SENATE—*Monday, June 20, 1988*

The Senate met at 11:30 a.m., and was called to order by the Honorable THOMAS A. DASCHLE, a Senator from the State of South Dakota.

PRAYER

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

Let us pray:

Sing unto the Lord with thanksgiving; sing praise upon the harp unto our God: Who covereth the heaven with clouds, who prepareth rain for the earth, who maketh grass to grow upon the mountains.—Psalms 147:7 and 8.

God of Abraham, Isaac, and Israel—God of Moses who sent manna from Heaven and brought water out of a rock for Thy people in the wilderness—hear our prayer. Thou knowest the seriousness of the drought in the upper Great Plains—the plight of the farmers—the concern of Congress. Mighty God, do what Congress with all its concern and power cannot do. Send rain upon this Nation wherever there is a need. We pray in the name of Him who rebuked the wind and the waves and they obeyed. 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, June 20, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable THOMAS A. DASCHLE, a Senator from the State of South Dakota, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

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

THE JOURNAL

Mr. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

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

RECOGNITION OF SENATOR PROXMIRE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin controls the majority leader's time and is recognized for a period not to exceed 5 minutes.

THIS IS NO TIME TO PASS A TRADE BILL THAT BRINGS BACK BRIBERY

Mr. PROXMIRE. Mr. President, what is the biggest Government corruption scandal in years all about? It is about bribery. And what was the purpose of the bribery? The purpose of the bribery was to secure the sale of military weapons. Should the Congress take steps to provide more effective laws against bribery? Should the Congress beef up the enforcement arm of the Federal Government to effectively prevent bribery? If this bribery scandal is as big as press reports indicate, you can be sure the Congress will be called on to do exactly this. Can the Congress make a change in Federal law that can sharply reduce or even eliminate bribery in the multibillion-dollar Government arms procurement business? What does the record show?

One experience in this regard is very promising. It took place 11 years ago. In the early 1970's, our country was rocked by a bribery scandal involving the sale of billions of dollars of American-produced arms. The scandal was sensational. The Lockheed Corp. paid a $1.4 million bribe to the Prime Minister of Japan to persuade him to order his Government to buy Lockheed planes. The Prime Minister was convicted by a Japanese court. He went to jail. He was disgraced for life.

What happened to Lockheed? Lockheed got away without even a gentle wrist tap. Indeed, Lockheed made tens of millions of dollars in profits out of the deal. The bribe was good business. That was not the only scandal. It was worse.

In the Netherlands, American arms producers again paid bribes to foreign officials. This time the royal family was implicated. The monarchy nearly fell. There was also widespread evidence of bribes by American corporations in countries like Italy, all to the detriment of our country's international reputation.

After that series of bribery scandals the Congress acted. We unanimously passed the Foreign Corrupt Practices Act in 1977. That act required every American corporation selling abroad to keep written records of all payments made by the corporation to foreign agents. It made the chief executive officer of the corporation responsible for that record and for knowledge of the record. The law required the date of payment, the person to whom the payment was made, and the purpose of the payment. The law also specified that the chief executive officer of an American corporation who had reason to know that his corporation had paid a bribe to a foreign official would be subject to prosecution.

Did that law do its job? It did, indeed. Mr. President, in the 11 years that have elapsed since that law was passed, there have been no major foreign bribery scandals. None. The shameful nightmare of corruption that haunted both America and our friends and trading partners abroad ended. A study by the General Accounting Office of the effect of the Foreign Corrupt Practices Act on exports showed that it had not been adverse. Indeed, in the 2 years after enactment of the act—the period when the act would have had its prime effect—American exports increased by more than 10 percent each year. Were there any unjust or allegedly unjust prosecutions under the Foreign Corrupt Practices Act? There were none. It worked.

Now, Mr. President—how about the situation today? Think of it: In the immediate shadow of the worst arms procurement scandal in recent memory that again involved bribery the Congress had included in the trade bill a provision that would gut the very anti-foreign bribery law I have been describing. Far from tightening up the law—the Congress—if it simply drops the plant closing provision of the trade bill and passes the trade bill in its present form will actually kill the one antibribery law that works. We would bring back bribery of foreign officials.

Mr. President, the very least we should do in the midst of the present grim reminder of the prevalence of bribery, when multibillion-dollar arms sales are involved, is not to gut the one antibribery law we have on the books that has worked.

RECOGNITION OF THE REPUBLICAN LEADER

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

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

RESERVATION OF THE REPUBLICAN LEADER'S TIME

Mr. DOLE. Mr. President, I reserve my time.

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

Mr. BYRD. Mr. President, will the distinguished Republican leader yield me his time?

Mr. DOLE. I will be happy to.

Mr. BYRD. I thank the leader.

WEST VIRGINIA DAY 1988

Mr. BYRD. Mr. President, today is West Virginia's 125th birthday.

On this day in 1863, after a long and heated Senate debate, and after a longer struggle and conflict within those Virginia counties that finally became the new State, West Virginia was admitted to the Union as the 35th State.

Not since the Revolutionary War itself, which transformed the Thirteen Original Colonies into the first 15 States represented on our flag, had a new State been born in such turmoil and bloodshed. Even as Abraham Lincoln was signing the proclamation making West Virginia a State, guerrilla bands and regular Union and Confederate units were still warring over the proprietorship of transmontane Virginia.

The Union victory sealed West Virginia's destiny, however, and West Virginia went on to assume a place among her sister States in the Republic.

Since then, West Virginians have proved their loyalty and devotion in every one of our country's subsequent wars, giving more than their expected or requested share in fighting personnel, and paying a price in deaths and casualties beyond the call of duty alone.

West Virginia ranked fifth among the States in the percentage of its male population participating in World War II, first among the States in the percentage of male population participating in the Korean war, and second among the States in the percentage of its male population participating in the Vietnam war.

West Virginia ranked first among the States in the percentage of deaths of its male population suffered during both the Korean and Vietnam wars.

But West Virginia ranks highly in more than its quality of patriotism. Endowed with vast stores of coal, West Virginia is synonymous in most people's minds with coal and coal mining. Much of that coal is rated as among the world's best metallurgical coal, a fact that made West Virginia a natural leader in steel production. Likewise, with some of the finest hardwood stands in our country, West Virginia has long been an important lumber producer, and the Kanawha Valley chemical industry is of world-class proportions.

Another feature of which West Virginians have long been proud, and with which tourists and visitors to West Virginia are becoming increasingly familiar, is West Virginia's scenic and natural beauty. White-water rafting on a number of West Virginia rivers is drawing thousands annually to the State. Others come to camp, to hike, to ski, to hunt, or simply to drive through thick, lush mountain forest lands.

Mr. President, my State is a rich wonderland, of which its people are proud. Moreover, I am proud to represent the people of West Virginia in the Senate, and I am frequently moved to a sense of humility that people of such strong character and moral fiber have entrusted to me this role in our national life. Today, I again salute the citizens of West Virginia, and I know that our colleagues join me in wishing West Virginia progress and prosperity in the decades ahead.

Mr. President, I yield the floor.

TRIBUTE TO WEST VIRGINIA'S BIRTHDAY

Mr. ROCKEFELLER. Mr. President, I rise to speak to you today on behalf of the people of West Virginia to wish our State a happy birthday. This is a day of celebration and reflection for our entire State.

One hundred and twenty-five years ago, June 20, 1863, in the midst of the Civil War, West Virginia joined the Union as the 35th State.

While the decision to join the Union was a difficult one for the people of western Virginia, it was an honorable and admirable one.

The mountains, valleys, hills, and hollows of western Virginia were settled by a fiercely independent people. They were people who believed in the rights of the individual. They were men and women who cared about family, community, and their Nation.

As their motto, they chose the three Latin words—Montani Semper Liberi—Mountaineers Are Always Free.

For 125 years, West Virginians have shown their dedication to freedom. They have given their very lives to protect and defend the ideals for which our Nation stands. Indeed, in the Vietnam war, West Virginians suffered the highest casualty rate of any State. We mourn our losses but stand proud of our history of patriotism and service to America.

The right decision often requires courage and sacrifice. West Virginians continue to make sacrifices today. Our State has faced many hardships, but our people have not faltered. We West Virginians are proud of our State and its heritage, and we're striving to build a bright and secure future for the generations to come.

The "independence of our people" which fostered our birth as a State has made us strong in spirit and determined to overcome any obstacle. Join with me today in wishing West Virginia a well-deserved happy birthday.

CLOTURE MOTION

MOTION TO PROCEED TO H.R. 1495

The ACTING PRESIDENT pro tempore. Under the previous order, the hour prior to the cloture vote shall be equally divided and controlled by the leaders or their designees.

Mr. BYRD. Mr. President, I designate on my side of the aisle Mr. SASSER to control the time.

Mr. DOLE. I designate Senator HELMS on this side.

Mr. BYRD. Mr. President, how much time remains now on each side?

The ACTING PRESIDENT pro tempore. Senator HELMS has 16 minutes and 40 seconds, and Senator SASSER has 24 minutes.

Mr. BYRD. I thank the Chair.

Mr. SASSER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. SASSER. Mr. President, if I understand, I have 24 minutes. Is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. SASSER. Mr. President, I would like to consume 10 minutes of that for myself, reserve 10 minutes of it for my distinguished colleague from North Carolina, Senator SANFORD, and then reserve the remaining 4 minutes to be dispensed with as we choose at that time.

Mr. President, I rise in strong support of this bill which will designate 467,000 acres in the Great Smoky Mountains National Park as wilderness. Wilderness designation for the Smoky Mountains has been a goal I have worked toward since my first days in the Senate.

In 1977, I introduced legislation seeking wilderness designation for the Great Smoky Mountains National Park. Again, in the 98th Congress, I promoted such wilderness legislation. My colleagues will recall that our former majority leader, Howard Baker, played a key role in that effort. That attempt is indicative of the bipartisan spirit we have seen throughout efforts promoting wilderness designation within the Smokies.

Indeed, the bipartisan support for this measure makes a mockery of claims that this effort is simply a partisan effort.

The two lead sponsors of this bill in the House are Democrat JAMIE CLARKE—whose district includes Swain County, NC—and Republican JOHN DUNCAN. My good friend, the ranking minority member of the Rules Committee on the House side, and the dean of our Tennessee congressional delegation, Congressman JIMMY QUIL-

LEN, also is cosponsoring this measure in the House of Representatives.

Congressman DUNCAN and Congressman QUILLEN, both Republicans, represent eastern Tennessee in the House of Representatives. Let me tell you, you cannot find any more staunch Republicans than JOHN DUNCAN or JIMMY QUILLEN. These two would not participate in a purely partisan effort nor would our former majority leader, Howard Baker. And let me reiterate so there can be no mistaking this. Senator Baker cosponsored Smokies wilderness legislation with me in the 98th Congress. That bill is nearly identical to the measure we are taking up today.

So let us put that partisan argument to rest. It simply does not hold water. It is a smokescreen, an effort to divert some of our colleagues' attention from true merit in this legislation. This is most certainly a completely bipartisan effort.

We have also heard that everyone in North Carolina is opposed to this bill. Well, Mr. President, I suspect that my distinguished friend from North Carolina, Senator SANFORD, will address this matter later but nothing could be further from the truth. As I have already mentioned, North Carolina's Congressman JAMIE CLARKE is a prime House sponsor of this bill. And, of course, as I indicated, our distinguished colleague, Senator SANFORD, of North Carolina is a cosponsor of the companion bill.

The elected officials of the county most directly affected by this bill—Swain County, North Carolina—support the legislation.

The superintendent of schools from Byrson City, NC also supports the legislation.

Support in North Carolina for this measure extends beyond elected officials. Newspapers across the State have endorsed our proposal over that of the senior Senator from North Carolina. Moreover, conservationists from across North Carolina support the bill. A listing of the groups supporting this bill includes the Sierra Club, the Audobon Society, the Wilderness Society, the League of Conservation Voters, Defenders of Wildlife, the National Parks and Conservation Association.

So let us be clear. This is broadbased support for a measure that is popular and needed or felt to be needed by officials both in Tennessee and in our neighboring State of North Carolina.

I do not need to mislead my colleagues. This is not to say that this legislation is not without controversy. The senior Senator from North Carolina, who I see on the floor today, has opposed this measure from the outset. He argues that this bill makes a mockery of certain commitments made to residents of Swain County, NC.

The commitment in question centers on a road the Federal Government promised to build. This road was to replace a road flooded by the creation of Fontana Lake. The road would lead into the national park for some 26 miles and would terminate at certain family cemeteries within the park.

We are going to hear a good deal about the agreement made in 1943 which promised this road. I am going to hold off with extensive remarks on this issue for a moment.

But I do want to say at the outset that the citizens of Swain County have a legitimate grievance. Nobody disputes this fact. Rather, the only point in dispute is how best to settle that grievance.

The senior Senator from North Carolina believes this grievance can only be settled with a literal reading of the 1943 agreement and completion of the North Shore Road. However, as we will establish through this debate, there are sound economic and environmental reasons for not building this road. Indeed, the National Park Service has come out in opposition to building this road. Their policy is crystal clear—the North Shore Road should not be built.

I believe we can settle the grievance of Swain County without building the road. By substituting a cash settlement for the road, we can satisfy the claim of Swain County against the Federal Government. The junior Senator from North Carolina agrees with that view. The elected officials of Swain County, NC, agree with this approach.

We have crafted such a substitute settlement for Swain County in this bill. And let me add that this settlement is a true compromise in every sense of the word. While some would contend that we have been unwilling to negotiate this dispute, a review of the history of this effort suggests otherwise.

Parties from North Carolina, Tennessee, and the Federal Government have negotiated this matter for over 20 years. The concept of a cash settlement as substitute performance came out of these negotiations. The junior Senator from North Carolina and I have worked long and hard in this Congress putting that remedy into legislative form that was acceptable to all parties.

Frankly, I believe we have gone very, very far in meeting the concerns expressed by many residents of Swain County. As I noted at the outset, so do officials in North Carolina and Tennessee and interest groups on both sides of this dispute.

Some of my colleagues may ask just why wilderness designation for this national park is so essential. First and foremost is the fact that the Great Smoky Mountains National Park is this Nation's most visited national park. In 1986, some 9.8 million persons visited the Smokies. In 1987, the number of visitors topped 10 million.

To put these numbers in perspective, I'd like to compare these visitation levels with the number of visitors at other national parks. America's second most visited national park is Acadia National Park in Maine. In 1986, Acadia received 3.9 million visitors, nearly 6 million less than the Smokies. For that same year, Yellowstone National Park drew 2.3 million visitors, Rocky Mountain National Park drew 2.4 million visitors, the Grand Canyon National Park—3 million visitors, Yosemite National Park—2.8 million visitors. Visits to the Smokies eclipsed visits to Yellowstone, Yosemite, and the Grand Canyon combined.

Mr. President, the high number of visitors to the Smokies is not surprising given the park's geographic proximity to so much of the Nation's population. However, this high level of visitation places a tremendous strain on the natural wonders in the park.

And let us be clear: The Great Smoky Mountains National Park is a land of incredible geographic and biological diversity. Sixteen mountain peaks within the park reach more than 6,000 feet. The highest peak in the park, Clingman's Dome, at 6,643 feet, is the second highest point in the Eastern United States.

Reaching these peaks is an eye-opening experience in itself. One publication has described the hike from the low levels of the Smokies to the mountain peaks as walking from Georgia to Maine in 1 day. And that is an accurate portrayal.

Areas which are best described as rain forests in the lower elevations of the park give way to hardwood forests typically found from Virginia to New York. As you continue to climb, the hardwoods give way to spruce fir forests characteristic of Maine and Canada.

All in all, Mr. President, the Great Smoky Mountain National Park is home to 150 species of trees and over 1,400 species of plants—more than any other national park in this country and more than in all of Europe.

This diversity extends to animal life within the park as well. Nearly 400,000 animal species make the Smokies their home. While we are best known for our black bears, the Smokies provide shelter for everything from wild boars to the pygmy shrew. Some 70 species of fish live within the park. A variety of reptiles, amphibians and over 200 species of resident and migrant birds are found in the park.

This diversity speaks of a fragile ecosystem, Mr. President. As with all such systems, a proper balance must be struck between preserving the wonders of nature and allowing visitors to come and enjoy nature's bounty. It is only

through such a balance that we can be sure that areas like the Smokies will be maintained for our children and our children's children. It is that spirit which has prompted us to seek wilderness designation for the Smokies.

Wilderness designation of the Great Smoky Mountain National Park is our best hope of preserving this most significant land resource in the Eastern United States. Presently, the Park Service manages the Smokies in a manner designed to preserve the park's wilderness characteristics. However, that administrative policy is purely discretionary. It can be changed at any point.

Now some will argue that such a change in policy is unlikely. Perhaps. But, why should we run even the slightest risk of gambling away future generation's enjoyment of the natural splendor of the Great Smoky Mountains?

Quite simply wilderness designation is the only guaranteed means we have of preserving the wilderness aspects of this park for generations to come. For as William Mott, Director of the National Park Service has noted, "wilderness designation by an act of Congress would assure that administrative discretion would not be used to permit developments and uses on Federal lands that are inconsistent with wilderness management."

That is what this bill is all about, making sure that we safeguard the incredible ecological diversity of the Smokies. Making sure that we strike the necessary balance between recreational use and conservation.

Let me reiterate the central point of this bill—it not only protects the best interests of the Great Smoky Mountains National Park—it also promotes the best interests of the residents of Swain County.

We can settle the claims of Swain County, NC, and at the same time accord the Great Smoky Mountains National Park the level of protection it deserves.

This opportunity has been many years in the making. If we don't act now, I doubt that we shall see action on these matters for many more years. The residents of Swain County will be left without a settlement. The Smokies will be left without wilderness protection.

Mr. President, the House of Representatives has already seized this opportunity and passed a Smokies wilderness bill. I would state again that the chief advocate of this measure in the House is Congressman JAMIE CLARKE, whose district includes Swain County. Again, his lead cosponsor is my good friend, JOHN DUNCAN, whose district includes the Tennessee side of the park. Congressman DUNCAN recently announced that he will be retiring at the end of this session of Congress. I know that he would like nothing better than to see this Smokies wilderness bill enacted on his watch.

Mr. President, the House's action on this bill and the array of public and private interests supporting this bill underscores the broad bipartisan support for this effort. This is as it should be. The bill reflects decades of hard work. The bill strikes an equitable balance between the interests of the residents of Swain County, NC, and the interests of the millions of Americans who visit the Great Smoky Mountains National Park.

Mr. President, we must not let this opportunity slip away. I urge my colleagues to support this legislation.

Mr. President, my 10 minutes have expired, and I now yield 10 minutes to my distinguished friend and colleague from North Carolina [Mr. SANFORD].

The PRESIDING OFFICER (Mr. SHELBY). The Senator from North Carolina.

Mr. SANFORD. Mr. President, we have here a controversy that has been going on now for almost 45 years. We have a settlement that has been on the table for a decade, and we have not been able to get this matter discussed on the floor of the Senate in the last 10 years.

I think it would serve everyone if we could bring this bill up for discussion, if we could talk about the concessions, the compromises, and the changes that we have made to accommodate a great many of the complaints. If we could have that kind of discussion, I do not doubt that we might very well be able to settle this matter, which has been in controversy for a lifetime.

The point is made that it will not do to commit any area of wilderness without the total consent of all the Senators involved. That is an appealing argument. It is an argument that had its beginning a year after the Wilderness Act was put on the books. The purpose was that, as a great many parts of the country attempted to have special areas included in wilderness, there was, understandably, a lot of dispute. So that rule, if it was a rule, was adopted under those circumstances. Those circumstances simply do not exist now.

In the first place, the Senate, on a number of occasions, has gone forward with designated areas as wilderness, without any agreement by either Senator involved. So there is no real precedent that we need to treat this as a local matter.

This is not just a matter of appointing a Federal judge or some Federal appointee, where Senators have to get together. This is a far more important matter.

I contend that this is a national issue, an issue of national concern, an issue that needs to be looked at by each Member of this body as a national opportunity, one that only the Senate can now decide.

I remember, as a second grader in North Carolina, being asked to contribute pennies to preserve this great natural resource in western North Carolina—all the way across the State from where I live. I remember that we did contribute pennies.

Where did the money for the national park come from? Did it come from North Carolina? Is this is a North Carolina project? Did it come from Tennessee and North Carolina? Is this a Tennessee and North Carolina proposition? This is a national proposition because the Nation bought it.

Now, my pennies helped the State of North Carolina appropriate $2 million. The State of Tennessee appropriated approximately $2 million. And, with private contributions between the two States, that amounted to about $5 million.

The Rockefeller Foundation, or one of the Rockefeller trusts, contributed an equal amount of $5.1 million. And then the Federal Government put in $3.5 million for the purchase. So you can very well see that this is a national park purchased with national money.

It had the enthusiastic support of North Carolina because the legislature appropriated the initial money. Citizens all over the State added to the contributions, especially the school children. And today we see one of the great natural resources of this Nation properly preserved.

No longer are the lumber people in denuding the mountainside. No longer are the people in digging for minerals. Here we have preserved now for 50 years one of the most remarkable pieces of land anywhere in the world and certainly anywhere in this Nation.

As an indication of the natural values of this park, we are one of the two or three places in the United States, the Great Smokies Park is, designated as an international biosphere reserve and a world heritage site. So this is anything but a little local issue that has to be decided by local agreement.

I think we have to look at it as a great national asset. We have to, therefore, look at it as a national responsibility and a national problem.

I have attempted to keep politics out of this. I have been involved, in a way, since I was Governor in the early 1960's when people from Swain County asked me to get involved with whether or not a road would be built or whether or not some other settlement would be made. And I said to them then that I will get involved when the local officials concerned, the local officials who have a responsibility, have settled the matter.

Now, they did not agree while I was in office. They did not agree until about 7 or 8 years ago. But now the county commissioners, the elected officials, the people of the only county

that entered into this contract initially, the only one that has anything to gain in terms of solving a claim that they have had is Swain County. And Swain County has testified and has certified that the county commissioners are unanimously in favor of going forward with this bill with this des-ignation of wilderness and, perhaps, from their point of view, of even greater importance, with the settlement of the longstanding claims that Swain County has been unable to settle.

My distinguished colleague from North Carolina disagrees with this designation and, with some justification, contends that they said they are going to build a road, they ought to build a road. And that is hard to disagree with.

But it has been pretty well demonstrated that a road is not feasible. It has been pretty well demonstrated that Congress is not going to appropriate enough money for a road. It has been pretty well agreed by all the scientists who have looked at it that building a road would be environmentally detrimental.

So, I do not think that is a feasible solution. As appealing as it is to me and as appealing as it is to a great many people, that simply it is not feasible. We have tried it. Six miles, approximately, was built at a tremendous cost overrun. But, worse than that, it caused not only slides that were damaging but it caused a leaching out of the anakeesta rock that they cut through and is prevalent in that part of the mountains, the runoff damaging very much the creeks and rivers. To this day fish have not come back to live in that area where the first leaching took place. So, there is plenty of scientific evidence as well as lack of funds indicating that however we work this out it is not possible right now to build a road.

I have worked to try to satisfy the local people that we can do some other things. We have put into this bill now, things that were not in it. One was the guarantee to the people that care about—is my time up?

The PRESIDING OFFICER. The Senator has about 9 seconds.

Mr. SANFORD. Well, I will take about 1 more minute.

But we have worked our best to work out compromises that guaranteed the people they could visit the cemeteries; that guaranteed the roads there would be kept open; that guaranteed that some of the park areas that have not been attended to as promised would not be made into adequate places for people to visit it.

We will have an opportunity to talk about all of those if we can get this bill up for discussion.

Mainly, I want to say that the schoolchildren of Swain County, because we have not in Washington been able to settle this matter, the schoolchildren there now, almost a generation of schoolchildren, have been denied the benefits that this long-overdue cash settlement with Swain County would make possible for them. So not only do we further preserve a great area of America, but we do what is right by the schoolchildren of Swain County.

I thank the Chair.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair for recognizing me.

May I inquire as to how much time is allocated to me?

The PRESIDING OFFICER. The Senator from North Carolina has 14 minutes.

Mr. HELMS. Is that all the time remaining?

The PRESIDING OFFICER. The Senator from Tennessee has 1 minute remaining.

Mr. HELMS. Very well. I thank the Chair.

Mr. President, we can conclude this argument in 5 minutes and pass a wilderness bill by a voice vote by 1 o'clock this afternoon. All I am asking, on behalf of the people of North Carolina, is that they be treated just as fairly as the people of Tennessee.

Now, I have listened to the self-congratulations this morning from the sponsors of the bill. I am somewhat less than impressed because I would advise the Chair that among those opposed to the pending legislation, which sorely needs to be modified, are the State of North Carolina, the Eastern Band of Cherokee Indians, the Graham County Commissioners, the Graham County Chamber of Commerce, the Cherokee County Commissioners, the Bryson City Board of Aldermen, 6,812 people in western North Carolina. They have sent me petitions and letters—not a one of which I requested; and the North Carolina Park and Recreation Council. In addition, the national Veterans of Foreign Wars support my bill over H.R. 1495.

Mr. President, I do not know who is supporting the Sasser-Gore-Sanford bill, but I will tell you this much: The people of North Carolina do not support it.

Mr. President, I ask the Chair just to look at some of these petitions and letters. I wish the Chair could read what they are saying about this bill and what it is doing or will do to the State of North Carolina. As this debate proceeds, we will talk about details.

The central issue in this debate is not about environmental protection. The land in question is already part of the National Park System. The issue here is whether the U.S. Government will keep its word and live up to a very clear commitment made in writing 45 years ago in exchange for land that the Federal Government took to build the Fontana Dam to generate power that was much needed during that wartime period.

So, what we have here is the question of the integrity of the Federal Government.

I say again, it was wartime and those western North Carolina mountaineers who love this country were willing to sacrifice. They gave up their land and their livelihood in exchange for a promise. But ever since that time politicians have reneged on that promise.

The Government started to build the road and then it stopped because the professional self-proclaimed environmentalists got into the political act. And that is what we have here, Mr. President, a political act.

Mr. President, I say again to all Senators who may be listening on their squawk boxes or watching the proceedings on television: We could settle this thing in 5 minutes and end the dispute that the Senator from North Carolina, Mr. SANFORD, referred to, simply by, one, saying to the Federal Government, "You will keep your word." And, second, setting aside 44,000 acres. That is all we ask.

The wilderness bill involving more than 400,000 acres will be enacted almost instantaneously if these two small concessions can be made.

I say, Mr. President, that if the Federal Government cannot keep its word in this, what will the Federal Government keep its word about?

Senators need to be aware of what happened 45 years ago to understand why I so strongly oppose the pending bill as it now stands. Literally thousands of Swain County residents back in those World War II years packed their bags and left their homes because the Federal Government said, "We need your land." The Government did not relocate them nor did they give these families additional land in compensation. The Government simply gave them a few dollars per acre for the land.

Mr. President, a lot of folks down there have told me over the years that they did not ever receive one dime of money from the Federal Government. But that is all right. All they are asking now is fair play.

Much has been said about the ancestral cemeteries and the elderly North Carolinians, who find it almost impossible to get there unless they are going to get on boats and go across the lake. In Tennessee, not one ancestral cemetery is inaccessible by automobiles.

Incidentally, World War II veterans are buried in the cemeteries, both in Tennessee and in North Carolina. I do not have to remind the Senators, Mr. President, about that war that was raging in 1943. Many of the men from those beautiful hills and mountains were across the sea fighting for free-

dom while their land was being taken by the Federal Government to build that hydroelectric facility. When the Government took 44,400 acres of land north of Fontana Lake, the Government promised two things. Let me make these points for the purpose of emphasis.

One, to reimburse Swain County for a highway that would be flooded to create Fontana Lake and, two, to build an all-around-the-park road to, among other things, those ancestral cemeteries.

What did the agreement during World War II between the Federal Government and the people of western North Carolina say? The agreement said the department agrees that, as soon as funds are made available for that purpose by Congress after the cessation of the hostilities in which the United States is now engaged, the department will construct or cause to be constructed, the following described sections of road, all of said sections being hereinafter collectively referred to as the "park road."

"A section of road"—and I am continuing to read the agreement—"A section of road beginning at a point on the Fontana Dam access road near the crossing of Fax Branch and extending to a point of the western boundary of the land identified on exhibit A as the property of North Carolina Exploration Co.

"B. A section of road beginning at the eastern boundary of said North Carolina Exploration Co., land and extending to the eastern boundary of the park as extended hereunder."

Sections C, D, and E continue to describe the land involved.

Mr. President, building the road was contingent, of course, on appropriation by Congress. However, it is clear the Government assumed the road would be built shortly after World War II. In July 1943, shortly after the agreement was signed, a Tennessee Valley Authority supervisor wrote the families about the gravesite removal and the letter stated:

> The construction of Fontana dam necessitated the flooding of the road leading to the Proctor Cemetery located in Swain County, North Carolina. And to reach this cemetery in the future it will be necessary to walk a considerable distance until a road is constructed in the vicinity of the cemetery which is proposed to be completed after the war has ended. We are informed that you are the nearest surviving relative of a deceased who is buried in this cemetery.

Mr. President, there are numerous documents assuring the people that the road would be built.

The Senator from Tennessee is disturbed about the cost of the road. We are not talking about a super highway. We are talking about 27 miles of primitive logging style road, at a cost, according to the last estimate available to me by the Forest Service, of $18,000 a mile, or a total of $486,000. So the cost is a red herring that has been thrown into this debate by those who want to snooker the people of North Carolina.

I make another point on this issue of cost, Mr. President. I think it is pretty common knowledge around this place that I am about as budget conscious as you can get. During the first session of the 100th Congress I was one of only six Senators who voted on every occasion against waiving section 311 of the budget act, but I think it is worth $486,000 for the Federal Government to live up to a commitment it made in writing during World War II to the people who are being snookered by this proposed bill as it now stands.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. Two minutes and 24 seconds.

Mr. HELMS. I thank the Chair.

In the four counties involving this park at Tennessee, the Government today owns less than one-fourth. If you want the precise figure, it is 244,106 acres out of a total of 1,235,040 acres. Those are the four counties in Tennessee, 25 percent owned by the Federal Government. In the four counties surrounding the park in the North Carolina side, the Government owns more than half of the land, 655,000 acres out of 190,941.5 acres.

Government ownership of land has already devastated tourism. And $700 million in tourism poured into Tennessee's four counties while North Carolina netted $53 million in tourism in the three counties surrounding the park. Placing parkland north of Fontana Lake will cripple the tourism industry in North Carolina.

So I do not wonder that Senator SASSER and other sponsors of the bill like the bill as it is. But the people represented here do not like it nor do the others that I identified earlier: The Cherokee, Indian Tribe, County Board of Commissioners, the Graham County Commissioners, the Graham County Chamber of Commerce, Bryson City Board of Aldermen, more than 85 percent of the business people in Bryson City, the State of North Carolina; the North Carolina Parks and Recreation Council; at least 6,800 residents of western North Carolina; and the Veterans of Foreign Wars who support my bill over the Sasser bill.

I say in conclusion that we can solve this problem if the two items that I mentioned are incorporated into the bill and I stand ready to work with the proponents of the bill. I ask them and I ask other Senators to consider fair play for the mountain people of western North Carolina who have nowhere to turn except to the Senate of the United States.

If I have extra time, I reserve it.

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

The Senator from Tennessee.

Mr. SASSER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. One minute.

Mr. SASSER. Mr. President, I yield the remaining 1 minute to the Senator from North Carolina [Mr. SANFORD].

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. SANFORD. Mr. President, the promises made to North Carolina and to the people of Swain County was that a road would be built if and when the Congress appropriated the money. The Congress appropriated $6 million. It built 6 miles. The Park Service now says it will take $4 to $5 million to build the road, not $400,000.

Now, what about this business of North Carolina being against this bill? I do not know how that comes about. The North Carolina Governor is, but the North Carolina Governor is an ally of our senior Senator, and that is quite appropriate.

The Swain County commissioners; Swain County School System; Jackson County commissioners; Western North Carolina Tomorrow, the development area; North Carolina Parks, Parkways, and Forest Development Council, which is a North Carolina State agency; the Cherokee Historical Association; the Western North Carolina Association of Communities; the Western North Carolina Development Association; the Land of the Sky Regional Council; conservation groups, 10 of them.

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

Mr. SANFORD. So I suggest that North Carolina, at best, is somewhat divided on this difficult issue. We need to settle it by longer debate right here. Thank you.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, inasmuch as I only had 14 minutes because of circumstances beyond my control, I ask unanimous consent for 1 minute. I want to answer the distinguished Senator from North Carolina by reading into the RECORD a letter from the Governor of North Carolina.

The PRESIDING OFFICER. Is there objection?

Mr. SANFORD. Reserving the right to object, if I may have 20 seconds to rebut.

The PRESIDING OFFICER. Without objection, it is so ordered. The senior Senator from North Carolina is recognized.

Mr. HELMS. The State of North Carolina, Office of the Governor, June 10, 1988:

> DEAR JESSE: I understand that S. 693, the Great Smoky Mountains Wilderness Legislation sponsored by Senator Sasser and cosponsored by Senator Sanford, may come before the full Senate in June. I am writing to you to express my opposition to this leg-

islation. S. 693 does not honor the federal government's commitment, made over 40 years ago, to replace an access road along the north shore of Fontana Lake. This bill is little more than a payoff to disinterested citizens as a substitute for the road.

As you know, I steadfastly support your legislation, S. 695. Your approach recognizes that to retain credibility and trust in government, the agreement to build a primitive access road must be honored. On May 26, after an informational hearing in Bryson City, the North Carolina Parks and Recreation Council also agreed with that assessment and voted to support the construction of a primitive road.

Thank you for your leadership on this issue that is so important to the people of Swain County.

Sincerely,

JAMES G. MARTIN.

Now, 20 seconds.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. SANFORD. I have a letter from the State of North Carolina Department of Justice.

Mr. HELMS. What is the date?

Mr. SANFORD. June 17, 1988:

I am writing to confirm my support for this bill and to commend you and Congressman James McClure Clarke on your efforts to resolve this forty-five year old controversy between Swain County and the United States.

Through your efforts, a fair and just compensation would be paid to Swain County for damage to the old county roads system from filling Fontana Lake. While the bill would provide reasonable access to the North Shore area for family and friends to visit the graves of their ancestors, it would not require ecological damage to one of the last truly wilderness areas in the Eastern United States.

The striking of this delicate balance protects the interests of all the citizens of North Carolina and the United States.

With warmest personal regards and best wishes, I am.

Sincerely,

LACY H. THORNBURG,
Attorney General.

Mr. President, I ask unanimous consent that various letters, articles, editorials, and materials be printed in the RECORD at this point.

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

DEAR SENATOR: At the Senate Energy and National Resources Committee markup on Wednesday, February 3, Public Lands Subcommittee Chairman Dale Bumpers indicated his intent to bring up Great Smoky Mountains Wilderness legislation in the Committee at the earliest possible opportunity. Chairman Johnston agreed with Senator Bumpers that the Committee would consider Smokies wilderness as soon as possible.

Our organizations strongly support S. 693, the Great Smokies wilderness bill introduced by Senators Jim Sasser, Terry Sanford and Al Gore. We are strongly opposed to Senator Jesse Helms' bill on the same subject. We expect the Committee will consider and vote on a substitute to S. 693 that is very similar to the Great Smokies legislation passed by the House on September 29.

Attached is a fact sheet that explains our position on this issue and why it is a very important priority for our organizations.

DAVID GARDINER,
Sierra Club.
SYDNEY BUTLER,
The Wilderness Society.
T. DESTRY JARVIS,
National Parks and Conservation Association.
BROCK EVANS,
National Audubon Society.
LYNN GREENWALT,
National Wildlife Federation.

GREAT SMOKY MOUNTAINS WILDERNESS LEGISLATION

(The Wilderness Society, Sierra Club, National Parks and Conservation Association, National Audubon Society, National Wildlife Federation)

Wilderness protection and management for the great Smoky Mountains National Park has been a primary objective for conservationists since the park was established more than 50 years ago. The Great Smokies represent the greatest single source of wilderness and ecological diversity in eastern North America, and include the largest virgin forest east of the Mississippi. Last year the park recorded more than 10 million visits, an all-time record for what was already the most heavily visited national park in the country.

For the past decade Congress has considered legislation to designate most of the Great Smokies as wilderness. Last September 29, the House unanimously passed H.R. 1495, a bill introduced by Representative James Clarke (D-NC) and Representative John Duncan (R-TN) which establishes the Great Smoky Mountain Park Wilderness. The House bill contains the following key provisons:

419,000 acres of the park are designated wilderness, and another 46,000 areas are to become wilderness as soon as certain rights retained by private landowners are acquired by the National Park Service.

Swain Country, North Carolina is authorized to be paid $9.5 million to settle claims relating to the failure of the Department of the Interior to complete construction of a road within the park along the north shore of Fontana Lake. This provision is supported by all parties involved in the Great Smokies Wilderness issue, including the Reagan Administration.

The official designation of the wilderness does not take effect until the appropriation of the $9.5 million occurs.

Current visitor access now provided by the Park Service to cemeteries within the park is to continue on a permanent basis.

Senators Jim Sasser, Terry Sanford and Al Gore introduced a Smokies Wilderness bill (S. 693) last February. They have prepared an amendment to that bill for consideration by the Senate Energy and Natural Resources Committee which would make it very similar to the House-passed legislation. The amendment would establish the same wilderness boundaries as the House-passed bill except that the cemeteries themselves would be excluded from wilderness, and the access corridors to the cemeteries are also deleted, but no use of these roads would be allowed except by Park Service owned or operated vehicles.

Senator Jesse Helms has introduced his own bill (S. 695) which differs from the Sasser-Sanford-Gore legislation on two key points:

The Helms bill would only designate 400,000 acres of wilderness in unspecified locations in the park; and

It would authorize the construction of dead-end road through the heart of the proposed wilderness to provide motorized access to the cemeteries within the Hazel Creek area of the park now serviced by Park Service boats and vehicles. Though Senator Helms has not indicated the exact route for this proposed road, it appears likely it would exceed 30 miles in length, would cause considerable damage to a pristine environment, and by Park Service estimates would cost millions of dollars to construct.

Our organizations are opposed to the Helms bill. We strongly support either the House-passed bill or the Sasser-Sanford-Gore legislation as the authors propose to amend it. The Reagan Administration officially supports all 465,000 acres as wilderness or potential wilderness. In fact, the wilderness boundaries in the House-passed bill and the Sasser-Sanford-Gore legislation are the same as those recommended by the Park Service for wilderness or potential wilderness. Furthermore, the Administration strongly opposes the construction of the road that has been proposed by Senator Helms.

We urge you to support Senators Sasser, Sanford, and Gore in their efforts to promptly enact a Great Smokies wilderness bill. It has literally taken decades to get to the point where this legislation has the local, regional and national support necessary for Congress to act. Passage of a strong Smokies bill will be an important milestone in the development of our National Wilderness Preservation System, and would be heralded as one of the major conservation achievements of the 100th Congress.

JUNE 17, 1988.

DEAR SENATOR: We want to express our strong support for H.R. 1495—The Great Smoky Mountains Wilderness Act—which is now being considered by the full Senate.

H.R. 1495 would designate 465,000 acres of the park as wilderness or potential wilderness and would settle long-standing claims against the federal government by Swain County, North Carolina. A similar bill passed by the House last September by unanimous voice vote. The Reagan Administration officially supports all 465,000 acres of wilderness or potential wilderness and strongly opposes the construction of the road proposed by Senator Jesse Helms. This issue is a top priority for the environmental community.

Senator Helms is opposed to the bill, and has begun a filibuster in order to prevent a vote from being taken. We do not believe that the opposition of the Senator should prevent this important legislation from being considered. We urge you to vote to invoke cloture on H.R. 1495.

The Great Smoky Mountains Park is the most visited national park in the country. H.R. 1495 would create the finest wilderness area in the eastern United States. It has been 11 years since the first Great Smokies Wilderness Bill was introduced in the Senate. The time to resolve this issue is long past due.

GEORGE T. FRAMPTON, Jr.,
President, The Wilderness Society.
PETER A.A. BERLE,
President, National Audubon Society.

MICHAEL FISCHER,
Executive Director, Sierra Club.

PAUL C. PRITCHARD,
President, National Parks and Conservation Assn.

FREDRIC P. SUTHERLAND, ESQ.,
Executive Director, Sierra Club Legal Defense Fund, Inc.

Dr. JAY D. HAIR,
President, National Wildlife, Federation.

JOHN H. ADAMS,
Executive Director, Natural Resources Defense Council, Inc.

Dr. RUPERT CUTLER,
President, Defenders of Wildlife.

DEFENDERS OF WILDLIFE,
Washington, DC, June 15, 1988.

Hon. TERRY SANFORD,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR SANFORD: On behalf of the 80,000 members of Defenders of Wildlife, I want to express our strong support for the enactment of H.R. 1495, which will designate approximately 90 percent of the Great Smoky Mountains National Park as part of the National Wilderness Preservation System. We hope that H.R. 1495 can be debated in the Senate in the near future.

As you know, this important park, straddling the boundary between North Carolina and Tennessee, is the greatest single tract of wilderness protecting ecological diversity in the eastern part of North America and includes the largest virgin forest east of the Mississippi.

Currently the park is the most heavily visited park in the nation. Wilderness protection will prevent new development, such as the construction of roads or visitor facilities, in the approximately 90 percent of the park that the National Park Service has recommended for wilderness. This would put an end to the proposals for major new highways through the park and for dead-end roads into the heart of the roadless area.

In addition, the wilderness designation would provide added protection for the black bear and the endangered eastern cougar that inhabit the park and require large areas free from development for survival. The park would remain a wildlife sanctuary and primitive recreation area.

Great Smoky Mountains National Park has been designated an International Biosphere Reserve by the United Nation's Economic, Social, and Cultural Organization (UNESCO) in recognition of its unique and important ecological value. It well deserves the additional protection of being designated part of the National Wilderness Preservation System.

Please do not hesitate to call on Defenders if we can be of more assistance in advancing wilderness designation for the Great Smoky Mountains National Park.

Sincerely,

M. RUPERT CUTLER,
President.

SWAIN COUNTY, NC,
Bryson City, NC, March 21, 1988.

Senator TERRY SANFORD,
Washington, DC.

DEAR SENATOR SANFORD: Recently the Great Smoky Mountains Wilderness Bill (HR 1495) received a favorable recommendation from the Senate Energy and Natural Resources Committee.

Approximately one-half of the Great Smoky Mountains National Park lies in North Carolina and is Swain County's most outstanding natural resource.

Swain County Commissioners unanimously support HR 1495 and we strongly urge your active support in getting it to the Senate Floor and your vote for its passage.

We feel HR 1495 is a feasible way to terminate a forty-five year old controversy between the Federal Government and Swain County. The 1943 Agreement between Swain County and the Federal Government promised a road in return for the right to flood the only road leading into the 46,400 acre area. This flooding was necessary when Fontana Dam was built to generate hydroelectric power for Alcoa at Oak Ridge, Tennessee, during World War II.

The funding structure of HR 1495 appropriates to Swain County $11,100,000 in lieu of a road, which the Federal Government has not opted to rebuild since 1943. It provides a reasonable compromise compensation to Swain County that can be used to maximize the return on the investment of the $11,100,000.

This settlement will stimulate economic development, provide cash for desperately needed infrastructure improvements to a small, poor county and the interest from the $11,100,000 could help pay for rebuilding deteriorated education facilities. It also settles a long standing dispute that has divided and traumatized Swain County for forty-five years.

The Bill addresses various concerns relating to appropriate cemetery access, Fontana Lake usage, and buffer zone restriction. It insures that the cemeteries will continue to be managed as they currently are with no additional restrictions being imposed.

The Great Smoky Mountains National Park attracts millions of visitors every year. From these visitors our economy is sustained. The people of Swain County led the movement to create a beautiful park for the rest of the world to enjoy and it provides a magnificent backdrop to Bryson City and the Cherokee Indian Reservation. Wilderness designation puts into law current management practices to which we have been accustomed for many years. We believe the Park, with adequate funding from the Federal Government, will continue to concentrate on quality development that will enhance and encourage the continued enjoyment of the Park as it is currently used. This development will provide a positive economic impact on Swain County that is badly needed now and in the future.

Eighty-four percent of Swain County is owned by the Federal Government imposing a low tax base and chronic high unemployment. A settlement of Federal obligation dating back to 1943 is sorely needed. Our economic survival is at stake and we ask you to help us. We thank you and respectfully request your support and vote for Senators Sanford and Sasser's HR 1495.

Sincerely yours,

JAMES L. COGGINS,
Chairman.

MERCEDITH BACON,
Commissioner.

Dr. R. MAX ABBOTT,
Commissioner.

SWAIN COUNTY, NC—RESOLUTION

The Swain County Commissioners, during regular session, did conduct the following business.

Whereas, on October 8, 1943 Swain County, the State of North Carolina, the Tennessee Valley Authority and the U.S. Department of Interior entered into that certain agreement which commonly came to be known as the "1943 Agreement", and the same is attached as Appendix "A"; and

Whereas, the U.S. Department of Interior in 1949 did commence construction of the North Shore Road and completed approximately a mile in length leading from Fontana Dam; and

Whereas, construction work on the North Shore Road ceased until the State of North Carolina agreed in 1959 to construct a road from Bryson City to the Great Smoky Mountain National Park boundary and thereby causing the U.S. Department of Interior a year later to resume construction; and

Whereas, the parties to the 1943 Agreement (or assignees) did attempt to enter into an agreement in 1965 that proposed a 34.7 mile transmountain road in exchange for construction of the North Shore Road, and construction of the North Shore Road has been terminated at the end of the tunnel completed in 1969; and

Whereas, the Department of Interior to date has not been able to discharge its obligations under the above-mentioned contract; and

Whereas, the parties of the above-mentioned contract did in October, 1979 establish a Study Committee to make recommendation for a resolution of the 1943 Agreement; and

Whereas, the Study Committee did make recommendation, and based on said recommendation the Swain County Commissioners, taking into consideration the recreational-economic potential of Swain County immediately adjacent to the Great Smoky Mountains National Park and national interest of the park's preservation, endorsed introduction of House Bill 8419 as introduced by the Honorable Lamar Gudger attached hereto as Appendix "B" and approved by then the Secretary of the Interior Cecil Andrus as the resolution to the 1943 Agreement; and

Whereas, said above legislation was introduced in the U.S. House of Representatives and like legislation in the U.S. Senate during a lame duck session was not passed prior to congress recessing; and

Whereas, Senator Baker and Senator Sasser of Tennessee co-sponsored legislation in the United States Senate and a portion of Senate Bill 1947 provided for an equitable resolution of the 1943 Agreement and was not passed during the 1984 Session; and

Whereas, Congressman Duncan of Tennessee and Congressman Clarke of North Carolina co-sponsored legislation in the United States House of Representatives and a portion of House Bill 4262 provided for an equitable resolution of the 1943 Agreement and was not passed in the 1984 Session; and

Whereas, Senator Sanford of North Carolina and Senator Sasser of Tennessee have introduced Legislation in the United States and a portion of Senate Bill 693 does provide for an equitable resolution of the 1943 Agreement; and

Whereas, Congressman Clarke of North Carolina introduced legislation in the United States House of Representatives and a portion of House Bill H.R. 1495 does provide for an equitable resolution of the 1943 Agreement; and

Therefore, based upon the foregoing, The Swain County Commissioners do hereby endorse and support the passage of the bipartisan legislation currently pending before Congress, to-wit Senate Bill 693 and House Bill H.R. 1495; and

Furthermore, the Swain County Commissioners strongly encourage not only the North Carolina Delegation, but all members of the U.S. Congress, to end this much over due Settlement of the "1943 Agreement" by passage of Senate Bill 693 and House Bill H.R. 1495.

This is the 19th day of June 1987.

Passed by unanimous vote.

Swain County Board of Commissioners,

JAMES L. COGGINS,
Chairman.
MERCEDITH BACON,
Member.
DR. R. MAX ABBOTT,
Member.

STATEMENT OF DR. JAMES F. CAUSBY, SUPERINTENDENT OF SCHOOLS, BRYSON, CITY, NC

Dr. CAUSBY. Thank you, Chairman Bumpers.

It is with a great deal of appreciation and anticipation that I appear before you today. I deeply appreciate the opportunity you have provided me to share my personal feelings with you concerning these very important pieces of legislation before you. As a representative of the Swain County Board of Education, I appreciate the opportunity to share with you the needs of our young people in Swain County.

I appear before you with anticipation that finally, after 44 years of empty promises and lack of action by the Federal Government, a just and fair settlement of the north shore road issue may be about to occur. If any settlement is to occur, it must begin here today with the members of this subcommittee. My anticipation is that you will carefully study this issue and make wise decisions concerning a settlement. Literally, the future of Swain County and its young people is in your hands.

Forty-four years ago during the effort to win World War II, the Federal Government flooded a road that had been built by Swain County. That road now lies covered by the waters of Fontana Lake. The effort during those war years to build the necessary dams that would allow production of the electricity needed to make aluminum was noble and worthwhile. That effort, however, has resulted in a longstanding controversy that has caused our county financial burdens, has led to a deep mistrust of the Federal Government by the people of Swain County, and has even led to divisiveness among our own people.

The controversy stems from the promise made by the Federal Government to the Swain County Board of Commissioners that a new road would be built along the north shore of Lake Fontana to replace the road that had been flooded. It was to be built if and when the money is appropriated by the Congress of the United States. That money has never been appropriated and the problem has been compounded by environmental issues related to possible road construction, by the desire for needed and deserved access to cemeteries located in the area, and by misunderstandings and often intentional misrepresentations of what wilderness designation for the Great Smoky Mountains National Park actually means.

The controversy is even further complicated by the introduction of two conflicting Senate bills designed to resolve the issue. Whatever the history of this issue, one thing is clear. It is best for everyone concerned that it be settled as quickly as possible.

I am here to speak in favor of companion bills S. 693 introduced by Senators Terry Sanford and James Sasser, and H.R. 1495 introduced by James McClure Clarke. These companion bills in my opinion make provisions to settle this longstanding controversy. They are comprehensive bills that consider the needs of Swain County and the many different groups that have an interest in the north shore road issue.

They are also the bills preferred by the Swain County Board of Commissioners who are the legal, elected representatives of the people of Swain County.

I believe there is little doubt by anyone that a settlement of this issue is right and just. The monetary provisions of these companion bills seem to be accepted by almost everyone. Swain County spent its own money to build a road flooded by the U.S. Government. It is reasonable and fair that the county be paid $9.5 million and a debt of approximately $1.6 million be paid off. This indebtedness resulted from construction of Swain County High School, and is held by the Farmers Home Administration.

Swain County is an economically depressed area. One reason perhaps the main reason for this, is the fact that 84 percent of all property in Swain County is nontaxable due to action of the Federal Government. This area includes the Great Smokey Mountains National Park, Cherokee Indian Reservation Natahala National Forest and Fontana Lake. The revenue that could be derived annually from the interest earned on $9.5 million and the $130,000 annual payment from the high school debt would allow for many needed services.

Our Board of County Commissioners have made education the top priority for the county. They have pledged that additional revenues from this settlement will be used in great part to upgrade the educational program in Swain County.

We have bright and interested students in Swain County. Our people have made many sacrifices to provide the best possible education for our children. However, the funding has never been available to offer the same educational opportunities that are enjoyed by students in many other school systems. We need to expand our course offerings in art, in music, in career awareness, in science, in mathematics, in foreign languages, and in programs for exceptional children. We need to provide the specialized counseling that is needed for our students, especially in the elementary schools. Our elementary students are housed in facilities that are outdated and no longer suitable for use. One of these buildings was built in 1922 and now has the third floor condemned. We badly need the funds that this settlement will provide. Our students deserve it.

I see the red light is on. I would just ask that you favorably report out S. 693.

A RESOLUTION SUPPORTING CONGRESSMAN JAMES M. CLARKE'S BILL TO SETTLE WITH SWAIN COUNTY

Whereas, Congressman James M. Clarke has introduced a Bill to settle a forty-four year old dispute between Swain County, North Carolina and the United States; and

Whereas, the Swain County Government believes the Legislation to be a fair and just settlement for the Citizens of their County; and

Whereas, the Citizens of Swain County would receive approximately twelve million dollars in money and pardon of a Federal Debt; and

Whereas, portions of the Smoky Mountain National Park would be designated wilderness area, leaving certain roads in the Park to be used by the General Public; and

Whereas, provisions are written into the Bill for families and friends to visit the graves of their ancestors; and

Whereas, this proposed settlement appears to be in the best interest of the majority of the Citizens of this area and the United States: Now, therefore, be it *Resolved, That the Commissioner of Jackson County endorse Congressman Clarke's Bill and encourage a speedy solution of this forty-four year old dispute; and*

Be it further resolved, That copies of this Resolution be presented to Congressman Clarke, Senator Terry Sanford, and the Board of Commissioners of Swain County, North Carolina. Adopted, this the 6th day of April, 1987.

WAYNE HOOPER, *Chairman,*
Jackson County Board of Commissioners.

WESTERN NORTH CAROLINA,
Cullowhee, NC, April 21, 1987.

Hon. JAMES MCCLURE CLARKE,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN CLARKE: The Board of Directors of Western North Carolina Tomorrow, at its annual meeting on April 13, 1987, unanimously adopted the recommendation of the Recreation Subcommittee and the Natural Resources and Pride in the Region Committees to support HR 1495, the Smoky Mountains Wilderness Bill.

Please do not hesitate to call on the WNCT Board and staff for any assistance we may provide to support this measure which is of vital importance to the future of the Great Smoky Mountains National Park, Swain County, and the State of North Carolina.

Sincerely,

EDGAR P. ISRAEL,
Executive Director.

NORTH CAROLINA
DEPARTMENT OF COMMERCE,
Raleigh, NC, June 10, 1987.

Hon. JAMES MCCLURE CLARKE,
U.S. Congressman, Biltmore Building—Suite 434, Asheville, NC.

DEAR CONGRESSMAN CLARKE: I am delighted to inform you that the N.C. Parks, Parkway and Forest Development Council voted to support HR 1495 or SB 693, the Great Smoky Mountains Wilderness Bill.

The Council appreciates your efforts to protect and preserve the Great Smoky Mountains National Park for future generations and effect the long overdue settlement of the 1943 agreement between Swain County and the National Park Service.

Respectfully yours,

ED ISRAEL,
Chairman, N.C. Parks, Parkway and Forest Development Council.

SMOKIES ROAD: FAVOR FOR A FEW

U.S. Sen. James Sasser of Tennessee could have been a bit more diplomatic when con-

fronted last week by a group of angry Swain County residents in Great Smoky Mountains National Park. By snubbing the protesters, Sasser fueled hostility toward legislation he is co-sponsoring that would help protect the park from development. Yet, as bitterly as some may oppose the bill, it also enjoys considerable local support—as it should.

Just ask the Swain County commissioners, for example. They favor the legislation because it would guarantee their economically strapped county a $9.5 million cash payment as well as $1.6 million to pay off school construction debts. The money would represent compensation by the federal government for shelving a commitment to rebuild a road that was flooded when Fontana Lake was built.

It's the road that is at the heart of the dispute. Some residents favor it because it would ease access to family cemeteries in the park north of the lake. But the road also would be a magnet for visitors, and thus a spur to development on the park's fringe. No doubt there would be money to be made by those exploiting greater access to the park, but environmentally, the road would be a terrible mistake because of the water pollution and habitat disruption it would bring.

The bill sponsored by Sasser, North Carolina's Senator Sanford and U.S. Rep. James McC. Clarke of the 11th District would protect the park by barring any further interior development. Not just Swain Countians, but all North Carolinians should support this effort to keep the park from suffocating on its own popularity.

Senator Helms backs rival legislation that would authorize the road while exempting a chunk of adjacent land from the recreational development ban. Helms' bill also would match the Democrats' proposed payment to Swain County. Still, as county officials recognize, environmental opposition is strong enough to keep that bill in limbo—and with it, any cash windfall. They sensibly would rather take the money, which the county badly needs, and forgo the road.

Rebuilding the Fontana Lake route seemed like a good idea when it was promised back in 1943. But since then, the Great Smokies have come under tremendous environmental pressures. The road would compound those pressures rather than allay them. Even if it would serve some people's interests to build it, the greater public interest lies in keeping this road off the map.

[From the Asheville Citizen-Times, May 3, 1987]

NORTH SHORE FOLKS HAVE IT BETTER THAN MOST OF US

Members of the North Shore Cemetery Association see themselves as a small and persecuted group. Forty-four years ago the federal government pushed their families off their land to make way for Fontana Lake. Now the government refuses to build a road through the Great Smoky Mountains National Parks so they can travel with ease to visit their old homesteads and family cemeteries.

If this were reason to feel sorry for one's self, Western North Carolina would be a sad place indeed. If this were reason to demand "justice" the mountains would ring with anguished cries.

The few dozens families and their descendants who make up the cemetery association are fortunate. At least they can get to their cemeteries. Many other mountain people cannot.

Who speaks for these silent thousands? Who acknowledges the sacrifices their families made? Who even remembers what they did?

Certainly not members of the North Shore Cemetery Association. They are too wrapped up in their own tiny cause, too busy demanding a privilege no one else has or could reasonably ask.

The north shore families lived on 44,000 acres that were part of a vast tract acquired for Fontana Lake. Unlike the rest of the land, those 44,000 acres were not flooded when the lake filled, so the parcel was added to the Great Smoky Mountains National Park.

The federal government built Fontana to generate the electricty to produce the aluminum to build the aircraft that helped us win World War II. That was a good reason to ask people to give up their land.

Hundreds of families did. Today, their towns, their homesteads and their cemeteries lie under the waters of Fontana. Their descendants never can go back. Only the small number of families who lived on those 44,000 acres are lucky enough to be able to visit their home places.

Thousands of other mountain families surrendered their land, and they did so for a less compelling reason—to protect the environment. The Great Smoky Mountains National Park covers more than a half-million acres. It was dotted with settlements, homes and isolated cabins. All of those people had to move out.

With the exception of Cataloochee Valley, Cades Cove and a few other areas, most of those homesteads cannot easily be reached. Cemeteries by the score lie scattered throughout the park. Many are in the backcountry in areas of the park managed as wilderness. You can get to them only by walking.

The Smokies were not the first. Pisgah and Nantahala national forest cover more than 1 million acres. Much of this land was settled also.

In 1911, when a Smoky Mountains National Park still was only a gleam in the eye of Horace Kephart, Congress adopted the Week Act. This law empowered the U.S. Forest Service to buy and restore land "necessary for the protection of navigable streams."

It was the Weeks Act by which our government acquired most of the national forests in the East. Much of it was land that had been devastated by timber barons and was in sore need of restoration.

The first parcel of land acquired under the Weeks Act was Curtis Creek near Old Fort. As would happen to thousands of other mountain people, the families who lived there were forced to sell their land to the government and move out.

Two of them were the Silvers and the Carver families, who had come to Curtis Creek in the 1800s from the Mitchell County area. I happen to know about them, because they were the families of my maternal grandparents.

Cemeteries? They are there too. One of them is the cemetery of the Curtis family, which settled the valley in the 1790s and for whom the creek is named.

The cemetery was lost for many years. Even my father did not know where it was. I found it some years ago, through the kind help of a woman who lives on the creek and whose sons had stumbled upon the plot while roaming the woods.

It's a small cemetery, on a ridge that rises above the creek and its bottomlands. Most of the graves are marked by rocks buried in the ground. Only one grave has a carved headstone. The inscription bears a simple message. "Rev. Moses Curtis, born 1777, died 1853."

The cemetery is on national forest land, and no road goes to it. You can reach it only by walking, but I'm grateful to be able to get to it at all. In the months before he died, my father wanted to visit it, but he couldn't. He wasn't strong enough.

Members of the North Shore Cemetery Association complain because they have to travel by boat across Fontana to get to their cemeteries, and take four-wheel drive vehicles to visit some of the others. Transportation is provided by the National Park Service.

The Park Service is willing to guarantee this access in perpetuity. Some members of the association say no. They insist that the federal government build them a 20-mile-long road through the national park so they can drive to the cemeteries at their convenience.

Other members are willing to give up the road, but they insist that the 44,000-acre section of the park never be designated as wilderness, as most of the rest of the park will be. (It already is being managed as wilderness. The designation by law only will make official what the Park Service is doing anyway.)

By what right do they make these demands? They say the federal government promised them a road in 1943. It did not. The promise of a road was made to Swain County, as economic compensation for land and roads taken by the lake.

Once those 44,000 acres became part of the national park, a road became untenable. Yes, a road of some sort still could be built—at a cost of millions of tax dollars and untold environmental damage to the park—but it would not help Swain economically. Its only purpose today would be to provide road access to the cemeteries.

The federal government proposes to keep its commitment—its promise of economic compensation to Swain—by giving the county a $9.5 million monetary settlement and forgiveness of a federal loan worth nearly $2 million. Swain's annual property tax revenue totals barely $600,000. Interest on the $9.5 million alone would exceed $700,000 a year. Swain intends to use the money to build schools and to build the kind of service base it needs to generate economic development.

Members of the association has succeeded so far in blocking any such settlement. The offer was first made in 1980. Since then, Swain, a financially pressed and struggling county, has lost $7.5 million in interest and loan payments because the association has stood in the way.

Members of the group say it is only "environmental groups" and outsiders who oppose the building of a road and who favor wilderness designation. I'm not an outsider. I want to see wilderness status for the Smokies. So do most other mountain people. The last time anyone took a poll on the question, WNC residents by a huge margin favored wilderness designation for the park. Swain County residents support the proposed settlement overwhelmingly. Swain commissioners support it unanimously.

It is association members who stand in the minority, and a tiny one it is. They stand virtually alone, because their position is so plainly unreasonable.

The Park Service has offered to give them access and transportation forever. That's all

they can reasonably ask. Certainly it's more than most of us have.

If having cemeteries on public land gave someone the right to demand a road, many of us could demand that roads be cut all through the Smokies and Pisgah and Nantahala. If having cemeteries there gave us the right to override public wishes on how that land is managed, our parks and forests would not be managed by the public at all.

It is only the north shore folks who insist that the taxpayers build them a road or let them decide how "their" piece of the park will be managed.

They demand a privilege that none of us has and that no one deserves—and they are holding up economic development of Swain County in their futile attempt to get it.

[From the Greensboro News & Record, Mar. 27, 1987]

THE ROAD TO NOWHERE

Tucked away in the Great Smoky Mountains of far western North Carolina is a six-mile stretch of road that some residents of Swain County call "The road to nowhere." The road runs north out of Bryson City, winds along the north shore of Fontana Lake and then, after passing through a tunnel cut in solid rock, ends abruptly.

Over the years, the road has generated more controversy than it is worth. The time has come for abandoning any hope that it will ever lead anywhere. A bill sponsored by Rep. Jamie Clarke of Asheville and Sen. Terry Sanford would compensate Swain County for the loss and declare much of the Smoky Mountain National Park as wilderness area. We hope the bill receives swift and favorable treatment in Congress.

In 1943 Swain County deeded 44,000 acres of land to TVA for construction of Fontana Dam and Lake. In return, the county thought it had a firm agreement for a government-built access road to almost two dozen cemeteries isolated by the new lake. Along the way, however, the government reneged on its promise of a road. A court later ruled that the government's commitment was contingent upon congressional appropriation of funds.

With the passing of time, Swain County commissioners have become convinced the road never will be built. Environmentalists strongly oppose the costly road because they say it will despoil a prime wilderness area and open it to campgrounds and other development. With development threatening the perimeters of many of the nation's national parks these days, it's hard to justify building another road in one of the most majestic and popular of those national treasures.

Commissioners are willing to settle for a lump sum payment and other concessions in return for giving up the road. They are opposed, though, by a group of citizens known as the North Shore Cemetery Association, who insist that the road should be completed.

Two bills introduced in Congress this session have revived the debate. They are almost a repeat of a 1984 scenario, when two proposals killed off each other. The Clarke-Sanford bill, which is also endorsed by Sen. James Sasser of Tennessee, would never complete the road. Instead, it would make much of the park a wilderness area, would authorize payment of $9.5 million to Swain County and would cancel a $1.6 million federal school construction loan to the county. The bill would also guarantee that the park service will continue furnishing access to the graveyards through free boat trips.

A second bill sponsored by Sen. Jesse Helms offers the same sweeteners, with one big difference: It would allow a "logging-type" access road to the cemeteries. Predictably, environmentalists see this as a foot in the door to further development on the park's fringes.

Swain County commissioners, who back the Clarke-Sanford version, point to the county's almost desperate need for additional income that would be gained from investment of the lump sum payment. The county suffers from a low tax base and high unemployment and cannot afford the luxury of another fruitless battle over the road.

We sympathize with those who have an attachment to their ancestral burying grounds. But since they are not denied free access, and since there is little chance that the road will ever be built, it's time to give Swain County the cash and leave the park alone.

[From the News and Observer, Raleigh, (NC) Mar. 12, 1987]

A SHIELD FOR THE SMOKIES

Congress now has before it a no-lose proposition to protect the Great Smoky Mountains National Park. The fate of the nation's most-visited park naturally is of concern far beyond North Carolina. But Tar Heels, along with the Tennesseans who share the Great Smokies, should feel a special sense of urgency about safeguarding this treasure that contributes so much to their states' appeal.

Proposed legislation would cushion the park from the harmful consequences of its immense popularity. It would do so by limiting further recreational development. The federal government now manages most of the park as a wilderness. Under the legislation—sponsored by Senator Sanford, Rep. James McC. Clarke of the 11th District and Sen. James Sasser of Tennessee—about 90 percent of the 520,000-acre park would receive a wilderness designation, with no vehicles allowed.

Significantly, the National Park Service says, the law would have no effect on visitor activities that now are permitted. Wherever the public has access by road, it would continue to have access, and hikers still could roam the park's back country. The law simply would hold the line at the current level of visitor-oriented improvements such as roads and campgrounds. This would be a reasonable compromise between the competing goals of public use and environmental preservation.

The legislation also attempts to resolve the decades-old dispute over access to portions of the park near Fontana Lake. True, the government would shed its longstanding commitment to build a road replacing one flooded when the lake was built. But to compensate, it would give $9.5 million to Swain County—a tax-poor county that badly needs the revenue—and would pay off $1.6 million in Swain school construction debts.

Some people have counted on a new road to provide better access to their family cemeteries. Despite their understandable objections to scuttling the road, Swain County on the whole would benefit from the cash settlement and debt retirement. And the park would be protected from a road that inevitably would attract not just cemetery visitors, but ordinary tourists, fishermen, campers, even poachers to an area that should stay remote.

Senator Helms has taken sides with the road advocates. He sponsors a bill similar to the Sanford-Clarke-Sasser measure except that it would pay to construct the road instead of helping Swain County. To accommodate the road—and the activity it would attract—the bill also would withhold wilderness designation from about 44,000 acres surrounding the cemeteries.

Helms' proposal is unacceptable for two reasons: It favors the interests of a relative few over the interests of an entire county, and it would pose an unnecessary environmental threat. The park service would continue to provide boat transportation across the lake for people who want to visit the cemeteries. That ought to be sufficient to honor legitimate visiting rights.

No national park can fulfill its purpose if access is so restricted that only a few fortunate backpackers can enjoy it. But the legislation sponsored by Sanford, Clarke and Sasser would protect some of nature's most graceful handiwork while ensuring that average people could sample the wonders. This is the balance that must be struck to shield the Great Smokies from the public's loving but potentially fatal embrace.

[From the Asheville Citizen, Mar. 12, 1987]

SETTLEMENT DELAY UNFAIR TO SWAIN

Resolution of the north shore road controversy has waited years longer than necessary, and the delay has cost Swain County millions of dollars that it desperately needs. Those who have opposed a financial settlement should defer to the larger interests of Swain County residents and allow this matter finally to be put to rest.

Opponents include members of the North Shore Cemetery Association and Sen. Jesse Helms. Association members, working through Helms, have blocked a settlement because they want a road built to cemeteries that were cut off from convenient access when Fontana Lake was built during World War II.

The federal government agreed to build a road along the north shore of Fontana when it acquired the land. The purpose of the road was to provide economic benefits to Swain County. It would open more of the Fontana shore to development and compensate the county for roads that were flooded by the lake.

But when the area later became part of Great Smoky Mountains National Park, the lakeshore lost its potential for development—so the road was never built.

Although the road was not intended primarily to provide access to cemeteries left in the park, decendants of those buried there had counted on using it for that purpose. They felt cheated when plans for it were dropped.

Swain County felt cheated for a much larger reason: It never received the economic compensation the road represented.

The National Park Service offered to settle the issue in 1980 by giving Swain $9.5 million in lieu of the long-abandoned road. Members of the cemetery association, with Helms' help, have managed to delay any such agreement. They want a road of some sort, one whose only purpose would be to provide land access to the cemeteries. Access now is by boat across the lake and a slow trip by four-wheel drive vehicle.

A road is never going to be built. The slight benefits of a road to a few dozen families do not justify the environmental damage it would do to the park. In addition, the Park Service intends to manage that part of the Smokies as wilderness, which precludes road-building.

Last year the Park Service offered to guarantee access to cemetery association members if they would go along with a settlement. Then-Rep. Bill Hendon told them it was the best deal they were going to get.

Rep. Jamie Clarke and Sen. Terry Sanford have introduced legislation to complete the settlement. Their bills designate most of the park as wilderness, award Swain County $9.5 million in cash compensation and direct the Farmer's Home Administration to forgive a loan the county used in 1976 to build a high school. Annual payments of $130,500 on the loan extend to 2008. The Park Service remains willing to guarantee access to the cemeteries.

Supporters of the association say it is tragic that people have to go through so much trouble to visit their family cemeteries. The real tragedy is that Swain residents have been denied the settlement that was offered seven years ago.

Swain is an economically depressed county struggling to maintain minimal services, let alone develop its economic base. Unemployment ranges to 20 percent and above. The county desperately needs to build new school buildings and to make improvements to basic services.

Swain's annual property tax revenues total barely $800,000. Interest alone on the $9.5 million would exceed $700,000.

The county already has lost more than $7.5 million in interest and loan payments since 1980. Therein lies the tragedy: that a compensation package beneficial to so many has been blocked for so long, all because of the stubbornness of a small group of people and one senator.

Swain residents overwhelmingly favor the settlement. County commissioners support it unanimously. Congress should let nothing, certainly not a single senator, stand in the way any longer.

[From the Asheville Citizen-Times, Oct. 18, 1987]

SMOKY PARK SETTLEMENT MOVES TO WITHIN REACH

The long dispute over wilderness designation for the Great Smoky Mountains National Park can be settled if those negotiating the issue will compromise just a bit more. An agreement stands within reach. For the good of Swain County, both sides should do whatever it takes to resolve their remaining differences.

Legislation sponsored by Rep. James McClure Clarke, Sen. Terry Sanford and their counterparts in Tennessee has been approved by the House, and its prospects in the Senate are good. Never has a settlement been closer. Now is the time for everyone to make that final effort needed to gain passage of the bill.

The obstacle always has been the 44,000-acre north shore area of Fontana Lake. This is but a small portion of the park lands that will be designated as wilderness, but it is specially important to the small number of people whose family cemeteries and old home places lie in the area.

They opposed inclusion of the north shore in the wilderness bill originally because they wanted a road built to provide land access. They now realize that a road never will be built, but many of them still have concerns about wilderness designation. They fear it somehow will interfere with their access to the area or preclude the preservation of the cemeteries and structures they care about.

Most of these concerns have been answered. The legislation guarantees permanent access by law—a guarantee that the north shore group does not have now.

More recently, Sanford, Clarke and other sponsors have indicated they are willing to amend the legislation to answer specific concerns about buildings and roads in the area. Certain parts of the 44,000 acres would be excluded from wilderness designation: access corridors from the shore of Fontana to the cemeteries, for example. The Hall Cabin and the Calhoun House may also be excluded. In addition, these buildings, two bridges in the area and other structures could be designated as national historic sites.

Clarke and Sanford are willing to spell out these things in the legislation, and to do whatever else is reasonable, to secure agreement. They have been negotiating with Sen. Jesse Helms, who represents the north shore group. If Helms drops his opposition to the bill, its chances of passage go from good to certain.

Swain County residents also are constituents of Helms. Most of them support the Smokies bill, as do Swain County commissioners and other local officials. The long-sought settlement benefits Swain directly, because the legislation gives the county $9.5 million (and other compensation) for the road through the north shore area that was never built. Swain commissioners intend to use the money for new schools and other improvements the county needs.

This may be the last chance for many years to get a settlement enacted. After all the work that has gone into the bill, neither the House nor Senate would be willing to take it up again any time soon. It may also represent the last chance for members of the north shore group to get written into law the concessions they have won. If Congress returns to the issue years hence, the leverage the group now holds could be gone.

Considering how much good the legislation will do for Swain County, it ought to be possible for those involved to work out whatever differences remain. They owe it to themselves, and their fellow residents, to make the effort.

[From the Daily Courier, Feb. 22, 1988]

JAMIE'S RIGHT, JESSE'S WRONG ON THIS ISSUE

U.S. Senator Jesse Helms is on the verge of losing a fight over protection of the Great Smoky Mountains National Park and the prospects don't make him happy.

In fact, Helms is so outraged over Democratic-backed legislation that would prohibit development in a section of the national park that he's expected to pull some of his infamous parliamentary tricks to block a vote on the matter scheduled later this week.

Helms wants the U.S. government to build a 34-mile, hard-surfaced road around the Fontana Dam to provide access to 20 or so graves that were cut off in the 1940s when the lake was created.

The government began work on the road four decades ago, but later stopped because of environmental and engineering concerns. Since then, U.S. Park Service employees have transported families to the graves when they wanted to visit.

That arrangement would stay the same if Congress approves a bill introduced by 11th District Congressman James McClure Clarke, which would designate a major portion of the park as wilderness and prohibit development.

In 1980 the federal government and Swain County Commissioners agreed to drop the road project in exchange for a federal payment of $9.5 million to compensate the county for an old road that had been flooded. The government has also agreed to excuse a Farmers Home Administration loan that the county took out to help pay for construction of a new high school.

Helms, it appears, is the only one not happy with the current agreement. He says that people in Swain County are so upset by the proposed legislation that Clarke can "kiss his congressional seat goodbye" if he persists with the legislation.

Clarke's bill may well make some people in Swain County mad, but it's reasonable legislation that resolves a 40-year-old controversy and ensures the protection of one of the U.S.'s most-often visited national parks.

Even if Clarke's stand costs him this year's election—and it wouldn't even if every voter in Swain County abandoned him—it's a stand that should be made for the long-term benefit of the Great Smoky Mountains National Park.

Mr. HELMS. Let him tell that to the people who are affected by this.

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired. One hour having passed since the Senate convened, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to the consideration of H.R. 1495, an act to designate certain lands in Great Smoky Mountains National Park as wilderness, to provide for settlement of all claims of Swain County, North Carolina, against the United States under the agreement dated July 30, 1943, and for other purposes.

Senators Jim Sasser, Don Riegle, Ernest F. Hollings, John Glenn, Paul Simon, Spark Matsunaga, Wendell Ford, Alan J. Dixon, J. Bennett Johnston, David Pryor, Dale Bumpers, Christopher Dodd, Terry Sanford, Richard Shelby, Richard G. Lugar, John Melcher and Patrick Leahy.

CALL OF THE ROLL

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

The assistant legislative clerk called the roll, and the following Senators answered to their names:

[Quorum No. 19]

Breaux	Gramm, Texas	Sanford
Byrd	Helms	Sasser
Domenici	Johnston	Shelby
Ford	Metzenbaum	

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

The assistant legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names.

Adams	Evans	Mitchell
Armstrong	Garn	Pell
Bentsen	Graham, Florida	Pressler
Bond	Grassley	Reid
Burdick	Hecht	Rockefeller
Chafee	Heflin	Sarbanes
Cochran	Hollings	Simon
Conrad	Kassebaum	Stafford
D'Amato	Kasten	Stennis
Danforth	Kennedy	Stevens
Dixon	Leahy	Thurmond
Dodd	McConnell	Trible
Dole	Melcher	Warner
Durenberger	Mikulski	Wirth

The PRESIDING OFFICER. A quorum is present.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate—the Senate will be in order. Members will take their seats. The Senate is not in order. The Senate will come to order.

The question is, Is it the sense of the Senate that debate on the motion to proceed to the consideration of H.R. 1495, an act to designate certain lands in Great Smoky Mountains National Park as wilderness, to provide for settlement of all claims in Swain County, NC, against the United States under the agreement dated July 30, 1943, and for other purposes, shall be brought to a close?

The yeas and nays are automatic under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD. I announce that the Senator from Montana [Mr. BAUCUS], the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. BRADLEY], the Senator from California [Mr. CRANSTON], the Senator from Nebraska [Mr. EXON], the Senator from Tennessee [Mr. GORE], the Senator from Iowa [Mr. HARKIN], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

I further announce that the Senator from Michigan [Mr. RIEGLE] is absent attending a funeral.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

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 Pennsylvania [Mr. HEINZ], the Senator from Nebraska [Mr. KARNES], the Senator from Oklahoma [Mr. NICKLES], the Senator from Indiana [Mr. QUAYLE], the Senator from Connecticut [Mr. WEICKER], and the Senator from California [Mr. WILSON] are necessarily absent.

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

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

The result was announced—yeas 49, nays 35, as follows:

[Rollcall Vote No. 192 Leg.]

YEAS—49

Adams	Fowler	Mitchell
Bentsen	Glenn	Moynihan
Bingaman	Graham	Nunn
Breaux	Heflin	Pell
Bumpers	Hollings	Proxmire
Burdick	Inouye	Reid
Byrd	Johnston	Rockefeller
Chafee	Kennedy	Roth
Chiles	Kerry	Sanford
Cohen	Lautenberg	Sarbanes
Conrad	Leahy	Sasser
Daschle	Levin	Shelby
DeConcini	Lugar	Simon
Dixon	Matsunaga	Stennis
Dodd	Melcher	Wirth
Durenberger	Metzenbaum	
Ford	Mikulski	

NAYS—35

Armstrong	Hatch	Pressler
Bond	Hatfield	Rudman
Boschwitz	Hecht	Simpson
Cochran	Helms	Specter
D'Amato	Humphrey	Stafford
Danforth	Kassebaum	Stevens
Dole	Kasten	Symms
Domenici	McCain	Thurmond
Evans	McClure	Trible
Garn	McConnell	Wallop
Gramm	Murkowski	Warner
Grassley	Packwood	

NOT VOTING—16

Baucus	Gore	Quayle
Biden	Harkin	Riegle
Boren	Heinz	Weicker
Bradley	Karnes	Wilson
Cranston	Nickles	
Exon	Pryor	

The PRESIDING OFFICER. On this vote, the yeas are 49, the nays are 35, three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

TENDER OFFER DISCLOSURE AND FAIRNESS ACT

The PRESIDING OFFICER. The clerk will report the unfinished business, S. 1323.

The legislative clerk read as follows:

A bill (S. 1323) to amend the Securities Exchange Act of 1935 to provide to shareholders more effective and fuller disclosure and greater fairness with respect to accumulations of stock and the conduct of tender offers.

The Senate resumed consideration of the bill.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I am going to take this opportunity—and so I would ask the floor leader if there is anything that I am stepping in on; I want to make sure that I do not do that—because I have the floor and I would like to have the floor for 20 minutes. But I do not want to interrupt anything that the leaders have planned.

What I am saying to the floor leader, since he is so respectful of people's rights, I am willing to give him the floor for anything he wants to do.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

The Senate is now on the corporate takeover legislation, am I correct, I ask the Chair?

The PRESIDING OFFICER. The majority leader is correct.

Mr. BYRD. The Senator would need unanimous consent to speak on a matter out of order, which he could get right now because our managers are not on the floor to proceed with corporate takeover legislation.

While we are getting those managers, I ask unanimous consent that the distinguished Senator may be permitted to speak out of order for not to exceed 20 minutes.

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

The Senator from Iowa is recognized for 20 minutes.

DEFENSE FRAUD INVESTIGATION

Mr. GRASSLEY. Mr. President, the current revelations of the defense fraud investigation have had a profound impact on our Nation in so short a period of time.

However, I suspect the general public is not at all surprised at the magnitude of the scandal.

I imagine what must be going through the collective mind of our constituents. A memorable scene in the movie Casablanca might sum it up best.

It is the scene in which Claude Raines, the French chief of police, shuts down Rick's saloon on the pretext of his "suddenly discovering" that gambling is going on in the back rooms.

He says: "I'm shocked. Shocked to find out there is gambling going on in here." Just then, a porter runs up to Raines and hands him a wad of money and says: "Your winnings, sir."

Now, I do not mean to suggest any association between the scene in Casablanca and anyone in our Government. The point I am making is simply this: There is a perception out there across this country that many of our Government officials are like the French chief of police in that scene in Casablanca.

This is because we have failed to earn the trust and respect of the public when it comes to dealing with perpetrators of fraud against the taxpayers of this country.

This investigation by the FBI and the Naval Investigative Service has not turned up a mere aberration. It has turned over a rather large rock and uncovered the veiled activities of critters undermining the national security out of the light of public view.

You can turn over just about any rock and find the same activity. This is ingrained in the culture of the mili-

tary-industrial complex. It is institutional and structural. And it is business-as-usual.

Most important, it is something we could have ferreted out 4 years ago. But Defense and Justice Department officials turned their backs on repeated requests by DOD investigators to provide resources for uncovering this obviously rampant problem in the defense community.

In light of this investigation, let's be very clear about a couple of matters, Mr. President. First, this notion of self-policing by defense contractors, which the Defense Department has acquiesced to, is a farce. What's more, it is an insult to the taxpayers of this country. It is like putting the fox in the chicken coup to guard the chickens.

Second, the prevalent argument against strict revolving door legislation that was proposed 2 years ago and defeated now seems weak indeed.

The argument was that strict revolving door legislation would inhibit experienced and well-qualified individuals in industry from serving in the Government.

But what this investigation shows is that in rejecting this strict language, we threw the baby out with the bath water.

Now, Mr. President, I would like to establish for the public record a series of circumstances that make crystal clear that this same activity—of bribery and document trafficking for competitive advantage—could have and should have been uncovered 4 years ago. In 1984, Defense Department investigators at DCIS received numerous allegations as well as hard evidence that documents were being trafficked illegally from Government officials to defense contractors, by way of consultants, and that gratuities were involved.

These investigators repeatedly requested resources to help develop the case, in the same manner that U.S. Attorney Henry Hudson has done with this investigation. But Defense and Justice Department officials turned their backs. The evidence gathered by those investigators showed possible widespread corruption throughout the defense community, just as this case has shown and has been demonstrated in the news within the last week.

When nothing was done by Justice Department officials to follow up on the evidence, one DCIS agent, who directed the investigation, came before a subcommittee of mine, quite frankly, out of frustration. That was on October 1, 1985. He began to testify that a case then being prosecuted by the Justice Department, the GTE case, or the Zettl case, was the tip of the proverbial iceberg, and that at least 25 companies were involved, not just GTE, and that these 25 companies would be household words to most of us.

The focus of the DCIS investigation was the widespread and indiscriminate distribution of classified documents from Government officials to consultants for the purpose of providing a competitive advantage on contract bidding. This was going on throughout the defense community, according to investigators, and informants were pouring out of the woodwork with information and evidence. Of course, just within the last 48 hours, I have learned that bribery was also involved in that investigation from investigators who were working way back then in 1984.

According to this former agent, whose name is Robert L. Segal, the focus of Department of Justice prosecution was not widespread and indiscriminate practices, but rather the very narrow view that GTE was an aberration, the only company doing this. And even then, according to Segal, "we had to drag the PFU—the Defense Procurement Fraud Unit—and the Department of Justice kicking and screaming toward indictments and prosecution." It was Mr. Segal's DCIS organization which had developed the investigation that led to the GTE case.

His point was that the Justice Department refused to recognize the magnitude of the case and its national significance. It is my understanding that a more vigorous and thorough investigation at that time would have produced 4 years ago what we are just now beginning to see unfold.

Incidentally, Mr. Segal himself worked at the Department of Justice as an investigator for 11 years, and received seven Department of Justice awards.

According to Segal, "the recent GTE case clearly demonstrates the magnitude of the problems at the PFU and within the Justice Department itself. For whatever reasons, the PFU and officials at Department of Justice continually chose to take the easy route, to avoid stepping on industry toes, to avoid performing their lawful responsibilities to protect this country's national security."

Mr. President, I also want to quote for some of my colleagues, and some of this might be somewhat repetitive but so they do not lose the context of it—remember, this is what Mr. Segal would have said to the Department of Justice on October 1, 1985:

MR. CHAIRMAN: I would like to begin by thanking you for the opportunity to appear before this committee.

There is a very simple reason why I am here today. A friend once told me that either you are part of the solution or you are part of the problem. I am here today hopefully to be part of the solution to a very real and serious problem: inability of the DOD/DOJ Procurement Fraud Unit (PFU) to have a significant impact upon fraudulent conduct within the defense procurement industry.

The views I express today represent my professional evaluation of the PFU performance. Those views were formed as a result of my first hand experience working on a day-to-day basis with that unit from October 1983 through January 1985, during which time I had the responsibility for coordinating all DCIS cases referred to the PFU for prosecution.

When I joined the Defense Criminal Investigative Service, I brought with me a wealth of investigative expertise, particularly in the area of complex criminal investigations. That expertise was formed through my eleven plus years experience as an investigator with the Department of Justice. My skills in the area of complex criminal investigations have received frequent recognition, including seven DOJ awards and, most recently, a memorandum of commendation from Mr. Joseph Sherick, the DOD Inspector General.

I accepted my assignment to coordinate the DCIS cases being handled by the PFU with great enthusiasm. I immediately recognized the tremendous potential the PFU had for significantly impacting the fraudulent activities within the Defense procurement community. However, my excitement and enthusiasm were both shortlived. I soon discovered that there were major problems within the very makeup of the PFU which greatly reduced its potential for having any serious impact upon Defense procurement fraud. Examples of PFU inadequacies abound. However, the recent GTE case clearly demonstrates the magnitude of the problems at the PFU and with DOJ itself.

The guilty pleas by GTE resulted from an extensive investigation originated by DCIS more than two years preceding the GTE plea. This was a case which was transfered by DCIS ot the DFU for prosecution because DCIS determined that the case's nationwide implications warranted prosecution by a central prosecutive unit with jurisdiction throughout the country. The failure of the PFU to take the appropriate action at the appropriate time repeated itself throughout the investigation. Its refusal to ever recognize the tremendous magnitude of the case still bewilders me.

GTE is but the tip of the proverbial iceberg. This was not your regular run-of-the-mill procurement fraud case. First of all, the investigation involves at least 25 companies, not just GTE. Many of those companies are household words. Second, the primary focus of the case was not the fact that the government was being regularly defrauded in its daily procurement processes, but rather the indiscriminate distribution of both proprietary and highly classified government documents by individuals within and without the government, in total disregard for laws and regulations designed to protect the very security for this nation. Classified documents which are prohibited from ever leaving the DOD are regularly trafficed among private "consultants," companies in the procurement industry, and military and civilian employees of the government.

Many of these companies appear to have espionage units whose main function is to obtain copies of highly classified documents in order to give their companies a competitive edge. This is not just my personal opinion. The evidence gathered during this investigation speaks for itself. Yet, we had to drag the PFU and the DOJ kicking and screaming toward indictments and prosecution. It was a major achievement when the PFU and DOJ agreed to use a conspiracy

charge in this case. It took my personal research and forceful stance to have the DOJ even consider espionage charges in this case. The evidence in this case was such that indictments could have been handed down before I even took charge of the investigation in June 1984. Yet, it took more than another year before any formal charges were levied against any potential defendants.

The national security implications of this case are overwhelming to even a casual observer, yet the PFU regularly rejected DCIS advice and suggestions for taking effective action against the pervasive illegal distribution and mishandling of highly classified government information. For whatever reasons, the PFU and officials at DOJ continually chose to take the easy route, to avoid stepping on industry toes, to avoid performing their lawful responsibilities to protect this country's national security. I will leave their motives to you. I can only say that with the single exception of PFU prosecutor David Hopkins, I have seen nothing but reprehensible conduct by officials at the PFU and DOJ regarding this case.

The concept of the PFU is an excellent one. However, to date the PFU has been an abject failure. It has lost the respect and earned the disdain of not only most every DCIS Special agent, but also many federal prosecutors throughout the country. The reasons why are clear. The unit has lacked leadership and direction. What it needs for success is a skilled, aggressive prosecutor with a long record of investigative, prosecutive and courtroom experience in complex criminal investigations. To date such leadership has been missing.

(From September 1979 until June 1983, I was one of the principal instructors on the nationally recognized DEA Conspiracy Training Team. In that capacity, I lectured to hundreds of law enforcement and prosecutive personnel at all levels of government [state, local and federal] throughout the United States. I was also a regular lecturer on complex criminal investigations to New FBI Agent Classes at the FBI Academy, and to state, local and federal attendees at the highly regarded FBI National Academy. Currently, I continue my training activities in complex criminal investigations as a regular lecturer in law enforcement training seminars sponsored by the International Association of Chiefs of Police.)

Mr. President, this body deserves an explanation of why Mr. Segal never testified there on October 1, 1985, and some of that needs to be understood so that you know what went on during the period of time that my staff and other people were working on this hearing coming up to that time.

The reason is because Mr. Segal's testimony was never allowed to be finished because he was interrupted at that hearing in 1985 by Deputy Assistant Attorney General Victoria Toensing. His testimony was never made part of the public domain because we complied with the wishes at that time of the Justice Department, which was concerned that Segal's testimony might jeopardize the Department of Justice's prosecution of the GTE case.

Let me paint for you that picture: I was chairing that Subcommittee of Judiciary at that time. Mr. Segal's appearance was not announced ahead of time because I know that there are efforts within the bureaucracy to put peer pressure on people not to testify. He started his statement, and at that point, Victoria Toensing was in the front row of the spectator section of the hearing room. She jumped up and grabbed his microphone and pleaded that his testimony might harm the case of the Government at that time.

Let me suggest to you, not being a lawyer myself, not wanting to jeopardize our Government's position in the prosecution, any prosecution for that matter, but particularly something that is a main interest of mine, the prosecution of defense industry procurement fraud, I stopped that at that point.

I wish now I had not because there was not anything in his testimony, as I have just read it to you, that in any way could have jeopardized the GTE case. I just gave that big black hole out there that is the industrial-military complex and its friends within the bureaucracy an opportunity probably for more time to keep from getting the facts out.

I feel confident at this time, however, that the public must be made aware of the fact that our Justice Department has been asleep at the switch, when it comes to the aggressive prosecution of defense contract fraud. I might add that Justice Department officials dropped espionage and theft charges against Zettl and all charges against his two codefendants, according to a recent story in the Washington Post. In retrospect, the Segal testimony plays a key role in the lessons learned from the current FBI probe.

What it says is that success in the prosecution of fraud will be achieved only when skilled, aggressive prosecutors with experience and leadership capture the reins of control from the Justice Department bureaucracy. I am overwhelmingly encouraged by the aggressiveness of U.S. Attorney Henry Hudson on this case, and I applaud his actions to date.

For those of my colleagues who have not become acquainted with Henry Hudson, I propose that they do and give him maximum encouragement because he will succeed if there is not interference from central Justice.

I would like to make a final comment, Mr. President. I have been a vocal critic of the Justice Department over the years because of its failure to prosecute defense fraud aggressively. This current investigation shows aggressiveness. We can only be pleased that the administration has responded in this manner, in spite of the Department of Justice bureaucracy. In my view, these types of investigations should be conducted by U.S. attorneys around the country in areas where fraud is most likely to occur.

Senator PROXMIRE and I introduced legislation that would establish regional fraud units around the country, and provide the obviously much-needed resources to successfully prosecute these cases. We will shortly be sending around a "Dear Colleague" letter to our colleagues, Mr. President, and we would urge Senators to cosponsor this bill. Thank you, Mr. President.

I yield the floor.

TENDER OFFER DISCLOSURE AND FAIRNESS ACT

The Senate continued with the consideration of the bill.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 1323.

Mr. SASSER. Mr. President, as a member of the Securities Subcommittee of the Banking Committee, I rise in strong support of the Tender Offer Disclosure and Fairness Act of 1988. Make no mistake about it. In fact, critically important legislation. Indeed, this is the most important securities legislation to be considered by Congress since the enactment of the Williams Act 20 years ago.

I would be remiss if I did not acknowledge the work done by my distinguished colleagues, Senators PROXMIRE and RIEGLE—the chairmen of the Banking Committee and the Securities Subcommittee, respectively—for their leadership in bringing this bill to the full Senate for consideration.

At the outset I would like to dispel right from the start some common misconceptions about this legislation.

First, this is not legislation designed to curb mergers and acquisitions, even hostile acquisitions. This is not an antishareholder bill. Nor will passage of the Tender Offer Disclosure and Fairness Act create a scheme that favors incumbent management.

Rather, this bill hits squarely at loopholes in the Federal securities law that governs tender offers—the Williams Act. It closes loopholes that have permitted the stock of companies to be manipulated for short-term profit. It prohibits abuses that have fostered speculative excesses that we are all familiar with and have dominated the headlines and network telecasts in recent years.

The bill seeks to stop those that would put a company in play, to garner exhorbitant and quick profits, without any intention of acquiring or running the company.

Importantly, Mr. President, the bill is directed at the activities that have given rise to the pervasive perception that the stock market is a rigged operation. The perception that it is no place for the individual investor. The perception that has contributed to on-

going volatility and has caused grave concern about the future of our capital-raising process. Make no mistake about it, a free enterprise system cannot long survive if the capital-raising process itself is put in jeopardy.

This bill is meant to alleviate a situation where well-managed companies operate everyday under the threat of a hostile, manipulative raid, a situation where takeover and other rumors abound and stock prices gyrate radically.

In short, the bill amends the Williams Act to correct something that has become a no lose proposition for a very few to the significant detriment of many.

Just how detrimental has this whole takeover manipulative process become? We all have heard about job losses from takeovers; indeed, Business Week estimates them to be 500,000, just in the last 2 years. We know about the devastated communities. I have seen many of them in my home State of Tennessee.

Mr. President, I think the detrimental impact though, has been much broader. I think it has been much more subtle.

The impact is the psyche that has taken seed in American management, because of the omnipresent threat of the hostile raid.

First and foremost, the inordinate emphasis by our business leaders on the short term, on quarterly earnings, and on the stock price, is a result, I submit, of the hostile takeover craze. With a takeover ever looming, no manager of a corporation will pursue a strategy that might pay off only in the long term. It inhibits long-range planning. This means a dramatically reduced commitment to research and development that is so critical if our economy is to remain competitive not just internationally but domestically.

The second manifestation of the takeover psyche is rising corporate debt. In the last 2 years, corporations have added $400 billion in additional debt. Any economist will tell you that these extraordinary debt levels will easily exacerbate the next recession.

Many great corporations will be unable to service this debt during the next economic downturn and that will come just as surely as day follows night.

Mr. President, increasing debt loads and buying back stock are the tyical defenses to the hostile corporate takeovers, and debt with short-term focus, the casino perception, if you will, of the equity markets, and the dislocation of employees and communities are just a few of the detrimental effects of this hostile takeover craze.

Well, what about the argument that this legislation will protect so-called entrenched management and how this legislation will further exacerbate the problem, as some of the opponents say of entrenched, inefficient management that just serves its own interests and not those of the shareholders.

Frankly, this notion does not hold water in my judgment. A cursory look at takeover targets indicates that most are well-run companies that have been returning value to their shareholders—companies like Borg-Warner, Holiday, Goodyear, Burlington, Owens-Corning, Dayton Hudson, and ITT. These companies were not considered poorly run, yet they were the targets of hostile takeover.

Lee Iaccoca, the dynamic chairman of Chrysler Corp., and a major critic of what had been characterized as manipulative hostile takeovers, is the first to tell you that no raider ever looked at Chrysler Corp. when that company was suffering from inept management. Rather, takeover artists tend to focus on whole industries where all stock prices are depressed for cyclical or other discernible reasons, not focusing on particularly poorly-managed companies.

For instance, raiders went through the oil industry a few years ago; next it was forest products, and then retailers. Now, one can seriously argue that every company of such an industry is mismanaged.

Questions of management entrenchment are best left to the courts to decide under established State corporate law—the so-called "business judgment rule." If management has indeed entrenched itself and if it is indeed unresponsive to shareholders, it is the legal responsibility of the board of directors. If it does not take action against management entrenchment, then the board has violated its fiduciary duty and is liable to the shareholders in a court of law.

Mr. President, I have a list of over 20 major cases in the last 2 years where management's actions were held to entrench management and were overturned quickly by injunction. This is the proper solution to the management entrenchment issue—a case-by-case review by courts—not the bludgeon approach of the hostile raid.

Mr. President, this brings me to the critical question of the role of State law in this process. The bill before us has been carefully crafted so as not to pre-empt State law. And this, I submit, is important. State corporate law has traditionally governed the internal affairs of corporations. This role for the States was explicitly reaffirmed by the Supreme Court in the context of a State takeover law just last year.

The Federal securities laws, including the Williams Act, are primarily disclosure, procedural and antifraud statutes. In contrast to State law, Federal statutes, for example, do not purport to govern internal corporate issues, particularly voting rights of shareholders—nor should they.

In this respect, State takeovers laws are a constructive development. According to the Supreme Court, in CTS versus Dynamics, these laws protect shareholders from coercive tender offers, they do not conflict with the Williams Act and they further "the Federal policy of investor protection."

Nor will they result in so-called "balkanization." In fact, in any given takeover transaction there would be only one State's law implicated—the law of the State of incorporation. Nor will they preclude hostile takeovers. Indeed, several takeovers have taken place in recent months in States that have adopted such laws.

Moreover, Mr. President, I warn my colleagues not to be taken in by concepts that sound good but would in fact preempt State laws.

By that I am referring to the so-called notion of one-share/one-vote. It sounds good but I would submit one-share/one-vote is not democratic, it rewards persons who can acquire enormous blocks of stock quickly and for a short period of time.

One-share/one-vote is a rule that was instituted on the New York Stock Exchange in 1926, at a time when there were no Federal securities laws governing disclosure and proxies. It was adopted in a different situation when business leaders were building strong companies that invested for the long term and were not continually the target of hostile raids.

One-share/one-vote is not a democratic principle. In our society, we do not accord voting rights by the amount of wealth a person has, or by the amount of taxes he pays—every person gets one vote.

Mr. President, if a company discloses clearly when it sells stock what the voting rights are, it is a bargained for exchange—a contract. The question comes, why should we interfere and violate the sanity of that freely bargained for contract?

If a company wants to raise capital, and at the same time retain its managerial style, it ought to be able to do just that.

If investors want to buy stock in such a company knowing that the voting rights are limited, then they should be able to do just that. What business is it of the Federal Government to say they cannot?

Mr. President, corporations are supposed to return a fair value to their shareholders. But they are also chartered by States to serve a public purpose. They are supposed to conduct a business, employ people and be good citizens. State corporate law is designed to ensure that corporations meet all these objectives.

In contrast, the primary focus of the Federal securities laws has been largely limited to the disclosure required upon the sale of stock.

If we allow the equity markets to be driven completely by the desire for instant gratification of shareholders, we could damage the longstanding principle of corporate governance by the States.

One of our former colleagues, the distinguished former Senator from New Jersey Nicholas Brady, who headed the Presidential Task Force on the Stock Market Crash, said rather graphically:

> Let's not have drunk driving and speeding on our financial highways. We are, by saying there is no limit to what the shareholder can do to maximize wealth, ignoring every other part of the system.

Mr. President, every other part of the system is State law—it is long-term investment strategies—it is employees, communities, and small- and long-term shareholders.

Mr. President, I urge my colleagues to support the Tender Offer Disclosure and Fairness Act. The Banking Committee reached a good compromise on this legislation. I firmly believe that the enactment of this legislation is critical to the stability of our equity markets and our corporations, to our communities and our working men and women, and to ensure a productive American economy in the future. I yield the floor.

Mr. President, I yield the floor at this time.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I rise in support of S. 1323, the "Tender Offer Disclosure and Fairness Act of 1987." I am pleased that the Banking Committee's months of hearings on the effects of hostile takeovers on the economy of our Nation have resulted in a piece of legislation that makes significant progress toward making the tender offer process more fair and evenly balanced. I do not agree with every provision of this bill. On balance, however, it is a modest and balanced piece of legislation that deserves the support of the Senate.

I believe that any tender offer reform should build on the fundamental principles of the Williams Act: Government neutrality in contests for corporate control, rules to ensure full and timely disclosure, adequate time for management and shareholders to make informed decisions, and effective SEC enforcement of these principles. These laws are designed to preserve investors' faith in the fairness of the marketplace and ensure that there is a level playing field in contests for corporate control.

After carefully listening to hours of testimony before the committee, I believe that the evidence is ambiguous about the long-term effect that hostile takeovers have on the health of the American economy and the performance of corporate management. We can find a study that confirms any point of view on these issues.

Whatever your own personal prejudice is, you can find that somebody has done that study which conclusively proves your point of view.

Hostile takeovers may be necessary as a check on the behavior of corporate managers who do not own the assets that they are managing for the shareholders. On the other hand, we have seen manipulative takeover attempts by raiders who clearly have no intention of running the companies that they've put into play. The only beneficiaries of these deals are investment bankers and lawyers.

This suggests to me that we have to maintain the careful balance set up by the Williams Act. We should make those changes that we can all agree on, such as closing the 13(d) window. I hope that we will limit our efforts to a simple package of Williams Act amendments and leave areas such as corporate governance to the States. As a former Governor, I am very reluctant to impose the Federal Government's wisdom on areas which have traditionally been the province of the States. The Supreme Court has spoken on this issue in upholding the Indiana statute, and I believe that we should let these laws be subject to time and judicial scrutiny before we hastily preempt them. I hope that the States will think about the national implications of their decisions and the economic results forthcoming, and that they will take these into considerations as they enact or amend antitakeover laws, and I believe that we on the Banking Committee should continue to monitor their effects.

I also hope that we do not load this bill down with controversial amendments which interfere in our market economy such as restrictions on the amount of debt corporations can incur.

I am one who believes that an ill-considered taxation measure that was introduced last fall in the House Ways and Means Committee had a great deal to do with triggering the downturn of the October 16, 19, and 20 on the stock exchange.

We will start down a very dangerous path if we begin to impose legislative limits on how much money consenting adults can borrow.

Tender offer reform strikes me as an area where the "Law of Unintended Consequences" reigns supreme. If we enact amendments that tilt the balance of the legislation one way or the other, we could be very disturbed by the results further down the road. Let us fix the Williams Act and leave it at that. We can always return to these issues if events demonstrate that we need to tinker with the process further. I encourage my colleagues to vote against amendments which favor corporate raiders or incumbent management and to support the bill as reported out by the Banking Committee.

I thank the Chair and yield the floor.

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

Mr. ARMSTRONG. Mr. President, if the Senator will withhold that, I want to do a couple of things at this moment: First, to congratulate him on his observations, for which we are grateful. The Senator from Missouri knows a lot about this subject, having been a Governor, having been a businessman, and having been a participating member of the Banking Committee. I am really grateful for his interest in this topic.

Some people may think this is kind of a difficult, technical area of the law, but in fact it is an extraordinarily important aspect of the law as it affects the rights and economic outlook of people in Missouri, people in Colorado, and all over the country. So I am grateful to him for pitching in on this matter, getting involved, and for his leadership in helping us to work this thing out. I thank him for doing so.

Mr. BOND. I thank my distinguished colleague from Colorado, who shows leadership on this as on many other issues.

Mr. ARMSTRONG. I thank the Senator.

I was relieved a few minutes ago when debate resumed to learn this was not an antishareholders bill; this was not a bill that in some way was going to make it possible for entrenched management to continue to situate themselves and to hold a tight grip on their sinecures. I was afraid we had gone back to the bill we were on Friday which did have those characteristics. Now I gather that we have shifted gears and moved on to another piece of legislation altogether. I am looking forward to hearing what that is all about.

Mr. President, during the last few minutes, I have heard several things with which I thoroughly disagree, and I just want to mention them. It is not because I want to be cantankerous because I think it is important to keep the record straight around here. In the first place, the notion that the reason corporating managers are focused on the short term is because of the "hostile takeover craze," it is the most far-fetched suggestion I have ever heard.

I happen to believe that it is a fair concern, a fair criticism, to say that a lot of companies are run with a very short time horizon. I think that is poor business practice. I, myself, in my private practice as an investor would not dream of being mixed up with a company like that. The kind of companies that do well are those that have a long-time horizon, those that look beyond what the stock price is going

to be today or tomorrow, and look to the long-term prospects of the company.

That has nothing to do with takeovers. In fact, I did not come to the floor prepared to do so, but I will bet with a very brief amount of effort I could bring a wad of scholarly articles and editorials from the business press that go back over at least two decades of thoughtful people complaining that American companies are managed with too short of a time line. Indeed, I think in many cases that is quite true. But to suggest that somehow that is a function of or a result of what has been improperly and I think prejudicially and pejoratively termed "the hostile takeover craze," which is a more or less recent phenomenon, simply ignores the historical record.

If companies are managed with too short a fuse, which I think they are, whatever is causing that, and I have some ideas of it, it certainly does not arise from the recent relatively small number of what are inaccurately termed "hostile takovers."

Second, Mr. President, I agree with the concern that has been expressed about the spiraling load of debt on American corporations; but the suggestion that that has been caused by takeovers, whether hostile or of some other character, is also not borne out by the historical record. The amount of debt owed by America's corporations has been rising very rapidly, both in absolute terms and in relation to the net worth and earning power of the corporation.

Whoever raised this concern, I think, is correct in pointing out that this threatens the long-term prospects of these companies. A reasonable amount of debt is not a bad thing for a company, or perhaps for a nation; but when it goes too far, it becomes a menace. However, it is obvious, not because I say so but because it is a historical fact, that almost all of that debt—I mean the overwhelming preponderance of the debt, the vast majority of this debt—has been run up by companies that have not been in any way the subject of a takeover attempt, hostile or otherwise.

Most thoughtful people who have looked at this and are concerned about it would agree with people like Beryl Sprinkel, Chairman of the President's Council on Economic Advisers, who, in response to my question on this matter before the Senate Banking Committee, said he figures that probably it was more related to the tax structure than to any takeover legislation. In fact, I think that is undoubtedly true.

If you are a businessman and go out into the capital markets and have the choice of raising money for a new plant or product or to start a new business and can raise it through equity, which has to be fully taxed at the corporate level before you get any dividends which you can then pay out to the shareholders, who are taxed again, or you have the option of raising that money by selling corporate debt, which is not taxed, the interest on which is a tax-deductible expense to the corporation, what is the likely outcome? It is that if you want to run your company efficiently, you are going to be tempted into a very large amount of debt, because equity debt is taxed twice. Equity ownership, equity capital, is taxed twice. Debt capital is taxed only once.

So it is not a mystery why companies have taken on large loads of debt, and in many cases, loads of debt well beyond what is reasonable or sound.

Mr. President, I also share the concern about States rights which has been expressed here. I am a States righter. That does not mean I think we have to defer on every issue to the States. But I think, in a general way of speaking, Congress has been remiss in preempting the States. We preempt the States on almost everything that comes along—what the speed limit should be, how they should run their welfare system. We supervise, in fairly minute detail, how they run various health programs, what they do about education, and a lot of other things. I think it has gone much too far.

I served for 10 years in the legislature of my State, and I think that, generally speaking, the members of the Colorado General Assembly have a better idea of what is good for Colorado than do the Members of the Congress of the United States—not because they are any smarter or because they are more dedicated or because they work harder, but because they are closer to home, and what happens in Colorado is different, to some extent, from what happens in Alabama or North Carolina or any other State.

I am far more respectful of the principle of States' rights than has been the U.S. Supreme Court during recent decades. But, having said that, I do not think States' rights are the end-all and be-all of good policy.

For a long time, we have recognized, as a society, as a nation, that we are a national society; that our economy is a national economy. Indeed, it is becoming an international economy. It is very clear, even by amendment to the U.S. Constitution, that those matters which affect the whole Nation may be and should be properly regulated by the National Government. The interstate commerce clause is for that purpose. It says that notwithstanding the general presumption, both as a matter of law and policy, toward States' rights on those issues where there is an interstate aspect, it is proper for Congress to legislate, for Federal courts to take jurisdiction, and so forth.

The notion that, somehow, by legislating in this area, we are "governing the internal affairs of companies," I think really misunderstands what is going on here.

We are talking, by definition, about companies which are in interstate commerce. We are not talking about little companies that operate only in one locale, in one State. We are talking about—in the amendments which will be proposed here today—companies listed on national exchanges: the NASDAC, the American Stock Exchange, the New York Stock Exchange. We are talking, in many cases, about companies that do business all over the world. In no case, not one, are we talking about a company which only does business within the confines of a single State. The fact is that most of the companies engaged in interstate commerce—there might be an isolated exception—which clearly fall within the interstate commerce concept of legislation, have shareholders in dozens of States.

This brings me to the point I wanted to respond to, from what has already been said, and it is this: To throw up a smokescreen of States' rights as a justification to say that shareholders who live in Colorado, who are citizens of Colorado, may be disenfranchised of their rights of ownership by the State of Delaware and other States simply because the corporation in which they own shares has been chartered by that State, I think, is way off the mark.

It seems to me that in a nation such as ours, the shareholders of North Carolina, and Alabama, and Texas, and every other State which does not happen to be the State of Delaware are entitled to equal protection of the law. They are entitled not to have their rights taken away from them arbitrarily by the State legislature of a single State.

I mentioned Delaware. That is not because I have a particular desire to criticize Delaware, although the legislation adopted recently by their legislature deserves to be criticized—the legislation, not the State nor the legislature. The legislation deserves to be criticized because in this State, which is the preeminent domicile of American corporations, where most big corporations are chartered, they have adopted legislation which, as a practical matter, does disenfranchise the corporate owners who happen to live in the other 49 States. I say that is reprehensible. We should not let them get away with it, whether it is Delaware or any of the other States that have experimented with this notion.

(Mr. FOWLER assumed the chair.)

Mr. SANFORD. Mr. President, will the Senator yield.

Mr. ARMSTRONG. I am honored to yield.

Mr. SANFORD. Would the Senator carry that argument further—that because interstate commerce is concerned, because stockholders live in States different from the incorporating State, perhaps the time has come to turn corporate governance over to the Federal Government?

Mr. ARMSTRONG. I would not care to make that argument, though I would listen to it if someone else wishes to.

I point out to the Senator that regulating the business affairs of corporations which are listed on the national exchanges has been, in fact, the standard of law for many years. In other words, this is now a new question. Congress has taken upon itself the regulation of companies which are listed on national exchanges for a long time. This is not something new.

Mr. SANFORD. Is the Senator suggesting that the Federal Government has taken over the regulation of corporate governance, as distinguished from the issuance of securities?

Mr. ARMSTRONG. Mr. President, in my view, Congress has impinged only to limited degrees on the governance of corporations, sometimes with desirable results and sometimes not; but in the main, most issues of corporate governance remain the province of the State and should remain the province of the State.

Mr. SANFORD. I assume, Mr. President, that the Senator from Colorado is talking about an issue that is not yet before this body—amendments mandating one share, one vote.

We will have an opportunity to discuss that at a later date.

Mr. ARMSTRONG. Well, Mr. President, let me say to the Senator that I am not discussing any particular amendment. I am discussing observations made by one of our distinguished colleagues who raised three points: One, that it is what he termed a hostile takeover craze that has caused companies to be managed with too short a term in mind. Second, that a spiraling debt load has been caused by the takeover craze, as he termed it. And, third, that we should not do anything that would interfere with States' rights.

I am just responding on the general philosophy here in pointing out that I do not think the historical record quite squares with the concerns he expressed.

Mr. SANFORD. Mr. President, will the Senator yield for two comments on the historical record while we are setting the record straight?

Mr. ARMSTRONG. Mr. President, I am happy to yield to the distinguished historian from North Carolina for his observations on this matter.

Mr. SANFORD. Mr. President, I will quote what comes out of the additional views to the committee report on page 79, which is entitled "A Resulting Short-Term Focus."

A looming threat of becoming the target of a takeover has forced managers to reorient their investment and planning strategies. Professor Peter Drucker observed that "the fear of the raider is undoubtedly the largest single cause for the increasing tendency of American companies to manage for the short term and let the future go hang." Results received from over 240 of the 1,200 largest member companies of the National Association of Manufacturers ("NAM") reveal findings similar to those of other business polls: that over 50 percent of the responding companies believe it is possible for them to be put in play for a short-term stock price runup under current Williams Act rules;

Now, the section goes on to quote Felix Rohatyn and his comment on T. Boone Pickens for two pages.

Mr. President, I ask unanimous consent that that be printed in the RECORD at this time.

Mr. ARMSTRONG. Mr. President, before we move on from this point, I observe that I have no objection to putting this in the RECORD, but I want to establish what it is we are putting in the RECORD here.

Do I understand that material which the distinguished Senator is putting in the RECORD is drawn from the report of the Committee on Banking, Housing, and Urban Affairs?

Mr. SANFORD. Along with my own comments about it.

Mr. ARMSTRONG. Yes; did the Senator from North Carolina write this report?

Mr. SANFORD. No; not the main body of the committee report.

Mr. ARMSTRONG. Does the Senator know who wrote that report?

Mr. SANFORD. The Senator certainly is aware of the fact that a great many people accepted this report and, in any event, it is the committee report.

Mr. ARMSTRONG. What persons accepted it? All I know is that when we got down to debating this bill, S. 1323, on my desk, along with every other Senator, was the committee report. It is just like we always do.

But I want to point out to you that I will bet the Senator does not know, without consulting, who even wrote this report. You cannot tell it. It was written by some member of the staff of the Banking Committee.

Mr. SANFORD. No; I wrote the additional views that I was quoting from along with my colleagues JIM SASSER and JOHN CHAFEE.

Mr. ARMSTRONG. Did you write it? Did the Senator write this report?

Mr. SANFORD. I wrote the portion of the views on the effect that takeovers are having on our corporations and the economy.

Mr. ARMSTRONG. Mr. President, I do not want to make more of this than there is. I am not critical of the report.

Mr. SANFORD. I just wanted to establish, as we are talking about the record, that there is a good deal of evidence that the short-term focus of so many corporations comes out of a concern that the corporation has to make the stock look good; it has to keep the price up.

Mr. ARMSTRONG. Well, Mr. President, then that makes the point better than I was going to make it in some other way. I have no objection to this being printed in the RECORD, but it can scarcely be printed as the report of—not the quotes from Mr. Drucker, which I want to comment on, also—but you can scarcely print something you wrote yourself and say it proves what you are saying, because, obviously, that is not an independent verification. That is not to say the Senator may not be right, but it is to say that it is not exactly like citing the Encyclopaedia Britannica.

Mr. SANFORD. Nor is just the unsupported statement of the Senator that history proves that corporations do not really bother with short-term when, of course, there is a great deal of evidence that they do. The point of quoting from the report is to emphasize that people such as Peter Drucker and Felix Rohatyn, who have studied this issue, are stating that corporations are being forced by takeovers to take a short-term approach.

Mr. ARMSTRONG. Mr. President, wait just a moment. I am pleased to yield to the Senator for any length of time and discuss this matter with him at any length. But I do not believe I made such a statement. In fact, I think I said very clearly that I agree with the concern that corporations are managed with far too short a time horizon; some corporations, not all.

The part I disagree with is not that there is such a concern, but the cause of it. And I believe I pointed out, Mr. Drucker to the contrary notwithstanding, that experience has been expressed in scholarly publications, business magazines, general periodicals, as well as in books long before anybody was concerned or even thought about what have come to be known as hostile takeovers.

In other words, it is a phenomenon which many people are concerned about but which cannot be properly traced on the historical record to the takeover phenomenon.

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

Investment banker Felix Rohatyn used the restructuring of the oil industry, for which T. Boone Pickens claims credit, to emphasize the detrimental effect of takeovers on long-term needs:

The mergers of Chevron-Gulf, Occidental-Cities Service, Mobil-Superior all occurred as a result of raids or the threat of raids. The deterioration in their combined balance sheets has been dramatic. Far from being a

healthy restructuring, the oil companies involved are cutting exploration sharply, a practice our country will pay for dearly when the next energy crisis occurs. With their high levels of debt, they could be in serious difficulty if the price of oil declines again. If one were to write a scenario about how to get the U.S. into trouble as far as energy is concerned, it would be hard to improve on what has happened.

Corporate management's short-term focus will indisputably have a far-reaching negative impact on the future of corporate America, particularly as corporate managers are forced into unplanned restructurings. For example, Goodyear was forced to put $1.5 billion worth of assets on the auction block after being put into play; Owens-Corning Fiberglass was forced to sell its recently acquired Aerospace & Strategic Materials Group and close a major facility in Jackson, Tennessee after defending a takeover attempt by Wickes Companies, Inc.

USX Corporation Chairman David Roderick warns that "many hostile takeovers can result in such highly leveraged situations they require an immediate bustup of the enterprise to reduce debt without concern for the most efficient operation of the enterprise. This can result in a myopic compulsion to generate a quick conversion to cash at the expense of the long-term viability of the company." Lawrence Chimerine, Chairman and CEO of Wharton Economics, Inc. accurately observes that "[c]orporations have overextended themselves . . . In the short-run, high debt loads hurt capital spending. Over the long-run, this will result in lower growth and productivity."

As Felix Rohatyn observed, "[i]t is obvious that these restructurings are driven more by the fear of takeovers than by straightforward economic forces." This dismantling of major American corporations and emphasis on the short term is a serious and real threat to the competitiveness and leadership of U.S. industry at home and abroad. As Professor Peter Drucker concluded, fear of takeovers is "contribut[ing] to the obsession with the short term and the slighting of tomorrow in research, product development, market development and marketing, and in quality of service—all to squeeze out a few more dollars in the next quarter's bottom line."

Mr. SANFORD. The Senator from Colorado and I are expressing different points of view and I will have to be content to leave it that way.

I also would like to ask if the Senator would admit that there was a great deal of evidence before the committee that corporate debt was significantly increased by hostile takeovers and the threat of hostile takeovers.

Mr. ARMSTRONG. Mr. President, I would stop short of denying it, but I cannot recall a single piece of such evidence. I recall many people expressing that opinion, but I do not regard the expression of an opinion as evidence.

I have cited one particular witness who testified that, in his opinion—and this is not evidence, either; this is just his opinion—that in the opinion of the chairman of the President's Council of Economic Advisors, that the reason for the large runup in corporate debt is more closely traced to the tax laws than it is to any incentives for corporate takeovers.

However, let me just make the Senator this offer: Rather than dealing with his opinion, my opinion, Beryl Sprinkel's opinion, Peter Drucker's opinion, HOWARD METZENBAUM'S opinion, or anybody else's opinion, why do I not just say that on tomorrow, if not before, I shall insert in the RECORD a summary showing the trend of corporate debt in this country over, say, the last 20 years. I am confident—I have not looked at this and if I am wrong I shall own up to it—but I am confident what it will show is there was a large increase in the amount of corporate debt long before there was any talk about hostile takeovers. I believe Chairman Sprinkel is pretty close to the mark in saying that that problem—and I think it is a problem; I think we have way too much corporate debt—is a response to the tax law, not the takeover law.

Mr. SANFORD. I do not think there is any question that the tax law has a part to play there and I have always objected to the different tax treatment of debt versus equity for that reason.

I think also, though, that a corporate manager is going to look very carefully at adding debt instead of equity if equity is available, not because of the tax laws, but because of the uncertainty of the interest rates. We saw a period of time when a number of very good, sound corporations got into very serious trouble as the interest rates ran up. So all of them were scrambling in every way they knew how to get out of debt. So there are other factors influencing corporate debt levels than just the tax laws.

But let me quote again the statement that was made by Mr. Greenspan, who is an equal authority, when he indicated that this is very significant, this pileup of debt. This statement was made by Lloyd Cutler, quoting Alan Greenspan when Mr. Cutler testified before the Banking Committee regarding hostile takeovers:

> That is very significant, year by year. Mr. Greenspan said the effect over a 3-year span since 1984 has been something like $240 billion. At the same time, corporate debt has gone up by a corresponding even larger amount. Much of that is attributable to the takeover phenomenon, and in particular, the fashion of junk bonds and the defensive measures which corporations like Phillips, some of the other oil companies, Unical, CBS, USX and others have had to take. Probably there has been more decapitalization as a result of these defensive measures, if anything, than by the actual takeovers themselves.

I am quite aware of the fact that the Senator from Colorado does not totally agree with that, but I thought it only fair that we put that in the record at this point.

Mr. ARMSTRONG. I think that is a very good point.

Mr. President, I do agree, in part, to the extent that Chairman Greenspan is saying the defensive measures adopted by management have had more effect than debt incurred in takeovers. I would agree with that because, frankly, there have not been very many hostile takeovers. There are not, by and large, despite all the talk about takeovers and mergers in the course of an ordinary year, there are not many takeovers of any character. Not a very big percentage of the total number of business concerns in this country undergo a merger or a takeover. And of those who do, admittedly, a small percentage and an even smaller percentage are a result of what has come to be known, incorrectly in my view, as hostile takeovers.

So I would agree with that; that, to the extent companies try to saddle themselves with a lot of debt so that they will not be attractive takeover candidates or for some other business reason, that that is the largest cause in the runup of debt.

To sum it up, Mr. President, I think the Senator and I are in agreement that many corporations have taken on more debt than they can afford; more debt than is really good for them. I think, if there is an area that we disagree on, on this matter, it is in whether this has been caused chiefly, or only to a minor degree, by the prospect of hostile corporate takeovers.

I will, tomorrow, or maybe later today, put in the RECORD a summary of that information so that all Senators may draw their own conclusions as to whether or not this is a takeover phenomenon, or something that has other roots and other antecedents.

Mr. President, I would be happy to yield further to the Senator if he wishes but, if not, I am prepared to yield the floor because I see that our colleague, the Senator from Alabama, has arrived and personally I am looking forward with great anticipation to his opening statement on this legislation.

Senator SHELBY has been a very valuable and very aggressive member of the Banking Committee. He knows a lot about this topic and, in fact, aside from the fact that he knows a lot about this bill has emerged as one of the foremost champions in this country of the rights of individual shareholders. So I hope that other Senators who are not on the floor, but who may be in their offices looking out windows, reading magazines, eating bonbons, or whatever it is that Senators do, would come over to the floor or at least turn on their television sets because I judge we are about to hear a very important statement.

Mr. SANFORD. You tempt me considerably to have an opportunity to hear our distinguished colleague from Alabama, and I certainly will yield to

him. But if he would permit just one statement prior to that, because the best example I have of a corporation burdening itself with debt is Burlington Industries example. Burlington is now $2.7 billion in debt as a result of an effort of a Canadian company and an entrepreneur in this country to take over Burlington.

Had Burlington not defended itself, it would have taken on at least $2.5 billion in debt from the raider. Burlington, as a defensive measure, went into debt to keep the management and to keep the company intact, and to keep that American company away from its No. 1 Canadian competitor. So the Canadian competitor, by its run at Burlington, put Burlington in debt, and destroyed the competitiveness of one of its major competitors.

In the last 2 years—just for one other sentence—more has been spent on takeovers than on research and development and capital development. That is just an indication that this fear of a takeover, if not the actual move for takeover, has, indeed, had a detrimental effect on debt.

I yield the floor.

Mr. ARMSTRONG. Mr. President, I have already yielded the floor, but with the indulgence of my friend from North Carolina and my friend from Alabama, maybe we can just lay to rest a couple of issues. I think I now have the facts that will settle the question of how this corporate debt came into existence and when. I believe that there is no dispute that the phenomenon of what has come to be known as hostile corporate takeovers, at least any large-scale exhibition of this tendency, is a relatively recent phenomenon, something of the last 3 or 4 or 5 years.

Mr. SANFORD. Ten.

Mr. ARMSTRONG. Well, 10, if the Senator wishes. It appears to me it is more like 5.

I mentioned I would put into the RECORD some information on that but let me just share it with Senators now so they do not have to dig through the RECORD and do not have to be wondering about it.

According to the Board of Governors of the Federal Reserve System, capital market section, division of research and statistics, measured at market value the average debt-equity ratio of nonfinancial corporations for the period 1973 to 1987 was 73.36 percent with a peak of 91.1 percent in 1974 and a trough of 60.4 percent in 1980.

As of January 1987 the aggregate debt-equity ratio stood at 66.6, which is something like 10 percent below the average for this 15-year period.

My point is not to say that that is the right amount of debt. For many companies it is far too much. My point is that to blame that on takeovers, hostile or friendly, misses the point.

Mr. SANFORD. If the Senator would yield, having had the floor, I assume, let me just add that the examples are not the average. The examples of what debt has done to the creative force of the economy of numerous corporations has been to virtually take them out of competition by debt which results from a takeover, or, worse than that, an attempted takeover.

I do not question those statistics, but I do think that countless examples indicate that this debt has come about because of a threatened takeover or a takeover, and I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama [Mr. SHELBY].

Mr. SHELBY. Mr. President, the tender offer reform legislation passed by the Senate Banking Committee last year makes several construction and needed changes to our Nation's securities laws: Closure of the section 13(d) 10-day window; extension of the minimum number of days provided to shareholders for review of tender offers; elimination of the "creeping" tender offer; access to the proxy machinery from minority shareholders; increased penalties for insider trading; and increased disclosure requirements applicable to purchasers of 5 percent of a company's stock. These specific reforms further the original objective of the Williams Act by providing a fair balance between the competing interests in contests for corporate control. The committee wisely avoided pursuing broad, unnecessary measures such as limitation on acquisition financing.

I do not agree, however, with the committee's decisions regarding a fundamental issue of corporate governance: shareholders' rights. Provisions are necessary to preserve the integrity of the shareholder franchise. The committee should have considered and adopted measures designed to fill this void. I suggest that specific provisions addressing "greenmail," "poison pills," "golden parachutes;" mandating equal shareholder voting; and requiring confidential proxy voting, if incorporated in the legislation, would help provide the shareholder some of the safeguards now lacking.

As a general rule, I believe that owners of common stock should be entitled to a vote that gives them an effective voice in governing the enterprise in which they hold an economic interest. The common tactic of anti-shareholder management interests is to argue that Federal standards on voting rights would be an intrusion on the ability of the States to regulate corporate governance. This is a purposeful misrepresentation of the Federal role in protecting shareholder voting rights.

Rather than include an equal shareholder voting requirement, the committee opted instead to request another study by the Securities and Exchange Commission [SEC]. During the past several years, numerous studies were completed on the issue of shareholder voting which revealed that the creation of disparate voting rights plans has had a negative effect on management accountability, shareholders' rights, and corporate performance. I am uncertain that another study which would show that disparate voting rights plans enable a relatively small group of individuals to obtain and control a corporation, while further distancing management from the shareholders, would prove to be anything other than dilatory. If insulated from mechanisms which foster accountability such as tender offers and proxy controls, management is free to act as it pleases, even if not in the interests of the shareholders.

Equal voting rights for shareholders has for more than 60 years been the standard of the securities industry. The SEC has already conducted lengthy public hearings and developed an extensive record on a proposed rule to mandate a shareholder voting standard. Congress has held hearings on the subject of shareholder voting rights numerous times with the most recent hearing on the subject being held by the Senate Banking Committee on March 17 of this year. That Senator ARMSTRONG and I initiated. The concept has been so thoroughly researched and reported that further study would seem redundant.

The Banking Committee should have included a provision generally requiring one vote for each share of common stock. An exception to the general rule to grandfather companies which have already adopted disparate voting rights plans could be provided for in the statute. Further, grandfathered companies could be permitted to issue additional shares of existing classes of stock. Other appropriate exceptions to the general rule such as for initial public offerings for small issuers could also be inlcuded in the statute. The SEC could be given delegated authority to implement and interpret the statute by rulemaking.

As reported out of committee, the legislation also lacks a provision guaranteeing the confidentiality of the voting protects. Confidential voting protects the privacy of shareholders so that they can exercise their decision making power free of management coercion. Currently management knows the outcome of shareholder voting before a vote is tallied. Incumbent managers can use their agenda setting powers to coerce stockholders to surrender valuable property rights without adequate compensation. I believe this is unfair and should be changed.

Although the Banking Committee did adopt an amendment to provide access to the proxy mechanisms for

shareholders owning 10 percent or more of a company's stock, the bill does not go far enough to protect the voting confidentiality of all shareholders. Failure to enact provisions to ensure the confidentiality of the proxy system for all shareholders results in protecting entrenched management. The voting system is dominated by corporate management, which has a strong vested interest in the outcome of controversial or contested items that are put to a shareholder vote. Shareholders are frozen out of the system by which corporate control is obtained and exercised.

The Banking Committee bill goes a long way toward correcting many of the shortcomings in the area of corporate governance and control. However, more protection is required for the shareholder. The Senate, I believe, should amend the legislation to include both an equal shareholder voting provision and a confidential proxy voting provision.

The Banking Committee bill is also unbalanced in that it fails to address the well-publicized problems of "greenmail," "golden parachutes," and "poison pills." I believe an amendment is necessary to make it unlawful for any company to pay "greenmail" to any person who is the beneficial owner of more than 3 percent of a class of securities unless approved by a majority of the outstanding voting securities of the issuer.

While the committee's bill empowers an issuer, and under certain circumstances, a shareholders, to sue to recover "greenmail" profits obtained by any person who had beneficially owned 3 percent or more of the outstanding amount of such securities for less than a year, unless such sale previously was approved by the affirmative vote of a majority of the shareholders or was made pursuant to an offer open to all of the issuer's shareholders, that is not enough.

Shareholders can already initiate a derivative suit in the event of "greenmail" in most States as a violation of the business judgment rule. While expanding private litigation rights for "greenmail" is admirable, more is needed. "Greenmail" discriminates among shareholders since it involves the transfer of corporate assets to pay off predators at the expense of other shareholders, with the only apparent purpose to protect entrenched management. "Greenmail" allows corporate management to appropriate assets belonging to all shareholders for the benefit of a minority. There should be no room in corporate America for "greenmail," and S. 1323 should address this inequitable practice in a substantive manner.

Further, I believe S. 1323, as reported by the Banking Committee, should address the problem posed by "golden parachutes," which are employment contract provisions that guarantee substantial severance payments to top management if they lose their job as a result of a takeover. While Federal tax law does subject certain of these payments to a 20-percent excised tax on the employee and is made nondeductible for the employer, there currently exist no Federal securities law restrictions on "golden parachutes."

Here, again, the only recourse available to shareholders is to initiate a civil action alleging a violation of the amorphous business judgment rule. An amendment should be incorporated into S. 1323 that establishes a prohibition on "golden parachutes" adopted during and in contemplation of tender offers unless such agreements have been approved by the affirmative vote of a majority of the aggregate outstanding voting securities of the issuer.

Finally, I believe that S. 1323 should address the problem posed by "poison pills." "Poison pills" are usually an issue of securities, normally preferred stock, designed to discourage a hostile merger. Upon completion of a hostile takeover, the typical "poison pill" stock becomes convertible to cash or into common stock of the acquiring company. The effect is to raise the cost.

Although plans may be challenged in court as violative of the business judgment rule, there presently exist no Federal securities law restrictions on "poison pills." An amendment should be incorporated into S. 1323 that would make it unlawful for a company to establish "poison pills" and to require that "poison pills" adopted prior to the date of enactment of S. 1323 be submitted to a vote of shareholders for a limited period of time.

Mr. President, with the inclusion of specific provisions substantively addressing "greenmail," "poison pills," and "golden parachutes;" of a specific provision requiring confidential proxy voting; and of a specific provision mandating equal shareholder voting, the tender offer reform legislation, or the bill before us, being considered by the Senate would effectively close the holes now existing in the Williams Act, yet would continue to preserve the balance between the competing interests for corporate control. I would then, Mr. President, strongly support the legislation.

Mr. President, at this time, I ask unanimous consent to print in the RECORD several articles concerning corporate takeover reform legislation.

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

SENATE SHOWDOWN EXPECTED OVER SHAREHOLDER RIGHTS

(By John R. Cranford)

The Senate is gearing up for what may be a fierce battle over the conflicting rights of shareholders and powers of corporate managers. But if blood is spilled, it probably will be for naught, because the House is not likely to consider the issue this year.

Within the next two or three weeks, a bill (S. 1323) that would erect new roadblocks to hostile corporate takeovers is expected to come to the Senate floor. The measure has few outspoken congressional partisans—according to some critics, only one: Wisconsin Democrat William Proxmire, chairman of the Senate Banking Committee.

Yet many senators will find it tough to oppose the bill, because it is portrayed as a way to protect corporations—and the jobs they provide—from greedy raiders bent on pushing profitable firms into debt for quick gains.

At the heart of the debate is widespread concern that takeover activity—not productivity—is currently the driving force in American business, to the detriment of the nation's ability to compete overseas.

Takeover opponents such as Proxmire have seized upon corporate raiders as the enemies of strong, profitable companies.

But stockholder advocates insist that entrenched, lethargic managers are the real culprits. "They're not interested in a competitive America, they're interested in perpetuating themselves," said Sen. Richard C. Shelby of Alabama, the only Banking Committee Democrat to oppose the bill.

Both sides in the debate talk about evening the score between raiders and managers. But if either side prevails, the face of corporate America could be changed. Either takeover activity would be greatly curtailed, or raiders would have more tools at their disposal.

Those tools would come in the form of "shareholder-rights" amendments that would limit the defenses available to corporate managers seeking to ward off potential raiders.

Shelby and Republican William L. Armstrong of Colorado offered several such amendments unsuccessfully in committee and plan to offer them again when the bill reaches the Senate floor. They say they are merely trying to preserve the presumption that owning a share of common stock entitles the stockholder to a say in the way the corporation is run.

The issue threatens to divide Democrats in the Senate. Many want to support Proxmire and the idea of putting the brakes on hostile takeovers—but they don't want to be seen as opposing shareholders.

It has also come down to a jurisdictional—and philosophical—debate over who should have control; states, which historically have regulated corporate activities, or the federal government, which regulates securities issues.

"It'll be an uncomfortable vote for some Democrats," said James E. Heard, executive director of the United Shareholders Association. He adds that his group is trying to build a "bonfire of opposition" to the bill, while at the same time generating support for shareholders-right amendments.

The 16,000-member organization which lobbies on behalf of stockholder rights, is backed by corporate raider T. Boone Pickens Jr., chairman of Mesa Limited Partnership in Amarillo, Texas.

ICAHN'S BID FOR TEXACO

If the Senate takes up the bill before the end of the month, it will do so against the backdrop of a classic, high-profile takeover battle, pitting raider Carl C. Icahn, chair-

man of Trans World Airlines Inc., against the Texaco Corp.

Icahn charges that Texaco management failed to undertake an appropriate corporate restructuring in the last year—in particular the selling off of some assets—and complains about a $3 billion settlement Texaco paid the Pennzoil Corp. following a four year battle between the two oil giants over Getty Oil Co., all at a high cost to shareholders. Texaco management counters that Icahn is just trying to raid the firm for quick profits.

Icahn, who made an offer to buy Texaco, is also engaged in a proxy fight aimed at persuading Texaco stockholders to give him their ballots for the corporation's board of directors' elections, scheduled for June 17.

It is in such proxy fights, whether over directors' elections or corporate policy, that voting rights take on particular significance.

ONE SHARE, ONE VOTE

Corporate managers have discovered that by issuing so-called dual-class stock—some of it with strong voting rights, some with diminished or no voting rights at all—they can keep control of the firm in a few hands, and thus thwart takeover attempts.

A growing number of larger firms have separate classes of common stock with different voting rights—306 firms at latest count by the Washington, D.C.-based Investor Responsibility Research Center (IRRC), up from 119 in 1985.

Not all of them have issued dualclass stock as a takeover defense. But most often the tactic is used to stop raids.

Defenders of dual-class stock say that it is just another means of raising capital, and that individuals do not have to buy non-voting stock if they don't wish to. Besides, except when a firm first going public issues two kinds of stock, existing stockholders must vote to authorize the non-voting stock issue.

Corporate managers and their partisans—including Proxmire and the Banking Committee's ranking Republican, Jake Garn of Utah—counter the one-share, one-vote argument with a plea for states' rights. At least 32 states have adopted some form of anti-take-over law since 1982. Establishing a one-share, one-vote requirement could upset some of those laws, which rely on denying voting rights to stockholders attempting a takeover.

But virtually all sides agree that the bill will go no further than the Senate floor. House Energy and Commerce Committee Chairman John D. Dingell, D-Mich., and Edward J. Markey, D-Mass., who chairs the panel's Finance Subcommittee, favor a one-share, one-vote provision, as do the committee's leading Republicans. But other issues, such as stock-market regulation, are higher on their agenda, and the dispute over the anti-takeover bill would not be easily resolved.

Therefore, many ask why the Senate—and particularly the Democrats—are pressing ahead.

The answer, according to a Proxmire aide, is that the Banking chairman in recent years has changed his views and now strongly opposes takeovers and the excessive debt that corporations have incurred fighting off raiders. "He wants to force a catharsis," the aide said.

A.A. Sommer, Jr., a Washington, D.C., attorney who represents The Business Roundtable and the Coalition to Stop the Raid on America, said business groups are still pushing for the bill "to get a leg up on the next session of Congress."

Sommer, who used to be a member of the Securities and Exchange Commission (SEC), said it would also be advantageous to defeat the anticipated one-share, one-vote amendment this year—which he thinks is likely.

But Armstrong discounted the appeal of the corporations. "It's a lot easier for special interests to 'hot box' the committee than it is the entire Senate," he said.

TAKEOVER MANIA

When the Banking Committee approved S. 1323 last Sept. 30, the opponents of hostile takeovers were cheered that finally there was movement at the national level to put a damper on the raiders.

Since then, the issue has receded—until now. The stock market crashed soon after the committee acted, taking down with it the sky-high prices of many stocks involved in takeover fights.

Some raiders were badly hurt in the crash. The Haft family of Washington, D.C., for example, was in the midst of a $6 billion bid for Dayton Hudson Corp., a large, Minneapolis-based retailer. The Hafts, notorious over the past three years for their failed, but very profitable, raids on Beatrice Foods, Safeway Stores and Supermarkets General, lost a reported $70 million in their failed bid for Dayton Hudson.

Many market observers thought at the time that the crash would stifle takeovers and take the heat off Congress, which was being pressed to act by The Business Roundtable and other groups representing large corporations.

Then in February, Delaware adopted a stiff anti-takeover law, and it was thought that the pressure on Congress would finally disappear altogether. The state is home to 54 percent of the firms whose stock is traded on the New York Stock Exchange, and the new law was expected to make it easier for those large, high-powered firms to mount takeover defenses.

But in the last few months, with stock prices down and takeovers more affordable, the fever has returned.

According to the M&A Data Base, a division of Mergers and Acquisitions magazine in Philadelphia, there have been 1,223 takeover or related bids of larger than $1 million in the first five months of this year. The total value of these bids is $98 billion and growing.

In a change from the past, however, some of the big firms that had been asking Congress and the states for protection from raiders are now doing the raiding themselves. Of the top four deals this year—successful, failed or pending—the raiders have inlcuded: R.H. Macy & Co. Inc. of New York and the Campeau Corp. of Toronto, which fought each other for control of Federated Department Stores Inc. of Cincinnati; and Eastman Kodak Co. of Rochester, N.Y., and F. Hoffman-La Roche & Co. of Switzerland, which battled over Sterling Drug Inc. of New York.

There wasn't a Boone Pickens or Carl Icahn among them.

A ONE-SIDED BILL?

It is the stated aim of the Senate anti-takeover bill to balance the takeover equation, giving preference neither to raiders nor to corporations. But critics say that it is weighted heavily toward corporate managers who are trying to protect their positions.

The bill would require a person who buys 5 percent of a company's stock to notify the SEC within five days, and would prohibit additional stock purchases until the notice is filed. Current law allows a 10-day window and doesn't require purchases to stop, which allows raiders the opportunity to gain controlling interest in a firm before anyone knows of their activities.

The bill also would require a buyer who acquires 25 percent of a corporation's stock to make all future purchases through a public "tender offer" for all or part of the outstanding shares at a specific price. Such bids would have to remain open for 35 business days, not 20 as under current law.

The intent of these provisions is to give all shareholders an equal opportunity to participate in the buyout, and virtually no one opposes them.

What is upsetting the shareholder advocates is that, while the bill seeks to curb raider abuses, it does little about management abuses—such as the paying of "greenmail"—premium prices for a raider's stock. The bill prohibits greenmail, but heard complaints that the provision is too weak and that stockholders would have to go to court to force repayment.

Moreover, although early drafts also contained prohibitions against "poison pills" and "golden parachutes"—defensive tactics that make takeovers prohibitively expensive or pay off ousted managers—Proxmire pulled those provisions out of the bill when he also dropped a provision that would have given states even more authority to regulate in this area.

THE SEC WEIGHS IN

Meanwhile, the SEC has also gotten involved in the one-share, one-vote issue. And it is likely that senators on both sides will use the floor action to pressure the agency.

Since 1934, the New York Stock Exchange has refused to list those corporations that issue dual-class stock—with a few notable exceptions, among them Ford Motor Co.

But in January 1985, the exchange asked the SEC for permission to revise its rules. The fact that other exchanges and the over-the-counter markets had no such requirements was costing the New York exchange valuable clients, it argued. (In 1971, when the Washington Post Co. went public, it was listed on the American exchange because it was issuing two classes of stock, so that voting control would remain closely held. But according to IRRC, at least 65 firms listed on the New York exchange, many of them large newspapers, now have dual-class stock despite the exchange's rule.)

The SEC has since had two rounds of hearings on the issue, and last June proposed a new regulation that stocks could not be listed on exchanges or over-the-counter computer systems if the company took any action to reduce the voting rights of exiting stockholders—such as issuing dual-class stock.

But some on the Senate Banking Committee don't want the SEC to adopt the rule.

S. 1323 would require the SEC to study the broad question of shareholder rights and to report back to Congress on the matter. That position was adopted in committee as an alternative to Armstrong's mandatory one-share, one-vote amendment.

Proxmire and Garn have each written the SEC, noting the provisio in S. 1323 and urging the agency not to act on its own. "The commission would be ill-advised and should not proceed." Proxmire wrote April 20, arguing that the SEC has no authority to act. Using less strident language, Garn agreed May 10, and said the real authority in this case belongs to the states.

In response, Dingell fired off his own analysis May 19 that the SEC does have au-

thority to issue a one-share, one-vote rule. But Dingell stopped short of endorsing such action.

The SEC may try to make the proposed rule final before July 1, when Commissioner Aulana L. Peters, who supports the rule, plans to step down. Her departure is expected to leave the SEC divided 2-2 on the issue, which means it cannot act.

SQUEEZING THE DEMOCRATS

Most observers believe that it is the Democrats, not the Republicans, who have the most to lose if and when S. 1323 comes to the floor.

GOP senators are mostly expected to support the shareholder-rights advocates. And those few—such as John Heinz of Pennsylvania—who have aided with corporations against the raiders can point to contentious takeover battles at home that have galvanized public opinion behind the corporate managers.

The problem for many Democrats is how to extricate themselves without abandoning individual stockholders or alienating their home-state businesses.

During the committee markup on S. 1323, Armstrong and his allies "very artfully painted the Democrats as the ones attempting to protect entrenched management, and hurt shareholders," lamented one Senate aide.

One possibility is a Democratic-sponsored amendment to protect shareholder rights, for example, requiring that proxy ballots be counted in secret. Currently, most corporations count ballots themselves, and some large, institutional investors report that managers have pressured them to change their votes when it looked as if the management position in a proxy fight was going to lose.

Alternatively, several observers said, some Democrats may ask Senate Majority Leader Robert C. Byrd of West Virginia not to take up the bill. And one business lobbyist said even the corporate sponsors of the bill would be happy if it "just went away" this year, eliminating any chance that pro-stockholder amendments might be adopted.

But aides to Byrd said the bill is still on the calendar and he has not deviated from his support for it.

[From the Washington Post, Sept. 23, 1987]

SHIELDING MANAGEMENT

(By Robert J. Samuelson)

Say it isn't so, Prox. For years, Sen. William Proxmire (D/Wis.), has been a pillar of common sense and political courage. Aside from fighting to hold down federal spending, he's consistently opposed government bailouts of big business. He has argued—quite correctly—that the possibility of failure keeps managers and workers competitive. How strange it is, then, that Proxmire is now proposing legislation that might aptly be termed "The Management Protection Act of 1987."

Proxmire has swallowed the corporate propaganda that hostile takeovers are bad for America. Actually, hostile takeovers are simply a new form of competition. They provide a way of replacing top corporate executives. We don't prohibit competition involving new products and technologies.

Generally speaking, we don't prevent companies from failing. Competition sometimes creates hardship, but (as Proxmire has said) it's a necessary discipline that encourages efficiency and innovation. Why should we prohibit competition for top corporate jobs?

But that's what Proxmire, chairman of the Senate Banking Committee, would inadvertently do. He would create a divine right of management. His proposal would—if it worked as intended—frustrate hostile takeovers. Bankruptcy would become virtually the only way top executives could lose their jobs. The fact that Proxmire is acting through the federal securities laws, which are supposed to protect investors, is a further travesty. His proposal would hurt investors, including pension funds, by limiting their ability to sell their stock at the best price.

In effect, it would become more difficult for someone to offer $40 a share for stock selling at $30. The proposal would do that indirectly. Rather than barring hostile takeover, it would sanction state laws designed to do that. The state laws are the latest tactic embraced by corporate managers to protect themselves. Last spring, the Supreme Court ruled that an Indiana takeover law is constitutional. In 1987, at least 11 states have enacted new takeover laws, according to Sharon Pamepinto, an analyst for the Investor Responsibility Research Center in Washington.

These laws abound in absurdities. Suppose you wanted to buy an Indiana-chartered corporation. The managers and directors object. Nevertheless, you purchase 70 percent of the company stock by paying shareholders, say, a 35 percent premium over the prevailing market price for the company's stock. You own 70 percent of the company. However, the Indiana law prevents you from voting your shares—that is, you can't change the directors or managers—unless the other 30 percent of the shareholders agree.

No one doubts that legislatures pass these laws to protect locally headquartered companies. Nor is there any doubt that Congress could override the state laws. Companies that are takeover candidates are usually in interstate commerce. So are the stock exchanges where takeover contests are waged. In 1968, Congress did set disclosure requirements for takeover offers. For examples, buyers of 5 percent of a company's stock must make a public announcement. What the Supreme Court has said is that, without more detailed federal regulations, the states can set rules that don't directly conflict with federal law.

The prospect now looms of a patchwork of restrictive state takeover laws. Proxmire accepts them because he embraces two popular arguments against hostile takeovers. Both sound plausible—and both are wrong.

First, corporate managers contend that the threat of being taken over distracts them from running their businesses and, thereby, subverts U.S. competitiveness. There's no evidence that it's true. Hostile takeovers have flourished in the 1980s. Meanwhile, manufacturing productivity has increased more than any time since the 1960s. Business investment (as a proportion of gross national product) is at its highest level since World War II. And corporate research and development spending is rising far faster than in the 1970s.

Second, it's said that paper profits made in takeover battles don't involve productive gains for the economy. True, the potential for speculative profits is vast. Illegal insider trading is an obvious abuse. The typical premium paid to buy takeover stock exceeds 30 percent; advanced knowledge guarantees quick riches. But once the takeover occurs, the buyer must make the company worth more than the purchase price. That's the ultimate source of profits and the pressure to break up unwieldy conglomerates, cut costs and operate more efficiently.

Contrary to popular myth, hostile takeovers are not common. In 1986, 40 were attempted and only 15 succeeded, according to W.T. Grimm & Co., a consulting company. The greatest value of hostile takeovers does not come from companies that actually get taken over. Rather, the mere threat of being taken over pressures managers to operate more efficiently. Hostile takeovers represent a modest, but desirable, check on the immense independence of top executives. There's now a way they can lose their jobs, short of running their companies into the ground.

Ironically, one area in which managers have abused their independence is takeovers. Most takeovers are "friendly"—that is, negotiated by the managements of the two companies. Many of these have failed. But until now, companies have had little reason to undo wasteful mergers. The possibility of being taken over is an inducement to act. If managers don't dismantle cumbersome conglomerates, corporate "raiders" will.

Competition is messy. Not all hostile takeovers are good, just as not all new products are good. But the competitive process of trial and error is good. Proxmire ought to heed the advice of David Ruder, the new chairman of the Securities and Exchange Commission, who wants Congress to override state takeover laws. The chances of this seem slight. Proxmire won't run for reelection in 1988. His has been a distinguished career, but it's ending in an uncharacteristic way. He's been hoodwinked by corporate lobbyists and apologists.

[From the Wall Street Journal, Sept. 16, 1987]

PROXMIRE'S DOUBLETALK ON TAKEOVERS

(By Joseph A. Grundfest)

Sen. William Proxmire has a reputation as a straight shooter who means what he says. But when it comes to the anti-takeover legislation sponsored by him and currently pending before the Banking Committee, he is saying one thing while doing another. The gap between his professed goals and the substance of his bill is stunning.

The Wisconsin Democrat's statement accompanying the proposed legislation claims that "tender offers should be neither encouraged nor discouraged by law" and asserts that "management of publicly traded companies should not be entrenched." The statement further condemns poison pills, golden parachutes and two-tier bids. Sen. Proxmire thus suggests that his bill offers a balanced approach to problems that are perceived to be caused by takeovers.

ALL BARK, NO BITE

The reality, however, is quite different. The bill's resonant theme is that hostile takeovers must be throttled, and the tough talk on poison pills, golden parachutes and two-tier bids turns out to be all bark and no bite.

More important, the bill, if enacted, would effectively kill the Williams Act, which is now the dominant standard for conducting takeovers. It would do so by protecting state anti-takeover laws in a fashion that virtually ensures that state law will become the binding constraint on intersate commerce in the securities of nationally traded corporations subject to takeover bids. The Williams Act would be superseded by anti-takeover

standards of the 50 states, many of which will try to outdo each other in their efforts to stifle takeover activity.

In noting contradictions between what Sen. Proxmire says and does. I do not suggest specific resolutions to the issues addressed in his bill. My goal is more modest: It is simply to clear away some of the smoke and mirrors used to create the illusion that the bill offers a balanced, judicious approach to takeover legislation.

In his introductory statement, Sen. Proxmire explains that "the defensive tactic known as the 'poison pill,' where target firms create new stock to thwart a purchase, is wrong." One would therefore expect that the bill imposes strict prohibitions on this practice. Right? Wrong.

When it comes to poison pills, the bill is a placebo, not an antidote. It would prohibit only those poison pills adopted while a tender offer is pending. Any poison pill in place before a takeover battle begins is safe. More than 400 publicly traded corporations already have poison bills, and any pill adopted in the future is also safe provided that it is in place before a takeover battle starts.

Such a "prohibition" is an obvious inducement for corporations to stock up on poison pills now. Indeed, Martin Lipton, the attorney whose apothecary formulated the first poison pill, has urged his clients to adopt poison pills promptly, precisely because Sen. Proxmire's bill might become law.

Sen. Proxmire takes a similarly limpwristed approach to golden parachutes, which he slams as "self-serving bonuses that executives pay themselves if they are ousted." The bill would prohibit only those golden parachutes adopted during a takeover contest, leaving untouched parachutes in place before a battle begins.

The consequences of this approach are obvious. About 200 of the Fortune 500 already have golden parachutes in place and the legislation would provide a powerful incentive for companies without golden parachutes not to wait until a takeover begins but to strap one on right away.

Sen. Proxmire also comes down hard on two-tier tender offers, calling them "inherently coercive in that they place enormous pressure on the stockholder to sell his shares to the raider in order to avoid a lower price on the second tier." The bill, however, is silent regarding these "inherently coercive" tactics.

Why would Sen. Proxmire attack two-tier bids but not legislate against them? One possible explanation has to do with recent trends in the use of two-tier bids. Contrary to Sen. Proxmire's assertion, these bids are no longer used predominantly by raiders.

Two-tier bids are now used predominantly in friendly transactions, by managements proposing their own leveraged buyouts, by "white knights" competing with all-cash offers, and, perhaps most significantly, by managements proposing self-tenders as a defense against a hostile bid. The pressure on stockholders to tender into these defensive offers is identical to the pressure to tender into a hostile bidder's two-tier offer.

The two-tier bid has thus become primarily a defensive tool. If Sen Proxmire believes that it's OK for managements to coerce their stockholders as part of a takeover defense but objectionable for bidders to use tactics with the same effect, then it makes sense for him to lambaste two-tier deals but do nothing to control them. So much for his claim that "egregious defense as well as coercive takeover tactics should be limited."

The bill contains numerous other provisions so illogical, unworkable and expansive that their only possible rationale is to throttle takeover activity at virtually any cost. To cite but one example, the bill would, for purposes of the Williams Act's 5 percent reporting threshold, define as members of a group any persons acting in a "coordinated or consciously parallel manner (whether or not pursuant to an express agreement)."

Conscious parallelism is a concept developed primarily in the antitrust law, where it has left a tortured and dangerous legacy. If transplanted to the securities laws, it could quickly wreak havoc as traders are forced to ponder metaphysical questions such as: "If I buy shares of Company X today because I expect that Bidder Y will make a tender offer, and if I intend to sell my shares to Bidder Y if he makes an offer, is my action 'coordinated' or 'consciously parallel' even though I've never met Bidder Y?"

Such questions would clog the courts for years and set a trap for anyone even thinking of buying shares while a takeover may be brewing in the wings. The chilling effect of liability arising from unwitting violations of the 5 percent reporting requirement would deter honest traders from seeking out undervalued companies. Despite all the rhetoric about evenhandedness, that may be precisely the goal Sen. Proxmire wants to achieve. In this example, and in numerous other provisions of the bill, the senator is apparently willing, if not eager, to terrorize honest traders and potential bidders with the specter of litigation and liability so as to protect undervalued or poorly managed companies from becoming takeover targets.

Perhaps the greatest irony is Sen. Proxmire's approach to federal pre-emption of state anti-takeover legislation. The bill would grant the state extremely broad authority to regulate interstate transactions in securities that are the subject of contests for corporate control. It would ensure state control of takeover activity far broader than suggested in the Supreme Court's recent decision upholding Indiana's anti-takeover law.

The evidence is overwhelming that many states would use this authority to make takeovers as difficult as possible. In the four months since the Indiana decision, at least eight states have passed laws designed to protect local firms from the forces of the nation's capital markets. By protecting state anti-takeover authority, and limiting the pre-emptive effect of the Williams Act. Sen. Proxmire rings the death knell for the Williams Act. Many more states are likely to adopt anti-takeover provisions far more onerous than the Williams Act, and state law would then become the binding constraint on takeover activity. The states' stranglehold on hostile takeovers would be ensured.

RHETORIC VS. REMEDIES

In contrast to Sen. Proxmire's bill, Rep. John Dingell's proposed takeover legislation at least has the merit of not abandoning the field to the states, and therefore would not kill the Williams Act. Whether the Michigan Democrat's bill is good or bad legislation is a different question entirely, but it certainly can't be attacked as unconditional federal surrender.

In sum, then, Sen. Proxmire's rhetoric doesn't jibe with his proposed remedies. If he wants to protect poison pills, golden parachutes and management's ability to use coercive two-tier tactics against their own shareholders, he should say so. If he wants to chill the markets with vague threats of legal liability, he should be candid about that too. Most important, he should explain that he wants to take the federal government out of the takeover-regulation business and give the states carte blanche to adopt anti-takeover measures more restrictive than those Congress would ever enact. Despite protestations to the contrary, Sen. Proxmire may agree with his supporters at the Business Roundtable that the only good takeover is a dead takeover.

The choice is clear: The Senate can either agree with what Sen. Proxmire says or it can vote for his legislation. It can't have it both ways.

[From the Wall Street Journal, Sept. 27, 1985]

TAKEOVERS ROOTED IN FEAR

(By Alan Greenspan)

While there have been flurries of mergers, takeovers, leveraged buyouts and corporate restructuring in the past, nothing in recent memory approaches the current intensity of interest exhibited by the corporate community. Indeed, many of the heroes (or villains, depending on one's point of view) of such activity have also engendered media attention unparalleled since the heyday of the larger-than-life titans of the 1920s.

Beyond the theatrics of the takeovers, however, some very deep-seated questions about their impact and future remain. Largely as a consequence of mergers, leveraged buyouts and corporate stock-purchase programs, the book value of nonfinancial corporate equities rose by only 3.5% last year, far less than the 7.4% of the previous year. Common stock buy-backs and conversions apparently liquidated something on the order of a staggering $77 billion of equity last year, and that rate continued through the first half of 1985.

For most recent years corporations have been issuers of net new equity and even during the previous short periods of liquidation, nothing even remotely resembling the current dimensions was involved. As a consequence, debt has replaced equity as corporations allocated available cash or the proceeds of new short-term debt to buy back a substantial chunk of outstanding stock over the past year-and-a-half. Debt/equity ratios have accordingly risen, and working capital as a ratio to invested capital has declined. Trends of this nature must, of course, prove worrisome. Clearly, something different is happening to our market structure that does not draw immediate analogies to any previous experience.

MISALIGNED AGGREGATION

A clue to the nature of the problem is gained by identifying the industries in which the more celebrated corporate takeover attempts have occurred. It was quite clear as recently as last year that CBS and ABC shares then selling in the 70s and 60s, respectively, were not reflecting the estimated liquidating value of the companies. Indeed, the presumed purchase price of owned and operated television stations alone, excluding the network, radio stations, publishing, etc., came close to approximating the market value of the whole companies as reflected in share prices.

Similarly, the market value of oil in the ground has accounted for a substantial part of the overall market value of integrated oil companies. Put another way, it appears that the market value of the sum of the parts exceeds the market value of the companies as a whole as reflected in their stock prices.

The stock market is, in effect, saying that a significant number of U.S. oil companies would be valued higher were they dismembered. Little value seems to be accorded to the large refining and marketing complexes after the separate market value of crude oil and natural gas reserves is accounted for. Obviously the disparity between values of oil and gas in general and refining and marketing complexes was even greater when light Arabian crude oil was selling for $34 a barrel. But even at $27 a barrel the gap remains large.

The valuation disparities, while clearly visible in only certain industries are, nonetheless, widespread. The markets are, in effect, indicating that somehow the particular aggregation of assets, currently reflecting the industrial structure of the U.S. is misaligned.

It is this perception that has created the current large premiums in the stock market for controlling interests of companies. Historically, controlling interest usually required premiums one-fourth to one-third above the prevailing market prices for stocks, in less than controlling interest lots. Control was not significantly more valuable than an investment because no major changes in corporate structure appeared potentially profitable. In today's market, control is perceived as being nearly twice as valuable as the investment value of a company, that is, the value of a claim to the prospective dividend flows under the current industrial and financial structures. Hence, if a corporate raider or investor can accumulate controlling interest at, say, only 50% over investment value, a major windfall from the liquidation of all or parts of the company is potentially available. Hence, so long as this extraordinary disparity between investment and controlling interest values continues, we can expect more of the same from the T. Boone Pickenses, Carl Ichans or Sir Jameses of this world, or their successors. The difficulty, however, lies not with them or the companies that they endeavor to corral, but with the overall valuation of common stocks that, by any historical criterion, remains exceptionally low.

The basic problem is that the real discount factors applied to expected future dividends are decidedly high by historical standards, reflecting the high risk premiums built into long-term equity capital investments. The latter, in turn, reflect the fears of a potential re-ignition of inflation and the resultant economy-wide instabilities. Underlying the growing concern is the presumption that the financial structure is fragile and might require large inflation-generating bailouts. Perhaps even more deep-seated is the concern that yawning federal budget deficits will persist for the indefinite future, ultimately forcing a massive expansion of the money supply and inflation.

Excessively high discount factors place a disproportionate share of the value of a company's stock on near-term earnings and dividend flows. When discount factors were closer to the lower historic norms, the generation of earnings expected for five to 10 years in the future had a large positive impact on the market price of a stock. In today's high-discount environment, earnings expected over the longer term currently have little impact on the market value of the firm.

SOME FIRMS ARE PENALIZED

Hence, "cash cows," that is, those entities that create a lot of cash flow up front, such as television stations and oil in the ground, are disproportionately favorably valued in periods of high discount rates—periods such as today. Other business units with longer cash-payout periods tend to be disproportionately undervalued. Hence, in today's environment a few units within an organization can, on a stand-alone basis, have as much perceived value as the corporation overall.

As a consequence, organizations put together in the expectation of normal long-term average discount rates nearer 10% than 15% underperform in the stock market at 15%. In fact, were such high discount factors to exist permanently, a misuse and misorganization of capital would be indicated.

The high discount factors in effect penalize those firms that continue to take the long-term time perspective that their historic corporate cultures require of them. So long as stock prices remain low, they will induce short-term profit preferences. In sum, capital costs are too high, stock prices too low.

Can we expect merger pressure to decline without a fall in the cost of capital? Only temporarily. We probably have run through the available large dollar oil company, and much in the way of media mergers. Hence, we may see a temporary falloff in mergers, acquisitions and leveraged buyouts. But so long as the current market value of exisitng assets remains low relative to their replacement cost, incentives to buy exisitng facilities, merge, or buy back one's stock will continue.

Only a significant rise in stock-market values seems likely to bring the recent flurry of corporate restructuring to an end. And that probably requires a fall in budget deficits and other uncertainty-creating forces. The most recent congressional experience with budget cutting is certainly not very encouraging. Hence, the fear of the corporate raider, so prevalent in today's executive suites, is likely to become a semi-permanent fixation of the corporate scene.

[From the Legal Times, Apr. 4, 1988]

MERGER MANIA: DON'T BLAME RAIDERS FOR SYSTEMWIDE ABUSES

(By Richard Greenfield)

Not long ago, reacting to the Ivan Boesky scandal and reflecting the fears of corporate America, A.A. Sommer, former commissioner of the Securities and Exchange Commission, denounced the takeover mania of recent years. In testimony before the House monopolies subcommittee, he said: "American enterprise, at a time when all its energies are needed for the worldwide economic struggle, is being driven by a handful of opportunists into a massive restructuring with consequences that may be disastrous."

Rep. Mary Rose Oakar (D-Ohio) reiterated this defensive theme: "Corporate America is being held hostage by the corporate raider. Profitable companies are being driven into debt, American jobs lost, and American businesses are being taken overseas, all so that a few enormously wealthy individuals can add to their personal fortunes." Presidential candidate Sen. Paul Simon (D-Ill,) introduced a bill in the Senate to curb what he described as abuses in connection with hostile takeover attempts. Simon and other members of Congress are proposing limits on these high-visibility transactions as well as other related activites. Most recently, opponents of unfriendly takeovers have caused the enactment in Delaware of a new and unjustifibly restrictive package of legislation to further inhibit the growing corporate phenomenon.

Regrettably, these well-intentioned reactions to hostile takeover attempts are bound to be counterproductive and lead to more government-sanctioned corporate protectionism—a form of legal chastity belt that should be abhorrent to the more vocal free enterprisers in this country. Indeed, some of the proposed legislation under discussion will damage a marketplace that by and large works well, reasonably fraud-free, and efficiently.

Unfriendly takeovers, when carried out legitimately and without market manipulation and misuse of inside information, can serve worthwhile economic and social purposes. In today's competitive business environment, incompetent, inefficient, and uncreative incumbent managements can only be truly accountable to their shareholders if they are vulnerable to replacement. If a raider offers a proposal to do more with a company's assets than the incumbents, either by means of better management performance or wholesale asset disposal, shareholders must have the freedom to analyze and, if desired, accept that choice.

What has fostered so much heat and so little light in the well-publicized takeover wars is the high-visibility offensive and defensive strategies of the combatants, all of which detract from the shareholders' freedom of choice. The rights of the shareholders of target companies are largely ignored. No champion of those rights has yet appeared in Congress, although it might be argued that Simon comes close to the mark.

The Williams Act made great strides toward regulating the conduct of tender offers, but it focuses on only two important aspects of such transactions: full disclosure and the avoidance of marketplace manipulation. Unfortunately, the Williams Act does not address what is the equally important third leg of the tripod, the fiduciary duties and activities of the target company's board of directors. These issues usually involve state law—but even a few examples amply demonstrate that state law has not proven itself up to the task of ensuring, or even encouraging, good corporate governance.

Ideally, if all the players in a takeover contest were to comply with the Williams Act, the fight would be a fair one. Almost always, this is not the case, as incumbent directors and their managements fall back on a creative array of defensive maneuvers employing the target company's resources to defeat the raider. State laws and case precedents do not even address many of these tactics; numerous additional practices have been upheld on so-called "business judgment" grounds.

Other tactics, usually employed in advance of a takeover attempt, have been wielded by corporate boards in the hopes of entrenching themselves and making the company more invulnerable to attack. These include poison pills of varying types, two-class common stock with different voting rights, delaying tactics permitted under pernicious state anti-takeover laws, and the payment of greenmail, one of the most notorious misuses of assets on the corporate landscape.

The conventional wisdom has been that the regulation of what is traditionally referred to as corporate law is a matter for the states and state courts, rather than for federal oversight. This view, however, is badly flawed, out-of-date, and largely ineffective in giving shareholders of public companies and the investing public generally the protection truly needed in the context of unfriendly offers. A more direct, national

approach is needed—namely, a federal business corporations code to govern all publicly owned companies the shares of which trade in interstate commerce.

This resort to federal standards is sorely needed in the current legal and economic climate. A number of states, in utter derogation of shareholder rights, have made a blatant attempt to attract incorporations there. Both state legislatures, by means of pro-management corporate law, and state court systems, which are frequently insensitive to fundamental concepts of corporate behavior and morality, have encouraged corporate boards to breach their fundamental obligations to shareholders and their companies.

Many states, of course, look up their corporations rather provincially. Citing the preservation of jobs and taxes, these states adopt a xenophobic resistance to predators from elsewhere. Some jurisdictions have enacted legislation to frustrate unfriendly takeovers; once the Supreme Court upheld Indiana's law in 1987, additional barriers to commerce were certain to be erected, like those recently enacted in Delaware. For these reasons, the playing field remains uneven and boards of directors, in the face of unfriendly takeover attempts, feel free to go to any lengths to fight back and protect their turfs. All too often, these defensive steps are detrimental to the shareholders and to the target company itself, yet they are carried out with impunity and with the confidence that the state courts will protect management, no matter how egregious the abuse.

Two states, Delaware and Pennsylvania, have even institutionalized corporate wrongdoing by providing mechanisms that free directors from inconvenient concern about liability for negligent or reckless behavior in the performance of their duties. Other jurisdictions, in competition with Delaware to retain their full share of Fortune 500 and other incorporations, are striving through legislative means to woo directors with even more far-reaching protectionist laws designed to insulate them from liability for their wrongdoing.

TAKEOVER CRITICS ON WRONG TRACK

Against this backdrop, many of the vocal critics of takeover mania are misguided. Without the benefit of an analysis of the root cause of the takeovers in the first place, these well-intentioned observers of the corporate scene appear likely to advocate still more layers of protection for corporate boards from ultimate accountability to their shareholders. Discussions abound with proposals that would prohibit the use of junk bonds in financing takeovers or would set obstacle courses before the raider to overcome. Undoubtedly, these new proposals would reduce the likelihood of success for unfriendly takeovers. But the critics would do better to develop ideas to make the process more fair and to create what all constituencies should prefer, an environment in which no party has an undue advantage over another.

In fact, many of Simon's proposals are directed toward this end. According to the senator, his legislation would shorten the time allowed before investors must disclose major purchases of a company's stock. Simon would require such disclosure within two days after an investor's holding reached two percent of a company's share and would lengthen the time given to targeted companies to consider tender offers to 45 days from the 20 days afforded by current rules.

While the Simon proposal was conceived out of concern for the Borg-Warner Corp., a hometown target of at least one raider waiting in the wings (the GAF Corp.), its protectionist bent nevertheless is designed to make any battle for control a fairer and more open one. But even this is insufficient: although Simon's proposed legislation goes far in the right direction and even would prohibit greenmail, its primary focus is still on the conduct of the tender offer or, rather than on management as well.

It is absolutely clear that the states, particularly Pennsylvania and Delaware, will not undo what they have already wrought in terms of management protectionism. For this reason, the time appears right to redirect all of the energies focused on the takeover crisis from the symptoms to the cause: the non-accountability of boards of directors to their shareholders. A nostrum frequently trumpeted by espousers of the status quo is that shareholders are free to elect new directors when incumbents do not act in their best interest. Of course, even the most incompetent and self-serving managements, such as in the Victor Posner-dominated empire, manage to get re-elected year after year by widely dispersed and ineffectual electroates—demonstrating that the conventional wisdom is a myth.

FEDERAL CODE NEEDED

An evenhanded federal corporate law, with the preservation of fundamental shareholder rights as its paramount objective, would improve the overall environment in which takeover fights play out. If one acknowledges that there is nothing fundamentally wrong with an unfriendly tender offer or quest for control, it should be clear that any proposed legislation should not be narrowly aimed at regulating further the free market forces that bring companies into play. Rather, the aim of new laws should be the misuse of the corporate-governance process to frustrate a free and open market. A federal business corporations code prohibiting specified protectionist and defensive (as well as offensive) conduct and providing for appropriate relief to injured companies and their shareholders would go a long way toward opening up and legitimizing contests for corporate control, as well as providing standards for corporate behavior generally.

Publicly owned corporations are rarely intrastate entities owned solely by shareholders within one state. The provincial or tax-based interests of the various states, who by relaxed state laws attempt to lure managements, must give way, ultimately, to a broader national interest: the protection of all investors, their companies, and the very integrity of our free enterprise system. While there are surely those who advocate no new regulation on philosophical, free-enterprise grounds and those who advocate a "go slow" response to the Boesky and related scandals, the need for a uniformly applied federal regulatory system has never been more apparent.

Classical laissez-faire capitalists, while perhaps preferring no regulation, should want the certainty of a nationwide body of law that in effect would lead to the virtual dismantling of 50 separate state apparatuses that have become anachronisms. More important, the level playing field would be achievable. The cost of any additional federal regulatory and judicial involvement could be borne by the companies that now pay incorporation and franchise fees to the various states. Further, assuming that appropriate injunctive and damage remedies are built into new federal legislation, "private attorneys general" acting for shareholders of affected companies will typically provide the enforcement that might otherwise come from the SEC and the Department of Justice. Such a rule, of course, would only be a modest extension of the rights and remedies under existing federal law.

A rush by Congress to enact legislation that is solely addressed to the conduct of the unfriendly raider, without examining the entire corporate-governance question, would be foolhardy and shortsighted. Congress must not view its legitimate short-term concern for the well-being of target companies without considering the long-term environment in which these businesses must exist—particulary in the area of international trade, where non-competitive American business is in such bad shape. Ultimately, a federal legal framework that balances the interests of shareholders as well as managements and that deals with the economic realities of the marketplace will, in the long run, enable corporate America to function most competitively at home and abroad.

[From the Boston Globe, Feb. 23, 1988]

THE FALLACY OF LAWS THAT STOP TAKEOVERS

(David G. Tuerck)

Last year the US Supreme Court upheld an Indiana law that threatens to Balkanize—"Hoosierize"—US capital markets. An investor buying up more than 20 percent of an Indiana corporation cannot vote his stock without the approval of a majority of "disinterested" shareholders. Management can delay approval up to 50 days as carrying costs mount with no guarantee of approval.

The purpose of this and similar laws adopted by other states, including Massachusetts, is to protect management from hostile takeovers. It is, in the words of one victim, an "entrenched-management relief program." Its effect is to proliferate a hodgepodge of regulations that hinder the flow of capital across state lines.

The case for antitakeover legislation rests on four arguments. Hostile takeovers supposedly:

Divert money from "real" investments that create jobs and increase productivity and toward mere paper investments.

Subject management to the whims of large institutions and other investors that don't have the future of the company at heart.

Pressure management to put short-run ahead of long-run profits, cheating society of investment projects with distant but valuable paybacks.

Put corporations in the hands of outsiders who don't care about the community or its employees.

The first argument confuses "real" investment and trading assets such as money. Real investment is business purchases of new, real assets such as equipment and structures. Money is a financial asset that can be traded for other assets, real or financial.

When people use money to buy a controlling interest in a corporation, they are merely exchanging one financial asset, money, for another, stock. What happens to real investment thereafter depends on what the bought-out shareholders do with their newly acquired money and what the new owners of the corporation do with their newly acquired stock.

Perhaps the bought-out shareholders will buy stock in other corporations, making their money available for the purchase of

real assets by those corporations. Perhaps the new owners will purchase additional new, real assets. But even if they do not—even if they sell off some or all of the corporation's real assets—there is no diversion of money from investment. In fact, there is likely to be an increase in investment as rising stock prices reduce the cost of raising equity capital through new stock issues.

The second argument, that some shareholders have no right to control a corporation, confuses the responsibilities of management with the rights of stock ownership. One manager revealed his confusion over this distinction when he complained that no one owning stock for an hour should have the right to decide the fate of a company. In fact, he had things backward. It is management's job to make a company's fate sufficiently bright that people are willing to buy the corporation's stock and to hold it for whatever time they choose.

Critics complain about the separation of ownership from control—the tendency of shareholders to abandon control of the corporation to its managers. The hostile takeover reverses this tendency. It makes managers more accountable to the people who pay their salaries. That government should single out one group—well-paid corporate managers—for protection against accountability testifies only to the lingering grip of 17th century mercantilism on 20th century politics.

The argument that takeovers put short-run profits ahead of long-run confuses the postponement and the uncertainty of profits. The market value of a corporation's stock tends to equal the discounted value of its future earnings. Profits postponed, properly discounted, contribute as much, dollar for dollar, to maintaining stock prices as do profits realized now.

The final argument, that the corporation has responsibilities to the community and to its employees that transcend shareholders' rights, confuses the interests of managers with that of the community. Managers want high salaries and safe jobs. The community wants good products. The best way to assure the community's interest is to protect investors' as well as consumers' sovereignty.

As for employees, corporate takeovers can revitalize a dying company. Shielding inept managers from the control of shareholders can only delay plant closings that might be averted if control is excised soon enough. Worst of all, the Hoosierization of capital markets, by shielding managers from the consequences of their investment mistakes, redirects investment from more-successful to less-successful projects. In the end, this reduces employment opportunities for all.

There are several bills before Congress to de-Hoosierize US capital markets and create uniform laws for securities regulation and restore investors sovereignty. These laws deserve the support of anyone who objects to the idea of regulating capital markets for the comfort of corporate managers.

[From the Wall Street Journal, June 24, 1987]

WHITE HOUSE OPPOSES TAKEOVER BILLS, SPRINKEL TELLS SENATE BANKING PANEL

(By Edward Sussman)

WASHINGTON.—The Reagan administration adamantly opposes new legislation regulating hostile takeovers, Beryl Sprinkel, the chairman of the president's Council of Economic Advisers, told the Senate Banking Committee.

At the same hearing, Charles Cox, acting chairman of the Securities and Exchange Commission, said the agency is generally against the takeover bills pending in the Senate. But he added that the commission does favor requiring quicker public disclosure of stock purchases by buyers who acquire 5% or more of a company's shares. Current law mandates buyers with such a stake to report their transactions to the SEC within 10 days.

Despite such opposition, support for anti-takeover legislation is strong in Congress, with both the House and Senate considering bills. Efforts to curb takeovers have been sponsored largely by congressional Democrats, who expected resistance from the free-market minded Reagan administration. Senate Banking Committee Chairman William Proxmire (D., Wis.) intends to move the bill he sponsors out of committee before the August congressional recess.

Mr. Sprinkel, whose testimony represented the conclusions of a high-level administration working group, said legislation to curb hostile takeovers could hurt shareholders, lead to a loss of jobs, preempt state regulations, and deter benefits takeovers. His comments were specifically in reaction to Sen. Proxmire's far-reaching bill.

The bill's effect "would be to impede the market for corporate control and to intrude into areas of corporate governance that should be left primarily to the shareholders and secondarily, to the states," Mr. Sprinkel testified.

He cautioned against letting sentiment against insider trading lead to prohibitions on hostile takeovers. He termed insider trading and corporate takeovers as "two separable issues."

The administration believes hostile takeovers promote market, efficiency by weeding out bad management, Mr. Sprinkel said. The administration has said it could support legislation to define insider trading more strictly.

Several senators strongly challenged the administration position, arguing that efficiently managed companies with well-developed assets are the likely targets of hostile takeovers and that measures to defend against takeovers often throw companies heavily into debt. Mr. Sprinkel countered that most corporate debt results from tax laws encouraging debt financing, not from takeovers.

While Mr. Sprinkel opposed the pending legislation on philosophical grounds, Mr. Cox limited most of his objections to technical points. However, he broadly opposed provisions in the bills to block so-called two-tiered tender offers, in which raiders make different price offers to different shareholders. "If enacted, these provisions would mark a dramatic departure from the historic role of federal securities regulation" by interfering with the free market, he argued.

The only major legislative change the SEC official did advocate involved disclosure requirements. Mr. Cox supported the idea of requiring shareholders with 5% or more of a company's shares to report their transactions in the stock within five days, instead of the current 10. And he recommended that such shareholders be prevented from acquiring more of a company's stock until after they make their initial filing that they own more than a 5% share.

The Proxmire bill would require stock purchasers who acquire 3% or more of a company to file within one day. Mr. Cox said a 3% threshold "would generate costs in excess of benefits." He went on to offer a point-by-point rebuttal of nearly all the provisions called for in the Senate proposal, saying the bills could "impair the depth and liquidity of the markets."

The Senate package includes provisions that would require large purchasers to identify the source of their financing, extend the time a company has to respond to a takeover offer to 35 days from 20, and require a formal tender offer after 15% or more of a company is purchased.

The measures also would seek to prohibit so-called greenmail payments, or the buyback of stock at a premium above the market price to buy off hostile bidders. In addition, they would ban so-called poison pill and golden parachute provisions from being instituted during takeover attempts. These are designed, respectively, to make a company prohibitively expensive to acquire or to provide substantial bonuses to executives removed as a result of a takeover.

Mr. Cox said that many of the provisions in the Senate package could be better addressed by the SEC, which he said can be more flexible in responding to the evolving takeover environment. He said that extending the tender offer period to 35 days would make it unnecessarily long, and that prohibiting defensive tactics by companies would be an inappropriate intrusion into corporate affairs. He said the poison-pill and golden-parachute provisions would be ineffective because they wouldn't prevent companies from adopting such measures before a takeover attempt.

The Senate proposal also would reaffirm the right of states to enact their own takeover legislation. Representatives of state securities regulators testified in favor of the package. But Mr. Sprinkel said the administration believes that the Senate proposal would actually "preempt any state law regarding corporate governance that favored the interest of shareholders."

IN DEFENSE OF TAKEOVERS

(By William Armstrong)

Ancient kings claimed to rule by divine right, impervious to the wishes of their subjects. Some modern-day corporate executives also want what noted economist Robert Samuleson has called the "divine right of management," under which "bankruptcy would become virtually the only way top executives could lose their jobs."

Just as kings built walls and moats to keep out their serfs, a number of executives from top companies have asked Congress and the states to build them a legal fortress that would stop takeovers. And just as kings dealt forcibly with insurrection, big business and its allies are wielding heavy swords, leaning hard on lawmakers to enact protectionist measures.

Sure enough, Congress and the states are caving in. Last September the Senate Banking Committee approved a bill aimed at inhibiting corporate takeovers and providing special protection for corporate managers. This year the Senate is likely to debate and revise the bill in an atmosphere that has been further emotionally charged by a wave of attempted takeovers of U.S companies by foreign corporations. Meanwhile, 27 states have adopted antitakeover statutes that trample on shareholder rights and common business sense. And earlier this year, the state of Delaware—home to many of America's corporations—passed a law that would prevent a new owner from taking full control of an acquired corporation for three years. (That law is now being challenged in the Delaware courts.)

The 35 million Americans who are investors, shareholders, pension fund beneficiaries and individual retirement account holders should be aware that their stake in American business is being threatened by this fight, which the privileged executives of the nations' largest and most powerful enterprises appear to be winning. Also at issue are fundamental questions of economic growth, job creation, preservation of free enterprise and the international competitiveness of U.S. firms. If big business wins, shareholders, national markets and interstate commerce will all lose.

LEGITIMATE RIGHT

Corporate executives are as threatened by takeovers as kings once were by insurrection; even the term "hostile takeover" conjures up images of serfs storming the castle. But it is preposterous to portray as outlaws shareholders who are willing to sell their stock for a higher price. They are simply exercising their legitimate right to buy and sell corporate stock that is publicly held and traded. Enacting the proposed antitakeover legislation would be like telling someone who is selling a house that it is against the law to accept the highest offer. These laws would restrict the sale of publicly held stock and balkanize America's heralded national markets and interstate commerce.

It all adds up to a bizarre spectacle. Usually, business leaders come to Congress to fight restrictive legislation that would impede free markets, free enterprise and competition. They testify in grave tones before our committees, warning of danger when government intervenes in the private sector. But now that their own interests are at stake, some of them seek protection.

To win public and legislative favor for their view, business leaders have launched an all-out offensive on Capitol Hill. In hearing after hearing, Congress has been warned of the parade of horribles that accompany corporate takeovers. We have heard emotional arguments about job loss and community devastation. One corporate critic went so far as to characterize takeovers as the "economic equivalent of AIDS."

But, in fact, takeovers benefit shareholders, employees, communities and the whole economy. A study released in September by the Securities and Exchange Commission reported that between 1981 and 1986, stockholder wealth increased by $167 billion as a result of takeover activity. And takeovers do not sacrifice long-term growth for short-term gain. Stanford University Professor Browyn Hall studied the R&D activities of thousands of firms between 1976 and 1985 and concluded that "innovators are less likely to be acquired" and that, in the aggregate, firms involved in mergers showed "no difference in their pre- and postmerger R&D performance over those not so involved." An SEC study notes that, as a percentage of corporate revenues, R&D expenses have increased, not decreased, during the past few years.

Nor is there systematic evidence that takeovers reduce overall employment. They often function instead as an alternative to plant closings—thereby saving jobs. The National Bureau of Economic Research, which adjusts employment data for larger trends in the economy, has concluded that "contrary to the tenor of popular press coverage of acquisitions, we find that wages generally grow faster following acquisitions [and] . . . employment [grows] faster."

Despite the wealth of evidence that takeovers are a healthy phenomenon. Congress is heeding the cries of big business to stop them. The bill approved by the Senate Banking Committee is innocently called the "Tender Offer Disclosure and Fairness Act of 1987." A better name would be the "Business Management Protection Act of 1987." This legislation, if enacted in its present form, would change the federally established principle of equal treatment of all shareholders by permitting discriminatory treatment of shareholders who do not meet management's approval. But the recent spate of antitakeover legislation is only the beginning of this battle. The fight about takeover tactics is expanding into a full-blown debate about how corporate America ought to be governed and about what responsibilities exceutives have to the owners of their corporations.

Such a debate is long overdue.

COMMUNITY CHIC

For years the leaders of America's largest corporations have denied responsibility for their workers and communities. They closed plants without warning, laid off employees when markets sagged, forced states to compete against one another in offering tax breaks and subsidies, and steadily moved their headquarters to ever more bucolic surroundings—from downtowns to country club suburbs to wooded expanses beyond. Corporate executives justified these slights by arguing, repeatedly and solemnly, that their responsibility was to their shareholders. The purpose of corporations was to make profits, not to be good samaritans. It fell to the public sector to deal with the problems of dislocated workers and disgruntled communities.

But a new vision has taken hold. America's business leaders have become born-again communitarians. Listen to a spokesman of the Business Rountable, an association of America's top executives, speaking before a congressional committee considering limits on takeovers: "Supposedly [takeovers] are being done in the interest of the shareholders. But what is this doing to the country? The corporation has intangible worth as a complex web of relationships in the community within which it functions." Or this, from USX Corporation chairman David Roderich, complaining of "massive abuses by a small group of raiders, arbitrageurs, promoters, and investment bankers, who reap enormous profits serving only their own self-interest at the expense of . . . employees, creditors, communities, and the nation at large.

Corporations seeking federal and state legislation to bar hostile takeovers have taken out full-page ads in local newspapers, depicting the strong and historic ties binding them to their workers and communities, and warning of the dangers to both of succumbing to "outside" control. Gillette, under siege by several potential raiders and desperately seeking protective legislation from Massachusetts, has pulled out all the stops. On the radio, on local television, in regional magazines and newspapers, Gillette has reiterated its links to the community. "Gillette has a responsibility to Boston," a Gillette spokesman told me. "We have employees here, suppliers here, our attachments run deep. What happens when Gillette is owned by someone without these attachments?"

So far 29 state legislatures have been moved by such noble sentiments. In order to preserve the "web or relationships" between the corporations, workers, and communities, states are erecting various barriers to hostile takeovers. Massachusetts enacted an anti-takeover law, and is now considering an even stronger one. Delaware—home to over half of the Fortune 500—became the most recent convert. Its anti-takeover statute forbids a newly controlling shareholder from consolidating a merger with the target, selling its assets, or otherwise restructuring the target firm for three years after the acquisition—effectively rendering such takeovers impossible. It is a fair guess that the other 21 states will soon follow.

The deep concern now being expressed by America's business leaders for their workers and communities—after years of indifference, or worse—is heartwarming. Some cynics say that is only a ruse to protect their own cushy jobs from corporate raiders. But I have more faith in them. I have so much faith that I am sure they will support my proposal to amend the anti-takeover statutes already enacted, and add to legislation now under consideration, the following provision: "No corporation shall be required to accept this anti-takeover protection offered by the state; the protection is entirely voluntary. But when a corporate does choose to shield itself it will be bound to live up to its avowed responsibilities to workers and communities by (1) giving six months' advance notice of any plant closing; (2) providing retraining and job-placement services to any workers it lays off; (3) donating ten percent of its net earnings to local charities; and (4) investing two-thirds of all its future investments within the state."

This will be known hereafter as the Put-Your-Money-Where-Your-Mouth-Is Amendment. I invite America's business leaders to join me in this worthy crusade. We'll show the cynics that American business really cares.

ROBERT B. REICH.

[From the Philadelphia Business Journal, Mar. 20, 1988]

DON'T SUCCUMB TO TAKEOVER FEARS

(By Richard D. Greenfield)

In part as a reaction to the Ivan Boesky scandal and in part reflective of the fears of the business community, a member of Congress recently said: "Corporate America is being held hostage by the corporate raider."

Sen. Paul Simon introduced a bill in the U.S. Senate to curb what he described as abuses in connection with hostile takeover attempts. Simon and other members of Congress are proposing limits on these high visibility transactions as well as other related activities. Most recently, opponents of "unfriendly" takeovers have caused the enactment in Delaware of a new and unjustifiable restrictive package of legislation to further inhibit this growing corporate phenomenon.

Regrettably, this well-intentioned reaction to hostile takeover attempts is bound to be counterproductive and lead to more governmentally sanctioned corporate protectionism, a form of legal chastity belt that should be abhorrent to the more vocal free enterprisers in America. Indeed, some of the proposed legislation being talked about will damage a marketplace which, by and large, works well and reasonably fraud-free.

Unfriendly takeovers, when carried out legitimately and without market manipulation and misuse of inside information can, indeed, serve a worthwhile economic and social purpose. In the competitive business environment of today, incompetent, inefficient and uncreative incumbent managements can only be truly accountable to their shareholders if they are vulnerable to replacement. If a "raider" can do more with a

company's assets than the incumbents, by means of either better management performance or wholesale asset disposal, that choice must be freely given to and analyzed by the company's owners, its shareholders.

It should be recognized that existing corporate law is out of date and largely ineffective in providing to shareholders of public companies and the investing public, generally, the protection truly needed in the context of unfriendly offers. In many takeover contests, incumbent directors and their managements fall back on a creative array of defensive maneuvers to employ the target company's resources in order to defeat the raider. Many of these tactics have not been previously addressed by state law, or, if they have, they have been frequently upheld on so-called "business judgment" grounds. Additionally, other tactics, usually employed in advance of a takeover attempt, have been employed by corporate boards in the hope of entrenching themselves and making the company more invulnerable to attack. These include "poison pills" of varying types, two-class common stock with different voting rights, utilizing the delaying tactics permitted under pernicious state anti-takeover laws and the payment of "greenmail," one of the most notorious misuses of assets on the corporate landscape.

Many states, of course, look upon their corporations rather provincially, and seek to protect jobs and taxes in their xenophobic resistance to predators from someplace else. Some states, such as Indiana, have enacted legislation to frustrate unfriendly takeovers and with the new Supreme Court decision, new barriers to commerce are certain to be erected such as those enacted in Delaware. For these reasons, the "playing field" remains uneven and boards of directors, in the face of unfriendly takover attempts, feel free to go to any lengths to fight back and protect "their" turns. All too often, these defensive steps are quite detrimental to the shareholders and to the target company itself yet are carried out with impunity with the confidence that the state courts will protect them, no matter how egregious the abuse.

Against this backdrop, many of the vocal critics of takeover mania are misguided. Absent an analysis of the root cause of the takeovers in the first place, these well-intentioned critics of the corporate scene appear likely to advocate, as they now have in Delaware, still more layers of protection for corporate boards from ultimate accountability to their shareholders. Undoubtedly, these new proposals will make it more difficult for unfriendly takeovers to succeed rather than being directed at making the process more fair and creating what all constituencies should ideally prefer, a level playing field.

It is absolutely clear that the states participating, Pennsylvania and Delaware, are going to do nothing to undo what they have already wrought in terms of management protectionism. For this reason, the time appears right to re-direct all of the energies directed to the takeover crisis from the symptom to the cause; that is, the non-accountability of boards of directors to their shareholders. Regrettably, this cannot be accomplished by voting the non-accountable directors out of office. Another conventional wisdom frequently trumpeted by those who espouse the status quo, is that the shareholders are free to elect new directors when the incumbents do not act in the best interests of the shareholders who initially elected them. This now-recognized myth can be debunked by merely observing that even the most incompetent and self-serving managements, such as the Victor Posner-dominated empire, managed to get re-elected year after year by widely dispersed and ineffectual electorates.

In order to even out the playing field, a bulldozer rather than a garden rake is necessary. The time has arrived where the Congress must recognize that this bulldozer should be in the form of a Federal Business Corporations Code, designed to prescribe standards of conduct for all publicly owned companies, the shares of which trade in interstate commerce.

A federal corporate law, if even-handed and not leaning to any particular constituency but having as a paramount objective the preservation of fundamental shareholder rights, will serve to even the corporate playing field both in takeover fights and generally. If one acknowledges that there is nothing fundamentally wrong with an unfriendly tender offer or quest for control, it should be clear that any proposed legislation should not be aimed narrowly at regulating further the free-market forces that bring companies "into play" but, rather, the misuse of the corporate governance process to frustrate a free and open market. A Federal Business Corporations Code which prohibits specified protectionist and defensive (as well as offensive) conduct and provides for appropriate relief to injured companies and their shareholders will go a long way to opening up and legitimizing contests for corporate control, as well as providing standards for corporate behavior generally. Ultimately, a legal framework at the federal level which balances the interests of shareholders, managements and deals with the economic realities of the marketplace will, in the long run, enable corporate America to function most competitively at home and abroad.

[From Business Week, May 18, 1987]

SOME COMMONSENSE TINKERING MIGHT BE ALL THAT'S NEEDED

The corporation, perhaps more than most institutions, is based on a series of myths. Managers serve owners. One share of stock gets one vote. Shareholders elect representatives to the board of directors. The free market disciplines winners and losers. All the myths have a purpose; to make us believe the corporation is accountable and efficient.

The truth of the matter is that the public corporation has generally been a benevolent autocracy for decades. Managers have run the show. Shareholder meetings have been elaborate ceremonies. Proxy votes have been foreordained rituals. People who have served as directors of boards have usually been friends of the boss.

For a long time, it didn't matter. As long as management delivered on economic growth, we shared in the myths and convinced ourselves of the international superiority of the American corporation. But in the early 1970s the U.S. economy started to run out of steam. At first we blamed the Vietnam War and the Great Society for our economic problems. Then we blamed OPEC. The real hammer on the economy, though, came from another source: foreign competition.

It forced us to face the truth. Once Europe and Japan emerged from the shadow of World War II and began competing on world markets, we realized that American corporations had been playing, for 25 years, not on a level field but on an empty one. When other players showed up and challenged them to a game, they often crumbled.

The raiders, for all their greed, were the first to understand that many American corporations weren't measuring up. Their raids exploded the myths and revealed that the governing corporate elite was generally not managing economic assets very well. Worse, managers could do almost anything to keep their jobs—and usually get away with it.

It is no surprise that the issues of ownership, control, and accountability were first raised during an earlier time of tremendous economic strain. In 1932, Adolf A. Berle and Gardiner C. Means published The Modern Corporation & Private Property. In the corporation, they noted, shareholders surrender their wealth to outside management. The interest of those parties diverge. The problem gets worse as the number of shareholders increases and their influence grows even more diffuse. Management is often left to go its own way, accountable more in theory than in practice.

But today, owners are starting to act as if they really owned the companies once again. Only this time, the owners are not the Cornelius Vanderbilts and Andrew Carnegies but giant institutions. Their assertion of the rights of ownership is bringing howls of protest from entrenched management. Corporate managers, led by the Business Roundtable, are beseeching Congress to help them keep control.

They are proposing many silly, selfserving remedies. One oil company executive has suggested that raiders be required to write impact statements before being allowed to complete a deal. Management, meanwhile, would still be free to close plants, sell assets, or do whatever it wants without such constraints. Other managers want to make shareholders hold stock for six months before they're allowed to vote on proxy resolutions or bids, yet still feel free to lay off 20-year employees.

But these ideas don't address the nub of the problem. In the new battle for control, managers and institutional shareholders accuse each other of precisely the same things—not being accountable and not focusing properly on long-term performance. There is an element of truth in what both groups are saying. That doesn't mean we need a raft of changes in corporate law. On the contrary, some commonsense tinkering is enough to allow markets to work the way they're supposed to. What can be done?

First, we need to recognize that takeover threats are generally good medicine for weak management. Neither Congress nor the U.S. Supreme Court, which recently upheld an Indiana law making mergers more difficult, should stand in the way of legitimate mergers and acquisitions. At the same time, no chop-shop raider should be able to grab a company overnight, with little investment of his own, for speculative purposes.

Between these two extremes lies reasonable compromise. A splash of cold water on some incendiary raider tactics would cool things down a bit. Coercing shareholders by paying those who tender quickly more than others could be ruled out-of-bounds. Requiring earlier disclosure of 5 percent stakes and preventing two-tier tender offers appear to be in order. To balance those moves, Washington could mandate one-share, one-vote common stock (table). And the government could tackle the problem of reforming antiquated proxy voting systems.

NO PARACHUTES

A number of securities regulations also need to be rewritten. Management rarely loses proxy battles, because the odds are stacked in its favor. Executives can use company funds to reach voters with all the arguments they want to offer. In contrast, shareholders are obliged to finance their own campaigns, can't solicit proxies from all shareholders, and have to confine their arguments to a limited number of words if they use the proxy published by the company.

Shareholders, outside directors, and managers have the most powerful levers to improve long-term performance and management accountability. Harried CEO's, striving to meet quarterly goals, could relax a bit if they told their own pension-fund managers, who do much of the stock-churning anyway, to forget quarterly earnings and look to long-term corporate performance.

Boards of directors could go a long way toward keeping management focused on the basic business of the company if they reminded themselves who elected them, if only in theory. Outside directors play a special role: They can make sure that compensation systems are fair and are geared to long-term performances. That probably means dumping golden parachutes for executives. After all, there aren't any for the 20-year employee forced to bail out. There aren't any parachutes for share-holders, either.

Managerial autocracy has not produced the kind of productivity and growth needed for America to succeed in the world. It's time for a change. The way corporations are governed is very much a competitiveness issue. Managing corporations for the short term is anticompetitive. And bad management is anticompetitive.

SOME SUGGESTIONS FOR REFORM

MANAGEMENT SHOULD

Link operationg managers' compensation to long-term performance.

Give all employees a share in the improved performance of a company through incentive plans that reward increases in productivity, quality, or profits.

Measure the perfomance of pension fund managers against long-term goals, not quarterly targets.

INDEPENDENT DIRECTORS SHOULD

Limit golden parachutes.

Base executive compensation largely on long-term performance.

Assert their independence on critical issues.

SHAREHOLDERS SHOULD

Always vote—and not automatically with management.

Insist on quality outside directors.

Buy stock in companies where management is investing for the long term.

GOVERNMENT SHOULD

Mandate one share, one vote for common stock, unless shareholders approve more than one class of stock.

Require buyers of 5% of a company's stock to disclose within 24 hours, not 10 days.

Ban two-tier tender offers. Require tender offers to remain open for 30 trading days, instead of 20 days.

Require shareholder approval of poison pills and greenmail—including the payment of a raider's investment banking and legal fees.

End "supermajorities," which require more than a simple majority to win proxy votes.

Require independent firms to conduct proxy voting, thus allowing secret balloting and auditing of shareholder votes.

Change securities regulations to give shareholders the same chance as management to get resolutions adopted.

[From the Washington Post, Dec. 17, 1986]

LONG-TERM HINDSIGHT

(By Robert J. Samuelson)

One misleading explanation for the problems of American business is the tyranny of the short term. American managers (it's said) focus too intensely on short-term profits and sacrifice their companies'—and the nation's—long-term competitiveness. The argument is now being dusted off for the debate about hostile takeovers. Critics say the takeovers are bad because they further distract management from the long term. The argument has a plausible and righteous ring, but it's backwards.

Companies, like people, get complacent when no one challenges them. From the end of World War II until the early 1970s, American managers lived in a dream world. Recessions were infrequent and mild, foreign competition was weak or nonexistent, and company shareholders were passive. Corporate executives grew self-satisfied and began to believe they were infallible. Many companies got sloppy; others embarked on misguided diversification programs. This freedom, not short-term thinking abetted poor managmenent.

In hindsight, it's easy to condemn many managers for not paying attention to the long term. But, in fact, managers often worried about the future. For example, many executives diversified precisely because they wanted to lessen corporate reliance on a single or mature business. Unfortunately, much of the diversification turned out to be disastrous. Companies got into businesses they didn't understand, or became unwieldy bureauracies. Planning for the future is no panacea if the result is bad planning.

The distinction between the short and long term, which so intrigues management analysts, isn't especially meaningful in the real world. Executives can have long-term goals but, like all of us, they can't know the future. They have to act tomorrow and next week, and their decisions inevitably reflect present pressures and perceptions. Not surprisingly, the things that most disrupt business—changes in the economy, technology or consumer tastes—are least predictable.

By now, almost everyone acknowledges economists' modest ability to forecast major changes in the business cycle. The same myopia afflicts most business decisions. In the early 1950s, the future computer market was thought to be tiny. A study by Steven Schnaars and Conrad Berenson of the City University of New York reviewed 90 predictions for successful new products between 1960 and 1980: 53 percent of the forecasts were judged failures. The losers included hang-on-the-wall televisions and home helicopters. Some forecasters were simply overoptimistic. Others were dazzled by new technologies and forgot to ask whether products were economical or useful to consumers.

The new attention to the alleged short-term bias of managers is an effort to build a case against takeovers. The argument, now made by managers themselves, blames Wall Street. Companies are increasingly owned (it's said) by large institutions, such as pension funds. These investors want quick profits. Therefore, managers must boost short-term profits by cutting long-term research or investment. Otherwise, their companies' stock will be dumped or they'll become takeover targets. In this view, institutional investors lack company loyalty and will eagerly sell to a "raider" offering a high price for the stock.

This argument won't wash. True, the proportion of total stock owned by institutions (pensions, insurance companies, trust departments) has risen from 16 percent to 27 percent since 1970. But individuals are still the main owners, and institutions apparently don't disproportionately own companies that become takeover targets. Of 177 target companies studied by the Securities and Exchange Commission, institutional ownership was typically two-fifths lower than their industry average. Most shareholders, institutional or otherwise, will sell if offered a 25 percent to 50 percent premium over the market price—typical in takeovers—for their stock.

Nor has the threat of hostile takeovers reduced investment or research and development. Management expert Peter Drucker, who deplores hostile takeovers, dates their onset to 1980. Logically, then, investment and research should have slumped after that as companies tried to boost short-term profits. In fact, business-financed R&D rose 34 percent after inflation between 1980 and 1985. Between 1970 and 1975, when there were no hostile takeovers. It grew a meager 7 percent. Business investment, as a proportion of gross national product, has been about 10 percent higher in the 1980s than a decade earlier.

What has happened is that managers have losts much of the discretion they enjoyed in the 1950s and 1960s to run their companies. The economy has become harsher, foreign competition has intensified, and shareholders, through the vehicle of the hostile takeover, are more threatening. Naturally, executives yearn for their former freedom. They can't easily control the business cycle or foreign competition, but they can try to outlaw hostile takeovers. By making Wall Street a scapegoat, they find an appealing public interest argument for limiting takeovers.

But managers' interests are not synonymous with the national interest. The new outside pressures are having therapeutic effects. More spending on R&D and investment are tangible signs of change. It's not that managers are being forced to focus on the long term. They always thought they were. They're being forced to defend their companies against concrete threats, and that's compelling them to lower costs, improve quality and develop new products. They can no longer take success for granted, as they did for so many years.

The campaign to blame Wall Street for short-term thinking is simply a new version of an old story. Since at least the era of Adam Smith, businessmen have sought to insulate themselves against outside threats. They prefer calm certainty to insecure uncertainty. It's an understandable longing. But a bit of insecurity isn't so bad. It makes managing tougher—and better.

ESOP BILL MAY BACKFIRE

The Senate Banking Committee has gone too far in its sponsorship of employee stock ownership plans.

As reported on page 1, the committee has reported out a bill that would make ESOPs

a powerful defensive weapon in the corporate anti-takeover arsenal.

ESOPs, when established for the right motives, are fine supplemental employee benefits.

Unfortunately the bill, if passed, will probably lead to the termination of more defined benefit pension plans, and ultimately, the demise of ESOPs.

ESOPs were first created as a genuine employee benefit that gave the employees a share in the companies they worked for—some say in the management of those companies—and a feeling of control over their destiny.

In return, the companies got improved morale, lower turnover, better productivity and presumably higher profitability, in which the employees shared.

Sometimes ESOPs were established alongside the primary pension fund. In other situations, the employees had to give up the protection of a pension plan backed by a diversified investment portfolio and rely on the ESOP for their retirement welfare.

In recent years, Congress has stimulated the creation of ESOPs with tax benefits. Now the Senate Banking Committee has added the incentive of anti-takeover weapons.

Companies that established ESOPs under the impetus of the committee's bill—assuming it passes—would be doing so for the wrong motives.

They would have little interest in the welfare of the employees. They would be interested solely in the welfare of top management.

Companies truly interested in the welfare of the employees would not need such incentives to start ESOPs, given all the tax incentives that already exist.

Therefore, such companies will establish ESOPs that give little to the employees while taking away much from them.

More defined benefit plans will be terminated so the assets can be used to finance the ESOP. More defined contribution plans will be frozen and replaced with ESOPs.

As Robert A.G. Monks, president of Institutional Shareholder Services Inc., Washington, commented: "The lawyers will find a way to use the ESOP abusively."

The result will be less retirement income protection for employees, more job security for top management, and ultimately, less competitiveness in American industry.

The end result could be a reaction against ESOPs that would lead to their abolition—the elimination of an employee benefit that is of great value when genuine.

[From the National Law Journal, Feb. 8, 1988]

ANTI-TAKEOVER BILL WOULD SHIFT BALANCE OF POWER

(By Bruce S. Mendelsohn and Andrew G. Berg)

Consideration of a strong anti-takeover statute by the state of Delaware[1] in January presents a timely opportunity to assess the role that the states play in regulating tender offers and the public policy underpinnings of state anti-takeover laws.

Since April 21, 1987, when the U.S. Supreme Court revived[2] the states role in tender offer regulation by affirming Indiana's control share acquisition statute[3] in CTS Corp. v. Dynamics Corp. of America,[4] 13 states have adopted some form of anti-takeover statute, bringing to 28 the number of states that have such statutes as part of their corporate codes.[5]

Because of the Supreme Court's decision in CTS and the opportunity it creates, takeover opponents have shifted their efforts away from the U.S. Congress, where anti-takeover bills have been introduced in every session since 1984, to the state legislatures instead.[6]

The results to date demonstrate that anti-takeover advocates—couching their arguments in terms of job loss, plant closings, reduced tax base and stifled economic growth—have been far more successful at the state level, with the individual state legislatures, than at the national level,[7] with the U.S. Congress.

Although these state anti-takeover laws by and large have had significant success in accomplishing their immediate goal—creating obstacles for a specific threatened or pending take-over of an in-state company[8]—adoption of them to date has had a limited impact on the U.S. capital markets.

This is because very few "major" corporations are either chartered by or residents of these states, or because some of these statutes have been drafted to apply only to a single in-state corporation—specifically, the corporation that lobbied for the statute.[9]

OPPOSITION ARGUMENT

Opponents have argued against anti-takeover statutes in individual states not so much because of the impact of individual statutes on the capital markets but because seriatim adoption of such statutes would encourage a "race to the bottom" by the other states—especially Delaware—in a competition for corporate chartering fees.

This "race to the bottom" has prompted opponents of state anti-takeover statutes to call for a uniform law in this area through either explicit federal pre-emption of such state laws or through a minimum federal code of corporate governance.[10]

Delaware is quite different, however, from these other states. Delaware is home to more than 179,000 corporations, including more than 50 percent of the Fortune 500 companies and more than 45 percent of all companies listed on the New York Stock Exchange.

Delaware-chartered corporations constitute the bulk of the major market indices (e.g., the Dow Jones 30 Industrials), and represent more than 50 percent of the Fortune 500's $645 billion in shareholder equity and more than 55 percent of the $1.7 trillion in corporate revenues generated by the Fortune 500 in 1986.

BROAD IMPACT?

Not surprisingly, no other single state comes close to having Delaware's significance in this area. Because of the breadth of its influence in matters involving corporate governance, Delaware's anti-takeover statute will have a broad nationwide impact, nearly the equivalent of congressional action in this area.

Delaware's action fundamentally alters the debate in this area. The Delaware anti-takeover statute shifts the debate away from broader and less precise economic issues to more fundamental political issues—the balance of power to regulate tender offers between the federal government and state government, and the balance of power between competing states to regulate the same tender offer.[11]

Should states adopt these anti-takeover statutes? State legislatures have a clear economic interest in making their jurisdictions hospitable for corporations, and legislatures would be remiss at least not to consider adopting an anti-takeover statute.[12]

Maintaining employment, preserving tax base and fostering economic growth are all legitimate concerns that state legislatures have relied on in voting to protect in-state companies from hostile takeovers by adopting strong anti-takeover statutes.

In the process, these state legislatures have rejected other important concerns—such as U.S. industrial competitiveness, cost-efficient capital formation and the basic tenets of shareholder democracy—that opponents of state anti-takeover laws have stressed.

Experience to date demonstrates, however, that these constituencies are best served by foregoing short-term fixes at the expense of long-term solutions.

ROLE IN ECONOMY

An important point against state anti-takeover statutes is the very crucial role that takeover activity serves in a competitive economy. Overall, merger and acquisition activity, especially takeovers, has had a very positive impact on the U.S. economy.

Tender offers and corporate acquisitions in general promote market and industrial efficiency, increase shareholder wealth and result in greater corporate accountability. It is important to preserve these effects as industry strives to maintain its competitiveness in global markets, particularly its competitiveness with West Germany and Japan.

One benefit of takeovers that cannot be overemphasized is the disciplinary effect that takeovers have on inefficient management.

Where takeovers have succeeded, in many cases incumbent management has been replaced by new managers dedicated to maximizing corporate profitability and enhancing shareholder value. Even in situations in which takeovers have been defeated or incumbent management faced only the threat of a takeover, managers have often been prompted to restructure in order to improve the competitive position of the company.[13]

Good corporate management is vital to a strong state and local economy. Jobs are created by dynamic and competitive companies that can adapt to constantly changing market conditions, not by companies that hide from competition and the free market through regulatory protection.[14]

SHAREHOLDER CONCERNS

Shareholder concerns are often offered in support of state anti-takeover legislation, such as protecting shareholders from economic coercion in the context of partial or two-tier tender offers. Proponents of the Delaware anti-takeover statute publicly characterized protection of minority shareholders in a freeze-out situation as the principal justification for the statute.

The Delaware statute, for instance, focuses on this concern by excepting from its coverage, under certain circumstances, unfriendly acquisitions of stock in excess of 85 percent. Another concern is the need to bolster management's defenses against takeovers in order to protect shareholders by maximizing share price in tender offers. While these shareholder concerns may be legitimate, state anti-takeover legislation is not needed to address either of these concerns.

The economic coercion that once accompanied partial and two-tier offers has been largely eliminated. Before 1982, two-tier or partial tender offers often had the potential for coercing shareholders to tender their shares earlier than they would in "any-or-

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Footnotes at end of article.

all" offers. This is because shareholders were given 20 business days in which to decide whether to tender their shares, but the proration requirement (which provides that where a greater number of shares are tendered than the offeror is required to take, the shares tendered must be purchased pro rata according to the number of shares tendered by each person) specified only 10 calendar days.

Thus, partial or two-tier offers may have coerced target shareholders to tender their shares within 10 calendar days in order to avoid forfeiting their proration rights, denying them the full 20 business days intended to permit shareholders to carefully make their decision. Significantly, the Securities and Exchange Commission has since eliminated this coercive effect by extending proration rights throughout the offering period, ensuring that their shareholders have the full waiting period to consider the merits of the tender offer.[15]

The SEC has also acted to preserve the integrity of the waiting period by extending withdrawal rights (permitting a shareholder to withdraw shares previously tendered) to run throughout the offering period.[16]

SEC STUDY

Empirical studies of this issue strongly suggest that, contrary to this perception, partial and two-tier tender offers do not coerce shareholders to tender.

A 1985 study by the SEC's Office of the Chief Economist[17] found that fewer shareholders tendered into two-tier and partial offers—supposedly more coercive types of offers—than into any-or-all offers.

The study also found that the price premium for any-or-all offers and the blended premium[18] for two-tier offers were nearly identical. More importantly, the empirical evidence also establishes that two-tier and partial tender offers are rapidly declining in use, in part because of the SEC's extension of proration rights in 1982 and because bidders have been better able to finance much stronger any-or-all cash offers. For the period 1981 through 1984, for instance, only 69 of 228 tender offers were partial or two-tier offers, and in 1984 alone, there were only seven two-tier offers.[19]

Testifying before the Senate Banking Committee on June 23, 1987, SEC Commissioner Charles C. Cox stated that "if the proposed limitation on partial tender offers is intended to regulate the alleged coercive effect of two-tier offers, the market appears to have corrected any problem that may have existed."[20] Mr. Cox found that the number of two-tier offers declined from 18 percent of all offers in 1982 to only 3 percent in 1986.[21] This has led the SEC's chief economist, among others, to question whether target shareholders would benefit from restrictions on two-tier or partial offers in favor of any-or-all offers.[22]

DEFENSIVE MEASURES

It appears that state takeover statutes also are not needed to bolster management defenses against takeovers.

A recent study conducted by the Washington, D.C.-based investor Responsibility Research Center reported that more than 400 of the Fortune 500 companies—more than 250 of which are chartered in Delaware—had adopted some form of anti-takeover measure, such as poison pill plans, by January 1987.[23]

Although the courts have closely scrutinized the use of these defensive tactics,[24] the tactics have been invalidated only where they were adopted by incumbent management to entrench itself, rather than for the purpose of protecting shareholder interests.

Moreover, these anti-takeover statutes do not afford corporations any protections that could not be more properly secured through charter or bylaw amendments.

From a public policy perspective, it is more appropriate that shareholder protection be provided in this way—allowing a corporation's shareholders to adopt whatever specific protections are needed—than for states to impose overbroad and overinclusive protections not needed by individual corporations and not desired by their shareholders.

In fact, the experience in states with anti-takeover statutes shows that shareholders generally have not asked for protection from takeovers; in the few cases that they have, corporations have been able to adopt fair-price or similar provisions in response to this need.

PRE-EMPTION BATTLE

Of even more critical interest to the states than these concerns should be the fact that overly obtrusive state anti-takeover laws will likely reignite the pre-emption debate. This significantly increases the possibility that the states will be barred by Congress from assuming any role in tender offer regulation.

The battle for federal pre-emption as a part of federal tender offer and securities law reform has been intense since the Supreme Court's decision in *CTS* in April 1986. Although one of the major legislative proposals introduced before *CTS* arguably would have indirect pre-emptive effect,[25] a similar proposal introduced by Reps. Matthew J. Rinaldo, R-N.J., and Norman F. Lent, R-N.Y., following the CTS decision, would explicitly authorize the SEC, through rule-making, to pre-empt the operation of some of these state statutes.[26]

These pre-emption proposals predictably gained the support of numerous free-market advocates.

The pre-emption debate intensified considerably with the introduction of a "reverse" state pre-emption proposal by Sen. William Proxmire, D-Wis., which specified that the federal tender offer laws should not be construed to supersede state law regulating the internal affairs, governance or contests for control of corporations organized within a state. As reported out of the Senate Banking Committee, however, the Proxmire tender offer reform bill[27] (which to date has been the only such bill to be reported out of committee) contained no federal pre-emption provision, reverse or otherwise.

POLITICAL VICTORY

This is largely the result of a political stalemate on the presumption issue, although it should more realistically be regarded as an important political victory achieved by the states and the advocates of state anti-takeover statutes, such as the Business Roundtable and the Coalition to Stop the Raid on America.

The pre-emption issue has largely lain dormant since the action of the Senate Banking Committee on the Proxmire proposal on Sept. 30, 1987.

Adoption of the Delaware statute should likely change all this, as proponents of the legislation have feared.

The reasons for this are several. It is one thing for one or several states with only limited impact on the national economy to adopt a strong anti-take-over statute. Although in such instances these state laws may contravene federal regulatory policy, the case for legislative action at the national level, because of this very limited impact, is somewhat difficult to establish.

NATIONAL IMPACT

However, where the influence of a state statute is as broad as Delaware's, the impact of such a statute on national interests is, one would hope, difficult for Congress to ignore.

Delaware's likely adoption of its anti-takeover statute will magnify the effect of all of the state statutes adopted after *CTS* with the intention of stopping takeovers and tender offer activity.

Of equal importance is the fact that the effect of such statutes to impose nearly insurmountable obstacles to takeovers—is inconsistent with the continuing evolution of the tender offer regulatory scheme since 1968. This evolution has demonstrated, above all, an effort to preserve the balance of power between targets and bidders in contests for corporate control in order to deny either one an upper hand in tender offer battles.

For instance, a primary goal underlying adoption of the Williams Act in 1968 was prohibition of so-called Saturday night specials, whereby a bidder could acquire control of a corporation through a tender offer without any investor safeguards.

ALL-HOLDERS RULE

More recently, the SEC in its all-holders rule effectively undid the explicit advantage that target management possessed by mounting discriminatory defensive self-tender offers—the so-called Unocal defense.[28]

And more recently still, both Congress and the SEC have sought to negate the significant advantage that some bidders have gained by engaging in "market sweeps" to acquire control of a target company, as demonstrated by Campeau Corp's acquisition of Allied Stores Corp.[29] in November 1986.

Many of these state anti-takeover statutes, most notably Delaware's, dramatically shift this balance of power against bidders in favor of target management. The practical effect is that the proscriptions of many of these statutes cannot be avoided.

For instance, in the case of the Delaware statute, which allows a bidder to avoid operation of the statute if the bidder acquires in excess of 85 percent of the target's stock, SEC Commissioner Joseph A. Grundfest found that in no hostile tender offer to date was a bidder able to acquire in excess of 85 percent of the target's stock.

Now that Delaware appears ready to act, the overly obtrusive effect of these state anti-takeover statutes cannot escape the notice of Congress.

Whereas before Delaware's anticipated action, the Williams Act dominated the tender offer regulatory scheme, the Delaware statute will become the de facto law of the land, severely favoring target management in tender offer battles to the detriment of shareholders and the national economy. The tender offer regulatory scheme—in this case, through legislation adopted by Congress—must maintain the balance that has been the scheme's hallmark over the years.

FOOTNOTES

[1]The Delaware statute, codified at Sec. 203 of the Delaware General Corporation Law, is a three-year freeze-out statute prohibiting certain business combinations with the bidder without approval of the target's management.

[2]Before the Supreme Court's decision in CTS Corp. v. Dynamics Corp. of America, 107 S. Ct. 1637 (1987), the state's role in tender offer regulation was severely limited by the court's decision in Edgar v. MITE Corp., 457 U.S. 624 (1962). In MITE, the Supreme Court ruled that the Illinois Business Takeover Act was unconstitutional because it indirectly burdened interstate commerce. The effect of the Supreme Court's opinion in MITE was to effectively invalidate the takeover laws of the 36 other states that had anti-takeover statutes on their books. For a further description of the MITE decision and its impact on tender offer regulation, see Mendelsohn & Berg, "Tender-Offer Battles in Legislative Arena Shift to Pre-Emption," Legal Times of Washington 26 (Sept. 14, 1987).

[3]Under the Indiana control share acquisition statute, acquisitions giving an acquiring party enough stock to cross one of three ownership thresholds—20 percent, 33 percent and 50 percent—are subject to shareholder approval, and the power to vote such shares is suspended until approved by the target's other shareholders. For a more detailed analysis of the Indiana statute, see Pampepinto & Heard, "New State Regulation of Corporate Takeovers," Nat'l L.J., Sept. 21, 1987, at 26.

[4]107 S. Ct. 1637 (1987). The majority in CTS held that the Indiana law did not conflict with the Williams Act, the federal statutory scheme regulating tender offers. In doing so, the court found that the Indiana statute avoided the problems that proved to be fatal for the Illinois statute in the MITE decision. Specifically, the court concluded that the Indiana law did not favor either target management or bidder in contests for corporate control, it did not impose an indefinite delay on tender offers, and it did not allow the state to interject its views of the fairness of the offer. In fact, the majority held that the Indiana law furthered the federal policy of investor protection by allowing shareholders to decide collectively whether to accept the tender offer. The court reasoned that this would protect shareholders from the economic coercion created by tender offers, because shareholders often accepted a tender offer rather than risk having to sell at a depressed share price after the offer is closed.

[5]The states that have adopted some form of anti-takeover legislation since the CTS case are Arizona, Florida, Louisiana, Massachusetts, Minnesota, Missouri, Nevada, North Carolina, Oklahoma, Oregon, Utah, Washington and Wisconsin. States with existing anti-takeover statutes are: Connecticut, Georgia, Hawaii, Illinois, Indiana, Kentucky, Maine, Maryland, Michigan, Mississippi, New Jersey, New York, Ohio, Pennsylvania and Virginia.

[6]The CTS decision effectively has turned the tender offer reform debate upside down. Corporate interests, which not long ago were urging congressional action in the tender offer area, are now arguing for congressional restraint. Bidders and takeover entrepreneurs, who earlier were opposed to congressional action, are now urging Congress to pre-empt the operation of these state anti-takeover statutes. Accord, P. Starobin, "Takeover Debate Centers on State's Powers," Cong. Q., July 25, 1987, at 1662; K. Victor, "Taking on Takeovers," National Journal (Jan. 9, 1988) at 79.

[7]For a discussion of the concerns favoring state regulation of takeovers, see, e.g., Wallman & Ranard, "State Takeover Laws Work Well," Legal Times of Washington, Sept. 21, 1987, at 22.

[8]Of the 13 states that adopted anti-takeover statutes after CTS, six acted in response to specific actual or threatened takeovers of in-state companies: Arizona (The Greyhound Corp.); Florida (Harcourt Brace Jovanovich Inc.); Massachusetts (Gillette Co.); North Carolina (Burlington Industries Inc.); Minnesota (Dayton-Hudson Corp.); Washington (The Boeing Co.); and Wisconsin (G. Heileman Brewing Co. Inc.).

[9]For instance, Washington's anti-takeover statute was drafted in such a way as to apply only to one in-state company, Boeing, whose management pressured the Washington state Legislature to adopt the statue in response to the acquisition of Boeing stock by T. Boone Pickens Jr.

[10]See. e.g., "Washington Crosses Delaware," Wall St. J., Dec. 21, 1987, at 6; Samuelson, "Corporate Socialism." Newsweek 42 (Dec. 28, 1987).

[11]For instance, the Delaware anti-takeover statute, which applies to Delaware-chartered corporations, will likely pre-empt the operation of other state statutes that jurisdictionally are not based on incorporation but on some other ground, such as in-state residence, business operations or shareholder residence. In fact, the California Commission on Corporate Governance (created by the California Legislature) has recently decided to support federal pre-emption in this area because the Delaware statute would pre-empt an anti-takeover law adopted by California with regard to Delaware-chartered corporations resident in California.

[12]Admittedly, it is unreasonable to expect a state legislature to consider the full implications of state laws on national interests. State legislators favor states and local concerns in deciding whether to adopt a state anti-takeover, statute. One of the fundamental issues in the pre-emption debate is whether tender offers are of such intrinsic national interest, as opposed to state interest, that overly obtrusive state regulation of tender offers should be pre-empted.

[13]The management of numerous corporations that were the subject of takeovers—including Unocal Corp., Phillips Petroleum Co., CBS Inc., USX Corp., The Walt Disney Co. and Gillettee Co.—have stated publicly that these takeover threats benefited their companies. See, e.g., K. Hammonds, "How Ron Parelman Scared Gillettee Into Shape," Business Week 40 (Oct. 12, 1987).

[14]The recent restructuring undertaken at The Walt Disney Co. in response to several hostile bids for control illustrates how threatened takeovers can discipline inefficient management and, ultimately, can increase productivity. After Walt Disney's death in 1966 and until 1984, Disney suffered a period of relative stagnation, including a significant decrease in profits for three years in a row beginning in 1980. In 1984, separate bids for control of Disney by Reliance Group Holdings Inc.; Minstar Inc. and an investor group led by the Bass family resulted in the replacement of management with a new team under Michael D. Eisner and Frank Wells, industry experts. Changes made by Messrs. Eisner and Wells since 1984 have improved Disney's performance dramatically, benefiting all of Disney's corporate constituencies. Income for fiscal year 1986 increased more than 150 percent: Disney's stock price has risen fourfold since before the hostile bids in 1984; and Disney has created more than 4,000 new jobs. Raymond L. Watson, head of Disney's executive committee and chairman before the takeover attempts, even admitted the positive impact of those takeover attempts: "It woke us up, though I hate to give credit to something like that. I think the company is stronger." See, e.g., "Disney's Magic: A Turnaround Proves Wishes Can Come True," Business Week 62 (March 9, 1987).

[15]See 12 C.F.R. 240.14d-8.

[16]See 17 C.F.R. 240.14d-7.

[17]Office of the Chief Economist, Securities and Exchange Commission. "The Economics of Any-or-All, Partial, and Two-Tier Tender Offers," April 19, 1985.

[18]Id. at 3 and 20.

[19]Id. at 23-24 and Table la.

[20]Statement of Charles C. Cox, then-acting chairman of the SEC, before the Senate Committee on Banking, Housing and Urban Affairs, June 23, 1987, at 14.

[21]Id. SEC data shows that there were only six third-party, two-tier tender offers during fiscal year 1987.

[22]See, e.g., Office of the Chief Economist, supra note 17, at 26. In fact, most recently two-tier tender offers have been used more by issuers as a defensive tactic than by bidders to gain control of an issuer. See J. Grundfest, "Two-Tier Bids Are Now a Defensive Tactic," Nat'l L.J., Nov. 9, 1987, at 26.

[23]Virginia K. Rosenbaum, Investor Responsibility Research Center, "Takeover Defenses: Profiles of the Fortune 500," January 1987, at 208.

[24]See, e.g., Moran v. Household International Inc., 500 A.2d 346 (Del. 1985); Dynamics Corp. v. CTS Corp., 794 F.2d 250 (7th Cir. 1986).

[25]H.R. 2172, introduced by Reps. John D. Dingell, D-Mich., and Edward J. Markey, D-Mass., would pre-empt any state anti-takeover law that has the effect of disenfranchising shareholders.

[26]The pre-emption provision in the proposal by Reps. Norman F. Lent, R-N.Y., and Matthew J. Rinaldo, R-N.M., H.R. 2648, is more direct. In addition to prohibiting shareholder disenfranchisement, it permits the SEC to limit changes in voting rights, even if such changes are pursuant to state law. Many of these state anti-takeover laws, including those of both Indiana and Delaware, disenfranchise a bidder who qualifies as an "interested stockholder," which in Delaware is a shareholder owning in excess of 15 percent of a corporation's stock.

[27]S. 1323, reported out of the Senate Banking Committee on Sept. 30, 1987.

[28]The all-holders rule requires that all shareholders be treated equally in a tender offer, i.e., that a tender offer be made on equal terms to all shareholders. See 17 C.F.R. 240.14d-10. In the Unocal case, management for Unocal made a discriminatory self-tender offer for Unocal shares, specifically excluding from the offer the stock holdings of the bidder, T. Boone Pickens, Jr. For a further examination of the "Unocal defense" and the adoption of the "all-holders rule," see SEC Release Nos. 33-6595 & 33-6596, 50 Fed. Reg. 27976 & 282210 (July 1, 1985). See generally Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (Del. Supp. 1985).

[29]In a market sweep, the bidder acquires a controlling interest in the target company through market or privately negotiated purchases of the target's stock, rather than through the formal tender mechanism.

[From the Washington Post, June 28, 1987]

More States Are Resorting to Legislation to Shoot Down Corporate Raiders

(By Bill Menezes)

When Minnesota lawmakers rushed to rescue the state's biggest corporation from Washington's Haft family last week, they followed in the footsteps of other states that have tried to block corporate takeovers they fear will cost them jobs and revenue.

Since the Supreme Court's landmark ruling in April upholding Indiana's law to limit hostile raids, Minnesota, North Carolina and Florida have enacted similar legislation in response to brewing takeover wars in their states.

Minnesota had no plans to rewrite its law until Dart Drug founder Herbert Haft and his son Robert made a bid to buy Dayton Hudson Corp., the giant department store chain based in Minneapolis. In one week, the company engineered a special session of the legislature which quickly threw up a defense against the Hafts.

Some 22 states already have laws dealing with shareholder rights during hostile takeovers—many modeled on the Indiana law—and several more are considering similar measures.

In California, for example, the legislature is considering nine such bills this year, and five or six more are planned for next year, according to Dick Damm, of the Senate Office of Research in Sacramento.

Lawmakers in Missouri and Nevada this year approved measures that either mirrored or included major provisions of the Indiana law, while existing laws were modified in Iowa.

Central to the campaigns to pass such laws has been the threat that a hostile suitor might try to pay off debt incurred in a buyout by selling or closing various divisions of the target company or by cost-cutting that might include massive layoffs.

The North Carolina General Assembly in April and May enacted legislation to help Burlington Industries Inc. prevent an unwanted takeover by an investor group led by New York financier Asher B. Edelman and Montreal-based Dominion Texile Inc.

The Florida Legislature approved a bill in response to a hostile takeover threat to Harcourt Brace Jovanovich Inc. by British publisher Robert Maxwell.

The Indiana law gives shareholders the right to decide whether an investor who buys a big block of stock in a company, or even a majority interest, can vote those shares in corporate elections.

The stockholders' vote must take place either at the target company's next annual stockholders meeting, or at a special meeting scheduled within 50 days.

Thus, in most cases, the hostile bidder faces the inability to vote any stock it acquires for at least 50 days—and manage-

ment has the same period to mobilize its defenses.

Antitakeover laws in a number of states also prohibit hostile suitors from selling assets of a target company for a certain period of time—say, five years. That is intended to make lenders reluctant to finance a hostile takeover of a company by limiting possible moves to pay off debt incurred in the buyout.

Indiana and several other states also require corporate raiders to pay all shareholders the same price, rather then offering a premium price for a controlling stake in the company and paying a lower price for the rest of the stock. Such two-tier offers are intended to get shareholders to tender their stock quickly to hostile bidders before management can find a means of staving off the bid.

Several states in the past have enacted measures in specific instances in which local companies faced hostile bidders.

But some states have had their attempts to limit raiders short-circuited by the courts or other authorities on the grounds that some of their provisions interfered with interstate commerce or existing federal takeover statutes.

A notable exception to the trend toward drafting new laws has been Delaware, where about 40 percent of the New York State Exchange-listed companies are incorporated. Delaware lawmakers earlier this month decided against considering a law modeled on the Indiana statute during their current session because of uncertainty about the practical effects of the proposal.

[From the Washington Post, Dec. 23, 1987]

A GHASTLY ANTITAKEOVER IDEA

(By Robert J. Samuelson)

You might not ever have to think about Delaware except for this: Although its citizens represent only 0.3 percent of the nation's shareholders, more companies are incorporated there than in any other state. There are 179,000 of them, including 56 percent of the Fortune 500. Delaware may soon enact an antitakeover law, which—given the state's preeminent position—would amount to a national antitakeover law.

This is a ghastly idea. Its only purpose is to shield well-paid executives against hostile takeovers. Corporate leaders like to project themselves as defenders of the productive economy against sinister financiers and "raiders." In fact, hostile takeovers promote greater efficiency and productivity. The whole antitakeover exercise smacks of corporate socialism: the marshaling of government powers to protect established businesses against change and challenge.

Executives want to sleep easier at night, and Delaware is eager to please. The corporate franchise tax and other fees provide 16 percent of state revenues. A Supreme Court decision last spring seemed to permit tougher state antitakeover laws. Since then, 13 states have passed new laws, bringing to 27 the number with antitakeover statutes. Delaware officials fear that companies will reincorporate elsewhere if the state doesn't offer greater protection. The local bar association is drafting a proposal, which the legislature may approve in early 1988.

The speed with which these antitakeover laws have passed represents a political triumph for big corporations. They've largely succeeded in portraying hostile takeovers as an economic pestilence. By now, the indictment is familiar. The takeover threat (it's said) forces companies to focus on short-term profits and sacrifice long-term investment or research. Corporate raiders cheat small shareholders by coercing them to sell their stock at low prices.

There's just enough truth to the indictment to make it seem compelling. Ivan Boesky was just sentenced last week. Some takeover bids are phantom, intended mainly to create speculative opportunities in the stock market. Outlandish trading profits are made. Not surprisingly, corporate raiders and investment bankers are the new villains of popular culture—reviled in novels (Tom Wolf's "The Bonfire of the Vanities") and movies (Oliver Stone's "Wall Street"). But beyond the imagery, the indictment against hostile takeovers is essentially false. Consider:

They aren't rampant. In 1986 only 40—a record—were attempted, according to W.T. Grimm & Co.; a mere 15 succeeded. What is rampant is executive anxiety about takeovers. In one survey of 200 large companies, 57 percent said they'd been subject to takeover rumors.

Hostile takeovers haven't cut total investment or research. Between 1979 and 1986, corporate-financed research and development rose 51 percent, after adjusting for inflation. The increase between 1969 and 1976—when hostile takeovers barely existed—was only 12 percent. Investment, as a share of gross national product, is higher than in the 1970s.

There's no evidence that shareholders fare worse in hostile takeovers than in friendly ones—those negotiated by the managers of merging companies. Typically, investors get 25 to 40 percent more than the previous market price.

Still, the corporate rhetoric continues. Listen to H.B. Atwater Jr., chairman of General Mills. He deplores financial "manipulations" bad "bust-ups." He says hostile takeovers create "no new wealth." He's probably right. But they can improve use of the existing wealth by redirecting wasteful corporate investments. Ironically, General Mills proves the point.

General Mills has an "extremely profitable base business that subsidized poor diversification," as Michael Porter of the Harvard Business School writes. The company is the second-largest cereal maker (Wheaties, Cheerios) and the leader in cake mixes (Betty Crocker). Food profits financed diversification in everything from toys to fashion to furniture. In 1985 Atwater overhauled the company. He sold poorly performing businesses and turned the toy and fashion operations into separate companies, whose stock was distributed to General Mills shareholders.

The results have been dazzling. The toy and fashion businesses have done better as independent companies. Focusing on fewer businesses, General Mills improved its return on shareholders' equity from 19 to 31 percent. Since 1984 its stock price (including the value of the spun-off companies) has risen about 150 percent. That's more than three times greater than the overall market rise. But suppose Atwater hadn't acted and a raider had? In 1985 someone could have bought General Mills for 50 percent more than its market price and, by doing what the company itself did, profited enormously. Would that be a financial "manipulation" or undesirable "bust-up"?

The economic value of hostile takeovers doesn't lie in the few that occur. It lies in the mere threat, which motivates managers to stay efficient. Just because the pressure operates through the stock market doesn't make it illegitimate. The Delaware antitakeover proposal aims to reduce the threat. Management-approved mergers are exempted. For others, the proposal would make it difficult for investor groups to borrow the money to finance hostile takeovers. Notably, many public pension funds—large stockholders representing millions of retirees—oppose the plan.

What Delaware and shortsighted executives are jeopardizing is a division of labor that's worked well for decades. Congress has left the details of corporate law to the states, as long as states don't use it to settle major issues of national policy. Once that happens—as it is happening here—the question arises: Why should Delaware have such power? The logical response is to abolish state corporate charters and replace them with a federal charter.

This step has long been advocated by social activists, but it's fraught with dangers. It would represent a huge politicization of the economy. Through federal charters, corporations could become the target of every passing political and social fad. It would be an economic nightmare. But if business leaders want corporate socialism, that's what they're risking. Those who beg for government protection are also inviting government control.

[From Forbes magazine, Oct. 19, 1987]

FACT AND COMMENT II

(By M.S. Forbes Jr., Deputy Editor-in-Chief)

TAKEOVER—A POSITIVE FORCE

MSF Jr was asked a couple of weeks ago by The Nightly Business Report to comment briefly on the rash of antitakeover laws. The following are excerpted remarks from the program.

Wisconsin and a number of other states are passing laws to obstruct hostile takeovers of home state companies.

This movement is ill-conceived. It is bad news for stockholders and for the American economy.

Such laws have obvious political appeal. But they will interfere with shareholders' rights to sell to someone at an agreed-upon price. And they will help entrench incumbent managements. How do you make these executives accountable if you isolate them from the pressures and voices of the markets! Such protectionism can breed complacency, insularity and mediocrity.

One of the great strengths of the American economy has been its ability to adapt and to adjust to changing circumstanstances. Managements need to be responsive to, and not shielded from, these pressures. Change, not stability, has been the characteristic of the American economy for generations. It has been the wellspring of our prosperity.

As we pointed out in our 70th Anniversary issue, a number of studies have shown that the chief beneficiaries of takeovers and mergers are the stockholders of the acquired companies, who are often saved from bad management.

Do takeover pressures force managements to concentrate on the short term, thereby harming the future? The evidence indicates that most takeover victims had little reputation for farsightedness.

We're not talking about insider trading, which is illegal. Nor are we talking about such notorious takeover abuses as greenmail and golden parachutes. There are several proposals before Congress and state legislatures that would bar these unscionable, immoral practices. To use outrages as an

excuse to obstruct unwelcome acquisition offers, however, is similar to calling for the abolition of automobiles because of the frequency of accidents.

Antitakeover laws protect the interests of a handful of entrenched executives. And this is not in the interests of an American economy in an increasingly competitive, fast-changing world.

Mr. SHELBY. I yield the floor.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, a moment ago I said the Senator from Alabama had emerged as one of the leading champions of the rights of shareholders of American public corporations. The statement which he has just made is an indication of why so many people around this country have thought of him in those terms because what he has said is exactly what needs to be said. That it is the shareholders who own these corporations; it is the shareholders who need to be protected.

We should not be here carrying the mail for a bunch of corporate raiders, and we should not be here to defend the rights of a bunch of corporate managers. These companies are owned by their shareholders, and they are the ones who deserve our consideration.

It seems to me the only higher considerations than those of the rights and outlook of the shareholders are for our national economy. Obviously, the economy itself and our country more broadly deserve the first priority, but I think the Senator from Alabama is absolutely right in speaking up on behalf of the rights of the shareholders of this country, and I congratulate him for doing it.

Mr. President, in his remarks, the Senator from Alabama referred to some specific problems in this legislation, some specific amendments that he feels are needed. I certainly share his observations.

AMENDMENT NO. 2374

(Purpose: To provide restictions on the use of golden parachutes and poison pill tactics, to amend the provision relating to greenmail, to require confidential proxy voting, and for other purposes)

Mr. ARMSTRONG. I will, in just a moment, send to the desk an amendment to provide restrictions on the use of golden parachutes, which the Senator from Alabama mentioned in his statement, poison pill tactics, to amend the provision relating to greenmail and to acquire confidential proxy voting; in other words, to address four of the specific areas of this bill where we think it is important to strengthen the protections for shareholders.

Mr. President, I send an amendment, No. 2374, to the desk and ask for its immediate consideration.

The PRESIDING OFFICE.R The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. ARMSTRONG] for himself, Mr. METZENBAUM, Mr. SHELBY, and Mr. GRAMM, proposes an amendment numbered 2374.

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

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

The amendment is as follows:

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

SEC. —. GOLDEN PARACHUTES; POISON PILLS.

(a) Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) is amended by adding at the end thereof the following new subsections:

"(m)(1) In the case of any class of equity security which is registered pursuant to this section, or any equity security of an insurance company which would be required to be so registered except for the exemption contained in subsection (g)(2)(G), or any equity security issued by a closed-end investment company registered under the Investment Act of 1940, it shall be unlawful for the issuer of such securities to enter into or amend, directly or indirectly, agreements to increase the current or future compensation of any officer or director in an amount which would constitute an 'excess parachute payment', as defined in section 280G(b)(1) of the Internal Revenue Code of 1986, contingent upon a change of control of the issuer by stock or asset acquisition, unless such agreements have been approved by the affirmative vote of a majority of the aggregate outstanding voting securities of the issuer. If any such agreement was entered into prior to enactment of this subsection, such agreement shall remain in effect after the close of the 2-year period beginning on the date of enactment of this subsection only if such agreement is approved by the shareholders pursuant to this subsection prior to the close of such period.

"(2) The Commission may, by rule, regulation, or by order, upon application, conditionally or unconditionally,—

"(A) exempt any person, security, or transaction from any or all of the provisions of this subsection as it determines to be necessary or appropriate and consistent with the public interest or the protection of investors, and

"(B) provide exemptions, subject to such terms and conditions as may be prescribed therein, from any or all of the provisions of paragraph (1).

"(n)(1) It shall be unlawful for an issuer of any class of any equity security described in subsection (m)(1) to issue, grant, declare, or establish any rights, including voting rights, of securities holders of the issuer with respect to any security or asset of the issuer or any other person, where the exercisability of such right is conditioned on the acquisition of securities of the issuer by a person other than the issuer, unless the establishment of such rights has been approved by a majority of the aggregate outstanding voting securities of the issuer. If such rights were established prior to enactment of this subsection, such rights shall remain in effect after the close of the 2-year period beginning on the date of enactment of this subsection only if such rights are approved by the shareholders pursuant to this subsection prior to the close of such period.

"(2) The Commission may, by rule, regulation, or by order, upon application, conditionally or unconditionally, exempt any person, security, or transaction, or class thereof from any or all of the provisions of this paragraph to the extent it determines such exemption is necessary or appropriate in the public interest and for the protection of investors and consistent with the purposes and policy fairly intended by this paragraph.".

On page 29, between lines 13 and 14, insert the following:

SEC. —. CONFIDENTIAL PROXY VOTING.

Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end thereof the following:

"(2)(A) Unless the Commission prescribes rules and regulations providing for an alternative to confidential proxy voting as described in paragraph (3), the rules and regulations prescribed by the Commission under paragraph (1) shall require confidentiality in the granting and voting of proxies, consents, and authorizations, and shall provide for the announcement of results of a vote following tabulation by an independent third party certified in accordance with such rules and regulations. Nothing in this paragraph authorizes any person to withhold information from the Commission or from any other duly authorized agency of Federal or State government.

"(B) The Commission shall prescribe any rules and regulations required by subparagraph (A) within 1 year after the date of enactment of this paragraph.

"(3)(A) In lieu of the rules and regulations described in paragraph (2), the Commission may prescribe rules and regulations which provide for an alternative to confidential proxy voting, if such alternative will assure—

"(i) the integrity of the proxy voting process,

"(ii) fairness to shareholders,

"(iii) unimpeded exercise of shareholder voting franchise,

"(iv) insulation from improper influence to a degree that meets or exceeds the protection afforded by confidential proxy voting, and

"(v) announcement of results of a vote following tabulation by an independent third party certified in accordance with such rules and regulations.

"(B) In promulgating rules and regulations under this paragraph the Commission shall—

"(i) consult with the Secretary of the Department of Labor, and

"(ii) hold public hearings, inviting the participation of all interested parties, including individual shareholders, securities issuers, institutional investors, and securities firms.

"(C) The Commission shall prescribe any rules and regulations required by subparagraph (A) not later than 11 months after the date of enactment of this paragraph.".

Beginning on page 35, line 17, strike all through page 36, line 24, and insert the following:

Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) is amended by adding at the end thereof the following:

"(4) It shall be unlawful for an issuer of any class of equity security described in section 14(d)(1) of this title to acquire, directly or indirectly, any of its securities from any person who is the beneficial owner of more than 3 percent of the class of the securities

to be acquired, unless such acquisition has been approved by the vote of a majority of the outstanding voting securities of the issuer (excluding the shares to be acquired), or acquisition is pursuant to a tender offer, or request or invitation for tenders, to all holders of securities of such class. The Commission shall, by rule, regulation, or by order, on application, conditionally or unconditionally, exempt any person, security, or transaction from any or all of the provisions of this paragraph as it determines to be necessary or appropriate and consistent with the public interest, the protection of investors, and the purposes of this paragraph.".

On page 45, line 9, strike "studies" and insert "study".

Beginning on page 45, line 10, strike all through page 46, line 3.

On page 46, line 4, strike "(b)" and insert "(a)".

On page 46, line 21, strike "(c) REPORT ON STUDIES." and insert "(b) REPORT ON STUDY.".

On page 47, line 1, strike "studies" and insert "study".

Mr. ARMSTRONG. In addition, I ask the amendment be divided at the logical points for its division, which will be the first portion of the amendment be divided at page 4 following line 5. That will produce an amendment on golden parachutes and poison pills.

The second division of the amendment beginning at that same point, that is, following line 5 on page 4 and continuing through the third line of page 6. That is an amendment on confidential proxy voting.

The third division of the amendment will continue from that point, that is to say, after line 3 on page 6 through line 2 of page 7. And the remainder of the amendment, as it is printed, comprising the fourth division of this amendment. That is my request that it be so divided.

The PRESIDING OFFICER. The Senator from Colorado has a right to the division as described in his request and it is so ordered.

Mr. ARMSTRONG. I thank the Chair.

Mr. President, I have sent this amendment to the desk for myself and on behalf of the Senator from Ohio, Mr. METZENBAUM, my colleague from Texas, Mr. GRAMM, and my colleague from Alabama, Mr. SHELBY. So we now have before us in effect four Armstrong - Metzenbaum - Gramm - Shelby amendments, the first of which is related to golden parachutes and poison pills. At the present time, there are no Federal securities law restrictions applying to golden parachutes. For the benefit of those who may not have been following the question closely, a golden parachute is an employment contract which guarantees a substantial severance pay to top management if they lose their jobs as a result of takeovers. Golden parachute is not a regular employment contract which provides such severance pay. It is the kind of contract that only kicks in, that only becomes effective on the occasion of a takeover. We are not talking about a normal severance pay where if somebody has been with the company a while, they get 2 weeks or a month or that they get—I have heard of a corporation, for example, that gives a week of severance pay for every year you have been employed. I have known of corporations that even give as much as a month of severance pay for every year a person has been employed by a corporation. In the case of a corporate executive, somebody who is a high-ranking official of a corporation, who has been with the company 10 years or 15 years, it would not seem to me to be unreasonable that in the event that person's employment is terminated, they should get a substantial amount of severance, as much as, say, 10 months if they had been there 10 years or 15 months if they had been there 15 years. This amendment does not have anything to do with that kind of regular severance pay.

What it does is addresses the question of severance pay provisions which only become effective upon a takeover. That is why they are called golden parachutes.

Mr. President, as the amendment is drafted, we establish a prohibition on golden parachutes unless such agreements have been approved by an affirmative vote of a majority of the aggregate outstanding voting securities of the issuer. So even though I find such golden parachutes inappropriate, we are not seeking to preempt them by law. We are just saying that the shareholders ought to have a right to vote. And by the shareholders we mean the outside shareholders. We are not talking about the group of insiders. We are talking about in effect the disinterested shareholders.

Golden parachute is described in our amendment in a manner consistent with tax law, which is to say three times annual compensation.

Mr. President, this amendment also relates to poison pills. It makes it unlawful for a company to establish poison pills unless approved by shareholders and requires those pills to be adopted prior to the date of enactment to be submitted to the shareholders for a vote within 2 years. And we give some regulatory authority for exemptions to the SEC.

Mr. President, there are several reasons why this amendment should be adopted. First, because the legislation that is before us, which at one point, at some earlier iteration, did contain some antigolden parachute, antipoison pill language, in its present form ignores the implications of management defenses on the shareholder and the value of the company.

Now, the plain fact is that these parachutes and poison pills can wreck a company, and indeed in many cases that is exactly what they are intended to do. They are intended to hang like the sword of Damocles over a corporation with the understanding that any attempt to take over the corporation will cause the sword to drop, in many cases shattering the corporation and denying the shareholders of its value, in many cases leading to the breakup of the corporation, which is exactly the thing that so many Senators have been concerned about when corporations are broken up, and yet that often happens or could happen as a result of these poison pills.

Second, Mr. President, this amendment is a convenient place to begin the debate on amendments because it brings into perspective the rights of shareholders. Even though I find personally a golden parachute or poison pill odious, I have not come to the floor, nor have my colleagues who join me in sponsoring this amendment come to the floor, to outlaw them. We have said that the shareholders ought to vote. That is only a reasonable thing. When you are talking, making a drastic change in a corporation, at least the shareholders ought to vote.

Mr. President, a third reason why this amendment should be adopted is that golden parachutes by their very nature are based on money rather than shares of the company. Basically, contrary goals are set up for management and the shareholders. In this case at least, maybe in other cases but at least where you have a golden parachute, you are talking about a conflict of interest between the people who own the corporation and those who run it. So again we think the owners ought to have a right to vote.

Finally, Mr. President, poison pills should be reviewed and approved by shareholders just as a matter of fundamental equity. This is just a fair play provision.

So it is a relatively simple and straightforward provision and one which I hope my colleagues will be disposed to accept.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin, Mr. PROXMIRE.

Mr. PROXMIRE. The distinguished Senator from Colorado appropriately proposed that we separate the en bloc amendment that he proposed, but he did not separate it entirely. He provided that the vote on golden parachutes and the vote on poison pills would be together. I think that the logic of the Senator from Colorado in proposing that we would separate all of the issues that he had before us in the en bloc amendment he offered first which contained I think four separate matters is right. We should do that. Senators are certainly entitled to vote on separate issues that they may favor, for example, the golden para-

chute amendment of the Senator from Colorado. They may oppose poison pills, or vice versa. They are quite different. They are anything but the same. And it seems to me that it would be wise to separate them.

Now, I understand that the Parliamentarian has indicated we can not automatically ask for a division on that. But what I have done instead in order to prepare for a division is to prepare an amendment that would separate them. The amendment would strike everything from line 7 on page 3 through line 5 on page 4 of the amendment and would in effect permit us to vote first on poison pills and second on golden parachutes. In other words, it would take golden parachutes outside of the vote and permit us to vote on poison pills to begin with.

Mr. ARMSTRONG. Mr. President, could the Senator state the amendment again?

Mr. PROXMIRE. The amendment is to strike everything from line 7 on page 3 through line 5 on page 4.

Mr. ARMSTRONG. Through line 7 or through line 5, Mr. President?

Mr. PROXMIRE. Through line 5 on page 4. Line 7 on page 3 through line 5 on page 4.

Mr. ARMSTRONG. Mr. President, if the Senator will yield to me, I have not examined whether or not the proposed amendment would have the effect that he suggests of separating golden parachutes from poison pills, but assuming that is the case, I see no reason to have an amendment on it. I would be happy to ask that it be divided in that way.

Mr. PROXMIRE. That is fine.

Mr. ARMSTRONG. My intent is not to deny the Senate its flexibility but in fact to facilitate that, and so I do ask unanimous consent that the amendment which is now known as the first division be further divided in exactly the manner the Senator has suggested.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I reserve the right to object. I do not intend to object.

The PRESIDING OFFICER. The Senator from Alabama reserves the right to object.

Mr. SHELBY. I inquire of the Senator from Colorado on this. Is this just dividing the issue? Is it a division of the question that would come before the Senate?

Mr. ARMSTRONG. Yes. Mr. President, I think the Senator from Wisconsin has the floor. But if he will yield to me——

Mr. PROXMIRE. I am happy to yield for that purpose.

Mr. ARMSTRONG. I am happy to respond to my friend from Alabama.

While the Senator was briefly absent from the floor, I called up our amendent 2374, and I asked that it be divided into four subdivisions. The first dealt with golden parachutes and poison pills; the second with another matter; greenmail and confidential proxy moving; and the fourth subdivision was some technical matters at the end.

The Senator from Wisconsin, Mr. PROXMIRE, has suggested it would be appropriate to further divide it so golden parachutes and poison pills are themselves divided. He has suggested this subdivision which I have asked for. So we will end up actually with five amendments, the first of which is on golden parachutes.

The PRESIDING OFFICER. Does the Senator from Alabama object?

Mr. SHELBY. I understand that would not weaken the amendment. It would just divide it. Is that correct?

Mr. ARMSTRONG. The Senator is exactly correct.

Mr. SHELBY. I have no objection.

Mr. ARMSTRONG. I cannot imagine myself why anybody would want to come to the floor and be recorded in favor of golden parachutes or poison pills. But if anybody wants to, this is their chance.

Mr. SHELBY. I agree with the Senator.

The PRESIDING OFFICER. Hearing no objection, the alteration of the amendment as suggested by the Senator from Wisconsin is so ordered.

Mr. PROXMIRE. Mr. President, may I inquire of the Chair, which part of this is before us? Will we be voting first on poison pills and then golden parachutes or vice versa?

Mr. ARMSTRONG. Mr. President, it appears to me——

Mr. PROXMIRE. My staff tells me we will be voting first on poison pills. I think it would be golden parachutes. I could be wrong.

Mr. ARMSTRONG. I think the Senator is correct and the staff in this case may not be.

The PRESIDING OFFICER. If the Senators will suspend, the Chair will state to the Senator from Wisconsin, the chairman of the committee, in response to his question, that as he knows the Chair is unable to interpret the characterizations of the amendments before the body. But under the unanimous consent request of the Senator from Wisconsin, agreed to by the body, we will first vote on the amendment No. 2374, the first three pages down to line 3. The Chair will state that without characterizing what that language may or may not accomplish.

Mr. ARMSTRONG. Mr. President, for the benefit of Senators, may I simply characterize that as being the golden parachute portion of the amendment?

The PRESIDING OFFICER. Is there further discussion?

Mr. PROXMIRE. 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. METZENBAUM. Mr. President, I ask unainimous consent that the order for the quorum call be rescinded.

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

Mr. METZENBAUM. Mr. President, I rise to indicate my support for this important legislation. I know how hard the Senator from Wisconsin, the Senator from Michigan, and other Senators have labored over this legislation. I had the privilege of working with them in connection with the hearings on this bill, and they were kind enough to invite me to sit with them as well as to consider the legislation which I had introduced.

It is important legislation that we have before us today, much more important than the attention that has been given to it so far because we are living through a period of takeover mania, the Boesky scandal, the market crash, and so many other things that have caused market jitters. Investor confidence has been reduced. It is important to deal with this crisis in confidence from here on in.

The elimination of takeover and insider trading abuses is necessary and long overdue. I want to say that I am not one of those who thinks that every takeover is horrible. There is no secret about it. In many instances the management of corporations has been more interested in preserving their own position and looking out for their own welfare than they have been in being concerned about the shareholder.

To the credit of the managers of this bill, and to the credit of the Senator from Colorado who has offered various amendments of which I am the principal cosponsor. I think we are making some major steps in the right direction. But let us not kid ourselves. We are not going to solve the whole problem. Frankly, legislation never does solve the whole problem. But passage of this legislation would be a good start, and a better start if we also adopt the Armstrong-Metzenbaum amendments. It would be an indication that we in Congress can do something about the problem.

As I testified when I appeared before the Banking Committee, the bill is not perfect. It is far from perfect. To be an effective and balanced bill and fair to bidders, managers and shareholders alike, it needs to be amended in certain important respects. I will outline those necessary changes in a moment.

But first let me state general philosophy on corporate takeovers and where I see the problem to be. The debate about takeovers has become far too polarized. If you accept the Boone Pickens-Wall Street view you believe that takeovers are an absolute good,

the salvation of the American economy. And if you listen to the States or the Business Roundtable, you conclude they are an absolute evil, a destroyer of jobs and communities and stable economic growth.

Neither of those extreme viewpoints, in my opinion, is valid. And, worse, they obstruct progress toward a solution of the problem. The fact is that some hostile takovers like some friendly mergers are good, and work out in the interests of the community, the shareholders, and the workers. And, some are bad. These hurt the community and the shareholders and the workers. Gains in management productivity sometimes result from takeovers. In these instances, capital flows freely to better uses. In these instances, takeovers are beneficial.

In our zeal to deal with abuses in the takover process, we should do nothing that dampens incentives and deprives us of their benefit. Abuses there are, and that is the reason we have this bill before us today—abuses that affect the lives and pocketbooks of real people, ordinary working men and women, average Americans, with hard-earned savings at risk in the markets or in retirement funds that are heavily invested in stocks. For these Americans, it is our responsibility to ensure that capital flows not only freely but also fairly.

It is not fair when ordinary workers receive pink slips without notice, while their bosses safely bail out with golden parachutes that set them up for life. If the President and corporate America are not going to accord ordinary workers the basic courtesy of warning them of a plant closing, Congress certainly should not allow ousted executives the luxury of unearned, grossly-inflated golden parachutes.

It is not fair when millions in greenmail are paid as ransom to make the raider go away. The shareholders, the community, the company, and the workers all lose. Only the raider wins. Some instances of greenmail have been unbelievable in their impact: They take away the money that belongs to the shareholders; they take away the corporate funds and pay them to a raider, to say: "Go away and don't bother us. Let us continue in our high-priced jobs." No concern at all for the shareholder. No concern at all for the workers. No concern for the community. Only a concern for protecting the jobs of the chief executives.

It is not fair when management swallows poison pills and deprives shareholders of a full return. The average poison pill is there not to help the shareholders and not to help the community and not to help the workers, but is to protect the executives in their high-paid positions.

It is not fair when hostile takeover attempts, even if successful, leave the target in ruin. In my own State, Goodyear's defense against the raid by Sir James Goldsmith, while ultimately successful, was staggeringly costly: The closing of three plants, the loss of 3,300 jobs, reduced research and development, and a $1 million-a-day tab in interest on debt incurred to stop the takeover.

So, too, with the aftermath of a losing takeover attempt of a Toledo-based company: massive restructuring, loss of hundreds of jobs in Ohio and 13,000 worldwide—50 percent of its total work force—and drastic cuts in research and development which had made it an innovative industry leader.

Last, but not least, it is certainly not fair when insiders profit on information not available to ordinary shareholders.

These abuses line the pockets of bidders and arbitrageurs and save the jobs of managers, but they do nothing for the shareholders, the employees, and the communities.

The Boesky scandal and others made the takeovers an issue on Main Street as well as Wall Street, made takeovers a problem up and down every avenue of America. The time to act was actually last year, but it is still not too late. With the falling dollar and the postcrash stock bargains, takeover activity is still substantial, and it is likely to be for some time to come. It is important, very important, for Congress to respond to the problem this year. The American people expect it. We can do no less.

The answer is not to bar all takeovers but to stop abuses and insure a level playing field.

S. 1323 comes close, but still has a way to go. The investment banking community has been forthcoming on the bidder side. Unfortunately, those who claim to speak for business have been less forthcoming on the management side.

I strongly support the bill's improvements in tender offer procedures and disclosures, such as earlier notice of open-market purchasers to the public; a longer time for shareholders to respond to offers; and requiring bidders who acquire a significant share of a company to proceed by tender offer open to all shareholders.

These provisions are similar to ones I had proposed, and I congratulate the committee on bringing them forth as they have.

The differences between what I proposed and what is in the bill are small, and I can certainly support the changes as adopted by the committee. But we do have some important differences. One is the need for tougher restrictions on abusive antitakeover tactics by management.

As reported, the committee bill does nothing about poison pills and golden parachutes. As introduced by Senator PROXMIRE, S. 1323 prohibited golden parachutes and poison pills, but only if adopted during a takeover. If adopted before, in anticipation of a takeover, they were not restricted.

As I testified to the committee at the time, this would have created a huge loophole. It would have meant continuation of antitakeover practices, of adopting poison pills and golden parachutes, which benefit no one but entrenched management at the expense of the shareholders of the corporation. Unfortunately, rather than closing this loophole, the committee went in the opposite direction. it widened the loophole by eliminating any restrictions on these damaging, self-serving devices. These measures serve only the selfish desires of incumbent management to stay in power.

So long as corporate executives, in concert with this administration, insist on the right to cruelly toss workers out of their jobs with no notice, they have no right to hold onto their jobs or to bail out with lucrative golden parachutes, through the use of anti-takeover tactics.

Let us not kid ourselves about what a golden parachute is. A golden parachute is a handout to the corporate executives, to say, "Goodbye," with a smile on their face as they go home and count their dividends. We are talking about hundreds of thousands and, in some cases, millions of dollars in golden parachutes. But the same people who get those golden parachutes will come to the U.S. Senate and oppose 60 days' notice for an unemployed worker, for a worker who is about to be laid off. We give the corporate executives a golden parachute, and for the workers, we are fighting about whether we ought to give them 60 days' notice—no extra money, just notice. Management knows what is coming; they negotiate what is coming; they are party to the whole process. The worker does not know, and then is hit suddenly.

The committee bill does not outlaw greenmail. It just says that if it is paid, the shareholders or the corporation can sue to try to get it back. That is not enough.

This puts the burden on the wrong party, the ripped-off shareholder. The burden should be on the raider who should not get greenmail at all. We need a bill that says greenmail is wrong, wrong, wrong, and that it should not be paid.

I am a principal cosponsor of Senator ARMSTRONG'S amendments to outlaw greenmail, to outlaw poison pills, and to outlaw golden parachutes unless they are approved by a majority of the shareholders. And I hope that my colleagues understand what the issue is all about.

We are talking about whether you are prepared to stand up for the shareholders of this country, or to stand up

for the executive officers and to forget the shareholders; whether you are prepared to stand up and be concerned about the shareholders in seeing to it that they get a fair share of the corporate assets and that those assets are not dissipated by the payment of greenmail.

S. 1323 also fails to address our concerns about management abuses of shareholder voting rights, specifically the adoption of unequal voting rights plans and misuse of proxy voting machinery.

The principle of "one share, one vote" is the bedrock of corporate as well as political democracy. And I heard it said here earlier that we are trying to protect those who have more shares as against those who have fewer shares; that we are trying to take care of the wealthy as against the poor. No way. What we are saying is, if you have 10 shares of stock, you are entitled to 10 votes. And if you have 100,000 shares of stock, you are entitled to 100,000 votes.

That is the way it should be. It should not be in our system that some have greater voting rights than others. And yet the fact is that there are many corporations in this country where that is the case, where some presume they have a special privilege to run the company by themselves and that the shareholders should cede to them all of their rights with respect to voting.

It is an interesting fact of life that some who are so prone to comment publicly, day in and day out—about democracy, about the rights of all people, about the kind of legislation we pass—they are the ones who are a party to the violation of equal voting rights in their own corporate communities. I do not understand it. I do not understand their lack of embarrassment in seeking shareholder approval for unequal voting rights from shareholders who do not understand the implications of their giving up those rights. It is time for us here in the Congress to really protect the shareholders of this country.

This fundamental principle should not be compromised in the name of stopping hostile takeovers or for any other reason. We have an obligation here today to enact the Armstrong-Metzenbaum amendments and to go on and pass the Proxmire bill.

My feeling is that since the New York Stock Exchange announced in 1986 that it was dropping its one-share, one-vote rule for competitive reasons, we have been waiting and waiting for the SEC to promulgate regulations to preserve the one-share, one-vote principle, but it has not occurred.

The patience of many Members and people in this country is wearing thin. I understand my colleague from Alabama tried unsuccessfully to add the one-share, one-vote provision to the bill in committee and that he may offer it again as an amendment on the floor. I appreciate the purposes of that amendment and I can support it.

I believe that there is maybe some propriety in perhaps grandfathering existing unequal voting rights plans. But if we grandfather them in, I think what we ought to do is send a signal that, over a period of years, we would expect all of these unequal voting rights provisions to be eliminated. I do not think we should do it precipitously, but I think, with adequate notice, there ought to be some cutoff date of which every shareholder in this country will then have an equal voting right with every other shareholder based upon the number of shares that they have.

I will enthusiastically support the Shelby amendment if it is drafted as I understand it to be. I certainly support Senator ARMSTRONG's amendments and I am pleased that we are going to deal with them individually so that no Member of this body can say, "Well, I don't want to vote for that package because one particular portion of it is objectionable." We can vote for each one on its merits, and on its merits I believe each one should be passed.

I support the provisions of S. 1323 that are intended to insulate pension fund assets from being used to help finance takeovers and defensive tactics. They are an important step in shielding workers' retirement reserves from the takeover wars.

I urge the Senate to pass these strengthening amendments and to help stop abuses on both sides of the takeover process—raiders and managers. They will ensure a fair and level playing field for takeovers and for the free market to work its will. The beneficiaries will be the owners and employees of our public corporations, and most importantly, the economy as a whole.

Mr. President, I yield the floor.

(Mr. REID assumed the chair.)

Mr. SHELBY. Mr. President, I, too, rise in support of the amendment offered by my friend, the distinguished Senator from Colorado. I am pleased to cosponsor this amendment with the distinguished Senator from Colorado. We share an interest in seeing that this legislation addresses the most abusive tactics that ensure during corporate takeovers.

Mr. President, a lot of this type legislation is complicated but, as was said here earlier today, it is very important to the American people. It is very important to the shareholders of corporate America.

This amendment would limit one such flagrant abuse of shareholder revenue, the so-called golden parachute. And when you said, "golden," it means "golden." This prosaic term is a name that describes the exorbitant payment which would be made to management in the event of a firm's acquisition by a "hostile" takeover or bidder.

By this amendment, Mr. President, we do not seek to limit how much a corporation pays its management. We merely would ensure that corporate assets, belonging to the shareholders, are not abused. The Internal Revenue Service defines a golden parachute as a payment in excess of 3 times annual compensation. We believe that payments of that size should be considered by the shareholders and only the shareholders.

This amendment offered by my friend from Colorado, Senator ARMSTRONG, would require that golden parachutes adopted "during" or "in contemplation of tender offers" be prohibited unless such agreements have been approved by the majority of the aggregate outstanding voting shares.

Mr. President, we lament the decline of productivity in this country. We talk about it on the floor of the Senate from time to time. We meet in committees and talk about it. We are embarrassed at how little is spent on research and development in this country. And yet we ignore the millions in corporate expenditures that go for greenmail payments and golden parachutes.

This amendment would correct this abuse. I urge my colleagues to vote for it and to adopt it.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Nevada.

Mr. REID. 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. REID. Mr. President, I ask unanimous consent to proceed as in morning business for not to exceed 5 minutes.

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

DRUNK DRIVING

Mr. REID. Mr. President, last Thursday I introduced a bill on behalf of myself and Senator LAUTENBERG, designed to induce States to enact more responsible legislation to combat the problem of drunk driving. That was last Thursday.

This is Monday. Since that time, Mr. President, over 300 human beings have been killed as a result of alcohol-related traffic accidents. I repeat, last

Thursday I introduced the legislation. Today, over 300 people are dead as a result of traffic accidents, alcohol related.

Today, another 65 people will die. Tomorrow will bring 65 more deaths. These deaths, Mr. President, hit the young, the old. We learned last week where a mere child was killed literally in her mother's arms, waiting for a school bus—by a drunk driver.

In Kentucky, very recently, 27, mostly teenagers, returning from a church outing, were killed as a result of a drunk driver.

Mr. President, the only way we can stop this destruction is to enact tough laws and sensitize the people of this country to the magnitude of the problem. Drunk drivers kill about 24,000 every year. This works out to 1 alcohol-related fatality every 22 minutes.

Mr. President, the majority leader has set up a procedure whereby he asks Members of the Senate to preside for a period of 1 hour at a time. During the 1 hour that a Member of the Senate presides over this body, three people are killed as a result of alcohol-related traffic accidents. Traffic accidents are the greatest single cause of death from people from the ages of 5 to 34, and more than half of the fatalities are alcohol related. The statistics, Mr. President, are really appalling.

I am not here to tell people that they cannot drink alcohol. That is a personal decision that each person should make for himself. However, we as a society must tell those who drink and want to drive that they cannot do it. We can only do that by enacting tough laws and by attaching a social stigma to drunk driving.

It is generally recognized that European countries have worse drinking problems than we have in this country. However, the drunk driving rate in Europe is less than half of what it is here. That is because the Europeans have tough laws, tough penalties, and they enforce them. Drunk driving is simply not socially acceptable in Europe. We must follow their example.

I urge each of my colleagues to join Senator LAUTENBERG and myself and become a cosponsor of S. 2523. Every day we delay, another 65 lives are lost.

I yield the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

TENDER OFFER DISCLOSURE AND FAIRNESS ACT

The Senate continued with the consideration of the bill.

Mr. ARMSTRONG. We have another speaker or two who wish to come before us to discuss the pending amendment, the antigolden parachute amendment. But while we await their arrival, I want to make another announcement which I think will be of general interests.

I have, and in a moment will send to the desk, a statement from the administration dated June 16 regarding this bill. Let me read the operative paragraph and then submit the entire memo for the RECORD so it will be available to all Senators.

The Administration opposes enactment of S. 1323 and, if it were presented to the President, the Chairman of the Council of Economic Advisers, the Attorney General, and the Director of the Office of Management and Budget recommend that the bill be vetoed.

Mr. President, for the purpose of keeping the record straight and just having Senators informed, I send this to the desk and ask unanimous consent that it be printed in the RECORD.

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

S. 1323—TENDER OFFER DISCLOSURE AND FAIRNESS ACT OF 1987

The Administration opposes enactment of S. 1323 and, if it were presented to the President, the Chairman of the Council of Economic Advisers, the Attorney General, and the Director of the Office of Management and Budget would recommend that the bill be vetoed.

S. 1323 is objectionable, because it would significantly increase the cost of takeovers, reduce the benefits resulting from takeovers, and intrude into areas of corporate governance that should be left primarily to shareholders and to the States. Unsolicited corporate mergers and acquisitions improve efficiency, promote the productive use of scarce resources, and stimulate effective corporate management, benefits which would be diminished if S. 1323 were enacted. Particularly troublesome provisions of S. 1323 include:

Provisions in sections 3 and 5 that would amend section 13(d) of the Securities Exchange Act of 1934. These amendments, which concern requirements to provide information on certain securities transactions, would make it significantly more difficult to undertake a successful tender offer (e.g., by increasing the cost of obtaining additional shares and by giving rise to new causes of action for defensive litigation). These additional reporting requirements, which are not confined to a simple reduction in the section 13(d) reporting "window," would, in effect, protect incumbent management, regardless of its performance, against unsolicited changes in corporate control.

The provision in section 7 that would nearly double (i.e., increase from 20 business days to 35 business days) the minimum period for which a tender offer must be held open. The current minimum offering period provides ample time for incumbent management to evaluate offers and, if necessary, solicit other bids. Lengthening the minimum offering period would deter all types of takeovers, encourage defensive restructuring, and diminish the benefits of the market for corporate control.

The provision in section 7 that would prohibit, except through a tender offer, the purchase of any securities that results in the acquiror owning more than 25 percent of the total shares of such securities. This restriction would significantly increase the costs to shareholders of certain activities (e.g., obtaining additional shares and forming joint ventures) unrelated to takeover efforts.

Section 10, which would make various changes to the Employee Retirement Income Security Act of 1974 affecting fiduciary standards that are unnecessary and confusing and that may jeopardize the interests of employee benefit plan participants.

Mr. ARMSTRONG. Mr. President, as I pointed out last week, my desire is not to kill this bill. My desire is to amend it in a way that will make it worthy of support by all Senators and, I trust, in a way that would avoid the threatened prospect of a Presidential veto.

Mr. President, I think we still have some speakers who are on their way.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, the distinguished Senator from Colorado has been very constructive and positive on this measure. He and the Senator from Alabama have indicated that they could very well favor this bill if it were amended, modified, improved. That is very encouraging.

I think that a substantial majority of the Senate will approve this bill. It passed the committee by a 14-to-6 vote.

That indicates a decisive majority of the committee with bipartisan majority, Democrats and Republicans both voting for it.

I would like to say a word on the bill in general before we come back to discussing the amendment which I also intend to discuss later.

Mr. President, on Friday the Senate debated this bill for most of the day. Those of us who supported the bill argued that it would slow down the enormous increase in debt that is being accrued by American corporations in the takeover process. I do not know how anybody can question that.

Time after time corporations which had substantial equity-to-debt ratio ended up with an enormous burden of debt. Borg-Warner is one example.

Unocal is another example of that. It happens persistently and consistently. It is a rare case when a takeover is initiated and either successfully resisted or succeeds, and the corporation is not loaded with an enormous burden of debt.

After all, Mr. President, that is the way that the munipulative corporate takeover game is played. The people

who take over the corporation are rarely able to write a check for billions of dollars to take over a big corporation. They have to borrow it. Of course, they repay themselves once they get control of the corproation by having the corporation buy back their stock. Or, the management resists a takeover by borrowing a huge amount of money, as many of these corporations did, and then using the fruits to buy the stock, bid up the price out of the reach of the takeover people, and lard the corporation up with junk debt so when the takeover succeeds, if it does, credit of the corporation is not sufficient to permit the corporation to sustain out the acquirer.

So there is no question about the fact. Again and again that debt grows with these corporate takeovers. That is one of the reasons why American business is so heavily in hock.

We contend our bill would give both the acquirer and the corporation management, a greater opportunity to make their respective cases for or against a takeover. The bill would inform shareholders more promptly when a takeover was underway so that the acquirer, arbitragers, and financiers would sharply reduce the insider advantage they presently possess over the public investor. Because the shareholders would be fully informed as the takeover practitioners, and arbitragers who are the insiders. I remind my colleagues of the Boesky case, the Levine case, the Tone case, and others.

By providing this information publicly, which is what our disclosure bill does, we create a more level playing field for the general investor. Whether he is already a shareholder in the corporation or whether he is a general investor that may be interested in buying the corporation, this bill gives him the same information that, under present law, so often only the takeover people enjoy.

We pointed out that the bill provides more effective or more penalties against insider trading. This, by definition, will help the great majority of general stockholders and investors. The bill adds a new requirement that owners of more than 10 percent of a company's stock may at the company's expense include their own proxy and board candidate so the stockholder can have fuller information in voting for the present or proposed new management. That is a provision, Mr. President, that helps the acquirer.

The bill prohibits either management or acquirer from tapping the surplus and pension funds to finance takeover attempts. That is very important to protect the employees who are usually the beneficiaries of the pension funds.

The bill limits greenmail by giving a corporation the right to recover any profit made by a person who sells the corporation its own stock, if that person holds more than 3 percent of the stock and has held it for less than 1 year.

The bill provides that only a majority of shareholders can, under the bill, vote to permit the greenmail payment.

Mr. President, if ever there were a shareholders' rights bill, this is it. I challenge any Senator to show how any specific provision of this bill is not in the general stockholder's interest. Ninety percent of the changes in present law contained in this bill will provide more disclosure.

Who benefits from the additional disclosure? Shareholders!

Who suffers from the fuller disclosure? The inside traders, the manipulators, the Boeskys, the Levines. This bill limits this inside information.

After all, how does the classic hostile takeover operate today? The acquirer moves in quickly. He moves in without the knowledge of many of the company's shareholders or the general investing public. The acquirer puts in little, maybe none, of his own money to purchase the stock. He secures what is called a highly confident letter from a major investment banking house, such as Drexel Burnham.

He does not have to put his own money at that point. He just pays $1 million for a highly confident letter saying his backers are highly confident that the acquirer can have access to the funds when he needs them. Until he borrows enough to actually hold 5 percent of the corporation's stock, he is free to conceal his takeover intentions.

Under present law, he does not file a notice of his stock ownership with the SEC until 10 days after he has acquired his 5-percent stake.

During the ensuing 10 days, the company's shareholders are kept in the dark. The general investor knows nothing about this acquisition.

Meanwhile, in that 10-day period, the acquirer knows, the arbitragers know, the people who are working with him know about the deal. They are the insiders. They can move swiftly; they can move invisibly. They may acquire working control of the corporation without the knowledge of the overwhelming majority of shareholders or the management. Icahn grabbed 20 percent of TWA before the 10-day window closed.

Under the present law, the acquirer is not required to disclose the persons with whom he has been working to secure control of the corporation.

Our bill meets all of those problems, and it meets them on behalf of the shareholder, on behalf of the person who owns the corporation, on behalf of the stockholder.

What does our bill do? It requires the acquirer to give public quit purchasing stock once the 5-percent threshold is reached. Then he has 5 days to disclose that beachhead. Until the acquirer provides that public notice, he cannot buy an additional share of stock.

In addition, Mr. President, under present law, an acquirer can make a tender offer for all the shares of a corporation and secure a vote of shareholders within only 20 business days, or about 4 weeks.

Management claims that under many circumstances, it cannot make its case adequately to shareholders in a 4-week period from the time they know that a tender offer is coming on. I think that is a reasonable argument. I have not heard it contested. In fact, some have proposed that the tender offer period be extended to 60 working days, or 12 weeks. Some resisted that in the committee.

The bill compromises at 35 working days, or about 7 weeks.

The point I want to make, Mr. President, is that the bill now before the Senate is in the clear interest of the American stockholder. It is in the interest of those who hold stock in the corporations that may be subject to take overs.

Mr. President, Senators can attack or defend the unprecedented wave of corporate acquisitions in recent years, and this bill, frankly, is not designed and would not stop these mergers. It would not impede stockholder sovereignty in any way. It is not designed to accelerate mergers; it is designed to permit mergers to go forward with much fuller disclosure to stockholders. Stockholders will be just as free to decide whether to approve or disapprove mergers if this legislation becomes law.

That is why I am very grateful to the Senator from Colorado and the Senator from Alabama who have indicated that they agree the bill has considerable merit. They feel it can be improved and should be improved. They have indicated that if we accept some of their amendments or if we vote for their amendments, I should say, if the Senate as a whole decides to vote for their amendments, that they may support the bill. I appreciate that very much.

I think the bill is worth supporting, even if all the amendments are defeated, of course. I hope they will, in the course of the debate, recognize that this does provide for a better break for the average investor.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, as tempting as it is, I am not going to launch into a debate with our distinguished chairman about the bill this afternoon, because we are not really here to debate the bill today; we are here to debate amendments by the distinguished Senator from Colorado that are currently pending. Those

amendments have been broken now into five parts, one of which is technical. The amendments that are substantive have to do with golden parachutes, poison pills, greenmail, and confidential proxy voting.

Mr. President, I could understand if somebody said, "Well, I'm for this bill and I'm against these amendments, and I'm for the bill because I want to protect entrenched management. After all, they are the people I'm here to protect, and therefore I want them to have these retirement slush funds so that if they don't do their job and they get fired, they get a big bonus." I could understand somebody who said, "Well, I don't like this idea of proxy voting. The corporate managers ought to get an opportunity to open the votes and look at them and call up people and try to pressure them to change their votes. What does this democracy business have to do with corporate America?" I could understand the consistency in that.

What I do not understand is how people can be against these amendments and be for the bill because they think the bill is supposed to help the stockholders. In fact, I see very little in the bill before us that is going to help the stockholder, but I see a lot in these amendments that is going to help the stockholder.

Now, I ask my colleagues, what is wrong with giving the people who own a corporation the opportunity to vote on whether or not a manager ought to get a golden parachute in the event that the manager does such a poor job that the assets of that company are worth more under somebody else's management than they are under his and therefore he ends up losing his job? Should not the stockholders get an opportunity to vote on whether that manager gets a golden parachute? I do not see how anybody who is the champion of the stockholder can oppose giving the people who, after all, made the investment, who own the business, an opportunity to vote on these so-called golden parachute agreements.

What this amendment would do is change existing law. What is existing law? Well, existing law has produced a situation where manager after manager in losing control of companies and losing jobs, are getting big cash payments—$35 million, $17 million, and in fact 200 out of the Fortune 500 companies in America have these golden parachute agreements. So if the manager does not generate adequate returns to the stockholder, then the management in essence gets paid off in terms of a golden parachute agreement.

If we adopt the amendment of the distinguished Senator from Colorado, what we are saying is that for the existing agreements the stockholders have 2 years in which to agree to them. If they do not agree to them, then they become void. And any arrangement in the future has to be voted on by the stockholders.

Mr. President, the way corporate America is supposed to work is the fellow running the company is supposed to work for the stockholder. I can assure you that too often that has ceased to be the case. I have been astounded, Mr. President, as corporate executive after corporate executive has come before our committee and talked about their great social responsibility and their concern about the company and their concern about the worker, that they never mentioned the stockholder.

For the American free enterprise system to work, corporate democracy has to work. So if we are in fact concerned about the stockholder, we can start to show that concern today by voting for the amendment of the distinguished Senator from Colorado to give the stockholder a vote on whether or not these golden parachute payments should be made. My view is that if a corporate manager is good enough that the people who own the company say, "You come to work for us, and if you are a failure we will give you $35 million, and if you are a success we will give you some other figure." If that is what they decide, that is great. It is their money. My objection is when these golden parachute provisions are being put into place and the victim turns out to be the stockholder. So if you are concerned about the stockholder, you have an opportunity on four votes in a row to show it. The first vote is to let the people who put up the money, let the people who own corporate America, let the people who bought the tools, who indirectly through the genius of the American corporation have hired the management, have a say as to whether a golden parachute should be put into place. I cannot see any reasonable objection to that, and I urge my colleagues to adopt this first amendment. Then we will have an opportunity to address poison pills, greenmail, and the confidential proxy voting issue. I think each one of these issues has to do with corporate democracy. With corporate democracy it is a pretty clear-cut issue; you either believe in it or you do not, and I do. That is why I am for these amendments, and I comment them to my colleagues.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I rise in support of S. 1323, the Tender Offer Disclosure and Fairness Act of 1986. This bill was reported to the Senate by the Senate Committee on Banking, Housing, and Urban Affairs by a vote of 14 to 6. There was a very clear majority within the committee in favor of this legislation. It was brought out after extensive hearings on corporate takeovers held by the Senate Banking Committee on January 28, March 4, April 8, April 22, June 23, 24, 25, and 26. We heard from a very long list of able witnesses, leaders in the financial field, leaders from business, leaders from labor, State representatives, Government officials, institutional investors, shareholders groups, and so forth and so on.

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

Mr. SARBANES. Yes.

Mr. PROXMIRE. I want to thank my good friend from Maryland for raising this point. I do not think anybody has pointed out the hard and detailed work the committee did. As the Senator said, there were 10 days of hearings. It is very unusual we have that length of time for hearings. The Senator pointed out we had all the leaders from all sides of this issue itself. We have a very, very substantial record on this. So the vote of the committee which he alluded to, the 14-to-6 vote, was based on a very comprehensive study of the problem and getting the opinions of people who were on all sides of each of these complicated questions.

I do not think that has been brought out by anybody. It certainly has not been by this Senator. I think it is the kind of information the Senate ought to understand when we vote on this.

Mr. SARBANES. I appreciate the chairman's comment. I think it is important.

Mr. President, I ask unanimous consent that a section from the committee report on this legislation entitled "History of the Legislation" be included in the RECORD. That details not only the dates of the hearings but who was heard at each of those hearings. I think anyone reading through this hearing record would have to conclude that the committee did a very careful, and extensive examination of this issue. All sides were heard from. We appreciated the importance of this matter. We wanted to probe it in depth, and that is exactly what happened. Furthermore, it took place over an extended period of time, which, of course, gave people time to reshape their views if they chose to do so, in the light of developing testimony—both members of the committee and witnesses who were called before us. We had the leading people who concerned themselves with this issue, in a whole range of diverse activities, testify before the committee, in considering this important legislation.

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

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

HISTORY OF THE LEGISLATION

The Senate Committee on Banking, Housing, and Urban Affairs held hearings on corporate takeovers on January 28, March 4, April 8, April 22, June 23, June 24, June 25, and June 26, 1987. Witnesses at these hearings included, among others, representatives from the investment banking community, corporate America, labor, law enforcement officials, the Securities and Exchange Commission, the Administration, institutional investors and the States.

On January 28, 1987, the Committee heard from leaders of the financial and legal community as well as former commissioners who served on the Securities and Exchange Commission. Witnesses included Alan Greenspan, at the time Chairman of Townsend-Greenspan, and now Chairman of the Board of Governors of the Federal Reserve System; Nicholas F. Brady, Chairman, Dillon, Read & Co.; Felix G. Rohatyn, Senior Partner, Lazard Freres & Co.; Lloyd N. Cutler, Partner, Wilmer, Cutler & Pickering; and former SEC Commissioners Roderick H. Hills, now Managing Director and Chairman, The Manchester Group, Ltd.; A.A. Sommer, Partner, Morgan Lewis & Bockius; and Francis M. Wheat, Partner, Gibson, Dunn & Crutcher.

Chairmen and Chief Executive Officers of some of America's best known corporations were invited to testify before the Committee on March 4, 1987. Witnesses at this hearing included: David M. Roderick, Chairman and Chief Executive Officer (CEO), USX Corporation; Raymond Plank, Chairman and CEO, Apache Corporation; John L. Murray, Chairman and CEO, Universal Food Corporation; George S. Slocum, President and CEO, Transco Energy Company; Andrew C. Sigler, Chairman and CEO, Champion International Corporation; James K. Baker, Chairman and CEO, Arvin Industries; Donald C. Clark, Chairman and CEO, Household International; Thomas F. Frist, Jr., Chairman of the Board, Hospital Corporation of America; William R. Howell, Chairman of the Board, J.C. Penney, Inc.; William McKinley, Chairman and CEO, Gerber Products; Robert P. Luciano, Chairman and CEO, Schering-Plough Corporation; Robert E. Mercer, Chairman and CEO, Goodyear Tire and Rubber Company; William D. Smithburg, Chairman and CEO, The Quaker Oats Company; Alvah H. Chapman, Jr., Chairman and CEO, Knight-Ridder, Inc.; William E. Wall, Chairman of the Board, The Kansas Power and Light Company; and Clarence E. Johnson, President and CEO, Borg-Warner Corporation.

The following labor representatives testified at the April 8, 1987, hearing: Thomas R. Donahue, Secretary-Treasurer, AFL-CIO; William H. Wynn, President, United Food and Commercial Workers International Union; James E. Hatfield, President, Glass, Pottery, Plastic and Allied Workers International Union; Jacob Sheinkman, Secretary-Treasurer, Amalgamated Clothing and Textile Union; Milan Stone, President, Rubber, Cork, Linoleum and Plastic Workers of America; Jack Bavis, President, Master Executive Council, Eastern Airlines; Charles Bryan, President, District Lodge 100, International Association of Machinists and Aerospace Workers; Mary Jane Barry, President, Local 553, Transport Workers Union; Delbert Walsh, President, Local 252, Glass, Pottery, Plastic and Allied Workers International Union; and Clayton C. Oster, President Local 26, United Rubber, Cork, Linoleum and Plastics Workers of America.

On April 22, 1987, the Committee received an update of the law enforcement activities of the government with respect to improper activities in the securities industry from Rudolph Giuliani, U.S. District Attorney for the Southern District of New York; and Gary Lynch, Director of the Division of Enforcement, Securities and Exchange Commission. This update included government enforcement actions related to insider trading and corporate takeovers.

The "Tender Offer Disclosure and Fairness Act of 1987" was introduced by nine members of the Senate Banking Committee on June 4, 1987. Legislative hearings were subsequently held on June 23, 24, 25, and 26, 1987.

On June 23, representatives from the Administration and the Securities and Exchange Commission testified. Beryl Sprinkle, Chairman, Council of Economic Advisers, testified on behalf of the Administration and the Securities and Exchange Commission was represented by Commissioner Charles Cox. A second panel included witnesses representing various state associations including: Daniel Bell III, President, North American Securities Administrators' Association; Anthony J. Celebrezze, Jr., Attorney General of the State of Ohio; Jim Edgar, representating the National Association of Secretaries of State; and Richard B. Geltman, Staff Director, Committee on Economic Development and Technological Innovation, National Governors' Association.

Representatives from the securities industry and the investment banking community testified on S. 1323 on June 24, 1987, as did labor. Witnesses at this hearing included John W. Bachmann, Chairman, Securites Industry Association; and Robert F. Greenhill, Managing Director, Morgan Stanley & Co., Inc. (representing the Capital Markets Group: The First Boston Corporation, Goldman Sachs & Co., and Morgan Stanley & Co., Inc.); followed by Laurence Gold, General Counsel, AFL-CIO.

On June 25, 1987, the Committee heard from the business community, institutional investors and a shareholder group. On the first panel were: H. Brewster Atwater, Jr., representing the Business Roundtable; Alexander B. Trowbridge, President, National Association of Manufacturers; and Donald C. Clark, representing Stakeholders in America. The second panel included Raymond J. Sweeny, Co-Chairman, Council of Institutional Investors; James Martin, Executive Vice President and Chairman, CREF Finance Committee, College Retirement Equities Fund; and Margaret Cox Sullivan, Stockholders of America, Inc.

To complete the hearing record, the Committe considered the relationship of employee ownership and corporate takeovers on June 26, 1987. Witnesses included: Former, U.S. Senator Rusell Long, Parnter, Finley, Kumble, Wagner, Heine, Underberg, Manley & Casey; F. Lee Bailey, Lead Trail Counsel, Eastern Airlines Coalition; Robert Strickland, Chairman, Lowes, Inc.; Randy Barber, Director, Center for Economic Organizing; Capt. William H. Palmer, United Airlines, President, Coalition Acting for the Rights of Employees; and Jared Kaplan, Partner, Keck Mahin & Cate.

(Mr. ROCKEFELLER assumed the chair.)

Mr. SARBANES. Mr. President, I want to make a few general remarks about the broader question of corporate takeovers and their consequences for our economy, before I address the specific provisions of this legislation.

I submit that the economic strength of our free-enterprise system is premised on the proposition that there is a coincidence between individual gain, as determined by the operation of the marketplace, and social gain. In other words, the premise of the system is that as one seeks, in a free-enterprise, competitive system, to maximize his own individual position, at the same time he serves to maximize the economic and social gain for the society at large. The system is premised on the proposition that the efficient producer will be rewarded, that decisions will be made in the marketplace, and that in the consequence of an individual advancing his own interest through being able to respond to market forces, society, more broadly speaking, will also benefit.

I think it is fair to say, on the basis of the numerous hearings held by the committee, that there is considerable question as to whether the takeover process as it is now being manipulated by some does not really amount to an abuse of the market system; that the result is that the market process is being manipulated in such a way as to separate the coincidence between individual gain and social gain. In effect, the takeovers have had the effect of separating the interests of the speculators from the interests of the producers, encompassing within the term "producers" both management and workers.

Corporate raiders have acted in such a way as to move in place, put a company into play, as they say, reap off very significant financial gain, and then move out of the situation, often leaving behind a company heavily burdened by debt and a community in disarray.

I have seen the rash of corporate takeover attempts with growing concern, because I think it is clear that they have serious consequences for the long-term competitiveness of our economy. In effect, if not addressed, they really raise the danger that the economy will be manipulated in such a way that certain individuals, those doing the manipulation, will gain significant financial benefits, but the overall economy, itself, will not benefit as a consequence. This point was made very well in the Banking Committee report which accompanied this legislation:

Traditionally, takeover activity was motivated by the notion that companies could achieve long-term growth by diversifying and expanding through corporate acquisitions. Today, however, many takeovers are based solely on a desire for immediate, short-term returns with no thought to actually managing the target company. Bidders put a company "into play" by acquiring large blocks of a target company's stock with virtually no risk and with an almost

certain guarantee of substantial profits through greenmail, bust-up liquidation of the target or a white knight rescue.

The phenomenon of the threatened takeover places well run corporations on the auction block or forces them to restructure financially. These takeovers have significant implications for the national economy, international competitiveness of American firms, corporate debt, community stability, unemployment and investor protection.

Although target company shareholders may benefit from a temporary run-up in the price of the target's stock, concerns over the fairness and integrity of the overall process persist.

Notwithstanding gains realized by some target shareholders, others have been deprived of information necessary to make an informed investment decision and have been denied a fair share of the control premium paid to acquire the company. Also, other parties to the transaction such as bidding company shareholders and target company bondholders have suffered economic loss and have not received adequate consideration in the tender offer process.

No one denies that mergers and acquisitions may produce social benefits through better managed companies and opportunities for growth. However, the proliferation of abusive takeover techniques, which have as the primary goal the precipitation of excessive speculation in the securities of the target company, has force corporate managers to focus their energies on short-term performance. This has major implications for research and development as well as for long-term growth and competitiveness at home and abroad.

All of this is well summarized by Akio Morita, Chairman of Sony Corporation, who recently wrote: "Unfortunately, American industry is now being distracted by a game called mergers and acquisitions. America's brightest managerial talent is engaged in take over moves and empire building. The best students do not study engineering but become MBA's or lawyers and, eventually professional moneymakers. This is not a productive enterprise."

In addition, an enormous amount of debt is being incurred in connection with takeovers. In part, this is because of the use of junk bonds to finance hostile tender offers or defensive leverage buy-outs. This has contributed to a sharp increase in debt-to-equity ratios and a concomitant decline in the credit rating of many companies. it is now widely recognized that many former takeover targets and junk bond investors, particularly financial institutions, will be vulnerable to defaults in the event of adverse economic or financial developments.

Based on the hearing record, the Committee agreed to amend the Williams Act. Many of the changes made are designed to improve the disclosure available so as to make the tender offer process fair for all investors. The bill states as its purposes: "(1) to reduce the opportunities for abuse under the Federal Securities laws as currently in effect, and (2) to expand the protective mechanisms of such laws". Other changes are designed to improve the integrity of the tender offer process and the capital markets by addressing abuses in the current system.

As John J. Phelan, Jr., Chairman and Chief Executive Officer of the New York Stock Exchange has put it: "[W]e need to ensure that when takeover attempts occur, they do so in an environment that minimizes the potential for abuse. That means getting more sunlight into the arena faster. And letting as many people as possible know at the same time what's happening in the marketplace."

Corporate takeover is a difficult issue to address because there are many who make the argument that certain corporate takeovers are consistent with market principles and, in fact, are advantageous to strengthening the economy. In part, I think, that comes back to the question of the purpose for which the acquisition is undertaken and, in particular, whether those seeking to acquire it are really out to actually take over the company and assume the responsibility for running and operating the company. In other words, a situation in which someone says, "I can do a better job than the existing management, and I ought to be given a chance to prove that, and any tactic that I may engage in, in order to gain acquisition, I will have to live with the consequences of it."

So that, if in effect, there is an effort, as it were, to raid the corporate treasury, it is one thing if you subsequently have to assume that burden and responsibility; it is another if you succeed in doing that and then walk away from the situation, leaving the problem behind for others to try to address.

Recognizing this problem and its seriousness, I think it is important to underscore that this legislation does not try to come fully to grips with the question of corporate takeovers. Actually, the provisions of this bill are very carefully crafted, and they will be a modest and reasonable change in our securities law, in an effort to assure shareholders in a U.S. Corporation a fair opportunity to make a judgment about whether a tender offer is in their own economic interest. In other words, one can have differing opinions about the danger of the concerns associated with corporate takeovers and still support this legislation as representing a very measured and reasonable effort to come to terms with some of the problems which have arisen.

Let me now recite a few of the provisions that are embraced in with legislation.

Under current law, any person who acquires more than 5 percent of a company's stock need not file a disclosure statement of having done that until 10 days after the acquisition that exceeds the 5-percent threshold. This has permitted stock acquisitions much greater than 5 percent during the 10-day window period before any disclosure is required. They do not have to file a disclosure statement for 10 days once they have passed the 5-percent mark. During that 10-day period, before they have to file the disclosure statement, they can make acquisitions much greater than the 5 percent which triggers the disclosure. As a result, by the time the first disclosure is made, a person may have accumulated a very significant interest in excess of 5 percent in the company.

In fact, in some instances, they may even have secured a controlling interest in the company, particularly if you define "controlling" as being a much smaller figure than a majority interest, since a person holding a very large interest, with everyone else holding a very small interest, is perceived as controlling, even though they are short of majority control.

The bill as written does not change the existing 5 percent threshold requirement. There was some consideration of doing that, of actually lowering the threshold requirement below 5 percent. However, to alert share holders to important purchases of the company's stock on a more timely basis, buyers are required by this legislation to disclose the acquisition of a greater then 5 percent stake in the company within 5 days, rather than the current 10 days, of reaching this level of ownership.

So we reduce it from 10 to 5 days for purposes of this disclosure of the 5 percent stake. And of equal importance, in fact, I think of greater importance, until the dislosure is filed, further purchases beyond 5 percent are prohibited. So that it is not possible to use the time period for making your disclosure to significantly increase your holdings in the company. So until the dislosure is filed further purchases beyond 5 percent are prohibited.

This provision will assure shareholders of the right to make a judgment about a tender offer before the offeror has acquired a controlling interest in the company.

Second, the bill clarifies existing disclosure requirements to ensure that buyers of stock disclose clearly whether their acquisition is either for passive investment purposes or for control of the company. This is an effort to clarify, with respect to the buyers of stock, whether their purchase, their acquisition, is for passive investment purposes or for control of the company.

Buyers who claim that the purpose of their purchase is to make a passive investment—in other words, the buyers says, "No, my purpose is not for control of the company. My purpose is to make a passive investment."—Buyers who claim that would not be able to change that intent and to make a tender offer unless the buyers notifies the Securites and Exchange Commission of his new intent and then waits for a period of 60 days.

So a buyer would not be able to move in, assert that the acquisitions were for passive investment purposes, and then switch to an effort to control the company without notifying the

SEC of this new intent and waiting for a period of 60 days.

Third, in order to give shareholders a better opportunity to assess a tender offer, the bill would lengthen the tender offer period from the current required minimum of 20 business days to 35 business days—from a minimum of 20 business days to 35 business days.

The bill would also prevent the so-called creeping tender offers by requiring any purchase above 25 percent of a company be made through a tender offer to assure all shareholders a fair opportunity to participate in the offer. So, in other words, any purchase above 25 percent would have to be through a tender offer giving all shareholders a fair opportunity to participate.

The bill includes a provision designed to limit the practice known as greenmail which allows a purchaser to buy up stock in a company for purely speculative purposes and then turn around and sell it back to the company at an exorbitant price. The bill gives the company the right to recover any profit made by a person who sells a corporation its own stock if that person holds more than 3 percent of the stock and has held it for less than 1 year. So if you get someone who moves in and starts acquiring the stock of a company and then seeks to unload it, having held it for less than 1 year, the bill gives the company the right to recover any profit made by such a person who sells a corporation his own stock.

The bill goes further than that. If the corporation does not act to recover the profit, a shareholder of the corporation may do so on behalf of the company.

Further, the bill addresses the question of excess pension fund assets. Under current law, there is no protection for excess pension fund assets from use in takeovers by either the bidder or the management. In other words, they can use those excess pension fund assets in the corporate takeover fight. In order to preserve excess funding as a cushion for employee benefits, the bill prohibits bidder and target companies from tapping the surplus in pension funds to finance takeover attempts.

Now this is a very important provision because we have encountered some difficulties with pension funds. Assumptions about the strength of their funding do not always withstand the test of time and the development of circumstances. In some instances, a corporate takeover effort by the bidder is mounted on the basis of seeking to reach or to use the excess pension fund assets which may exist. In other instances, the management may use those excess pension fund assets in order to resist or fight the takeover.

This legislation would seek to preserve that excess funding as a cushion for employee benefits. What it really seeks to do is to require the judgments about the funding of the pension fund to be made for pension fund reasons—which is, of course, the whole purpose of that provision—and not have the judgments with respect to those pension fund assets being made for reasons totally unrelated to protecting the employee benefits which are to be protected by the pension funds; in other words, if the calculation is made on the basis of what serves the takeover fight rather than on the basis of what is necessary in order to protect the employee benefits.

The bill also raises the criminal penalties for insider trading, both in terms of a fine and in terms of jail sentence. A new requirement provides that perjury or obstruction of justice in the course of an insider trading violation carries a mandatory sentence in addition to any other applicable penalty.

Obviously, the rash of insider trading violations is placing in question, indeed in jeopardy, the integrity of the markets and people's confidence in them. It is a matter that must be dealt with, and it is recognized that it must be dealt with by the responsible people in the market and in the business world. One of the strengths of our economy, historically, has been the strength of our capital markets. But people's confidence in those markets will be eroded and that strength will be lost if this insider trading issue is not dealt with very sternly, and the bill seeks to do that.

Finally, the bill has been very carefully written not to affect the role of the States in governing the internal affairs of corporations. It is carefully drafted to leave in place the current role of the States in the regulation of corporate governance.

Now, that is a very important philosophical question. Traditionally, we have left corporate governance to be dealt with by State law. We have dealt at the Federal level primarily on the basis of disclosure, which is of course reflected in the provisions of this legislation which have enhanced disclosure, developed it, sought to make it more relevant to the circumstances we face today. But we have not moved heavily into the field of corporate governance at the Federal level, leaving that matter to be done by the States. That is a system which traditionally has served us well and this legislation does not seek to alter that in any major or significant way.

Mr. President, I think this is a carefully crafted, well thought out bill that represents a significant improvement in Federal securities law. It would give greater assurance so that the shareholders would have fair notice of when a tender offer is being made and fair opportunity to consider the offer once it is made. It addresses clearly areas of Federal law in which changes, I think, would be beneficial.

I am hard-put, actually, to find counterarguments against the provisions in this bill. It does not try to make sweeping changes which are, by themselves, of great controversy. And I gather some provisions of that sort may be offered as amendments in the course of considering this legislation. It does not seek to alter the basic allocation of responsibilities between the Federal and the State Government. But I think the bill brought forth by the committee after very careful consideration, after elaborate hearings which I discussed earlier at the outset of my remarks, represents a prudent response to the situation with which we are confronted.

The takeover efforts have had a devastating impact on some communities in our country, including in our own State. The takeover attempt by Sir James Goldsmith, of Goodyear, resulted in the closure of its Kelly-Springfield tire plant in Cumberland, MD, causing a loss of 1,000 manufacturing jobs.

We heard in our committee hearings of numerous instances of such consequences because of the effort, as I said earlier, by some in effect to manipulate the opportunities that are present in terms of purchasing of corporate stock in order to make significant short-term financial gains without regard to the impact on the community and the disruption to individuals, communities and State and local governments and the disruption to the functioning of our economic system.

Mr. President, I strongly support this legislation. I hope it will meet the approval of my colleagues in the Senate and that we will pass this measure in short order.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I commend my good friend from Maryland, Senator SARBANES, for his statement. It is typical of the distinguished Senator from Maryland that he made this kind of a speech because it is specific, it is on the issue. It is not a general "support for the bill" without specifics. It is not a condemnation of amendments in general.

He brought up all of the important provisions in the bill, specifically enumerated them, and indicated exactly why this bill makes sense.

Closing a 10-day window, for instance. He brought that up and pointed out this is a matter of disclosure for the stockholder so that he knows as well as the insider during that 10 days, knows that an attempt to take over the corporation is coming on and that there is going to be a big increase, probably, in the price of the stock. So, in innocence of not knowing that that is going on, he sells the stock. The bill

would close that window and make that impossible.

He points out how important it is to protect pension funds.

Mr. SARBANES. Would the Senator yield on that point? I think it is reasonable to assume that at the time that this provision was put in, about the disclosure of crossing the 5 percent threshold, giving people 10 days in order to do it, the 10-day provision was really an accommodation. I do not think at the time anyone thought that that provision would then be used with increasing frequency by people moving very quickly to use the 10-day period when they were to give the notice, the disclosure, to significantly increase the acquisition well above the 5-percent figure.

If you concede that that should happen, then the 5-percent figure almost becomes irrelevant. People can work very fast in the 10-day period, elevate from 5 percent to 15, 20, 25 percent, and present an entirely different picture at the point of disclosure than I think anything that was assumed at the time that that provision was put into the law.

So, what we are doing here, it seems to me, is really bringing the law back, the situation that it was intended to expose, and to lay out to all of the shareholders at the time it was first put into law.

Mr. PROXMIRE. That is exactly right. Under the present law, because of the 10-day window, it is possible for an acquiring group to secure working control of a corporation without the stockholders knowing it.

What this does is say from the time you get 5 percent you cannot buy another share until the public is notified; until the average investor, whether it is a big investor with a pension fund or whether it is a small investor, knows a takeover is underway.

As I say, the Senator also pointed out how important it is to protect pension funds and not permit them to then be abused. We are all concerned, about the Boesky and Levine scandals and the other black stains on Wall Street.

Then there is, as the Senator from Maryland properly pointed out, a very important State governance provision. Throughout our history, States have chartered corporations. It has worked well. It means we not only have an effective decentralization of corporate governance, but States, after all, understand their corporate problems far better than the Federal Government possibly can. I am very proud of the kind of governance we have had under Republican as well as Democratic administrations in Wisconsin. In general there has been very little criticism of the honesty and the concern for shareholders, for employees, for communities, that the States have brought to this matter.

Mr. ARMSTRONG. Mr. President, I was just going to express my surprise at the invocation of Ivan Boesky as a case in point supporting this bill.

Mr. PROXMIRE. I do not mean that he supports the bill by any means. No.

Mr. ARMSTRONG. Mr. President, I did not draw that conclusion.

Mr. PROXMIRE. I am sure you did not.

Mr. ARMSTRONG. But I did draw the conclusion that the Senator from Wisconsin was suggesting that the Boesky case shows why this bill is needed. It so happens that, with some amendments, I would support this bill. But I want to point out that the Boesky case is a case of a person who is accused and has been convicted, I believe, of violating the present law and that there is not any new provision of this bill that I am aware of that would make any act which Mr. Boesky was alleged to have committed illegal, which was not illegal in the first place. The only thing that might be different than that is section 14, which is the increased penalty for insider trading.

Mr. PROXMIRE. That is an important provision and it would affect Boesky.

There is also the 10-day window operation. Boesky and the other insiders were able to get information that an acquisition was underway when the general public did not know. They were able to buy under those circumstances and take advantage of it.

Mr. ARMSTRONG. Mr. President, I do not want to be quarrelsome but I cannot see exactly how the 10-day issue would affect the facts of the Boesky case. I am not disposed to try to argue that because I actually favor the tightening of the 10-day window. I am not opposed to that, and I do not want to quibble about it.

Mr. PROXMIRE. Would the Senator argue that the provision for a 1-year mandatory jail sentence for those who commit perjury in the course of an insider investigation could not have made it much easier for us to proceed in the Boesky case and in other insider trading cases?

Mr. ARMSTRONG. I am not so sure it would have made it any easier, but it is certainly a stiffer penalty, and an appropriate one.

Mr. PROXMIRE. That is right. It is a change in the current law.

Mr. SARBANES. Would the Senator yield on the point of relevance of the insider problem to the 10-day window?

Mr. ARMSTRONG. Let me make this point and I will be happy to yield. My concern—I do not object, as I have already said, to the narrowing of the 10-day window and the other provisions. I do not object to increasing the insider trading penalty, although I have some lingering concerns about whether we have defined insider trading properly. What does trouble me is the casual way in which we join in debate, persons who have violated the law with those who have not violated the law, who are not accused of violating the law and who in the opinion of many of us really do not deserve to be put in that same basket.

I think there are provisions in this bill which I support, and we just talked about two of them, but I do not think the Boesky case really has anything to do with takeovers or stockholder rights or greenmail or golden parachutes. That is the only point I would make is that there are several subjects in this bill and they should not be mixed in anybody's mind.

I apologize for taking a moment before yielding to the Senator from Maryland.

Mr. SARBANES. I think the Senator makes an important point. There are provisions in this bill designed to change practices which involve people not engaged in insider abuses. I think that is quite correct.

On the other hand, insider abuse, if caught, leads to criminal prosecution.

Tightening up these other provisions does open up the opportunity that in instances where it may not be caught, that the person still is not able to reap the benefits of his activity because there are now provisions that are going to expose his attack and his conduct in public light a lot sooner than might have otherwise been the case.

So it is quite true that those provisions do not directly—the other provisions, the earlier disclosure, the limitations on acquisitions and so forth—do not go to the criminal insider activity, but if someone is engaged in that activity and is not caught, tightening up these other provisions may, in fact, impede them or prevent them from reaping benefits from their improper activities. So to that extent, it is helpful.

Mr. ARMSTRONG. Mr. President, it seems a little strange to be able to say the provisions which the Senator feels would be helpful are not provisions I object to. I do not want to quibble about it. There may be more cases than I know where that would be true. The only concern I wanted to express is, let us not lump together legitimate business activity with law-breaking. Even business activity of a character we may not approve does not rise to a level of criminal conduct. There are a lot of things that are matters of corporate governance, matters of business practice. Evidently, Mr. Boesky was guilty of serious criminal wrongdoing under existing statutes, whether this bill ever becomes law or not.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, the pending amendment is the amendment that would provide for a regulation of golden parachutes. I wonder if the sponsors are aware—section 280(g) of the Internal Revenue Code already taxes payments made under golden parachute agreements at a higher rate than other kinds of income. As a matter of fact, 20 percent higher. The maximum rate now, as we know, in the new law that has been changed is 28 percent on income. Golden parachutes would be taxed as the excess payments defined under the law, which would be taxed at 20 percent more or a 48-percent tax.

Mr. SHELBY. I wonder if the Senator will yield on that?

Mr. PROXMIRE. Certainly.

Mr. SHELBY. In my opening statement in support of the amendment offered by the distinguished Senator from Colorado, I mentioned in my statement that the Internal Revenue Service, the code already treats that differently, and we can see that. I did not recall whether or not the Senator from Colorado has mentioned that in his statement or not, but in my opening statement, I did bring that up specifically.

Mr. PROXMIRE. I think the Senator is right. It nearly doubles the tax. That is an enormous increase. That is a strong disincentive.

Mr. SHELBY. If the distinguished Senator from Wisconsin, the chairman of the committee, will further yield for a colloquy?

Mr. PROXMIRE. Certainly.

Mr. SHELBY. We conceived that, and the point is well made there, but I submit to the Senator from Wisconsin, that is not enough. To have golden parachutes, as we have in this country, to enrich management, even if they have to pay a lot of taxes on it, we should cut that out, we should stop it. This amendment offered by the Senator from Colorado, and I have cosponsored it along with several other Senators, would do that. We would not have to have the problem any more, and we would not have to say: "Well, Internal Revenue Service is going to take care of that because they are going to tax it and they are going to tax it to where it is not worth it but why not go ahead and outlaw it?"

That is what the amendment would do. I appreciate the distinguished chairman for yielding.

Mr. PROXMIRE. Does the distinguished Senator from Alabama have any evidence that golden parachutes are at the same level since the tax law was changed to provide this clear, serious penalty against golden parachutes? It seems to me it makes it much more difficult for a board of directors to vote a golden parachute in excess if it is going to be subject to that kind of tax.

Mr. SHELBY. If the Senator will yield.

Mr. PROXMIRE. Yes.

Mr. SHELBY. I do not have the evidence before me, but I just do not believe that is the panacea we should look forward to. We should make the law of the land here in the Senate, and with the concurrence of the House and the President's signature, that we are going to go on record as outlawing golden parachutes, period, and not leave it to the Internal Revenue Service. I will try to dig up the information that the Senator just alluded to.

Mr. PROXMIRE. It just seem to me here we have an old dog and we not only drown it, but we have to shoot it and hang it and find all kinds of ways to go after something that has already been treated with considerable effectiveness by our tax law.

Mr. SHELBY. If the Senator will yield further, when it is a mad dog in this situation, I believe a golden parachute is a mad dog syndrome, we ought to go ahead and kill it and kill it forever and get it out of corporate society. I appreciate the Senator yielding to me.

Mr. PROXMIRE. Mr. President, I would like to call attention to the views of both the AFL-CIO and the National Association of Manufacturers. These are two outstanding organizations. I might add to that the Association of Attorneys General, Secretaries of State, and the National Governors Association, all of whom have indicated their interest and support of the bill.

First let me read from the letter of the American Federation of Labor. This is dated June 20:

DEAR SENATOR: The purpose of this letter is to state the AFL-CIO's views regarding S. 1323, the Tender Offer Disclosure and Fairness Act and to urge your support for certain amendments to be offered by Senator Sanford and Senator Sasser which we believe would strengthen the bill.

We support S. 1323 as far as it goes. In our view, the bill's reform of the Williams Act procedures, the tighter regulation of group activity, the ban on greenmail, the flexibility accorded fiduciaries, and the protection of pension funds address some of the infirmities in the present system in a helpful and sensible fashion.

The AFL-CIO, however, regards S. 1323 as a far too modest step forward. While the reforms it would work go toward a system that is fairer for stockholders and investors, the bill does not adequately protect the interests of either the target corporation's employees or of the communites in which that corporation operates. In particular, S. 1323 does not provide any protection against the dislocations that follow once a company is put in play and, one way or another, emerges in a more highly leveraged position.

S. 1323 also falls short by failing to provide enough in the way of disincentives to the making of "completely finance-driven" deals. We agree with the basic premise stated by Senator Proxmire in introducing S. 1323 that the principal aim of federal regulation in this area should be to "curb manipulators whose purpose is to put companies into play in order to make a fast buck." Yet, under S. 1323, there is still considerable room to make huge profits by speculating on a company in play. So long as that remains true, it is more likely than not that such speculation will continue unabated.

In this regard we commend to the Senate's attention an amendment that Senator Sanford will offer requiring the disgorgement of short-swing profits. Section 16 of the Securities Act of 1934 already requires all "insiders" to make certain periodic disclosure and to return any short-swing stock profits they obtain on securities that they have held for less then six months. The Sanford amendment would add to the group of "insiders" those who both own more than 3 percent of the stock and who file a tender offer or announce an intent to take over the corporation.

The Sanford Amendment provides a realistic means to limit the ability of raiders and other professional investors to manipulate the market and to profiteer from the circumstance that their raid has inflated the value of the target stock. By eliminating the profit for those who initiate takeovers for speculative reasons to reap huge shortswing returns and by thereby helping to curb rampant insider trading, the Sanford Amendment addresses fundamental deficiencies in the present system. We therefore urge your support for this amendment.

That amendment will be coming later and I am sure it will receive substantial support in the Senate.

Also deserving of your support, in our judgment, are three amendments that will be offered by Senator Sasser. First and foremost, we recommend the Sasser amendment that will particularize the disclosure already required by "acquirors" under Section 13(d) of the Securities and Exchange Act. While Section 13(d) currently requires certain acquirors to disclose any plans to make major changes in the "business or corporate structure" of a target, a 13(d) filing rarely discloses information regarding plans to close major facilities, change the location of principal business activities, terminate major operations or make considerable employment reductions. By rectifying this deficiency in current law, this amendment would benefit not only shareholders but also the target's employees and the communities in which the target operates.

We also support a Sasser Amendment that will require the Securities and Exchange Commission to study the role of proxy contests, particularly involving institutional investors, in corporate takeovers. Given the increasing evidence that many of the abusive, manipulative and speculative tactics that have plagued tender offers may be moving to the proxy forum, this is a matter that warrants serious study.

Finally, the AFL-CIO supports an amendment that Senator Sasser will offer that would lower the filing threshold under Section 13(d) from 5 percent to 3 percent of a company's stock.

Incidentally, that was the figure the bill had in it originally. The committee amended it to make it 5 percent.

S. 1323, as supplemented by these amendments to be offered by Senators Sanford and Sasser, would represent an improvement over current law. We therefore again

recommend your support for S. 1323, with these strengthening amendments.

Sincerely,

ROBERT M. MCGLOTTEN,
Director, Department of Legislation.

Then I have a letter from the National Association of Manufacturers. This is a letter to Senator RIEGLE. It reads:

NATIONAL ASSOCIATION
OF MANUFACTURERS,
May 13, 1988.

Hon. DONALD W. RIEGLE, JR.,
U.S. Senate, Washington, DC.

DEAR SENATOR RIEGLE: On behalf of the National Association of Manufacturers, I urge you to support Senator Proxmire's tender offer bill, S. 1323, and to oppose any amendments which would preempt the state's corporate governance role, such as a one-share, one-vote rule.

Senator Proxmire's tender offer reforms will have far-reaching benefits for our capital markets, companies and economy. The Proxmire tender offer bill will provide shareholders with more effective, fuller disclosure and greater fairness during tender offers. These changes will eliminate many hostile takeover abuses and allow companies to set long-term goals and compete for international markets. These reforms will help restore the integrity of Wall Street's role in the takeover market and the confidence of shareholders in the tender offer process.

Most important, the Proxmire tender offer bill does not preempt the role of the states in corporate governance matters. The states have provided a stable environment for corporate growth based on sound public policy concerns. The states have enacted laws that guard against attempts to manipulate and destabilize corporate governance procedures.

Preserving the state role in corporate law is an issue of the highest concern to the NAM and the manufacturing community. Any federal preemption amendments such as a one-share, one-vote proposal, would increase rather than eliminate tender offer abuses. The NAM strongly opposes such amendments and urges your opposition to any such proposals.

Sincerely,

JERRY J. JASINOWSKI.

Finally, Mr. President, I would like to read from a letter from the National Governors' Association, which is also from the National Association of Attorneys General, National Association of Secretaries of State, National Conference of State Legislatures, and the North American Securities Administrators Association.

MAY 20, 1988.

Hon. WILLIAM PROXMIRE,
U.S. Senate, Washington, DC.

DEAR SENATOR PROXMIRE: We, the undersigned, understand that S. 1323, The Tender Offer Disclosure and Fairness Act, may soon be scheduled for Senate floor action. We further understand that when S. 1323 is considered, amendments that would preempt the states' traditional role in regulating internal corporate governance will be offered. On behalf of the undersigned state associations, we urge you to maintain the important balance between state and federal responsibilities in tender offers and acquisitions as embodied in S. 1323, and oppose any amendments which would explicitly or implicitly preempt or intrude upon state authority to regulate internal corporate governance.

The authority of the states to regulate corporations is a fundamental principle first enunciated by the Supreme Court over 100 years ago. This authority was reaffirmed in 1987 when the Supreme Court again declared constitutional a strong state role within the dual state-federal regulatory system in CTS v. Dynamics Corporation of America. In light of this decision, many state legislatures have responded affirmatively to protect the public interest and shareholder rights by addressing takeover excesses.

We are vitally concerned about potential adverse economic impacts of abuses in corporate takeovers and acquisitions. Tender offers and acquisitions directly affect the economic well-being of the states, their communities, citizens, employees and shareholders as corporations and states seek to compete in international markets. We believe that state authority to regulate in this area is as critical for the future as it has been in the past.

We applaud Congressional efforts, as exemplified by S. 1323, to curb abuses in the corporate takeover process. Improvements upon federal disclosure requirements as spelled out in S. 1323, balanced with reaffirmation of the states' historic role in corporate governance, would provide an effective means to remedy takeover abuses.

We urge you to oppose any amendments to S. 1323 that would preempt the states' authority to regulate internal corporate governance.

Thank you for your consideration.

Sincerely yours,

CHRISTINE T. MILLIKEN,
Executive Director and General Counsel, National Association of Attorneys General.

WILLIAM T. POUND,
Executive Director National Conference of State Legislatures.

ANDREW MAGUIRE,
Vice President, North American Securities Administrators Association.

JIM EDGAR,
Secretary of State, Illinois, President-Elect, National Association of Secretaries of State.

RAYMOND C. SCHEPPACH,
Executive Director National Governors' Association.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

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

The PRESIDING OFFICER (Mr. BREAUX). The absence of a quorum is noted. The clerk will please 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.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a brief period for morning business, not to extend beyond 10 minutes, and that Senators may speak therein.

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

1988 DROUGHT DISASTER

Mr. DOLE. Mr. President, every day seems to bring more bad new for many of the National's farmers who are suffering under some of the worst drought conditions in recent memory. Many States have hardly registered any noticeable rainfall for the year, and their crop prospects look extremely bleak.

The soil is like concrete in many areas, and predictions of another dust bowl are starting to be heard. The litany of farm States experiencing dry weather is indeed ominous—Indiana, Minnesota, North and South Dakota, Iowa, Illinois, Michigan, Louisiana, Arkansas, Alabama, Georgia, Mississippi, Tennessee, Ohio, Wisconsin, Nebraska, and part of Kansas. I am certain others will be added in a brief time unless there is some relief.

With the wheat harvest underway, and the corn crop now maturing, the implications of a continued drought are alarming for thousands of farmers across the Grain Belt.

This past weekend I traveled to Minnesota, Illinois and Idaho. Although we haven't declared the current situation a national disaster, it is clear that a lot of farmers won't harvest a crop this year, or only a minimal one at best.

As my colleagues are aware, the Government has traditionally provided a safety net in times of natural disasters.

Mr. President, Secretary Lyng and the administration have been responsive and on top of the situation. Several emergency measures have been implemented: These include opening the conservation reserve program in 17 States for haying for a 30-day period.

In addition, USDA has approved haying and grazing on acreage conservation reserve, and conserving use land in over 1,000 counties in 24 States. Emergency feed programs have been approved in nine States and "zero-92" provisions have been approved for counties in seven States.

The Interagency Task Force appointed by the President was a positive step and should help in assessing further needs of both farmers and nonfarmers.

It is also, I might add, consumers who should be very concerned about this problem.

Our bipartisan drought task force—and I hope it remains partisan, or nonpartisan—composed of Democrats and Republicans on the Agriculture Committee in the Senate and the House will meet again this Wednesday to discuss further options. We had a meeting last Friday. I would hope that legislation would only be considered after all administrative actions have been pursued and we know precisely where we are going after we have had a full opportunity to assess the impact of the drought. I am fearful when we start this ad hoc approach where everyone is running around with some idea, in the final analysis the farmer is not going to benefit as much as he could if we just be patient and work together on a nonpartisan, bipartisan basis with the administration, with the American farm community. Then I believe we can find a responsible approach that reflects our care and concern about the livelihood of farmers and ranchers across the grain belt.

0-92

The "Zero-92" option, which allows farmers to receive 92 percent of their deficiency payments, has been used where farmers have been prevented from planting, and should be a helpful tool.

But there are also many producers who took the risk, and underwent the financial cost of planting a crop, but will not be able to harvest one due to the effect of the dry weather.

We will need to explore ensuring that these farmers, who are seeing their deficiency payment rate plummet due to higher market prices, receive similar deficiency payment protection as those who were prevented from planting, and there are ways you can get that done very simply by legislation.

Either through forgiving advance deficiency payments and protecting the balance of their deficiency payment, or by allowing producers to retroactively sign up for "Zero-92."

Mr. President, most farmers want higher prices, but high prices do little good if you do not have a crop to sell. And falling deficiency payments for those without a crop spell double disaster.

Some farmers, some of the fortunate ones, have large stocks in granaries. Of course they will benefit. We are very happy for those farmers who will benefit from the higher prices for wheat or corn or soybeans. But I am certain that group of farmers is a minority. There are not too many of them out there.

There are many livestock producers who are running out of both water and feed. A widespread slaughter of herds could devestate the livestock market. I would urge the Government to consider making additional beef and pork purchases to prevent a severe market price impact. In addition, there are many farmers who do not have programs crops who are faced with the same basic problem—no crop and no income—and we will have to determine how to help them as well.

SUMMARY

Mr. President, again I would state that we will need to assess the impact of the drought before pushing a legislated remedy. Any legislative action we undertake should be done on a bipartisan basis and should work within the framework of the 1985 farm bill to the extent possible.

In the meantime, we should take every possible adminstrative action to help those producers who have already been impacted. We have seen improvements in the agricultural economy during the last 2 years, but a natural disaster could spell trouble once again for the Nation's farmers and I might add again the Nation's consumers because we are going to drive up prices in the supermarket when these commodities become scarce and prices become higher and higher.

It is my hope that American farmers will understand that if our worst fears are realized regarding the spector of drought, that Members of Congress will help where we can, and that we intend to act responsibly, quickly and in a spirit of bipartisanship.

I say to the credit of Democrats and Republicans in the Senate and the House, we are trying to act responsibly. I just hope we are able to contain that and come to this floor hopefully before the July Fourth recess with a package that we can bring up here and support and pass by almost unanimous consent. If we do that, will again indicate to the American farmer and the American consumer that we are responsive and that we can take responsible bipartisan action, and that we should do that in times like this.

BICENTENNIAL MINUTE

JUNE 19, 1959: SENATE REJECTS CABINET NOMINEE

Mr. DOLE. Mr. President, from time to time I have been doing what I call a little bicentennial minute, pointing out things that have happened in the past in the U.S. Senate.

Mr. President, 29 years ago yesterday, on June 19, 1959, the U.S. Senate rejected President Dwight Eisenhower's appointment of Lewis L. Strauss as Secretary of Commerce. In its entire history, the Senate has formally denied only eight Cabinet nominations—with Strauss being the sole nominee rejected since 1925. President Eisenhower later deemed this extraordinary incident "one of the most depressing official disappointments I experienced during my 8 years in the White House."

Lewis Strauss had made a number of well-placed enemies in Congress during his earlier tenure as Chairman of the Atomic Energy Commission. His campaign to declare Dr. J. Robert Oppenheimer a security risk and his active support of the Dixon-Yates contract for private financing of nuclear powerplants engendered the disenchantment of many Senators.

His confirmation hearings quickly took on decidedly partisan overtones. They occurred in the wake of the 1958 elections, in which the Democrats had picked up 13 Senate seats—the largest single party transfers of seats in Senate history. A routine nomination evolved into a test of wills between an increasingly beleaguered Republican administration and a revived Senate Democratic majority. During the hearings, Strauss, a hard-line cold warrior, needlessly alienated nominally supportive Senators, who might otherwise have been expected to let the President have his own man in his Cabinet, with what many perceived as an arrogant attitude toward senatorial prerogatives.

Shortly after midnight on June 19, in an Chamber jammed to capacity, the votes were cast. Forty-nine Senators opposed Strauss, while 46 approved. To the chagrin of the White House and party leaders, the margin of defeat was provided by two Republicans voting in opposition. This defeat marked the onset of a virtual legislative stalemate between Congress and the White House for the final year and a half of the Eisenhower administration.

I yield the floor.

FEDERAL JUDGE ALBERT B. MARIS

Mr. SPECTER. Mr. President, on Friday of this week, June 24, 1988, U.S. Judge Albert B. Maris, of the Third Circuit Court of Appeals, will celebrate a magnificent milestone—the golden anniversary of his appointment to the Federal appellate bench.

Over the past five decades, Judge Maris has compiled a truly outstanding record as a jurist and continues to serve on the court. His tenture has been longer than any other Federal judge.

Again and again he has answered the call for special service in a wide variety of judicial assignments. During World War II, he served as chief judge of the Temporary Emergency Court. At the behest of the U.S. Supreme Court, he has served as a special master in a number of complex cases.

Judge Maris authored the judicial codes of the U.S. Virgin Islands, Guam, the Trust Territory of the Pacific Islands and American Samoa. He

led the able and renowned jurists and legal scholars who compromised the committee in the recodification of the U.S. Criminal and Judicial Codes.

In the parlance of baseball, a player receives the highest encomium of his colleagues when he is called "a ballplayer's ballplayer." It can be truly said of Judge Maris that he is "a judge's judge." He has done it all as a jurist.

On June 27, 1988, Judge Maris, who at age 94 still serves by special assignment as a senior judge on the court, will be honored by his colleagues and U.S. Supreme Court Justice William J. Brennan, Jr., at a special ceremonial session of the Court in Philadelphia.

It is altogether fitting, then, that the U.S. Senate take note of the exceptional service of Judge Albert B. Maris to the court and to his country and extend its sincere gratitude and congratulations on this most auspicious occasion.

THE LATE WILBUR J. COHEN: A REMEMBRANCE BY SENATOR ABRAHAM A. RIBICOFF

Mr. MOYNIHAN. Mr. President, recently, I was privileged to be on hand for the dedication of the Wilbur J. Cohen Federal Building on Independence Avenue. It was a good and fitting tribute to the great former Secretary of Health, Education, and Welfare to have named for him a place wherein the work he cared about so deeply is carried on.

At the dedication ceremony, a number of distinguished Members of Congress, administration officials, and others praised Wilbur Cohen for his many accomplishments and commitment as a public servant. The former Senator from Connecticut, my friend Abe Ribicoff, was unable to be at the ceremony. Knowing of the event, however, Senator Ribicoff took pen in hand and put down recollections of his work and friendship with Wilbur Cohen.

Mr. President, as we all are well aware, there is hardly a more distinguished current or former Member of the U.S. Senate than Abraham Ribicoff. He has served the Nation and his State of Connecticut as a judge, Member of the House of Representatives from the First District, Governor, and U.S. Senator. President Kennedy named Abe Ribicoff his Secretary of the Department of Health, Education, and Welfare in 1961, and so Senator Ribicoff's tribute to Wilbur Cohen, his successor in that Cabinet position, has a special meaning.

Mr. President, I ask unanimous consent that Senator Ribicoff's tribute for Wilbur Cohen be printed in the RECORD.

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

WILBUR J. COHEN

I first met Wilbur when I invited him to come to the Governor's Office in Hartford, Connecticut in late 1960 to talk with him about joining me in the Department of Health, Education and Welfare. From our first conversation, he became a close, personal friend, a confidant and one of the most able persons I had ever known.

Through the Kennedy Administration and all my years in the United States Senate, we worked closely together on all the social issues confronting the country. Of all the advances made in the social field beginning with the Administration of President Franklin Delano Roosevelt, the thumbprints of Wilbur Cohen were definitely embedded.

We went through the fight to name him Assistant Secretary in 1961 and it was with joy and admiration that I watched his continuous progress to become Secretary of the Department in the Johnson Administration. Whenever he came to Washington, we shared time together. I saw him as Dean at the University of Michigan and as professor of Public Affairs at the University of Texas. Even out of office, his contributions were many and continuous. When the bell rang from any administration or any member of the House or Senate, he gave his assistance, sound advice and drafting skills in legislation in the many fields—he was the quintessential expert needed by everybody.

The last I saw him was the summer of 1986 when we both received honorary degrees together at Rutgers University. He was still the same ebullient Wilbur Cohen.

Wilbur Cohen's achievements, accomplishments, service to our nation and mankind and his record and reputation will live on in the history of our Nation forever.—Abraham Ribicoff.

WELFARE REFORM—A PIPE DREAM

Mr. HELMS. Mr. President, this past Friday, June 17, the Senate passed S. 1511, the so-called Family Security Act of 1988. I felt obliged to vote against this bill because I was, and am, convinced that it will do precious little to end the welfare cycle and may, in fact, perpetuate it.

Mr. President, I emphasize at the outset that I am not against helping those who are less fortunate. Americans, as individuals and communities, have a responsibility to help those who cannot help themselves with our time and our money. That responsibility cannot and should not be abdicated by us as individuals. Trying to place it entirely on the shoulders of Government is a copout. It has never worked and never will.

In fact, Mr. President, history clearly shows that past efforts to shift this responsibility from individuals and communities to the Federal Government have failed. Since we embarked down the road called the Great Society in the middle 1960's, the result has been massive Federal spending, increased poverty and unfortunately, millions of Americans trapped in the welfare cycle.

Mr. President, statistics show that child poverty is the core of the welfare problem. Declining steadily from 1959 to 1969, it then began rising hitting 19.5 percent in 1981 and has remained over 20 percent ever since.

This was not a national phenomenon, Mr. President. It was concentrated in the States which pay the highest Aid for Families with Dependent Children [AFDC] benefits. A study for the Joint Economic Committee last year by Ohio University professors Richard Vedder and Lowell Gallaway showed that from 1969-79 child poverty increased close to 40 percent in the 10 States with the highest AFDC benefits while child poverty decreased 20 percent in the 10 States with the lowest benefits. Between 1979 and 1984 black poverty rates in the South fell while the West suffered a 38-percent increase—even though AFDC benefits in the West were twice those in the South.

The "Family Security Act of 1988" ostensibly "reforms" welfare to reverse the errors of the past. Unfortunately, it will do nothing of the sort. It will not require all able-bodied welfare recipients to work. It will not foster individual responsibility. It simply robs from the State and Federal treasury billions of dollars—a bill which our children and grandchildren will be forced to pay.

Let's look at the specifics of the bill, Mr. President:

First off, S. 1511 would create an entirely new entitlement to education and job training for AFDC recipients called the JOBS Program which will eventually cost taxpayers $1 billion a year. This money will be in addition to education and job training funds already targeted for the poor through the Adult Education Program, Job Training Partnership Act block grants and several other programs.

In the debate on S. 1511, Mr. President, we heard a lot about the supposed requirement under the JOBS Program that AFDC recipients either work, train, or be looking for a job in order to receive benefits. However, numerous exemptions together with the conditions imposed on the individual States effectively emasculate any mandatory aspects the JOBS Program might otherwise have.

Mr. President, approximately 50 percent of the AFDC caseload would be exempt from mandatory participation in the JOBS Program for one reason or another. For example, only able-bodied AFDC recipients with children over 3 years of age would be required to participate. This provision alone will exempt over 20 percent of all AFDC recipients. It will also effectively foreclose efforts to intervene early in the welfare dependency cycle despite the fact two-thirds of mothers who use AFDC for 10 years or more first enter the program with a child under three.

Mr. President, mandatory participation in the JOBS Program would also be contingent on the States guaranteeing child care, transportation, and other work-related expenses for all participants. Even when recipients could be required to participate, States would not have to provide any significant work-related activities and could even pay for them to attend post-secondary education as part of the JOBS Program. As Senator ARMSTRONG noted in the Finance Committee's report, this may entice some to go on the rolls to reap significant education benefits.

Most ludicrous of all, Mr. President, S. 1511 would prohibit participants in the JOBS Program from taking most jobs. Participants could not be given jobs that cause current employees to be displaced, lose hours, or lose promotional opportunities. They also could not be given jobs filling vacancies in established positions or which result from lay-offs. In other words, Mr. President, the JOBS Program would only permit participants to fill newly created jobs.

Mr. President, States also could not force AFDC recipients to take jobs paying less than the AFDC benefit amount unless a State will pay the difference between a recipient's wages and the former AFDC benefit. Each year, Mr. President, millions of Americans enter the workforce making less than what they could receive under welfare. However, they are almost certain to earn much more in a few years than they would receive from welfare. I fail to understand why welfare recipients should receive a wage guarantee unavailable to other Americans.

Mr. President, if welfare recipients find and are willing to accept jobs, States must then provide them with 9 months of child care at a 5-year cost of $400 million to the Federal taxpayer. It will cost State taxpayers $300 million on top of that. Nine months of "transitional" Medicaid benefits costing another $700 million would also have to be provided. These new benefits more than double the current transitional benefits to families leaving the AFDC Program.

Mr. President, in addition to expanding benefits the bill would also expand eligibility by making the AFDC-UP Program mandatory to the States rather than optional. Under AFDC-UP, welfare assistance is extended to two-parent families in which the principal wage earner is unemployed. Another 130,000 families will thus be sucked into the welfare trap costing Federal taxpayers $1.1 billion and the State taxpayer $600 million over the next 5 years.

Mr. President, its apparent that this bill—when looked at in its entirety—will not force welfare recipients to work as its advocates proclaim. S. 1511 sells out to the tried and failed philosophy of begging welfare recipients to work via work incentives and expanded benefits.

The mandate that recipients either work or prepare for work is negated by the bill's other provisions. Half of welfare's caseload would be exempt for one reason or another and the remaining recipients may only be forced to take newly created jobs—which are few in number—as part of the JOBS Program. Even when participation could be compelled, States would have to pay related transportation and childcare expenses. Finally, States could not require recipients to take jobs unless the States will pay shortfalls between recipient wages and the AFDC benefit.

Mr. President, the hodgepodge of programs constituting our welfare system obviously needs to be coordinated and streamlined. However, the "Family Security Act of 1988" merely takes us back to failed policies of the past rather than enacting meaningful improvement. The American taxpayer—and welfare recipients—deserve better. I sincerely wish I believed S. 1511 would reform welfare, but I do not, and for that reason I voted against S. 1511.

RECENT CAMPAIGN FINANCE DEVELOPMENTS

Mr. MCCONNELL. Mr. President, while S. 2 lies dead in its grave—and most of us do not expect it to come back for the remainder of the year—the cause of campaign finance reform marches on. I would like to discuss a couple of recent developments. The so-called "millionaire's loophole" restriction was successfully added by this Senator to the Ethics in Post-Employment Act, which the Senate acted on earlier this year. That provision—which a lot of my colleagues may not be aware of, since we approved it on voice vote—prohibits candidates from paying themselves back from contributions after the election. In other words, if they ante up money in advance of the election, they cannot go around after the election and pay themselves back. I think that would be a significant deterrent for one of the main problems we have in campaign finance today, and that is a growing number of people simply trying to buy public office from personal wealth.

In addition, a tougher version of the earlier McConnell-Packwood bill has been introduced that would prohibit all PAC contributions to candidates and political parties. It would tighten the antibundling provision contained in S. 2. Unfortunately, we still do not have a cosponsor from the other side of the aisle for this strict reform measure.

In addition, Mr. President, I intend to introduce shortly a Presidential election reform bill. The bill has been prepared and I have been discussing it with a number of my colleagues. This bill would end the three-quarters-of-a-billion-dollar failed entitlement program for those who seek the Presidency, and strip away disastrous spending limits that have done nothing to limit spending, wasted millions of dollars on lawyers and accountants, and promoted cheating and soft money spending.

Further, Mr. President, it is interesting to note the recent California referend, and I would like to congratulate the citizens of that State, who spoke on the campaign finance issue just a couple weeks ago. The Nation's largest and most progressive voting bloc voted in favor of campaign finance reform based on the congressional system of contribution limits and full disclosure, the kind of system we have right here in electing Members of Congress.

The voters in fact rejected taxpayer financing of elections. Fifty-eight percent voted for contribution limits and against taxpayer financing. In effect, they said no to the ridiculous Presidential system, no to Common Cause, and no to the absurd proposals like S. 2 which would extend this disaster area any further.

For an incisive analysis of that particular referendum, Mr. President, I ask unanimous consent that an article appearing in the Wall Street Journal be printed in the RECORD.

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

[From the Wall Street Journal, May 9, 1988]

CALIFORNIA VOTERS SPLIT ON MEASURES FOR ELECTION FUNDS

(By Jill Bettner)

California voters approved campaign-spending reforms, but sent mixed signals about their views on public financing of legislative races.

Results of Tuesday's closely watched California primary election—in which voters also approved a record issuance of bonds and turned aside a proposal to close the Rancho Seco nuclear plant outside Sacramento—showed that each of the two rival campaign-spending initiatives were approved. The state attorney general's office said a decision on which measure is adopted will be made by the California Fair Political Practices Commission.

Proposition 68, sharply limiting political donations and spending in legislative contests, would create some public financing for campaigns. The other campaign-reform measure on the ballot, Proposition 73, limits contributions but bars public financing. The latter also applies to all state public officials, whereas Proposition 68 applies only to state legislators. Because Proposition 73 received more votes—a 58% yes vote compared with 53% for Proposition 68—some observers expect the ban on public financing will prevail.

While concerned that Proposition 68's public financing might not become law, the coalition of citizens groups that lobbied for that approach to cracking down on big-money politics was hoping the impact of the favorable vote will be felt nationally.

"There's a strong message there for the country that these rotten campaign-finance systems must be reformed," said Fred Wertheimer, president of Washington-based Common Cause.

The opposition to Proposition 68, which included Gov. George Deukmejian, ended its heated drive for rejection of public financing with a controversial television commercial that depicted the Ku Klux Klan scheming to get public tax dollars.

While three-quarters of states in the U.S. curb campaign financing in some way, only three states have some sort of minimal public financing for state lawmakers. It's unclear whether California's embrace of conflicting public finance measures will help or hurt efforts to win public financing of congressional campaigns.

The Rancho Seco ballot measure—sponsored by managers of the problem-plagued, recently refurbished Sacramento plant—was narrowly approved with a 51.6% vote. It gives the plant another 18 months to prove itself. A rival measure that would have closed the plant permanently was defeated by an even slimmer margin, with a No vote of 50.4%.

California votes also approved a record $2.2 billion in proposed bond issues to finance programs for schools, parks and veterans, as well as water and earthquake rehabilitation projects. A vote on a proposed $1 billion highway bond issue was too close to call late yesterday.

Voters rejected a measure that would have subjected AIDS patients to quarantine and late yesterday a controversial "slow-growth" initiative in populous Orange County near Los Angeles also seemed headed for defeat.

Mr. McCONNELL. In addition, Mr. President, an article also appeared recently in the Washington Post on soft money; it was followed up with an editorial shortly thereafter in the same paper. The key points of both articles were right on the money, if you will. Soft money is a "major legal loophole allowing unions and corporations to spend around restrictions, limits, and disclosure requirements by which everybody else abides", the Post said.

The Post editorial further asserted, and I agree,

Soft money is a loophole that needs to be plugged, (because it) vastly understates the amount of financial aid given. This is information the public only should have.

Federal reporting requirements that do not include soft money means that the public is getting only partial disclosure. The Federal Election Commission should require that all contributions that benefit Federal candidates be federally reported.

Mr. President, I ask unanimous consent that both Washington Post articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 14, 1988]

FOR 1986 RACES IN FIVE STATES, $3.3 MILLION "SOFT MONEY"—CORPORATE GIFTS AUGMENTED BY $500,000 IN NATIONAL FUNDS; CRITICS SEE MAJOR LOOPHOLE

(By Charles R. Babcock)

Corporations, which are barred from donating to campaigns for federal office, gave $3.3 million directly to state party committees in five states where key Senate races were held in 1986, according to a new survey in the selected states.

The research by the Center for Responsive Politics, a self-described public-interest group, showed that these "soft money" donations, outside the controls of federal law, were augmented by $500,000 in such contributions transferred to the same state committees by their national parties.

Critics of "soft money" call its use a major legal loophole in federal election laws because the state parties can and do accept the funds from corporations and unions, which are barred from giving directly to federal campaigns; because they give in amounts far above the $1,000 individual limit in federal races, and because the donor and amount need not be disclosed by federal law. The state parties can then use the money for activities such as registration drives and get-out-the-vote efforts that help federal candidates, such as Senate candidates, even though the donation does not go directly to an individual federal campaign.

For instances, the center's survey found that Charles H. Keating Jr., head of a controversial California savings and loan, gave $100,000 personally to the Florida state Republican Party just before the 1986 election, and his holding company, American Continental Corp. of Phoenix, gave another $85,000 about the same time to the California Democratic Party.

The only larger corporate donor in the states surveyed was Atlantic Richfield Co., which gave $79,000 to the state GOP and $10,000 to the Democrats in California.

At the time of the large donations, Keating was sparring with federal regulators over their long-running examination of his Lincoln S&L of Irvine, Calif. He and his family contributed at least $8,000 directly to the campaign of Sen. Paula Hawkins (R-Fla.) in July 1986, according to Federal Election Commission records.

The race, which Hawkins lost, was a key one in the Republicans' unsuccessful bid to retain control of the Senate. The $100,000 personal contribution to the Florida GOP is permitted under state law, as are the corporate donations his American Continental made to the Democrats in California.

Keating and his family gave $6,000 directly to Sen. Alan Cranston (D-Calif.) a member of the Senate Banking Committee, who won a close race for reelection that year. A spokesman for Keating and his company declined to comment yesterday on how they picked the Florida and California parties and whether they have made "soft money" donations to other states.

The survey found that corporate donors gave $1.1 million to state parties in California, nearly $925,000 in Florida, about $717,0000 in Colorado, $392,000 in Missouri and $161,000 in Washington state. Nearly three-quarters of the total $3.3 million went to Republican state parties. Few union "soft money" donations were found.

Ellen S. Miller, executive director of the center, said the group's research compiled 1,700 donations to reach the $3.3 million in the five states. "This amount if multiplied nationwide would blossom into an enormous sum, despite the fact that there was no presidential race to boost contributions even higher," Miller said.

She said her group didn't attempt to follow how the corporate money was spent and added that the center wasn't trying to imply the process was in any way illegal. The state say such funds go to voter registration and get-out-the-vote compaigns. The center's concern, she said, is that the nonfederal money "may be seeping into the federal races."

Paul G. Kirk Jr., Democratic National Committee chairman, said last week that his committee will disclose voluntarily the source of its "soft money" donations for the fall presidential campaign. The Republican National Committee has not made such a pledge.

[From the Washington Post, June 15, 1988]

MR. KEATING'S SOFT MONEY

The problem of soft money continues to fester. "Soft money" means political contributions illegal under federal law—because they're over the limits or are made by corporations or unions—but legal under state law; soft money isn't supposed to be used to affect the outcomes of federal elections, but obviously when a state party uses soft money to register and turn out voters, it's helping its Senate and House as well as state candidates. Yet soft money is not required to be reported at the federal level.

To get an idea of the scope of soft money, the Center for Responsive Politics went to five states with disclosure requirements and counted the soft money contributions for 1985 and 1986. They found some $3.3 million in soft money given to state parties in California, Colorado, Florida, Missouri and Washington. And they found at least one interesting contributor. Charles Keating Jr., who runs an Irvine, Calif., savings and loan, gave $100,000 to the Florida Republican Party just before the 1986 election, after he and his family had already contributed $8,000 to the campaign of Sen. Paula Hawkins (R-Fla); and a Keating-controlled holding company gave $85,000 to the California Democratic Party, after Mr. Keating and his family gave $6,000 to Sen. Alan Cranston (D-Calif.). Perhaps coincidentally Mr. Cranston was one of five senators who met with federal regulators in 1987 to argue in Mr. Keating's behalf. Mr. Keating didn't want regulators in the San Francisco office to force low appraisals of real estate that might have forced a $167 million write-down of the assets of the savings and loan. After the meeting with the senators, the regulators transferred the case out of the San Francisco office and a different settlement was reached.

We see no evidence that the Keating contributions were illegal. We do see a prime example of why the soft money loophole needs to be plugged. The disclosures of the Keating contributions in federal records vastly understate the amount of financial aid he gave Mr. Cranston and others. This is information the public should have. But to get it you have to comb through the records, as the center usefully did, in Tallahassee and Sacramento.

Federal reporting requirements that do not include some money contributions mean that the public is getting only partial disclosure. The Federal Election Commission, in its current review of soft money rules, should require that all contributions that benefit federal candidates be federally reported and that funds centrally collected by the national parties and centrally disbrused by them to state parties be centrally disclosed. In the meantime, the Republicans who have made partial disclosure and the Democrats who have promised future disclosure should disclose all their soft money contributors now.

Mr. McCONNELL. These soft money articles also reflected the futility of an overall spending cap, unless you make the FEC as big as the Veterans' Administration and give it the powers of Big Brother. Both pieces were based on a report by the Center for Responsive Politics—which by the way, refused to provide a copy to my staff. More importantly, the articles only chipped at the tip of the iceberg of soft money.

Totally neglected was political spending by labor unions, which dominate the black market of soft money support. In 1980, for example, organized labor provided an estimated $11 million in soft money, all unreported and unlimited. In 1984, big labor conducted "an electoral Jihad." Labor and other special interests spent $30.4 million in soft money to support their particular candidates. This included a million dollar ad campaign by the AFL-CIO, which sharply criticized one candidate's policies but did not mention either candidate by name. In Ohio, AFL-CIO set up 80 phone banks and paid unemployed members $4 an hour to make 10,000 calls per day, without advocating a special candidate, of course. The Teamsters spent $2 million directly and provided services worth $6 million to benefit its particular choice in that election.

Labor organizations reported spending $4.5 million on communications to members for certain candidates. No one really knows how much they do not report.

After the 1976 election, Michael Malbin wrote: "The biggest winner of the Presidential system was organized labor. Public financing shut off private contributions. Party contributions also were limited.

"In contrast, labor could spend as much as it wanted, in communicating with union members, registering them to vote, and getting them to the polls.

"When labor unites behind one candidate, as it did in 1976, a system in which private contributions are prohibited, leaves it in a position no other groups can match. Little wonder that labor calls the campaign finance experiment a success."

While we are talking about soft money and ways of getting around spending and contribution limits, we should also look at the entire underground economy of tax-exempt corporations—laundering money for unions and Democratic candidates, violating contribution limits, the corporate contribution prohibition, and the Tax Code. In 1984, about $6.7 million was spent by 85 tax-exempt organizations to conduct "nonpatisan" voter drives. All of these operations were undisclosed and outside the legal limits.

Yet the funds used by these organizations were directed by operatives from the political parties and campaigns. According to Herb Alexander, author of "Financing the 1984 Election."

TOTAL SPENDING OUTSIDE OF LEGAL LIMITS

Before spending limits and taxpayer financing, outside spending constituted less than 10 percent of overall spending.

In 1980, special interest spending to influence elections represented at least one-quarter of all money spent.

Nearly half the total spending in the 1984 general election—$72 million—was spent outside candidates' direct control.

And at least one-fourth of all money now spent in Presidential races is unreported, unlimited, and unaccountable.

So if we are going to look at soft money, let us look at the whole, sordid picture.

Let us be realistic about the true effect of spending limits—they only encourage black market politics, forcing campaign spending underground, out of public scrutiny and control.

PHILIP STERN EDITORIAL

Finally, there was another article which appeared in the Washington Post on June 12.

It was written by Philip Stern, the son of a Sears heiress, who has put together the worst book money can buy, called The Best Congress Money Can Buy. The only thing I have found of value in this book is the 1-dollar bill provided inside as a bookmark.

In the book excerpt printed by the Post, Stern suggests the following rule: "If you can't vote for a candidate, you can't give money to him or her." Stern admits that such a rule not only violates the Constitution, but also would "doom to perpetual defeat nonincumbents from small, poor States and challengers like MIKE ESPY, the new black Representative from Mississippi."

The resurgence of the two-party system throughout this country, and the growth of election competition for Senate seats, are the direct results of increased public participation through small, disclosed, voluntary contributions.

Our Constitution gives each citizen the right to support any candidate who stands for what they believe in, whether it is lower taxes, civil rights, strong defense, more social services, whatever issues that candidate is running on.

A rule like the one Stern proposes would lock incumbents into power, undercut poor but promising challengers, and eliminate the two-party system in many States.

In response to this alarming result, Stern lamely asserts that, "while those fears may be well-founded under today's ground rules * * * with public campaign financing, the challenger would be guaranteed a level playing field, at least in general election contests."

I have news for Mr. Stern: There is not going to be any public financing of congressional elections; it is an irresponsible waste of taxpayer money, at a time of mounting Federal deficits; and the public will not tolerate it, as evidenced by the clear 58-percent mandate in California rejecting it.

To people who have earned their money, it would be utterly offensive to have to pay more taxes so that someone who looks in the mirror one morning and sees a Senator can run for office—and have the public pick up the tab.

Who is Lenora Fulani? You may not know her, but she is costing you close to a half a million dollars.

Who is Lyndon Larouche? You may know that his lieutenants put together a California referendum requiring names of AIDS victims to be printed in the paper. In 1984, he spent a half-million of your money, and he just qualified for more Federal funds this year.

If you do not like out-of-State PAC fundraisers, abolish PACs. I have introduced legislation to do just that, and there is not one Democratic cosponsor.

However, if you put a limit on out-of-State contributions from the little people who want to have a say, you will have less party competition, fewer successful challengers, more millionaire Congressmen, and less free political participation in our country.

NO INVITATION TO TOSHIBA JUSTIFIED

Mr. HELMS. Mr. President, today the Department of Defense begins a series of briefings for business representatives regarding the development of new weapons and military equipment. DOD will discuss its plans for improving conventional weapons and the development of the next generation fighter aircraft.

Company representatives will visit research and development agencies operated by the U.S. Army, Navy, and Air Force.

The Department of Defense has invited 13 Japanese firms to participate in the briefings, including the Toshiba Corp. According to news media accounts, DOD is seeking Japanese assistance in upgrading the quality of missiles and other types of guided weapons, armored vehicles, and antisubmarine warfare equipment. Further, a high DOD official is scheduled to visit Tokyo next week to explore possibilities of joint weapons development.

Mr. President, DOD's actions represent a serious lack of judgment on important national security issues. First, the United States, as the defender of the free world, must not become de-

pendent upon foreign military suppliers for critical equipment.

Foreign suppliers obviously take direction from their national governments. In a time of crisis there is no guarantee that a foreign government will make the kind of judgments we would need or prefer. This is true, no matter how closely allied to the United States the foreign government may be. If the United States should require a certain critical technology available only in the hands of a foreign firm, then as a matter of policy the foreign firm should not become a supplier of products to the United States. Instead, the foreign firm should license production to a U.S.-controlled firm. The reason is clear.

Second, with specific regard to Japanese firms, it is worth noting that the Japanese Constitution specifically prohibits the production of weapons of war. To date this has been interpreted officially as not precluding items strictly for defense. However, the debate on that point in Japan is not closed—and it is not at all clear what interpretation a succeeding government might have. This makes military tieups with Japanese firms particularly problematical.

Finally, there is the question of participation by the Toshiba Corp. For good reason, the name Toshiba has become synonymous with betrayal. In August of last year, after the high-level resignations, after the full page ads in American newspapers and after the assurances by the highly paid lobbyists and consultants, we discovered that Toshiba was even then trying to sell out the alliance.

Without question, Mr. President, any firm with a record of illegal sales of controlled equipment as long as Toshiba's has no business becoming a contractor to the American Defense Department. It is worth noting that Toshiba Corp. stands accused of having sold to the East bloc two complete factories for the production of highly critical defense electronics, precisely the sort they want to sell to us. Such sales are currently prohibited in fiscal year 1988 and the House Appropriations Committee has just extended it to fiscal year 1989.

Mr. President, I ask unanimous consent that a letter sent this past Friday, June 17, by Senator GARN, Senator PROXMIRE, Senator HEINZ and myself, along with others, to Secretary Carlucci be printed in the RECORD at the conclusion of my remarks.

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

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,

Washington, DC, June 17, 1988.

Hon. FRANK C. CARLUCCI III,
Secretary of Defense, The Pentagon, Washington, DC.

DEAR MR. SECRETARY: We are writing to voice our objection to the recent Defense Department decision to include Toshiba Corporation in briefings on U.S. defense procurement. This decision undercuts our commitments to technology security and is contrary to the clear intent of Congress. It should be reversed.

There should be no argument from the Defense Department that leakage of critical technology to the Soviet Union forces the United States to pay tens of billions of dollars to defend against our own technology. Toshiba Corporation of Japan and Kongsberg Vaapenfabrikk of Norway, one a world technology leader and the other a government-owned weapons company, have been shown to be willing collaborators in this process. Yet the Department with primary responsibility for protecting our national security has decided to include Toshiba in procurement briefings as if nothing had happened.

This action sends a terrible signal about the U.S. commitment to technology security. By minimizing the importance of the Toshiba-Kongsberg diversion during the trade debate, Defense officials created the strong impression that the Department is unconcerned either with the technology loss that took place or the lax corporate security that permitted it to happen. That error of judgment is dwarfed by the decision to invite Toshiba to participate as full partner in U.S. defense briefings on future procurement. No one can take the United States seriously on these matters if we reward violators by opening the door to the defense contracting process.

The Department's actions are also directly contrary to the intent of Congress. In defense appropriations language, Defense was forbidden to undertake any procurement from the Toshiba Corporation and Kongsberg Vaapenfabrikk during FY 1988, a ban which the House Appropriations Committee has extended through FY 1989. In the trade bill, a broader sanctions provision was adopted that would ban all government procurement with these companies for three years and would impose sanctions in similar cases that arise in the future. Sanctions are in effect because Congress wants to send a strong signal that betrayal of our security is not going to be tolerated. That intent is thwarted by the actions of the Department.

Finally, participation by Toshiba in this program gives an unreliable partner access to the defense planning process. Even if these initial briefings place no classified information at risk, they provide too much access for a firm that has shown so little concern for Western technology security. Toshiba has enhanced internal corporate controls with the goal of improving its performance in this area. However, they have much to prove before they can be entrusted with access to the development process for U.S. defense systems.

For all of these reasons, we believe the actions of the Department have been ill advised. We urge you to exclude the Toshiba Corporation from next week's briefings.

Sincerely,

Senator JOHN HEINZ,
Senator JESSE HELMS,
Senator JAKE GARN,
Senator WILLIAM PROXMIRE.

SPECIAL ISOTOPE SEPARATION PROJECT

Mr. SYMMS. Mr. President, in light of the ongoing debate on the special isotope separation [SIS] project, I would like to bring to your attention a recent editorial which appeared in the Washington Post entitled "Do We Have More Nukes Than We Had 20 Years Ago?" It addresses the fact that the majority of Americans are not aware of the status of this country's defense capacity. Most people feel we do not need any new source of plutonium; they believe there is an abundance of nuclear material for our Defense Program. This is definitely not the case. On the contrary, the weapons stockpile has steadily decreased, as much as 75 percent in the last two decades, and very few people in America pay enough attention to be aware of this fact.

This false sense of security has become very apparent to me with regard to the SIS project. There are a number of people in my own State of Idaho who have voiced their opposition to this project because they are unaware of the need. The fact is, the SIS is vital to our national security. It is not a question of increasing our stockpile but of recycling the material we have lost either through aging or technological advances which make our current defense systems obsolete. When the SIS does come on line, it may well be our only source of plutonium.

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

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

DO WE HAVE MORE NUKES THAN WE HAD 20 YEARS AGO?

(By Norman Podhoretz)

Question: By how much has the American nuclear arsenal increased over the past 20 years?

If you recognized this as a trick question—if, that is, you know that the American nuclear arsenal has become not larger but smaller, much smaller, over the past 20 years—then you are one of a very tiny minority of your fellow countrymen who know what they are talking about when they discuss the arms "race" and arms control.

Thus, in a recent poll taken for the Committee on the Present Danger, Penn and Schoen Associates asked a random national sample of Americans (not in the tricky form I have just used but in straight-forward terms) whether the total number of nuclear weapons in the U.S. arsenal has increased, decreased or stayed the same over the past 20 years.

Now, the plain fact is that we have 8,000 fewer nuclear weapons of one kind of another today than we had in 1967. Yet an astonishing 75 percent of the American people believe that the number has increased, and another 11 percent labor under the delusion that it has stayed the same.

As against this 86 percent who are ignorant or misinformed, only 7 percent of the

American people are aware of the true situation, at least in general terms. And things get even worse as we examine the poll a little further.

For example, in addition to being asked about numbers, the respondents were questioned about the explosive power of our nuclear stockpile. On this point, 84 percent gave the wrong answers (that it has either increased or stayed the same), while only 4 percent said correctly that our nuclear arsenal is less powerful than it was 20 years ago.

Not even this 4 percent, however, had more than a vague idea of how large the decrease in explosive power has been. In fact, when asked about that, not one of the 802 persons polled, not a single one, picked the correct category of "50 percent or more."

In other words, practically nobody in America realizes that the total yield of our nuclear stockpile, as measured in megatonnage, has declined by about 75 percent—yes, 75 percent—in the past two decades.

Nor have arms control agreements had anything to do with these reductions. They are mainly the result of technological developments that have made nuclear weapons more accurate. Furthermore, such developments would ironically have been prevented if some arms-control enthusiasts had had their way.

Given the abysmal level of knowledge revealed by the Penn-Schoen poll about the trends over time, it is less surprising than it might otherwise have been to discover that very few people in America have an accurate notion of what has happened to our nuclear stockpile during the Reagan administration.

Here again only 7 percent know that under Reagan (and of course without counting the weapons that will be eliminated by the newly ratified INF Treaty) there has been a decrease in the size of our nuclear arsenal.

True, the decline under Reagan (about 3 percent) has been much smaller than was registered in the period between 1967 and 1980. But a decline it still is, and not the increase the nearly two-thirds of the American people imagine Reagan has brought us.

The Penn-Schoen poll did not go into the issue of defense spending. But it is a safe bet that no more than a comparably minuscule number of Americans realize that only 15 percent of the defense budget is devoted to nuclear forces. And how many Americans understand that even the 50-percent cuts in long-range missiles contemplated by the proposed START agreement would amount to only about 2 percent of the defense budget?

Stop for a minute and consider how it has come to pass that so many of us in this country are either ignorant or misinformed on issues that are literally matters of life and death to us all, and that we hear and read about almost every day.

Does the explanation perhaps lie in a lack of education? On the contrary. The respondents in this poll who went to college proved to be more (and on some questions a lot more) ignorant or misinformed than those who had not enjoyed the benefits of a higher education.

The reason for this discrepancy, I suspect, is that the college educated have paid more attention to the clamor about nuclear weapons that has for so long been filling the American air with distortions and outright lies. By contrast, people who have averted their eyes and ears—either because they thought they would be unable to understand the discussion, or because they found it too unpleasant, or because they had more interesting things to do—have undergone a less thorough course of brainwashing than their intellectual "betters."

Yet even without excessive exposure to the relentless campaigns waged in and through the media against the arms "race," the relatively unschooled have also for the most part been left with three flagrantly false impressions: that the United States has been engaged over the years in a massive buildup of its nuclear forces; that this process has escalated to unprecedented heights since Ronald Reagan became president; and that it is one of the main causes of the growth in the federal deficit.

In the face of this egregious illustration of how hard it is for a simple set of facts to penetrate the mind of the public against the will of the media, what becomes of the theories of liberal democracy on which our political system is built? What, in particular, becomes of the belief that the truth is bound to prevail in a free competition of ideas? And what becomes of the Jeffersonian faith in the protections that are supposed to be afforded by a well educated citizenry against the deceptions of demagogues?

IN HONOR OF CHIEF JUDGE ALEXANDER L. PASKAY

Mr. CHILES. Mr. President, July 1, 1988 marks Chief Judge Alexander L. Paskay's 25th year on the U.S. Bankruptcy Court for the middle district of Florida. I would like to take this opportunity to thank him for his years of service on the bench and his contribution to the legal profession in general.

As if 25 years of service on the bench were not enough, Judge Paskay has distinguished himself as a legal scholar and author. Judge Paskay is chairman for the Annual Bankruptcy Seminar, sponsored by Stetson University College of Law, a post which he has held since 1974. As adjunct professor at Stetson University College of Law, Judge Paskay has taught courses on creditors' rights since 1973. Additionally impressive, in 1979, Judge Paskay was appointed by Chief Justice Burger to serve on the Advisory Committee on Bankruptcy Rules. The judge currently serves on the Administrative Office of the U.S. Courts Task Force on Bankruptcy Forms.

A noted authority on bankruptcy law, Judge Paskay authored the "Handbook for Trustees and Receivers" and its 1978 supplement, and coauthored the "14th Edition of Collier on Bankruptcy," which is considered to be the leading text in its field. Judge Paskay serves as a member of the board of advisors of the Annual Survey of Bankruptcy Laws and is coauthor of volume 6 of "Norton Bankruptcy Law and Practice," published by Callaghan Co.

Judge Paskay has also served the legal community through his extensive involvement in legal organizations. A member of the American Bar Association, the Florida Bar Association, and the Hillsborough County Bar Association, his reputation is widespread. He has served in the past as chairman of the Bankruptcy Committee of the Florida Bar, and presently serves on the advisory council of the Consumer Credit Counseling Service of Tampa and as bankruptcy liaison to the judicial council of the fifth circuit on the Bankruptcy Act.

As further tribute to the life and career of Judge Paskay, I think it worth mentioning that he has overcome much adversity in his early life. A native of Hungary, Judge Paskay was deported by German occupational forces to Germany in 1944, where he spent the remaining months of World War II in a labor camp. After being liberated by the British forces in 1945, Judge Paskay joined the British Army as staff interpreter. He quickly became chief interpreter for the British War Crimes Commission, interrogating Germans accused of having committed war crimes, and later worked for the French occupational government in charge of all displaced persons in the French zone of occupation.

In 1949, Judge Paskay immigrated to the United States where he resumed his education, receiving his LLB degree and the degree of juris doctor from the University of Miami School of Law. Prior to accepting his judgeship, he was employed as a research assistant for the late Hon. Joseph P. Lieb, a Federal district judge in the southern district of Florida.

On this occasion, commemorating Judge Paskay's 25 years on the bench of the U.S. Bankruptcy Court, I wish to commend Judge Paskay for his hard work and dedication to the profession of law and wish him the happiness and pride that he so well deserves.

AFGHANISTAN

Mr. ARMSTRONG. Mr. President, the recent events in Afghanistan are certainly encouraging, but the departure of Soviet troops will not restore the damage caused by 8 long years of Soviet occupation. The United States should, and I am confident will, assist the Afghans in rebuilding their country with democratic reform. I recently received a letter from a long-time friend in Colorado on this particular subject. His thoughtful comments are timely, and I urge my colleagues to take a few moments to read them. The following is his letter, in part:

> Reeling under the genocidal atrocities of the greatest military power in the world, the ancient and once proud nation of Afghanistan is nearly destroyed. One third of the country's peoples are refugees, living in squalor on the edge of what was their native land . . . over one million have been killed outright. Small bombs disguised as toys were dropped from helicopters in villages and thousands of children have lost arms, legs and eyes. No civilized people the world

over can visualize such barbarous, inhuman actions.

But the people struggle on . . . imbued with strong Moslem faith, rooted in their culture of thousands of years, trampled repeatedly throughout history by foreign hordes; they have always come back . . . and will again. Now this communistic and militaristic power, that has decimated the Afghans, finds that to continue this attempt at complete genocide and occupation costs enormously in lives and diversion of military might and funds, and is trying to withdraw and save face.

Our country is being drawn into this scheme with the hopes that we will quit providing weapons and non-military supplies to the struggling Mujahadeen (fighting to regain their country) and will agree to pressure the Pakistanis and the leaders of the freedom fighters into agreeing to a pull-out of the USSR forces that will leave the present form of government (a communist puppet) in power. This scheme will fail . . . [and the Afghans] will continue to fight until they (the Communists) are out.

Tentative plans call for the first withdrawal of the USSR troops by May 15, with one-half gone by mid-August, with the refugees returning and all troops out by November. These plans will work only if the communist government folds its tent and slops into oblivion . . . otherwise the USSR will maintain troops in Kabul and the fighting will go on . . . or the USSR may withdraw all support and let the Mujahadeen finish off the puppet government and, hopefully, set up one of loyal Afghans.

Regardless of just how this scenerio is played out, the Soviets will leave and the Afghan refugees and freedom fighters will return home. This is our point of entry, let's help them get back home and re-established in their homeland.

These are some of my own experiences with rehabilitation of war-torn areas and with the Afghan people.

June, 1946, I joined the UNRRA (United Nations Relief and Rehabilitation Administration) and worked for nine months in war-torn areas of Germany, Greece, Sicily and Italy. My assignment was to help farmers get livestock, seeds, machinery and other help needed to get back into food production. I literally waded through the aftermath of WWII . . . cities destroyed, power and water sources bombed, farm buildings in rubbles, people in rags, local governments in utter disorganization and making only feeble gestures at rebuilding. The UNRRA was the first, except Red Cross, on the ground, but its efforts and those of the later Marshall Plan have given these countries an astounding comeback coupled with the people and their eagerness to rebuild . . . Now Germany is a leading nation among those of the western world.

August 1953, I joined the MKE (Morrison-Knudsen-Afghanistan) group to develop the southwestern part of Afghanistan. I travelled hundreds of miles in a WWII jeep, flew in the bubble of a reconnaissance photo-plane from Ghazni to the Chakansur (Iranian Border) and later, as head of agricultural development, used American soil scientists and agronomists to examine in general about one million acres of these lands, eliminate all but 600,000 that had some promise, and make detail plans and put irrigation farming practices on about 250,000 acres. Five and one half years of hard work, . . . sunstroke in the Registan sand dunes, stoned by nomads in the Siestan . . . near Iran many ventures . . . but the Afghans grew prosperous and the country thrived under King Nadir Shah. MKA built roads, huge reservoirs on the Helmand and Arghandab Rivers, small modern towns on irrigated lands and helped move the country toward more modern living. Now I can see these beautiful structures laying rubble, villages destroyed, beautiful orchards and vineyards smashed into the earth, canals and dams blown apart . . . death and destruction across a once beautiful and intriguing countryside. But it can live again.

This is the first one of the many countries where the USSR has promoted communism by using their own troops. Apparently Soviets are getting tired of the effort and depressed by the results. If the withdrawal of troops and abandonment of the communist puppet government takes place, the entire world, particularly the United States, should offer help to restore this once proud country of Afghanistan. This would be an achievement of enormous political and psychological impact . . . it could lead to the loosening of the Soviet clutches on other Third World countries. It could restore some sense to and restrict this ideological invasion that maims, deteriorates and downgrades the homelands of many peoples. Let us try it! Start planning now!—Claude L. Fly.

Mr. Fly has expressed many good points in his letter. We have the opportunity to assist not only a strategic country get back on the road to democracy, but people who want freedom and have fought desperately hard for it for nearly 10 years. Let us help, but let us do it responsibly. We should help Afghanistan to its feet, but then let the country and its people walk on their own.

MESSAGES FROM THE PRESIDENT RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of February 3, 1987, the Secretary of the Senate, on June 17, 1988, during the adjournment of the Senate, received a message from the President of the United States transmitting sundry nominations, which were referred to the appropriate committees.

(The nominations received on June 17, 1988 are printed in today's RECORD at the end of the Senate proceedings.)

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the presiding officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 1:15 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4782. An act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1989, and for other purposes; and

H.R. 4783. An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1989, and for other purposes.

At 3:14 p.m., a message from the House of Representatives delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4784. An act making appropriations for Rural Development, Agriculture, and Related Agencies programs for the fiscal year ending September 30, 1989, and for other purposes.

At 3:24 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 1901. A bill to designate the Federal Building located at 600 Las Vegas Boulevard in Las Vegas, Nevada, as the "Alan Bible Federal Building"; and

S. 1960. An act to designate the Federal Building located at 215 North 17th Street in Omaha, Nebraska, as the "Edward Zorinsky Federal Building".

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 4782. An act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1989, and for other purposes; to the Committee on Appropriations.

H.R. 4783. An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1989, and for other purposes; to the Committee on Appropriations.

H.R. 4784. An act making appropriations for Rural Development, Agriculture, and Related Agencies programs for the fiscal year ending September 30, 1989, and for other purposes; to the Committee on Appropriations.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 2530: A bill to improve the management of the Federal pay system and increase efficiency and productivity of Federal employees, and for other purposes; and

H.R. 4731. An Act to extend the authority for the Work Incentive Demonstration Program.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Appropriations, with amendments:

H.R. 4782: A bill making appropriations for the Department of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1989, and for other purposes (Rept. No. 100-388).

By Mr. BURDICK, from the Committee on Appropriations, with amendments:

H.R. 4784. A bill making appropriations for Rural Development, Agriculture, and Related Agencies programs for the fiscal year ending September 30, 1989, and for other purposes (Rept. No. 100-389).

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. BURDICK:

S. 2539. A bill to amend the Agricultural Act of 1969 to provide drought relief to producers of 1988 crops of wheat, feed grains, upland cotton, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HEFLIN:

S. 2540. A bill for the relief of Bassam S. Belmany; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 2541. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income the gain on certain sales of lands subject to ground leases; to the Committee on Finance.

By Mr. MOYNIHAN [for himself, Mr. LUGAR, Mr. DURENBERGER, Mr. DIXON, Mr. DOLE, Mr. PELL, Mr. STAFFORD, Ms. MIKULSKI, Mr. TRIBLE, Mr. INOUYE, Mr. LAUTENBERG, Mr. CRANSTON, Mr. PRYOR, Mr. HOLLINGS, Mr. WILSON, and Mr. HATCH]:

S.J. Res. 342. Joint resolution to designate the week of November 28 through December 5, 1988, as "National Book Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BURDICK:

S. 2539. A bill to amend the Agricultural Act of 1949 to provide drought relief to producers of 1988 crops of wheat, feed grains, upland cotton, and rice; to the Committee on Agriculture, Nutrition, and Forestry.

DROUGHT RELIEF

● Mr. BURDICK. Mr. President, this past weekend, I visited North and South Dakota with my distinguished colleague from Vermont, Senator LEAHY. Several other of my colleagues were also on this trip. I appreciate their visiting North Dakota to witness first-hand one of my State's drought stricken areas.

During our tour, we heard from many farmers and ranchers about how this drought is affecting them and the severe consequences they face personally. We heard how they are trying everything they know to do to make it through this drought, including shipping cattle hundreds of miles to greener pastures.

I would like to describe to you what I saw in my State. We drove along the countryside for 15 miles to Larry Schmitz' farm in Menoken, ND. I have never witnessed such devastation, even during the Dust Bowl year of 1934. As we looked at the countryside from our bus and listened to farmers, an economist and a crop insurance adjuster, we saw only devastation.

There was a field of sunflowers that never came up. We passed CRP land that had grass on it that was only 2 to 3 inches tall, at the most. Weeds crowded out grass on the pastures, as well as the CRP land.

We walked through a wheat field on our way to the farm. This was a field of winter wheat that should have been between over 2 feet high with heads full of kernels. Instead, this wheat was 6 to 8 inches tall and was like straw. More importantly, the heads were empty.

No amount of rain would revive this wheat. In fact, none of the crops we saw in this 15 mile drive could be revived with any amount of rain.

We also flew in helicopters to get an aerial view of this drought-ravaged area. No one can imagine the devastation we witnessed from this vantage point.

As we flew along, we saw many of our famous prairie potholes that were completely dry. There was no wildlife to been seen. We also saw a pasture that had 20 head of cattle on it, when there was not enough grass to sustain one cow.

Throughout our trip, farmers and ranchers wanted to know what Congress and the administration intend to do to help them survive a drought that rivals any we have seen this century. At each stop we made in both North and South Dakota, there was one thing in particular that farmers, economists and business people agreed was imperative for the survival of our farmers. We heard again and again, "we must have our deficiency payments. Without them our farmers cannot survive."

In response, I pledged that I would introduce a bill that would guarantee deficiency payments at the level of the estimated deficiency payment. I introduce that bill today.

My bill essentially creates a 0/92 program for producers who experience a crop failure. It provides that, for the 1988 crop year, producers eligible for deficiency payments shall be eligible for payment of 92 percent on the acreage that is or was planted to the 1988 crop of wheat, feed grains, upland cotton and rice and is included in a failed acreage report filed by the producer with the appropriate county ASCS office. The rate of payment will be the projected deficiency payment.

Mr. President, by guaranteeing deficiency payments, we send a message to our farmers that we will stand by them to help them make it through this drought. More importantly, we keep many of these farmers on the farm.

Just as our rural economy was recovering from a major depression, we are being dealt the cruel blow of a severe drought. Farmers are suffering as I have never before seen them suffer. I believe that we must let our farmers know now that their deficiency payments will be made. This would go a long way to ease their minds and relieve much of the suffering we saw in the faces of the people we met this past weekend. I hope that my colleagues will join me in providing these payments to our farmers.●

By Mr. INOUYE:

S. 2541. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income the gain on certain sales of lands subject to ground leases; referred to the Committee on Finance.

LEGISLATION TO EXCLUDE THE GAIN ON CERTAIN SALES OF LANDS FROM GROSS INCOME

Mr. INOUYE. Mr. President, I rise to introduce a bill to amend the Internal Revenue Code of 1986 to exclude from gross income, profits on lease-free conversions of residential properties. This exemption, available until 1995, would provide an incentive for landowners to sell their fee-simple interests to those persons currently leasing the land. Specifically addressed would be the situation of condominium and co-op owners who are currently leasing the land on which their buildings are situated.

This bill would increase the chances of residential and condominium owners, who currently lease their land, to become homeowners in the true sense of the word by acquiring an interest in the land they live on.

The impact of this bill would be tremendous. In Hawaii, an estimated 70,000 people would be affected by this legislation. Much of the land in Hawaii is owned by a few large estates. Allowing these estates to sell some of their fee-simple interests would benefit the State and its residents by increasing the size of the landownerships.

The large landholding estates in Hawaii would welcome this legislation as an opportunity to voluntarily dispose of some of their land. The cur-

rent system addresses the goal of broadening the size of landownership by mandatory conversions. This is a costly procedure requiring Government condemnation of the land as part of the transfer. This bill would allow for an increase in the size of landownership by creating an incentive for voluntary lease-free conversions. This would effectively remove the need for the Government's involvement in this costly process.

I urge my colleagues to support this bill.

Mr. President, I ask unanimous consent that the bill be placed in the RECORD.

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

S.2541

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 135 as section 136 and by inserting after section 134 the following new section:

"SEC. 135. GAIN ON CERTAIN SALES OF LAND SUBJECT TO GROUND LEASE.

"(a) GENERAL RULE.—Gross income shall not include any gain on a qualified sale of land.

"(b) QUALIFIED SALE.—For purposes of this section, the term 'qualified sale' means any sale or exchange of land if—

"(1) such land was subject to a ground lease on the date of the enactment of this section and at all times thereafter before the date of such sale or exchange,

"(2) such sale or exchange is to the lessee under such ground lease,

"(3) the only buildings on such land are residential buildings (or appurtenant structures), and

"(4) such sale or exchange is on or before December 31, 1995.

"(c) RESIDENTIAL BUILDING.—For purposes of this section, the term 'residential building' means—

"(1) any single-family house, and

"(2) any building containing 2 or more dwelling units (as defined in section 167(k)(3)(C)) if 80 percent or more of such building (other than common areas) consists of dwelling units (as so defined)."

(b) The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 135 and inserting the following:

"Sec. 135. Gain on certain sales of land subject to ground lease.
"Sec. 136. Cross references to other Acts."

(b) The amendments made by this section shall apply to sales or exchanges after the date of the enactment of this Act in taxable years ending after such date.

ADDITIONAL COSPONSORS

S. 314

At the request of Mr. PRESSLER, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 314, a bill to require certain telephones to be hearing aid compatible.

S. 1109

At the request of Mr. HARKIN, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 1109, a bill to amend the Federal Food, Drug, and Cosmetic Act to require certain labeling of foods which contain tropical fats.

S. 2174

At the request of Mr. BURDICK, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 2174, a bill to amend the Department of Transportation Act so as to reauthorize local rail service assistance.

S. 2193

At the request of Mr. INOUYE, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 2193, a bill to amend title XVIII of the Social Security Act to increase the independence of psychologists with respect to services furnished at a comprehensive outpatient rehabilitation facility.

S. 2222

At the request of Mr. KENNEDY, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 2222, a bill to amend the Public Health Service Act to reauthorize programs relating to the national research institutes established under title IV of such act, and for other purposes.

S. 2454

At the request of Mr. BOSCHWITZ, the names of the Senator from Minnesota [Mr. DURENBERGER] and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of S. 2454, a bill to seek the eradication of the worst aspects of poverty in developing countries by the year 2000.

At the request of Mr. HARKIN, the name of the Senator from Washington [Mr. EVANS] was added as a cosponsor of S. 2454, supra.

S. 2484

At the request of Mr. DANFORTH, the name of the Senator from Washington [Mr. EVANS] was added as a cosponsor of S. 2484, a bill to amend the Internal Revenue Code of 1986 to enhance the incentive for increasing research activities.

S. 2510

At the request of Mr. INOUYE, the names of the Senator from North Dakota [Mr. BURDICK] and the Senator from Kentucky [Mr. FORD] were added as cosponsors of S. 2510, a bill to make certain U.S.-flag vessels eligible for operating-differential subsidies under the Merchant Marine Act, 1936.

S. 2521

At the request of Mr. MATSUNAGA, the name of the Senator from Hawaii [Mr. INOUYE] was added as cosponsor of S. 2521, a bill to require the Administrator of Veterans' Affairs to conduct a study of the prevalence and incidence of certain psychological problems among Asian-American and Polynesian-American Vietnam veterans.

S. 2527

At the request of Mr. METZENBAUM, the names of the Senator from Nebraska [Mr. EXON], the Senator from Massachusetts [Mr. KERRY], and the Senator from Wisconsin [Mr. PROXMIRE] were added as cosponsors of S. 2527, a bill to require advance notification of plant closings and mass layoffs, and for other purposes.

S. 2528

At the request of Mr. METZENBAUM, the names of the Senator from Nebraska [Mr. EXON], the Senator from Massachusetts [Mr. KERRY], and the Senator from Wisconsin [Mr. PROXMIRE] were added as cosponsors of S. 2528, a bill to require advance notification of plant closings and mass layoffs, and for other purposes.

S. 2534

At the request of Mr. DOLE, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 2534, a bill to establish a College Savings Bond Program and to amend the Internal Revenue Code of 1986 to provide that gross income of an individual shall not include income from certain savings bonds the proceeds of which are used to pay certain post-secondary educational expenses, and for other purposes.

SENATE JOINT RESOLUTION 291

At the request of Mr. COCHRAN, the names of the Senator from Georgia [Mr. NUNN] and the Senator from Missouri [Mr. DANFORTH] were added as cosponsors of Senate Joint Resolution 291, a joint resolution to designate the Month of September 1988 as "National Sewing Month."

SENATE JOINT RESOLUTION 294

At the request of Mr. TRIBLE, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of Senate Joint Resolution 294, a joint resolution designating August 9, 1988, as "National Neighborhood Crime Watch Day."

SENATE JOINT RESOLUTION 296

At the request of Mr. SHELBY, the names of the Senator from Minnesota [Mr. DURENBERGER] and the Senator from California [Mr. WILSON] were added as cosponsors of Senate Joint Resolution 296, a joint resolution designating April 1989 as "National Outdoor Power Equipment Safety Month."

SENATE JOINT RESOLUTION 298

At the request of Mr. D'AMATO, the names of the Senator from South Carolina [Mr. THURMOND], the Senator from Connecticut [Mr. WEICKER], the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from Hawaii [Mr. MATSUNAGA] were added as cosponsors of Senate Joint Resolution 298, a joint resolution designating

September 1988 as "National Library Card Sign-Up Month."

SENATE JOINT RESOLUTION 312

At the request of Mr. D'AMATO, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of Senate Joint Resolution 312, a joint resolution designating the week beginning September 18, 1988, as "Emergency Medical Services Week."

SENATE JOINT RESOLUTION 320

At the request of Mr. HATCH, the names of the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Indiana [Mr. QUAYLE], the Senator from Alabama [Mr. SHELBY], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Joint Resolution 320, a joint resolution to commemorate the fiftieth anniversary of the passage of the Food, Drug and Cosmetic Act.

SENATE JOINT RESOLUTION 326

At the request of Mr. MOYNIHAN, the name of the Senator from Florida [Mr. GRAHAM], was added as a cosponsor of Senate Joint Resolution 326, a joint resolution designating June 12 through 18, 1988, as "Lyme Disease Awareness Week."

SENATE JOINT RESOLUTION 337

At the request of Mr. COCHRAN, the name of the Senator from Alabama [Mr. HEFLIN], was added as a cosponsor of Senate Joint Resolution 337, a joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 21, 1988, as "National Military Families Recognition Day."

SENATE RESOLUTION 408

At the request of Mr. MITCHELL, the names of the Senator from Nevada [Mr. REID] and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of Senate Resolution 408, a resolution to condemn the use of chemical weapons by Iraq and urge the President to continue applying diplomatic pressure to prevent their further use, and urge the administration to step up efforts to achieve an international ban on chemical weapons.

SENATE RESOLUTION 432

At the request of Mr. MOYNIHAN, the names of the Senator from California [Mr. CRANSTON], the Senator from Arizona [Mr. DECONCINI], the Senator from New Mexico [Mr. DOMENICI], the Senator from Massachusetts [Mr. KERRY], the Senator from Michigan [Mr. LEVIN], the Senator from Georgia [Mr. NUNN] and the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of Senate Resolution 432, a resolution to honor Eugene O'Neill for his priceless contribution to the canon of American literature in this the 100th anniversary year of his birth.

SENATE RESOLUTION 442

At the request of Mr. TRIBLE, the names of the Senator from Alaska [Mr. MURKOWSKI], the Senator from Massachusetts [Mr. KERRY], the Senator from Oregon [Mr. PACKWOOD], the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of Senate Resolution 442, a resolution expressing the sense of the Senate that the President should convene an International Conference on Combatting Illegal Drug Production, Trafficking, and Use in the Western Hemisphere.

AMENDMENTS SUBMITTED

TENDER OFFICER DISCLOSURE AND FAIRNESS ACT

ARMSTRONG (AND OTHERS) AMENDMENT NO. 2374

Mr. ARMSTRONG (for himself, Mr. METZENBAUM, Mr. SHELBY, and Mr. GRAMM) proposed an amendment to the bill (S. 1323) to amend the Securities Exchange Act of 1934 to provide to shareholders more effective and fuller disclosure and greater fairness with respect to accumulations of stock and the conduct of tender officers; as follows:

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

SEC. —. GOLDEN PARACHUTES; POISON PILLS.

(a) Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) is amended by adding at the end thereof the following new subsections:

"(m)(1) In the case of any class of equity security which is registered pursuant to this section, or any equity security of an insurance company which would be required to be so registered except for the exemption contained in subsection (g)(2)(G), or any equity security issued by a closed-end investment company registered under the Investment Act of 1940, it shall be unlawful for the issuer of such securities to enter into or amend, directly or indirectly, agreements to increase the current or future compensation of any officer or director in an amount which would constitute an 'excess parachute payment', as defined in section 280G(b)(1) of the Internal Revenue Code of 1986, contingent upon a change of control of the issuer by stock or asset acquisition, unless such agreements have been approved by the affirmative vote of a majority of the aggregate outstanding voting securities of the issuer. If any such agreement was entered into prior to enactment of this subsection, such agreement shall remain in effect after the close of the 2-year period beginning on the date of enactment of this subsection only if such agreement is approved by the shareholders pursuant to this subsection prior to the close of such period.

"(2) The Commission may, by rule, regulation, or by order, upon application, conditionally or unconditionally,—

"(A) exempt any person, security, or transaction from any or all of the provisions of this subsection as it determines to be necessary or appropriate and consistent with the public interest or the protection of investors, and

"(B) provide exemptions, subject to such terms and conditions as may be prescribed therein, from any or all of the provisions of paragraph (1).

"(n)(1) It shall be unlawful for an issuer of any class of any equity security described in subsection (m)(1) to issue, grant, declare, or establish any rights, including voting rights, of securities holders of the issuer with respect to any security or asset of the issuer or any other person, where the exercisability of such right is conditioned on the acquisition of securities of the issuer by a person other than the issuer, unless the establishment of such rights has been approved by a majority of the aggregate outstanding voting securities of the issuer. If such rights were established prior to enactment of this subsection, such rights shall remain in effect after the close of the 2-year period beginning on the date of enactment of this subsection only if such rights are approved by the shareholders pursuant to this subsection prior to the close of such period.

"(2) The Commission may, by rule, regulation, or by order, upon application, conditionally or unconditionally, exempt any person, security, or transaction, or class thereof from any or all of the provisions of this paragraph to the extent it determines such exemption is necessary or appropriate in the public interest and for the protection of investors and consistent with the purposes and policy fairly intended by this paragraph.".

On page 29, between lines 13 and 14, insert the following:

SEC. —. CONFIDENTIAL PROXY VOTING.

Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end thereof the following:

"(2)(A) Unless the Commission prescribes rules and regulations providing for an alternative to confidential proxy voting as described in paragraph (3), the rules and regulations prescribed by the Commission under paragraph (1) shall require confidentiality in the granting and voting of proxies, consents, and authorizations, and shall provide for the announcement of results of a vote following tabulation by an independent third party certified in accordance with such rules and regulations. Nothing in this paragraph authorizes any person to withhold information from the Commission or from any other duly authorized agency of Federal or State government.

"(B) The Commission shall prescribe any rules and regulations required by subparagraph (A) within 1 year after the date of enactment of this paragraph.

"(3)(A) In lieu of the rules and regulations described in paragraph (2), the Commission may prescribe rules and regulations which provide for an alternative to confidential proxy voting, if such alternative will assure—

"(i) the integrity of the proxy voting process,

"(ii) fairness to shareholders,

"(iii) unimpeded exercise of shareholder voting franchise,

"(iv) insulation from improper influence to a degree that meets or exceeds the protection afforded by confidential proxy voting, and

"(v) announcement of results of a vote following tabulation by an independent third party certified in accordance with such rules and regulations.

"(B) In promulgating rules and regulations under this paragraph the Commission shall—

"(i) consult with the Secretary of the Department of Labor, and

"(ii) hold public hearings, inviting the participation of all interested parties, including individual shareholders, securities issuers, institutional investors, and securities firms.

"(C) The Commission shall prescribe any rules and regulations required by subparagraph (A) not later than 11 months after the date of enactment of this paragraph.".

Beginning on page 35, line 17, strike all through page 36, line 24, and insert the following:

Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) is amended by adding at the end thereof the following:

"(4) It shall be unlawful for an issuer of any class of equity security described in section 14(d)(1) of this title to acquire, directly or indirectly, any of its securities from any person who is the beneficial owner of more than 3 percent of the class of the securities to be acquired, unless such acquisition has been approved by the vote of a majority of the outstanding voting securities of the issuer (excluding the shares to be acquired), or acquisition is pursuant to a tender offer, or request or invitation for tenders, to all holders of securities of such class. The Commission shall, by rule, regulation, or by order, on application, conditionally or unconditionally, exempt any person, security, or transaction from any or all of the provisions of this paragraph as it determines to be necessary or appropriate and consistent with the public interest, the protection of investors, and the purposes of this paragraph.".

On page 45, line 9, strike "studies" and insert "study".

Beginning on page 45, line 10, strike all through page 46, line 3.

On page 46, line 4, strike "(b)" and insert "(a)".

On page 46, line 21, strike "(c) REPORT ON STUDIES." and insert "(b) REPORT ON STUDY.".

On page 47, line 1, strike "studies" and insert "study".

RETAIL COMPETITIVENESS

THURMOND AMENDMENT NO. 2412

(Ordered to lie on the table.)

Mr. THURMOND submitted an amendment intended to be proposed by him to the bill (S. 430) to amend the Sherman Act regarding retail competition; as follows:

At the appropriate place, insert the following:

SEC. . (a) Title V of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART D—PUBLIC AWARENESS CONCERNING THE HEALTH EFFECTS OF ALCOHOLIC BEVERAGE CONSUMPTION

"SEC. 550. PUBLIC AWARENESS.

"(a) DEFINITIONS.—For purposes of this section—

"(1) ALCOHOLIC BEVERAGE.—The term 'alcoholic beverage' includes distilled spirits, wine, any drink in liquid form containing wine to which is added concentrated juice or flavoring material and intended for human consumption, and malt beverages.

"(2) COMMERCE.—The term 'commerce' has the same meaning as in section 3(2) of the Federal Cigarette Labeling and Advertising Act.

"(3) CONTAINER.—The term 'container' means any container, irrespective of the material from which made, used in the sale of any alcoholic beverage.

"(4) DISTILLED SPIRITS.—The term 'distilled spirits' means any ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use.

"(5) MALT BEVERAGE.—The term 'malt beverage' means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

"(6) PERSON. —The term 'person' has the same meaning as in section 3(5) of the Federal Cigarette Labeling and Advertising Act.

"(7) UNITED STATES.—The term 'United States' has the same meaning as in section 3(3) of the Federal Cigarette Labeling and Advertising Act.

"(8) WINE.—The term 'wine' has the same meaning as in section 17(a)(6) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)(6)).

"(b) GENERAL RULE.—It shall be unlawful for any person to manufacture, import, or package for sale or distribution, any alcoholic beverage unless the container of such beverage has a label bearing one of the following statements:

"(1) 'WARNING: THE SURGEON GENERAL HAS DETERMINED THAT THE CONSUMPTION OF THIS PRODUCT, WHICH CONTAINS ALCOHOL, DURING PREGNANCY CAN CAUSE MENTAL RETARDATION AND OTHER BIRTH DEFECTS.

"(2) 'WARNING: DRINKING THIS PRODUCT, WHICH CONTAINS ALCOHOL, IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY.

"(3) 'WARNING: THIS PRODUCT CONTAINS ALCOHOL AND IS PARTICULARLY HAZARDOUS IN COMBINATION WITH SOME DRUGS.

"(4) 'WARNING: THE CONSUMPTION OF THIS PRODUCT, WHICH CONTAINS ALCOHOL, CAN INCREASE THE RISK OF DEVELOPING HYPERTENSION, LIVER DISEASE, AND CANCER.

"(5) 'WARNING: ALCOHOL IS A DRUG AND MAY BE ADDICTIVE.'.

"(c) LOCATION OF LABEL.—The label required by subsection (b) shall be located in a conspicuous and prominent place on the container of a beverage to which such subsection applies. The statement required by such subsection shall appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on such container.

"(d) REQUIREMENTS.—Each statement required by subsection (b) shall—

"(1) be randomly displayed by a manufacturer, packager, or importer of an alcoholic beverage in each calendar year in as equal a number of times as is possible on each brand of the beverage; and

"(2) be randomly distributed in all parts of the United States in which such brand is marketed.

"(e) BUREAU OF ALCOHOL TOBACCO AND FIREARMS.—The Bureau of Alcohol Tobacco and Firearms shall—

"(1) have the power to—

"(A) ensure the enforcement of the privisions of this section; and

"(B) issue regulations to carry out this section; and

"(2) consult and coordinate the health awareness efforts of the labeling requirements of this section with the Secretary of Health and Human Services.

"(f) VIOLATIONS.—Any person who violates the provisions of this section shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $10,000

"(g) JURISDICTION.—The several district courts of the United States are invested with jurisdiction, for cause shown, to prevent and restrain violations of this section upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

"(h) EXEMPTIONS.—Alcoholic beverages manufactured, imported, or packaged for export from the United States, or for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States shall be exempt from the requirements of this section, but such exemptions shall not apply to alcoholic beverages manufactured, imported, or packaged for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

"(i) LIABILITY.—Nothing in this section shall be construed to relieve any person from any liability under Federal or State law to any other person.

"(j) PREEMPTION.—No statement relating to alcoholic beverages and health, other than a statement required by subsection (b), shall be required on any alcoholic beverage container covered by this section.".

(b) The amendment made by this section shall become effective 6 months after the date of its enactment.

NOTICES OF HEARING

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding the following:

A hearing on Tuesday, June 21, 1988, in Senate Russell 485, beginning at 9 a.m., on S. 2382, a bill to delay implementation of a certain rule affecting the provision of health services by the Indian Health Service.

A field hearing on the Hoopa-Yurok Indian Reservation on June 30, 1988, in Sacramento, CA, at the Sacramento Board of Supervisors Council Chambers, Room 1450, 700 H Street, Sacramento, CA, from 9 a.m. to 12 noon; and also an oversight hearing on the Eligibility for Services from the Indian Health Services from 1 p.m. to 5 p.m.

Those wishing additional information should contact the Indian Affairs Committee at 224-2251.

ADDITIONAL STATEMENTS

COMMENDING HAWAII COMPUTER TRAINING CENTER

Mr. INOUYE. Mr. President, I wish to express my commendation to the sponsors of an innovative training project in Hawaii designed to assist Native Hawaiians, the largest economically disadvantaged ethnic group in the State of Hawaii.

The Hawaii Computer Training Center is a joint project of International Business Machines [IBM] and Alu Like, Inc., a nonprofit organization assisting Native Hawaiians. It provides a high quality and affordable means of training in the computer field, thereby enabling broad employment and business opportunities for the Native Hawaiian community. The 16-week training program recently graduated its fourth class.

I believe that special commendation is owed to the Pacific Area Manager for IBM, Anton Chalmers Krucky, for initiating the establishment of the Hawaii Computer Training Center. I might note that Mr. Krucky is himself one-quarter Native Hawaiian. His dedication to assisting his fellow Native Hawaiian people and IBM's continuing support of this important program is a sterling example of corporate citizenship.

Mr. President, I ask that several articles from the June 1988 issue of the newsletter of the Office of Hawaiian Affairs, Ka Wai Ola O OHA, be reprinted in the RECORD.

The articles follow:

[From Ka Wai Ola O OHA, June 1988]

KUPUNA BEGINS LIFE AT 60 IN THE COMPUTER LANE

(By Kenny Haina, Editor, Ka Wai Ola O OHA)

A 60-year-old grandmother of nine (soon to be 10), who has held a number of executive and administrative secretarial positions, suddenly realized not too long ago she was lacking in one important area—computer training.

Apolei Kahai Bargamento, a 100 percent native Hawaiian who admits to understanding more than speaking the language, found out about the Hawaii Computer Training Center by Alu Like Inc. through a friend. She subsequently enrolled in Class IV which held its graduation exercises Saturday, Apr. 23.

So life in the computer lane begins at 60 for this livewire and talented kupuna who thought she had all the necessary tools in her field until the realization she had no computer background. That is to say, nothing like the total picture she found at HCTC. She had been exposed to computers in her previous employment but nothing like she just went through.

"Today's business is heavy into automation. This is why you need computers and you need to be prepared because computers, too, are always changing. My knowledge of computers was limited before I came to this school (HCTC)," said Bargamento who is the mother of four daughters, including a set of twins, and a son living on Maui.

"Our Hawaiians should look into this program. It's fantastic. IBM (International Business Machines) provides us with the latest up-to-date equipment. And the fee for Hawaiians unable to pay is the best thing. I learned that this kind of training runs around $4,500 elsewhere. The staff and the sponsoring businesses here are all supportive," she continued.

Bargamento, who is the oldest student to graduate from HCTC, possesses strong credentials in the secretarial field. She types 85 to 100 words per minute and has worked as administrative secretary for Orange County, the State of California and for the University of Califorinia at Irvine.

She was executive secretary for eight years to the area director of the church eductional system of the Church of Jesus Christ of Latter Day Saints (Mormons) until the office was moved to Australia, a transfer she did not want to make.

Bargamento was also secretary to the admissions director at Brigham Young University of Hawaii and served five years as office manager at Newtown Recreation Center.

As for her HCTC experience, she said she had a few hangups in the beginning of the 16-week training but soon overcame them to graduate with honors, one of seven in this largest class of 19 to be cited. The previous high was 18.

Bargamento, who is originally from Kalihi but now resides in Perarl City, graduated from Roosevelt High Schol when it was an English standard school.

Coincidentally, Bargamento began work May 2 at the Office of Hawaiian Affairs as secretary to Government Affairs Officer Jalna Keala, replacing Brian Doty who currently serves as secretary to Land Officer Linda Kawai'ono Delaney.

KRUCKY'S DEEP CONCERN FOR FELLOW HAWAIIANS NOTED

(By Kenny Haina, Editor, Ka Wai Ola O OHA)

Anton Chalmers Krucky may not look it but he proudly notes he is one-quarter Hawaiian and is deeply concerned about education for Hawaiians, especially in the computer field.

As Pacific Area manager for International Business Machines (IBM), Krucky holds the top job in an area which also includes Japan, Hong Kong and Taiwan. He came to Honolulu a little over two years ago in February, 1986.

Krucky immediately set into motion a plan to establish a computer training school for minorities and the disadvantaged. He got together with Alu Like Inc. and the result was the Hawaii Computer Training Center which graduated its fourth class Apr. 23.

He explained that IBM already had such schools going on the mainland so why not have one here? Krucky told Ka Wai Ola O OHA he has another project in mind that would also benefit minority groups, especially Hawaiians, but was not ready to reveal the plan.

Krucky is Hawaiian through his mother, the former Evelyn Chalmers, who is one-half Hawaiian. He has three older sisters who were born in Honolulu and are now residents of the Washington, D.C., area where they are active members of the Hawaii State Historic Society. Krucky was born in Japan during the Korean War. His father was stationed there with the Navy.

While he never lived or grew up in Hawaii, it was always his goal to "come home" and do something for the people here. IBM is the major corporate sponsor of HCTC and Krucky is elated over the success of the program headed by Director Estelle Liu and a dedicated staff.

Krucky went to high school in Maryland and graduated in 1974 from the University of Maryland with a Bachelor of Arts degree in criminology. He was hired by IBM in 1977 as an engineer in San Francisco. Then followed marketing, manufacturing and management until his relocation here in 1986.

Krucky says he likes being "back home" and will be doing everything he can in the computer field to help his fellow Hawaiians. He is married to the former Dana Anderson of San Francisco. She works for Hawaiian Telephone Company in its marketing department.

He feels honored the school has named an award in his honor for the most outstanding student. Krucky says he looks forward to every graduation and presentation of the award "because I really feel good about this award. It is something to see the students endure 16 weeks of intensive training and have one among them doing exceptional work. In my book, all the graduates are winners."

COMPUTER TRAINING CENTER GRADUATES LARGEST CLASS

(By Kenny Haina)

A housewife and mother for 18 years with two grown high school sons and a single parent with five children ages one and one-half to 13 were recipients of two prestigious awards at the Apr. 23 Class IV graduation of the Hawaii Computer Training Center, 33 S. King St.

A project of Alu Like Inc. in conjunction with International Business Machines (IBM) and other business firms, the program was held in the third floor meeting room of the computer school.

Nineteen students were presented their certificates by Director Estelle Liu. Seven of them graduated with honors. This was by far the largest number of graduates for one class and also the highest total with honors since the school's inception in March, 1986.

The dropout ratio was also the lowest with just five who did not stay on to finish for a variety of reasons. The class started with 24. Class V began May 2 with 30 students who will be handled in two groups of 15.

The Anton Krucky Award for the most outstanding student went to Evelyn Girndt, the housewife and mother who said she learned about the school by reading Ka Wai Ola O OHA. She said it was about time she got into the employment market to help her husband, Walter, with the college education of their two sons—Werner, who just finished his junior year at Kamehameha and Erik, who will join his brother in August at Kapalama Heights as a ninth grader. Krucky personally presented the award.

Erleen Haunani Eaton, who didn't finish high school but got her GED which is the equivalent of a high school diploma, was named as the student with the most improved performance to receive the Winona Elis Rubin Award. Mrs. Rubin, director of the Department of Human Services, missed her first graduation because of the pressure of business at the state legislature. Mrs. Liu did the honors.

Mrs. Girndt is a 1953 graduate of St. Joseph's High School in Hilo. Her husband is a pastry chef with United Air Lines.

Eaton, who worked a few years as an educational assistant at Palolo Elementary

School, said she didn't have college intentions so "I had to pick up something. I learned about this school but I didn't think I was smart enough."

She went through the interview, was accepted and worked hard despite the pressures of five growing youngsters. Eaton quickly learned the program which was new to her, persevered and came through with flying colors.

The keynote speaker was Dr. Richard Kekuni Blaisdell who told students "We are descendants of those Polynesians who traveled the open sea guided only by the stars, wind and birds to a new nation. You have it in your genes. We are the indigenous people of these islands. The most precious think we have is being Hawaiian."

He also encouraged the students to be aggessive in protecting native Hawaiian rights, culture and religion. He closed his brief address with a chant.

A slide show presentation and the singing of the class song, "What You Did for Us," completed the program. The class motto was "Ho'oulu i ka po'okela" (to grow to excellence).

The graduating class, with honors designated by (H), follows:

Karen K. Abersold (H) Paulette Kuuipo Aiona, Apolei Kahai Bargamento (H), Juliet Lynn Cordova, David Dane, Erleen Haunani Eaton, Lean Ann Fritzler (H), Evelyn Girndt (H), Rhonda Greco.

Also, Brendalyn Ponilani Apele-Iokia, Anderson P. Kahuyanui, George K, Kaopuiki (H), Rosemary Lokelani Lum, Allyn U. Morita (H), Dee Palakiko, Babette Malia Mahealani Porter, Gay Kinoaloha Porter, Ramona Rodriguez, and Emmaline U. Yen (H). Kaopuiki class president.

Food and beverage paid for by the students through a fund raising project were served following the program.

In addition to IBM, other corporate sponsors are First Hawaiian Bank, Hawaiian Electric Inc., United Air Lines, Alexander and Baldwin Inc., James Campbell Estate, Hawaiian Telephone Company and Bank of Hawaii.●

50TH ANNIVERSARY OF THE NATIONAL SKI PATROL

● Mr. HATFIELD. Mr. President, 50 years ago, New York insurance broker Charles "Minnie" Dole founded the National Ski Patrol to serve the needs of disabled winter sports enthusiasts and to provide skier safety information. The organization has grown to a force of more than 24,000 volunteer and professional members.

Since the formation of the National Ski Patrol, the nonprofit organization has saved many lives and provided prompt first aid to thousands of injured skiers. Because its members must meet rigorous requirements, including 60 hours of advanced Red Cross instruction in everything from car extrication to childbirth, many more people than just those who ski have benefited from the National Ski Patrol. In recognition of the National Ski Patrol's dedication to service, it was granted a Federal charter by Congress in 1980.

The National Ski Patrol now operates in almost every State in the Union, as well as overseas. Its membership ranges in age from 15 to 70 and includes lawyers, educators, artists, business owners, high school students and many others. They can be found at work on the slopes providing the one thing they all have in common to those who need it, the willingness to help others. The familiar cross on brightly colored parkas is sign of welcome to disabled skiers as well as a symbol of skier safety to everyone on the slopes.

Most of those involved in the National Ski Patrol are volunteers, who, in their spare time, learn the skills required to become and remain a patroller. In addition to the patrol of winter recreation areas, patrollers are called upon to help in emergencies such as avalanche and blizzard searches. They are continually taking refresher courses to assure that they will remain current on the latest first aid and disaster techniques.

Throughout its 50-year history the National Ski Patrol has continually worked to improve its services. From the establishment of a communications department to help distribute information to members, to the creation of a full-time professional division, the National Ski Patrol has been constantly changing, growing and improving. The National Ski Patrol's continued involvement in the National Avalanche Foundation earned them the responsibility of assuming administration of the foundation, which includes running the National Avalanche School to teach the fundamentals of avalanche science, protection, and travel techniques. The National Ski Patrol recently developed a Winter Emergency Care Program engineered to meet the special first aid needs of the patrollers with a program textbook soon to be published.

National Ski Patrol members use special emergency care and transport equipment and often transport skiers miles before they can access hospital facilities. The National Ski Patrol has been an integral part of skier safety and injury treatment for over 50 years and will continue to diligently serve the public for years to come.

Mr. President, the National Ski Patrol has proven to all of us how one group of dedicated individuals can make a difference in the lives of others. I urge my colleagues to join me in congratulating the National Ski Patrol for their 50 years of service and to wish them continued success for the next 50 years.●

GROUND WATER PROTECTION

● Mr. HARKIN. Mr. President, ground water quality is an issue of great importance that affects the entire Nation. Because of this importance, there has been an increasing amount of attention paid to this issue within the last few years. Throughout 1987, the issue received a great amount of public attention in my State of Iowa, culminating in the passage of the landmark Ground Water Protection Act of 1987 by the Iowa Legislature.

This Iowa act is notable for its lack of standards and nonregulatory approach. Instead of dictating to individuals rules and regulations, the bill uses demonstration projects to show Iowans how to prevent ground water contamination. But without widespread public support, this nonregulatory approach cannot be effective. How the public responds to this bill depends upon how effective Iowans perceive it to be.

Luckily, however, the Iowa public does support the Ground Water Protection Act. Iowa's farmers, in particular, who must be central to any ground water program, support this ground water act.

I recently received an interesting study by Steve Padgitt, a rural sociologist at Iowa State University. He has done extensive research on management practices and the attitudes of Iowa farmers relating to ground water issues. His surveys indicate ground water quality is a high-level concern for farmers, falling below only the farm commodity prices and Federal deficit. The study also outlines the sources of information that farmers rely upon when researching the ground water issue.

As Congress grapples with the difficult issue of ground water quality, we would do well to carefully examine Iowa's experience with its Ground Water Protection Act. To that end, I commend Dr. Padgitt's study to the attention of my colleagues and ask that a summary of Dr. Padgitt's study be printed in the RECORD.

The summary follows:

FARMER'S PERSPECTIVES ON AGRICULTURE & GROUNDWATER QUALITY ISSUES

(Steve Padgitt, Extension Sociologist, Iowa State University, June 9, 1988)

SUMMARY

Since 1984 the Sociology Extension Unit has worked closely with crop production extension specialists (weed scientists, agronomists, entomologists, ag engineers, etc.) in conducting detailed studies of management practices and farmer attitudes related to water quality. The studies are part of the Integrated Farm Management Demonstration Project of the Iowa State University Agricultural Experiment Station and Cooperative Extension Service. Farmer surveys have been carried out at several locations throughout the state and a statewide survey is now in process. The knowledge generated from these studies have supplemented program planning of extension programs and will serve as baseline assessments in subsequent program evaluation. The findings include:

The assignment of a high priority to agricultural chemicals and groundwater quality as a social issue.

The perception that pesticides pose a greater risk than fertilizer.

The nearly universal use of pesticides in farming operation. (Although a majority be-

lieve chemicals are the best alternative to control weeds, insects and disease, there is substantial interest in seeking alternatives to chemicals.)

Initial reactions to educational programs that are positive and result in small adjustments downward in the use of nitrogen.

The endorsement of non-degradation and standards rather than industry self-regulation as policy options.

The use of the land grant experiment station/extension service system as a major source of information about this topic.

The belief that information obtained from the land grant experiment station/extension service system is reliable.

[Charts and graphs not reproducible for the RECORD.]

How concerned are you about the following issues? Please indicate your level of concern for each of the issues by circling the number that best represents your feelings.

OPINIONS ON AGRICULTURAL AND RURAL DEVELOPMENT POLICY ISSUES[1]

	Not concerned to very concerned							Average score
	1	2	3	4	5	6	7	
	Percent							
Prices for farm products	2	0	1	4	9	21	63	6.3
Federal budget deficit	2	1	1	4	9	16	67	6.3
Presence of pesticides, herbicides, and other chemicals in drinking water	2	2	2	7	11	20	56	6.1
Foreign ownership of farmland in IA	4	2	4	8	8	14	60	6.0
Adverse health effects from exposure to agriculture chemicals	1	1	3	9	15	23	48	5.9
Closings of local mainstreet businesses	2	1	2	9	15	24	47	5.9
Residues such as pesticides and herbicides in food products	2	2	4	9	15	22	46	5.8
Corporate ownership of farmland in IA	3	3	4	9	11	18	52	5.8
Contamination of underground water supplies	2	3	5	11	17	17	45	5.7
Soil erosion	2	1	4	10	19	25	39	5.7
Loss of farm population	3	3	6	13	15	20	40	5.6
Interest rates to borrowers	4	3	7	16	15	17	38	5.4
Inflation	3	3	6	19	20	18	31	5.3
Outmigration of IA residents to other States	5	3	5	16	19	24	28	5.3
Condition of county and State roads	2	3	6	18	23	24	24	5.2
Use of food additives and preservatives	3	5	8	18	20	19	27	5.1
Consolidation of local schools	6	3	6	19	18	19	29	5.1
Unemployment in your area	4	4	8	19	21	19	25	5.1
Quality of local services and facilities	4	5	6	23	26	21	15	4.9

[1]Source: Iowa Farm and Rural Life Poll, Spring 1988. Random sample of approximately 2,000 active Iowa farm operators. (Paul Lasley, ISU Extension Sociologist, is Principal Investigator.)

POTENTIAL FOR CHANGE IN FARMING PRACTICES

BIG SPRING BASIN: 1984–1986

Reduction in nitrogen application: 15–20#/acre.

Percent reporting decrease in nitrogen rates: 40%.

Percent reporting decrease in pesticide applications: 15%.

ATTITUDINAL PREDISPOSITIONS TO CHANGE

	Response (percent)				
	Strongly disagree	Somewhat disagree	Undecided	Somewhat agree	Strongly agree
Although some farmers could reduce fertilizer and pesticide expenses by more precise applications, for me these savings would not justify the added time, cost and effort:					
Big Spring Basin farmers	26	32	20	18	4
Winneshiek County, IA, farmers	35	32	15	13	5
Audubon County, IA, farmers	20	28	17	17	8
Although manure has significant nutrient value, the cost of utilizing this may outweigh the return:					
Big Spring Basin farmers	29	38	14	14	6
Winneshiek County, IA, farmers	51	28	8	13	0
Audubon County, IA, farmers	30	31	12	19	8
If economically viable alternatives existed, I would like to reduce my use of farm chemicals:					
Audubon County, IA, study	4	4	10	40	43
4-county, IA, study (Plymouth, Fayette, Johnson, Lee), 1988	3	6	7	38	49

LAND GRANT SYSTEM AS SOURCE OF INFORMATION

SOURCES OF INFORMATION ABOUT EFFECTS OF FARMING ON GROUNDWATER QUALITY AND ASSESSMENT OF SOURCE RELIABILITY[1]

Source	Audubon County, 1987		Big Spring Basin, 1986	
	Percent[2] used	Percent[3] reliable[2]	Percent[2] used	Percent[3] reliable[2]
Farm magazines and ag newspapers	82	55	58	51
Newspapers	76	47	49	32
Radio	70	45	48	45
Television	66	46	48	45
County Extension Service	52	75	61	77
Soil Conservation Service	45	73	38	74
Chemical company publications/representatives	35	34		
Local chemical dealers and sales representatives	33	38	26	19
Soil Conservation District	28	66	25	67
ISU extension specialists	27	73	54	72
Environmental Protection Agency	18	56	5	42
Iowa Fertilizer & Chemical Dealer Association	18	29		
State Department of Natural Resources	14	60	11	46
University Hygienic Laboratory	13	65	19	68
Iowa Department of Agriculture and Land Stewardship	9	57		
Iowa Natural Heritage Foundation	8	40		
Iowa Geological Survey	7	61	33	61
Practical Farmers of Iowa	6	37		
University of Iowa Institute of Ag Medicine	3	60		

[1]Question asked: During the past year, information about the effects of farming on groundwater quality has been available from several sources. We are interested in learning from whom you may have obtained such information. Also, please indicate how reliable you feel each source is.

[2]5-pt. scale. 1=very reliable, 5=very unreliable. Reported percent is sum of "1's" and "2's."

[3]Percent is "valid percent." Missing cases excluded

SOURCES OF INFORMATION ABOUT CONSERVATION COMPLIANCE CONCERNS ABOUT GROUND WATER QUALITY

[4-county[1] Iowa study, 1988]

Source	Percent used	Percent very useful[1]
Farm magazines	86	33
Neighbors and friends, seed/chemical/fertilizer	70	19
Local dealers	67	46
Soil Conservation Service	62	49
Newspapers	61	10
County Extension Service	58	49
Farm radio	54	17
Advertisements in commercial media	28	6
ISU specialists	26	33
Machinery dealers	13	8

[1]Random sample of farm operators in Plymouth, Fayette, Johnson, and Lee Counties (N–244).●

THE BLUES MAN FROM BOISE, ID

● Mr. SYMMS. Mr. President, I rise today to recognize Gene Harris, a jazz musician who loves to be in Idaho, and although he is world renowned, he is best loved by Idahoans. I have watched and listened to Gene entertain audiences on warm Sunday afternoons in the small amphitheatre at the Ste. Chapelle Winery. He is truly an outstanding musician, and one of the finest blues pianists in the world.

I recently ran across an article in the Wall Street Journal, which titled Gene as "The Blues Man from Boise." With Gene's continued success, Boiseans do not see much of him but are delighted to see him return to Idaho between trips around the globe.

Mr. President, I ask that the article in the Wall Street Journal be printed in the RECORD to reflect Idaho's appreciation and congratulations to Gene Harris.

The article follows:

[From the Wall Street Journal, June 6, 1988]

THE BLUES MAN FROM BOISE

(By Joe Morgenstern)

BOISE, ID.—American jazz musicians, according to the conventional wisdom, are so neglected in their own land, where jazz was born, that they must go abroad to be appreciated. Maybe so, but here's an exception from the heartland: a portrait of the artist as a happy man.

His name is Gene Harris. He is 54 years old, a native of Benton Harbor, Mich., and an Idahoan since 1977. Never adept at self-promotion, he is a household word only in Boise. Still, Harris is known to jazz aficionados, and to his peers, as one of the greatest blues pianists in the world. And his fame is finally catching up with his virtuosity; a brilliant new album with an unwieldy title—"The Harris All Star Big Band Tribute to Count Basie"—is No. 7 on Billboard's national jazz chart.

From time to time Harris leaves Boise to play, usually as part of the Ray Brown Trio. Within the past year he has appeared in New York, Los Angeles, London, Paris, West Germany, Spain and Japan. Audiences love the interplay between Brown "a renowned bassist, and Harris, whose technique and volcanic energy moved one colleague to say,

"If God meant us to play like that, He would have given us 88 fingers."

Still, Idaho is where Gene Harris is best loved, and loves to be. He understands why some people are surprised by the notion of an urban black living in a part of the country known principally for white potatoes. But he has found the good life, and is eager to share it. "If you haven't seen Boise," he said, "you don't know what heaven is."

Part of that life has been a steady gig—steady for almost a decade—in the lounge at the Idanha Hotel, a Romanesque Gothic landmark in downtown Boise. When the Idanha opened in 1901, it was the finest hotel west of the Mississippi. It's still a charming place, with an elegant restaurant that features nouvelle American cuisine. These days the stix nix more than his mix.

The lounge is small, with barely enough room for 35 seats and Harris's 9-foot Baldwin grand. On a recent Saturday night, though, more than a hundred people squeezed in to listen, clap and cheer as Harris and some local sidemen played. First came a few piano solos. There were ballads, such as "Sweet and Lovely," which Harris invested with startling strength and passion. There were rhythm tunes—such as Duke Ellington's "In a Melotone," or "The Hills of Idaho," written by a black man named Jesse Stone—that Harris developed with bold harmonic inventions, crystalline runs and the joyous trills that have become his trademark.

Unlike Count Basie, who was a minimalist, Gene Harris is a maximalist, with so much force at his command that his work can be overpowering. But he's also an exceptionally generous musician, so his solos soon gave way to ensemble work, and solos by his Boise friends.

Some were accomplished jazzmen in their own right: John Jones, a guitarist who works in a Boise pawn shop; Rod Wray, a bass player who's a prep chef in a local restaurant; Charlie Warren, a tenor sax man and construction worker; and Gib Hochstrasser, a drummer and jack-of-all-musical-trades who has a big band of his own.

Others were less accomplished, but thrilled to be there. "It's such a privilege to play with this guy," said Phil Batt, a recreational clarinetist who ran for governor in 1982, served as lieutenant governor and is now on the Idaho Highway Commission. "Gene makes everybody play better. Hell, he makes everybody feel better. He's got such a magnetic personality that the place dies when he's not here."

Joe Clayton, a real estate agent who drove 280 miles from Idaho Falls to hear Harris play, put it more simply: "He's the greatest thing that ever happened to this town."

That is the consensus. In a city where night life leans toward kids cruising on weekends, Gene Harris and his cohorts have filled a void and then some. "It's phenomenal what a following Gene has here," said Dave Malone, the Idanha's assistant manager. Peter Schott, the man who runs the hotel's restaurant and lounge, wondered whether Boiseans "know what a jewel they really have, because Gene is a great star but he never lets that come across." They certainly seem to know, for the pianist is an icon of Idaho culture. "Gene Harris?" said the woman behind a tourist bureau counter in the basement of the state capital. "Oh, he's the best entertainer we've got."

In a sense, Idaho had been waiting for Harris without knowing it. The state has a long jazz tradition. In the 1920s, so many students at the University of Idaho, in Moscow, played jazz on the train between Moscow and Boise that it came to be called the Jazz Train. During World War II, when Boise's Gowen Field was the second largest air base in the country, the city had scores of jazz clubs. Today the state university calls its music school the Lionel Hampton School of Music.

And Harris had been seeking Idaho without knowing it. When he first came to Boise, he was a man who had lost his way in the thickets of electronic music and wanted to get back to playing what he knew best. Soon he met, and subsequently married, an ebullient teacher named Jane Hewitt. The daughter of a local banker, she had grown up listening to jazz, and was a classical pianist herself. Then came the gig at the Idanha lounge, and the beginning of semiretired bliss.

The bliss remains intact. As an interracial couple in a small city, Gene and Janie Harris feel entirely at home. "There's no black or white communities here," he said. "It's just all of us together, and I love it." Harris has brought other stars to Boise to play with him, among them Ray Brown, Ramsey Lewis, Lionel Hampton and the late Buddy Rich and Woody Herman. When he plays on summer Sunday afternoons in a little amphitheater at the nearby Ste. Chapelle Winery, he draws a thousand or more listeners. When he isn't making music he's playing golf, fishing or piloting his cabin cruiser on the sparkling waters of Lucky Peak Lake.

As for the semiretirement, it's gravely threatened by success. The more Harris's album sells, the more extra-Idaho appearances he's compelled to make. (He and his band are scheduled to play tomorrow night through Sunday in Manhattan at the Blue Note and June 16-18 at the Loa in Santa Monica.)

Leaving heaven can be hell, but Harris is philosophical. "At least I'll be back to play the Winery on July 10th," he said with an expansive smile. His Boise fans are philosophical too. "These days we can't get as much of him as we'd like," said Dave Malone, the Idanha's assistant manager, "but we're grateful for what we've got."●

SUBSEABED DISPOSAL OF NUCLEAR WASTE

● Mr. HECHT. Mr. President, last fall I spoke on the floor of the Senate about the need to resume United States participation in the international research on the possibility of subseabed disposal of nuclear waste.

As a result of my efforts, and with the cooperation of several key Members of this body and the House of Representatives, there is now a special Office of Subseabed Disposal Research within the Department of Energy. Within a matter of a few weeks, at most, I expect to see the Woods Hole Oceanographic Institution delegated the responsibility to assemble a university-based subseabed consortium to plan and conduct this research.

I have made no secret of my opposition to a deep geologic repository for high level nuclear waste at Yucca Mountain, NV, or anywhere else. Deep geologic disposal of unreprocessed spent nuclear fuel will be dreadfully expensive, in excess of $25 billion, and has never been proven safe anywhere in the world. I favor reprocessing and recycling nuclear waste so it can be burned for energy.

At present, America's nuclear waste management strategy entirely depends on siting a repository at Yucca Mountain, NV. However, I am continually hearing report after report about how many problems there are with both the Yucca Mountain site, and the way the program is being run. If the technical problems turn out to be as serious as certain people think they are, or if the program suffers from procedureal inadequacies and quality control problems, then it is very much an open question in my mind as to whether the Nuclear Regulatory Commission will ever grant a license for a repository at Yucca Mountain.

If Yucca Mountain is unlicensable, then dozens of nuclear powerplants all around the country may have to be shutdown, because they operate under State laws that allow them to operate only so long as the Nuclear Regulatory Commission has confidence that there is a solution to the nuclear waste management problem. If Yucca Mountain turns out to be no good, then there is no monitored retrievable storage facility, and there is no waste confidence.

Mr. President, there are tens of millions of people in the eastern States who depend on nuclear power to run their factories and light their homes. I have no desire to see these people suddenly jobless in the dark because the Congress put all its nuclear waste eggs in a poorly conceived Yucca Mountain basket.

I would think that even those here in the Senate, or the other body, who really think that Yucca Mountain is the answer to their own parochial nuclear waste problem, would see the value in taking out a little inexpensive public policy insurance. Without this insurance, known as continuing research on subseabed disposal, a number of people on Capitol Hill might just wake up one morning in about 10 years and discover that their State is being considered once again for a repository.

If we continue research on subseabed disposal, then the factories can stay open, the lights can stay on, even if the Nuclear Regulatory Commission turns down a Yucca Mountain repository.

As I stated during the nuclear waste debates last year, other countries have in fact borne the brunt of the cost of international subseabed research efforts. Other countries are very actively and aggressively pursuing any of several variations on the theme of disposing of nuclear waste under the seabed. Sweden has a facility mined under the sea near its coast where it stores low

and medium level nuclear waste. There is active discussion in Great Britain about a similar concept which may soon be applied in that country.

Earlier this year, the Washington Post reported how the chemistry of seawater might be used to dramatically improve our ability to isolate high level nuclear waste from the human environment, particularly if that waste is reprocessed first.

In a waste management system involving reprocessing, the only sensible thing to do with any residual liquid waste is to vitrify it. Vitrification is a very effective way of keeping the waste from dissolving away into the ground water when the waste canister eventually corrodes. It turns out that the magnesium found naturally occurring in seawater dramatically slows down the rate at which the vitrified waste dissolves. In other words, if you want to keep the waste out of the human environment, the best place for it is somewhere it will be in contact with seawater-saturated rock or sediment before it gets a chance to leak out into the environment more generally.

If we proceed with a land-based repository, then we would need to put magnesium salts into the dry holes where the waste canisters would be located, to try to imitate conditions that are found underneath the seabed. Rather than trying to mimic the ocean, I would hope it would be obvious to everyone that it makes more sense to take a closer look at the ocean itself.

Mr. President, I hope that Senators from States whose citizens rely on nuclear energy for their jobs and domestic energy needs, and Senators from States which may once again be considered for a land-based repository when the Yucca Mountain, NV, site turns out to be unacceptable, will support my efforts to get America once again to meaningfully participate in the cooperative international research effort on the subseabed disposal of nuclear waste.

Mr. President, I ask that an article on subseabed disposal by Dr. Tulenko of the University of Florida, an article on subseabed work in Great Britain from New Scientist magazine, and the Washington Post article on the beneficial effects of magnesium found in seawater in enhancing our ability to isolate nuclear waste from the human environment, be printed in the RECORD.

The material follows:

[From the Washington Post, Jan. 18, 1988]

DISCOVERY COULD REDUCE RISKS OF RADIOACTIVE WASTE STORAGE

One of the risks of long-term storage of highly radioactive nuclear wastes could be reduced by a factor of 100 or more if the storage facility imitated the ocean chemically, a team of government and private researchers said last week.

Their discovery, which has been tested only in the laboratory, would be a modification of a storage method now used in France and Belgium, but only under consideration for the United States and other nuclear-powered countries. The current method involves mixing the sludgelike wastes, partly dissolved in acid, with melted glass and then pouring the mixture into stainless steel canisters. After the glass cools and hardens, the sealed canisters would be buried.

The steel is expected to resist corrosion for about 300 years. After that, however, it would be possible for ground water to reach the glass and slowly corrode it, releasing radioactive matter into the water table.

The modification "will prevent the glass from corroding for at least 25,000 years," according to Sidney Alterescu of NASA's Goddard Space Flight Center in Greenbelt.

The idea emerged from the work of John A. O'Keefe, a Goddard geophysicist who studies tektites, hardened droplets of natural glass formed when meteorites land with enough force to melt and splash rock.

O'Keefe and his colleagues have found that tektites recovered from the ocean where some fell millions of years ago, are far less corroded than those of comparable age found on land. Experiments by Aaron Barkatt of the Catholic Univeristy of America have established that sea water's dissolved magnesium makes the difference. The magnesium-rich water forms a protective coating on the glass.

One way to use the discovery, the scientists suggest, would be to mix nontoxic magnesium compounds, such as Epson salts, into the earth around the canisters. When the groundwater breaches the canisters, it will resemble the ocean chemically and coat the glass.

DISPOSAL OF WASTE: A STATUS REPORT

(Session Organizer: J.S. Tulenko (Univ. of Florida)

1. Radiological Assessment of the Consequences of the Disposal of High-Level Radioactive Waste in Subseabed Sediments, G. de Marsily (Paris Sch of Mines-France), V. Behrendt, D.A. Ensminger, C. Flebus, B.L. Hutchinson, P. Kane, A. Karpf, R.D. Klett, S. Mobbs, M. Poulin, D.A. Stanners, D. Wuschke, invited.

INTRODUCTION

The radiological assessment of the seabed option consists in estimating the detriment to man and to the environment that could result from the disposal of high-level waste (HLW) within the seabed sediments in deep oceans.

The assessment is made for the high-level waste (vitrified glass) produced by the reprocessing of 10^5 tons of heavy metal from spent fuel, which represents the amount of waste generated by 3333 reactor-yr of 900-MW(electric) reactors, i.e., 3000 GW (electric) yr.

The disposal option considered is to use 14667 steel penetrators, each of them containing five canisters of HLW glass (0.15 m^3 each). These penetrators would reach a depth of 50 m in the sediments and would be placed at an average distance of 180 m from each other, requiring a disposal area on the order of 22 x 22 km. Two such potential disposal areas in the Atlantic Ocean were studied, Great Meteor East (GME) and South Nares Abyssal Plains (SNAP). A special ship design is proposed to minimize transportation accidents. Approximately 100 shipments would be necessary to dispose of the proposed amount of waste.

METHODOLOGY

The assessment was done within the framework of the International Seabed Working Group of the Nuclear Energy Agency of the Organization for Economic Cooperation and Development, using the best models and data available at the end of 1986 (Ref. 1). Three types of calculations are made:

1. The base case, or "normal" scenario: the waste is assumed buried at its prescribed depth and all the barriers behave as anticipated.

2. Several "abnormal" scenarios, where one or more components of the system behave abnormally.

3. Scenarios of transportation accidents, occurring in coastal areas or in the deep seas: not only the consequences of such accidents are analyzed, but also their probability of occurrence is assessed given a special ship design. Probability of recovery actions is also studied.

The assessments are made with both a deterministic and a stochastic methodology. This makes it possible to estimate not only the most likely doses resulting from each scenario, but also the range of uncertainty of this estimation, given the uncertainty in the available data.

RESULTS

No significant differences were found between the two sites (GME and SNAP), although the quality of their sediments is slightly different. We will therefore not specify the site origin of the results.

BASE CASE

For the base case, the peak dose to the maximally exposed group of individuals is on the order of 2.8×10^{-9} Sv.yr^{-1} for the complete repository of 10^5 tonne heavy metal (HM), occurring 150000 yr after disposal. This is $\sim3.6\times10^5$ times smaller than the International Commission on Radiological Protection recommended limit (10^{-3} Sv.yr^{-1}), and also 3.6×10^5 times smaller than background doses: such very small doses are therefore totally negligible and insignificant. The uncertainty on this value calculated by the stochastic analysis ranges between 3×10^{-15} and 3×10^{-8} Sv.yr^{-1}, and the highest dose ever calculated in the stochastic analysis is 2.5×10^{-8} Sv.yr^{-1} in a sample of 500 runs.

The radionuclides contributing most to these doses are the long-lived poorly sorbed fission products (^{99}Tc, ^{79}Se, ^{126}Sn, ^{129}I, ^{135}Cs), and the major pathway is the consumption of mollusks, crustaceans, seaweed, and fish.

The collective doses integrated to 10^5 yr is on the order of 2.2×10^3 person-Sv and to 10^7 yr of 2.8×10^4 person-Sv. These figures can only be used for comparative purposes with other disposal options.

ABNORMAL SCENARIOS

For the various abnormal scenarios, it was found that the seabed option was extremely insensitive to a large number of assumptions or behaviors of the components of the system. In particular, for a properly emplaced penetrator, the corrosion and leaching properties of the waste are not significant. Only three scenarios were found to increase the doses significantly (factor of individual dose increase compared to the base case):

1. Emplacement of penetrators at a depth <10 m in the sediment (factor of 100 and higher).

2. Existence of an upward pore water velocity in the sediments: the base case sce-

nario assumes, as presently observed, that no pore water velocity exists in the sediments above the detection limit, which is 10^{-3} m.yr^{-1}; causes of such movements of water could be compaction, natural convective cells developing between the crustal bedrock and the ocean bottom, or other unknown mechansims (factors up to 10^6).

3. Change in the retention properties of the sediments for the radionuclides (factor of 170).

TRANSPORTATION ACCIDENTS

It was found that the doses arising from transportion accidents could be very severe, especially for accidents in coastal waters (in the order of 6.5×10^{-5} Sv.yr^{-1} per metric tonne of heavy metal of waste lost in the sea, with an uncertainty range of 3.7×10^{-6} to 1.1×10^{-3} Sv.yr^{-1} tonne^{-1}). However, it is possible to design a transportation vessel and organize recovery actions, so that the probability of occurrence of such doses is extremely small and in practice, negligible.

In none of the above scenarios does the dose to fauna appear to be significant.

DISCUSSION

The results of this radiological assessment seem to show that the disposal of HLW in subseabed sediments is radiologically a very acceptable option. This statement holds true as far as the assumptions, models, and data used in the calculations can be validated. A further research program on subseabed disposal should therefore aim at achieving such a validation. This task must be completed before the feasibility study of the subseabed option can be considered complete, along with other tasks that remain to be done (e.g., further site selection, engineering design and testing, etc.).

Since, in many cases, conservative assumptions or data were used in this assessment, it is most likely that future research will show that the consequences of this disposal option may be even smaller than those described here.

NUCLEAR WASTE GOES TO SEA

Finding acceptable land-based sites for dumping radioactive waste is a headache for both the nuclear industry and the British government. Underground burial, the strategy largely favoured by the agency responsible, the Nuclear Industry Radioactive Waste Executive (NIREX) is a very unwelcome prospect for those who may end up living close to the sites.

Over the next 40 years, a final resting place must be found for nearly 1.2 million cubic metres of rubbish from nuclear power plants, nuclear reprocessing and a variety of research, medical, industrial and military sources. That is the estimated total of low- and intermediate-level waste (ILW and LLW) which will be generated.

Now, two British companies have produced competing solutions which sidestep the problem of winning approval for burial on land. Both proposals involve disposal under the seabed. And both methods rely heavily on conventional mining and offshore oil and gas technology.

The rival companies are Wheeler Offshore and Consolidated Environment Technologies (CET). Wheeler's system is known as POWER, for Pipeline Operated Nuclear Waste Repository. Under this scheme cannisters of radioactive waste would be "pumped" hydraulically down pipelines and placed, by remote control, in subsea wells. The waste would be loaded into the system at a shore station, possibly sited at a nuclear power plant. The cannisters, up to 1.4 metres in diameter, would end up in wells 1,700 metres below the sea. Wheeler estimates that one of its repositories could hold as much as 50,000 cubic metres of packaged waste.

CET's concept is on a much larger scale. It would involve sinking a shaft 15 metres in diameter under the seabed. Large modules of waste, up to 2,000 tonnes in weight could be lowered into the shaft. This could be sunk up to 3,000 metres deep.

The scheme would be suitable for bulky waste from decommissioned power plants and mothballed nuclear submarines. It would also cut down the radiation dose experienced by workers who would have to handle large volumes of waste.

To date Wheeler has spent more than £200,000 on developing their scheme. CET has spent just over £120,000. Both systems require at least three or four years' development work before their commercial viability can be assessed.

Wheeler has joined forces with a French company called ACB Alsthom. Together they are bidding to install a POWER system in Taiwan. The Soviet Union is also interested. CET says that the Japanese are interested in its system, but so far neither proposal has won the backing of NIREX.

Full-scale technical presentations of both schemes are due to be made to NIREX over the next 10 days. Both face formidable legal obstacles, as well as considerable political, public and diplomatic opposition to the use of the sea, and the seabed, for radioactive waste disposal.●

THE FAMILY SECURITY ACT OF 1988

● Mr. COHEN. Mr. President, DANIEL PATRICK MOYNIHAN has labored for many years in pursuit of compassionate and responsible welfare policy in this country. Decades ago, he saw the need for change in the way our society addresses the problem of family poverty. His efforts to change Federal welfare policy for the better have been legion and his expertise on the subject is formidable. He has been a man ahead of his time and I am happy to see that the U.S. Sentate, having yesterday approved his very significant welfare reform bill, seems to have been pulled forward in his wake.

The Family Security Act of 1988, introduced by Senator MOYNIHAN, would bring about fundamental improvements in the nature and operation of the Nation's welfare system and thereby make that system much more equal to the social, demographic, and economic realities we hope for it to ameliorate. I commend Senator MOYNIHAN for his persistence and his tireless pursuit of the goal of improving our welfare system and I congratulate him for his fine work. I must also commend the chairman of the Finance Committee and the members of that committee who have done so much to advance this measure.

The Census Bureau has estimated that, in the United States today, one child in five suffers in poverty. One child out of every four born is born into poverty. The implications of these numbers are indeed grave, especially when one considers that the perils of beginning life in poverty can affect the development of a child in ways that can never be overcome.

Despite the best of intentions and vast expenditures, our current welfare system too often hinders rather than helps the least fortunate in our society. The system hinders its beneficiaries by trapping them into dependence on government assistance rather than encouraging them and empowering them to work toward self-sufficiency. The thrust of the Family Security Act is to make efforts to help welfare recipients to help themselves a central feature of the Nation's welfare system.

The Nation's basic welfare program for families with children, Aid to Families with Dependent Children [AFDC], was established in 1935 to meet circumstances much different than we face today. AFDC was designed as a program to help widows, who were expected to stay home rather than work, to raise their children. It was expected that, with the passing of time, Social Security and unemployment insurance coverage would render AFDC no longer necessary.

After the passage of more than 50 years, AFDC is still with us, but social, demographic, and economic forces that bear upon family poverty are much changed. It is much more common today for children to grow up in a female-headed household. The number of such households rose from 4.5 million in 1960 to 10.1 million in 1985. Poverty is much more prevalent among female-headed households and tends to persist longer. In female-headed households more than 50 percent of all children are poor.

Of course, society no longer assumes that women will stay home with their children. Currently, about half of American women with children under the age of 1 work. Accordingly, the recent public debate on the reform of the Nation's welfare system has been characterized by a consensus that welfare mothers should be encouraged to support themselves and their children through work.

SUMMARY OF THE FAMILY SECURITY ACT OF 1988

CHILD SUPPORT ENFORCEMENT

According to the Census Bureau, of the nearly 9 million mothers with children whose fathers were not living at home in early 1986, nearly 40 percent had never been awarded child support. Of those who were entitled to child support in 1986, only half received the full amount due.

The Family Security Act would reassert the appropriate expectation and requirement that both parents share in the responsibility for the support of their children. The bill would strengthen the child support enforce-

ment system by encouraging and helping States to establish paternity for purposes of awarding appropriate child support and by taking further steps to ensure that children enjoy the financial support of an absent parent.

EDUCATION, EMPLOYMENT, AND TRAINING

The Family Security Act would begin to transform our welfare system from a system that helps its beneficiaries to do little more than subsist to a system that strives, first and foremost, to provide opportunities for education, training, and gainful employment. The bill before the Senate would establish a new program, the Job Opportunities and Basic Skills [JOBS] Program, under which the States would provide work, training, and education activities to help welfare recipients move from welfare to gainful employment.

For most families who receive welfare benefits, welfare participation does not last for very long. Most mothers who receive AFDC benefits will do so for no more than 4 years over the course of their adult lives. However, about one-fourth of women who enroll in AFDC are expected to use it for 10 years or more. These long-term recipients collect more than 60 percent of AFDC benefits. The Family Security Act would require States to make a special effort to help these long-term recipients escape dependency.

TRANSITIONAL ASSISTANCE

In order to help welfare recipients make the transition from welfare to work, the Family Security Act provides for child care assistance for 9 months and continued Medicaid coverage for up to 12 months as a mother enters the work force.

ASSISTANCE TO TWO-PARENT FAMILIES

This welfare reform measure would require all the States to provide welfare assistance to needy families in which both parents are present, but in which the principal earner is unemployed. Currently, about half the States—including my State of Maine—provide such support. This requirement is intended to prevent the exclusion of two-parent families from welfare assistance from driving a parent away.

PAYING FOR WELFARE REFORM

The entire cost of this legislation—an estimated $2.8 billion over the next 5 years—will be offset by other provisions of the bill. This legislation would extend the current authority of the Internal Revenue Service to deduct from tax refunds debts owed the Federal Government. The remainder of the revenue necessary to cover the new costs of the welfare reform bill would come from limiting the business deduction for meals and entertainment for very high income individuals.

Mr. President, I am pleased to have been a cosponsor and supporter of the Family Security Act. This legislation offers hope through greater efforts to break the grip of poverty that holds so many American families. I am hopeful that the Senate will be able to negotiate successfully with the House of Representatives in order to present back to us and to the President a welfare reform measure he will sign into law. Again, I commend and applaud the efforts of Senator MOYNIHAN and his colleagues on the Finance Committee for their fine work on this legislation.●

ETHIOPIAN FAMINE

● Mr. BOSCHWITZ. Mr. President, famine again is striking Ethiopia and once again the human dimension of this crisis threatens to be truly staggering. In 1984-85, during another Ethiopian famine, more than 1 million people died of starvation. The American people and our Government responded very generously—the U.S. Government provided almost half of the emergency food needs sent by the world to Ethiopia and private U.S. citizens donated more than $100 million to help.

Tragically, as a renewed drought spells famine for the Ethiopian people, the Ethiopian Government is making matters worse by closing transportation routes and halting relief distribution measures. In April, Ethiopia's ruler, Lieutenant Colonel Mengistu, expelled the International Committee of the Red Cross and other international famine relief agencies from the entire northern provinces of Eritrea and Tigray—where the civil war is most heavily fought and where the drought is the most severe. Until that time, we had hoped that it would be possible to avoid the terrible suffering and death that occurred in Ethiopia in 1984-85.

I have written to the Ethiopian leader condemning his actions and urging him to reconsider his potentially disastrous decision—which could literally sentence to death an innocent population. I would like to share that letter with my colleagues and I strongly urge them to write to Colonel Mengistu as well.

I ask that my letter be included in the RECORD.

The letter follows:

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Washington, DC, June 9, 1988.

L. Col. MENGISTU HAILE MARIAM,
President of Ethiopia, c/o the Embassy of Ethiopia, Washington, DC

DEAR PRESIDENT MENGISTU: I am writing to strongly urge you to reconsider your potentially disastrous decision to expel the International Committee of the Red Cross and other international famine relief agencies from the northern provinces of Eritrea and Tigray. This is an action which could literally sentence to death an innocent population.

As you know, we had hoped to meet your request for assistance during this period of renewed drought so that it might be possible to avoid the terrible suffering and death that occurred in Ethiopia in 1984-85. At that time, a calamitous drought in which over one million people died was severely aggravated as a direct result of the policies you followed in forced resettlement and "villagization." Now your decision to expel relief agencies threatens to make a very bad situation even worse.

I'm told that drought conditions now exist in 10 of your 14 provinces. In February, nearly two million people received food aid. Today, however, because of your actions, only about 850,000 people are being fed and 2.3 million people are in danger of needlessly dying of starvation.

The population of Ethiopia is now 47 million and is growing at a rate of 3 percent a year. Land degradation is among the worst in the world. To feed your people, you need to import about 500,000 tons of grain even under the best of circumstances. I strongly appeal to you, in the name of our common humanity, that you reverse your decision and let desperately needed deliveries of food aid be made immediately.

Sincerely,

RUDY BOSCHWITZ.●

INFORMED CONSENT: MARYLAND

● Mr. HUMPHREY. Mr. President, today I have two letters from the State of Maryland urging passage of informed consent legislation. The women who write tell of the pain and sorrow they feel because of an abortion they regret ever having. Their stories are not uncommon. Many women decide to have an abortion without full knowledge of the risks and alternatives that exist. They are not provided with the necessary information to enable them to give an informed consent. I ask my distinguished colleagues to join me in support of S. 272 and S. 273. I ask unanimous consent that the letters from Maryland be inserted in the RECORD.

The letters follow:

DEAR SENATOR HUMPHREY: I am writing this letter as a start to help others who are pregnant and considering an abortion. My husband and I have three wonderful children, but during my second pregnancy I ran into complications. My morning sickness is always severe which ends me up at the hospital receiving I.V. feedings. This particular pregnancy my veins collapsed and I could not be given the I.V. The doctor who I trust and has delivered my babies said this one should be aborted for there wasn't anyway I could receive nutrition. My vomiting was constant. I asked the doctor what the baby looked like at this point—7-8 weeks. His response was, "Oh, only about this big (about an inch)," holding up his fingers.

This was the very moment I should have been informed on exactly the development of my child. It's been such a loss to myself and to my husband. We still cry about it when it's brought up.

We can only hope by the help of you, Senator Humphrey, and others like you that this changes. Expectant mothers must be told about the complete process and physical pain to her expectant child. I know if I would have been told, I would have said

"no," and stayed in bed, sick, just a little longer. Please help.

Sincerely,

Mrs. EILEEN PHELPS,
Ellicott City, MD.

It has been four years since I lost my job over the abortion issue.

In 1977, I began working in an institution that performs abortions. At the time, I was "pro-choice."

One of my duties was to interview patients—some of whom were very ambivalent about the abortion; some of whom were prodded into it by husbands, boyfriends or parents; some who had no second thoughts. Those patients who seemed hesitant, I suggested waiting—if time allowed. Better a solid decision than one later regretted.

I tried to avoid interviewing second trimester abortion patients once I learned what the procedure entailed. It became difficult to walk down the hallway where plastic containers stood at the nursing stations holding dead fetuses on their way to the Pathology Department. These 16 to 24 week fetuses had arms, legs, brains, hearts—all components of a human being. Those hearts were beating when I interviewed the patients but at discharge time, those hearts were in those plastic containers, dead at the hand of physicians.

As time passed, I learned that most abortions are done for the sake of convenience—not as a result of rape, incest, threat to the mother's health, or the presence of a severely handicapped fetus. The patient's chief complaint was usually "unwanted pregnancy."

One patient had her seventh abortion—all of them paid for by Medicaid. My point of view began to slowly change.

A patient that I interviewed went into premature labor and delivered a live 20 week gestation fetus that lived only 12 minutes. I had to interview the parents again for information for death certification. The doctor had baptized the infant and the parents had named him. A funeral home was called and arrangements were made. Immediately after this incident, a patient came in who was scheduled to abort her 19 week pregnancy via saline abortion. It seemed to me that there was something very wrong when comparing these two situations. I suddenly saw the abortion patient's fetus as a baby and that it was her choice to kill that baby. And it was legal.

Another time I had to inform a patient who was 20 weeks pregnant that she was an obstetrical patient from the institution's point of view. She replied, "You mean it's a baby already?" The amount of ignorance among women about pregnancy is overwhelming.

I agree that it was terrible to be 13 or 14 and to be pregnant. Isn't it worse to kill your first child?

I finally had to leave my job—the conflict over what I was doing became too much for me to handle. I no longer earn money helping to kill babies.

The frustration lingers—someone else has my job—abortions continue.

Luckily for my sanity, I still believe in ultimate justice.

ANONYMOUS.

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

● Mr. HEFLIN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35, for Mr. H.D. Palmer, a member of the staff of Senator MCCLURE, to participate in a program in West Germany, sponsored by the German Academic Exchange Foundation, from June 26 to July 13, 1988.

The committee has determined that participation by Mr. Palmer in the program in West Germany, at the expense of the German Academic Exchange Foundation, it is in the interest of the Senate and the United States.●

BILL PLACED ON CALENDAR—H.R. 4731

Mr. BYRD. Mr. President, I ask unanimous consent that H.R. 4731, a bill to extend the authority for the work-incentive demonstration program, be placed on the calendar.

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

AUTHORIZING THE SECRETARY OF THE SENATE TO MAKE CERTAIN CORRECTIONS IN H.R. 3097

Mr. DOLE. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make corrections in the engrossment of H.R. 3097, the Organ Transplant Amendments Act, which I now send to the desk.

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

The corrections are as follows:

On page 8, line 10: Strike the word "total".

On page 16, line 18 add after part.:

"SEC. 1937. TERMINATION DATE.

The provisions of Part D of this Act shall terminate effective January 1, 1991.".

FEDERAL PERSONNEL IMPROVEMENTS ACT

The PRESIDING OFFICER. The clerk will read the bill, S. 2530 for the second time.

The legislative clerk read as follows:

A bill (S. 2530) to improve the management of the Federal pay system and increase the deficiency and productivity of Federal employees, and for other purposes.

Mr. DOLE. Mr. President, I object to further consideration of the bill.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, has morning business been closed?

The PRESIDING OFFICER. Morning business is now closed.

ORDERS FOR TOMORROW

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:20 a.m. tomorrow; that following the two leaders or their designees, there will be morning business to extend until the hour of 10 o'clock a.m., and Senators may speak during that period for morning business for not to exceed 5 minutes each; that at 10 o'clock a.m., the Senate resume its consideration of the unfinished business, the corporate takeover legislation; that there be, beginning at 10 o'clock a.m., 30 minutes equally divided on division I(a) on the pending amendment by Mr. ARMSTRONG; that 30 minutes be equally divided and controlled in accordance with the usual form; that the vote on or in relation to the Armstrong amendment occur at 10:30 a.m.; that the 1 hour under rule XXII on the motion to invoke cloture begin running at 12 o'clock noon tomorrow; that that 1 hour be reduced to 45 minutes; that the 45 minutes be equally divided between the Senator from Tennessee [Mr. SASSER], as was the case today, and the Senator from North Carolina [Mr. HELMS]; that the Senate stand in recess from 12:45 p.m. tomorrow until 2 o'clock to accommodate the two party conferences; that at 2 o'clock p.m., the vote occur on the motion to invoke cloture, thus waiving the mandatory quorum.

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

Mr. DOLE. There is no objection.

The PRESIDING OFFICER. Hearing none, it is so ordered.

Mr. BYRD. Mr. President, I also should ask there be no amendments in order to division I(a) of the amendment by Mr. ARMSTRONG. That is in accord with the wishes of both Mr. ARMSTRONG and Mr. PROXMIRE.

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

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, the pending question before the Senate then, is division I(a) of the amendment by Mr. ARMSTRONG.

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Mr. President, I ask for the yeas and nays on division I(a).

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

PROGRAM

Mr. BYRD. Mr. President, the Senate will be in tomorrow at 20 minutes after 9 a.m.

After the two leaders or their designees have been recognized under the standing order, there will be a period for morning business until 10 o'clock a.m. Senators will be permitted to speak during that period for morning business for not to exceed 5 minutes each.

At 10 o'clock a.m., the Senate will resume consideration of the Armstrong amendment, and there will be 30 minutes of debate, equally divided, on division I(a) of the amendment by Mr. ARMSTRONG, amendment No. 2374. There will be 30 minutes of debate, and there will be a rollcall vote. There will be a 15-minute rollcall vote. The call for the regular order will be automatic at the conclusion of the 15 minutes.

Upon the disposition of the division of the Armstrong amendment, the Senate will proceed to further consideration of the Armstrong amendment and the various divisions thereof, and other amendments, until the hour of 12 o'clock noon, at which time the Senate will proceed to debate the motion to invoke cloture on H.R. 1495.

If cloture is invoked, the Senate will continue with that business, to the exclusion of all other business, until that business is completed. If cloture is not invoked, the Senate will resume consideration of the corporate takeover legislation.

So there will be various rollcall votes tomorrow, I am sure. Senators would do well to be here early and be prepared to stay until a reasonably late hour.

Mr. President, does the distinguished Republican leader have any statement which he would like to make or any business he would like to transact?

Mr. DOLE. I say to the distinguished majority leader that we have no further business.

I also indicate, as I did early last week, that we hope to be in a position to move legislation along this week. Under an appropriate incentive program, I think it might make it easier. So I will be happy to discuss incentives with the majority leader, prior to the policy luncheons tomorrow.

Mr. BYRD. The incentive is to get out by October 8.

Mr. DOLE. That is the big incentive.

Mr. BYRD. Mr. President, I thank my friend, the distinguished Republican leader.

RECESS UNTIL 9:20 A.M. TOMORROW

Mr. BYRD. Mr. President, there being no further business to come before the Senate, I move that the Senate stand in recess until the hour of 9:20 a.m. tomorrow.

The motion was agreed to, and at 5:08 p.m., the Senate recessed until tomorrow, Tuesday, June 21, 1988, at 9:20 a.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate after the recess of the Senate on June 17, 1988, under authority of the order of the Senate of February 3, 1987:

DEPARTMENT OF STATE

CARL COPELAND CUNDIFF, OF NEVADA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF NIGER.

FEDERAL RESERVE SYSTEM

JOHN P. LAWARE, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF 14 YEARS FROM FEBRUARY 1, 1988, VICE HENRY C. WALLICH, RESIGNED.

Executive nominations received by the Senate June 20, 1988:

THE JUDICIARY

ADRIANE J. DUDLEY, OF THE VIRGIN ISLANDS, TO BE A JUDGE OF THE DISTRICT COURT OF THE VIRGIN ISLANDS FOR A TERM OF 10 YEARS, VICE ALMERIC L. CHRISTIAN, RETIRED.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR PERMANENT APPOINTMENT TO THE GRADES INDICATED IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

To be captain

WILLIAM L. STUBBLEFIELD	ABRAM Y. BRYSON, JR.
ROBERT V. SMART	DONNIE M. SPILLMAN
CLARENCE W. TIGNOR	ROBERT C. ROUSH
WARRENT K. TAGUCHI	DAVID J. GOEHLER
	WILLIAM J. LOUNSBERY

To be commander

DANE E. TRACY	CHRISTOPHER B. LAWRENCE
RONALD W. JONES	DIRK R. TAYLOR
RICHARD W. PERMENTER	KURT X. GORES
THEODORE C. KAISER	ANDREW A. AMRSTRONG, III
JOHN M. BARNHILL	
DONALD D. WINTER	
RICHARD P. FLOYD	

To be lieutenant commander

LAWRENCE F. SIMONEAUX	JOHN F. NOVARO
CHARLES D. MASON	MICHAEL E. HENDERSON
GARY M. BARONE	MARK P. KOEHN
LEWIS D. CONSIGLIERI	NICHOLAS E. PERUGINI
CHARLES B. GREENAWALT	JOHN C. BORTNIAK
JOHN T. MOAKLEY	

To be lieutenant

CRAIG L. BAILEY	PHILIP M. KENUL
PAUL J. RUIZ	ILENE BYRON
PAUL T. STEELE	SVETLANA I. ANDREEVA
RUSSELL E. BRAINARD	ERIC G. HAWK
CRAIG N. MCLEAN	ROBERT W. ANDERSON
NEAL G. MILLETT	JOHN A. MILLER
SEAN R. WHITE	DANIEL E. CLEMENTS
WILLIAM P. HINES	GEORGE A. GALASSO
GEOFFREY T. LEBON	NANCY L. CREWS
JAMES E. WADDELL, JR.	DEBRA M. DAVIS
TIMOTHY D. TISCH	KENNETH W. BARTON
THOMAS G. CALLAHAN	JOHN T. LAMKIN
STEVEN A. THOMPSON	JEFFREY P. SALMORE
WILLIAM E. SITES	MARK P. ABLONDI

To be lieutenant (junior grade)

SCOTT E. KUESTER	PAUL L. SCHATTGEN
MICHAEL B. BROWN	ELIZABETH A. LAKE
EMILY BEARD	MATTHEW J. WELLSLAGER
ELIZABETH A. CROZER	MICHAEL P. LYNCH
MICHAEL K. JEFFERS	ROBERT W. POSTON
MICHAEL S. ABBOTT	WADE J. BLAKE
DAVID A. COLE	TIMOTHY C. O'MARA
TODD C. STILES	BRIAN K. TAGGART
GLENN A. GIOSEFFI	E. ALLEN RICE
CATHERINE A. NITCHMAN	DAVID S. SAVAGE
CATHERINE J. BRADLEY	JOHN M. STEGER
CAROLYN COHO	PATRICIA D. LYNCH
JOANNE R. SALERNO	ALISON J. VEISHLOW
KRISTIE L. MILLER	MICHELE G. BULLOCK
MICHAEL S. GALLAGHER	JAMES VICEDOMINE
MARGARET H. SANO	
MARY T. FORAN	

To be ensign

ANDREW L. BEAVER	TODD L. BERGGREN
THOMAS R. WADDINGTON	TRACY A. DUNN
BRANDON B. FRIEDMAN	TORSTEN DUFFY
ANGELA M. LUIS	JACK G. CLAYTON
JEFFREY A. FERGUSON	CHERYL L. THACKER
MICHAEL R. LEMON	CHRISTOPHER T. MOBLEY
PHILIP S. HILL	SHANNON WHALEY
WILLIAM B. KEARSE	WILTIE A. CRESWELL
JOSEPH S. MCDOWELL	THOMAS A. NIICHEL
PHILIP J. MEIS	JULIA A. NICHOLS
MARK S. LARSEN	JAMES R. MEIGS
JAMES S. VERLAQUE	TIMOTHY S. HALSEY
SCOTT K. SULLIVAN	CATHERINE D. DEAL
STACY L. BIRK-RISHEIM	PETER C. STAUFFER
CYNTHIA N. CUDABACK	JEFFREY K. BROWN
GARY R. MAY	BARBARA E. WHEELER
LAURIE A. RAFFETTO	JAMES A. BUNN, II
JOHN E. HERRING	LAURA L. CLAYWELL
MATTHEW H. PICKETT	MATTHEW P. EAGLETON
KEITH W. SMITH	DONALD W. HAINES
MARK P. SKARBEK	DAWN A. HARTLEY
LEAH U. IAEA	CHRISTIE M. JOHNSON
CHRISTOPHER A. BEAVERSON	PEGGY L. KLINEDINST
	STEVEN P. LABOSSIERE
BRIAN J. LAKE	BJORN K. LARSEN
CARL R. GROENEVELD	CHRISTIAN MEINIG
GUY T. NOLL	ROBERT S. PAPE
ALISON R. BETZ	CRAIG W. REEVES
DAVID O. NEADER	J. ALLISON ROUTT
WESLEY G. KITT	JILL F. RUSSELL
CARLA R. CUNNIGHAM	TIMOTHY C. TREMBLEY
JOE A. INTERMILL, III	DALE H. TYSOR
DOUGLAS R. SCHLEIGHER	PATRICK I. WADDINGTON
JEFFREY D. BEAR	DAVID K. ZIMMERMAN

IN THE AIR FORCE

THE FOLLOWING OFFICERS FOR APPOINTMENT IN THE REGULAR AIR FORCE UNDER THE PROVISIONS OF SECTION 531, TITLE 10, UNITED STATES CODE, WITH A VIEW TO DESIGNATION UNDER THE PROVISIONS OF SECTION 8067, TITLE 10, UNITED STATES CODE, TO PERFORM DUTIES INDICATED WITH GRADE AND DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE PROVIDED THAT IN NO CASE SHALL THE FOLLOWING OFFICERS BE APPOINTED IN A GRADE HIGHER THAN THAT INDICATED.

MEDICAL CORPS

To be colonel

JOE E. BURTON, xxx-xx-xxxx

To be lieutenant colonel

ROBERT A. GASSER, JR., xxx-xx-xxxx
WILLIAM A. POLLAN, xxx-xx-xx...
GEORGE P. TAYLOR, JR., xxx-xx-xxxx

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICERS FOR PERMANENT PROMOTION IN THE U.S. AIR FORCE, UNDER THE PROVISIONS OF SECTION 628, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

MEDICAL CORPS.

To be colonel

ALI N. BASER, xxx-xx-xxxx
DWIGHT R. BASS, xxx-xx-xxxx
ROBERT A. CONNER, xxx-xx-xxxx
DEXTER D. DEWITT, xxx-xx-xxxx
RONNIE R. MERWIN, xxx-xx-xxxx

To be lieutenant colonel

LUISA F. BARILE, xxx-xx-xxxx
RONALD E. WICKS, xxx-xx-xxxx

To be major

KATHERINE H. DEATON, xxx-xx-xxxx
PAUL S. DOCKTOR, xxx-xx-xxxx
JULIO E. IZQUIERDORIVERA, xxx-xx-xxxx
JOYCE Y. JORDAN, xxx-xx-xxxx
GUNTIS KALNINS, xxx-xx-xxxx
RICHARD E. KARULF, xxx-xx-xxxx
GEORGE MAROSAN, xxx-xx-xxxx
STANISLAV MERKA, xxx-xx-xxxx
ROBERT M. ROYSTER, xxx-xx-xxxx
PHILIP M. SHUE, xxx-xx-xxxx

DENTAL CORPS

To be colonel

STEVEN G. CABLE, xxx-xx-xxxx
WAYNE E. HOTT, xxx-xx-xxxx

To be lieutenant colonel

JAMES H. FOSTER, xxx-xx-xxxx

To be major

JAMES H. FOSTER, xxx-xx-xxxx
DAVID E. PAQUETTE, xxx-xx-xxxx

IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE AIR FORCE UNDER THE PROVISIONS OF SECTIONS 593 AND 8379, TITLE 10 OF THE UNITED STATES CODE. PROMOTIONS MADE UNDER SECTION 8379 AND CONFIRMED BY THE SENATE UNDER SECTION 593 SHALL BEAR AN EFFECTIVE DATE ESTABLISHED IN ACCORDANCE WITH SECTION 8374, TITLE 10 OF THE UNITED STATES CODE. (EFFECTIVE DATE FOLLOWS SERIAL NUMBER)

LINE OF THE AIR FORCE

To be lieutenant colonel

MAJ. DANA O. ADAMS, xxx-xx-xxxx 4/9/88
MAJ LAWRENCE R. ALLRED, xxx-xx-xxxx 3/14/88
MAJ. THOMAS E. BAINES, xxx-xx-xxxx 3/16/88
MAJ. RONALD D. BOLL, xxx-xx-xxxx 4/1/88
MAJ. WILLIAM A. CHRISTIAN, xxx-xx-xxxx 3/13/88
MAJ. DONALD H. CLOBES, xxx-xx-xxxx 2/20/88
MAJ. JOHN F. DISOSWAY, xxx-xx-xxxx 4/7/88
MAJ. CHARLES W. DUNN, xxx-xx-xxxx 4/17/88
MAJ. CHARLES J. ENDERS III, xxx-xx-xxxx 3/24/88
MAJ. STEVEN A. HULIN, xxx-xx-xxxx 4/9/88
MAJ. DEAN A. JACKSON, xxx-xx-xxxx 3/19/88
MAJ. RONALD T. JAMES, xxx-xx-xxxx 4/9/88
MAJ. EDWARD J. KRAUS, JR., xxx-xx-xxxx 4/9/88
MAJ. RONALD J. LAMBERT, xxx-xx-xxxx 2/18/88
MAJ. WAYNE C. LECOURS, xxx-xx-xxxx 4/4/88
MAJ. KATHLEEN D. LESJAK, xxx-xx-xxxx 4/29/88
MAJ. RONALD M. MOORE, xxx-xx-xxxx 4/29/88
MAJ. WILLIAM E. NESBITT, xxx-xx-xxxx 2/25/88
MAJ. JAMES R. REICHENBACH, xxx-xx-xxxx 3/4/88
MAJ. MARK G. SCHUSTER, xxx-xx-xxxx 3/15/88
MAJ. RICHARD R. WALKER, xxx-xx-xxxx 4/9/88

LEGAL CORPS

MAJ. JOHN H. CHASE, xxx-xx-xxxx 4/9/88

CHAPLAIN CORPS

MAJ. ALBERT G. BALTZ, xxx-xx-xxxx 4/9/88
MAJ. FREDERICK E.A. JOHNSON, xxx-xx-xxxx 3/1/88

BIOMEDICAL SCIENCES CORPS

MAJ. BRUCE G. SIMPSON, xxx-xx-xxxx 3/23/88

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR PERMANENT PROMOTION IN THE UNITED STATES AIR FORCE, UNDER THE APPROPRIATE PROVISIONS OF SECTION 624, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATES OR RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

DENTAL CORPS

To be lieutenant colonel

WALTER A. AICHEL, xxx-xx-xxxx
RICHARD P. APPS, JR., xxx-xx-xxxx
CARL A. BIFANO, xxx-xx-xxxx
LUIS J. BLANCO, xxx-xx-xxxx
ROBERT BOUSQUET, xxx-xx-xxxx
HENRY S. BOYARS, xxx-xx-xxxx
HARVEY A. COLLINS, JR., xxx-xx-xxxx
WILLIAM C. COPLEY, JR., xxx-xx-xxxx
DONALD E. CUMMINGS, xxx-xx-xxxx
DAVID E. DAVIS, xxx-xx-xxxx
DUANE A. DEGENHARDT, xxx-xx-xxxx
ROBERT P. DZIEJMA, xxx-xx-xxxx
RONALD W. ENG, xxx-xx-xxxx
WILEY J. FAIRCLOTH, JR, xxx-xx-xxxx
JAMES P. FANCHER, xxx-xx-xxxx
VICTOR M. FAULKNER, xxx-xx-xxxx
TIMOTHY M. FRANK, xxx-xx-xxxx
GEORGE W. GAINES, xxx-xx-xxxx
WILLIAM T. GILLESPIE, JR, xxx-xx-xxxx
JOSEPH M. HANSON, xxx-xx-xxxx
DELVIN D. HORNBECK, xxx-xx-xxxx
MELVIN G. MITCHELL, xxx-xx-xxxx
BRENT E. NELSEN, xxx-xx-xxxx
THOMAS W. PIKE, xxx-xx-xxxx
ELLIOT R. SHULMAN, xxx-xx-xxxx
MELVIN J. SOKOLOWSKY, xxx-xx-xxxx
WILLIAM G. SPANGLE, xxx-xx-xxxx
WAYLAND M. WATTS, III, xxx-xx-xxxx
JAMES M. WILSON, xxx-xx-xxxx
MICHAEL D. ZOLLARS, xxx-xx-xxxx

MEDICAL CORPS

To be lieutenant colonel

FRANK B. ADAMS, xxx-xx-xxxx
NERIZZA PALOS ANDRADA, xxx-xx-xxxx
GREGORY C. BAGGERLY, xxx-xx-xxxx
MANIBHA BANERJEE, xxx-xx-xxxx
JACK L. BERG, xxx-xx-xxxx
JOHN G. BIZON, xxx-xx-xxxx
KATHLEEN S. BOHANON, xxx-xx-xxxx
EMMETT H. BROXSON, JR, xxx-xx-xxxx
BALAKRISHNAN CHANDRAMOHAN, xxx-xx-xxxx
RONALD L. COPELAND, xxx-xx-xxxx
JERRY M. DAVENPORT, xxx-xx-xxxx
ALAN D. DENNISON, xxx-xx-xxxx
LIBERATUS A. DEROSA, xxx-xx-xxxx
AVINASH T. DESHMUKH, xxx-xx-xxxx
DAVID S. DOUGHERTY, xxx-xx-xxxx
JAMES J. DOUGHERTY, III, xxx-xx-xxxx
NANCY DSILVA, xxx-xx-xxxx
MARK E. ELLIS, xxx-xx-xxxx
FREDDIE L. EVERSON, xxx-xx-xxxx
JOHN P. FLOYD, III, xxx-xx-xxxx
ROBERT A. GASSER, JR, xxx-xx-xxxx
DALE R. GERSTMANN, xxx-xx-xxxx
DEBORAH V. GOODWIN, xxx-xx-xxxx
URIL C. GREENE, xxx-xx-xxxx
JAMES E. HANSEN, xxx-xx-xxxx
VIRGIL E. HEMPHILL, JR, xxx-xx-xxxx
MICHAEL A. HENRY, xxx-xx-xxxx
PHILIP D. HOUCK, xxx-xx-xxxx
DOYLE W. ISAAK, xxx-xx-xxxx
VIRGIL S. JEFFERSON, xxx-xx-xxxx
JOHN F. KESSLER, xxx-xx-xxxx
AARON K. KIRKEMO, xxx-xx-xxxx
ROBERT S. KLEPATZ, xxx-xx-xxxx
WAYNE M. LARSEN, xxx-xx-xxxx
BRADFORD H. LEE, xxx-xx-xxxx
SHINE S. LIN, xxx-xx-xxxx
HENRY A. LITZ, xxx-xx-xxxx
PEDRO H. LOPEZVALENTIN, xxx-xx-xxxx
HARRY E. MARDEN, JR, xxx-xx-xxxx
STEPHEN R. MITCHELL, xxx-xx-xxxx
SCOTT W. MONROE, xxx-xx-xxxx
MICHAEL R. MORK, xxx-xx-xxxx
HENRY B. NELSON, III, xxx-xx-xxxx
RICHARD C. NIEMTZOW, xxx-xx-xxxx
THOMAS J. ODONNELL, xxx-xx-xxxx
RICHARD A. PETERS, xxx-xx-xxxx
WILLIAM A. POLLAN, xxx-xx-xxxx
IRENEO M. RACOMA, JR, xxx-xx-xxxx
VADAKKENCHERRY R. RAMANATHAN, xxx-xx-xxxx
JOHN M. RAMLER, xxx-xx-xxxx
JOSEPH E. RONAGHAN, xxx-xx-xxxx
JAMES H. SAMMONS, JR, xxx-xx-xxxx
MARK E. SAND, xxx-xx-xxxx
ROBERT S. SCHWARTZ, xxx-xx-xxxx
JAMES K. SIMPSON, III, xxx-xx-xxxx
PETER J. SPOHN, xxx-xx-xxxx
RICHARD F. STRIBLEY, xxx-xx-xxxx
GEORGE P. TAYLOR, JR, xxx-xx-xxxx
GREGORY C. TOMLINSON, xxx-xx-xxxx
STANLEY F. UCHMAN, xxx-xx-xxxx
FRANKLIN B. WADDELL, xxx-xx-xxxx
MICHAEL J. WHITE, xxx-xx-xxxx
FORREST C. YANCEY, JR, xxx-xx-xxxx
WILLIAM W. C. YOUNG, xxx-xx-xxxx

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR PERMANENT PROMOTION IN THE UNITED STATES AIR FORCE, UNDER THE APPROPRIATE PROVISIONS OF SECTION 624, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATES OR RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

DENTAL CORPS

To be major

JOEL B. ALEXANDER, III, xxx-xx-xxxx
DOUGLAS J. AMMON, xxx-xx-xxxx
JEFFERY W. ARMSTRONG, xxx-xx-xxxx
LYNN F. ASCHER, xxx-xx-xxxx
CHRISTOPHER F. BATES, xxx-xx-xxxx
GEOFFREY R. BAUMAN, xxx-xx-xxxx
THOMAS J. BEESON, xxx-xx-xxxx
WILLIAM F. BERGERON, JR, xxx-xx-xxxx
LAWRENCE B. BLACKMON, JR, xxx-xx-xxxx
HARVEY H. BRECKNER, xxx-xx-xxxx
MERLYN L. CARVER, xxx-xx-xxxx
YEJU CHOI, xxx-xx-xxxx
JOHN F. COKE, xxx-xx-xxxx
EARL F. CUBBAGE, xxx-xx-xxxx
STEVE R. CURTIS, xxx-xx-xxxx
BRENDA JEAN DANIELS, xxx-xx-xxxx
WILLIAM H. DAVIS, xxx-xx-xxxx
SARA M. DEVINE, xxx-xx-xxxx
RICARDO DIAZ, xxx-xx-xxxx
ALLEN M. EDWARDS, xxx-xx-xxxx
CARLOS ESQUIVEL, xxx-xx-xxxx
VANCE B. FONNESBECK, xxx-xx-xxxx
WILLIAM F. FOWLER, xxx-xx-xxxx
ANTHONY G. GIARDINO, xxx-xx-xxxx
WILLIAM J. GOEHRING, xxx-xx-xxxx
STEVEN D. GULBRANSON, xxx-xx-xxxx
ROBERT H. HALLER, xxx-xx-xxxx
THOMAS D. HAWLEY, xxx-xx-xxxx
JULIA M. HENDRIX, xxx-xx-xxxx
GLORIA J. HOBAN, xxx-xx-xxxx
CHARLES R. HOLMEN, xxx-xx-xxxx
TERENCE A. IMBERY, xxx-xx-xxxx
WALTER J. JAMES, xxx-xx-xxxx
MICHAEL S. JONES, xxx-xx-xxxx
CAROL L. KADOW, xxx-xx-xxxx
DENNIS W. KELLY, JR, xxx-xx-xxxx
DAVID B. KEMP, xxx-xx-xxxx
GEORGE L. LAWSON, xxx-xx-xxxx
ALLAN D. LINEHAN, xxx-xx-xxxx
ROBIN L. LIVINGSTON, xxx-xx-xxxx
JEFF R. MACPHERSON, xxx-xx-xxxx
JEFFREY A. MARK, xxx-xx-xxxx
ANTHONY C. MARTIN, xxx-xx-xxxx
LAURENCE S. MASUOKA, xxx-xx-xxxx
DANIEL G. MAZZA, xxx-xx-xxxx
JOHN K. MCCOWN, xxx-xx-xxxx
MARK J. MCLEAN, xxx-xx-xxxx
BRIAN L. MEALEY, xxx-xx-xxxx
KAY L. NESS, xxx-xx-xxxx
SCOTT K. NICHOLSON, xxx-xx-xxxx
PAUL A. ONNINK, xxx-xx-xxxx
DOUGLAS A. OTTAWAY, xxx-xx-xxxx
CARROLL A. PALMORE, xxx-xx-xxxx
CANDACE L. PETERSON, xxx-xx-xxxx
RODNEY D. PHOENIX, xxx-xx-xxxx
DIANA C. POWERS, xxx-xx-xxxx
THOMAS J. VI POWERS, xxx-xx-xxxx
DANIEL J. RAWLEY, xxx-xx-xxxx
DANIEL S. READ, xxx-xx-xxxx
STEVEN F. RECK, xxx-xx-xxxx
BRAD E. SALMON, xxx-xx-xxxx
STEPHEN P. SCHOEN, xxx-xx-xxxx
JOHN L. SCHULER, xxx-xx-xxxx
JAMES W. SCHUMACHER, xxx-xx-xxxx
DONALD C. SEDBERRY, xxx-xx-xxxx
PHILIP C. SHIERE, xxx-xx-xxxx
JOE D. SPARKS, xxx-xx-xxxx
WILLIAM C. STENTZ, JR, xxx-xx-xxxx
STEVEN M. STOECKLEIN, xxx-xx-xxxx
DONALD L. THERIAULT, xxx-xx-xxxx
WILLIAM F. TROLENBERG, IV, xxx-xx-xxxx
MARK S. VALLE, xxx-xx-xxxx
DOUGLAS B. VANHOFWEGEN, xxx-xx-xxxx
RICHARD H. VILLA, xxx-xx-xxxx
LON J. WARREN, xxx-xx-xxxx
DOUGLAS J. WASSON, xxx-xx-xxxx
ROBERT P. WHITE, xxx-xx-xxxx
EDWARD R. WILSON, xxx-xx-xxxx
ROBERT P. WOLFENDEN, xxx-xx-xxxx

MEDICAL CORPS

To be major

WILLIAM P. ABRAHAM, xxx-xx-xxxx
FRANK AIELLO, III, xxx-xx-xxxx
LESLIE F. ALGASE, xxx-xx-xxxx
ROBERT C. ALLEN, xxx-xx-xxxx
KATHRYN M. AMACHER, xxx-xx-xxxx
KENTON R. AMSTUTZ, xxx-xx-xxxx
CHARLES T. ANDERSON, xxx-xx-xxxx
COLLEEN A. ANNES, xxx-xx-xxxx
STEPHEN C. ARCHER, xxx-xx-xxxx
GEORGE J. ARCOS, xxx-xx-xxxx
LUIS R. ARGUESOMUNOZ, xxx-xx-xxxx
DAVID P. ARMSTRONG, xxx-xx-xxxx
ANTHONY H. ARNOLD, xxx-xx-xxxx
STEVEN D. ARROWSMITH, xxx-xx-xxxx
GRANT M. BARNUM, xxx-xx-xxxx
WENDALL C. BAUMAN, JR, xxx-xx-xxxx
ROBERT WILLIAM BEARDALL, xxx-xx-xxxx
CHARLES G. BELENY, xxx-xx-xxxx
ANN F. BELL, xxx-xx-xxxx
VALERIE J. BELL, xxx-xx-xxxx
MICHAEL J. BELLER, xxx-xx-xxxx
DONALD BENETT, xxx-xx-xxxx
ERIC R. BERG, xxx-xx-xxxx
GREGORY K. BERRYMAN, xxx-xx-xxxx
ILSA J. BICK, xxx-xx-xxxx
LIANIS Z. BIDOT, xxx-xx-xxxx
JEFFREY M. BISHOP, xxx-xx-xxxx
KEITH L. BLAUER, xxx-xx-xxxx
NEAL H. BLAUZVERN, xxx-xx-xxxx
MICHAEL D. BLICK, xxx-xx-xxxx
DENNIS W. BLOCK, xxx-xx-xxxx
ROBERT L. BLOOD, xxx-xx-xxxx
STEVEN D. BOGGS, xxx-xx-xxxx
STEPHEN C. BOOS, xxx-xx-xxxx
HENRY K. BOREN, xxx-xx-xxxx
COLLEEN R. BOUCHER, xxx-xx-xxxx
WARREN R. E. BOURGEOIS, III, xxx-xx-xxxx
CLAY N. BOYD, xxx-xx-xxxx
LISA M. BOYLE, xxx-xx-xxxx
THOMAS ALFRED BOYLE, xxx-xx-xxxx
CHRISTOPHER J. BOYNTON, xxx-xx-xxxx
THOMAS P. BRADLEY, xxx-xx-xxxx
CORDELL L. BRAGG, xxx-xx-xxxx
STEPHEN R. BRANDT, xxx-xx-xxxx
CHRISTOPHER A. BRANN, xxx-xx-xxxx
STEVEN D. BRANTLEY, xxx-xx-xxxx
EVAN A. BRATHWAITE, xxx-xx-xxxx
ROBERT R. BRINSON, xxx-xx-xxxx
DANIEL J. BROWN, xxx-xx-xxxx
GEORGE R. BROWN, xxx-xx-xxxx
THOMAS R. BROWN, xxx-xx-xxxx
JOHN B. BUDINGER, xxx-xx-xxxx
PHILLIP L. BURGETTE, xxx-xx-xxxx
STEPHEN M. BURNS, xxx-xx-xxxx
DEBORAH A. BURROWS, xxx-xx-xxxx
MICHAEL J. BUSCEMI, JR, xxx-xx-xxxx
ELIZABETH A. BUSS, xxx-xx-xxxx

RODNEY L. CAMP, xxx-xx-xxxx
JAMES A. CAMPBELL, JR., xxx-xx-xxxx
MICHAEL E. CANFIELD, JR., xxx-xx-xxxx
DONALD R. CAPPADONA, xxx-xx-xxxx
WILLIAM E. CARLILE, xxx-xx-xxxx
DIRK T. CARLSON, xxx-xx-xxxx
JAMES W. CARPENTER, xxx-xx-xxxx
ROBERT E. CARROLL, xxx-xx-xxxx
EUGENE B. CASAGRANDE, II, xxx-xx-xxxx
STEPHEN F. W. CAVANAH, xxx-xx-xxxx
PETER J. CHENAILLE, xxx-xx-xxxx
HENRY W. CHEU, xxx-xx-xxxx
JACK R. CHILDRESS, xxx-xx-xxxx
ALAN L. CHRISTENSEN, xxx-xx-xxxx
VAL D. CHRISTENSEN, xxx-xx-xxxx
RONALD F. CHRISTIANSON, xxx-xx-xxxx
STEPHEN T. CHRISTO, xxx-xx-xxxx
MATTHEW A. COATSWORTH, xxx-xx-xxxx
MICHAEL W. COHEN, xxx-xx-xxxx
RICHARD C. COLE, xxx-xx-xxxx
ROBIN D. COLE, xxx-xx-xxxx
WILLIAM COLLAZONUNEZ, xxx-xx-xxxx
ROGER C. COLLICOTT, xxx-xx-xxxx
MARK COLLINS, xxx-xx-xxxx
GRANT D. COMNICK, xxx-xx-xxxx
DONALD E. CONRAD, xxx-xx-xxxx
JOHN T. COOPER, JR., xxx-xx-xxxx
DAVID F. CORRAL, xxx-xx-xxxx
DENNIS J. COSTA, xxx-xx-xxxx
JANE K. COTTINGHAM, xxx-xx-xxxx
JAMES E. COX, JR., xxx-xx-xxxx
PAUL W. CRAIG, II, xxx-xx-xxxx
RODERIC C. CRIST, xxx-xx-xxxx
JOSEPH P. CUNNIFF, xxx-xx-xxxx
MARK D. CUNNINGHAM, xxx-xx-xxxx
GWENDOLYN W. CURRY, xxx-xx-xxxx
WILLIAM J. CURRY, xxx-xx-xxxx
LOUIS A. DAGOSTINO, xxx-xx-xxxx
BEJAN J. DANESHFAR, xxx-xx-xxxx
ERNEST G. DANIELS, xxx-xx-xxxx
MARK D. DANKLE, xxx-xx-xxxx
THOMAS L. DAVIS, xxx-xx-xxxx
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THE FOLLOWING NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE UNITED STATES ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE. THE OFFICERS INDICATED BY ASTERISK ARE ALSO NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE:

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JOYCE A. *. FLETCHER, xxx-xx-xxxx
LAWRENCE M. FOLTZ, xxx-xx-xxxx
BRADLEY D. FREEMAN, xxx-xx-xxxx
WILLIAM D. *. GEESLIN, xxx-xx-xxxx
EDWARD A. *. GILMORE, xxx-xx-xxxx
TERRY D. *. GOATLEY, xxx-xx-xxxx
JONATHAN D. *. GOLDSMITH, xxx-xx-xxxx
CHARLES E. *. GOODMAN, JR., xxx-xx-xxxx
GREG A. *. GRIFFIN, xxx-xx-xxxx
VERNON L. GROEBER, xxx-xx-xxxx
AARON *. HEARD, JR., xxx-xx-xxxx
DAVID S. *. HEINTZ, xxx-xx-xxxx
DONALD E. *. HENDERSON, JR., xxx-xx-xxxx
GERARD R. *. HEPLER, xxx-xx-xxxx
EUGENE V. HOLAHAN, JR., xxx-xx-xxxx
RICHARD L. *. HOLMES, xxx-xx-xxxx
MARK R. *. HOPTON, xxx-xx-xxxx
PAUL A. HORN, xxx-xx-xxxx
FRANK A. HORNA, xxx-xx-xxxx
MARGARET A. HORRELL, xxx-xx-xxxx
GREGORY *. HOWARD, xxx-xx-xxxx
WILLIAM J. HULEATT, JR., xxx-xx-xxxx
DORENE *. HURT, xxx-xx-xxxx
ALFRED J. *. JOHNSON, xxx-xx-xxxx
KAREN J. *. JOHNSON, xxx-xx-xxxx
TONY W. *. JOHNSON, xxx-xx-xxxx
DAVID L. *. JONES, xxx-xx-xxxx
ROBERT J. JONES, xxx-xx-xxxx
ROBERT G. *. JORDAN, xxx-xx-xxxx
KONSTANTY M. *. KAMINSKI, xxx-xx-xxxx
KENT W. *. KARSTETTER, xxx-xx-xxxx
LARIS D. KEEFER, xxx-xx-xxxx
JOHNETTE *. KEISER, xxx-xx-xxxx
FRANK L. *. KELLY, xxx-xx-xxxx
EDWARD H. *. KENNEDY, JR., xxx-xx-xxxx
WILLIAM J. *. KLENKE, xxx-xx-xxxx
FRANCIS K. *. KOMAR, xxx-xx-xxxx
ROSEMARY T. KYTE, xxx-xx-xxxx
ROGER W. LEBLANC, xxx-xx-xxxx
DOUGLAS W. *. LEFEBVRE, xxx-xx-xxxx
PAUL J. *. LEGRANDE, xxx-xx-xxxx
JOHN R. *. LEU, xxx-xx-xxxx
IRENE F. *. LOGAN, xxx-xx-xxxx
GERARD F. *. LOSARDO, xxx-xx-xxxx
LARRY C. *. LYNCH, xxx-xx-xxxx
MARYANN P. *. MABE, xxx-xx-xxxx
FRED D. MACK, xxx-xx-xxxx
WILLIAM D. *. MARSH, xxx-xx-xxxx
JULIE M. *. MARTIN, xxx-xx-xxxx
GEORGE R. MASTROIANNI, xxx-xx-xxxx
ROBERT J. *. MATTHEWS, xxx-xx-xxxx
DANIEL F. *. MCFERRAN, xxx-xx-xxxx
RODNEY A. *. MCPHERSON, xxx-xx-xxxx
FRANCIS L. *. MCVEIGH, xxx-xx-xxxx
DONALD A. MENARD, xxx-xx-xxxx
CHERYL A. *. MERRITT, xxx-xx-xxxx
JOSEPH F. *. MILLER, xxx-xx-xxxx
GARY T. *. MIRAKIAN, xxx-xx-xxxx
NANCY H. *. MOONEY, xxx-xx-xxxx
HAROLD D. *. MOORE, xxx-xx-xxxx
JOHN A. MORGAN, xxx-xx-xxxx
TERRY A. MORGAN, xxx-xx-xxxx
WILLIAM S. *. MORNINGSTAR, xxx-xx-xxxx
MARK L. *. MORRIS, xxx-xx-xxxx
DIANA L. *. MORRISYOUNG, xxx-xx-xxxx
WILLIAM A. *. MOTLEY, JR., xxx-xx-xxxx
DALE L. *. MURRAY, xxx-xx-xxxx
RONALD L. *. NICHOLAS, xxx-xx-xxxx
STEVAN L. *. NIELSEN, xxx-xx-xxxx
BRADLEY J. NYSTROM, xxx-xx-xxxx
RICHARD N. *. ODONNEL, JR., xxx-xx-xxxx
WILLIAM E. *. OLIVER, xxx-xx-xxxx
ROGER W. *. OLSEN, xxx-xx-xxxx
WALTER H. *. ORTHNER, xxx-xx-xxxx
CHRISTOPHER R. PAPARONE, xxx-xx-xxxx
DAVID A. PATTILLO, xxx-xx-xxxx
DENNIS R. *. PAYNE, xxx-xx-xxxx
RONALD D. *. PHILLIPS, xxx-xx-xxxx
ARTHUR D. PICKERING, JR., xxx-xx-xxxx
CATHERINE L. *. PICKETT, xxx-xx-xxxx
LINDA L. PIERSON, xxx-xx-xxxx
NELSON R. *. POWERS, xxx-xx-xxxx
JAMES D. *. RILEY, JR., xxx-xx-xxxx
MARGARET *. RIVERA, xxx-xx-xxxx
LUIS *. ROLON, xxx-xx-xxxx
PAMELA J. *. ROYALTY, xxx-xx-xxxx
REGINALD B. *. SANDIFER, xxx-xx-xxxx
LINDA P. *. SAUER, xxx-xx-xxxx
ANN E. *. SAUNDERS, xxx-xx-xxxx
ERIC T. *. SHIMOMURA, xxx-xx-xxxx
RONALD L. *. SHIPPEE, xxx-xx-xxxx
JEFFREY J. *. SIKORSKI, xxx-xx-xxxx
MARK J. *. SILVER, xxx-xx-xxxx
STEPHEN SKOWRONSKI, xxx-xx-xxxx
DONALD A. SMATHERS, xxx-xx-xxxx
ROBERT K. *. SMITH, xxx-xx-xxxx
EVANS *. SMOOT, xxx-xx-xxxx
JEFFERY C. *. SPRINGER, xxx-xx-xxxx
CHRISTOPHER W. *. STEPHENSON, xxx-xx-xxxx
JAMES E. *. THOMAS, xxx-xx-xxxx
ROBERT J. THOMPSON, xxx-xx-xxxx
DAVID E. TOELKES, xxx-xx-xxxx
DAVID J. *. TOMPKINS, xxx-xx-xxxx
TIMOTHY D. TOOMEY, xxx-xx-xxxx
YVONNE L. *. TUCKER, xxx-xx-xxxx
RICKY D. *. UPTON, xxx-xx-xxxx
JEAN P. VREULS, JR., xxx-xx-xxxx
ANNA L. *. WALSH, xxx-xx-xxxx
CHARLES D. *. WARD, JR., xxx-xx-xxxx
VINCENT O. WARDLAW, xxx-xx-xxxx
RALPH R. WATSON, xxx-xx-xxxx
LISA D. *. WEATHERINGTON, xxx-xx-xxxx
NOEL R. WEBSTER, xxx-xx-xxxx
RANDY W. WEISHAAR, xxx-xx-xxxx
SUSAN R. WEST, xxx-xx-xxxx
MARK G. WHIPPLE, xxx-xx-xxxx
J. D. WHITE, JR., xxx-xx-xxxx
DUNCAN T. *. WHYTE, xxx-xx-xxxx
BETTY J. *. WILEY, xxx-xx-xxxx
KEVIN D. WILLIAMS, xxx-xx-xxxx
TIMOTHY D. *. WILLIAMSON, xxx-xx-xxxx
THOMAS M. *. WILLOUGHBY, xxx-xx-xxxx
BARBARA A. WILSON, xxx-xx-xxxx
PAUL W. WINGO, xxx-xx-xxxx
PATRICIA M. *. YOUNG, xxx-xx-xxxx
MARK W. YOW, xxx-xx-xxxx
HENRY A. *. ZOMPA, xxx-xx-xxxx

ARMY MEDICAL SPECIALIST CORPS

To be major

GAIL K. *. BAPTISTE, xxx-xx-xxxx
JOAN E. *. BEEBE, xxx-xx-xxxx
JEANNINE B. *. DAVIES, xxx-xx-xxxx
NEVA C. *. GASKINS, xxx-xx-xxxx
GARY J. *. HAGUE, xxx-xx-xxxx
JAMES P. HEETER, xxx-xx-xxxx
DALE E. *. HILL, xxx-xx-xxxx
MAX A. *. ITO, xxx-xx-xxxx
BARRY L. *. KARALFA, xxx-xx-xxxx
MARY R. *. KOCH, xxx-xx-xxxx
MARY S. *. LOPEZ, xxx-xx-xxxx
BRENDA F. *. MOSLEYCOULTER, xxx-xx-xxxx
CATHERINE E. *. SUCHER, xxx-xx-xxxx
JOHN P. WARBER, xxx-xx-xxxx
MLYNDA S. *. WATKINS, xxx-xx-xxxx

VETERINARY

To be major

RONALD E. *. BANKS, xxx-xx-xxxx
LARRY G. *. CARPENTER, xxx-xx-xxxx
DON L. *. COUCH, xxx-xx-xxxx
STEPHEN L. DENNY, xxx-xx-xxxx
DENZIL F. *. FROST, xxx-xx-xxxx
WALTER D. *. GOOLSBY, xxx-xx-xxxx
JAMES R. *. HAILEY, xxx-xx-xxxx
MARK C. *. HAINES, xxx-xx-xxxx
BILLY W. *. HOWARD, xxx-xx-xxxx
CARNEY B. *. JACKSON, xxx-xx-xxxx
ROSS D. *. LECLAIRE, xxx-xx-xxxx
WARREN S. *. MATHEY, xxx-xx-xxxx
RONNIE L. *. NYE, xxx-xx-xxxx
WILLIAM D. *. PRATT, xxx-xx-xxxx
DAVID R. *. SCHUCKENBROCK, xxx-xx-xxxx
SCOTT R. *. SEVERIN, xxx-xx-xxxx
DOUGLAS D. *. SHARPNACK, xxx-xx-xxxx
KERRY L. *. TAYLOR, xxx-xx-xxxx
MARK E. *. WOLKEN, xxx-xx-xxxx

ARMY NURSE CORPS

To be major

ANGELA E. *. ADAMS, xxx-xx-xxxx
DOROTHY A. *. ANDERSON, xxx-xx-xxxx
LINDA H. *. ANDERSON, xxx-xx-xxxx
CAROLYN O. *. BAKER, xxx-xx-xxxx
SUE A. *. BARDSLEY, xxx-xx-xxxx
MARGARET A. *. BATES, xxx-xx-xxxx
KAREN P. *. BATTAFARANO, xxx-xx-xxxx
EDITH R. *. BAUTISTA, xxx-xx-xxxx
ROGER D. BAXTER, xxx-xx-xxxx
TERRY V. *. BAXTER, xxx-xx-xxxx
CHRISTALLIA I. *. BLACK, xxx-xx-xxxx
JAMES R. *. BLOCKER, xxx-xx-xxxx
PATRICIA M. *. BOONE, xxx-xx-xxxx
CHRISTINE K. BOOTH, xxx-xx-xxxx
KENNETH P. *. BOWDEN, xxx-xx-xxxx
JULIETTE C. *. BRIDGEMAN, xxx-xx-xxxx
STEPHEN A. *. BRILES, xxx-xx-xxxx
DEBRA L. *. BROWN, xxx-xx-xxxx
LAUREN A. *. BURNEY, xxx-xx-xxxx
JOAN M. *. CAMPANARO, xxx-xx-xxxx
DEBORAH J. *. CANNON, xxx-xx-xxxx
ALFRED N. *. CARVILL, xxx-xx-xxxx
YOUNG B. *. CHUNG, xxx-xx-xxxx
DANIEL F. *. COOVERT, xxx-xx-xxxx
PATRICIA L. *. CORDIER, xxx-xx-xxxx
RICHARD W. *. CRUMP, xxx-xx-xxxx
LARRY D. *. CURTIS, xxx-xx-xxxx
EDWARD O. *. CYR, xxx-xx-xxxx
RICHARD P. *. DABBS, xxx-xx-xxxx
MARVIN G. *. DAVEY, xxx-xx-xxxx
RHODA L. *. DEARMAN, xxx-xx-xxxx
HOLLY C. *. DORLAND, xxx-xx-xxxx
CAROLYN E. *. DRIVER, xxx-xx-xxxx
PAUL R. *. EHRLICH, xxx-xx-xxxx
PER I. *. EIANE, xxx-xx-xxxx
JAMES A. *. EIRING, xxx-xx-xxxx
SUSAN J. *. FELICE, xxx-xx-xxxx
BRENDA G. *. FINNICUM, xxx-xx-xxxx
GERALD W. *. FLANAGAN, xxx-xx-xxxx
MARY L. *. GABBARD, xxx-xx-xxxx
CAROLE E. *. GALLIMORE, xxx-xx-xxxx
CAROL S. *. GILMORE, xxx-xx-xxxx
BOYD D. *. GOLDSBY, xxx-xx-xxxx
COLINDA M. *. GRAVELLE, xxx-xx-xxxx
WILLIAM L. *. HAGIN, JR., xxx-xx-xxxx
FRANCES M. *. HARGIS, xxx-xx-xxxx
RICHARD W. *. HARPER, xxx-xx-xxxx
MARGARET S. *. HARRISON, xxx-xx-xxxx
PATRICIA A. *. HAYES, xxx-xx-xxxx
ALEX J. *. HOUSE, xxx-xx-xxxx
ROSALIE E. *. HYPOLITE, xxx-xx-xxxx
YVONNE K. *. JACKSON, xxx-xx-xxxx
JUANA M. *. JIMENEZ, xxx-xx-xxxx
DORIS T. *. JOHNSON, xxx-xx-xxxx
JAMES R. *. KEENAN, xxx-xx-xxxx
KATHLEEN L. *. KELM, xxx-xx-xxxx
MARIA A. *. KIRKLAND, xxx-xx-xxxx
JOSEPH C. *. KISER, JR., xxx-xx-xxxx
CHRISTOPHER A. *. KRUPP, xxx-xx-xxxx
CLAUDE A. KUCINSKIS, xxx-xx-xxxx
REYMUNDO *. LARIOSA, JR., xxx-xx-xxxx
DEBRA K. *. LAYER, xxx-xx-xxxx
RUTH E. *. LEE, xxx-xx-xxxx
PAMELA J. *. LEWIS, xxx-xx-xxxx
SAMUEL L. *. LEWIS, xxx-xx-xxxx
JOHN R. *. LONGENCKER, xxx-xx-xxxx
JUDITH L. *. LOVETT, xxx-xx-xxxx
HERIBERTO *. LUGOCOLON, xxx-xx-xxxx
DENISE M. *. LURK, xxx-xx-xxxx
JUANICE F. *. MAPLES, xxx-xx-xxxx
JOSE D. *. MARINRODRIGUEZ, xxx-xx-xxxx
JUAN J. *. MARTINEZ, xxx-xx-xxxx
STEPHEN D. *. MASSEY, xxx-xx-xxxx
EDWARD G. *. MATTERN, xxx-xx-xxxx
MICHAEL T. *. MAY, xxx-xx-xxxx
ALEXINE E. *. MCCOLLUM, xxx-xx-xxxx
YOLINDIA E. *. MCCORQUODALE, xxx-xx-xxxx
ANTONIO *. MEDINAMUNIZ, xxx-xx-xxxx
RAYMOND J. *. MEYERS, xxx-xx-xxxx
THOMAS H. MILLER, xxx-xx-xxxx
LEEANN *. MOLINI, xxx-xx-xxxx
MIGUEL A. *. MORALESMARTINEZ, xxx-xx-xxxx
KEITH L. MORGAN, xxx-xx-xxxx
SARA E. *. MORRIS, xxx-xx-xxxx
JO A. MOYERS, xxx-xx-xxxx
LAURIE A. MUTH, xxx-xx-xxxx
SUE B. *. NEWCOMBE, xxx-xx-xxxx
JACKIE L. *. NUSSBAUM, xxx-xx-xxxx
TAMARA D. *. ODONNELL, xxx-xx-xxxx
THOMAS L. *. OGLESBY, xxx-xx-xxxx
DUANE A. *. ORNES, xxx-xx-xxxx
HARRIET M. *. PAUL, xxx-xx-xxxx
STEPHEN E. *. PELLEGRIN, xxx-xx-xxxx
JUDY B. *. PENISTON, xxx-xx-xxxx
LAURA W. *. PIERRE, xxx-xx-xxxx
WILLIAM T. PIXTON, xxx-xx-xxxx
ROBERT M. *. PONTIUS, xxx-xx-xxxx
PAULA F. *. PRICE, xxx-xx-xxxx
DEBORAH F. *. REICHERT, xxx-xx-xxxx
ANN B. *. RICHARDSON, xxx-xx-xxxx
CYNTHIA O. RICHARDSON, xxx-xx-xxxx
LAURA A. *. RUSE, xxx-xx-xxxx
CATHERINE B. *. RYAN, xxx-xx-xxxx
JUAN A. *. SAENZ, xxx-xx-xxxx
ARTURO *. SALA, xxx-xx-xxxx
GEMRYL L. *. SAMUELS, xxx-xx-xxxx
BEATRIZ *. SANTIAGORIVERA, xxx-xx-xxxx
CARYL J. *. SCHAFFTER, xxx-xx-xxxx
JOHN N. *. SCHANK, xxx-xx-xxxx
DORIS J. *. SCHELL, xxx-xx-xxxx
SUSAN J. *. SCHMITZ, xxx-xx-xxxx
PATRICK M. *. SCHRETENTHALER, xxx-xx-xxxx
RITA A. *. SCHULTE, xxx-xx-xxxx
JOHN L. *. SCHULZ, xxx-xx-xxxx
KATHLEEN A. *. SEEHAFER, xxx-xx-xxxx
ANN F. *. SEES, xxx-xx-xxxx
BRENDA E. *. SEWAK, xxx-xx-xxxx
JOHN T. *. SLAGLE, xxx-xx-xxxx
GARY L. *. SMITH, xxx-xx-xxxx
SANDRA L. *. SMITH, xxx-xx-xxxx
RHONDA L. *. SNIPES, xxx-xx-xxxx
VICKIE C. *. STAMP, xxx-xx-xxxx
CAROLYN E. *. STEED, xxx-xx-xxxx
JERRY L. *. STRAND, xxx-xx-xxxx
LAURA M. *. TERRIQUEZ, xxx-xx-xxxx
MARCY D. *. THOMAS, xxx-xx-xxxx
MARIE A. *. TODDTURNER, xxx-xx-xxxx

BYRON D. *. UNDERWOOD, xxx-xx-xxxx
JOAN K. *. VANDERLAAN, xxx-xx-xxxx
MARY C. *. VAUSE, xxx-xx-xxxx
GERMAN *. VELAZQUEZ, xxx-xx-xxxx
RANDALL L. *. VOYLES, xxx-xx-xxxx
BETH J. *. WALL, xxx-xx-xxxx
JULIE K. *. WEBER, xxx-xx-xxxx
MARGARET E. *. WEISER, xxx-xx-xxxx
SUSAN A. *. WEST, xxx-xx-xxxx
JANNIFER E. *. WIGGINS, xxx-xx-xxxx
JOAN S. *. WORTMAN xxx-xx-xxxx
MARIA D. *. ZAMARRIPA, xxx-xx-xxxx

IN THE NAVY

THE FOLLOWING NAMED COMMANDERS OF THE RESERVE OF THE U. S. NAVY FOR PERMANENT PROMOTION TO THE GRADE OF CAPTAIN IN THE STAFF CORPS, AS INDICATED, PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 5912:

MEDICAL CORPS OFFICERS

To be captain

OFELIA MARAL BORLONGAN
ROBERT ARTHUR BRAUN
RICHARD G. BUSH
DONALD PAUL BYINGTON
MICHAEL L. COATES
NICHOLAS JOSEPH COLOSI
STEPHEN STANDISH COOK
LEON JOSEPH DAVIS
CHARLES EIL
LARRY A. ENINGER
BONIFACIO CO ESPERANZA
JEAN LONG FOURCROY
PAUL GUY GALENTINE, III
MARSHALL JAMES GERRIE
JOHN CHRISTIAN GILLIN
EUGENE HUGH GINCHEREAU
LAWRENCE E. GREEN
JOHN CHARLES HEDGES
PATRICK MICHAEL HUTTON
CARLOS JASSIR
FRANCIS CLYDE JOHNSON
JESSE M. JONES
ANTHONY BRUCE JUNKIN
SAMUEL VICTOR JUST
SABIH KAYAN
ROGER D. KELLEY
THOMAS PATRIC KENEFICK
NOELINE KHAW
ROBERT CURTIS KNOWLES
JOHN PHILLIP KOREN
LELAND KENNETH KRANTZ
SITA G. KRISHNA
OWEN WILLIAM LLOYD
GARY SCOTT LYTLE
RYOJI MAKINO
WILLIAM PATRICK MANN
MYRLE F. MARSH
ROBERT L. MARSHALL
DAVID MICHAEL MCCANCE
EUGENE B. MCLAURIN
MIGUEL P. MEDINA
MARVIN MILLER
LAWRENCE KEITH MONAHAN
EUGENE W. OVERTON
STEVEN JAY OXLER
USHA THAKORBHAI PATEL
ALLYN MICHAEL PIERCE
RICHARD KEPLEY PRUETT
JOHN JOSEPH RACCIATO
RONALD F. RUSSO
TERSITO SABADUQ SERATE
TOMMY CLAY THOMPSON
ROGER CHARLES TOFFLE
JAMES ETHRIDGE TURNER
CHARLES JACKS VANMETER
DANIEL VERNARD VOISS
JOHN C. WEED, JR
CLEMMIE LEE S. WILLIAMS
PAUL CARROLL WILLIAMS

DENTAL CORPS OFFICERS

To be captain

JAMES BENSON ANDERSON
GILL BERNARD BASTIEN
RODNEY JOEL BECKETT
JOEL DAVID BERICK
JOHN WESLEY BIDDULPH
TIMOTHY JOHN BOKMEYER
BYRON AUSTIN BONEBREAK
CHARLES DEVO BROADBENT
L. W. CARLYLE, III
KENNETH OLIVE CARNEIRO
HIRAM THOMAS CARR
JOSEPH ANTHO CATANZANO
ROBERT JOSEPH CHLOSTA
JAMES ANTHONY COTTONE
STEPHEN M. CREAL
CLARK BYRON DEPEW
JOHN WEBSTER DESHAZO
CRAIG BREEN DEVER
LAWRENCE BRUNO DIBONA
CHARLES EDWARD EHLE, II
KENNETH LOU FONTECCHIO
THOMAS PHILLIPS GLANCY
JAMES WINFIELD GLORE
JAMES ALLEN BAL HADMAN
ROBERT TERRY HALL
ARTHUR LEE HALSTEAD, II
TERENCE CHESTER HILGER
JOWELL DEAN HORTON
THOMAS MATTHEW JACOBY
CLAYTON HENRY JOHNSON
THOMAS LENVILLE JONES
MICHAEL JAMES KELLEY
DONALD GEORGE KREHL
LOUIS STEVEN I. LATIMER
ROBERT CRILE LEBOLD
THOMAS JOSEP MAUROVICH
DAVID THOMAS MCCANN
JAMES ALAN MCNULTY
STEVEN DENNIS MILLER
JOHN ALDEN MUNN, JR
THOMAS FIELDER MYERS
JAMES CAMERON NEWBY
LYNN I. NILSON
RONALD CHARLES OBOYLE
RONALD THEODORE PAGANI
JEROME PHILI ROTHSTEIN
LYLE THOMAS ROUDABUSH
RALPH JOSEPH RUNGO
DENNIS HENRY SCHIPKE
ANDREW JOSEPH SEVERSON
ALBERT PETER J. SINDALL
WILLIAM JOSEP STARSIAK
JOSEPH STEINER
HARRY ALLISO STROHMYER

MEDICAL SERVICE CORPS OFFICERS

To be captain

LYNN YVONNE BRECHTEL
CHARLES VANCE J. GORDON
CALVIN PETER MYERS
ROBERT PETER NALEWAIK
JANIECE SIMMONS NOLAN
GEORGE RICHARD WILSON

JUDGE ADVOCATE GENERAL'S CORPS OFFICERS

To be captain

RICHARD EUGENE HAHN
KERMIT WILLIAM NEUMAN
CHARLES ROEDERSHEIMER
JOHN GORDON SOULE

NURSE CORPS OFFICERS

To be captain

LYNN M. AYLWARD
BEVERLY YOUNG BROOKS
PATRICIA JANE KELLER
CHARLES EVERET LEARNED
KAREN ANN MEEHAN

SUPPLY CORPS OFFICERS

To be captain

WILLIAM CHARLES ACKERMANN
DANIEL WILLIAM ALJOE
JAMES SCOTT ALLAN
GEORGE CHRISTIAN APPEL
KENNETH E. ARENDT
DOUGLAS ALAN BROOK
DAVID ARTHUR BUTLER
PRICE FREEMAN CAMPBELL
DANNY GLENN CASEY
PETER BRECKENRIDGE DOVE
WILLIAM VICTOR ERICKSON
JAMES ANTHONY FARKAS
JOSEPH AUGUSTINE GIACOMINI
KENNETH MARK GLADSTONE
WILLIAM DENNIS GRIFFITHS
EDWARD FRANCIS HAND
JOHN PAUL HANLIN
DAVID THEODORE HARDEN
VICTOR H. HEMMY, JR
RICHARD ALLAN HILL
BRUCE DEAN IVEY
RUSSELL CURTIS JOHNSON
DON MARK KAMMERER
GARRY LEE KARSNER
THOMAS ANDREW KELLY
PHILIP LAWRENCE KIRSTEIN
RICHARD ALLAN KLAUBER
CHRISTOPHER ANTHONY KULE
WILLIAM RICHARD LINK
ARTHUR WILLIAM MIRES, JR
DANIEL EARL MOSER, JR
WILLIAM CHARLES NIERMAN
EDWARD JOHN ODACHOWSKI, JR
ROBERT ERWIN ODONNELL
ROBERT ALLEN PETERS, JR
JOHN ARTHUR POTTS
JAMES BRUCE POWERS
WALLACE SMART REED
FRANCIS GEORGE ROBERTSON
DAVID LARRY ROST
WILLIAM WOLF ROUZER
WILLIAM APPLEBY ROYAL
JAMES RUSSELL SHORTER, JR
THEODORE DANIEL SOLIE, III
FREDERICK CARLTON SPATHELF
JAMES LAWRENCE STANFORD
WILLIAM HARRISON TEWELOW
RICHARD TILLOTSON TRACY
ROBERT LLOYD TRAUPE
WILLIAM WELLS WEISSNER
KENNETH H. ZEZULKA

SUPPLY CORPS OFFICERS (TAR)

To be captain

PAUL D. GRIFFITH
ROBERT B. MILLER
RONALD THEODORE PRETULAK

CHAPLAIN CORPS OFFICERS

To be captain

HORACE ALFORD HAMM

CIVIL ENGINEER CORPS OFFICERS

To be captain

WILEY JAMES ARCHER
ERIC RANSOM BENNETT
TIMOTHY DONN BREDAHL
MONROE FRANK BREWER, JR
JOHN GRIFFITH DAY
DAVID EDMUND DELWICHE
JERAULD LEE DICKERSON
CHRISTOPHER JOHN EDWARDS
LESTER GLEN EVANS, JR
EDWARD MALER GABRIELSON
CLIFFORD NICHOLS HARBY
JOHN POWERS HEINSTADT
JAMES ISHIHARA
RICHARD HOWARD MILLER
GREGORY ALDEN PARKER
JOHN JAMES PICCO
DAVID ANDREW PRICE
CLIFFORD HARPER ROYAL
DANIEL THOMAS SCHULTES
CHARLES TOMMIE SING
ROBERT FRANK SMITH
RALPH SWINTON SPILLINGER
RICHARD ROSS STAPP
JOHN RICHARD STEGMILLER
HARRY MARIAM STITTLE, III
JACK ALLEN WERNER
WINSTON DOUGLAS WILLS
ROBERT DAVIS WINESETT, JR

IN THE NAVY

THE FOLLOWING NAMED LIEUTENANT COMMANDERS OF THE RESERVE OF THE U. S. NAVY FOR PERMANENT PROMOTION TO THE GRADE OF COMMANDER IN THE STAFF CORPS, AS INDICATED, PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 5912:

MEDICAL CORPS OFFICERS

To be commander

WILLIAM EDWARD ADKINS
HENRY R. ALEXANDER
ROBERT JAMES ALLEN
WILLIAM MICHAEL ASHER
SCOTT D. AUGUSTINE
WILLIAM B. BARBER, II
DAGMARA ELGA BASTIKS
ROBERT HARLOD BIGGS
KENNETH DEAN BIRD
CARL VALDEMAR BISGARD
KEITH N. BLACK
RALPH BUDD BLASIER
RANNIE PAUL BORDLEE
JERRELL LAWRENCE BORUP
JOHN T. BRITTON
HAROLD V. BRYANT, JR
JOSEPH ANTHON CALLAHAN
CHARLES HARVE CAMPBELL
GERALD EDWARD CARLSON
HOMER S. CARSON, III
ROBERT CHIN, JR
JAMES MICHAEL COBB
PETER C. COTE
RICHARD TURNER CRANE
ROBERT LEE DENNISON, JR
DAVID JEROME DONAHUE
PHYLLIS ANN EDWARDS
BERNARD HERBER EICHOLD
JODEA ELLIOTTBLAKESLEE
JOSEPH GARTLAN ENGLISH
LORNETTA RUTH TAY EPPS
JOHN M. FAUST, JR
JOHN V. FERGUSON
ADOLF FERNANDEZOBREGON
TIMOTHY CARLYLE FLYNN
J. FRANCESSCHI-ZAMBRANA
FRANK JOHN FRASSICA
HARRY FRIEDMAN
CLAUDIA E. GALBO
BEN F. GAUMER
ANTHONY GODBOLDT
JOSEPH FRANK GOLUBSKI
JIMMY GRAHAM
HERBERT G. GRANTHAM
MICHAEL DAVID GROSS
JOHN L. HALLER
ERNEST C. HANES
DONALD CARTER HANSEN
ROBERT CHARLES HARRIS
ROBERT K. HETZ
THEODORE J. HEYNEKER
JOHN WESTLY HODGE
CHARLES BUR HUDDLESTON
ANTHONY NAI KIT HUI
JACE WARD HYDER
CHRISTINE INDECH
RICHARD T. IRENE
LANE WOLCOTT JOHNSON
ROBERT ALBERT JOHNSON
JOHN L. KEATING
OWEN BERNARD KEENAN
DAVID A. KEILMAN
SHAHNAZ SADRI KEYKHAH
ERNEST BOBBY KLEIER, JR
JEFFREY J. KREBS
RICHARD MAX KUHARICH
PERRI LYNNE LAVERSON
KEITH J. LEE
JOHN D. LENTZ, III
WALTER DAVID LEVENTHAL
MIRCEA B. LIPOVAN
CLARENCE EDWARD LOWERY
DAVID T. MACMILLAN
RUTH HELD MARTIN
MICHAEL JOSEPH MASELLY
CHERRAL WESTERMA MASON
JOHN ROBERT MAWK
STEPHEN A. MCADAMS
THOMAS E. MCGUE
JOHN ALOYSIUS MCGURTY
GEORGE G. MILLER
VICKI ANN MORRISON
DONNA LUCILLE MOYER
JOHN HUGH JOSEP NADEAU
BERNARD M. NAGEL
ALAN P. NEUREN
ROBERT J. NEWMAN
JON KIRBY NEWSUM
HENRY FRANCIS OLIVIER
JOHN NEFF PARKER
DAVID ONEIL PARRISH
CHARLES RICH PATTERSON
ROBERT B. PATTERSON
GREG STEPH PUDHORODSKY
DAVID H. RATCLIFF
JAMES W. RICHARDSON
HOMER E. RICHER
MARC SAMUEL SAGEMAN
JEFFERY G. SCHERER
RANDOLPH BREN SCHIFFER
DENNIS WAYNE SCHMIDT
ROBERT LESTER SCOTT
BARBARA PITTNE SEIZERT
MARGARET M. SHANNON
VINCENT SHIN WEN SHEN
GARY LEE SHUGAR
BRIAN D. SIMS
BRUCE WAYNE STAEHELI
JOSEPH C. STEGMAN
JOHN ROBERT STEWART
MICHAEL S. SZKOTNICKI
DERRICK DONALD TAYLOR
EULON R. TAYLOR
DAVID W. TERHUNE
MARK ANDREW TERRY
WILLIAM EDWA UNDERDOWN
MAREK STANESLAW VOIT
ANTHONY JON VOLPE
D. WALKERROBERT, III
DAVID JOSEPH WALSH
JEFFREY D. WAY
RICHARD CHARLES WELTON
CHRISTINE E. WHITTEN
FREELAND L. WILLIAMS, II
FRED JOHN WILMS
MARIO SANTOS YCO
BLANE WESLEY YELTON, JR
MARTHA A. ZEIGER

DENTAL CORPS OFFICERS

To be commander

ROBERT ANTHONY
GORDON TRENT AUSTIN
MARK CLAUDE BAKER
WAYNE M. BAKER
ANTHONY M. BATKO
JAMES ALBERT BLACK
DAVID SCOTT CAMERON
LAMONT CANADA
JAMES ROBERT CARNEY
JOHN L. DEFFENBAUGH
ERNEST STEP FERJENTSIK
GILBERT R. FULLER
CHARLES H. HUDGINS
CHARLES A. JONES
ROBERT STAFFORD JUSTUS
BRIAN LEE KOZLIK
JOSEPH LEMBO
HAROLD A. MCADOO
JAMES R. MCCUTCHEON
THOMAS J. OLINGER
FRANCISCO J. ROMERO
BRIAN EDWARD SCOTT
BARBARA J. SLABE
DAVID RAY STEVENS
MICHAEL C. TAYLOR
JOHN WAYNE WHEELER

MEDICAL SERVICE CORPS OFFICERS

To be commander

ANN EVELYN BARY ADCOOK
TEDDY CHARLES JOHNSON

CURTIS WILLIAM KESWICK
GEORGE BERNAR KORN
SCOTT KENT LIDDELL
WILLIAM GREGORY LOTZ
GILBERT HERRE MARTINEZ
CRAIG ALAN MORIN
DAVID FREDERI OETINGER
JAY ROBERT ROBERTS
GEORGE RODMAN, III
HAROLD KENNETH STRUNK
ROBERT EDWARD TITCOMB
JAMES STIMSON TRIPP
RONALD ANDRE WARCHOLAK
DENNIS PATRICK WOOD

JUDGE ADVOCATE GENERAL'S CORPS OFFICERS

To be commander

ROBERT LANCE ANDREWS
PAUL P. CASWELL
GEORGE EVERET ERICKSON
JAMES FREDERICK MORGAN
JAMES RILEY MULROY
ROBERT CHARLES SEIGER
JOHN NEVIN SHAFFER, JR

NURSE CORPS OFFICERS

To be commander

BARBARA ANNE C. CASSIDY
PATRICIA KAT CHRISTMAN
LADONNA LOU NEWT DARKS
CYNTHIA MARAVICH DROZ
ROSALINDA HASSELBACHER
SARA LOUISE KARSTETTER
KATHLEEN KELLEY
MARTHA LOUISE LARSON
JOSEPH FLOYD LATHAM
MARY WELLS SAMSON

SUPPLY CORPS OFFICERS

To be commander

JAMES CHI CHANG
MICHAEL THOMAS DERRICO
JAMES LYNN ERICKSON
PAUL VICTOR KONKA
JONATHAN DISMUKES LEA
THOMAS WARREN MCDONALD
SUMNER KITTELLE MOORE, JR
DAVID FRED STANKEIVICZ

SUPPLY CORPS OFFICERS (TAR)

To be commander

ROBERT RUDOLPH LANGMAACK
DAVID AARON LUECHAUER

CHAPLAIN CORPS OFFICERS

To be commander

JOHN SIDNEY CREWS
DANIEL EUGENE LOCHNER
BYRON DEFLYNN LONG
ERNEST BURCHIE NEWSOM
THOMAS MICHAEL PARENTI
RAY EVERETT ROBERTS, JR

CIVIL ENGINEER CORPS OFFICERS

To be commander

STEVAN MILLER ARMSTRONG
RONALD PAUL DETROYE
CARL ENGLAND DEVILBISS
MICHAEL RHEU FOSDICK
ROBERT KENYON FRINK, II
HERBERT RONALD HRIBAR
CALVIN PALMER JONES, JR
CASIMIR ANDREW LITWINSKI
JAMES ROLAND LORD
JAMES MITCHELL MCGARRAH
WILLIAM CHARLES MCINTYRE
TIMOTHY RALPH MORTON
CHARLES MICHAEL REEVES
JAMES THOMAS RODRIGUEZ
TERRENCE DAVID SHOFNER
KENDRICK AQUINAS SIMMS, III
RICHARD LEE SMITH
KENNETH MITCH WILLIAMS