SENATE—*Tuesday, June 13, 1989*

(Legislative day of Tuesday, January 3, 1989)

The Senate met at 11:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. Today's prayer will be offered by guest chaplain, Rabbi Stephen Pinsky, Temple Israel, Minneapolis, MN.

PRAYER

Rabbi Stephen Pinsky, Temple Israel, Minneapolis, MN, offered the following prayer:

Let us pray:

Our G-d and the G-d who links us generation to generation, soul to soul, heart to heart:

As we begin this day's session of this Senate, let us pause to reflect upon our lives and upon our Nation—upon its dreams and its promise.

We are thankful for this new day and for this season of the year as the days grow longer and the pace of our lives slow just a bit as the Earth warms and cares seem softened by the Sun's lengthening rays.

And we are grateful for the lives we lead, for our homes which offer us safe havens from life's inevitable storms, for our families which give life purpose and meaning, for our Nation, this Republic with its "amber waves of grain," its "purple mountain majesty," its patriot's dream, its alabaster cities, its citizens proud and free, its institutions democratic and open.

And although this Nation celebrates a vision of "one nation under G-d," we know all too well that our society, being a creation of men and women, does not yet reflect that which a nation under G-d must reflect.

Our streets are too often filled with violence and a spreading sense of valuelessness and despair. Our people are not yet one nor do all share equally Your gifts to our Nation and our land. There is hunger, there is fear, there is poverty of the body and of the spirit.

Give us, O G-d, the ability to feel the pain of others, to reach out to them, to share our blessings with them. Help us to build a society based on equity and justice, on righteousness and peace. Give us that wisdom, that breadth of vision, which shall enable us to understand that if the cost of turning our land into a garden seems high to some, the price of making it a desert is higher still.

Grant the men and women of this Senate the strength and the courage to do what must be done so that this Nation, this blessed land, may represent the very finest and the very best, that it may, indeed, become "one nation under G-d." Bless the work of their hands, the Nation which we love so deeply and of which we are so proud so that all G-d's children will some day sit at His table and drink the wine of deliverance and eat the bread of freedom.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

THE JOURNAL

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

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

Mr. MITCHELL. Mr. President, on behalf of the Members of the Senate, I thank Rabbi Pinsky for his presence here today and for this thoughtful and inspirational message. I now yield to the distinguished Senator from Minnesota [Mr. BOSCHWITZ].

THE VISITING CHAPLAIN'S PRAYER

Mr. BOSCHWITZ. I thank the majority leader, Mr. President. I also found the rabbi's prayer inspirational, as I so often do. I am a member of his congregation in Minneapolis, and I am proud to say that he is my rabbi and that he is here today to open the Senate. We look forward to today visiting together here in the Senate, and we look forward to having him again here in Washington. I yield the floor.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, following the time for the two leaders, there will be a period for the transaction of morning business not to extend beyond 12:30 p.m., with Senators permitted to speak therein for up to 5 minutes each.

The Senate will recess today from 12:30 to 2:15 p.m. to accommodate the party conferences.

Mr. President, following consultation with the distinguished Republican leader, I will shortly propound a unanimous-consent agreement, which if agreed to, would provide that the vote on the motion to invoke cloture on the natural gas deregulation bill be vitiated; that all remaining amendments to this bill, except the Bradley amendment, be disposed of today; and that final passage occur tomorrow following disposition of the Bradley amendment and after 2 additional hours of debate on the bill.

The agreement would also provide for the consideration of the nomination of Richard Burt to be Ambassador to the START talks following disposition of the natural gas bill, and also that the Senate then proceed to the consideration of S. 5, the child care bill, following the disposition of the Burt nomination.

UNANIMOUS-CONSENT REQUEST

Mr. MITCHELL. Mr. President, I ask unanimous consent that the cloture vote on H.R. 1722 be vitiated; that at 2:15 p.m. today, when the Senate resumes consideration of the bill, the committee amendments be agreed to without debate; that Senator METZENBAUM then be permitted to offer up to four amendments described as follows, on each of which there will be 1 hour equally divided: First, an amendment described as take or pay. It declares that take-or-pay liabilities may not legally be passed through to consumers by the pipeline unless the Federal Energy Regulatory Commission finds those liabilities to be just and reasonable.

Second, an amendment described as indefinite price escalators. It declares that indefinite escalator liabilities may not legally be passed through to consumers by the pipeline unless the Federal Energy Regulatory Commission finds those liabilities to be just and reasonable.

Third, an amendment to prevent the passthrough of costs incurred by pipelines that resulted from violations of environmental law.

And fourth, an amendment to require the decontrol of certain high-priced gas immediately.

I further ask unanimous consent that Senator BRADLEY be permitted to offer one amendment regarding gas transportation authority on which there be 1 hour equally divided.

I further ask unanimous consent that all these amendments, except the Bradley amendment, be considered and disposed of during the Senate session on Tuesday and that no other amendments, motions to recommit, or other motions, except motions to table and motions to reconsider, be in order with respect to this bill; that the

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

agreement be in the usual form with respect to control and division of time.

ORDERS FOR WEDNESDAY

I further ask unanimous consent that when the Senate recesses at the conclusion of Tuesday's session, it stand in recess until 9 a.m. on Wednesday; that following the conclusion of the leaders' time, there be a period of morning business not to extend beyond 9:30 a.m. with Senators permitted to speak therein for not to exceed 5 minutes each, and that at 9:30, the Senate resume consideration of the pending business, H.R. 1722; that Senator BRADLEY be recognized to offer his amendment, and that following the disposition of the Bradley amendment, there be up to 2 hours allocated for debate only equally divided and controlled between Senators JOHNSTON and METZENBAUM with a rollcall vote expected to occur on final passage of the bill at the conclusion or yielding back of the time.

I further ask unanimous consent, as in executive session, that following the disposition of the natural gas bill, the Senate turn to the consideration of the nomination of Richard R. Burt to serve as head of the delegation on nuclear and space talks and chief negotiator on strategic nuclear arms; that there be 2 hours of debate to be equally divided between the chairman and ranking member of the Committee on Foreign Relations or their designees, and that at the conclusion or yielding back of the time, the Senate proceed without any intervening business to a vote on the nomination, that the President be immediately notified of the Senate's action, and that the Senate then return to legislative business.

Finally, Mr. President, I further ask unanimous consent that following the disposition of the Burt nomination, the Senate proceed to consideration of Calendar item No. 43, S. 5, a bill to provide for a Federal program for the improvement of child care.

The PRESIDENT pro tempore. Is there objection to the agreement as propounded by the majority leader?

Mr. DOLE. Mr. President, I have indicated to the majority leader that I would be constrained to object on behalf of a Member at this time. I hopefully do not see any problem with the first two parts of the agreement. I am not certain I can accommodate the leader with reference to child care. I do not believe there will be a problem taking that up, but since the Finance Committee has not yet marked up what could become in part a substitute, I do not believe I could enter into that part of the agreement. But I have yet to be able to contact Senator HELMS with reference to the Burt nomination. He has indicated to the Secretary of State, Jim Baker, that he would not hold it up. He may want to debate; he may want a rollcall on the nomination; and I hope to get back to the majority leader before the policy luncheon recess on those provisions.

The PRESIDENT pro tempore. Does the Chair hear an objection?

Mr. DOLE. I object.

The PRESIDENT pro tempore. Objection is heard.

UNANIMOUS-CONSENT REQUEST, AS MODIFIED

Mr. MITCHELL. Mr. President, since the Republican leader's objections relate to those portions of the proposed agreement which involve the disposition of the Burt nomination and then proceeding to S. 5, I would like to inquire of the distinguished Republican leader whether he would in fact agree to the remaining portion of the agreement which deals with the disposition of the Natural Gas Decontrol Act, and that if we might not now get agreement on that so then Senators who at the present time anticipate a cloture vote at or about 2:45 could be aware of the sequence of events with respect to that and we would take care of disposition of that. So I inquire of the distinguished Republican leader whether or not he might agree to that, and then I would therefore propose the agreement limited to the Natural Gas Act.

Mr. DOLE. Mr. President, if the majority leader will yield, I have no objection. In fact, I agree with the distinguished majority leader it would be helpful if we could get the agreement on the natural gas portion of the proposed consent agreement. Certainly I share the concerns of the majority leader. We need to notify Members, and this will put all Members on notice, including the managers. So I agree.

Mr. MITCHELL. Accordingly, Mr. President, I renew my request for unanimous consent regarding the disposition of the Natural Gas Decontrol Act as previously stated.

The PRESIDENT pro tempore. Is there objection to the modified agreement as proposed by the majority leader, Mr. MITCHELL?

Hearing no objection, that will be the order of the Senate.

Mr. MITCHELL. Mr. President, I thank the Republican leader. Therefore, Senators should be aware that there will not be a cloture vote at 2:45 today, as previously scheduled, but there will be up to four votes on amendments to be offered by Senator METZENBAUM which I have identified in general terms in the agreement, and I would expect those votes to occur between the period of approximately 3:30 and 6:30 this evening, depending upon how much time is taken with respect to those amendments.

Then tomorrow morning there will be the possibility of two rollcall votes, one on the Bradley amendment and one on final passage of the Natural Gas Decontrol Act. I hope, before we break for the party conferences today, we will be able to get back with the Republican leader and deal with the disposition of the Burt nomination at that time.

Mr. DOLE. Will the majority leader yield?

Mr. MITCHELL. Yes.

Mr. DOLE. I believe it is tomorrow morning that we have another important bicentennial event. I believe it starts at 10 a.m., if I might ask the Presiding Officer. 10:30?

The PRESIDENT pro tempore. That is my understanding.

Mr. DOLE. I hope during that time, if we are going to have a good attendance, there is some way we could discourage committee meetings. If there are committee meetings, Members feel compelled to go. It is a rather historic event that is going to be happening, and, if there were some way to persuade our colleagues to have their committee meetings in the afternoon, I would try to get consent to do that.

Mr. MITCHELL. Let me consider that and perhaps get back to the Republican leader shortly after the party caucuses today.

The PRESIDENT pro tempore. The Chair should state to the Republican leader that the Chair is not sure as to when the program to which the Republican leader has referred begins on tomorrow.

Mr. DOLE. We have rechecked the information, and it is our information it does start at 10:30.

Mr. MITCHELL. Mr. President, I am now advised that the distinguished leader is prepared to agree to a unanimous-consent request regarding the nomination of Richard Burt, and I therefore now will propound an agreement with respect to that subject.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, as in executive session, I ask unanimous consent that at such time as the Senate considers the nomination of Richard R. Burt to serve as Head of Delegation on Nuclear and Space Talks and Chief Negotiator on Strategic Nuclear Arms there be 1 hour of debate to be equally divided between the chairman and ranking member of the Committee on Foreign Relations or their designees, and that at conclusion or yielding back of time the Senate proceed without any intervening business to a vote on the nomination; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session.

The PRESIDENT pro tempore. Is there objection to the proposal as submitted by the majority leader, Mr. MITCHELL, as in executive session? The Chair hears none, and that will be the order of the Senate.

Mr. DOLE. If the majority leader will yield, there could be a request for a rollcall vote on that nomination. I assume there may be.

Mr. MITCHELL. Yes. I anticipate that. Has the request been approved, Mr. President?

The PRESIDENT pro tempore. It has been approved.

Mr. MITCHELL. I thank the Chair.

I should state to the distinguished Republican leader that it is my intention to proceed to that nomination tomorrow afternoon after completion of the Natural Gas Decontrol Act. That is not included in the agreement. As I understand it, there was some concern expressed on that, and I hope to discuss it further with the Republican leader and other interested Senators prior thereto. That is my present intention.

We will, Mr. President, discuss ways and means by which we can encourage attendance at the ceremony tomorrow morning, and hope to announce them at a later point during the day, including the scheduling of votes tomorrow morning, in such a way as to not detract from the participation at the ceremony.

Mr. President, I reserve the remainder of my leader time, and I yield to the distinguished Republican leader.

RECOGNITION OF THE REPUBLICAN LEADER

The PRESIDENT pro tempore. The Republican leader, Mr. DOLE, is recognized.

WICHITA STATE WINS COLLEGE WORLD SERIES

Mr. DOLE. Mr. President, this past weekend a Kansas tornado roared through Omaha, NE. The good news is, it didn't do any damage, except to the competition at the College World Series.

The tornado was the Wichita State University baseball team which won the NCAA championship on Saturday with a dramatic 5 to 3 victory over a tough Texas Longhorn squad.

Today, the team is being honored with a joyous parade through downtown Wichita. No doubt about it, the Shockers earned it.

I would like to add to the celebration by announcing that President Bush has just extended an invitation to the Shocker team to come visit him in the White House this Friday. I have a feeling the team will be able to make it.

They have earned it, and I certainly look forward to it, and I know my colleague, Senator KASSEBAUM, who made the request, is pleased also.

Despite injuries, the haunting memories of tournament elimination last year, and some rugged competition this year, our Wheat Shockers from Wichita refused to settle for anything less than the world series title; and they proved it, fighting off elimination six times.

Well, mission accomplished—call them national champions.

I want to congratulate coach Gene Stephenson and the entire Shocker team for an inspirational victory. Kansas is enjoying every minute on our field of dreams.

Our State is especially proud that the national baseball crown now rests in the Midwest; for the first time in 23 years it is not in the Sunbelt. And we are also extremely proud that the Shockers are mainly a homegrown product: six of the nine players on the field at clinching-time were Kansans.

Looks like we play some pretty good ball back home, and I believe America agrees.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point stories about their championship and their victory, and I also say that following a visit with President Bush—and I want to thank President Bush for agreeing to see members of the Shocker team and their coaches—it is the hope of Senator KASSEBAUM and myself to bring them to the Nation's Capitol to honor them with a reception.

We invite all of our colleagues to come by and say hello to these outstanding young men.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From USA Today, June 12, 1989]

WINSLOW INSPIRES GRITTY WICHITA WIN

(By John Bannon)

OMAHA.—Two hours earlier, first baseman Bryant Winslow had tried something silly. He had tried to keep playing baseball on a freshly fractured leg.

Now, Winslow was in line to get his reward—a memento of Wichita State's College World Series title.

Winslow, left wrist bandaged tightly, right leg in an inflatable cast, used a crutch to limp forward when his turn came in the awards ceremony.

He is a properly gritty symbol for a plucky Wichita State team that won the school's first national title in any sport with Saturday's 5-3 victory against Texas.

This was a team that arrived in Omaha with two of its top players out with injuries. Center fielder Jim Audley limped around with a sore Achilles tendon. Winslow was playing with a stress fracture in his right leg.

"We're just a competitive bunch," coach Gene Stephenson said. "We were going to keep playing even if we could only put eight guys out there."

The Shockers played seven postseason games in which a loss would have eliminated them. They found a way to win them all.

In the top of the fifth Saturday, Winslow and Texas' Lance Jones collided at first base. The exchange left Winslow with two broken bones in his leg. Still, he wanted to play.

"How many chances are you going to get to play for a title at the College World Series?" he said.

"He just wouldn't come out," Stephenson said. "He refused."

The bravery ended one pitch later when Winslow realized he couldn't put any weight on his leg.

"If you had known Bryant a year ago, you never would have thought he was capable of this," Stephenson said. "He was pampered, sheltered, spoiled. He had to learn dedication."

As Winslow limped out of the game, he had a message for catcher Eric Wedge and pitcher Greg Brummett.

Wedge said, "He told us: 'You guys have got to win this thing. Don't you dare lose this game.' "

Brummett, a Wichita native, was listening.

"Sure, he was an inspiration to us," Brummett said. "You had to be moved by that. I know it put a lump in my throat."

Brummett, a right-handed sinkerball pitcher who won three games and was the tournament's MVP, did his job.

In the final game, Wichita State was just hoping Brummett could last long enough for reliever Jim Newin to take over.

But Newlin, who had saved the Shockers' previous four victories, ended up watching from the bullpen.

Brummett retired the last eight batters in order, wanting to finish what he had started—"more than anything I've ever wanted in my entire life."

That's desire his buddy Winslow fully understood.

[From the Wichita Eagle-Beacon, June 11, 1989]

Team of Destiny.—WSU Shocks: Our National Champs

Against all the odds, the Wichita State University Shockers baseball team is the College World Series national champions. Twice before, the Shocks had fought their way to the series. Over the past 10 years, the Shocks have averaged more wins each season than any other U.S. college team. Still, to get to where they were Saturday afternoon, they had to beat the powerful University of Michigan Wolverines—twice—and the top-ranked Florida State University Seminoles—twice. Finally, they had to face the University of Texas Longhorns, who hadn't lost a game all the way to this year's championship match-up.

Then the Longhorns met the Shockers.

The Shocker victory came despite injuries, fatigue, rain and other adversities that had hampered the team most of the season. Yet the Shocks kept winning, moving almost inexorably, it sometimes seemed, toward Omaha's Rosenblatt Stadium and the College World Series. It was enough to make Coach Gene Stephenson speculate his was a "team of destiny." The feeling must have grown Saturday as the Shockers displayed the grit that had driven the team all season long, and captured the first national sports championship in WSU history.

The victory was all the sweeter because Wichita State's baseball players have their priorities straight: They are scholars first and athletes second. Team members consistently place high on the Athletic Director's Honor Roll, maintaining a 3.0 grade point average or better. This is partly because Coach Stephenson, to his credit, insists that it be so; but it's primarily because the players know the importance of getting an education—that a diploma is worth even more than a College World Series title.

The Shockers' win isn't Wichita's alone; the players come from throughout the

state, representing the strength that comes from diversity. WSU team members are the embodiment, in fact, of the Kansas state motto: "To the stars through difficulties." The Shockers reached the stars in Omaha, and the entire state of Kansas is proud.

The 1989 Wichita State Shockers

Player	Position	Year	Hometown (School)
Pat Meares	88-3B	So.	Salina (Sacred Heart).
Mike Jones	0-3B	So.	Wichita (East).
Jim Audley	OF	So.	Overland Park (SM North).
Mike Lansing	88-2B	Jr.	Casper, Wyo. (Natron Co.).
Mike McDonald	OF-1B	Sr.	Vici, Okla. (Vlol).
Jay Haffley	3B-C	Fr.	Hutchinson, Minn. (Hutchinson).
Jeff Bonacquista	OF	Sr.	Pueblo, Colo. (South).
P.J. Forbes	2B-3B	Jr.	Pittsburg (Colgan).
Joey Wilson	OF	Sr.	Anderson, Ind. (Anderson).
Bryant Winslow	1B	So.	Littleton, Colo. (Columbine).
Jeff Williams	P	So.	Wichita (North).
Charlie Glaudrone	P	Fr.	McAlester, Ok. (McAlester).
Todd Dreifort	OF-3B	Fr.	Wichita (Heights).
Greg Brummett	P	Sr.	Wichita (Northwest).
Eric Wedge	C	Jr.	Fort Wayne, Ind. (Northrop).
Mike Wentworth	C	Sr.	Canton, N.Y. (Hugh Williams).
Jeff Bluma	P	Jr.	Duncan, Okla. (Duncan).
Tyler Green	P	Fr.	Denver (Thomas Jefferson).
Darrin Paxton	P	Fr.	Wichita (East).
Brian Buzard	P	Fr.	Neodesha (Neodesha).
Pat Cedeno	P	Sr.	Pittsburg (Pittsburg).
Jim Newlin	P	Jr.	Overland Park (SM South).
Morgan LeClair	P	So.	Mulvane (Mulvane).

Coaches: Gene Stephenson, head coach (Missouri, 1955); Brent Kemnitz, pitching coach (Phillips, 1978); Loren Hibbs, assistant coach (Wichita State, 1984); Gregg Miller, graduate assistant coach (Phillips, 1988); Randy Fox, baseball trainer.

[From the Washington Post, June 11, 1989]

SHOCKERS WIN WORLD SERIES OVER LONGHORNS

OMAHA, June 10.—Wichita State won its first NCAA baseball title today as Greg Brummett tied a record with his third College World Series triumph and Pat Meares hit a two-run homer in a 5-3 victory over error-plagued Texas.

Brummett, 18-2 for the season, allowed six hits and one earned run in becoming the seventh pitcher to get three tournament victories. Brummett, who beat Arkansas by 3-1 and 8-4 earlier in the tournament, struck out six and walked four.

"I had my best stuff probably of the whole series," said Brummett, chosen the tournament's most valuable player. "Three days rest was not enough. I was throwing on guts out there."

Meares' second homer of the tournament and ninth of the year with one on in the fifth broke a 3-3 tie.

"These kids, they tried so hard," Wichita State Coach Gene Stephenson said. "To overcome everything we had to overcome—[outfielder Jeff] Bonacquista out for the season and [shortshop Mike] Lansing out for the season—it was just incredible. I'll be numb for weeks."

Texas ended its season 53-18.

"We didn't play well but you have to credit Brummett for a fine job," Texas Coach Cliff Gustafson said. "The best team is the winner. They did it the hard way."

Wichita State lost to Miami in its only other title game, in 1982. It was the eighth title game for Texas, which has won four times.

Brummett started the game slowly, walking Lance Jones and giving up a single to David Tollison that put runners on first and third. But he picked off Tollison and struck out Scott Bryant and Arthur Butcher.

Bryant, Texas's starting pitcher, was plagued by control troubles, leaving after two-thirds of an inning trailing, 1-0.

COLLEGE WORLD SERIES

AT OMAHA

Double elimination

East Division

Game 1—Florida State 4, North Carolina 2
Game 2—Wichita State 3, Arkansas 1

West Division

Game 3—Texas 7, Long Beach State 1
Game 4—Miami 5, Lousiana State 2

Sundays results

Game 5—Arkansas 7, N. Carolina 3
Game 6—Florida St. 4, Wichita St. 2

Monday's results

Game 7—LSU 8, Long Beach St. 5
Game 8—Texas 12, Miami 2

Tuesday's results

Game 9—Wichita St. 8, Arkansas 4
Game 10—LSU 6, Miami 3

Wednesday's result

Game 11—Wichita State 7, Florida State 4

Thursday's result

Game 12—Texas 12, LSU 7

Friday's result

Game 13—Wichita State 12, Florida St. 9

Saturday's result

Championship

Game 14—Wichita St. 5, Texas 3

Jim Audley walked to lead off for Wichita State, but was caught stealing. Bryant then walked P.J. Forbes, got Mike McDonald to fly out and walked Eric Wedge. Bryant Winslow, playing on a stress fracture in his right leg, followed with a single to left that scored Forbes. It was the first hit in two series games off Bryant.

Wichita made it 3-0 in the second with the help of three Texas errors.

Lance Jones led off with a bunt for Texas in the fifth and collided with Winslow at first, reinjuring Winslow's stress fracture and forcing him to leave the game.

Mike Wilson, Winslow's sub, singled with one out in the fifth and scored when Meares homered.

Texas	ab	r	h	rbi
Jones cf	2	0	1	0
Tollison 2b	4	0	1	0
Bryant dh/p	4	1	1	0
Butcher lf	4	1	1	0
Newkirk 3b	3	1	1	0
Lowery 1b	3	0	1	1
Shults rf	3	0	0	1
Bethea ss	4	0	0	0
Prather c	3	0	0	0
Pate ph	1	0	0	0
Dare p	0	0	0	0
Total	31	3	6	2

Wichita St.	ab	r	h	rbi
Audley cf	3	0	0	0
Forbes 2b	3	1	0	0
McDonald lf	4	0	0	0
Wedge c	3	0	0	0
Winslow 1b	2	0	1	1
Wilson lf	2	1	1	0
Meares ss	3	1	1	2
Dreifort rf	4	0	1	0
Jones 3b	4	1	1	0
Wentworth dh	4	1	2	0
Total	32	5	7	3

Texas	000	201	000	3
Wichita State	120	020	00x	5

E. Newkirk 2, Tollison, Dreifort, Winslow, Bethea. DP: Wichita St. 1. LOB: Texas 6, Wichita St. 8. HR: Meares (9). S: Audley. SF: Lowery.

	IP	H	R	ER	BB	SO
Aggies						
Bryant (L, 1-1)	⅔	1	1	1	4	0
Dare	7⅓	6	4	2	0	7
Shockers						
Brummett (W, 18-2)	9	6	3	1	4	6

WP: Bryant. PB: Wedge.
Umpires: Home, Williams; First, Steiner; Second, Jones; Third, Graham; Left, Raven, Right, Roberts.
Time: 2:59. Attendance: 13,701

[From the Wichita Eagle-Beacon]

STEPHENSON COMPLETES CLIMB TO THE TOP

(By Lauretta McMillen)

Paula Stephenson crouched behind the home-plate screen Saturday with tears of joy squeezing out of the corners of her eyes.

As soon as Greg Brummtt threw the final strike past Texas' Kevin Pate, wife Paula and daughter Ginny were poised to join Gene Stephenson in a celebration of something he has wanted for a long, long time: a College World Series title.

"I just can't believe it," said Paula Stephenson, dabbing at her tears with her yellow Shocker Homer Hankie. "I just never thought we'd get this far."

Gene Stephenson may not have thought so, either, but he certainly wanted to.

"I've been waiting about 11 or 12 years for this," he said, tears of joy lining the laugh lines around his eyes. "I didn't know what I'd do, how I'd react.

"We thought we had it last year, we thought we had it in '82. But we somehow just found a way to get it done this year."

In doing so, the Shocker baseball team took Stephenson to the pinnacle of an already highly successful career.

The victories in the CWS lifted Stephenson's career record to 681-216-3. His .759 winning percentage is third among active coaches behind only Cliff Gustafson of Texas and Gary Ward of Oklahoma State.

After Stephenson's Shocker team eliminated Florida State from the College World Series Friday night, FSU coach Mike Martin did not mince words about his counterpart.

"Gene Stephenson should be bronzed for the job he's done," Martin said after the 12-0 Shocker victory."

"With the stuff he's lost: two starters, plus the guy with the stress fracture on first base, they were still a very good baseball team."

Originally from Guthrie, Okla., Stephenson came to WSU in February 1977 to revive the Shocker program that had been dormant since 1970. Stephenson had been an assistant coach at Oklahoma, where he served under Enos Semore for five years.

When Stephenson was at OU, the Sooners earned four Big Eight Conference titles and five trips to the CWS. They have not been back to Omaha since Stephenson left.

It has been rumored that Stephenson could be Semore's replacement because the Oklahoma coach has come under fire this season. On Saturday, that was the least thing Gene Stephenson wanted to talk about.

"Right now, this is the most important thing to me and I want to savor today," he said.

With WSU's CWS title, the Shockers became the first team outside of the so-called Sun Belt to win the national championship since Ohio State in 1986.

"We've tried for so many years to run a great program and do it in such a way that it would make people proud around the

country," Stephenson said. "Now, it finally happened and we're not going to be second fiddle to anybody."

SALUTE TO THE COLLEGE WORLD SERIES CHAMPIONS

Mrs. KASSEBAUM. Mr. President, today the Shockers of Wichita State University reign as the best college baseball team in America. On Saturday, before a nationwide television audience, the Shockers won the 1989 College World Series, defeating the University of Texas 5 to 3.

Wichita State was not the best known or most highly favored team in the series. They had suffered enough injuries and disappointments the last two seasons to sink many a lesser team. In fact, to follow their fortunes this year you might have thought "backs against the wall" was part of their official name.

By one account, on six different occasions during the postseason, the Shockers were on the verge of elimination. But in the never-say-die tradition for which Kansans, and all champions, are known, Wichita State University fought its way to the top.

Much of the credit goes to the team's coach, Gene Stephenson, who set the example of hard work and dedication for which this team became known. The on-field heroes include pitcher Greg Brummett, who added his name to the record books by winning three games in the series, including the championship game on Saturday.

But this was, in the best sense of the term, a "team effort." I salute the Wichita State University Shockers as a team of heroes who have brought great pride to their school, the city of Wichita, and the State of Kansas. I salute them for their championship season.

NOMINATION OF WILLIAM LUCAS

Mr. DOLE. Mr. President, something is wrong with the nominations process when nominees are treated more like suspects on trial than the considered choices of elected Presidents. We saw it happen to Robert Bork. We saw it happen to John Tower. I hope we are not going to see it happen to Bill Lucas, President Bush's outstanding choice to head up the Justice Department's Civil Rights Division.

On June 1, the Judiciary Committee asked the Justice Department to release documents relating to Bill Lucas's background. Such a request is not unusual—particularly for Justice nominees. But what is unusual is the incredibly broad scope of the request. The request covers employment records, court documents, personal documents, campaign filings—everything but Bill Lucas's fifth grade report card.

Even worse, the documents could total between 100,000 and 150,000 pages of reading material. We will know for certain when the Justice Department releases most of the documents later this week.

But whatever the number, we can be certain of one thing: Unless the Judiciary Committee staff enrolls itself in the Evelyn Wood speed-reading course, it will take at least a month—perhaps 2 months—for the staff to review all these documents. And it will take even longer for the Judiciary Committee to hold its hearing and act on the Lucas nomination.

Now, I am not going to second-guess the motives behind such a voluminous document request. I am not going to suggest that the purpose of the request is to stall the nomination—or to find something—no matter how trivial—that could be taken out of context.

But I can hear the rumor mill churning already. And the last thing this institution needs is another Tower debacle. I hope that Bill Lucas—or anyone else for that matter, Republican or Democrat—will never have to endure the kind of character assassination that John Tower suffered. We do not need any more rejections by innuendo, defeat by appearances and perception, and career destruction by leaks and irresponsible reporting.

BILL LUCAS: A HISTORY OF PUBLIC SERVICE

Now, let us forget about documents for a moment. Let's talk about the man—Bill Lucas.

Here is a son of immigrant parents—orphaned at age 14—the victim himself of racial discrimination and racial stereotyping—Bill Lucas has managed to climb out of poverty, educate himself, and raise a lovely family of five children. And somehow Bill Lucas has found the time to dedicate more than 35 years of his life to public service: As a schoolteacher, social worker, policeman, FBI agent, lawyer, sheriff, and as an elected official for one of the Nation's largest counties.

Most importantly, Bill Lucas has risen to the challenges that life has offered him. The principle of equality of opportunity has real-life meaning for him.

To those who say that Bill Lucas is technically unqualified, let me say this: I cannot think of anyone who is more technically qualified. More technically qualified to know the real-life effects of the evils of discrimination. And more technically qualified to know what it takes to be a tough enforcer of our Nation's laws—and particularly its civil rights laws.

SPEED UP THE PROCESS

So, I just hope that the Judiciary Committee will finish up its review, hold a hearing, and report out the nomination. Perhaps the committee could pare down the scope of its document request.

We have to speed up the process so that Bill Lucas—who has been a fine public servant—can now be a fine Assistant Attorney General.

Yesterday's Wall Street Journal contains an editorial entitled "Sandbag Watch" that makes some of the points that I have tried to make here this morning.

Mr. President, I ask unanimous consent that the text of the editorial be printed in the RECORD.

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

SANDBAG WATCH

President Bush has nominated William Lucas, a former county executive and sheriff from the Detroit area for the Justice Department's top civil-rights job. But the honor is turning into an ordeal, as the staff of the Senate Judiciary Committee subjects him to an amazing investigation.

Chief committee counsel Diana Huffman and her staff are bombing Justice with requests for tens of thousands of documents relating to Mr. Lucas's past, perhaps as many as 200,000 pages. They're seeking employment records, court documents and other material that may have been filed in cases when, as a public official, Mr. Lucas was a defendant in legal actions. The committee has also mau-maued the White House into turning over files from FBI background checks. No other Justice nominee has received the same going over.

His nomination has infuriated Ralph Neas and others in the Washington civil-rights establishment, because Mr. Lucas isn't part of their club. But because Mr. Lucas is black and capable—supported by Jesse Jackson, Congressman John Conyers and other prominent blacks—his opponents probably can't win on the merits.

Unless, of course, they can dig up enough allegations and innuendo to "raise doubts," as they say in Washington, about his personal character. This tactic was used brilliantly against John Tower, complete with leaks of unproven allegations from raw FBI files made available to the Senate Armed Services Committee. Former Defense Secretary Donald Rumsfeld was so disgusted by the leaks that he informed FBI chief William Sessions that he wouldn't any longer be interviewed for background checks.

Everyone's now moaning about Washington's "poisonous" atmosphere. We'll believe it's more than hypocrisy when Senate committees start treating nominees less like suspects to be investigated and more like the choices of elected presidents.

Mr. DOLE. I reserve any time I might have remaining.

The PRESIDENT pro tempore. Without objection, the Republican leader's time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the order, there will now be a period for the transaction of morning business. The Chair understands that no provisions have been made permitting Senators to speak during the period of the transaction of morning business.

Mr. REID addressed the Chair.

The PRESIDENT pro tempore. The Senator from Nevada [Mr. REID].

Mr. REID. I ask unanimous consent that there be a period for morning business not to extend beyond the hour of 12:30 p.m. this day, with Senators permitted to speak therein for a period of time not to exceed 5 minutes each.

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

Mr. REID addressed the Chair.

The PRESIDENT pro tempore. The senior Senator from Nevada is recognized for not to exceed 5 minutes.

TRAGEDY IN ISRAEL

Mr. REID. A Las Vegas newspaper this past Sunday reported a small boy had been killed in rioting in Israel. What a terrible tragedy—the loss of a young life. And yet that death, half a world a way, has been noted in every reputable paper in the civilized world. Why is that?

I would submit to you that, in part, at least, it is because of the inherent difficulties with which a nation steeped in democratic ideals; indeed a country whose very foundations are the ideals of the 18th-century enlightenment and 19th-century humanism, faces attack by those who are willing to sacrifice their children for a political motive.

Because that tiny democracy, that ancient nation, stands alone among peoples to whom the concept of individual liberty is as foreign and repulsive as the plague, Israel alone is the focus of our attention. Only in Israel do the courts act as a bulwark against repression. Only in Israel can the citizenry openly disagree with the government and with each other. Only in Israel is the press free to tell the world of the death of one boy.

On the same page of Sunday's paper, there was another story. An item about continued shelling by the Syrian Army and its Lebanese Moslem allies of Christian areas in and around Beirut. "Continued shelling"—what a nice summation. So simple; so easy to say. What does it mean?

We do not know what it means. We can not know.

Because in Lebanon the free press, due to kidnapings and repression, dares not tread. Instead of rubber bullets and tear gas, for day after ceaseless day, the artillery roars and anonymous civilians suffer. How many small boys die not because they were sent by their elders to riot in the streets, but because, as they lay huddled in basements with their mothers and sisters, a shell landed indiscriminately.

They die, not because of what they do, or because of the stones they throw, but because they made the mistake of being born to a family of the wrong religion.

We do not know—we may never know—how many will die because their water supplies are cut off, their sewage systems destroyed, their medical facilities eliminated by year after year of shelling by Russian-supplied Syrian artillery.

We do not know—we may never know—how many small boys and girls have lost limbs, how many have been orphaned, how many have succumbed to the same blank horror of shellshock that our trained soldiers experienced in the First World War. It is time that we, and the American people, and the world press look away for a moment from the mote in the Israeli eye and turn to the beam in the eye of its neighbor.

Mr. President, in 1860, a new doctrine entered the field of international law. The concept of humanitarian intervention, the right of a nation to intervene in what would normally be the internal affairs of another country to prevent crimes against humanity this doctrine was promulgated by the French Government.

That idea arose because of the strong revulsion of the French people, Europe as a whole, and the entire civilized world at the wicked and heartless manner in which the Turkish Empire ruled Lebanon, and at the way in which they allowed their Christian minority to be oppressed. The French have a saying:

The more things change, the more things stay the same.

In Lebanon, some things have not changed. It is time that they do.

We have tried, as a nation, to do the job through military force or with our European allies. It did not work and we lost a terrible number of our young men in the attempt.

Let us take another approach to the concept of humanitarian intervention. The Soviet Union, under Mr. Gorbachev, has indicated its desire to join the community of civilized nations.

Let them speak to that desire by cutting off the Syrian shelling of the Christian community.

I think that the Soviets are beginning, in their own republics with minority populations, to recognize the fruits of the mischief they have sowed in the Moslem world. Let them begin to rectify that error.

We all know that there is no easy answer in Lebanon. But we also know—at least those of us who are students of history—that there once was an oasis of peace in the Middle East.

Once there was a spot where Moslem and Christian, Greek, and Armenian, Arab and Jew, could sit side-by-side in peaceful discussion of their rivalries.

Once there was a place called Lebanon. Let it be so again. Let it be so.

Today I call upon the State Department and upon all our allies among the Western democracies to put the utmost pressure on the Soviets and their Syrian allies to take a first step, to stop the shelling of innocent civilians in the Christian enclaves.

It is not peace when the shelling stops; it is not peace, but it is a necessary precursor to peace.

Let the world recognize that fact and perhaps the death of small boys will again be a fact and a tragedy as important when it occurs in the basements of Beirut as when it happens in the streets of the West Bank and Gaza.

I yield the floor.

The PRESIDENT pro tempore. The senior Senator from South Carolina [Mr. THURMOND] is recognized for not to exceed 5 minutes.

Mr. THURMOND. Mr. President, I ask unanimous consent for 8 minutes.

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

The distinguished Senator from South Carolina [Mr. THURMOND] is recognized for not to exceed 8 minutes.

CONSTITUTIONALITY OF THE CHILD PROTECTION AND OBSCENITY ENFORCEMENT ACT OF 1988

Mr. THURMOND. Mr. President, on May 16, 1989, in the case of American Library Association versus Dick Thornburgh, Attorney General of the United States, a Federal district court struck down key provisions of the recently enacted Child Protection and Obscenity Enforcement Act of 1988. This important legislation, which I introduced, was carefully drafted to give government a strong weapon for fighting child pornography and obscenity.

Regarding the decision, the court declared unconstitutional and enjoined enforcement of the recordkeeping and criminal presumption provisions, and declared unconstitutional certain key aspects of the statute's forfeiture provisions. These provisions were strong, effective ones, useful in the fight against pornography. For this reason, I find the decision troubling. The strong public policy against and the evils associated with child pornography and obscenity justify the burdens this legislation places upon the pornography industry.

With respect to its growth, pornography is rampant in our society today. It has increasingly made its way into existing and new media of communication and has become an enormously profitable business as well. The Department of Justice has estimated that the pornography industry reaps an astonishing $4 billion annually.

On January 25, 1989, Ted Bundy was executed in the electric chair at Florida State Prison. Prior to his execution he gave one last interview in which he discussed how hardcore pornography had an addictive, progressive, and de-

structive nature in his own life. In discussing pornography's role in shaping his life, Mr. Bundy said, "Pornography can reach out and snatch a kid out of any house. * * * It snatched me out of my home 30 years ago." He went on to say that Americans walk past magazine racks "full of the very kinds of things that send young kids down the road to be Ted Bundys." Such a statement is truly alarming.

The Child Protection and Obscenity Enforcement Act of 1988 was introduced to protect our children and to enhance enforcement procedures in current obscenity law. The bill was fully debated in both Houses of Congress and represents what we, as Federal legislators, believe to be a fair, reasonable, and constitutional weapon against child pornographers and obscenity producers and distributors. It provides the additional tools to current law which are critically necessary for vigorous enforcement. This is mandatory if we are to rid our Nation of obscenity and child pornography. Careful consideration was taken to insure that the act met constitutional requirements.

I would like to briefly discuss the provisions in controversy and the reasons for their inclusion in the Child Protection and Obscenity Enforcement Act of 1988. One such provision is the recordkeeping requirement. This provision requires producers of sexually explicit material to keep records pertaining to every person portrayed in such material. These records must include the age and other identifying information of all the performers engaging in the explicit conduct. By requiring this information, it will assure that minors are not used in the production of pornography. This provision serves the legitimate governmental interest of protecting children from sexual exploitation.

Additionally, the court concluded that certain key provisions relating to criminal and civil forfeiture are unconstitutional. The forfeiture provisions included in the act allow for forfeiture of obscene material, child pornography, the profits from their sale, and property used to produce or distribute this material. It is clear that forfeiture is a powerful weapon. Under the act, the Government can seize these items prior to filing of a forfeiture action or a formal adversarial hearing. However, the Government must possess a search warrant issued by a judicial officer only after a showing of probable cause. In addition, the Government must show that a restraining order would be insufficient to insure preservation of a pornographer's forfeitable assets. The court concluded that such pretrial seizures are unconstitutional if undertaken without a prior adversarial hearing in court. However, I believe these provisions are constitutionally acceptable and necessary to preserve evidence in these cases. If prior notice is given to child pornographers and obscenity peddlers, they will dispose of assets and hide their profits. The Government has a compelling interest in preserving evidence necessary to successfully prosecute and put out of business those who produce obscene material and sexually exploit children.

Another conclusion of the court relating to forfeiture limits the application of the criminal forfeiture provisions to only those cases involving patterns of criminal behavior. The court decided that it would be inappropriate to impose criminal forfeiture upon a person convicted of only a single violation if no pattern of criminal behavior has been proven. Therefore, before the Government could utilize these powerful forfeiture provisions, there would have to be two or more criminal convictions. The provision as drafted only requires a single conviction before forfeiture is allowed. To require otherwise would only serve to give these criminals a second chance to break the law.

In summary, the decision that I have discussed today is that of a single district court. I believe a higher court should examine the complicated legal issues this opinion raises. For this reason, I have urged Attorney General Thornburgh to appeal this decision. The Government's duty and responsibility to our children may well merit appealing this decision all the way to the Supreme Court of the United States, if necessary. If this decision is permitted to stand, it will operate as an unacceptable precedent.

In closing, we, as a nation, must take every reasonable step necessary to ensure the protection of our society and our most precious resource, our children. Unless we continue to strengthen our laws, the progress we have made in recent years could be easily eroded. The interests of our children and those who are the victims of child pornography and obscenity demand our sincere attention and endless efforts.

Mr. SHELBY addressed the Chair.

The PRESIDING OFFICER (Mr. KERRY). The Senator from Alabama is recognized.

(The remarks of Mr. SHELBY pertaining to the introduction of S. 1161 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

(The remarks of Mr. GLENN pertaining to the introduction of S. 1165 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. KOHL. I thank the Chair.

(The remarks of Mr. KOHL pertaining to the introduction of S. 1162 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

THE CLEAN AIR ACT

Mr. BAUCUS. Mr. President, yesterday President Bush outlined his proposal for cleaning up our Nation's dirty air. I congratulate the President for his leadership. After 8 long years of congressional work and 8 long years of opposition by the Reagan-Bush administration, the President's proposal is in fact a breath of fresh air.

Over the past 8 years, Congress has tried to enact strong progressive air legislation that we stop the degradation of our air; that will assure that everyone has clean, healthy air to breathe; that will assure our children no longer have to play in air so dirty that it would be illegal to work in; that will assure that ozone levels go down and not up as they did last summer, when ozone levels were the highest levels of the decade—in some areas the highest level ever recorded; that will stop the hemorrhaging of life from our lakes, streams, and forests.

For almost a decade, many of us in Congress have tried to enact legislation to fix what was wrong with the Clean Air Act. We tried to address acid rain, to control releases of toxic chemicals, and to stop our cities' skies from resembling sewers.

But each time we tried to move forward, we have been stymied by the previous administration that placed cost of controls above cost to human health.

We now have an opportunity to move forward. I know my colleagues will join me in welcoming the President aboard. We look forward to seeing his legislative proposal. And we look forward to working with him.

I am encouraged to see that many of the solutions that the President has proposed were contained in the Senate's clean air legislation during the last Congress.

And I am encouraged that both Congress and the administration share the goal of clean, healthful air for everyone.

The President's outline holds out the promise of dramatic improvement in air quality. We will have to review the details to determine if the legislation matches up to the rhetoric.

The details are important. The President's proposal suggests that clean fuels in autos will enable us to continue the luxury of not having to think about getting to work in car pools or by mass transit. These are very rosy assumptions.

The President's proposal mentions tighter tailpipe standards, but only for

hydrocarbons and no date is mentioned.

The proposal makes only passing and confused reference to the important problem of transport of air pollution, which is particularly serious from Virginia to Maine.

The toxics proposal suggests the best available control measures will be used on categories of toxic emitters: but we do not know which emitters, and it appears that not all sources will be required to control their emissions.

The best news is the clearest news: the President has committed himself to a 10-million-ton reduction in sulfur dioxide emissions below 1980 levels, taking growth into account. It is of tremendous relief to no longer have to struggle with the amount of the reduction. While I have supported a 12-million-ton reduction in the past, I am willing to act in good faith and support, as I have indicated to the President, a 10-million-ton option.

The flexibility of the proposal is especially encouraging, as this can reduce ratepayers' costs and does not shut out opportunities for low-sulfur coal.

Everyone is for clean air. I hope that his proposal, the President's proposal, is not only a breath of fresh air, but more importantly, a breath of clean air. Unless we enact good, strong legislation our air quality will only deteriorate. This option is within our grasp, we must not forgo this rare opportunity.

We must not squander this opportunity, the unique opportunity now, with the convergence of the President's interest and that of the Congress, to in fact pass strong clean air legislation. It is our duty to do so.

WARREN GRANT MAGNUSON

Mr. MITCHELL. Mr. President, earlier this week I heard with great interest and sympathy our colleague, Senator ADAMS of Washington, give an extended eulogy for a man who was a giant in his home State, former Senator Warren Magnuson, of Washington.

And although I only had the privilege of serving with Senator Magnuson for a very short 8 months in 1980, I was reminded of the stature of Senator Magnuson, and I wanted to add my voice to the many others on the sad occasion of his death.

Warren Magnuson's life spanned decades that changed the face of our Nation and our world. From 1904, when he was born, and America was a nation of small towns to the year of his death, he played a role in the tumultous events of our century.

He was in China during the period of the warlords in the 1920's, when the leaders of modern China were unknown students.

He served his nation in World War II, both at sea and in the Senate.

In the depths of the Depression, legislation he conceived laid the groundwork for the Nation's first workmen's compensation system.

Magnuson is a famous name in coastal Maine, as it is in every State with a commercial fishery, for one of Senator Magnuson's abiding concerns was to nurture and preserve the commercial fisheries of our Nation. His legislative legacy in that field will endure, enhancing the livelihoods of fishermen from Alaska to Maine to the Mexican coast.

His work in the Senate ranged from the practical works of construction essential to economic growth to the great research centers essential to a better future for our people. He was instrumental in the construction of Grand Coulee Dam and the National Cancer Institute. Neither his interests nor his sympathies were limited or narrow.

The Senate lost a part of its history and a man of vision on his departure in 1981. The State of Washington and the Nation lost an unparalleled public servant on his departure from this life last weekend.

INTERNATIONAL CONFERENCE ON INDOCHINESE REFUGEES

Mr. KENNEDY. Mr. President, today in Geneva the U.N. Secretary-General, in cooperation with the U.N. High Commissioner for Refugees, will convene the Second International Conference on Indochinese Refugees to set the stage for more effective international action to deal with the continuing problem of refugees from Indochina.

Ten years ago, representatives from over 60 countries met in Geneva to consider for the first time at a major conference the plight of hundreds of thousands of refugees in Southeast Asia. After 2 days of intensive diplomatic activity, and after a great deal of preparatory work by the U.N. High Commissioner for Refugees, the meeting concluded with a coordinated, international response to the Indochinese refugee problem.

That first meeting served as a catalyst for the world's original effort to address the urgent humanitarian needs of refugees scattered throughout Southeast Asia—many unable at the time to even find temporary safe haven, their leaky boats being pushed out to sea, all facing uncertain futures with few or no prospects for resettlement elsewhere.

The 1979 Geneva conference dealt with this crisis by doubling the resources made available to provide emergency care and assistance. It secured agreement by the countries of first asylum that they would provide temporary safe haven if they were assured of international support. It also saw a new commitment by third countries, including the United States, to provide permanent resettlement opportunities for refugees outside the region. Finally, and perhaps most important, it set the stage for the first initiative to deal with the problem at its source—the Orderly Departure Program—to provide an alternative to forcing tens of thousands of refugees to flee by boat with great risk and loss of human life.

During the decade since, the pact agreed upon in Geneva in 1979 has worked—although it was limited in scope, and there have clearly been serious lapses and more than a few broken promises. Despite this, the basic understandings between the countries of first asylum that they would provide protection for refugees if the countries outside the region provided assistance and opportunities for resettlement, has held for most of the decade. That is, until recent months.

Impatience with the continuing flow has grown; there seems to be no end in sight. The spectre of a large, unanticipated residue of refugees left in Southeast Asia has increasingly alarmed the countries of first asylum. Finally, the continued high demand for third country resettlement has, after a decade, taxed the resources and patience of outside countries as well. The lack of any real management or control of the flow through the Orderly Departure Program, has also brought despair. To many observers, the program is on the brink of breakdown.

For some months, Mr. President, it has been clear that if the world is to avoid a tragic ending to what has been until now, an extraordinarily humane international effort, new and urgent action must be undertaken to deal more effectively with the continued movement of Indochinese. New approaches are required to cope with this flow into Southeast Asia, while more realistic steps are taken to deal with the problem at its source.

Critically important in this process will be efforts by all nations, within the region and outside, to improve the political climate in Southeast Asia—by ending years of conflict in Cambodia, by negotiating the end to other longstanding differences, and by assisting countries to deal with problems that contribute to the desperate movement of peoples throughout the region. As always, the fate of refugees is linked to the larger questions of war and peace and economic stability—of diplomacy instead of conflict. To this end, the United States can best contribute to this peaceful process by taking the necessary steps to normalize relations with Vietnam. That is one of the most realistic ways for us to deal with these humanitarian problems at their source.

Finally, the office of the U.N. High Commissioner for Refugees must begin to adjust its programs of humanitarian assistance—taking steps to screen refugees from nonrefugees; securing greater protection for bona fide refugees; establishing programs to help the countries of origin; and providing new procedures, consistent with international humanitarian law, to facilitate both the repatriation as well as the resettlement of Indochinese.

That will be the agenda before the international community at this week's conference in Geneva. It is a critical time—a watershed point—for the Indochinese program. New diplomatic approaches must be reviewed; international responsibilities delineated; and old obligations reestablished.

Mr. President, I am hopeful the United States will assume its traditional leadership—as we did in Geneva in 1979—and support these new international efforts to address the root causes behind the continued refugee flow, as well as promote more durable solutions for the future. The broad outlines of the program are there—again, thanks to the preparatory work of the High Commissioner, Jean-Pierre Hocke, and the staff of the UNHCR.

What is needed now is a commitment to act upon the draft "Comprehensive Plan of Action" adopted last March in Kuala Lumpur, Malaysia. It provides the framework for the international community to respond to the new situation in Southeast Asia by:

Providing for more regular, and legal, departures from the countries of Indochina;

Reestablishing the principle of refugee protection and first asylum;

Protecting the integrity of the refugee process by screening out nonrefugees; and

Supporting new efforts to promote safe return and voluntary repatriation, as well as continued third country resettlement.

These undertakings are all interrelated, and the task in Geneva will be to assure that each receives balanced attention and support. More important still, the diplomats in Geneva must not allow-short term objectives, some fueled by current frustrations and admittedly difficult problems, to distract us from our longer term obligations under the United Nations Convention and Protocol Relating to the Status of Refugees. These principles remain paramount, not only in what is said in Geneva, but what is done by member nations in the weeks and months to come. Only then will history judge this, the Second Conference on Indochinese Refugees, to have been a success.

Again, Mr. President, I commend the Secretary-General for his action in convening the conference, and the High Commissioner for his diligent work in preparing for its successful conclusion.

Given the importance this meeting will likely have upon future U.S. refugee programs in the area, senior staff from our Immigration and Refugees Subcommittee will be attending the Geneva conference this week. For the information of my colleagues and the readers of the RECORD, I ask that the draft text of the Comprehensive Plan of Action prepared for Geneva by the UNHCR be printed at this point in the RECORD.

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

DRAFT DECLARATION AND COMPREHENSIVE PLAN OF ACTION APPROVED BY THE PREPARATORY MEETING FOR THE INTERNATIONAL CONFERENCE ON INDOCHINESE REFUGEES ON MARCH 8, 1989

NOTE BY THE SECRETARY-GENERAL

1. The Preparatory Meeting for the International Conference on Indo-Chinese Refugees, convened by the Government of Malaysia, was held at Kuala Lumpur from 7 to 9 March 1989. It approved by consensus the text of a draft Declaration and Comprehensive Plan of Action.

2. In accordance with a request contained in a letter dated 24 March 1989 from the Chairman of the Preparatory Meeting to the Secretary-General, the above-mentioned text is being brought to the attention of the Conference.

DRAFT DECLARATION AND COMPREHENSIVE PLAN OF ACTION

I. DECLARATION

Having reviewed the problems of Indo-China asylum-seekers in the South-East Asian region,

Noting that, since 1975, over 2 million persons have left their countries of origin in Indo-China and that the flow of asylum-seekers still continues,

Aware that the movement of asylum-seekers across frontiers in the South-East Asian region remains a subject of intense humanitarian concern to the international community,

Recalling United Nations General Assembly resolution 3455 (XXX) and the first Meeting on Refugees and Displaced Persons in South-East Asia convened at Geneva in July 1979 under the auspices of the United Nations to address the problem,

Recalling further the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and related instruments,

Noting with satisfaction that, as a result of combined efforts on the part of Governments and international organizations concerned, a durable solution has been found for over 1.6 million Indo-Chinese,

Preoccupied however by the burden imposed, particularly on the neighbouring countries and territories, as a result of the continuation of the outflow and the presence of large numbers of asylum-seekers still in camps,

Alarmed by indications that the current arrangements designed to find solutions for asylum-seekers and resolve problems stemming from the outflow may no longer be responsive to the size, tenacity and complexity of the problems in the region,

Recognizing that the resolution of the problem of asylum-seekers in the region could contribute positively to a climate of peace, harmony and good neighbourliness,

Satisfied that the international community, and in particular the countries directly involved, have responded positively to the call for a new international conference made by the States members of the Association of South-East Asian Nations and endorsed by the Executive Committee of the Programme of the United Nations High Commissioner for Refugees at its thirty-ninth session and by the General Assembly of the United Nations at its forty-third session,

Noting the progress achieved towards a solution of this issue by the various bilateral and multilateral meetings held between the parties concerned prior to the International Conference on Indo-Chinese Refugees,

Noting that the issues arising from the presence of Khmer refugees and displaced persons are being discussed, among the parties directly involved, within a different framework and as such have not been included in the deliberations of the Conference,

Noting with satisfaction the positive results of the Preparatory Meeting for the Conference, held in Kuala Lumpur from 7 to 9 March 1989,

Realizing that the complex problem at hand necessitates the co-operation and understanding of all concerned and that a comprehensive set of mutually re-enforcing humanitarian undertakings, which must be carried out in its totality rather than selectively, is the only realistic approach towards achieving a durable solution to the problem,

Acknowledging that such a solution must be developed in the context of national laws and regulations as well as of international standards,

Have solemnly resolved to adopt the attached Comprehensive Plan of Action.

II. COMPREHENSIVE PLAN OF ACTION

A. Clandestine departures

1. Extreme human suffering and hardship, often resulting in loss of lives, have accompanied organized clandestine departures. It is therefore imperative that humane measures be implemented to deter such departures, which should include the following:

(a) Continuation of official measures directed against those organizing clandestine departures, including clear guidelines on these measures from the central government to the provincial and local authorities.

(b) Mass media activities at both local and international level, focusing on:

(i) The dangers and hardship involved in clandestine departures;

(ii) The institution of a status-determination mechanism under which those determined not to be refugees shall have no opportunity for resettlement;

(iii) Absence of any advantage, real or perceived, particularly in relation to third-country resettlement, of clandestine and unsafe departures;

(iv) Encouragement of the use of the regular departure and other migration programmes;

(v) Discouragement of activities leading to clandestine departures.

(c) In the spirit of mutual co-operation, the countries concerned shall consult regularly to ensure effective implementation and co-ordination of the above measures.

B. Regular departure programmes

2. In order to offer a preferable alternative to clandestine departures, emigration

from Viet-Nam through regular departure procedures and migration programmes, such as the current Orderly Departure Programme, should be fully encouraged and promoted.

3. Emigration through regular departure procedures and migration programmes should be accelerated and expanded with a view to making such programmes the primary and eventually the sole modes of departure.

4. In order to achieve this goal, the following measures will be undertaken:

(a) There will be a continuous and widely publicized media campaign to increase awareness of regular departure procedures and migration programmes for departure from Viet-Nam.

(b) All persons eligible under regular third-country migration programmes, Amerasians and former re-education centre detainees will have full access to regular departure procedures and migration programmes. The problem of former re-education centre detainees will be further discussed separately by the parties concerned.

(c) Exit permits and other resettlement requirements will be facilitated for all persons eligible under regular departure procedures and migration programmes.

(d) Viet-Nam will fully co-operate with the United Nations High Commissioner for Refugees (UNHCR) and the Intergovernmental Committee for Migration (ICM) in expediting and improving processing, including medical processing, for departures under regular departure procedures and migration programmes and will ensure that medical records of those departing comply with standards acceptable to receiving countries.

(e) Viet-Nam UNHCR, ICM and resettlement countries will co-operate to ensure that air transportation and logistics are sufficient to move expeditiously all those accepted under regular departure procedures and migration programmes.

(f) If necessary, countries in South-East Asia through which people emigrating under regular departure procedures and migration programmes must transit will, with external financial support as appropriate, expand transit facilities and expedite exit and entry procedures in order to help facilitate increased departures under such programmes.

C. Reception of new arrivals

5. All those seeking asylum will be given the opportunity to do so through the implementation of the following measures:

(a) Temporary refuge will be given to all asylum-seekers, who will be treated identically regardless of their mode of arrival until the status-determination process is completed.

(b) UNHCR will be given full and early access to new arrivals and will retain access, following the determination of their status.

(c) New arrivals will be transferred, as soon as possible, to a temporary asylum centre where they would be provided assistance and full access to the refugee status-determination process.

D. Refugee status

6. The early establishment of a consistent region-wide refugee status-determination process is required and will take place in accordance with national legislation and internationally accepted practice. It will make specific provision, inter alia, for the following:

(a) Within a prescribed period, the status of the asylum-seeker will be determined by a qualified and competent national authority or body, in accordance with established refugee criteria and procedures. UNHCR will participate in the process in an observer and advisory capacity. In the course of that period, UNHCR shall advise in writing each individual of the nature of the procedure, of the implications for rejected cases and of the right to appeal the first-level determination.

(b) The criteria will be those recognized in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, bearing in mind, to the extent appropriate, the 1948 Universal Declaration of Human Rights and other relevant international instruments concerning refugees, and will be applied in a humanitarian spirit taking into account the special situation of the asylum-seekers concerned and the need to respect the family unit. A uniform questionnaire developed in consultation with UNHCR will be the basis for interviews and shall reflect the element of such criteria.

(c) The Handbook on Procedures and Criteria for Determining Refugee Status issued by UNHCR will serve as an authoritative and interpretative guide in developing and applying the criteria.

(d) The procedures to be followed will be in accordance with those endorsed by the Executive Committee of the Programme of the United Nations High Commissioner for Refugees in this area. Such procedures will include, inter alia:

(i) The provision of information to the asylum-seekers about the procedures, the criteria and the presentation of their cases;

(ii) Prompt advice of the decision in writing within a prescribed period;

(iii) A right of appeal against negative decisions and proper appeals procedures for this purpose, based upon the existing laws and procedures of the individual place of asylum, with the asylum-seeker entitled to advice, if required, to be provided under UNHCR auspices.

7. UNHCR will institute, in co-operation with the Governments concerned, a comprehensive regional training programme for officials involved in the determination process with a view to ensuring the proper and consistent functioning of the procedures and application of the criteria, taking full advantage of the experience gained in Hong Kong.

E. Resettlement

8. Continued resettlement of Vietnamese refugees benefiting from temporary refuge in South-East Asia is a vital component of the Comprehensive Plan of Action.

1. Long-Stayers Resettlement Programme

9. The Long-Stayers Resettlement Programme includes all individuals who arrived in temporary asylum camps prior to the appropriate cut-off date and would contain the following elements:

(a) A call to the international community to respond to the need for resettlement, in particular through the participation by an expanded number of countries, beyond those few currently active in refugee resettlement. The expanded number of countries could include, among others, the following: Australia, Austria, Belgium, Canada, Denmark, Germany, Federal Republic of, Finland, France, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom and United States of America.

(b) A multi-year commitment to resettle all the Vietnamese who have arrived in temporary asylum camps prior to an agreed date, except those persons already found not to be refugees under established status-determination procedure and those who express the wish to return to Viet-Nam. Refugees will be advised that they do not have the option of refusing offers of resettlement, as this would exclude them from further resettlement consideration.

2. Resettlement Programme for Newly-Determined Refugees

10. The Resettlement Programme for Newly-Determined Refugees will accommodate all those who arrive after the introduction of status determination procedures and are determined to be refugees. Within a designated period after their transfer to the resettlement area, those determined to be refugees shall receive an orientation briefing from a UNHCR representative that explains the third-country resettlement programme, the length of time current arrivals may be expected to spend in camp awaiting resettlement, and the necessity of adhering to the rules and regulations of the camp.

11. Wherever possible, a pledge shall be sought from the resettlement countries to place all those determined to be refugees, except those expressing the wish to return to Viet-Nam, within a prescribed period. It shall be the responsibility of UNHCR, with the full support of all the resettlement countries and countries of asylum, to co-ordinate efforts to ensure that departures are effected within that time.

F. Repatriation/Plan of Repatriation

12. Persons determined not to be refugees should return to their country of origin in accordance with international practices reflecting the responsibilities of States towards their own citizens. In the first instance, every effort will be made to encourage the voluntary return of such persons.

13. In order to allow this process to develop momentum, the following measures will be implemented:

(a) Widely publicized assurances by the country of origin that returnees will be allowed to return in conditions of safety and dignity and will not be subject to persecution.

(b) The procedure for readmission will be such that the applicants would be readmitted within the shortest possible time.

(c) Returns will be administered in accordance with the above principles by UNHCR and ICM, and internationally funded reintegration assistance will be channeled through UNHCR, according to the terms of the Memorandum of Understanding signed with Viet-Nam on 13 December 1988.

14. If, after the passage of reasonable time, it becomes clear that voluntary repatriation is not making sufficient progress towards the desired objective, alternatives recognized as being acceptable under international practices would be examined. A regional holding centre under the auspices of UNHCR may be considered as an interim measure for housing persons determined not to be refugees pending their eventual return to the country of origin.

15. Persons determined not to be refugees shall be provided humane care and assistance by UNHCR and international agencies pending their return to the country of origin. Such assistance would include educational and orientation programmes designed to encourage return and reduce re-integration problems.

G. Laotian asylum-seekers

16. In dealing with Laotian asylum-seekers, future measures are to be worked out through intensified trilateral negotiation

between UNHCR, the Lao People's Democratic Republic and Thailand, with the active support and co-operation of all parties concerned. These measures should be aimed at:

(a) Maintaining safe arrival and access to the Lao screening process;

(b) Accelerating and simplifying the process for both the return of the screened out and voluntary repatriation to the Lao People's Democratic Republic under safe, humane and UNHCR-monitored conditions.

17. Together with other durable solutions, third-country resettlement continues to play an important role with regard to the present camp populations of the Laotians.

H. Implementation and review procedures

18. Implementation of the Comprehensive Plan of Action is a dynamic process that will require continued co-ordination and possible adaptation to respond to changing situations. In order to ensure effective implementation of the Plan, the following mechanisms shall be established:

(a) UNHCR, with the financial support of the donor community, will be in charge of continuing liaison and co-ordination with concerned Governments and intergovernmental as well as non-governmental organizations to implement the Comprehensive Plan of Action.

(b) A Steering Committee based in South-East Asia will be established. It will consist of representatives of all Governments making specific commitments under the Comprehensive Plan of Action. The Steering Committee will meet periodically under the chairmanship of UNHCR to discuss implementation of the Comprehensive Plan of Action. The Steering Committee may establish sub-committees as necessary to deal with specific aspects of the implementation of the Plan, particularly with regard to status determination, return and resettlement.

(c) A regular review arrangement will be devised by UNHCR, preferably in conjunction with the annual Executive Committee session, to assess progress in implementation of the Comprehensive Plan of Action and consider additional measures to improve the Plan's effectiveness in meeting its objectives.

SENATOR WARREN MAGNUSON

Mr. BRADLEY. Mr. President, with the death of Senator Magnuson, we lost one of the 20th century's great statesmen. I join my colleagues in paying tribute to a man whose outstanding public service career has left an important mark on history.

Senator Magnuson was a man of integrity, a true statesman who showed wisdom and skill throughout his 44 years on Capitol Hill. As chairman of the Appropriations Committee and President pro tem, he was able to channel his influence toward vitally important issues. He was a leader in the effort to strengthen our National Institutes of Health, and it is appropriate that a NIH hospital and research center bears his name. Senator Magnuson was at the forefront of consumer advocacy—pushing through legislation on auto safety, regulation of flammable fabrics and truth in packaging. I am particularly grateful for his work on cigarette labeling.

Besides his legislative accomplishments, Senator Magnuson contributed greatly to the life of the Senate. He believed in stating things simply and fairly. But behind every simple saying were years of legislative experience that his colleagues listened to and respected. Senator Magnuson also understood that the Senate worked best without animosity and retribution—that however we felt about a course of action, our goals were similar.

America has lost a powerful political leader, whose dedication, hard work, and unbending pride in the principles of democracy have made our country a better place to live.

FORMER SECRETARY OF THE NAVY WILLIAM L. BALL III

Mr. NUNN. Mr. President, I want to take a few moments to pay tribute to William L. Ball III, who resigned as Secretary of the Navy last month. At the age of only 41, Will Ball has already had a distinguished career of both military and civilian service in both the executive and legislative branches of the Federal Government.

Will Ball spent 6 years in the U.S. Navy. He served 3 years aboard the guided missile destroyer U.S.S. *Sellers*, and then had a tour of duty in the Navy's Office of Legislative Affairs in the Senate where I first came to know him.

From 1975 until 1986, Will worked on the staffs of Senator Herman Talmadge and Senator John Tower, as well as on the staff of the Armed Services Committee. For the last 3½ years of this period, he served as Senator Tower's administrative assistant.

In 1985, Will was nominated by President Reagan to be the Assistant Secretary of State for Legislative and Intergovernmental Affairs, and a year later President Reagan put him on the White House staff as Assistant to the President for Legislative Affairs. In these two jobs, Will quickly earned an excellent reputation on Capitol Hill as a knowledgeable, articulate, and effective spokesman for the administration's policies.

In March 1987, President Reagan nominated Will Ball to be Secretary of the Navy. With less than a year to go in the second term of an administration, a lesser appointee might have been satisfied to coast through the remaining months in office, leaving the tough decisions to his successor in the new administration. Not Will Ball. Will brought the same thoughtful, steady and energetic approach to his responsibilities as Secretary of the Navy that have been the hallmark of his whole career in public service. He established a special rapport with the men and women throughout the sea services, that quickly won him their confidence and respect. His strong leadership and sense of compassion in the wake of the recent tragedy aboard the U.S.S. *Iowa* helped the Navy community and a grieving nation get through this very difficult period.

As Secretary of the Navy, Will Ball also played a key role in helping former Defense Secretary Frank Carlucci put together the last 5-year defense plan of the Reagan administration.

As Will steps down as Secretary of the Navy, I want to congratulate him for his outstanding service to the men and women in uniform and to the Nation. I want to extend to Will and his family my best wishes for continued success in the future.

TERRY ANDERSON'S 1,550TH DAY OF CAPTIVITY

Mr. MOYNIHAN. Mr. President, for 1,550 days, Terry Anderson has been held in captivity in Beirut.

I ask unanimous consent that the following piece, which appeared in Newsweek on October 20, 1986, and which provides a chilling description of this captivity, be printed in the RECORD.

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

AMERICA'S FORGOTTEN HOSTAGES

(By Rod Nordland)

Terry Anderson spent the first three weeks of his captivity lying chained to a bed—threatened with death if he uttered a single word. The Associated Press Beirut bureau chief had been a Marine; he had fought in Vietnam. As his nerves steadied, he got mad, replying to the mixed threats and blandishments of his captors with two words: "—— you." For the next six months, he was beaten, kicked and tormented with taunts that his family and his government had abandoned him. Still, he kept a private faith, refusing to make the scripted appearances his kidnappers demanded again and again. But when the kidnappers let him read about the Daniloff deal, he went on camera. The administration believes the kidnappers forced him to make the videotape. His family doesn't think so. "How can any official justify the interest and attention and action given that case—and the inattention given ours?" he asked.

This cry of pain out of Lebanon cannot be wished away. Since 1984, when kidnappers in Beirut declared open season on Americans, they have seized journalist Anderson, agriculturist Thomas Sutherland and David Jacobsen, a hospital administrator—along with a priest and a Presbyterian minister, an accountant, an engineer, librarian, school director, broadcaster and a diplomat they believed to be the CIA station chief. Two have been released. One managed to flee, one was rescued—and two have been killed. Five remain.

Over periods of captivity that range from 490 to 575 days, Anderson, Jacobsen and Sutherland, crammed into their tiny room with no furniture or light, have been beaten—sometimes for months on end. Pressure from the Syrians did force the kidnappers to move their prisoners from the dangerous reaches of the Bekaa Valley to the sprawling suburbs of Beirut, where they

have been kept in the basement of a half-finished apartment block. The administration has identified many of the exact places where the hostages have been held, but they've been moved often and undoubtedly will be moved again. That hasn't been easy. From time to time they have been stuffed into the trunk of a car, bound like mummies with packing tape and shuttled from hiding place to hiding place in wooden coffins and ambulances.

Real names: No one is certain who is holding the two newest hostages—Joseph Cicippio, the accountant, and Frank Reed, the school director—who were seized just last month. But the kidnappers of Anderson, Jacobsen and Sutherland sign their communiqués Islamic Jihad. They have real names too. They belong to a family called the Mugniyahs, part of the Musawi clan, led by Hussein Musawi from the Bekaa. They are Shiite Muslims, admirers of Iran's relentless style of Islamic fundamentalism. They call the Reagan administration the Great Satan, denounce imperialism and praise Ayatollah Ruhollah Khomeini. Ostensibly they snatched their victims to trade for 17 confreres-in-terror jailed in Kuwait. But intelligence sources believe that they might settle for springing just the three Lebanese Shiites among them, who have been sentenced to death. They particularly want to free a ringleader and bomb maker, Mustafa Yousef, who also goes by the Christian alias of Elias Fuad Saab. Strip away their fancy religious and ideological trappings and it comes down to this: he's their cousin and they want him back. All of this has been established by U.S. intelligence—and is well known to the hostage families.

The situation presents the families with an agonizing choice: to remain quiet in the long-faded hope that silence might protect the hostages and hasten their release; or to speak out, counting on exposure and public pressure to work as it did in the Teheran hostage crisis, in the TWA Flight 847 hijacking and in the Daniloff affair. "My prayer from Day One has been to do nothing that would hurt my brother," says Peggy Say, Terry Anderson's sister. She began her ordeal as the most cooperative of hostage relatives. At first, she says, all the hostage families accepted a terrifying warning from the State Department about their loved ones' plight: be quiet or you will kill them. At State Department meetings, she bitterly denounced others who didn't trust the government's advice.

Then came the TWA hijacking, which—it is now known—involved some of the same kidnappers who now hold the forgotten hostages in Beirut. "They called me and said, 'Don't even ask for Terry and the others, don't say anything to connect your hostages to the TWA ones'," she said. "I was stunned." Other potential sources of help also left these particular hostages in the lurch. The country has not been bombarded with gun-to-neck images; even the media seem to have forgotten them.

Although Mrs. Say began criticizing the Reagan administration after the TWA affair, she has been careful; she still had hope. But the Daniloff deal, then her brother's haggard look and pained, videotaped call for help were the last straws. "Only by letting all the facts be known can we help them now," she says. With many of the others, she now believes that remaining quiet is what can kill them. Father Lawrence Jenco, a Roman Catholic priest released by the kidnappers last July, and the Rev. Benjamin Weir, a Presbyterian minister set free in September 1985, have both refused to talk about their ordeal. But with information gathered from the families—supplemented by reports from intelligence and diplomatic sources and sounding in Beirut—it is now possible to piece together a wrenching study in human misery.

The growing breach with the hostage families confronts the administration with its own agonizing problem. Ronald Reagan came to office vowing that America would never again be held hostage by terrorists. According to basic U.S. policy, negotiating with terrorists can only encourage them; and bargaining will only prompt them to take more Americans hostage elsewhere.

Ready to talk: Behind the scenes, the administration has used private go-betweens and secret emissaries like Vernon Walters, U.S. ambassador to the United Nations, and CIA chief William Casey, who have gone to Syria and other countries to try to win the release of the hostages. "Just as the president said, there hasn't been a day since this whole affair began where we haven't been trying to find out where these people are and who's holding them," said one White House official last week. "We've said in every way that we can, publicly, privately, on the street, that we're ready to talk to these people about the safety and release of the hostages, and we are willing to do it directly, anyplace, anytime, with anyone."

But so far, according to administration hands, all leads have proved tenuous, imprecise and contradictory. "It's a maddening situation," said the president's official. "There's no place to vent one's rage. You simply have to keep plugging away at it, using all the resources that you have." Given the lack of results, however, the argument leaves most hostage relatives cold. "The president keeps saying there is no comparison" with Daniloff, says Jacobsen's son Eric, a cardiac researcher from Huntington Beach, Calif. "He's right. In our case I see a complete lack of commitment . . . a lack of urgency and a prolonging of his suffering." If nothing is done to break the impasse, the plight of the captives will grow worse. And with the families breaking silence, an administration that has so successfully avoided the fate of Jimmy Carter in Iran could finally face its own hostage crisis.

The first months of Terry Anderson's captivity were by far the worst. Anderson's anger, and his stubborn streak, marked him out for especially brutal treatment. Whenever the kidnappers insisted on looking down his undershorts for contraband, he struggled and tried to stop them—and was beaten for it. In June of 1985, Terry and Madeleine Anderson expected their first child; not knowing if they had a son or a daughter drove him to distraction, and he never stopped demanding to be told. "You've been forgotten by everyone," the captors taunted during beatings. He was a muscular man with a sturdy constitution—probably that helped to save him, but he lost his hearing in one ear. Back in his seafront apartment on the corniche in West Beirut, he had lifted weights every night while Madeleine did sit-ups and stretches on the floor nearby. One such night a week before his kidnapping, they told a visitor that they weren't worried about being kidnapped. "People in Lebanon know that I care about them," Anderson said. "I'd be the last one they would take."

Weird irony: By one of Lebanon's weird ironies, the men standing guard over Anderson, Jacobsen and Sutherland are devout Muslims who pray five times a day. The guard Said, a Shiite in his early 20s, earns 1,200 Lebanese pounds ($27) a month for his work. He has three children; following the death of his wife, he has often seemed depressed. On one occasion Lebanese TV was about to play a videotape from Anderson's family; Said found out and brought a TV set into the cell. There on television, Anderson finally saw his child for the first time and learned he and Madeleine had a healthy daughter named Sulome Teresa. But in February of this year, Anderson's father, Glenn, died of cancer. And on June 7, Sulome's first birthday, Anderson's brother also died of cancer. On his deathbed, Glenn Anderson Jr. delivered a videotaped plea to the captors. "I wish to see him one more time," he said. The appeal was broadcast in Beirut. The captors were in no mood to grant the request. They sympathized enough, though, not to tell Anderson his brother and father were dead. They were afraid it would break him.

Peggy Say called the hostages' life in close quarters "the odd couple in quintuple." Living together 24 hours a day, seven days a week, they struggle to fend off the double affliction of fear and boredom. They exercise regularly, doing push-ups and calisthenics. When the exercises wore out their socks, Anderson began knitting new ones from accumulated bits of cloth and string pulled from mats. At one point, the captors gave their prisoners an elaborate Mr. T puzzle. Anderson turned the offering into a test of mind and reflex; he can now do it in 30 minutes flat. He spends endless hours with Sutherland, quizzing the agriculturist on what he will have to do to start a farm on a piece of land he owns with his sister Peggy near her hometown of Batavia, N.Y. With tinfoil cheese wrappers and matchsticks he makes crucifixes, and he has devised a way to crochet rosaries from fuzz balls and string. Whenever he becomes depressed, he takes out his rosary and says his Hail Marys.

David Jacobsen sometimes loses patience with Anderson's incessant "jogging" around the tiny room. To fight boredom, Anderson likes to engage the guard Haj in political arguments, refusing to budge from his own positions. One verbal mismatch so angered the kidnappers that they dropped the bread from the hostages' meager ration of bread and cheese. "Terry," snapped Jacobsen, "you're always making us pay for your principles." Anderson, a liberal Democrat from Lorain, Ohio, sometimes has political fights with Jacobsen, a Republican fundamentalist from Orange County, Calif.; but the shared ordeal of captivity has drawn the two men closer. Jacobsen was touched the day Anderson made him a gift of a handmade rosary.

'Read this': Thomas Sutherland, from Ft. Collins, Colo., has had the bad luck to look suspicious to the kidnappers. Early on, they mistook him for a CIA agent. Their evidence was ridiculous. After they snatched him from his car on the airport road, they discovered an article on Islam tucked into his briefcase. A friend had written on it the notation, "You should read this." That was all. One day Haj and Said said they were taking Sutherland away to "another place." "Please, please don't take Tom; he's not a CIA agent," pleaded Father Jenco, a gentle Catholic priest. When Jenco started crying, the guards relented. They ought to know by now that Sutherland is no CIA agent; he came to the American University of Beirut (AUB) because he wanted to train Lebanese farmers to help restore the war-ravaged countryside. As Sutherland's captivity

stretches out, the danger remains, his captors will not believe this. He did not appear with Anderson and Jacobsen on the latest videotape.

William Buckley, a diplomat the kidnappers took to be a CIA agent, apparently did not survive. Privately, administration officials now believe that after 19 months of sustained torture he suffered pneumonia and other complications as the result of one especially brutal session and died early in October. The kidnappers told the remaining hostages about it and claimed they were upset that medical attention had not been available to save him. After that they seemed to pay closer attention to the health of their captives. Some U.S. officials cling to the hope that Buckley, who was a political officer at the U.S. Embassy, may have survived. His body has never been found. But the kidnappers did release a picture that appeared to show him dead. In an Islamic Jihad communiqué, the kidnappers boasted that they had tried Buckley, found him to be CIA station chief in Beirut—and executed him.

Sold to die: After the Reagan administration bombed Tripoli in a reprisal for Libyan-sponsored terrorism in April, another hostage was executed: Peter Kilburn, a librarian at AUB. A gentle man in frail health, he used to write long, loving letters about God and life to his favorite niece Patty Little of Watsonville, Calif. Kilburn was held for ransom by a group of kidnap-for-profit Lebanese who, U.S. officials told the family, had been demanding "many millions of dollars" for his release. Intelligence sources learned that, shortly after Kaddafi offered a million dollars if the hostages in Beirut were turned over to him, Kilburn's kidnappers sold him to a pro-Libyan, Abu Nidal faction, which promptly executed him, calling it a reprisal for the Libyan raid. The same group also tried to buy Anderson and the other hostages for the same purpose from the Mugniyah family, but they refused to sell.

Afterwards Patty Little wrote a bitter letter to President Reagan. "It is terribly sad to think he was worth more dead to them than alive to his own country," she said. And she accused the administration of failing to help her family find a way to negotiate or pay a ransom. National-security adviser John Poindexter wrote a long reply six weeks ago. "Unfortunately, those individuals holding your uncle were even more reprehensible, unscrupulous and unreasonable than the group holding separately the other Americans," he said. When Little appealed to Reagan not to let the same thing happen to the surviving hostages, to negotiate instead, Poindexter restated the administration's view "that any pressure on Kuwait to release their convicted prisoners or any payment of ransom subverts justice and establishes a new and dangerous precedent that would subject even greater numbers of Americans to the whims of terrorists anywhere in the world." "I can assure you," Poindexter concluded, "that President Reagan will never forget the hostages remaining in Lebanon." "It was a real good letter," Patty Little said last week. "But I'm not that stupid."

The accumulation of hard feelings that surround the hostage mess in Lebanon began on Feb. 10, 1984, when AUB engineering Prof. Frank Regier, 58, ventured into the dangerous streets of West Beirut. He wanted to find a friend and tell him about plans to evacuate Americans by helicopter. A husky Arab walked up and put his arm around Regier's shoulder; when the professor started to shrung off the squeeze, he felt a gun pressed to his temple. The sudden sequence of events would later become familiar in almost every kidnapping. Shoved into a car with three men, Regier was wrapped head to toe in wide, plastic packing tape, then jammed into the trunk of another car for the ride to a hiding place. There he was kept blindfolded, tied up and chained to a wall or radiator. Occasionally he was moved around town in an ambulance, some times in a wooden box made to order for a shorter man. That box was probably a Lebanese coffin.

Blind beating: The beatings started immediately. "I couldn't see what he wanted out of me," Regier recalls. "I was asked if I was CIA, but it was never asked seriously. I think he was just sadistic." He was told if he moved, he would be beaten, and hour after hour his tormentor watched for the slightest twitch. "He knows how hard to hit you without breaking any bones. He would hit my cheek, for instance, not my nose." Blindfolded, Regier developed a routine in the dark, terrifying world he lived in. "After a while you have to move," he says, working back to his thoughts at the time. "Do I move a lot and get in a new position so after the beating I'm more comfortable? Or do I move a little and hope he doesn't see me?" Either way, most times he would get a beating. When his tormentor left the room, he would tiptoe silently so Regier would still think he was there. But Regier had developed the acute hearing of the blind and usually knew when he was alone.

While Regier was being held, Cable News Network Beirut bureau chief Jerry Levin and then Buckley were seized. Regier was luckier by far. After two months some children playing outside his jail in the Shiite suburbs of southerh Beirut got a peek through the window of his cell and alerted Shiite Amal militiamen, who rescued him. "I kept thinking, 'how could I endure this for a whole year," and those poor guys now have endured it a lot longer," he says.

'Mean Mike': Levin and probably Buckley were first stashed in the town of Baalbek in the Bekaa Valley, held in an apartment block in the Sheik Abdallah barracks—an old Lebanese fort on the top of a hill that now is headquarters to the Musawi clan and the radical Hizbullah party and as many as 1,000 Revolutionary Guards from Iran. He knew none of this at the time; all he knew were the names he silently gave his tormentors: "Mad Mean Mike," "Angry Al" and "Sadistic Sam." Sadistic Sam was the worst. "He would come in and he wouldn't want me to say anything, and he'd say, 'Shut up, huh' and hit me anyway."

To keep occupied, Levin made mental lists of all the many operas he knew and tried to recite the names of all the players on his hometown team, the Detroit Tigers, when they won the 1945 World Series. During captivity, Levin, who is Jewish, also experienced a "spiritual awakening" after having been an atheist.

One day Levin's captors told him that his wife had shown up—probably referring to her trip to Damascus. Suddenly the food got better—there were even hot meals. Levin noticed that several times his captors had fastened his chain in a way that would enable him to slip out of it. "I kept thinking about it, but I kept chickening out, four times," he said. Finally, 11 months into captivity and almost too weak to walk, he did it. He knotted together his sheets, slid out the window and ran to the safety of the first Syrian Army post he could find. "I thought I escaped, but maybe they let me," he later said. Syrian officials were quick to claim responsibility for winning his release.

When Levin returned to the United States, President Reagan called him personally and, as the nation listened in, Reagan delivered a fatherly warning: "In the days ahead you'll no doubt be beset by those in your profession who want . . . to know your full story . . . Say only that which won't cause, even inadvertently, harm to those who are still held hostage." Levin didn't say so at the time, but he was furious that the president was hinting the administration somehow won his freedom. Now, critical at the administration's lack of action on behalf of the other hostages, Levin says, "I think that was the dirtiest, meanest thing [Reagan] ever did."

After Levin escaped, the captors shuttled their prisoners from the Bekka Valley to Beirut—just in case. President Assad of Syria had promised to help find them, thanks to U.S. pressure. U.S. officials believe the Syrians could easily find and free the hostages but are unable to make an all-out effort to do so without angering Iran, which helps finance both allies like Syria and extremist friends like the Musawi clan. Deprived of one journalist, the kidnappers went looking for another, grabbing Anderson on his way back from a tennis match with fellow AP staffer Don Mell, a photographer. "To this day, I'll never understand why they didn't take me, too," Mell says. Apparently they know whom they wanted. To Mell, Anderson seemed like a man who already knew he was doomed. Mell said he has been haunted ever since by a look in Anderson's eyes as he was pushed into the getaway car. The look seemed to plead "Help me," though Anderson must have kown Mell was no match for three gunmen on the lawless streets of West Beirut. For the first several weeks of his grueling captivity, Anderson lay down and sobbed. His first letter, a month later, related his captors' terms and ended, "I cannot take it anymore." Somehow he did.

In June of 1985 Sutherland, the dean of agriculture at the American University of Beirut, was kidnapped, too. Then a group of gunmen took over TWA Flight 847, shuttling it between Lebanon, Cyprus and Algeria, murdering one American and demanding the freedom of prisoners in Kuwait and Shiites in Israel. The Reagan administration had a larger hostage crisis, and it scrambled a team of ranking officials to deal with it. One of their first chores was to call Peggy Say and demand that she keep quiet. She didn't, and the public furor she raised about negotiating for the 39 remaining TWA hostages but not for the 7 others, forced the administration to change its position. Secretary Shultz publicly declared there were 46 hostages, including Anderson and the others. After all, the demands for the release of the Kuwait prisoners had been put forth for both groups of hostages. When word came that their release was immiment, Peggy Say flew to Washington to wait for them over the July 4 weekend, while State Department officials called other relatives of the hostages in Beirut to tell them to expect their loved ones to come out, too.

Heading home? Back in Beirut the captors put an end to the solitary confinement of the hostages, who called the break "Christmas in July." They already had individually requested a prayer meeting, and the request was granted. For most of them it was the

first time in many months that they had seen another man's face. As soon as they got over their fears of a trick, they poured out their stories in whispers. For several days they got full meals, beds and linens and reading materials. Anderson was allowed to be alone with Father Jenco briefly to take confession. The brutality seemed to be over.

Best of all, it seemed as if they would soon be heading home. TWA Flight 847 sat on the runway at Beirut International Airport surrounded by terrorists and radical demonstrators supporting them. According to one U.S. intelligence source, among the terrorists on the tarmac were Haj and Said, taking a leave from the tedium of prison duties. The accused mastermind of that hijacking was Imad Mugniyah, whom the United States narrowly missed catching in Paris later. The men who carried it out were from Hizbullah, a group closely linked with the Musawi clan to which the Mugniyah family belongs, intelligence sources say. Back at the secret prison, the hostages' captors could not disguise their jubilation that a deal was in sight.

Then everything fell apart. Peggy Say believes the administration was in too much of a hurry to settle the TWA crisis; she thinks it cut Anderson and the others off, rather than negotiate further. Or perhaps the captors were still holding out for the Kuwait prisoners. Administration officials argue they got the best deal possible at the time. Whatever the case, when a caravan of Shiite gunmen escorted a caravan of hostages over Mount Lebanon to Damascus, Anderson and the others were not on board. Back in their new quarters, the party was abruptly over.

Forgotten again: The hostages were forgotten once again, and life soon settled down to a tedium marked by occasional beatings, sparse food and poor ventilation in sealed rooms. Some good seemed to linger, however. By August the kidnappers decided to keep five of the hostages together. The desperate loneliness was over for everyone but Buckley. Little by little, some of the hostages and their captors began developing a rapport. Outsiders call it the Stockholm syndrome: Father Jenco considers it the result of an accumulation of mutual kindnesses and the growth of mutual respect. The captors even warmed to Anderson, although he still refused to do their bidding on videotape.

At this time, the families of the hostages were meeting regularly with administration officials, but usually only low-level messengers at State, who served mostly as a sounding board for their concerns—and a damper on their public activities. One high-ranking administration official acknowledged that the administration at first was "slow to focus" on the hostage families' concerns, failing to let them meet with high officials, for instance. Larry Speakes' repeated public statement that "the U.S. government does not negotiate with terrorists," in this official's view, may have gotten the terrorists' backs up. But at the time, he said, quiet contacts were well under way secretly.

A little over a year ago, after the kidnappers released Reverend Weir as a "goodwill gesture," the families met with Vice President George Bush, head of the administration's terrorism task force. They were still hopping mad about the outcome of the TWA hostage affair, and the meeting with the vice president degenerated into acrimony and shouting. Mrs. Say called him a cold fish. Stung, he shot back, "How can you accuse me, a Christian man, of being cold?" "Don't tell me you're Christian," Mrs. Say said. "Show me you're a Christian." The relatives complained to Bush of being kept in the dark. They accused the administration of withholding letters sent out by the hostages—including one that had a threat to hang the prisoners. After that meeting, the administration decided to begin sharing confidential intelligence and updates on negotiations with the families.

That fall the administration and the families put their greatest hope in Terry Waite, the special envoy of the archbishop of Canterbury who acted as a messenger between Washington and Beirut and actually met with the captors. The administration chose to stand by its refusal to pressure Kuwait to release Yousef and the others. "There is absolutely no way we'll do that," says one White House hand. "These people tried to blow up the French and American embassies," argues another administration insider. "They killed 6 and wounded 80, and Kuwait isn't going to release anyone." When Waite returned to the Middle East, the Kuwaitis made it clear that they wouldn't even grant him a visa. And on his return to Beirut over Christmas in 1985, the kidnappers were furious that he had returned empty-handed. "Don't come back or we'll kill you," they told him.

After the Libyan raid, when the kidnappers released Father Jenco, they vowed he would be the last prisoner they would let go. The death threats resumed. A letter that purported to be from Jacobsen was dropped off at a Western news agency in West Beirut. It was in scrawled handwriting, full of spelling errors that a man of Jacobsen's education would not be likely to make. "We fear the possible ending of our story," the letter said.

The administration says that statements made under duress cannot be taken at face value. That point offers no comfort, let alone hope, for the families of the hostages. "It is absolutely awful for someone to be held for 17 days," says Sutherland's daughter Kit. "It's unthinkable for 16 months." Peggy Say has quit work and school to campaign full time for her brother's release: "After six years in the Marine Corps and staying on in Beirut to bring that truth to the American people, he put his life on the line for both his country and his profession," she says. "He must feel a terrible abandonment by both of them." Nothing has happened so far to change her view.

MRS. ROBERT TOMPKINS HONORED FOR HER CONTRIBUTIONS TO PUBLIC EDUCATION IN SOUTH CAROLINA

Mr. THURMOND. Mr. President, Henry Brooks Adams once said, "a teacher affects eternity, he can never tell where his influence stops." It is with great pride that I stand before you today to pay tribute to Mrs. Mary Thurmond Tompkins, a woman who has influenced many of South Carolina's most distinguished citizens as a teacher in our State's public schools. Mrs. Tompkins was recently honored at the dedication of the Strom Thurmond Institute on the campus of Clemson University for her outstanding contributions to public education.

This tribute is especially meaningful for me. Not only have I admired the professional career of this exceptional woman for more than 50 years, but I have had the good fortune to have known her throughout her lifetime as she is my sister. It is rare that a man has the opportunity to acknowledge the accomplishments of a member of his own family in such a public way, however, I am sure that my colleagues will agree that Mary's dedication to the education of the children of South Carolina merits no less.

Born on May 31, 1909, Mary attended public school in Edgefield, SC, before entering Winthrop College in the fall of 1927. She majored in home economics and graduated in 1931. Later in that same year, she accepted a position teaching home economics at Clover High School in Clover, SC. She taught at Clover High School for the next 4 years.

In 1936, Mary returned to Edgefield County and began teaching home economics at her alma mater, Edgefield High School. She continued teaching until she married on August 25, 1938. At that time, South Carolina law forbade a married women to teach public school. In 1939, Mary and her husband J. Robert Tompkins, who is now deceased, celebrated the birth of their only daughter, Mary Thurmond Tompkins. Mary's interest in education, however, never diminished and she attended both the University of South Carolina and Columbia University in New York to obtain certification to teach elementary school. When the law was amended, Mary returned to public education, teaching fifth grade until she retired in 1974.

Perhaps Mary's greatest strength as an educator was her ability to motivate her students to learn. There is an old Chinese proverb which reads, "I hear and I forget; I see and I remember; I do and I understand." In Mary Thurmond Tompkins fifth grade classes, the students did and they understood. Mary used innovative and enjoyable methods to teach her students some very basic principles. For instance, to teach the children fractions, Mary would make a pan of fudge and have the children cut it into specific proportions. To demonstrate the scientific principle of salt melting ice, Mary would bring an ice cream churn and make homemade ice cream for the class, and when the children studied South Carolina government, Mary led a field trip to the State capital. It is not hard to understand why Mary was loved by both her students and their parents.

As Members of the U.S. Senate, we often speak of the responsibility which will one day be shouldered by the youth of our Nation. Unfortunately, we often forget to mention the tremendous responsibility which is being shouldered daily by our Nation's teachers. They shape the future of this great country as they shape the

minds of our children. We must never forget to say thank you to those professionals who, like Mary Thurmond Tompkins, have dedicated their lives to educating our children.

I am pleased to commend Mary Thurmond Tompkins for the many contributions which she has made to the State of South Carolina. May God bless her, her daughter Mary T. Freeman, her son-in-law Ted Barron Freeman and her grandchildren Ted Barron II, Eloise Townsend, and Robert Tompkins Thurmond. May her dedication to education serve as a model for others who seek to teach the future leaders of our country.

I ask unanimous consent that a newspaper article from the Edgefield Citizen-News be printed in the RECORD.

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

[From the Edgefield (SC) Citizen-News, May 4, 1989]

MRS. TOMPKINS HONORED FOR SERVICE

(By Dana Bailey)

A very special lady was honored at the recent dedication of the Strom Thurmond Institute of Clemson University.

Mrs. Robert (Mary Thurmond) Tompkins, sister of Senator Strom Thurmond, was honored for her contributions to public education.

Although Mrs. Tompkins, a life long resident of Edgefield County, feels that she deserves no special recognition, her accomplishments are far too great to go unacknowledged.

After graduating from Edgefield High School, Mrs. Tompkins went to Winthrop College in Rock Hill to major in home economics. She also traveled extensively through Europe to get insight on other countries and to broaden her own education.

She began her teaching career at Clover High School in York County where she stayed for four years before returning to Edgefield in 1936.

Back at her own alma mater, she taught home economics until she gave up her job to get married. At that time the law stated that married women weren't allowed to teach.

When the law changed in 1938, Mrs. Tompkins took courses at the University of South Carolina and at Columbia University in New York so she could teach elementary grade students.

Mrs. Tompkins seen many changes through her years of teaching.

"When I first began teaching there was no such thing as integration," said Mrs. Tompkins, who taught the very first black student to attend Edgefield County public schools. "I couldn't have asked for a nicer student. He went on to become the vice-president of student government at the University of South Carolina."

Mrs. Tompkins also has seen many changes in the educational system in Edgefield County.

"Things have truly changed for the better," Mrs. Tompkins said. "Teachers are more qualified, the students have more access to equipment, and the students seem to realize the importance of a good education now much more than when I was teaching."

After Mrs. Tompkins retired in 1974, she continued to substitute two or three times a week.

"The thing I miss the most is the people. I enjoy students, I enjoy having contact with other teachers," said Mrs. Tompkins. "I always had a good time seeing the students advance themselves through the years."

Mrs. Tompkins recent recognition was not her first.

In 1936, she spoke at the S.C. Teachers Education Association before a crowd of 5,000-6,000 members, as County Chairman of the Beautification Project she received the county award, and she served as President of the Village Garden Club.

Mrs. Tompkins is also a member of the Daughters of the American Revolution, the Colonial Dames, the Edgefield Revitalization Committee, and has been a life long member of Edgefield First Baptist Church.

In spite of all these various honors, Mrs. Tompkins is most proud of the desk that was placed in the Senator's suite at the Strom Thurmond Institute. On the desk will be a brass plaque permanently displayed acknowledging her life-time services to the state and Edgefield County.

"This is definitely the biggest honor I've ever received," said Mrs. Tompkins. "When I found out I was overcome with joy!"

TRIBUTE TO SENATOR WARREN MAGNUSON

Mr. CRANSTON. Mr. President, throughout his life, Warren Magnuson toiled to give the people of Washington and the country the best, most honorable and diligent representation he could. The warm, loving, and deeply respectful tributes Maggie has received throughout this week are testimony to the outstanding success he had in his efforts and to the friendships he earned along the way.

It is a great pleasure to reflect on the two full Senate terms Maggie and I served together and on the many causes we undertook together. He had an abiding concern for justice and fairness. Maggie pioneered consumer protection legislation, he fought for civil rights, and he was a leader in getting voting rights for 18-year-olds. Compassion and caring were the foundation of his work.

The Senate is a better institution for having had his presence and guidance, and generations of Americans will benefit from all he did.

TRIBUTE TO MRS. EVELYN CAVE

Mr. HEFLIN. Mr. President, I rise today to pay tribute to a wonderful Alabamian—Mrs. Evelyn Cave from Mobile, AL. On May 14, 1989, Mrs. Cave reached an incredible milestone in her career. On that day she completed her 50th year of Federal service. I applaud her for her accomplishment and for her diligent service to her country.

Almost all of Evelyn Cave's 50-year career has been served in the Mobile District of the U.S. Army Corps of Engineers. Few offices are fortunate enough to have employees of Mrs. Cave's caliber stay for such an extended period. While she has been in the office, Mrs. Cave has served in numerous positions in personnel management and has helped shape this Corps of Engineers district.

For the past 16 years, Mrs. Cave has served as the district's Personnel Officer, which oversees about 2,000 employees. In addition to six States, her district also covers Central America. For this time, she has been responsible for the planning, implementation, and evaluation of all personnel programs in the district. Mrs. Cave has also served for 16 years as the Assistant Personnel Officer and for 15 years as Chief of the Employee Utilization and Development Section.

Throughout her career, Mrs. Cave has been recognized for her outstanding contributions to the Corps of Engineers. Her talents have provided her office with strong guidance through numerous projects. She was responsible for the staffing of the Tennessee-Tombigbee Waterway Corps of Engineers. She has been instrumental to the success of the waterway over the past few years. The staff of the waterway was brought into the spotlight during the summer of 1988 when the drought forced much of the barge traffic off the Mississsippi River onto the Tennessee-Tombigbee Waterway.

Mrs. Cave has also been instrumental in helping the Corps of Engineers compete against the private contractors. She played a key role in starting the Mobile District life cycle project management which has helped them compete in today's market.

Mr. President, these are just a few of the many accomplishments of Evelyn Cave. I cannot begin to list all of her awards, achievements, and special projects, but wanted to share these few examples of her leadership and managerial ability.

Mr. President, Evelyn Cave's devotion and talent should serve as a shining example to those of us who aspire to public service. She has provided an important service to her country and has devoted her life to the service of others.

Thank you, Mr. President.

TRIBUTE TO LEE GOLDMAN FOR HIS OUTSTANDING ROLE IN HEALTH POLICY

Mr. KENNEDY. Mr. President, it is a privilege to draw the Senate's attention to the appointment by Secretary Louis Sullivan of the Department of Health and Human Services of LeRoy Goldman to the Senior Executive Service.

Lee Goldman's productive career in public service now spans 25 years. In 1971, as the incoming chairman of the Senate Health Subcommittee, I was fortunate to persuade him to become

the subcommittee's staff director—a post he held until 1977.

During that period, he served with great distinction and was responsible for the enactment of numerous measures that have significantly enhanced the quality of health care in America. Among the principal bills that he guided expertly into law are the National Cancer Act, the National Heart Act, the Health Manpower Act, the President's Biomedical Research Panel, and the HMO legislation. In addition, Lee was tireless in our effort to provide decent health insurance protection for all Americans.

One of Lee's greatest assets, as subcommittee staff director, was his skill in working with Senators on both sides of the aisle to create the bipartisan coalitions essential to the successful passage of vital health legislation.

Upon his return to the executive branch, he has continued to serve in positions of increasing responsibility, including the Health Resources Administration, the National Institutes of Health, and, now, the National Institute of Mental Health, where he is the Director of the Office of Policy and Legislation. The NIMH is indeed fortunate to have the benefit of his energy, judgment, and vision.

I commend Lee Goldman for his distinguished career in public service and his extraordinary contributions to public health policy. I know that all of us in the Senate who have worked with Lee will be pleased to know of this latest honor, and I wish him every continued success in the years ahead.

SENATOR DOMENICI CALLS FOR WORLD ENERGY SUMMIT TO EXAMINE GLOBAL WARMING

Mr. DOLE. Mr. President, yesterday, President Bush announced his important initiatives to improve dramatically the air Americans breathe.

Not long before the President's action, our good friend, the distinguished Senator from New Mexico [Mr. DOMENICI], gave a major speech on clean air issues. He spoke at a meeting of environmental groups in Albuquerque, NM.

During that speech, Senator DOMENICI discussed a variety of air pollution issues: local, national, and international.

While all of his comments were interesting, I was particularly impressed with his review of the global climatic situation, as it relates to clean air and energy use.

Concern continues to grow over the "greenhouse effect"—global warming. Senator DOMENICI rightly notes that the danger of global warming as a result of pollution could be "a disaster unlike any this planet has experienced during mankind's tenure."

During the speech, Senator DOMENICI went on to discuss the huge increases that are forecast in the world's population, particularly in the Third World, and the accompanying increase that will occur in demand for energy, which Senator DOMENICI called the fundamental component of economic growth.

Senator DOMENICI told the Albuquerque meeting that the United States must take the lead in developing a comprehensive international energy policy, beginning with an International Energy Conference designed to lead to the greater use of nonfossil fuel sources, both here and among the developing nations.

Mr. President, Senator DOMENICI's speech was both wise and thoughtful. I ask unanimous consent that the portion of Senator DOMENICI's speech that addressed world energy issues and global warming be printed at this point in the RECORD.

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

GLOBAL ENVIRONMENTAL PROBLEMS

Now let me turn to the international front. The other day, I heard a private talk given by a former leader of one of the great European democracies.

He talked of many things, but during his talk he cited four overriding problems that confront mankind—problems for us, for our children, and for their children. Included in those concerns were: (1) Population growth, and (2) the world environment, in particular global warming.

I want to spend the remainder of my talk discussing those challenges, particularly the second one, the challenge facing a planet on which the median temperature seems likely to be rising, quite possibly at a dangerous rate.

We know that global warming—the Greenhouse Effect—could be a disaster, a disaster unlike any this planet has experienced during mankind's tenure.

Many scientists predict that the accumulation of CO_2 and other gases will raise the planet's mean temperature in the next 50 to 60 years by 3 to 4 degrees centigrade, the same increase that brought us out of the Ice Age 18,000 years ago.

Because this issue is so complex scientifically, it is not clear whether or not these forecasts are accurate.

But we do not have the luxury of waiting until we know for certain what increases might occur.

We must act, recognizing that a "Greenhouse" cataclysm is possible. We must do all that we reasonably can to build a global awareness—and action—while more data is developed.

While global warming—or the extent of warming—may not yet be conclusive, one thing that is absolutely certain is that the number of people on this planet will continue to increase at a startling rate.

In the year I was born, 1932, about 2 billion persons lived on this planet. Today, there are just over 5 billion of us. The United Nations Population Fund now predicts that by the year 2025—36 years from now—there will be between 8½ billion and 10 billion human beings living on the planet.

Human experience tells us that each of those individuals will be seeking material advancement, a better life for themselves, certainly, a better life than their parents experienced in 1989.

Our country's policy is to encourage prosperity. The hallmark of America's world leadership since World War II has been to foster democracy and economic growth.

What that means, of course, is that the world of the early 21st century will not only be a far more populated world, but it will almost certainly be a world of far greater consumption than exists today.

And of that huge increase in population, about 90 percent will occur in nations of the Third World.

These developing nations will demand—and justly demand—their fair share of the economic growth. They will very possibly experience a growth rate faster than our own.

Those billions of new humans will not sit gladly in mud huts, thankful that they are contributing to a better environment. They will demand a better life, and they will deserve it.

So with that framework, let me pose a question: What is the fundamental component of that economic growth, the growth after which billions of humans are—and will—be clamoring?

The answer is energy.

Without energy, our standard of living will collapse and mankind's survival is threatened.

That doesn't mean we can't be more efficient in our use of energy. But the combination of the twin growth in population and human expectations make it certain that energy will expand.

And since the burning of fossil fuels is tied so very closely to what appears to be a warming of the planet, we confront a situation we dare not avoid.

We—as individuals and as government officials—face a challenge that can only be called "staggering."

The risk of doing nothing is horrendous. We must act, and we must begin to act promptly to meet this challenge—not just the challenge of protecting our climate, but the challenge of ensuring that energy is available for mankind's progress.

We cannot wait until incontrovertible scientific proof appears to validate or invalidate the estimates on global warming.

With all this in mind, I have concluded that we will not suddenly scale down energy use. Such a change will be politically unsustainable in the United States and Europe. And other countries, the developing nations, simply will not accept the fact that they cannot improve their standard of living.

Because of what America is—the richest and most powerful nation, the nation that is responsible for about 25 percent of the man-produced carbon dioxide—we simply must take the lead in addressing the climatic situation that will affect all human beings.

Recognizing all of that means we must take the lead to develop a comprehensive international energy policy to meet the challenges ahead and to move toward energy sources that will not endanger our atmosphere.

If we don't, I can assure you that no one else will.

For millions of years, CO_2 was in balance on this planet. Nature produced—and consumed—about 100 billion tons of CO_2 a year through the natural cycle of photosynthesis and respiration.

Mankind upset that balance when we began to burn wood and later coal and oil in vast quantities. Even though man's activities produce just 6 billion tons of CO_2—

about 1 ton per person per year—much of that 6 billion tons has not been consumed in the environment, but accumulated in the atmosphere.

We can't eliminate the build-up, but I would like to suggest several steps that I believe are a pre-requisite to reducing the rate of future CO_2 accumulations. These are not magical solutions, but they will definitely move us forward.

First, President Bush is absolutely correct in calling for the negotiation of an international treaty on global warming. That has been done, and the conference will take place beginning this October in Washington, DC. Forty or so nations will examine the financial, economic, technical, and legal issues for responding to climate change.

Once those nations develop the framework for an international treaty, they will take that document to meetings of the Intergovernmental Panel on Climate Change next summer for further evaluation.

I can't begin to suggest to you what such a treaty will look like, but I am encouraged that we are moving forward.

More than a decade ago, Senator Dale Bumpers and I initiated the groundbreaking hearings that led to an international treaty reducing the use of CFCs—chlorofluorocarbons—by 50 percent in the industrialized nations by the end of the century. CFC gases are not only "greenhouse" gases, but they are the culprits for depletion of the ozone layer.

We are going back to the table to negotiate a total phase-out of CFCs. While the CFC issue was a far easier challenge that CO_2, we now have a history of global environmental co-operation.

Second, I recommend that the White House establish an inter-agency group to develop policy options on ways to reduce CO_2 emissions, and submit those proposals to the Congress. It would be appropriate if such a task force were led jointly by EPA Administrator Riley and Energy Secretary Watkins.

I must tell you that last fall I was able to work with Senator Leahy of Vermont to get $13 million so EPA could begin to study the policy implications of global warming. That was a good start.

A related concern is research into the basic science of global climatic change. Overall, in the current fiscal year, the Federal Government is spending $134 million for such research. Next year, in the Budget the Congress just approved, we will spend about $190 million.

That sounds great. I support it. But I warn you of one unfortunate fact: There really isn't much co-ordination in this spending, which is spread among half a dozen agencies.

We must find ways to focus that effort more effectively, to develop solutions to particular problems.

I certainly intend to work within the Senate's Energy Committee, on which both Senator Bingaman and I serve, to move us toward a coordinated effort.

And certainly, our national laboratories—including Los Alamos and Sandia—have the skills and knowledge to become leaders in this effort.

The list of worldwide science and policy issues regarding the climate is extensive.

What more can we learn about the methane cycle, since methane is believed to be the second most significant contributor to climatic change?

What is the role of clouds in climatic change, and the role of the oceans?

To what degree is the price of energy a factor in emission forecasts?

What do we do about Third World deforestation, which contributes an estimated 20 percent of the CO_2 mankind sends to the atmosphere? How do we reverse a situation where for every tree that is planted in the Third World, 10 are cut down?

My third and primary proposal is this: The United States should call for an International Energy Conference to encourage all nations to begin to address energy use and new sources that are compatible with our world environment. Our nation must take the lead in encouraging the use of sources of energy other than fossil fuels.

That doesn't mean our oil fields will be closed down. What it means is that we absolutely must increase our research into alternative, cleaner sources of energy.

Such a conference is valid, whatever the impact of global warming.

Right now, the Federal Government is spending just over $500 billion a year for research into high-temperature fusion.

We need a much stronger effort on solar energy.

And while many of you may disagree with me, I am convinced we must move toward greater use of nuclear energy, starting with a stepped-up effort to design fail-safe nuclear power plants.

We must move toward a long-term worldwide energy policy, particularly one that encourages technology transfer assisting the Third World.

And we certainly need to bring the industries and countries of the world into this dialogue.

Before closing, let me cite the example of China.

China today produces an estimated 10 percent of the man-made CO_2. And China, with its population exceeding 1 billion, is in the midst of its own Industrial Revolution.

China also happens to possess vast quantities of coal, the resource that could propel China into the First World. It is a resource that will obviously accelerate worldwide CO_2 emissions. And it is also high-sulfur coal, the kind that produces acid rain.

Do we tell China: Sorry, you can't use your coal?

And even if we did, would they listen?

I think the answer is obvious. It will only be through a coordinated international effort that countries such as China will be able to leap into the future without committing horrendous damage to this planet.

Mankind has probably never faced a more difficult challenge. It is one that will require our every skill—both scientifically and politically—even if the problem is only a fraction as bad as some forecast.

I guess there is no one in this room who doesn't know that I am an optimist. I believe we can meet that challenge. But we will only meet it if we recognize it for what it is—possibly the greatest challenge in the history of this beautiful planet.

TRIBUTE TO WARREN MAGNUSON

Mr. STEVENS. Mr. President, there is a special desk and a big green couch in my Senate office.

They were not chosen for beauty or contemporary style. The desk has some nicks and scratches, and the couch springs have seen better days.

But for years before I got them, they were Senator Warren Magnuson's. When he left the Senate he asked me to keep them. I promised him they would be with me for as long as I served as Senator from Alaska.

The vast body of legislation Warren Magnuson left as a legacy to the people of Washington and our Nation is a measure of his greatness.

When I came to the Senate 21 years ago, Senator Magnuson had already served in this Chamber for 24 years, following his 7 years in the House of Representatives.

From the beginning, he was more than a colleague. He was a mentor, a teacher, and a good friend. For nearly a decade, although we have been thousands of miles apart, I am proud to say that friendship remained.

News stories in Washington State recalled for some of Senator Magnuson's greatest accomplishments. The list is long.

He was ahead of his time in his concerns. From public television to marine mammal protection; from consumer protections to the Coastal Zone Management Act; from the public accommodations section of the Civil Rights Act to the National Cancer Institute and the National Institutes of Health to oil tanker safety laws; from the creation of the Department of Transportation to animal welfare, Maggie charted new courses that benefit us all.

He worked long and hard on the 200-mile-limit law, one of the most important pieces of legislation ever enacted, particularly for coastal States. It was my privilege to make the motion designating it the Magnuson Act—the Magnuson Fishery Conservation and Management Act.

Politics were immaterial in all the years I worked with Warren Magnuson. We sat on different sides of the aisle, but our mutual concerns, representing regions of the Pacific Northwest, put us on the same side of the fence more often than not.

Maggie understood my commitment to amateur sports. Even though I was in the minority then, as chairman of the Commerce Committee he gave me wide latitude to pursue the Amateur Sports Act of 1978. For 3 years, before the bill's final passage, his interest and his assistance were critical to its success.

The fear and anxiety the recent tragic oil spill in my State have generated, reminded me of Senator Magnuson's deep personal concern when Mount St. Helens erupted. With great passion on the Senate floor, he discussed the need for realistic disaster assistance to deal with the tremendous devastation resulting from the eruption.

Warren Magnuson never sought the limelight. Grandstanding was not his style. Hard work, attention to detail, endurance, and the ability to forget

yesterday's disagreements and move forward earned him the respect of all who worked with him.

As an Alaskan, I feel especially grateful for his support for Alaska statehood. "Let us vote for the 49th star on the flag," he said in an eloquent statement on the Senate floor detailing the reasons Alaska should be admitted to the Union.

He supported the construction of the Alaska highway, vital at first in the defense of our Nation, and more and more important now, as travelers come to explore Alaska.

Many times in our years together in the Senate—even on my 50th birthday—Maggie called me son. We were colleagues, but he had every right to call me son. I looked on him in many ways as a father.

I was fortunate to have had, for so long, a time, his counsel. He taught me a thing or two, that's for sure.

In his 44 years on Capitol Hill, Warren Magnuson never forgot who came first—the people of his State. In working for them he was a good steward of our resources and our environment, a careful planner for our health and safety, and a master at his craft.

His wit was equal to his wisdom. His tenacity was softened by his kindness and understanding. His legendary hard work was balanced by his ability to enjoy a good time. His loyalty was unmatched.

It's tough to see others say goodbye one final time to Warren Magnuson.

As an Alaskan and as a personal friend of his, I was at the farewell ceremony in Seattle.

But I did not really say goodbye. Maggie will be here in spirit as long as I sit at his desk in my office.

ADDITIONAL COSPONSOR—S. 1153

Mr. DASCHLE. Mr. President, last Thursday I introduced S. 1153, the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989. In the rush to get the bill introduced in time for consideration at a June 22 Senate Veterans' Affairs Committee hearing, the name of one cosponsor of the bill, Senator HEINZ, was not added. As many of my colleagues are aware, Senator HEINZ has been a strong supporter of agent orange victims for many years, and he has played a key role in the ongoing struggle for compensation for those veterans. I want to acknowledge Senator HEINZ' cosponsorship and thank him for his support. Thank you, Mr. President. I yield the floor.

THE FIFTH INTERNATIONAL CONFERENCE ON AIDS

Mr. KENNEDY. Mr. President, I wish to take this opportunity to bring to the attention of the Senate some of the key findings reported last week in Montreal at the Fifth International AIDS Conference.

AIDS continues to escalate as a global public health catastrophy. Millions of people worldwide now infected with the HIV virus face catastrophic illness unless society moves swiftly to make available the therapeutic interventions which biomedical research is now producing. The world's leading AIDS researchers brought us both good news and bad last week in Montreal. Unfortunately, it appears that efforts to develop an effective vaccine that entirely prevents HIV infection in human beings are moving slowly. On the other hand, we are making steady progress in developing treatment strategies to slow the devastating effect of HIV. In particular, we now have effective means of preventing the pneumonia which has been the most frequent killer of people with HIV disease, and there is encouraging progress being made in the development of treatments directed at the AIDS virus itself.

According to Dr. Samuel Broder, Director of the National Cancer Institute:

> Our treatment technology is reaching the stage that a diagnosis of HIV infection might be regarded, not as a mandatory death sentence, but as a chronic illness that can be successfully managed over many years through clinical intervention.

If we take action to increase access to these treatment advances for the hundreds of thousands of HIV-infected Americans, who could benefit from them, we will not only save lives but also advance the Nation's public health campaign to halt the spread of HIV. Our ability to offer life-prolonging treatment could become a significant and realistic incentive to encourage individuals to volunteer for HIV testing and counseling. It is through counseling to achieve behavior change that we will arrest the continued spread of the epidemic. We cannot expect people to take advantage of expanded testing opportunities unless proper medical evaluation and necessary treatment are available as a follow up to testing. Today, that is not the case. Indeed, in some inner-city public hospitals, HIV positive individuals must wait up to 4 months for a clinic appointment that will provide necessary immune system evaluation.

An even greater threat to our public health effort against this virus is the continuance of HIV-related discrimination. That was considered the "linchpin of our ability to control this epidemic" in the opinion of the President's Commission of the HIV Epidemic. Unless we take action to bar senseless discrimination against HIV-infected people, we cannot expect them to step forward for counseling, testing, treatment or anything else. Our No. 1 policy priority on AIDS must be to send a clear signal that we will help, not punish, those who are infected.

We have learned the hard way the implications of discrimination and attempts at implementation of coercive measures in the name of contagion control. Such techniques have driven the epidemic underground and to unwarranted human suffering. I believe that the U.S. Congress has learned these lessons well and does not wish, at this juncture to, turn back on sound public health policy.

Our best and only option is to enlist the voluntary cooperation of those in need of counseling, testing, and possibly lifesaving treatment. In the months ahead, I will seek support for the adoption of a comprehensive Federal policy barring HIV-related discrimination in the context of protections against discrimination for all people with disabilities. In addition, I hope to design a program to make the fruits of AIDS research accessible to all who need them.

While hope is on the horizon we must keep our eye on the goal and maintain a policy in accord with sound public health principles.

THANKING TOM STALLMAN FOR 20 YEARS OF SERVICE

Mr. BURDICK. Mr. President, it is hard to believe that it has been 20 years since I talked Tom Stallman, a farmer from Barney, ND, into joining my staff. This week will be his last in my Fargo office, as he begins his retirement Saturday.

Tom Stallman has been a true and loyal assistant. He always put my needs and best interests first. I truly do not know what I could have done without him heading up my office in my home city of Fargo.

Stallman joined my staff in April 1969 as an agricultural assistant. Before joining my staff, he had served as a North Dakota committeeman for the Agricultural Stabilization and Conservation Service, a member of the North Dakota State Legislature, and a sergeant in the U.S. Marine Corps, one of the brave marines who landed at Iwo Jima during World War II. Tom's background, experience, and friendship have been a great help in my work for farmers, veterans, Federal employees, State and local officials, and other constituents in my State. Anyone who contacted my Fargo office for any reason knew they could count on Tom Stallman.

I could share hundreds of stories from our many trips across North Dakota. We have driven between boulders and flown into airports without paved runways or lights to get to meetings on time. We have shared countless church dinners and quick stops at the Dairy Queen. Tom has

kept floodwaters from my house and led friends to my door.

Although it is hard for me to understand why some people enjoy the thought of retirement, I know Tom wants more time to travel and enjoy life with his wife Lois. I wish him all the best in the future, and I thank him for all his help in the past.

TRIBUTE TO CONGRESSMAN CLAUDE PEPPER

Mr. SARBANES. Mr. President, I join in expressing my profound sadness at the death of Congressman Claude Pepper, a beloved friend and colleague and one of the Nation's most formidable and admired legislators. Rarely has a public figure served with such distinction and consistent vision. In his own words, Claude Pepper devoted his full energies "to helping to free people from fear of dictatorial oppression, from fear of illness and poverty, from fear of ignorance and from fear of opportunity foreclosed."

In his early childhood, amid the poverty of rural Alabama at the turn of the century, Claude Denson Pepper set his sights on service in the U.S. Congress. His intelligence, integrity, and hard work led him to the University of Alabama and, with veterans' benefits earned through service in World War I, he went on to graduate from Harvard Law School, finishing in the top six of the class of 1924. He later said that he felt "a lifelong obligation to the Government for his legal education, redoubling his commitment to public service.

By 1928, Claude Pepper had settled in Perry, FL, and won a seat in the Florida State Legislature. When the legislature passed a resolution condemning the invitation of a black Congressman to the White House, Pepper's dissenting vote cost him the seat in 1930. Six years later, he returned to public life, winning a 1936 special election to the U.S. Senate. He immediately became a strong and eloquent voice in support of President Roosevelt's New Deal legislation to revive an economy depressed by the Depression, restore hope in the Nation's future and create new opportunities for Americans where none had existed before.

Claude Pepper was a sponsor of the Nation's first minimum wage law and an early advocate of publicly assisted health care. He fought for the establishment of the Social Security system, making a life-time commitment to its effective functioning. This uncompromising advocacy of social welfare was the hallmark of his 14 years of distinguished service in the Senate, which ended with his defeat for reelection in 1950.

When he returned to Congress in 1962, this time in the House of Representatives, Congressman Claude Pepper simply continued the work begun by Senator Pepper. He was a steadfast supporter of President Johnson's Great Society programs and resumed his role as an outspoken friend of the disadvantaged.

In 1978, he assumed the chairmanship of the Special House Committee on Aging, where he continued his efforts on health care and became the Nation's leading spokesman in the drive to improve the lives of older Americans. Nearly 50 years after he first voted for Social Security, he remained its staunchest defender, fighting against the cuts proposed in the early eighties. His vigorous intellect and principled commitment to a just society remained undiminished to the end.

Most will remember Claude Pepper as the foremost champion of older Americans. Yet his effective advocacy on their behalf is but a part of his legacy. Claude Pepper was the champion of all Americans. Although we can no longer look to his courageous and unflagging leadership in the Congress, we will continue to draw inspiration from his example in the years to come.

Mr. President, I ask that the editorials on Congressman Pepper's career from the Baltimore Sun and the Baltimore Evening Sun be printed in the RECORD at this point.

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

[From the Baltimore Sun, June 1, 1989]

CLAUDE PEPPER

The story of Claude Pepper's career reads like a recitation of the New Deal, to which he always remained faithful. He began as a champion of the poor and downtrodden in the 1920s, and ended as a folk hero for the elderly. He was tireless in working for the liberal ideals in which he believed, whether or not those ideals were in vogue.

Mr. Pepper stuck to his beliefs even when they cost him dearly. As a state legislator in racially segregated Florida, he sided with Mrs. Herbert Hoover's decision to invite a black congressman to a White House reception. That cost him his seat, but he soon showed his political resilience. He ran for the U.S. Senate and won in 1936. He was instrumental in passage of the first minimum wage law, was an early supporter of health care insurance and favored outlawing the poll tax used to prevent blacks from voting in the South.

In 1940 after hearing Adolf Hitler address a crowd in Nuremberg, he warned against the rise of Nazism. He urged America to work with Joseph Stalin after World War II. For that, he was branded "Red Pepper," and lost his Senate seat in a nasty smear campaign.

But Mr. Pepper made another comeback at the age of 62, winning election to the House from a Miami district, where his pro-elderly positions and his largely elderly constituency gave him a safe seat for 27 years. His work on behalf of the elderly, and his chairmanship of the House Select Committee on Aging, catapulted him to the status of folk hero to millions of retirees. Indeed, he gained such popularity he was in great demand during the 1980s as a campaigner for other Democrats.

President Bush, in awarding Mr. Pepper the Medal of Freedom last week, said, "Those who agreed with him were proud to follow his banner. Those who disagreed with him always respected him. Claude Pepper was a gentleman, a noble human being." He also was the best argument against forced retirement. He remained energetic and hard working until he died Tuesday at age 88.

[From the Baltimore Evening Sun, May 31, 1989]

LEGACY OF LIBERALISM

Claude Pepper, the senior member of Congress who died yesterday, finished his legendary career as he began—as a "do-gooder" and proud of it. "There are many worse terms of derision," he wrote in his autobiography. "I am and shall remain a liberal. I intend to continue to devote my full energies to helping to free people from fear of dictatorial oppression, from fear of illness and poverty, from fear of discrimination, from fear of ignorance and from fear of opportunity foreclosed."

Those were lofty goals, but Claude Pepper's 88 years were filled with an impressive list of achievements that have made life better for millions of people. Pepper's political career is remarkable for the courage he showed on many important issues—from his early opposition to Hitler to his support for the first minimum wage bill and his early efforts to guarantee equal rights and equal pay for women. In recent years, he has been known largely as a champion of the elderly, but he wasn't new to that cause either. Pepper won passage of a law to ban mandatory retirement ages in the federal government and most private jobs, and helped protect the Social Security system from cuts—but those efforts came a full half century after he campaigned for the establishment of the retirement program that has largely ended poverty among this country's elderly. Pepper also wrote and sponsored legislation that helped create the Medicare and Medicaid, federal health-care programs for the poor and elderly.

It is not surprising that Pepper died in the middle of another long political fight—the unresolved issue of federal aid for long-term health care legislation. Pepper's long and remarkable career is likely never to be duplicated. But the best tribute to his memory would be for other members of Congress to embrace the ideals and causes that inspired Claude Pepper to make this country a better place to live.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. The Senate, under the previous order, will now recess until the hour of 2:15 p.m.

Thereupon, at 12:30 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. SANFORD].

NATURAL GAS WELLHEAD DECONTROL ACT

The PRESIDING OFFICER. The Senate will now resume consideration of H.R. 1722, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1722) to amend the Natural Gas Policy Act of 1978 to eliminate wellhead price and nonprice controls on the first sale of natural gas, and to make technical and conforming amendments to such act.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the two committee amendments will be considered without debate. The question occurs on agreeing to the first committee amendment.

The first committee amendment was agreed to.

The PRESIDING OFFICER. The question occurs now on agreeing to the second committee amendment.

The second committee amendment was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

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

The motion to lay on the table was agreed to.

Mr. BINGAMAN. Mr. President, the time for complete decontrol of natural gas prices at the wellhead has come. I fully support the legislation that is before the Senate today to amend the Natural Gas Policy Act of 1978 to eliminate the remaining wellhead price controls by January 1, 1993.

Our experience with partial wellhead decontrol under the NGPA and with the total decontrol of crude oil prices has proven unquestionably that energy markets do respond favorably, both in terms of price and in terms of supply, to free market forces. Price controls at the well head are a regulatory anachronism, as proven by the fact that natural gas is the only commodity that remains subject to Federal price controls at its source.

The legislation which is before the Senate today will benefit consumers because the elimination of remaining wellhead price controls will increase competition in the natural gas industry that has been fostered by partial wellhead decontrol under the NGPA and by the Federal Energy Regulatory Commission's open access initiatives and by other procompetitive policies.

Looking ahead, removal of the distorting influences of the wellhead price controls is important, because fully responsive natural gas markets will be necessary to meet the demand for natural gas that is forecast for the decade ahead.

I hope and expect that this demand will be significant. Many have called natural gas the fuel of the future, and I believe this label is justified, especially as a result of the President's clean air plan announced yesterday for acid rain and ozone depletion.

We also, Mr. President, have a real opportunity to reduce our growing dependence on oil imports by converting our transportation fleets to alternative fuels such as natural gas. Natural gas also will be the key in reducing sulfur dioxide emissions which are major causes of acid rain. Decontrol will help ensure that we have sufficient supplies to meet this emerging demand.

Many of my constituents in New Mexico have expressed concern regarding the impact that this legislation would have on tight sands gas, a unique formation of natural gas found only in a few States, one of those being New Mexico. One unintended and unavoidable consequence of the decontrol legislation, because of the way the Tax Code is written, is to eliminate the tight sands credit. However, the legislation that we consider today in no way reflects an adverse judgment on the desirability of that credit, and I have hopes that the Finance Committee will take up the various legislative initiatives that have been put forward by myself as well as others to extend that tight sands credit as well as the credit for other nonconventional fuels.

I urge my colleagues to support the legislation and to pass it promptly.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 191

(Purpose: To declare indefinite price escalator clauses to be presumptively unjust and unreasonable)

Mr. METZENBAUM. Mr. President, on behalf of myself and Senator EXON, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself and Mr. EXON, proposes an amendment numbered 191.

At the appropriate place, insert:

"SEC. 3. INDEFINITE PRICE ESCALATOR CLAUSES.

"An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.".

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, this is not a complicated amendment. It is a pretty simple amendment. It would simply shift the burden of proof regarding who should pick up the tab for the indefinite price escalator provisions in producer pipeline contracts.

I am pleased that Senator EXON, who spoke to this subject last week, is cosponsoring this amendment, and I am also pleased that it has been endorsed by the AARP, the American Association of Retired Persons. They endorse it because they know that without its passage senior citizens and the rest of the entire community who use gas are going to wind up paying the bill by reason of this situation.

While H.R. 1722 claims to bring about a free market for natural gas, the price escalator provisions actually prevent the marketplace from working by locking in high prices.

These price escalator clauses work by setting prices according to formulas, rather than according to what the market will bear.

If you have decontrol then market forces ought to be permitted to work, but unless this amendment is passed then the free market will not be able to work.

For example, the proponents of decontrol say that with decontrol the price of high price gas will come down to market levels. But that will not be the case for contracts with fail-safe clauses, clauses that say, in effect, "the price the day after decontrol shall be the same as the price the day before decontrol and will go up at the rate of inflation."

If you are going to have decontrol let us have decontrol. But oh, no, if there are higher prices keep them in place. That is what would happen without this amendment. The market will not be free for consumers where their pipelines signed these favored nation contracts.

What is a favored nation contract? It provides for periodic readjustment, such as upon decontrol, that the price of gas for all the wells in a producing area will rise to the average of the two highest priced contracts from that producing field.

Now, hear me. What I am saying is that under these contracts that are presently in existence, the price will rise after decontrol to the average of the two highest priced contracts from the producing field in which the well is. That means, simply speaking, increase in prices. That means more dollars for the producers and more costs to the consumer.

The two highest priced contracts is the place to which the prices can rise.

What absurd logic could possibly bring about that kind of result? It was put into those contracts and now we are trying to provide a mechanism to take that clause out.

Some of those contracts lock in stripper well prices, listen to this, of $6.82 per 1,000 cubic feet. We have been told the market price today is somewhere around $1.35 to $1.65. Without this amendment some of those contracts will lock in stripper well prices about 4½ times that amount, $6.82 per 1,000 cubic feet, and these dollars will be passed on to the consumer. The favored nation contract will shoot up to that price.

Is that a free marketplace? Is that what my colleagues from Louisiana and Idaho have been talking about? Free marketplace—free, my eye. It cost the consumer more money and the prices will be controlled, forced to go up. I guess you would not say "forced to go up." Nobody has to raise the price, but the fact is they will if they have the right to do so under the contract just as any other business person would.

If this bill passes without this amendment we will not have a free and fair marketplace unless consumers are freed from the burden of paying for the results of these oppressive contract terms.

This amendment would place the burden of proof on the producers and pipelines. If they can demonstrate that these contracts are in fact just and reasonable, then producers will be allowed by FERC to keep these terms in their contracts and pipelines would be able to pass these costs on.

Now I am frank to say, Mr. President, we gave some consideration to totally outlawing these favored nations contracts to say that the higher price could not be charged. But we decided that we wanted to be reasonable and so we provided that FERC would be allowed to keep the terms in the contracts if they can determine that the contracts are in fact just and reasonable. But if they are not just and reasonable, then consumers will not have to pay prices higher than the free market price.

The opponents may argue that this amendment voids contract terms. That is not true. The only thing this amendment does is affects the price. The contracts will otherwise remain legally binding.

To those who would question as to whether that can be done, I point out that the courts have already approved FERC's powers to invalidate contract terms while leaving the basic obligations between the buyers and the sellers intact.

As a matter of fact, the appellate court said in Wisconsin Gas Company against FERC, decided in 1985, that "Section 5 gives the Commission authority to alter terms of any existing contract found to be unjust or unreasonable."

In fact, the Supreme Court in Permian Basin, a case decided 20 years ago in 1968, rejected the gas producers' arguments that Commission action might destroy the contracts in which unjust price escalator clauses were found. In that case they held that "The Commission has plenary authority to limit or to proscribe contractual arrangements that contravene the relevant public interests."

Now, frankly, FERC could have done something about this matter on its own. FERC should have done something about this matter on its own. But although FERC has the power to alter the oppressive terms, it has failed to do so. It is not a theoretical matter. We are talking about changing the burden of proof. We are talking about an amendment that is quite simple. It says:

> An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

In other words, we are saying the automatic escalation of the price is unjust and unreasonable unless FERC decides to the contrary. We are not talking about a theoretical matter. We are not talking about something up in the sky.

A study by the U.S. Energy Information Administration examined these oppressive contract terms. The USEIA is obviously an objective, impartial agency. The USEIA found that most contracts contain more than one of these complex pricing provisions. Most fixed-price clauses are overridden by complex indefinite pricing clauses that make predictions of future prices, according to EIA, indeterminable.

The EIA said that most indefinite pricing clauses are written very broadly to include the highest price allowed "in response to the possibility that price of gas might be deregulated."

Now, do you understand that? The clauses are written that if there is deregulation, they are written so broadly that the highest price can be allowed. That is the EIA's finding.

The EIA said:

> Most of these provisions would establish a price higher than the current maximum lawful price. Most of these provisions would establish a price higher than the current maximum lawful price.

If these men who are fighting so hard and all these groups fighting to pass this bill want real decontrol, why does it not go both ways? Why does it not make it possible to reduce prices as well as to increase prices?

Am I making this up in my head? Let me tell you what EIA further say:

> This type of pricing provision, if rigidly enforced, would make little or no sense, in an open and competitive market, because a few high-priced contracts would lead gas prices to be set above market.

The EIA further found something else—we are not talking about a few contracts; we are talking about a lot of contracts—that 45 percent, almost half, of all the old gas contracts have most-favored-nation clauses. That is to be found in the EIA report on page 43.

Mr. JOHNSTON. What year was that report?

Mr. METZENBAUM. February 1986. But I am certain that that has not changed.

In other words, half the gas we are deregulating have most-favored-nation clauses. So who are you kidding with this bill? You are talking about decontrol? You are talking about decontrol so prices can go up, go up. That is what you are talking about. See to it that the prices go up so you can rob the consumers of this country that do not know what is going on here on the floor of the Senate today. Does anybody care? No. Let the gas producers rip off the American public. Let the pipelines rip off the American public. Forget about the consumer. Who cares about them anyhow? They are just people.

Contract prices under many of the contracts that are presently in existence are also tied to prices of competing fuels like No. 2 and No. 6 fuel oil markets which are posted in New York or the gulf coast. And those prices we know have gone up and will continue to go up.

The EIA concluded that:

> In an open and competitive market for gas, these provisions would be hard to justify since there is no reason for oil products to set the price for gas directly.

Unlike competitive market gas prices, almost none of these contracts have "market out" provisions to let either party walk away if prices go too far from the market price in either direction.

There is in fact substantial precedent to invalidate these unjust and unreasonable clauses. In 1984, FERC Order 380 voided anticompetitive minimum bills in contracts that forced local distribution companies to pay pipelines whether or not they took the gas. The court upheld FERC.

FERC also used section 5 remedial powers to invalidate Columbia's high cost, take-or-pay contracts, forcing Columbia to absorb all the costs.

The D.C. Circuit Court of Appeals threw out FERC Order 436, that provided open access transportation because—and listen to this—FERC did not use its section 5 powers to declare the take-or-pay contracts unjust and unreasonable. If I could wave a magic

wand, I would void all of these contract terms, and let this decontrol legislation really wipe the slate clean. But, rather, I have chosen the more modest approach of encouraging FERC to review these contract terms to see if they are just and reasonable.

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

Mr. JOHNSTON. Mr. President, first of all, I would like to ask the distinguished Senator from Ohio a rather basic question. Under his amendment, an indefinite price escalator in a contract will be declared to be unjust and unreasonable.

Now when FERC finds such an indefinite price escalator clause in a contract, what may FERC do?

Let me give the Senator three things they might do:

First, they might declare the whole contract invalid, unenforceable.

No. 2, they might declare the whole contract as written unenforceable and write new terms with respect to what they consider to be a just and reasonable price.

Or, third, they might consider themselves bound by the starting price without reference to an escalator.

Now which of those three things, or would FERC have power to do all three?

Mr. METZENBAUM. First, I would say to my distinguished colleague that the contracts themselves would stand and FERC could declare that the take-or-pay provision, the price escalator provision, was unjust and unreasonable.

Mr. JOHNSTON. Well, a contract without a price, though, is no contract.

Mr. METZENBAUM. Well, that is what I thought at first until I started studying it. Then I found that FERC has in previous cases affected the price without vitiating the contract itself, without vitiating the entirety of the contract.

And I believe that my colleague knows this better than I do, we are dealing in a very unusual area because we recognize that the contract's validity would still remain in place but we are going to decontrol the price.

Mr. JOHNSTON. Well, let us say you have a contract to deliver gas for a 10-year period in certain quantities and the price is to be set based upon what the market, the average market price in that year, readjusted every 6 months, is, and the FERC finds that this is an indefinite price escalator, which it obviously is. A price escalator based upon market price, as it may vary, is obviously indefinite; a classic indefinite price escalator. So what would FERC's order be? "We order that the gas be delivered." But what is the obligation of the pipeline in taking the gas?

Mr. METZENBAUM. First of all, let me say that if they found it was tied to the market price, then my guess is they would not find it to be unjust and unreasonable. It is only when it gets to a price like $6.82 or way above the market price that they would find that the price escalator clause is unreasonable.

Mr. JOHNSTON. My question is: What do they have power to do?

Mr. METZENBAUM. They have the power to do anything they deem advisable because the power is within their control.

Mr. JOHNSTON. If that is——

Mr. METZENBAUM. Let me just finish. Let us assume that they find that the price escalator clause winds up at $1.52 and the market price is $1.47. Well, it is just my guess that they would not find that to be unjust and unreasonable, that they would let that stay.

But, if they found that the price was $1.47 market price and the price escalator clause—do not forget, the price escalator clause permits it in many of these instances to go to the price of the gas in two highest-priced wells in the field. And some of that gas does have a price, as you know, in many instances, as high as $6.82. That would be unjust and unreasonable, I would guess.

Mr. JOHNSTON. First I want the Senator to understand that he is incorrect in saying that it would go to this $6.82, referencing this section 107 because section 313 specifically says that section 107 may not be taken into account in applying any indefinite price escalator clause. That is section 313 of the act, so the Senator was incorrect to say that.

Mr. METZENBAUM. If my colleague is going to talk about a section with which I am not familiar, I hope he will be good enough for me to have a chance to look at the section.

Mr. JOHNSTON. Let me get one point clear. I am not arguing what the FERC might do or should do. I simply want to know: What is their power? Let us say they find a contract wherein they find an indefinite price escalator. Would they have the power to reset a new price? Or, must they use the initial price? Or, must they declare the contract to be invalid?

Mr. METZENBAUM. I think it would be totally discretionary with them.

Mr. JOHNSTON. Thank you, I will reclaim my time.

Mr. President, let me tell my colleagues, this amendment was not brought forth in the Energy Committee. Not one word of testimony has been considered on this amendment.

It was not discussed by the members at the time, and I can tell the President, if it were, it would be considered to be completely irresponsible, a killer amendment. It is reregulation. May I explain?

First of all, this amendment says that you may not have an indefinite price escalator in a contract. That sounds good. My colleague says it is to protect the consumer. The effect would be exactly the opposite, by making it impossible to contract for gas on a long-term basis.

Why is this? Well, because, Mr. President, if you have a supply of natural gas and you want to contract with the local distribution company, you do not know what that price of that gas is going to be in the future. The average price of gas now is about $1.64. But if you were going to make a long-term, 10-year contract with a local distribution company, you would not say, "I am going to contract for $1.64 a year for 10 years." Of course, you would not.

So, what would you use? You would use an indefinite price escalator. You would tie it to inflation or the average price of natural gas or the consumer price index or some other formula that would let the price of that gas rise. Perhaps it would be the price of the gas in your State.

Whatever it is, it would be an indefinite price escalator. If you could not use an indefinite price escalator, then what you would do is say: "Well, we will sell it for 3 months and then we will renegotiate the price." In other words, you could not be bound by a long-term contract.

Mr. President, that is what AGA says, the American Gas Association. That is what all the industry says. If this amendment passed, the bill is dead, Mr. President, because it is completely unworkable. It is an absurd amendment; absolutely absurd.

Argument two, Mr. President, if this passed, this would be reregulation of natural gas. It would be a reassertion of the power of FERC over all natural gas.

What do I mean? Well, right now 17 percent of natural gas is still subject to what we call the Natural Gas Act, that is, the initial Natural Gas Act of 1938, which provides the authority under which gas is committed to market, is held under price controls. The rest of it is deregulated.

Under this, Mr. President, if you had one of these provisions that say reference the price of natural gas or reference inflation or something, and it was declared to be an indefinite price escalator and it is unenforceable, then FERC can come in and rewrite your contract and reset the price.

Reset it at what? At whatever they want to. There is no guidance to FERC in here. So, FERC, I suppose, would have to come up with some new standards of price reregulation. In other words, Mr. President, here we have a deregulation bill affecting the last 2 percent of natural gas which will still be held down by price controls in 1993, where we are trying to get rid of those controls, and this amendment

says: Let us make all the gas subject to reregulation. We do not want to give any standards on how to reregulate it, but we want to give the FERC the power to do so.

Mr. METZENBAUM. Will my colleague yield for a question?

Mr. JOHNSTON. I will yield.

Mr. METZENBAUM. My colleague has used that 2-percent figure time and time again. What is his authority for that figure? Since it is my understanding there is something like 10.7 trillion cubic feet of natural gas that has not been brought to market. I do not know how much of it is still controlled, but I think it is far, far, far in excess of 2 percent.

My colleague has used it over and over again. What is his authority?

Mr. JOHNSTON. I will tell my colleague there is 6 percent of the gas now, according to the Energy Information Administration, that is under controls, whereby that gas is, by the operation of the act, being held down in price. And the American Gas Association tells us that by 1993, which is the date of deregulation here, that two-thirds of that gas, those contracts will expire.

They have done a study on when contracts expire. So, of 6 percent, two-thirds expire. That leaves 2 percent.

Mr. METZENBAUM. So my colleague is saying to me, as I understand it, that the American Gas Association gave him a figure. Did they buttress it with any studies? Does the Energy Information Administation give the Senator a figure like that? Does the Department of Energy give him a figure like that? Does the Interior Department give him a figure like that?

Because from everything that I have been able to find, in fact, the figures that we used on the floor the other day indicated that far more than 2 percent is controlled, for more than 6 percent; and that 10.7 trillion cubic feet that is sitting out there, underground, that the oil companies are buying up and buying up constantly, that a whole lot of that is still controlled and would be controlled except for this legislation.

So where does the Senator from Louisiana get the 2 percent?

Mr. JOHNSTON. I just told the Senator.

Mr. METZENBAUM. More than what the AGA says. That is a group pushing for this bill.

Mr. JOHNSTON. I will tell the Senator, everyone virtually agrees upon the 6 percent.

Mr. METZENBAUM. The 6 percent is what is coming to market now. But what I am saying is, what about the trillions of cubic feet of natural gas that has not come to market and, if prices go up, is it not the fact that there will be closer to 40 percent of the natural gas that is still controlled?

Mr. JOHNSTON. Whether the gas comes to market or not does not determine whether it is controlled or not controlled.

Mr. METZENBAUM. I agree with that.

Mr. JOHNSTON. It is controlled or not controlled under the law. There is some gas that is not being sent to market that is under control. There is some gas not being sent to market that is decontrolled. That is irrelevant.

The fact of the matter is, there is 6 percent of the natural gas now under control where the control level is below the market price.

Mr. METZENBAUM. Six percent of the gas coming to market is under control?

Mr. JOHNSTON. Six percent of the natural gas.

Mr. METZENBAUM. That is coming to market is under control.

Mr. JOHNSTON. That is right; of the controls that hold it down.

Mr. METZENBAUM. What I am trying to get at, and I do not mean to badger my colleague and I certainly have no intention of doing that, but my point is, of that, this 10.7 trillion cubic feet—which I guess the gas companies know, I guess the oil companies know, I guess the producers know, but I have not been able to find out—what portion of that 10.7 trillion cubic feet is still controlled and at what price?

I have tried with every group I could search out.

Mr. JOHNSTON. I can tell the Senator there is 178 trillion cubic feet in reserves; he used the figure 10.6, so that is 6 percent.

Mr. METZENBAUM. If there are 178 trillion cubic feet in reserve, the only reason I used 10.7, that is what I had been advised. If there are 178 trillion cubic feet in reserve, how much of that is still controlled, and how do you get the answer to that? I cannot find it.

Mr. NICKLES. Will the Senator yield?

Mr. JOHNSTON. You used the figure 10.7. That is exactly the 6 percent.

Mr. METZENBAUM. I picked that figure up in some report I read that that is how much gas is out there. You tell me it is 178 trillion cubic feet in reserve. I accept your figure because I do not claim to be an expert in this. I am an expert in what the consumers pay. I do not know what the gas companies have. When I went to the AGA——

Mr. JOHNSTON. Mr. President, I yielded for a question, not for a speech.

Mr. METZENBAUM. The Senator is right. I yield the floor.

Mr. JOHNSTON. I think the Senator has confirmed the 6 percent figure. There is really no question about that, Mr. President. There is 6 percent of the gas left still under control. It is going to phase down to 2 percent. What the Senator's amendment would do is subject the whole of the natural gas, the whole 100 percent to reregulation; a deregulation bill with a reregulation amendment.

Mr. President, third, this would be an absolute administrative nightmare. The amendment says that contracts that have indefinite price escalators, which are most contracts—most contracts either reference inflation or market price, so that is most contracts. How many contracts are there? Thousands upon thousands upon thousands of contracts are of the kind that would be outlawed by this amendment which could be enforceable only by coming to FERC, unless the Federal Energy Commission finds on application of a party to the contract that the clause is just and reasonable. So what the amendment would be saying, Mr. President, is that the thousands and thousands of contracts that have this kind of clause would be unenforceable unless you bring those thousands to FERC.

Mr. President, what do you think would happen? There would be such chaos in FERC. It goes without saying, Mr. President, that this would make our gas markets totally unworkable.

Finally, Mr. President, is there a problem here that this amendment fixes? The answer is no. There was a time when there were problems with indefinite price escalators. No doubt about it. The Energy Administration report back in January of 1986, 3½ years ago, made reference to that. And what was that problem? The problem was that upon deregulation, many contracts referenced the highest regulated price in an area so that on January 1, 1985, we were concerned that there would be a fly-up in prices because upon deregulation it would go to the highest regulated price which would be section 107, which the Senator has pointed out is $6 and something.

How was it fixed? It was fixed by, first of all, section 313 of the act which stated that you could not use section 107 for the purpose of an indefinite price escalator. Second, it was fixed by renegotiation of these contracts so that, Mr. President, that was yesterday's problem. Deregulation of 1185 with these indefinite price escalators has long ago occurred. We are talking about only 2 percent of the contracts which would be left still unnegotiated. it is not a problem, Mr. President. In fact, that was a problem of 4 years ago which has gone away.

Mr. President, I say this is a killer amendment. I mean an amendment which under the guise of deregulation reregulates possibly all of the gas which is totally unworkable from an administrative standpoint which makes it impossible to contract for gas on a long-term basis. In other words, these local distribution companies,

whose duty it is to supply gas to the consumer, would not be able to contract on a long-term basis, and you would end up with rapid ups and downs in the market, in the spot market, with the price of gas going up and down rapidly, the supply being undependable because whoever would make the biggest bid for natural gas, whether it be an industrial load or some other load, if they bid a little bit higher on the spot market, they would get the gas and bid it right away from the local distribution company. Mr. President, this provision is totally unworkable.

I see my friend from Oklahoma rising. If he has a question, I will answer it; otherwise I will yield the floor.

Mr. NICKLES. I would like to ask the Senator from Louisiana a couple of questions. One, in this bill we put together, and many of us worked on this for some time, one, we tried to avoid abrogation of contracts. Would not the amendment of the Senator from Ohio grossly abrogate untold numbers of contracts?

Mr. JOHNSTON. By the thousands. There is almost no way to contract for gas on a long-term basis without reference to inflation or the market price and that, by definition, is an indefinite price escalator.

Mr. NICKLES. I think and I hope and I believe the majority of the members of the Senate are not interested in running around abrogating so many contracts. If we were unwise enough to do so, we would be turning these over to the FERC to determine whether they are just and reasonable.

How long does it take the FERC to handle a case? I can just see in my State, which has some production of natural gas, if not thousands, of contracts sitting up before FERC waiting months, if not years, to be determined whether it is just and reasonable. What happens in the meantime? What are they going to charge?

Mr. JOHNSTON. I can tell the Senator exactly what would happen. The FERC would not and could not deal with these things. Shortly after this act would pass, the FERC would come to the Hill and say, "Look, we cannot do this. This is unworkable. if you want to stop natural gas markets in their tracks, then do not do anything about it. Otherwise, you better pass emergency curative legislation to fix this mistake." That is what would happen.

Mr. NICKLES. I thank the Senator.

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

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Chair recognizes the Senator from Ohio, Senator Metzenbaum.

Mr. METZENBAUM. Mr. President, since talking with my colleague from Louisiana, I find that we are both, I think, wrong. I have before me this statement, and it is to be found in the legislative bulletin: "Between 1979 and 1978, the share of decontrolled gas as a percentage of total U.S. production rose to 61 percent."

Obviously, if it rose to 61 percent, that leaves 39 percent that is still controlled; 39 percent still controlled.

Mr. JOHNSTON. Will the Senator yield?

Mr. METZENBAUM. In 1988, 6 percent was held down by reason of controls, and that means that 33 percent is still controlled, but they are above market prices right now, and that is the reason why there is only 6 percent of that which is coming to market, that is, coming to market under the present prices. But 33 percent of it still remains to be controlled, or a total of 39 percent. I now yield.

Mr. JOHNSTON. That is exactly what I have been saying. I have been saying that 6 percent was controlled by prices that were below market price and that 6 percent would phase down to 2 percent so that by January 1, 1993, only 2 percent would be held down.

Mr. METZENBAUM. Would my colleague then explain to me, what about this other 33 percent?

Mr. JOHNSTON. That is the kind of gas like the section 107 gas, the price of which is now $6.83 cents.

I say the price of which. The controlling price is $6.83. The market price is $1.64. So it is way up above the market price. Section 102 gas is $5.24. Section 103 gas is $3.41. Section 105 gas is $5.03. Section 107 is $6.83. Section 108, stripper gas, is $5.60. So while this is subject to price controls, those price controls for the most part are several times higher than the actual market price.

Mr. METZENBAUM. But the fact is—and I appreciate the Senator's comment but I will proceed—as I read on the floor of the Senate last week there is a considerable amount of gas that is 64 cents, 67 cents, 79 cents, 70 cents, 79 cents, 57 cents, 67 cents, $1.02, $1.34, $1.04, $1.08, and on up. In other words, when you look at the amount of gas that is out there, of course there is some that is controlled at higher prices, and that is one of the reasons why we need my amendment, because some of the gas from those wells in the field is selling as high as $6.82. So the bill, without my amendment, permits all of that which is decontrolled by reason of the bill to immediately go up to $6.82.

Mr. JOHNSTON. That is not correct.

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

The PRESIDING OFFICER. The Chair recognizes the Senator from Louisiana.

Mr. JOHNSTON. I do not understand the Senator's question. It permits what to go up to $6.82?

Mr. METZENBAUM. It would permit all of that gas that is the subject of my amendment, that is, gas that has an indefinite price escalator, to go up—not all gas. I am not going to say all gas is going to go up to $6.82, but it could go up to $6.82, if there are wells in the field that have a price of $6.82 and some wells do. We do not know; some will be $5.87, some will be $6.50.

Mr. JOHNSTON. The Senator is wrong on two scores. First of all, the law in section 313 specifically prohibits using that high-cost gas as the price to which indefinite price escalator gas can rise. That is the first thing. Second, those contracts simply do not reference any highest price. That is yesterday's problem. That was the problem in the early 1980's. It is simply not a problem now. There is virtually none of that gas left.

Mr. METZENBAUM. I would like to say to my colleague as I read section 313 I do not read it the same way the Senator does. That only says that "no price paid in the first sale of high cost natural gas as defined in section 107(c)"—that is a limiting clause—"may be taken into account in applying any indefinite price escalator," and then "as defined in section 105(b)(3)(b)," and then "with respect to any first sale of any natural gas other than low cost natural gas, which is gas defined in section 107(c)."

Now, I want to say to my colleague, frankly, if the Senator understands that, the Senator is smarter than I, but I understand it well enough to say that we are not talking about failing to take into account the possibility of higher prices than the price which existed at the time of decontrol—the price escalator clauses to which we both refer.

Mr. JOHNSTON. I will say to the Senator, I think section 313 read together with section 107 is clear. It says you cannot use that as the price to which it will rise. Moreover, the contracts do not provide for that anyway.

Mr. President, it is so very plain and simple. FERC could not handle thousands of contracts. They just could not do it. You cannot contract for gas long-term without an indefinite price escalator. It is supposed to be in the interest of the consumer to have 3-month contracts with the price set by the spot market?

Mr. President, on this committee I have been dealing with natural gas now for 17 years. We have tried in all that time to get some certainty in the markets, to get some supply in the markets, to get some predictability

and to be able to get some market signals. What this amendment would do in one fell swoop is do away with predictability because you could not contract on a long-term basis. If you have a gas field, you are simply not going to commit that gas field to a long-term contract on today's price. You just do not do that.

The Senator from Ohio said in the debate the other day that the price of natural gas was going to go up. So would you commit your gas to a long-term contract if the price was going to go up, or if you thought it was going to go up? Of course you would not. You would commit it for 3 months and then say, "Well, we will take a look at the end of 3 months." So that in effect you would be free at any time to recommit your gas to another customer and take it away from those customers about which the Senator from Ohio professes such concern.

Mr. President, I think it is very clear that this amendment is not only a killer amendment but it would be a terrible mistake.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from Louisiana has 4 minutes, 6 seconds remaining.

Mr. JOHNSON. I yield 2 minutes to the Senator from Idaho.

Mr. McCLURE. Mr. President, I thank the Senator from Louisiana for yielding this time.

Mr. President, I will not belabor the subject but I did not wish to allow this time to pass and get to a vote on the amendment without having registered my strong opposition to this amendment. The Senator from Ohio simply does not trust market forces, and there are many of us who do.

I want to make just one point which is true of the energy market, and it is an energy market, not a natural gas market, and that is that fuel switching at the margins determines market value of energy today. Fuel switching in the industrial markets by which industrial users can move away from natural gas to residual oils is where the market determines what the price is. No amount of Government regulation can change that fact. And so there is no reason to fear a price fly up when as a matter of fact the industrial market has alternatives and will choose those alternatives. There is simply no reason any longer to leave the Government in control of a portion of that market.

I thank my colleague for yielding this time. I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

If no one yields time, time will be deducted evenly.

Mr. JOHNSTON. Mr. President, if the Senaor is ready to yield back his time and vote, I am.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, let me make it clear that under these price escalator clauses you could have $6.82 gas to which the price would go and that would not be market price. The market price might just be $1.40, $1.50, $1.90, $2. But if you have one of these price escalators clauses which says that the price immediately after decontrol shall go to the price of the highest two wells in the field—and there are such contracts, lots of them—it might go to $6.82, or if you had some stripper wells in the field it might go to $5.27 as compared to the present price of $1.35 or $1.65—$5.27 being a maximum stripper price. You could have some long-term contracts that would be just and reasonable—in other words, that would be market sensitive.

What we really have here in an effort on the part of my colleagues to say that they want decontrol, but not too much decontrol, because if you get too much decontrol, then the prices are going to come down. You see, if you had total decontrol, there is no question you would not need this amendment that is on the floor. But the fact is, they have now reduced their argument on this amendment to one single claim—too much paperwork—rather than responding to the substance.

They do not want the paperwork. Eliminate that part of the bill that relates to this subject. I tried to be fair and give FERC an opportunity to determine whether it was just and reasonable. If the Senator does not like that, tell me. I will accept an amendment; I will make my own amendment to take out that portion having to do with being just and reasonable and giving FERC authority. I tried to be reasonable, so that there would not be a precipitous action, that there would be an opportunity for FERC to take a look at it.

So now because I am doing that, I am being told, oh, no, now I am causing too much paperwork for FERC. If the Senator does not like the fact that FERC has any say about it, maybe we just ought to have total decontrol, determine that it is unjust and unreasonable.

If the Senator were to vote for it and told me he was going to vote for it on that basis, I would have no trouble taking it out; he could accept the amendment. So if the Senator wanted to worry about the paperwork, I will help him on that score. Just let the amendment be accepted without giving FERC any authority. But absent that, I thought that giving FERC some authority would be a reasonable way to approach this problem.

The PRESIDING OFFICER. The Chair recognizes the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the distinguished Senator from Ohio has just suggested that he recognized the unworkability of his amendment by saying that the power he will give to FERC under this amendment, he would take away from FERC. The Senator has not offered to change his amendment, and I am frank to say I do not know how it would change. I do respect his honesty in recognizing the total unworkability of this amendment.

Mr. President, there are thousands of gas contracts out there. I assume that all the long-term gas contracts have some kind of indefinite price escalator. In one fell swoop, this amendment would declare them all illegal, unless you come to FERC and make a determination and a finding by FERC, which FERC could not do; it would be overwhelmed, totally overwhelmed and physically could not do this.

So, Mr. President, for that unworkable reason alone, this amendment should fall. Second, it reregulates all natural gas, gives FERC the power to do that. Third, it fixes a problem that is not a problem, that was a problem back 5 and 6 years ago. Most important, Mr. President, it would make it impossible to enter into long-term contracts for supply of natural gas, which would hurt that very consumer who the amendment is designed to protect.

So, Mr. President, if the Senator is ready to vote, I am ready.

Mr. METZENBAUM. Mr. President, I am ready to vote.

I ask for the yeas and nays.

The PRESIDING OFFICER. The request has been made for the yeas and nays.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. JOHNSTON. Mr. President, does the Senator yield back his time?

Mr. METZENBAUM. I yield.

The PRESIDING OFFICER. Under the previous order for a vote, the Senator form Ohio will have to yield back the remainder of his time.

Mr. METZENBAUM. On the condition that the Senator from Louisiana does the same, I will, yes.

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

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio [Mr. METZENBAUM].

Mr. JOHNSTON. Mr. President, I move to table the amendment, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Louisiana [Mr. JOHNSTON] to table the amendment of the Senator from Ohio [Mr. METZENBAUM].

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

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] is necessarily absent.

Mr. DOLE. I announce that the Senator from Wyoming [Mr. SIMPSON], the Senator from Wyoming [Mr. WALLOP], and the Senator from California [Mr. WILSON] are necessarily absent.

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

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

The result was announced—yeas 73, nays 23, as follows:

[Rollcall Vote No. 86 Leg.]

YEAS—73

Armstrong	Ford	McClure
Baucus	Fowler	McConnell
Bentsen	Garn	Mitchell
Biden	Glenn	Moynihan
Bingaman	Gorton	Murkowski
Bond	Graham	Nickles
Boren	Gramm	Nunn
Boschwitz	Grassley	Packwood
Breaux	Hatch	Pell
Bryan	Hatfield	Pryor
Burdick	Heflin	Reid
Burns	Heinz	Robb
Byrd	Helms	Roth
Coats	Hollings	Rudman
Cochran	Humphrey	Sanford
Cohen	Jeffords	Sasser
Conrad	Johnston	Shelby
Cranston	Kassebaum	Specter
D'Amato	Kasten	Stevens
Daschle	Levin	Symms
DeConcini	Lott	Thurmond
Dixon	Lugar	Warner
Dole	Mack	Wirth
Domenici	Matsunaga	
Durenberger	McCain	

NAYS—23

Adams	Inouye	Metzenbaum
Bradley	Kennedy	Mikulski
Bumpers	Kerrey	Pressler
Chafee	Kerry	Riegle
Danforth	Kohl	Rockefeller
Dodd	Lautenberg	Sarbanes
Exon	Leahy	Simon
Harkin	Lieberman	

NOT VOTING—4

Gore	Wallop
Simpson	Wilson

So the motion to lay on the table amendment No. 191 was agreed to.

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

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 192

(Purpose: To prohibit passthrough of unjust and unreasonable costs incurred by a natural gas company as a result of an act in violation of environmental law)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself, Mr. REID, and Mr. LAUTENBERG, proposes an amendment numbered 192.

At the appropriate place, insert:

SEC. . PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that: was a violation of Federal or State environmental law; or was an environmentally irresponsible act unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution or a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATION.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) The term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) The term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

Mr. METZENBAUM. Mr. President, I yield myself up to 10 minutes.

Mr. President, this amendment makes it much more difficult for pipelines to pass on to consumers the costs for a cleanup incurred as a result of an environmental violation. It strongly discourages but does not prohibit the passthrough of costs for cleanup of environmental violations.

Gas pipelines have contaminated the environment with PCB's, and, frankly, that was bad enough. And the environment will suffer for their negligence. But now, under current FERC regulations, they can turn around and pass the cleanup bills on to gas consumers.

I think pipelines have a lot of nerve in attempting to do that. But, unfortunately, FERC is permitting them to do it.

They are trying to pass on environmental cleanup costs to consumers just as Exxon is attempting to pass on its Alaska oilspill cleanup costs to the taxpayers of this country.

Exxon wants to write off its Alaska cleanup costs to reduce its taxes. Gas pipelines want to have their cleanup costs declared just and reasonable by the Federal Energy Regulatory Commission so that they may legally stick their consumers with the tab.

One gas pipeline signed a consent decree with the Justice Department and the EPA, agreeing to pay the cleanup costs. The pipeline then turned around, applied to FERC to pass all its costs on to consumers as ordinary and necessary expenses associated with providing service.

Texas Eastern Gas Pipeline is actually now attempting to recover over $400 million in cleanup costs after being caught dumping PCB's in open pits along its pipeline right-of-way from Louisiana all the way up to New York and New Jersey.

I wrote letters to the FERC chairman and the EPA Administrator in late 1987 urging them not to do anything in any consent decree that in any way could be construed as allowing Texas Eastern to pass on these cleanup costs. In 1988, Senator LAUTENBERG, one of the cosponsors of this amendment, requested Senate confirmation of five FERC commissioners be held up until we receive their assurances that pipelines could not pass on their costs. This would assure pipelines cannot shift the cost of their mistakes on to consumers.

There are a number of other gas pipelines out there that have PCB cleanup problems. We do not yet know the extent of the problem or have any idea what the cleanup costs will be, and cleanup costs for Texas Eastern may go much higher than the $400 million previously mentioned.

This amendment protects consumers from unjustly footing the bill. This amendment in no way diminishes the pipeline's environmental responsibility. They must still follow the law and will be punished severely if they do not. But for once they will have to pay the price of their negligence and not pass the bill on to the consumers.

Mr. President, I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Chair recognizes the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the amendment sounds good. It was not considered before committee. But, Mr. President, this amendment is an abomination. I think I have seen very few amendments on the floor of this Senate which rank with this in terms of bad legal drafting and using concepts which are totally violative of due process and would subject companies to what amounts to huge penalties with no right to be heard and with opinions being determined on the telephone. Let me explain what I mean, Mr. President.

First of all, let me say what the present law is. Present law is that if you have something like this PCB violation, and I have also written letters on the PCB violation urging strong and strict action but, Mr. President, I do not know what the facts of the PCB violation are. I do know this. In order to pass that $400 million of cleanup costs along, Texas Eastern Pipeline must come and prove their case before FERC. FERC has not allowed that to be passed on to consumers. FERC has all the power that they need right now to determine whether that was prudent or nonprudent. So the law now, Mr. President, provides all the power that is needed. There is not one example given of an abuse of power.

He would refer to the *Exxon Valdez* situation. I think my colleagues know that the *Exxon Valdez* spill has nothing to do with FERC. That oil is not regulated by FERC. There is no question of passing that along to consumers at regulated rates. Those rates are not regulated. The Senator from Ohio does not mention one single example of an abusive discretion by FERC or a situation in which FERC does not have the power.

What would he give as the power? First of all, he would say, you cannot pass along these costs if it was an environmentally irresponsible act. Now what, Mr. President, is an environmentally irresponsible act? He defines it. An environmentally irresponsible act means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

So perhaps you are going to build a pipeline and you get a permit to build that pipeline and some State agency says, Well, this is inconsistent with our clean air laws or our scenic laws. It is going to be a blot or eyesore upon the landscape. It means, in effect, you could not pass the costs of that pipeline along, I suppose, because some regulator could say that it is inconsistent with the ends sought to be achieved by some environmental law.

Mr. President, I do not think I have ever seen a standard quite that broad—inconsistent with the ends sought to be achieved by Federal or State environmental law.

Mr. METZENBAUM. Will the Senator yield? I think the Senator from Louisiana has made a good point, and I am going to make the modification to eliminate that particular phrase. Mr. President, I make a modification to eliminate the last paragraph thereof.

The PRESIDING OFFICER (Mr. ROBB). Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

At the appropriate place, insert:

SEC. . PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (Referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that—

Was a violation of Federal or State environmental law; or

Was an environmentally irresponsible act unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation of by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—The term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent.

Mr. JOHNSTON. Mr. President, what the Senator has done is taken away a very noxious definition of the term environmentally irresponsible act and has perhaps done the worst thing. He has left it undefined. What in the world does environmentally irresponsible act mean?

Not only that, Mr. President, but this amendment would disallow the passthrough even if it is an inadvertent act by an employee or agent of the corporation not authorized by the corporation, inconsistent with anything that the corporation stands for. Mr. President, we are not talking about intentional actions. We are talking about punishing inadvertent acts on behalf of the corporation. Not only that, Mr. President, if it is deemed to be a violation of State or Federal environmental law, then you may be disallowed the passthrough. Again, this pass-through may be as much as $400 million. In fact, we have referred to the $400 million cleanup cost if it is a violation of State or Federal law.

How do you determine a violation of State or Federal law? We are told in here, Mr. President. First of all, we are not talking about a conviction. We are not talking about a conviction at all. In fact, it says:

Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

So that you can be environmentally irresponsible even though you do not violate the law in such way so as to be prosecuted.

How do you determine whether or not an actual violation has taken place? Well, we are told here that the Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred. And get this, Mr. President:

The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

The Commission shall be bound by advice from a State agency on whether you violate a Federal or State law even if that opinion was given informally. I suppose, Mr. President, that this means that if you call up the State agency having responsibility for PCB's or scenic easements, or whatever, and say, "Does this violate the law and are you qualified to give this opinion," and they say, "Yes, it violates the law," not only may that evidence be used, but FERC is bound by it.

Let me repeat the language if what I have said sounds too strong. I am quoting:

> The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was in violation of environmental law.

Mr. President, there is no hearing. There is no right to present your case. There is no right to confront your accusers. It is hearsay. It may be itself an irresponsible act but FERC would be bound by that and not allow that to be passed along.

Mr. President, what this would do is discourage cleaning up some situations that need cleaning up, because if you cannot pass that cost along, then you are going to resist this and FERC until the last breath and litigate it out through years rather than putting up the money to clean up the problem.

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

Mr. JOHNSTON. I yield to my friend from Colorado.

Mr. WIRTH. I thank the Senator for yielding. I have a question.

I think the Senator from Louisiana has pointed out very clearly the procedural problems with this amendment. I think that there are some fundamental environmental problems. It is my understanding that the purpose of the whole passthrough process is to encourage cleanup, not to encourage litigation. Is that not correct?

Mr. JOHNSTON. It clearly has that effect.

Mr. WIRTH. What it wants to do, it seems to me, if you go back to the egregiousness of the $400 million example, is encourage a company to voluntarily move in and clean up and then take its chances at FERC as to whether or not those costs could be passed through.

Mr. JOHNSTON. That is right. And you want to give him a fair hearing at FERC where he can present his evidence and the other guy present his evidence and not have him bound by some third-level bureaucrat in some State agency, because under this amendment they would be bound by some informal opinion given by some State agency.

Mr. WIRTH. I think the Senator is correct. There is another fundamental and environmental point which is; we want to make sure the company has the incentive to clean up.

The purpose of the law is cleanup, it seems to me, not to put people in jail or set up long litigation or whatever. Those may be long-term byproducts of this, but the goal, like in the situation with the PCB's, is to get the company to clean up, to allow the company to come in and say maybe I will be able to pass through the charges but maybe not. What I am going to do is clean up, then take the next steps and take my chances with FERC. It seems to me that leaving the legislation the way it is now encourages environmental cleanup and that we should therefore vote against the amendment offered by the Senator from Ohio.

Mr. JOHNSTON. The Senator is very correct. The Texas Eastern case is a good example. Texas Eastern disposed of some PCB improperly. This was certainly not correct, certainly in later years. This took place over a period of years. In the early years PCB's were really a fire retardant lubricant in transformers and other things and they did not know how bad they were.

I am not defending Texas Eastern. I am saying there were levels of complicity, levels of scienter, to use the the legal word, of Texas Eastern—perhaps very bad action during later years, perhaps less bad during earlier years. Texas Eastern claims that they were justified in whole or in part. That proceeding is at FERC right now with much discovery, many intervenors, many witnesses, and under the due process provisions at FERC they will have their day in court. I do not know what FERC is going to do but in the meantime Texas Eastern agreed with EPA to pay $400 million to get it cleaned up so that the problem will be eradicated and whether or not they pass it on will be determined in accordance with due process at a later time.

Now, the point of the Senator is a proper one. If this amendment had been in operation, Texas Eastern would probably never have agreed to pay $400 million in advance. They probably would have taken their chances to go all the way through EPA and FERC, resist it to the last appeal and it would not be cleaned up now. It probably would not be cleaned up 5 years from now.

Mr. WIRTH. If the Senator might further yield, it seems to me, looking at this from an environmental perspective, while the amendment has a good appearance to it and while there may be some very egregious violations that have occurred, in the situation we are talking about, for example, Texas Eastern, this is a long history of PCB's. We have all had PCB's in our district because they looked like oil; they looked appropriate; we did not understand what the problems were.

What we would do, in passing the Metzenbaum amendment, would be to discourage cleanup. The purpose is to encourage cleanup. Let us encourage cleanup and then take our chances as to whether or not FERC is going to allow those costs to be passed through.

Mr. METZENBAUM. Will the Senator yield?

Mr. WIRTH. The Senator from Louisiana has the time but I would hope that we might oppose this amendment; I think it is bad environmental policy. I think we ought to stay with the existing legislation.

I thank the distinguished chairman for yielding.

Mr. JOHNSTON. I thank the Senator from Colorado for his very valid point. I think the Senator from Ohio now wants the floor and I now yield the floor.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. I yield such time as needed by the Senator from New Jersey, up to 5 mintues.

The PRESIDING OFFICER. The chair recognizes the Senator from New Jersey for 5 minutes.

Mr. LAUTENBERG. I thank the Senator from Ohio for permitting me to join with him in supporting this amendment today.

The amendment prohibits FERC from approving rates that pass on environmental violations costs for cleanup to rate payers' unless there is substantial evidence that such rates are just and reasonable. The amendment applies this prohibition to all rate requests by natural gas companies, and it is general in its application. The Texas Eastern gas pipeline case, which is as the distinguished Senator from Louisiana said, the classic case, underscores the need for this amendment. In 1987, we learned that this company had dumped PCB contaminated liquids in pits across the country. The dumping scarred some 89 sites in 14 States. States included were Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, Ohio, Pennsylvania, Tennessee, and Texas.

After a year long investigation, the Subcommittee on Superfund and Environmental Oversight, which I chaired, issued a report on this situation. That report, which was unanimously approved by the subcommittee, included a recommendation that environmental violation costs not be allowed to be passed through in rate recovery. The cost of cleanup in that case was estimated, as we have heard here today, at $400 million. That does not even account for groundwater and off-site contamination.

In November of 1987, Texas Eastern indicated that it was considering passing some of these costs on to consumers. A rate proceeding is currently underway at FERC which addresses these costs. If this goes unchecked, such a passthrough by Texas Eastern or any such regulated entity could seriously undermine our environmental laws.

In unregulated industries, costs resulting from environmental regulations are borne by shareholders or possible passed on the consumers. But consumers only pick up the tab is they cannot get the product more cheaply someplace else.

Regulated companies face different constraints. They can pass costs on the consumers if they can show that the costs are just and reasonable, which is the application here. Where a regulated company enjoys monopoly power consumers may not be able to purchase the product elsewhere.

If FERC does it job right, it should not allow the passthrough of environmental violation costs. FERC clearly has the authority to prevent rate recovery of environmental violations. But given the importance of this issue, I think that some clarification is necessary to assure that some passthrough does not occur. Consumers should not have to pay for behavior by the management or by the functioning of a company, which violates or is inconsistent with environmental laws.

They should not have to pay for pollution that might have been prevented. The polluter ought to pay. That principle is fundamental to our Federal environmental laws. Otherwise, we take away a significant incentive to prevent pollution. We say that regulated industries can pollute without the certainty of knowing that they must pick up the tab. This jeopardizes the environment and penalizes the consumer.

Mr. President, we heard my friend, the distinguished Senator from Colorado, suggest that by preventing the company to pass along the costs, that in fact it might stand in the way of environmental cleanup.

Mr. WIRTH. Will the Senator yield?

Mr. LAUTENBERG. In just a minute.

Well, that hardly makes the case, in my view.

The PRESIDING OFFICER. The time for the Senator from New Jersey has expired.

Mr. LAUTENBERG. I ask the manager if I might have 2 more minutes.

Mr. METZENBAUM. Without objection.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. LAUTENBERG. That hardly makes the case. I think it is very obvious that if someone else is going to pay the tab, the risk is often worth taking. What we are saying is that if—as much as the Senator from Colorado is in the forefront of all fights to improve the quality of our environment—gas companies know in advance that they can pass along the costs resulting from environmental violations, the incentive to prevent the pollution from occurring could be diminished.

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

Mr. LAUTENBERG. Yes.

Mr. WIRTH. Is it the case that there is nothing in the legislation that says they cannot automatically passthrough the cost? That is not in the legislation. What is there is they can apply to FERC, which goes through the process of trying to find out what is reasonable and fair in the determination of whether that passthrough is the case.

Mr. LAUTENBERG. The answer to the question, in my view, is that we must guide FERC in making its decision. We want to let them know in advance that you cannot abuse the environment without paying the cost. We want to help and clarify that decisionmaking process.

I want to say, Mr. President, that we have an important opportunity to send a message to the country: Polluters, not consumers, should pick up the tab of pollution. That is what it is about. That is why it deserves the support of everybody here who is concerned about the protection of the environment.

In response to some of the objectives raised in this debate, I would note that they appear to be procedural, and do not suggest a contrary view of the underlying legal principles of this amendment. Therefore, should a tabling motion be offered, as it appears is likely, and should such a motion succeed, such a result would not form a basis for arguing or concluding that costs resulting from environmental violations or from acts that are inconsistent with environmental laws are just and reasonable. In fact, the statements of the proponents and opponents of the amendment indicate a consensus that such costs are not just and reasonable.

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

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. McCLURE. If the Senator from Kentucky will yield 4 minutes.

Mr. FORD. The Senator has 4 minutes from this side.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 4 minutes.

Mr. McCLURE. Thank you. I thank the Senator for yielding the time. I will be very brief. First of all, I agree with what the Senator from Colorado has said. This could inhibit the cleanup of conditions which are discovered and not deliberately created. I want to make a rather fundamental point about where we are and what this amendment does. We have in the law today a flexible standard which FERC does apply on whether or not costs can be passed through, and that standard works. There is no showing that FERC does not make that work.

This amendment would eliminate flexibility and mandate the result, and that has two adverse effects, as far as I am concerned: One, it substitutes arbitrary action for reasoned decision. Second, it deprives the parties who are involved from any sense of, or any semblance of due process. There is no way in which the so-called polluter has the opportunity to present evidence as to whether or not it was accidental or inadvertent or a discovered condition that they did not know existed. It just says, "If you pollute, you pay."

Now, that sounds good, but as the Senator from Colorado has indicated, that militates against the kind of action we wish to take to clean up exactly that kind of mess, which, in part, was true in the Texas-Eastern case, I believe—although I am not an expert on that particular case—I think the amendment, if I listened correctly, and I listened carefully, I think the Senator from New Jersey made a very good point in describing existing law and misdescribing the amendment, because the amendment would not do what he suggested. It would do entirely something different, and the current law does precisely what the Senator outlined in his amendment. There is not only no reason shown for a change in the law, but the law itself, as presented to us in this amendment, does not do what either of the speakers in favor of the amendment suggest that it does.

I hope that indeed we reject this amendment. If there is a problem which has not yet been identified, let us try in a reasonably constructive, ordinary legislative process to deal with a solution to a problem which is then identified, rather than attempting to legislate in this way, which I think would be harmful to the objectives of the people that are suggesting that we make a change in the law at this time.

So I hope our colleagues will not be misled into believing this does something good for the environment or does something good for the process or does something good for the consumers when, as a matter of fact, I think it does none of the above.

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

Mr. McCLURE. I am afraid my time has expired.

Mr. REID addressed the Chair.

Mr. METZENBAUM. How much time does the Senator from Nevada wish?

Mr. REID. The Senator from Ohio has how much time remaining?

The PRESIDING OFFICER. About 19 minutes, 30 seconds.

Mr. REID. Up to 10 minutes.

Mr. METZENBAUM. Without objection.

Mr. REID. Mr. President, I rise in support of the amendment now pending before this body. First of all, let us get to the merits of this amendment. There has been talk here that this amendment would put people in jail—simply not true. This is a simple amendment, one that Members of this body should be able to identify with.

If you cause a mess, the consumer should not have to pay. This is similar to an amendment that was discussed at some length last week on this floor—my oilspill bill—which simply said, if you pollute, then before you can deduct from your taxes the cost of that cleanup, that there must be a certification by the EPA and/or the Coast Guard that you have complied with the law; that is, that you have done a reasonably good job of cleaning up and met certain standards established by EPA and/or the Coast Guard.

The Metzenbaum amendment is a general remedy, inspired by a specific event, much like the oilspill bill, which was inspired by Exxon's polluting the Alaskan waters. The tragic *Exxon Valdez* spill created a lot of commotion, but in addition to that, Mr. President, it created an atmosphere in this country that the time has come when these large corporations should be held accountable for what they do. And the *Exxon Oil Valdez* example certainly is something that is emblazoned in the minds of the consumer public.

This amendment, the one about which we are here today, is a response to a gasoline explosion that occurred on May 27 in California, at or near the city of San Bernardino. That incident arose when a large gas pipeline exploded. The reason that it exploded, probably—we do not know for sure—was as a result of a train accident that has occurred a matter of a couple weeks prior to that.

The explosion that occurred killing two people, forced hundreds to abandon their homes, cut the gasoline supply to southern Nevada, different factually than the *Exxon Valdez* oilspill which did not directly kill people but killed thousands of animals and led to the largest oil price increases in the history of the Nation in a short period of time.

The gasoline explosion that took place in San Bernardino killed people, disrupted people in their homes, destroyed homes, but in addition to that, Mr. President, it increased the cost of gasoline even more so in the State of Nevada than was caused by the *Exxon Valdez* oilspill. This was caused by a violation of law.

In response to the Alaska oilspill, Exxon is passing on the cleanup cost to consumers. In response to the San Bernardino explosion, various oil companies are passing on the cost of trucking the gasoline to southern Nevada.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mr. REID. I will in a short time, not right now.

In both cases other oil companies will raise their prices in response.

The consumers do not expect and should not expect to pay for the accidents of giant corporations. I think this Congress must stand on the side of the consumer and on the side of the environment.

I think the Senator from New Jersey certainly responded well to the question of how FERC would handle this. This gives direction to FERC in handling this awesome job that they have. But it does have to take into consideration these violations of our environment.

We cannot do anything about oil pipelines directly perhaps, but we have an opportunity here today to protect consumers from costs associated with environmental mishaps on these pipelines.

The oilspill bill prevents polluters from passing on cleanup costs by deducting these costs from their Federal income taxes.

This amendment before this body today requires FERC to prevent gas companies from passing on the cost of price increases that result when a company violates Federal or State environmental laws. That is quite simple, direct and to the point. It prevents gas companies from passing on the cost of price increases that result when a company violates Federal or State environmental laws.

The Finance Committee, by agreeing to hold hearings on my bill, the oilspill bill, is giving this body an opportunity to protect consumers from the costs of cleaning up the mess left by corporate polluters. Now today this body has an opportunity to protect consumers from the cost of gas polluters as has been illustrated here today.

I urge my colleagues to support the Metzenbaum amendment.

I would be happy to respond to a question from the senior Senator from Louisiana.

Mr. JOHNSTON. I thank my friend from Nevada.

My friend from Nevada talked about a couple of cases, the *Exxon* spill, the gasoline spill in Arizona. The Senator, of course, understands that none of that is regulated by FERC or covered by this amendment.

Mr. REID. Yes, I do understand that.

Mr. JOHNSTON. Is the Senator aware of any single case in which FERC has allowed a pass-on of expenses in one of these environmental cleanup cases, cases where there was a violation of environmental law?

Mr. REID. I would suggest to the Senator from Louisiana that I cannot give a specific case. I do not serve on the chairman's committee and am not certainly as familiar with the case-by-case history as is the chairman.

But that answers the question in and of itself, because if in fact there are not cases, then we should not be concerned, and that should make the amendment that much more agreeable, if in fact there are not cases, because if one does occur then this would give FERC further direction about how to handle their rate increase requests.

Mr. JOHNSTON. Would the Senator be in a position to disagree with me when I tell him that to my knowledge there is only one case of this kind and that is the Texas Eastern case that is pending now, and the question is whether it was improvident of Texas Eastern to have taken this action in the first place.

I have not heard it suggested that there is any lack of authority on behalf of FERC. Would the Senator be in a position to disagree with the statement?

Mr. REID. I would respond to the chairman's question by saying my answer still applies as answered previously. If in fact there are cases, one that the chairman mentioned, or others arise in the future as to whether there are some environmental laws being violated, then certainly FERC, as indicated by the Senator from New Jersey, would just have that much additional guidance in handling the rate request or the request for the cleanup costs being passed on.

Mr. JOHNSTON. I thank the Senator.

Mr. REID. I yield the floor.

Mr. JOHNSTON. Mr. President, I yield to the Senator from Idaho 3 minutes.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 3 minutes.

Mr. McCLURE. Mr. President, in trying to explain the effect of this amendment, let us get into something that more of us might be familiar with.

You are involved in a minor traffic accident. Two cars came together and there is a small wrinkle in the fender of each. Nobody is injured. It is not terribly serious. The investigating officer looks at it and says, "I think the driver of car A was guilty." Bang, he is guilty.

Under this amendment there is no appeal from that. There is no review of that. There is absolutely no way the man can escape unless he goes to court and is exonerated by a court and a jury at a later stage.

Now get this: If, on the other hand, he did not go to court and get a trial and get exonerated, suppose he goes to the investigating officer or to the supervisor or to the district attorney and persuades them not to prosecute the violation of law. He is still guilty under this amendment because there was no exoneration by a jury at a later date; the investigating officer's opinion in advice to someone else determines his guilt—no hearing, no trial, no exoneration; he is guilty.

If that standard is made to apply here, I would tell you I think that is impossible to live with as a matter of law or policy.

I have read this as carefully as I know how to read, and I can tell you that is the result, maybe not the intended result, but it is the result of the language in this amendment.

There may be a problem that needs to be addressed. I think probably not under the prudent expenditure test which FERC is permitted to attach. But if there is a problem, this simply is overkill, and in my judgment the amendment ought to be rejected.

The PRESIDING OFFICER. Who yields time?

Mr. LAUTENBERG. Mr. President, I ask if the Senator from Ohio would permit me a 1-minute response?

Mr. METZENBAUM. I yield 1 minute.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 1 minute.

Mr. LAUTENBERG. Mr. President, FERC has broad discretion given to it. We are saying there should be no doubt about the fact that neglect of environmental responsibility by companies is their obligation and not the ratepayers.

There is no penalty. This is no incentive to comply with the law otherwise.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question on my time?

The PRESIDING OFFICER. Does the Senator from New Jersey yield to the Senator from Louisiana for a question?

Mr. LAUTENBERG. I return the floor to the manager.

Mr. JOHNSTON. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. Nine minutes and nineteen seconds on the opponents' side and 9 minutes and 54 seconds on the proponents' side.

Mr. JOHNSTON. Mr. President, if the Senator is willing, I am willing to sum up in a minute or have the Senator from Colorado sum up in a minute and let the Senator from Ohio sum up in a minute, and vote.

Mr. METZENBAUM. Mr. President, I say to the Senator from Louisiana, the Senator from Ohio is considering modifying his amendment to make it short, and so I do not know if I want to do that without the Senator from Louisiana having an opportunity to see what I have done to it so he may have a further opportunity to speak to it.

Mr. JOHNSTON. Mr. President, this amendment has been changed once to take out what was an awful definition and leave the term "environmentally irresponsible" undefined. That could mean any number of things. One thing is clear, Mr. President, that this amendment would be productive of endless litigation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. JOHNSTON. Mr. President, under the quorum call, is the time being equally divided?

The PRESIDING OFFICER. The time is not being equally divided at this point. It is being taken from the time of the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, we were advised earlier that under a quorum call the time was equally divided.

The PRESIDING OFFICER. The request for a quorum call would have to specify that the time be equally divided. The Senator has 2 minutes remaining on his side.

The Chair would remind the Senator that the time is still running, if any Senator desires to address the question before the Senate.

Mr. JOHNSTON. Mr. President, I had asked the Senator from Ohio if he was willing to vote at this time. We were willing to vote. I think he wants to further argue this.

I have thought, under what we were told previously, that the time would run equally under the quorum call against both sides. I believe we have only 2 minutes remaining.

I yield the remainder of the time to the Senator from Colorado.

The PRESIDING OFFICER. The Chair recognizes the Senator from Colorado.

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

The statement was made earlier in support of this amendment that: "You cannot abuse the environment without paying the cost."

Noboby disagrees with that. I mean, we want those who have caused environmental problems to pay for it. No question about that whatsoever.

What this amendment does, though, however, is preclude people who have in fact caused problems to clean up the environment and then go after the cost for doing that. This amendment makes it almost impossible to assume that any company that says, "Hey, I made a mistake. I'm sorry. It was a problem," or, "I did something in the past that I didn't know about," it makes it impossible for any one of them to come forward and say they are going to clean up their problem and then to to FERC and say, "Maybe that is justifiable, maybe it isn't, but you, FERC, decide whether or not this is a reasonable and fair approach."

This is a very anticleanup amendment. The polluter pays, of course, but this is simply not a fair way of approaching it, and a completely irrational approach.

Finally, it says in this amendment: "The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action."

FERC calls up a State or a county or a local agency and says, "What do you think?" And that becomes a formal procedure? I am not a lawyer, but I can tell you that is terrible.

This is a poorly drafted, thin gruel amendment indeed, and it certainly is antienvironmental. This is going to discourage any kind of cleanup.

So I hope, from an environmental perspective, Senators should certainly understand that they should vote against this very badly crafted and bad amendment.

The PRESIDING OFFICER. All time for the opponents has expired. The Chair recognizes the Senator from Ohio.

Mr. METZENBAUM. Mr. President, just the opposite is true, of that which he has been peddling on this floor this afternoon.

If the pipeline knows that they cannot pass thrugh to the consumer the cost of their environmental irresponsibility, they will have the financial incentive to prevent the environmental problem in the first place.

What an absurd proposition we have been offered this afternoon by the Senator from Colorado, that it is a terrible thing, that if we do not let them pass through, they are not going to clean up the environment.

First of all, they should not have polluted the environment.

Mr. WIRTH. Will the Senator yield?

Mr. METZENBAUM. No.

They should not have polluted the environment.

They were the ones who were the moving party. It was not somebody else. It was they.

And now what they want to do is pass through those costs to the consumers. That is exactly what is being

attempted in a case pending before the FERC at the present time.

Why? What possible justification could there be to permit that to occur?

So this amendment is directed at the same subject, only different kinds of operations, as the proposal made by the distinguished Senator from Nevada the other day with respect to Exxon.

Exxon pollutes in Alaska; comes back and says that they are going to deduct the costs of cleaning it up from the taxpayers of this country, that everybody is going to have to share in those costs. Not 100 percent because it is only the amount of the taxes. But that is the same kind of argument we are getting here today. If we do not let them pass it through, then they will not clean it up.

I do not believe the Senator from Colorado believes that these gas pipeline companies are that irresponsible.

Mr. WIRTH. Will the Senator yield?

Mr. METZENBAUM. I think he knows better than that.

Mr. WIRTH. Will the Senator yield?

Mr. METZENBAUM. I yield for a simple question, one question, not a speech.

Mr. WIRTH. Is there anything in this amendment that relates to Alaska and Exxon?

Mr. METZENBAUM. Not a thing.

Mr. WIRTH. I did not think so.

Mr. METZENBAUM. My colleague is absolutely right. But the situation is comparable and that is the only reason we mention it. In the Exxon situation, the effort is made to clean it up and then pass it on to the taxpayers by deducting it from the taxes. In this one, the effort is made to pass it on to the consumers.

What we are saying is that FERC has the right to say no; that FERC has a right to find out what the facts are, to find out what decisions have been made by governmental agencies, and then to say no.

To suggest to the contrary, and that this is a great environmental opportunity, by defeating this amendment, violates the language of the amendment; violates the facts; is contrary to reality; and worst of all, it violates the environment.

This amendment allows the pipelines to clean up. If they show that they acted reasonably, they can pass it on, period.

But, if they did not, they cannot pass it on. And anyone who believes that we ought to have a cleaner environment in this country should be voting with me on this amendment. They should be voting with Senator REID. They should be voting with Senator LAUTENBERG on this amendment.

My colleague from Louisiana made the point that there could be no hearing, just an absolute moving forward and that would be the end of the ball game. FERC would disallow it and that is it.

I know my colleague from Louisiana is too good a lawyer to have anybody believe that, because the language specifically says, in line 8, "was an environmentally irresponsible act unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable."

The only place you have evidence is in a hearing.

Mr. JOHNSTON. Will the Senator yield?

Mr. METZENBAUM. For a question?

Mr. JOHNSTON. Yes. I said that they would be "bound by advice from authorized officials of an agency, whether or not in the form of a formal action," that there was a violation of environmental law.

Mr. METZENBAUM. No, what the Senator said, if I may correct him, my colleague said there is no right to be heard, and he said no hearing.

Mr. JOHNSTON. That is correct. On the question of a violation.

There are two different things here: "an environmentally irresponsible act" on which you have a right to a hearing; and "a violation of environmental law," on which the "Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action."

I am quoting the amendment of the Senator from Ohio. There is no evidence. No hearing. No nothing.

Mr. METZENBAUM. It is my time, if my colleague does not mind, and I asked for a question and I tried to answer his question.

Mr. JOHNSTON. Am I not correct?

Mr. METZENBAUM. Thank you very much. The determination of the violation is found in the language: "The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards."

And then you have those standards set forth in the amendment. I will not read all of them. The Senator from Louisiana mentions one of them, but that is all.

There will be a hearing. There will be evidence. There will be fairness. And, if it is just and unreasonable, then it will be disallowed. But if it is just and reasonable, it will be allowed. And that is the way it ought to be.

Mr. JOHNSTON. Would the Senator yield for a question? A short question?

Mr. METZENBAUM. Only for a question.

Mr. JOHNSTON. I must not be reading this right. If the Commission is bound by the informal opinion of an authorized official, how can there be evidence on that question, other than the question of whether or not he gave the opinion?

Mr. METZENBAUM. The Commission will take all the factors into account and will make its own determination. We cannot preclude the Commission from making its own determination.

Mr. JOHNSTON. The Senator just did.

Mr. METZENBAUM. Just a moment. Whether or not the violation occurred, the Commission can get the advice. But the Commission still has the right to determine whether or not the pipeline's actions were just and reasonable.

Mr. JOHNSTON. What does it mean it says they are "bound by advice"?

Mr. METZENBAUM. It is a determination that there was a violation. They are bound that there was a violation.

They are not bound in the ultimate decision as to whether their expenditures were just and reasonable.

Mr. President, how much time does the Senator from Ohio have?

The PRESIDING OFFICER. The Senator from Ohio has 1 minute and 48 seconds remaining.

Mr. METZENBAUM. Mr. President, if Senators believe in the environment, if Senators think that those who violate the environment ought to at least be brought up, not exactly on charges but brought before FERC for a determination as to whether or not they should or should not be required to pay it themselves or pass on the expenses to their consumers, then Senators have to vote for this amendment. We are just saying that FERC has the right to do it. We are saying that, if there is a violation, that it ought not to be charged back to the consumers automatically.

Mr. President, my understanding is that the proponents have no further time; the Senator from Ohio probably has less than 1 minute time left?

The PRESIDING OFFICER. The Senator's understanding is correct on both counts.

Mr. METZENBAUM. Mr. President, I yield back the remainder of my time and I am ready to vote.

The PRESIDING OFFICER. Both sides have yielded back all time. The question occurs on the amendment offered by the Senator from Ohio.

The Chair recognizes the Senator from Louisiana, Senator JOHNSTON.

Mr. JOHNSTON. Mr. President, I move to table the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Louisiana to lay on the table the amendment by the Senator from Ohio [Mr. METZENBAUM],

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

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] is necessarily absent.

Mr. DOLE. I announce that the Senator from Wyoming [Mr. SIMPSON] and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

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

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

The result was announced—yeas 66, nays 31, as follows:

[Rollcall Vote No. 87 Leg.]

YEAS—66

Armstrong	Fowler	McClure
Baucus	Garn	McConnell
Bentsen	Glenn	Mitchell
Bingaman	Gorton	Moynihan
Bond	Gramm	Murkowski
Boren	Grassley	Nickles
Breaux	Hatch	Nunn
Bumpers	Hatfield	Packwood
Burdick	Heflin	Pryor
Burns	Helms	Riegle
Chafee	Hollings	Robb
Coats	Inouye	Roth
Cochran	Jeffords	Rudman
Cranston	Johnston	Sanford
D'Amato	Kassebaum	Sasser
Danforth	Kerrey	Shelby
Daschle	Kerry	Stevens
Dixon	Lott	Symms
Dole	Lugar	Thurmond
Domenici	Mack	Warner
Exon	Matsunaga	Wilson
Ford	McCain	Wirth

NAYS—31

Adams	Graham	Metzenbaum
Biden	Harkin	Mikulski
Boschwitz	Heinz	Pell
Bradley	Humphrey	Pressler
Bryan	Kasten	Reid
Byrd	Kennedy	Rockefeller
Cohen	Kohl	Sarbanes
Conrad	Lautenberg	Simon
DeConcini	Leahy	Specter
Dodd	Levin	
Durenberger	Lieberman	

NOT VOTING—3

Gore	Simpson	Wallop

So the motion to lay on the table amendment No. 192, as modified, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

If the Senator will withhold for 1 moment, if we could have order in the Chamber so the Senator can be heard.

The Senator from Rhode Island.

EXPLANATION OF VOTE

Mr. CHAFEE. Mr. President, as one who is deeply concerned about our environment, and whose credentials on environmental issues are as strong as any of my colleagues in the Senate, I would just like to comment briefly on the last vote. I believe the amendment, which was just soundly defeated, would have resulted in an entirely inappropriate Federal policy. The amendment stated that "the Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law." This is bad language. I do not believe we want the Federal Energy Regulatory Commission to be bound by advice that comes from any agency official, whether or not that advice was in the form of a formal action.

This would allow an authorized official to come forward and give his opinion, as if in fact, that an action was in violation of environmental law. To bind FERC by this opinion would violate the concept of due process of the law, a fundamental underpinning of our system of jurisprudence.

So, Mr. President, it is for that reason that I voted to table the amendment that was presented by the junior Senator from Ohio. I believe environmentalists must take responsible positions on environmental matters. When a proposal is not adequately constructed, and poses a significant threat to an important tenet like due process of the law, we should say so.

Our credibility is an extremely important factor in this Chamber. If we wish others to carefully consider our concerns, we must be thorough in evaluating environmental proposals. Plenty of difficult matters will come before us in the coming months—the Clean Air Act, preservation of wetlands, the Clean Water Act, and reauthorization of the Superfund. Those of us who are deeply concerned with the environment want to be able to stand up here and have our colleagues say we are responsible or in pursuit of protecting our environment. I think that confidence and respect gives us the best chance of enacting important environmental legislation.

I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 193

(Purpose: To declare take-or-pay clauses to be presumptively unjust and unreasonable)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk on behalf of myself and Senator KOHL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself and Mr. KOHL, proposes an amendment numbered 193.

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

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

The amendment is as follows:

At the appropriate place, insert:

"SEC. 8. TAKE-OR-PAY CLAUSES.

"A take-or-pay clause in a contract for the purchase of natural gas shall be held to be injust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.".

Mr. METZENBAUM. Mr. President, this amendment is simple. It shifts the burden of proof regarding who should pay for the multibillion-dollar mistake known as take-or-pay.

Right now, consumers must pay for billions of dollars in take-or-pay liabilities. Bills being passed on to consumers for take-or-pay contracts now total over $5.1 billion. That amount will increase in the future unless we adopt this amendment.

While FERC has made some generic rulings regarding the apportionment of take-or-pay liabilities, they have failed to examine particular cases to see whether the pipelines acted prudently when they entered into the contracts.

This amendment says that FERC must presume that take-or-pay liabilities are unjust and unreasonable unless, after a hearing, they find that a particular contract's take-or-pay clause was in fact just and reasonable.

This amendment in no way abrogates contracts between producers and pipelines that have take-or-pay clauses: The contracts remain legally binding. The legal obligation between buyers and sellers continue.

I am pleased that it has been endorsed by AARP.

Now, take-or-pay contracts were extracted from gas buyers during acute gas shortages of late 1970's.

Buyers must take high priced gas in large quantities, or pay a penalty for the shortfall. Typically the required "take"; in other words, purchase, is 70 to 90 percent of the average purchase.

This is the equivalent of having to pay 70 to 90 percent of your average grocery bill every time you shop, re-

gardless of how many groceries you actually take home.

Take-or-pay is anticompetitive. It restricts gas buyers from shopping for lowest cost supplies and getting it delivered under open access transportation. They cannot do that because they are obligated to buy large volumes of the high-priced gas.

Soon after most of these contracts were signed, demand for gas plummeted due to several factors, such as warm winters, plant closings, recession, and conservation.

As a matter of fact, large industrial gas purchasers switched to oil as the oil price collapsed.

Yet, despite the lower demand, pipelines had obligated themselves to buy large volumes of high priced gas, and as a result significantly raised costs to residential consumers.

FERC has the power to invalidate take-or-pay, but they are now making the consumers pay half the liability, the pipelines pay up to half.

In a similar situation pertaining to pipeline-local distribution company [LDC] contracts, the other end of the stick, our end being the pipeline to the producer, minimum bill clauses with the same anticompetitive effects of take-or-pay were in the contracts.

In 1984, FERC used its NGA section 5 powers to invalidate minimum bills in pipeline-LDC contracts. This order 380 was upheld by courts as I described earlier, citing FERC's "authority to limit or to proscribe contractual arrangements that contravene the relevant public interests."

In 1985 FERC issued order 436, which encouraged pipelines to become open access transporters but it failed to deal with take-or-pay liabilities between producers and pipelines that were already mounting into many billions of dollars of costs for consumers.

Take-or-pay liabilities worsened as pipelines could not sell high cost, high take-or-pay gas. In June 1987, the D.C. Court of Appeals, while confirming FERC power to coerce pipelines to become open access transporters, threw out the whole order for its glaring failure to address the closely related take-or-pay problem using its section 5 remedial powers. The court criticized, and I quote:

> FERC's seeming blindness to the possible impact of order 436 on take-or-pay liability seems impossible to square with reasoned decisionmaking.

I am not sure all of my colleagues heard that, but I want to point it out to you. I want to repeat it. The court in that case, the D.C. Court of Appeals, while confirming that FERC had the power to coerce pipelines to become open access transporters, they threw out the whole order for its glaring failure to address the closely related take-or-pay problems using its section 5 remedial powers.

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

Mr. METZENBAUM. Not at this point.

The court said:

> FERC's seeming blindness to the possible impact of order 436 on take-or-pay liability seems impossible to square with reasoned decisionmaking.

That is about as strong language as I have ever heard a court use.

The court concluded "FERC's indifference on take or pay taints the package."

In late 1987 FERC's solution to the Court of Appeals ruling was order 500 with respect to take or pay. Order 500 allows automatic passthrough of up to half of the billions in liabilities, and the bulk is passed on to residential consumers if pipelines absorb the other half.

Order 500 is still an interim rule. The court will not hear the oral argument until the fall of 1989. By that time most bills may already be paid by consumers and unquestionably FERC will say the problem is solved, the case is moot, and the consumer will have been stuck with the bill.

This amendment will help consumers and local distribution companies nationwide by encouraging FERC to conduct an investigation into the reasonableness of these contract terms. It does not void take or pay liabilities. It merely exposes them to the light of day.

I yield the floor.

Mr. JOHNSTON. Mr. President, this amendment would wreak havoc in the whole gas market, and that havoc would last only so long as it would take the Congress to come in and correct the mistake because this would be totally, totally unworkable.

If I may explain, first of all, let me explain what a take-or-pay contract is. In any contract for natural gas you have a price and you have a quantity. Now, the quantity is dealt with on what we call take-or-pay because in the case of purchaser, the needs of that purchaser will vary seasonally. In wintertime they will need more gas than they will in summertime.

On the other hand, for the supplier of natural gas, the deliverability of the field or of the well will vary according to geologic conditions.

So, accordingly, in order to tie up a specific quantity of gas or a specific field, we provide for take-or-pay contracts which will typically say that the purchaser will be bound to take, for example, 70 percent of the deliverability of the field not to exceed a certain specified amount.

Now, Mr. President, virtually every long-term gas contract has a take-or-pay provision. It is the only way to make really a binding long-term contract. If you cannot tie up the quantity, then there is no way to have a contract.

So, in effect what this amendment would do would say that virtually every long-term contract for the delivery of natural gas existing in America today would be presumptively invalid, and the only way to make them valid would be to go in to FERC and prove that it was just or reasonable.

How many natural gas contracts are there? There are thousands of natural gas contracts, all of which would be presumptively invalid and you would have to go to FERC in order to prove them valid.

It is precisely the same question that we had in the amendment a moment ago which we beat 73 to 23.

The contract would be invalid unless you went to FERC. You would have to go to FERC in virtually every case because they all have take-or-pay contracts. There is no other way to have a long-term gas purchase contract.

What was the Senator talking about a moment ago when he was saying FERC said in order 436 or the court of appeals said on appeal of order 436?

Mr. President, the Senator did not answer my question which was going to be: Did the Commission not come back under order 500 and clear it up? And the answer to that is yes, Mr. President.

After order 436 and the court of appeals decision on that, then they remanded the case to FERC. FERC then came up with order 500 dealing with the take-or-pay.

The problem, Mr. President, was not with take-or-pay contracts. The problem was really in the price specified in those contracts because some years ago when the price of natural gas was very high and the supply was very low, companies entered into long-term take-or-pay contracts, setting the price of natural gas in some cases as high as $6 or $7 and providing for a long-term contract.

The contract was perfectly valid, was entered into in good faith, but the price of natural gas dropped, thereby putting pipelines, local distribution companies, and consumers in an embarrassing economic situation; thereby FERC came up with order 500 to deal with that, which provided, in effect, for the passthrough of sums incurred for the renegotiation of those contracts, and that such costs would be split 50-50 between the consumer and the pipeline.

As I mentioned the other day, Mr. President, about 80 percent of the costs had been renegotiated; 95 percent of the contracts have been renegotiated, and 80 percent of the liability was negotiated away and absorbed by producers. The remaining 20 or 30 percent was divided 50-50 by agreement between consumers and the pipeline companies.

So, Mr. President, the problem dealing with take-or-pay which was really a price problem has been solved.

This amendment would create brand new problems of unsolvable dimensions. The first effect would be probably to abrogate all of these contracts.

There is a provision in gas contracts, typically a provision, called a force majeure provision, which says in effect that, if by action beyond the control of the parties as in the case of FERC or in the case of a congressional abrogation of a provision of the contract such as take-or-pay, the whole contract is abrogated.

So, you would have thousands of contracts which would be subject to being immediately nullified.

The only way to revive them would be to go to have a long-term litigation at FERC.

So, Mr. President, in effect what you have is all the gas that is being supplied to consumers today would be at very best uncertain as to its legality and at worst the contract fully abrogated.

Mr. President, further for future action it would make virtually impossible a long-term contract. If you cannot tie up a long-term supply of gas binding both the purchaser to take it and the supplier to supply it, you are not going to have any long-term contracts. They will say we will contract for 90 days. We will give you x amount of gas which they know that they need and you know that you can supply, and you will come back at the end of 90 days—no stability of supply for the market.

I cannot imagine a worse thing for the consumer than what this amendment would do.

Mr. President, it would be totally unworkable. Moreover, this amendment would greatly expand FERC jurisdiction. Most wellhead natural gas contracts are already deregulated. Well over 60 percent are already deregulated. But what this amendment would do would bring those contracts to the extent they have take-or-pay obligations back under FERC jurisdiction, with I suppose blanket authority of FERC to reform the contracts in whichever way they wished, to rewrite the price or rewrite the quantity of take-or-pay or indeed to declare the whole contract null and void.

The same arguments were made on the first amendment today. Take-or-pay it is the flip side of the indeterminant price escalator provision.

Mr. President, there are probably few areas of the law as arcane, as detailed, as difficult as natural gas deregulation.

I can tell my colleagues what order 436 provides and what order 500 provides, but I can tell you that my colleagues, those who do not deal in natural gas, are not going to really understand it because it is very, very complicated.

So to bring an amendment out here on the floor that deals with all the natural gas contracts in America, which runs the risk of nullifying all of those contracts, of abrogating any long-term contracts, of putting the markets into disarray and doing all of that without hearing from the first witness, without having the first day markup in the committee of jurisdiction, Mr. President, would be totally irresponsible.

It is simply indefensible, because there is a no problem here. The problem has been fixed by order 500. Over 95 percent of those contracts have been renegotiated. And the effect of the amendment would be to wreak havoc on all of our natural gas markets.

Mr. METZENBAUM. Will the Senator from Louisiana yield for a question?

Mr. JOHNSTON. Yes.

Mr. METZENBAUM. The Senator from Louisiana has spoken about order 500 providing for pipelines to pay 50 percent of the cost and consumers to bear 50 percent of the cost. Is it not a fact that the consumers are now paying 100 percent of the costs because order 500 is on appeal? Many lawyers are saying that it may be overturned, but in the interim the consumer is being billed and the only way the consumer would benefit from that order is if FERC were to order refunds, which is a highly unlikely probability.

Mr. JOHNSTON. The Senator is incorrect. The billing mechanisms in place at the present time are on a 50 to 50 basis. Moreover, the amount that is split 50–50 is only the amount that the pipeline has paid to settle its liability.

Understand that about 70 to 80 percent of cost of those take-or-pay contracts from some years ago have already been negotiated away. So you are dealing with only the remaining 20 or 30 percent of renegotiated costs and that is being split 50–50 between the pipelines and the consumer.

Mr. METZENBAUM. Is the Senator from Louisiana saying that the consumer is not being billed for that 50 percent under order 500; that none of it is being billed to the consumer?

Mr. JOHNSTON. Fifty percent of the unnegotiated amount is being billed to the consumer, that is correct.

Mr. METZENBAUM. Is it not correct that the consumers have been billed as of May 11 this year $3,467,328,412, according to a report from somewhere, I am not sure where it came from?

Mr. JOHNSTON. I am not sure of the amount, but that may well be what the pipelines have applied for which has not been passed through yet, not been determined by the Commission.

Mr. METZENBAUM. According to what I am reading here, it says amount directly bill, $3,467,328,000.

Mr. JOHNSTON. I do not know what document the Senator has.

Mr. METZENBAUM. It is a FERC document.

Mr. JOHNSTON. I think the Senator would probably find that that is the amount that has been filed for that represents 50 percent of the negotiated amount and that will be amortized over a 5-year period and, indeed, passed on to consumers if the State commissions determine that LDC's were prudent.

Mr. METZENBAUM. I am afraid I have to take issue with my colleagues, because in the FERC figures, the amount directly billed, as I said in my opening statement, $5.1 billion has actually already been passed through this. This has a breakdown of $3,467,000,000 and plus a voluntary surcharge of $1,743,000,759. I guess the total of that would come up to $5.1 billion.

Mr. KOHL. Mr. President, I am pleased to speak on behalf of this amendment.

I also am concerned about passage of S. 783 in its current form.

Mr. President, this legislation does nothing to protect or help residential consumers of natural gas. This bill essentially gives gas producers everything they want, while denying consumers any relief from unreasonable contract terms, and unfair Federal regulations.

As Senator METZENBAUM has ably explained, the producers took advantage of their market power in the late seventies and early eighties, insisting on these take-or-pay clauses in the sales contracts they negotiated with pipelines.

And for their part, the pipelines made the unfortunate decision to accept these unreasonable terms.

The producers were clearly playing on the Nation's fear of gas shortages, and the pipelines bought into that sales pitch.

I am a businessman, and I understand that being in business involves a certain amount of risk-taking. You make your best guesses about what the future holds, and you take your chances. Sometimes you win, and sometimes you lose.

In the case of high-priced gas contracts signed in the late seventies, the pipelines clearly lost.

The Federal Energy Regulatory Commission [FERC] has decided that it is fair to hold gas consumers partially responsible for these unfortunate business decisions, in which they had no say.

FERC, which Congress entrusted with the responsibility of protecting

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the public interest, has refused to protect consumers from take-or-pay.

FERC simply told the producers and pipelines to renegotiate these contracts, and encouraged the pipelines to buy their way out of these contracts.

Meanwhile, producers are free to resell the gas which was not taken by the pipelines, essentially allowing them to collect payment twice on the same gas.

And FERC decided that consumers should help the pipelines with those take-or-pay liabilities pipelines and end users are required to split the buy-out costs 50–50.

But it gets even worse. FERC has decided that if large industrial users do not want to pay these buy-out costs, they can bypass the local gas utility and contract for their own gas. That leaves the homeowners picking up a bigger share of the tab.

Clearly, Congress could have resolved the take-or-pay problem long ago. For years, consumers have asked Congress to do something. And they were told that Congress could not open the Gas Act. It is too complicated. It would get too messy.

But, interestingly enough, when the producers asked Congress to decontrol cheap "old gas" still subject to controls, Congress went to work drafting a bill.

And when the pipelines objected to immediate decontrol, guess what happened? The bill was changed to provide for a 3-year phase-in.

Producers and pipelines made their requests, and their wishes were granted. But who is listening to the consumers?

The bill before us today finally opens the Gas Act—but only to the benefit of natural gas producers. If we do not take this opportunity to provide relief and fairness to consumers, we will not have another chance.

The proponents of the bill tell us that we need not worry because total deregulation of natural gas is the universal panacea. Consumers need not worry about any of their prior concerns because competition will hold prices down.

But everyone forgets to mention that residential gas customers will not benefit from competitive prices for a very long time. Competition—what is that? For the average homeowner, it means nothing.

FERC's open access transmission policy does not allow residential customers to take advantge of market prices.

Large industrial gas users will benefit from open access. They have the resources to compare wellhead gas prices, secure transportation rights, and build a hookup straight to the pipeline, circumventing the local utility.

In so doing, the industrials can also avoid sharing in take-or-pay buy-out costs.

But what about senior citizens on fixed incomes, or young families trying to heat their homes in Wisconsin, or any other State in the Midwest, or Northeast?

Can these homeowners shop around for the cheapest gas? Can they get on the phone and call producers in the Southwest, trying to get a good deal on their heating bills?

Of course not. Homeowners are still dependent on their local gas utility. The monopoly still exists for the millions of people who depend on natural gas for home heating, and are captive customers of their local gas utility.

They will not benefit from increased competition in the natural gas marketplace. They have to pay whatever their local utility charges. They do not have any options.

They cannot object to the price and take their business elsewhere.

They will not be able to object when their bills go up as take-or-pay liabilities are passed through. They cannot object to paying for gas they never even used.

Mr. President, this situation simply is not fair. Residential customers keep getting the short end of the stick.

And if we decontrol the remaining natural gas under regulation, without correcting some of the regulatory and contract abuses which afflict residential customers, we are doing a disservice to our constituents.

There is absolutely no reason why any Senator from a consuming State should not support this amendment. It simply requires that FERC make a determination that take-or-pay costs are just and reasonable before they can be passed on to consumers.

Is that so unreasonable? I think not. Most homeowners who heat their homes with natural gas would probably agree.

Mr. President, I urge my colleagues to support this amendment which makes some small improvement to the benefit of consumers.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I would like to thank the distinguished Senator from Wisconsin for a very erudite, direct, concise statement as to why we need this amendment. It pleases me no end to have him speaking out so strongly in behalf of consumers of this country.

We all know that he came here as a very successful business person and it is with a great deal of pleasure that I align myself with his concerns and appreciate his support very much.

Mr. McCLURE. Mr. President, will the Senator from Louisiana yield me 5 minutes?

Mr. JOHNSTON. Yes, I so yield.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, would the Senator from Ohio respond to a question, because I want to make certain I understand what is intended by the amendment?

It is a short amendment, but languge can sometimes be understood by different people to mean different things. It says, "A take-or-pay clause in a contract for the purchase of natural gas shall be held," and so on.

Is it intended to be prospective only? Is this to be attached to current contracts or only to future contracts?

Mr. METZENBAUM. It would be applicable to current contracts.

Mr. McCLURE. And that would be applicable, then, to all of those under order 500 today?

Mr. METZENBAUM. The answer is yes.

Mr. McCLURE. And it would be applicable equally to all those in which negotiated settlements have already been effected and approved?

METZENBAUM. Let me respond to my colleague.

When he says "negotiated," the implication is there was a give and take.

Let me make it very clear, I do not know who did the negotiations.

Mr. McCLURE. Aside from that issue—and I recognize we can get into the question of how equal were the relative strengths of the parties to such negotiation.

Mr. METZENBAUM. Certainly the consumers were not at the table. They had nobody speaking for them.

Mr. McCLURE. Nevertheless, there were an awful lot of contracts in which the contracting parties did negotiate some kind of settlement with respect to take-or-pay issues.

Mr. METZENBAUM. If the Senator from Idaho is asking whether or not this would have any retroactive effect with respect to the application of order 500, the answer is "No." But if he is asking whether or not it would have an impact upon those contracts still extant, the answer is yes, even though they may be affected by order 500.

Mr. McCLURE. That answer did not help me much because order 500 purports to cover a number of existing contracts. There are only the unsettled remnants of those which were earlier settled.

We had a whole block of contracts, as we have had since 1938, that had take-or-pay provisions in them, and many of those have expired by their terms. Some have been renegotiated—the great bulk of them have been renegotiated in one form or another.

Mr. METZENBAUM. If they were renegotiated and there is no longer a take-or-pay clause that is applicable, then this language would not be applicable.

Mr. McCLURE. So it is not your intention to apply this language to reopen those contracts which have already been negotiated?

Mr. METZENBAUM. Where the take-or-pay provisions of the contract have been negotiated out, it is not my intention to reopen that situation.

Mr. McCLURE. I thank the Senator for his answer because that does narrow the range of the discussion somewhat. But I would also say, if that is true, then it does not apply to the $8,678,000,000 that the Senator made reference to a while ago.

Mr. METZENBAUM. I do not think I ever mentioned that figure.

Mr. McCLURE. The Senator mentioned two halves of it, $3,467,000,000 which is eaten by the pipelines and $3,467,000,000 which is to be direct billed to the consumers.

That is the total amount. But I would say that, pursuant to the answer, of my colleague, we can set all of that aside because it is not covered by the amendment.

Mr. METZENBAUM. The fact is, so that we not leave that confusion as to the $3,467,000,000, let me point out that there is also a volumetric surcharge which is passed on to the consumers, the amount of $1,473,000,000.

Mr. McCLURE. Which has nothing to do with this discussion, but it may be a fact. We could put a lot of other facts in, too, that have nothing to do with the discussion, but that does not change the discussion.

If, as a matter of fact, this amendment has the effect the Senator from Ohio says that it does, it has almost no effect. And maybe on that basis, we ought to accept it.

Mr. METZENBAUM. Why does my colleague not do so?

Mr. McCLURE. But I am afraid that others reading the amendment might come to a different conclusion than has the Senator from Ohio.

Mr. JOHNSTON. Will the Senator yield? It would have prospective effect, which would mean it would be virtually impossible to contract for a long-term supply of gas.

Mr. McCLURE. That is fair. But it would have almost no effect on current liabilities under current contracts, regardless of their status.

Mr. JOHNSTON. If the Senator will further yield, it would at least be productive of a great deal of litigation as to those existing contracts.

Mr. McCLURE. Yes.

Mr. JOHNSTON. Because I heard both a yes and a no answer when the question was put to the Senator. And I am inclined to think that the court would be equally confused, as well.

Mr. McCLURE. I am concerned because if indeed the Senator meant what he said, and understood what he said, then it has no effect. Therefore, I am not sure that he meant what he said or understood what he said. And the court might well say, in spite of what he said, he must have meant something by the amendment and therefore we will apply it, even though he said it does not apply.

So, I agree with the Senator that, indeed, there would be a great deal of confusion with respect to where we stand. And that confusion would extend, I would say, also, not just to the 42 contracts that are in question here—and I might just mention, out of those 42 contracts, there are 9 of them that have already been settled, 9 out of that 42.

I have not tried to total up the number of dollars in those nine that have been settled. There are 2 in which there is no contest about the prudency, but with 31 of the 42, there is a contest before the Commission on the prudency question. So to hold out to this body or to anybody listening that this is a kind of a liquidated sum is to overstate our understanding of the facts that exist.

I am very much opposed to this amendment for a variety of reasons, in spite of the answers of the Senator from Ohio, the author of the amendment, because I do not believe the language is that clear. But I think, as a matter of fact, the very fact that we do not know what the language means casts in doubt not just this volume of contracts, but all of those that were renegotiated, and the consumers who believed that they know what their charges are may well find they wake up the day after tomorrow and find that we have thrown all of those contracts back into contention before a FERC that is already unduly burdened.

I do know that it is easy to say, well, all this does is change the burden of proof. That is an easy thing to say, but it does much, much, much more than that because it says every one of those contracts that we have negotiated settlements upon or that are now pending under order 500 will be back before the Commission for a redetermination of what the effect will be. That is a grab bag. As a matter of fact, order 500 carefully tries to balance certain equities with a kind of a contract carriage, open access policy offset by a split on the effects of take-or-pay obligations.

If we had been willing to make that kind of a settlement, we could have had that 5 years ago. As the Senator from Louisiana and the Senator from Ohio know, we spent almost 2 years negotiating those kinds of trade dollars. The Senator from Ohio and others at that time said, no, we are not going to make any settlement; we are not willing to make tradeoffs; we will hold out for everything. That is why 5 years later we have several hundreds of millions of dollars having transferred from consumers to producers at the wellhead.

So I would suggest that if, indeed, we want to protect the consumers, the best way to do that is to come to an end to this business and give them supplies under secure contracts of known quantity and known price and give the producers at the other end the opportunity to get out there and drill some wells and find some gas and build some pipelines and distribute some supplies to consumers so that they have supplies at a known price.

Mr. President, this amendment in its thrust, and I believe it would be safe to say in its genesis, comes from almost precisely the same ground and the same direction as the amendment we previously voted on and rejected by a vote of 2 to 1 in this body. I hope when we get to the conclusion of this debate, and I hope that is soon, that we will again have the opportunity to vote on a motion to table this amendment. I urge my colleagues to vote on this as they did on the other amendment earlier this afternoon.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Ohio.

Mr. METZENBAUM. Let us understand what we are talking about on this 50-50. It is 50-50 for some of those cases, but there is no reason for the consumer to be billed for this 1 penny. They did not make the contract. But in addition to the 50-50, there is a volumetric surcharge that will be billed to the consumer to the extent of exactly one-half of that amount billed to the consumer, $1,743,759,000.

All we are saying here is that they cannot pass it on, it is unjust and unreasonable, on these take-or-pay contracts unless the FERC determines to the contrary. Mr. President, I am prepared to vote.

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

Mr. METZENBAUM. Sure.

Mr. McCLURE. The volumetric surcharge to which you make reference—that is 17 of the contracts you would make reference to—is already the subject of a FERC order; is it not?

Mr. METZENBAUM. I do not know.

Mr. McCLURE. FERC has already looked at those contracts and said it is just and reasonable there be a volumetric surcharge.

Mr. METZENBAUM. I guess that would be correct, but the fact is, let me point something out to my colleague, you all talk about the fact it will open up all these cases. Let me say to you that the cases may very well be opened up despite of what we do here on the floor because order 500 is presently on appeal. And if the decision comes down to overrule FERC, then the entire matter would be before FERC and, therefore, there would be an even stronger reason as to why we need this legislation.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, very briefly. First of all the Senator is wrong in his last statement. Most of these cases are not jurisdictional with FERC because they deal with decontrolled wellhead contracts, which is another reason to oppose it. This amendment would bring jurisdiction for the first time over these contracts. So in the guise of deregulating natural gas, the last 2 percent, we would be reregulating all natural gas.

Mr. President, this amendment, if agreed to, would put in complete turmoil all of our natural gas contracts, would abrogate many of those contracts because of what we call force majeure clause in the contracts, would make it impossible to contract for long-term supplies of natural gas, would inundate FERC with a volume of cases which would be completely impossible for FERC to deal with and, indeed, make it impossible to have rational gas markets. For that reason, Mr. President, the amendment should not be agreed to, and I am ready to yield back the remainder of my time.

Mr. METZENBAUM. I yield back the remainder of my time.

The PRESIDING OFFICER. All the time has been yielded back.

Mr. JOHNSTON. Mr. President, I move to table the amendment. I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DOLE. I announce that the Senator from Wyoming [Mr. SIMPSON] and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

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

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

The result was announced—yeas 63, nays 35, as follows:

[Rollcall Vote No. 88 Leg.]

YEAS—63

Armstrong	Dodd	Levin
Baucus	Dole	Lott
Bentsen	Domenici	Lugar
Biden	Ford	Mack
Bingaman	Fowler	Matsunaga
Bond	Garn	McCain
Boren	Glenn	McClure
Boschwitz	Gore	McConnell
Breaux	Gorton	Mitchell
Burdick	Graham	Murkowski
Burns	Gramm	Nickles
Byrd	Hatch	Nunn
Coats	Hatfield	Packwood
Cochran	Heflin	Pell
Conrad	Helms	Pryor
Cranston	Hollings	Robb
DeConcini	Inouye	Rockefeller
Dixon	Johnston	Roth
Sanford	Stevens	Warner
Sasser	Symms	Wilson
Shelby	Thurmond	Wirth

NAYS—35

Adams	Harkin	Lieberman
Bradley	Heinz	Metzenbaum
Bryan	Humphrey	Mikulski
Bumpers	Jeffords	Moynihan
Chafee	Kassebaum	Pressler
Cohen	Kasten	Reid
D'Amato	Kennedy	Riegle
Danforth	Kerrey	Rudman
Daschle	Kerry	Sarbanes
Durenberger	Kohl	Simon
Exon	Lautenberg	Specter
Grassley	Leahy	

NOT VOTING—2

Simpson	Wallop

So the motion to lay on the table amendment No. 193 was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, there is one amendment remaining with a time limit of an hour. I wonder if the Senator from Ohio would be willing to reduce that time to a less time, 5 or 10 minutes to a side.

Mr. METZENBAUM. As I indicated earlier, 10 minutes on a side would be agreeable. I want to take a few minutes to offer the amendment just to be certain I have it in the right order. I have no objection to entering into an agreement for 20 minutes on a side, but since there is no time limit on the bill itself, I want to tell my colleagues there will be a few minutes in which I will actually offer the amendment.

Mr. JOHNSTON. Mr. President, in that case, I ask unanimous consent that the time on the final Metzenbaum amendment be reduced to 10 minutes a side.

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

Mr. JOHNSTON. 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 unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 194

(Purpose: To require the Federal Energy Regulatory Commission to use its existing authority to decontrol incentive pricing for certain high cost natural gas)

Mr. METZENBAUM. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 194.

At the appropriate place, insert:

"In the case of high-cost natural gas under Section 107(c)(5) of title I of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission shall exercise its existing authority to rescind any incentive prices on that category of natural gas within 90 days of the date of enactment. Notwithstanding any other provision of the Code, nothing in this amendment shall affect the continuation of tax credits under the Internal Revenue Code with respect to natural gas production.".

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, this amendment forces FERC to remove incentive prices that give producers windfalls four times above market.

Now, if you believe in decontrol, and it is obvious that a majority of the Members of this body, as indicated by the votes today, favor decontrol, then you ought to be for this amendment, because this amendment is the decontrol amendment.

The proponents have been hammering away about free markets, and they view 1989 as a unique opportunity to remove the wellhead controls that they contend distort markets.

Yet, FERC has failed to administratively deregulate incentive priced tight formation gas, as it said it intended to do several years ago in a proposed rule.

This gas is currently selling at prices as high as $6.82 per thousand cubic feet. If you want to deregulate, let us go for it. That is this amendment, deregulation of the high-priced gas.

FERC has refused for years to remove the incentive prices it set in 1980 even though those prices are today more than four times the market price of gas.

The reason FERC has failed to act is that the large producers screamed that they would lose their windfall.

The Supreme Court said in *FERC* v. *Martin Exploration*, 108 S. Ct. 1765 (1988), that:

> Not one participant in the NGPA legislative process suggested that producers should receive higher prices than deregulation would afford them.

Yet, that is what is happening today to large amounts of high priced gas, and the consumers are footing the whole bill.

In April 1989, the D.C. Circuit Court of Appeals slammed FERC for refusing without explanation to amend its regulations to remove the incentive prices for this gas. It said:

> The Commission also ignores the contention that many contracts for future sales of deregulated gas have set the price by reference to the last regulated price.

At pages 21–22, the Court further rebuked FERC:

We see no basis in either the statute or in logic for such extraordinary abdication of FERC's role.

Are you getting the picture about FERC's intransigence? How about the way they conduct business?

Is FERC protecting consumers the way Congress expected them to?

This recent court case that I have been quoting concluded:

FERC has not merely tolerated, but encouraged the formation of contracts which incorporate by reference the incentive price.

So the Court believes that FERC caused the problem, but continuously refuses to act.

Meanwhile, consumers are being forced to pay prices way above market.

I am sure that the opposition will say there is only a little bit involved. What difference does it make? Why should any portion of the gas be at $6.82 per 1,000 cubic feet?

I find it incredible that the FERC Chairman can chant "deregulation" and "free market" but refuse to remove antiquated incentives for high-cost gas that is hitting consumers so hard.

If you believe in deregulation, then give the consumer a break and deregulate the high-price gas.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I do not know where the distinguished Senator from Ohio has gotten his information but it is incorrect. He has stated that the average price of gas under his amendment is $6.82, I believe he said.

According to the Energy Information Administration that gas under section 107 is not selling for $6 or $4. It sold for an average wellhead price of $1.89 in 1988 which is a little more than 20 percent above the average market price.

Mr. President, there are a number of reasons to be against this amendment. It seems to me that probably the clearest is that this amendment is within the jurisdiction of the Ways and Means Committee on the House side. I have not run it by the chairman of the Finance Committee here. But as my colleagues know if it is in their jurisdiction, it gets a blue slip and therefore it kills the whole bill.

How is it in their jurisdiction? It is because, Mr. President, section 29 of the Internal Revenue Code provides a tax credit for tight formation gas that is contingent upon such gas being regulated by the Federal Government.

What this amendment purports to do is deregulate the gas but continue the tax credit. It says in explicit terms that it continues the tax credit notwithstanding any other law. It is plainly within the jurisdiction of Ways and Means. It plainly would give us a blue slip on this whole bill. The whole bill falls not just that provision if it is contained in the law.

Beyond that, Mr. President, it is fixing a nonproblem. The price gotten by this gas is only $1.89 which is 24 cents above the average market price now. And how much gas does it affect? It affects three-tenths of 1 percent of the natural gas.

So, Mr. President, it is a total nonproblem.

Now how did we get it in the first place? It is because we in the Congress explicitly decided that we wanted these tight sands, Devonian shale, and other formations drilled, and we had to give incentives to do that and people relying upon the solemn legislation will of this body went out and make investments based upon that. Now that they have flowing wells, even though they are getting only 25 cents 1,000 cubic feet above the market price, the Senator from Ohio would take that away from them.

That is not right. It is not necessary. It does not correct the problem that is plaguing the consumers of this country.

What it would do is put on notice all producers to not ever rely upon the Federal Government even if it is a Federal law, to keep their word because they will change it every year that comes along.

But, Mr. President, principally I ask my colleagues not to make this bill blue slip bait. We have been debating this thing now for 2 full days and to lose the bill at the last moment because we do something in the jurisdiction of the Ways and Means Committee, I think, is wrong.

Mr. President, how much time remains?

The PRESIDING OFFICER. Seven minutes and 22 seconds.

Mr. JOHNSTON. I yield 3 minutes to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I certainly cannot do any better than my good friend from Louisiana, but let me just suggest that I was one of the Senators who for months on end participated in getting the Natural Gas Policy Act passed.

It was clear in that law. At that point in time we were short of natural gas. Industries all over this country, including the State of Ohio and others were even thinking of closing down or opening at night because they could save energy. What we did in that Natural Gas Policy Act was to say if people would go out and take an extraordinary risk, and then we provided that the Commission had to find that it was an extraordinary risk in the case of the gas that is the subject of this amendment.

Some people in this country went out and did that. They invested their money and they found some natural gas. It is filling the pipelines of this country. It has brought us to the point where natural gas is once again a true natural asset.

We may indeed in the future find that that Natural Gas Policy Act, with some of these incentives built in, brought us to a position where we could finally deregulate natural gas.

Mr. President, how does anyone in this body think they could face constituents, people out there who said here is the law, we will go out and invest money to take an exceptional risk, we will find new natural gas, and then we come along and, while we are getting ready to deregulate it all, including that, by 1993, we come along with an amendment and we say we did not mean what we were saying. We said you go out and take that risk. They found that it is a very, very risky business. That is what the Commission has already found. People relied on it. And this amendment would say we did not mean what we were saying. You did that. You produced natural gas. We just want this afternoon to say we will take that away from you.

Essentially this bill for deregulation of the 6 percent of the natural gas that remains regulated is a Godsend for America. It is something we never thought would happen. Now we want to come along in the waning moments and Christmas tree it up to make little exceptions here and there negating the proposal we made to the American people, to investors, to independent operators, to go out and find this hard to find gas, risky gas. We will take their price away from them.

I do not think this is the way to do it. We ought not do it on this bill. Let the 1993 deregulation take its course. We will indeed have done something very significant for our people.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I wonder if the Senator from Ohio will join me in yielding back the remainder of his time?

Mr. METZENBAUM. I have no objection.

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

Mr. METZENBAUM. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back——

Mr. JOHNSTON. Mr. President, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Ohio.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. 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. MITCHELL. Mr. President, for the information of Senators, I am about to propound a unanimous-consent agreement that has been cleared with the distinguished Republican leader that will set forth the circumstances for final disposition of the pending legislation on tomorrow.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Senators will take their seats and clear the well and clear the aisle. The majority leader is entitled to be heard.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the time for debate on this bill on Wednesday, June 14, be reduced to 90 minutes under the same terms and conditions as previously ordered.

I further ask unanimous consent that following the debate on the Bradley amendment, which is to begin at 9:30 a.m. on Wednesday morning, the vote on or in relation to the amendment be delayed to occur upon the completion or yielding back of the time that has been reserved for debate on the bill. I further ask unanimous consent that all other provisions of the time agreement obtained earlier today remain in effect.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. MITCHELL. Mr. President, Senators should therefore be advised that the rollcall vote that is about to occur will be the last rollcall vote this evening, and that on tomorrow, there will be two rollcall votes, one on the Bradley amendment, and then on final passage of this bill. They will occur back to back beginning at approximately noon tomorrow. So there will be two rollcall votes tomorrow at 12 and at 12:15 and the vote that is about to occur will be the last vote this evening.

Mr. DOLE. Will the majority leader yield?

Mr. MITCHELL. Yes.

Mr. DOLE. I had asked earlier today about the coin striking ceremony and whether or not any arrangements could be made with reference to that. Some of us need to be there and some of us need to be somewhere else at the same time. If committees are going to meet, then we would need to know.

Mr. MITCHELL. Following the discussion with the distinguished Republican leader, I have, and do now again, encouraged committee chairman to recess any meetings that are underway between the hours of 10:30 and noon tomorrow to permit those Senators who wish to do so to attend the ceremony that will be underway. One of the reasons for my seeking and obtaining the unanimous consent agreement is to make certain there are no votes here during that period so Senators may confidently participate in the ceremony and such other business that they may have. So I hope that committee chairmen would be understanding in this regard. I know the distinguished Republican leader and I both have to attend and we encourage other Senators to attend who can do so.

The PRESIDING OFFICER. The question is on the motion of the Senator from Louisiana [Mr. JOHNSTON] to table the amendment of the Senator from Ohio [Mr. METZENBAUM]. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. DOLE. I announce that the Senator from Wyoming [Mr. SIMPSON] and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

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

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

The result was announced—yeas 87, nays 11, as follows:

[Rollcall Vote No. 89 Leg.]

YEAS—87

Adams	Durenberger	McCain
Armstrong	Exon	McClure
Baucus	Ford	McConnell
Bentsen	Fowler	Moynihan
Biden	Garn	Murkowski
Bingaman	Gore	Nickles
Bond	Gorton	Nunn
Boren	Graham	Packwood
Boschwitz	Gramm	Pell
Bradley	Grassley	Pressler
Breaux	Hatch	Pryor
Bumpers	Hatfield	Reid
Burdick	Heflin	Riegle
Burns	Heinz	Robb
Byrd	Helms	Rockefeller
Chafee	Hollings	Roth
Coats	Humphrey	Rudman
Cochran	Inouye	Sanford
Cohen	Jeffords	Sarbanes
Conrad	Johnston	Sasser
Cranston	Kassebaum	Shelby
D'Amato	Kasten	Simon
Danforth	Kerrey	Specter
Daschle	Lautenberg	Stevens
DeConcini	Leahy	Symms
Dixon	Lott	Thurmond
Dodd	Lugar	Warner
Dole	Mack	Wilson
Domenici	Matsunaga	Wirth

NAYS—11

Bryan	Kerry	Metzenbaum
Glenn	Kohl	Mikulski
Harkin	Levin	Mitchell
Kennedy	Lieberman	

NOT VOTING—2

Simpson	Wallop

So the motion to lay on the table amendment No. 194 was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

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

The motion to lay on the table was agreed to.

Mr. CONRAD. Mr. President, the Committee on Energy and Natural Resources considered what effect, if any, this legislation might have upon the Great Plains Coal Gasification Plant near Beaulah, ND. The committee noted in its report language, that none of the provisions of S. 625, S. 783, or H.R. 1722 would affect the plant, and that it would oppose any actions that would adversely effect the economic viability of the project. The committee stated as follows:

Concern was expressed during hearings before the Committee that pending natural gas legislation might have an effect on the economic viability on the Great Plains Synthetic Fuels Project. Under terms of its contract for the sale of the Great Plains Project, the Federal Government will receive certain financial returns stemming from the gas purchase agreements with the original partners. The Committee would oppose any actions that would adversely effect those gas purchase agreements, the economic viability of the project, or anticipated returns to the Federal Government. From this perspective, the Committee concurs in the judgment of the Department of Energy that none of the provisions of S. 625, S. 783, or H.R. 1722 would affect the Great Plains gas purchase agreements. As previously stated, the legislation does not abrogate or modify any contract.

Moreover, the Committee has received assurances from the Department that it would oppose actions which would modify the Great Plains gas purchase agreements in a manner which would adversely affect the Project's economic viability and the financial returns to the Federal government. The continued operation of Great Plains was established as a major objective guiding the Federal government divestiture process and the Committee has received the Department's assurance that this policy objective is viewed by the Department as extending to post divestiture activities.

This position has been expressed by the Department in its letter of May 12, 1989 to the Federal Energy Regulatory Commission regarding proceedings involving a proposed restructuring of the merchant function of Transcontinental Gas Pipe Line Corporation, one of the four interstate natural gas pipelines that contractually committed to purchase the Great Plains Project's output. The Departments letter requested that the Commission act to ensure that its action on Transco restructuring plan not adversely affect the regulatory and contractual framework on which the Great Plain project is premised. The Committee supports the Department in this view.

Mr. President, I also submit for the RECORD the letter from the Department of Energy of the Federal Energy Regulatory Commission, dated May 12, 1989, that is referenced in the report language.

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

DEPARTMENT OF ENERGY,
Washington, DC, May 12, 1989.

Hon. MARTHA O. HESSE,
Chairman, Federal Energy Regulatory Commission, Washington, DC.

DEAR CHAIRMAN HESSE: I would like to bring to your attention some concerns of the Department of Energy (the Department) related to the continued operation of the Great Plains Coal Gasification Plant (Plant). These concerns arise in connection with the ongoing Commission proceedings concerning Transcontinental Gas Pipe Line Corporation's (Transco) proposals for a marketing affiliate and a gas inventory charge (FERC Docket Nos. RP88-68, et al. and CP88-391, et al.). I request that the Commission consider these concerns carefully before it takes any action on Transco's proposals.

As you are well aware, from its inception, the Great Plains project involved substantially greater risks than an ordinary energy project. In Opinion and Order 119, the Commission provided the regulatory treatment necessary for the successful construction and operation of the plant. In subsequent decisions, the Commission reaffirmed its commitment thereby ensuring that inadvertent government action would not defeat the project. On the private side, four interstate pipelines, including Transco, entered into a "Gas Purchase Agreement" under which, by contract, they committed themselves to purchase the plant's full production. The regulatory and contractual framework for the project recognizes its unique nature and is essential to its continued viability.

For the past ten years, the Department has expended considerable time and expense on the Great Plains project. The plant was financed with $1.5 billion in loans from the Federal Financing Bank, guaranteed by the Department. After the original investors defaulted in 1985, the Department acquired the plant through foreclosure. On October 31, 1988, Dakota Gasification Company (Dakota) purchased the plant from the Department under an Asset Purchase Agreement containing provisions designed to assure continued operation of the plant by establishing a trust account in support of operation and a revenue-sharing plan that would eliminate further U.S. taxpayer subsidy and could return to the government its original investment. For this to occur, the plant must continue to operate for the next 20 years. Both the ability to draw on the trust account and the receipt of revenue sharing payments are, in large part, contingent on the continued validity of the Gas Purchase Agreement. Thus the continued operation of the plant and the integrity of its underlying contracts have a direct economic effect on the U.S. Government.

The Department views the long-term viability of the plant as an important element of our long-term national energy policy. The Great Plains project is a unique undertaking in which a combination of private parties and the U.S. Government cooperated to develop and commercialize the technology for making pipeline quality synthetic natural gas from coal. The operation of the plant has generated valuable information concerning the use of this "clean coal" technology. This information holds the promise of greatly benefiting the U.S. public by providing a use for our abundant supplies of coal in an environmentally-acceptable manner, while enhancing our national energy security by reducing our dependence on imported oil. The continued operation of the plant, with its concomitant flow of data to the Department, is vital to our retention of this technology in our national energy arsenal.

Recently, Dakota brought to the Department's attention its serious concerns that potential Commission actions concerning Transco's proposals for a marketing affiliate and a gas inventory charge might jeopardize the integrity of the underlying Gas Purchase Agreement and Transco's performance under it. While the Department does not believe indirect Commission action could constitute "force majeure" or otherwise abrogate the gas purchase contract, it urges the Commission to be aware of and take into account the effect on the Great Plains project of any action it might take concerning Transco. Accordingly, the Department requests the Commission to make explicit in any order concerning Transco's proposals that its action is not intended to, and should not be implemented in a manner that could, affect adversely the regulatory and contractual framework on which the Great Plains project is premised.

The Department strongly supports the Commission in its efforts to make the natural gas industry more responsive to the realities of the marketplace. Preservation of the existing regulatory and contractual framework for Great Plains is consistent with these efforts, since the ultimate commercialization of the technology utilized in the project will mean more competition in the future. Gas from coal can be an important element of ensuring American consumers adequate energy supplies at reasonable prices. The Department, therefore, asks the Commission to avoid any inadvertent regulatory disincentive to the continued operation of Great Plains since a truly efficient marketplace has the ability to respond to the realities of today and the future.

Please enter this correspondence in the public record. I appreciate your consideration of the concerns expressed in this letter.

Sincerely,

J. ALLEN WAMPLER,
Assistant Secretary, Fossil Energy.

S. 1158: THE PROPOSED VETERANS HOME LOAN GUARANTY RESTRUCTURING AND SOLVENCY ACT OF 1989

Mr. CRANSTON. Mr. President, I rise to make a supplementary introductory statement on S. 1158, the proposed Veterans' Home Loan Guaranty Restructuring and Solvency Act of 1989, which I introduced on Friday, June 9.

S. 1158 would restructure and improve the present Department of Veterans' Affairs loan guaranty system to create a solvent and equitable program that better serves the interests of our Nation's veterans.

SUMMARY OF PROVISIONS

Mr. President, this measure contains provisions that would, effective October 1, 1989:

First, create a new revolving fund, known as the Home Loan Guaranty Fund, to finance the VA home loan guaranty program with respect to loans made or assumed after September 30, 1989, for the purpose of providing greater solvency and continuity for the VA Loan Guaranty Program.

Second, provide for there to be deposited in the Guaranty Fund all fees collected after September 30, 1989, all income and proceeds from VA's holding or disposing of homes acquired by VA upon foreclosures of loans made or assumed after September 30, 1989, and all revenues from investments of funds in the Guaranty Fund; provide for crediting to the Guaranty Fund an amount equal to 0.25 percent of the loan amount for each of the first 3 years on guaranteed loans made after September 30, 1989; and require the Secretary of the Treasury to invest surplus funds in the Guaranty Fund in Government securities.

Third, generally increase the loan fee from 1 percent to 1.25 percent of the loan amount but reduce the fee to 0.75 percent if the veteran make a downpayment of at least 5 percent and to 0.25 percent for a 10-percent downpayment; allow the veteran to finance the fee as part of the loan; increase the fee for assumptions from one-half of 1 percent to two-thirds of 1 percent; and continue the current 1-percent fee for vendee loans.

Fourth, require VA to pay the loan fee for all veterans with compensable disabilities and for surviving spouses of veterans who died from service-connected disabilities.

Fifth, allow the Secretary—after first providing the Committees on Veterans' Affairs with advance notice at the time the President submits the budget in mid-January—on or after the ensuing October 1 to increase all loan and assumption fees uniformly to not more than 20 percent more that the statutorily prescribed percentages—for example, as to the proposed standard 1.25-percent fee, this would permit an increase to no more than 1.5 percent, in one or more steps—if the Secretary determines such an increase is necessary to keep the Guaranty Fund solvent, based on a Secretarial determination that the Guaranty Fund otherwise would become insolvent within 24 months after the proposed increase would take effect; and require the director of the Congressional Budget Office to provide the committees with an assessment of any Secretarial finding relating to such insolvency.

Sixth, eliminate liability to VA for any loss resulting from default on a VA-guaranteed home loan for anyone who pays a fee, or is exempted from paying a fee, after September 30, 1989, except (a) in the case of fraud, misrepresentation, or bad faith by such individual in obtaining the loan or approval of an assumption of the loan, or in connection with a default, and (b) in the case of any default resulting from circumstances not beyond the borrower's control—vendee loans would not

be covered under this release from liability.

Seventh, extend for 1 year, to October 1, 1990, the current expiring authority for VA to sell loan assets either with or without recourse and the requirement for VA to justify and explain each such loan asset sale in a report to the Committees on Veterans' Affairs.

Eighth, require that, notwithstanding any other provision of law, all amounts received from recourse and nonrecourse loan asset sales be credited, without reduction, as offsetting collections of the Loan Guaranty Revolving Fund or the Home Loan Guaranty Fund, depending on which fund received the fee for the loan involved.

Ninth, allow a veteran to acquire additional loan guaranty entitlement—up to $10,000—for a particular loan by paying a 0.1-percent fee for each additional $1,000 of entitlement, or portion thereof; require that the total of the guaranty and any downpayment could not exceed 25 percent of the purchase price, except where, under regulations prescribed by the Secretary, the Secretary grants a waiver of this requirement in order to enable a veteran to use a VA-guaranteed loan in a market where lenders would otherwise charge so many points—which sellers must pay as to make it unlikely for the veteran to be able to use his or her VA entitlement to acquire a home; and provide that the fee for the additional entitlement, like other loan fees, could be financed as part of the loan.

Tenth, require a lender to notify VA when the lender refuses a tender of partial payment by a veteran and to state the circumstances of the veteran's default and the reasons why the lender refused partial payment.

Eleventh, extend by 2 years, through fiscal year 1991, the statutory formula—known as the "no-bid" formula—by which VA determines whether it will acquire at foreclosure the property securing a VA-guaranteed loan.

Twelfth, prohibit VA from considering the cost of borrowing funds in determining the net value of a property for purposes of the no-bid formula, except to the extent of one half of the amount by which the cost of borrowing the funds necessary to acquire the property exceeds the cost of borrowing the funds that would be needed to pay the guaranty.

BACKGROUND

Mr. President, the VA Home Loan Guaranty Program was established by the Servicemen's Readjustment Act of 1944 to assist veterans who because of their military service had been unable to achieve the savings necessary to make a downpayment on a home or the creditworthiness to obtain a loan without one as their nonveteran counterparts had been able to do. Under that 1944 act, the program was to expire 5 years after the end of World War II. However, due to its great popularity and success, the program was extended a number of times until it was made a permanent benefits program in 1970. It is currently codified in subchapters I through III of chapter 37 of title 38, United States Code.

Since its inception in 1944, the program has been changed and expanded many times, guaranteeing loans totalling more than $300 billion and helping more than 13 million veterans to purchase homes. With a VA guaranty, a mortgage can now be obtained for a term of up to 30 years and with an interest rate no greater than the maximum set by the Secretary of Veterans' Affairs and adjusted periodically to meet the demands of the loan market.

Today, the Loan Guaranty Program is financed primarily through the loan guaranty revolving fund [LGRF], which funds guaranty payments and the acquisition of foreclosed properties. LGRF receipts are derived from a 1-percent fee charged to veterans and service persons—other than those with compensable service-connected disabilities or surviving spouses of veterans and servicepersons who died from a service-connected disability—in order to obtain the guaranty and to individuals who give to the Department of Veterans' Affairs [VA] secured promissory notes—known as vendee loans—to finance their purchase of foreclosed properties acquired by VA in liquidation sales. The LGRF also receives money from the sale of foreclosed properties, transfers from the direct loan revolving fund, and appropriations.

Traditionally, the vast majority of VA-guaranteed loans have cost the Government little to guarantee and have provided significant benefits to veterans and to society because veterans generally have proven good credit risks. From its inception in 1944 until 1961, the Home Loan Guaranty Program was funded through appropriations of just $730 million to VA's readjustment benefits account. That's an average of $49.9 million a year for the 5.6 million loans made during those 17 years.

More recently, however, the downturn in certain parts of the economy and higher default and foreclosure rates, including those for loans guaranteed by VA, have threatened the viability of the program. In many cases, the cost to VA of acquiring, managing, and reselling properties has exceeded the income realized by VA through property sales and loan fees. As a result, the program has incurred significant deficits requiring increasing appropriations to keep the program alive. In fiscal year 1989 alone, the LGRF has received $658 million in appropriations and VA has requested—and both Houses have passed in H.R. 2074, the fiscal year 1989 Dire Emergency Supplemental Appropriations Act—$120 million more in supplemental appropriations.

Mr. President, it is not realistic to expect that a benefits program will incur no costs. But when the cost of such a program continues to increase, we must take a closer look to determine the reasons for the sharp increase and must take steps to minimize program costs in view of the towering Federal deficit. That does not mean changing the fundamental nature of the Loan Guaranty Program, however, either by drastically curtailing it or by insisting that it must be paid for in full by those seeking to use it.

I believe that S. 1158 would make improvements in the VA Home Loan Program that would enhance its value to veterans, maintain its solvency, and reduce its dependence on taxpayers' funds—without compromising basic program goals.

I, along with the ranking minority member and former chairman of the Committee, Senator MURKOWSKI, and other colleagues on the Veterans' Affairs Committee, have worked very hard over the past several years to make needed improvements in this program and protect it from various threats that could undercut its value to veterans. Thus, for example, our committee has successfully opposed the Reagan administration's repeated proposals to double, triple, and nearly quadruple the current 1-percent fee veterans must pay to use the guaranty. Such dramatic fee increases would have diminished the value of this program for a large number of veterans and would have precluded many from using this important benefit. I also authored legislation, enacted in Public Law 100-198, to make the program exempt from across-the-board reductions under the Gramm-Rudman-Hollings law.

More recently, on October 20, 1988, the Senate passed my bill, S. 2049, enacted into law as Public Law 100-689, which in title III authorized interest-rate reductions to finance vendee loans, established creditworthiness requirements for assumed loans, and expanded VA's authority to use money from the LGRF for certain costs of administering the program.

Mr. President, I note that S. 1158 is substantially similar to homeloan legislation passed by the House on June 6, 1989. This legislation, H.R. 1415, was introduced in the House on March 15, 1989, by Representative HARLEY STAGGERS, who chairs the House Veterans' Affairs Subcommittee on Housing and Memorial Affairs; reported by the House Veterans' Affairs Committee on June 1, 1989; and passed by the full House on June 6, 1989. The House bill is derived directly from H.R. 5221, a bill authored by Representative

MARCY KAPTUR in the 100th Congress and passed by the House late last year. I congratulate Representatives KAPTUR and STAGGERS, as well as the House Committee, for their leadership in this matter.

COMPARISON TO H.R. 1415

Provisions of H.R. 1415, as passed by the House, that are included, with revisions in some cases, in my bill would:

First, establish a new revolving fund to finance the loan guaranty program with respect to loans made after Septemer 30, 1989; the Senate bill titles the fund the Home Loan Guaranty Fund whereas the House bill calls it the Veterans Mortgage Indemnity Fund.

Second, relieve veterans from liability to VA in the event of foreclosure on a VA-guaranteed loan, except in cases of fraud, misrepresentation, or bad faith; the Senate bill adds an exception for cases in which the default is not for reasons beyond the veteran's or assumptor's control.

Third, generally increase the current loan fees from 1 percent to 1.25 percent byt decrease it to 0.75 percent for veterans making a downpayment of 5 percent or more; the Senate bill adds a further half-percentage-point decrease for downpayments of 10 percent or more.

Fourth, require a payment by the Federal Government to the new fund of 0.25 percent of the loan amount for the fiscal year in which the loan is guaranteed and for each of the next 2 years.

Fifth, require the Secretary of the Treasury to invest surplus amounts from the new fund in government securities.

Sixth, continue the current 1-percent fee for vendee loans.

Seventh, continue the fee for assumed loans; the Senate bill would increase the current one half-percent fee to two-thirds of 1 percent and provide indemnification protection for assumptors.

Eighth, require that loan asset sales both with and without recourse be scored as offsetting collections of the fund in which the original loan fee was deposited.

Ninth, extend VA's foreclosed-property acquisition no-bid formula until October 1, 1991.

Tenth, restrict VA as to including the Government's cost of borrowing from net value determinations for purposes of the no bid formula; the House bill would prohibit such inclusion entirely whereas S. 1158 would permit the cost of borrowing to be included but only to the extent that interest costs are incurred to borrow 50 percent of the amount by which the amount that VA would be required to pay in order to acquire a property exceeds the amount of the guaranty.

Eleventh, require that a lender immediately notify VA of its refusal of a veterans' offer of partial payment and the reasons for the refusal.

Mr. President, two significant provisions of S. 1158 have no roots in H.R. 1415—the requirement that the Government pay the loan fee for the veterans with compensable service-connected disabilities and the surviving spouses who are exempt from paying the fee and the provision allowing for the purchase of limited amounts of additional entitlement.

DISCUSSION OF THE BILL

ESTABLISHMENT OF NEW FUND—THE VETERANS HOME LOAN GUARANTY FUND

Mr. President, section 2(a) of S. 1158 would amend chapter 37 of title 38, United States Code, relating to the VA Home Loan Guaranty Program, to add new secton 1824A, entitled "Home Loan Guaranty Fund." This new section would create a new revolving fund—the Home Loan Guaranty Fund, which I will refer to as the Guaranty Fund—to finance operations of the program with respect to loans guaranteed or assumed after September 30, 1989. Thus, the Guaranty Fund would accept deposits of fees collected after September 30, 1989, including both government and borrower contributions and income from VA-acquired properties and from investments of any surplus money in the Guaranty Fund. Payments would be made from the Guaranty Fund to pay the claims of holders of loans made or guaranteed by VA after September 30, 1989. The current Loan Guaranty Revolving Fund would continue to operate for loans originally made before the effective date of the new program. If the Secretary of Veterans' Affairs determines that the new Guaranty Fund contains more money than necessary to meet current requirements, the Secretary of the Treasury must invest the surplus funds in Federal Government securities, but the principal and earnings would remain Guaranty Fund assets.

Establishment of this separate, new fund would allow more accurate evaluation and monitoring of the Loan Guaranty Program as it would be restructured under this bill, unaffected by operations under the current program.

Mr. President, new section 1824A also would provide for Government contributions to the Guaranty Fund of 0.25 percent a year for the first 3 years of any loan made after September 30, 1989.

Under current law, there are no regular Government contributions to the Loan Guaranty Revolving Fund. Rather, the Revolving Fund relies on ad hoc appropriations to meet funding shortfalls. Modest, regular Government contributions, together with slightly increased fees from veterans and assumptors, should help ensure the long-term, stable operation of this important program of such major benefit to our Nation's veterans—in constrast to the uneven, sometimes very large appropriations requirements for maintaining the current program that have threatened the continuing viability of VA loan guaranties as a benefit program.

LOAN FEES

Mr. President, section 2(b) of S. 1158 would amend section 1829 of title 38 generally to raise the current 1-percent guaranty fee to 1.25 percent for VA-guaranteed loans made after September 30, 1989. S. 1158 would provide that when a veteran or eligible surviving spouse makes a 5-percent downpayment the fee is only 0.75 percent. A 10-percent downpayment would reduce the fee further, to 0.25 percent. Current law provides no such incentive for making a downpayment. Home buyers who assume VA-guaranteed home loans made after March 1, 1988 and for which an assumption fee was imposed under section 1814 of title 38 would be required to pay a two-thirds of 1-percent fee on the remaining balance, rather than the current ½ percent. The government would pay the loan fees for veterans with compensable service-connected disabilities and for surviving spouses of veterans who died from service-connected disabilities. Direct VA financing of purchases of VA-owned properties, known as vendee loans, would carry the same 1-percent fee applicable under current law. The fee is not increased because the obligor would not be indemnified—that is, in the case of foreclosure, the obligor would be liable to the VA for any loss not eliminated by the sale of the property.

These basic loan-fee provisions differ from current law and the House bill in three significant ways, as I have pointed out earlier. First, S. 1158 would add an additional incentive category for downpayments of 10 percent by reducing the loan fee even further than the House bill's reduction for 5-percent downpayments. Larger downpayments should reduce the likelihood of default, and thus the cost of these loans to the VA, by increasing the buyer's equity in the home. The graduated fee reductions for downpayments would encourage downpayments, thereby reducing defaults and contributing to the overall viability of the home loan program.

Second, the requirement that VA pay the loan fees, in addition to the regular Government contribution, for disabled veterans or surviving spouses of veterans who died from a service-connected disability—in contrast to the House bill, under which these borrowers would be exempted from the fees—recognizes that the costs of the loans are the same for all borrowers, because some risk of default exists in all cases and recognizes that these costs should be funded even where the

borrower is exempt from paying the fee. I am advised that this provision would increase guaranty fund resources by about $10 million a year.

Third, S. 1158 would increase the loan fee for assumptions by a third, from ½ percent to two-thirds of 1 percent of the remaining balance, would indemnify the assumptor; and would provide for the assumption fee to be deposited in the new guaranty fund. Under H.R. 1415, the fee would not be modified, nor would there be indemnification, and the existing ½-percent assumption fee would be deposited in the current loan guaranty revolving fund for loans originally made before October 1, 1989 and in the new fund—known as the indemnity fund in the House bill—only for loans originally made after September 30, 1989.

LIMITED FEE-ADJUSTMENT AUTHORITY

Mr. President, new section 1829(d) would authorize the Secretary of Veterans' Affairs to make a small adjustment in loan fees under certain circumstances. If the Secretary determines that the guaranty fund faces insolvency within 24 months after a proposed increase would take effect, the Secretary could increase all of the fees uniformly to no more than 120 percent of the respective fee amounts specified in the statute. Before ordering any such increase in any fiscal year, the Secretary first would have to submit to the Senate and House Committees on Veterans' Affairs a report justifying and explaining the proposed increase, at the time the President submits the budget for that fiscal year on the first Monday after January 3 each year. Thus, the Secretary would be required to propose an increase by the time the budget is submitted in early January before ordering an increase to take effect in the upcoming fiscal year, beginning the following October 1. This would give the Congress the opportunity to review and, if it chose to do so, nullify any planned increase.

To assist the Congress in making this review, the Secretary would be required to submit a copy of the report on the increase to the Director of the Congressional Budget Office, who would be required to provide the Committees with CBO's views on the Secretary's report.

The adjustment provision, which has no parallel in current law or the House bill, would provide the means for the Secretary to respond in a carefully limited way to changing economic conditions without the need for new legislation.

INDEMNIFICATION

Mr. President, section 2(c) of S. 1158 would release veterans and surviving spouses who pay a loan fee or for whom VA pays a fee after September 30, 1989, from liability to VA for any loss it incurs as a result of a loan default. Those who assume VA-guaranteed loans and pay the increased assumption fee on or after the effective date of the new program, October 1, 1989, also would receive indemnification against liability to VA.

Veterans who default on a home loan face the prospect of a double trauma—first of losing their homes, then of being pursued by VA as it seeks to recover its losses from paying the guaranty. VA currently collects only 7 percent of the liabilities owed by defaulting VA home loan borrowers. Nevertheless, the threat of this liability can hang over the veteran's head for months—even years—and can delay and complicate the veteran's recovery from the financial catastrophe that already has claimed the family's home. This low collection rate means that indemnification would have little effect on the financial soundness of the home loan program in comparison to the resulting benefit to veterans who have experienced financial reverses, and to their families.

Other statutory loan protection programs, such as the Federal Housing Administration [FHA] loan insurance program, provide insurance against default. Thus, the concept of indemnification has ample precedent.

Forgoing a 7-percent collection rate—the receipts from which would be at least partially offset by the increased fees in the bill—is a small price to pay for the financial and emotional benefits or indemnification for veterans and their families.

This provision includes measures to prevent abuse of indemnification by retaining liability to VA in the case of fraud, misrepresentation, or bad faith by the borrower in obtaining a loan or approval of an assumption of a loan or in connection with the loan default. Also, unlike the House bill, this provision specifically provides for a denial of indemnification to borrowers who default as a result of circumstances not beyond their control.

Unlike the House bill, S. 1158 also would indemnify those who assume VA loans, many of whom are themselves veterans. I will be reviewing the possible impact that the increased assumption fee and the provision for indemnification may have on program funding and operations in an effort to ensure that these provisions are in the best interest of the program.

SALE OF VENDEE LOANS

Mr. President, section 3 of S. 1158 would amend section 1833(a)(3) of title 38 to extend by 1 year, through fiscal year 1990, VA's authority to sell vendee loans either with or without recourse and would require that all proceeds from either type of sale be counted as offsetting collections of the fund under which the original loan was guaranteed.

Current law and the House bill contain provisions that, as of October 1, 1989, effectively would prohibit loan asset sales without recourse. A prohibition on nonrecourse sales was inserted by the House in the legislation enacted as Public Law 100-136 as its price for agreeing to extend temporarily the VA loan fee—which we believed was necessary to protect the revolving fund and which otherwise would have expired on September 30, 1987. A compromise provision, enacted in the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, delayed the nonrecourse-sale prohibition until October 1, 1989.

VA's initial attempt, in 1987, to sell loan assets without recourse failed when VA had to withdraw the offering because bids ranged from only 15 to 65 percent of the loan's par value. Based on this experience, and on the Reagan administration's policy to require, beginning in fiscal year 1988, that all vendee loans be sold without recourse and that a total of $900 million of loan assets be sold during fiscal years 1988, 1989, and 1990, I agreed with my colleagues on the House Committee that restrictions were needed to govern nonrecourse sales. I was very concerned with the Reagan administration's attempts to use the assets of the VA Home Loan Guaranty Program to provide quick cash for one-time reductions of the budget deficit—at the expense of the viability of the home loan program and the veterans who benefit from it, and the administration's attempt to use nonrecourse sales as a means of privatizing the program.

It seemed clear then that VA would be able to sell loan assets without recourse only at very substantial discounts. To make matters worse, in order to increase the value of securities backed by loans purchased from VA without recourse, VA recently has structured these sales so that VA retains almost all the risk of nonpayment of the loans, by taking subordinate certificates as part of the proceeds of the nonrecourse sale. Thus, any revenues achieved through such sales likely could turn out to be less, over the long term, than the revenues from recourse sales.

If the House provision had ensured that nonrecourse sales could be made only if VA obtained fair value for the loans, I probably could have endorsed it. However, as I indicated in my October 1, 1987, statement beginning on page S 13344 of the RECORD, when the Senate reluctantly accepted the total ban on nonrecourse sales in a compromise to keep alive the 1-percent loan fee, I believed the House's total, permanent ban went too far.

I still believe that a permanent prohibition on nonrecourse sales is not sound public policy. There is nothing inherently wrong with nonrecourse sales of loans, as long as the sale price is not substantially discounted from the price VA could obtain for a sale of the same loan with recourse.

S. 1158 would permit both recourse and nonrecourse sales for 1 more year beyond the current cutoff date, but would retain the restrictions and reporting requirements, enacted in December 1987, imposed on all loan asset sales. The delayed prohibition in the current law, which S. 1158 would extend for another year, would provide this administration with an opportunity to demonstrate greater responsibility and appropriate concern for the long-term best interests of the loan guaranty program in conducting loan asset sales.

Mr. President, in fairness to the current administration, I would note that, at least according to VA's financial adviser, Kidder Peabody & Co., the most recent nonrecourse sale of vendee loans, completed on March 23, 1989, produced greater proceeds than the sale of the same loans with recourse would have produced. Although I found this assertion difficult to accept on face value, the 85.03 percent of par that VA received on this nonrecourse sale, without the need for issuance of subordinate certificates, suggests that it is counterproductive for nonrecourse sales to be prohibited altogether.

S. 1158, as does the House bill, also would change the way that loan asset sales are scored for budget purposes by requiring that the proceeds of all sales of loan assets, whether with or without recourse, be counted as offsetting collections of the fund for which the particular loan's fee was collected.

The background on this matter is as follows: In 1987, the Office of Management and Budget, and later the Congressional Budget Office, adopted an illogical, biased approach to scoring recourse-sale proceeds. Instead of counting the proceeds of recourse sales as receipts, as they previously had done, they declared that a recourse sale would be considered to be the equivalent of a loan from the purchaser to the Government. Thus, OMB and CBO now refuse to count recourse-sale proceeds as budgetary receipts. As a consequence, a nonrecourse sale—even one with subordinate certificates—currently has favorable budget scorekeeping results that are denied in the case of a recourse sale.

The approach in S. 1158 and the House bill is more objective than the current OMB-CBO scorekeeping rule; it simply requires that dollars received for both types of sales be treated as receipts when the Government receives them. Thus, S. 1158 would create a level playing field by requiring that the proceeds of both recourse and nonrecourse sales be so counted, rather than continue the CBO/OMB new scorekeeping policy that dictates public policy results based on technical factors rather than assessments of what is in the best interest of veterans and the solvency of the home Loan Guaranty Program.

OPTIONAL INCREASED ENTITLEMENT

Mr. President, section 4 of S. 1158 would amend section 1803(a) of title 38 by allowing veterans to purchase additional entitlement—up to $10,000—for a particular loan, provided the increased guaranty plus any downpayment would not total more than 25 percent of the purchase price. The Secretary could prescribe regulations under which exceptions to the 25-percent limit could be permitted under certain circumstances. The veteran or surviving spouse would pay 0.1 percent of the loan amount for each additional $1,000 of entitlement.

Current home loan guaranty limits generally allow a veteran to purchase a home for up to four times the amount of the VA guaranty, without the need of a downpayment. The current guaranty maximum of $36,000 thus allows a VA borrower to buy a house worth up to $144,000 with no money down. In many parts of the country, this amount cannot buy even a modest-sized home for a veteran and his or her family. Allowing a veteran to purchase an additional $10,000 in loan guaranty would increase to $184,000 the maximum value of a VA-guaranteed home loan purchased without a downpayment.

This provision thus is intended to help make the Loan Guaranty Program better reflect current home prices in certain parts of the country—including my State of California, Alaska, and Hawaii.

The provision prohibiting the veteran or surviving spouse from purchasing additional entitlement beyond the point at which the guaranty plus any downpayment would equal 25 percent of the purchase price is designed to protect the veteran against unreasonable pressure from lenders to increase the guaranty amount beyond the level reasonably necessary to protect the lender. However, the Secretary would be given the authority to prescribe regulations allowing an exception to the 25-percent limitation where the additional entitlement would enable the veteran or surviving spouse to use his or her VA loan guaranty entitlement to acquire a home in areas in which lenders are charging so many points for VA-guaranteed loans that sellers—who must pay the points—generally are unwilling to sell to VA-guaranteed loan borrowers.

NOTIFICATION OF LENDER'S REFUSAL OF PARTIAL PAYMENT

Mr. President, section 5(a) of the bill would amend section 1832(a) of title 38 to require lenders to notify VA when they refuse a veteran's tender of partial payment on a VA-guaranteed loan.

Current law requires lenders to notify VA when a veteran defaults and—except where the lender has a demonstrated record of providing those in default of VA-guaranteed loans with timely and accurate information—also requires VA to counsel defaulting veterans about alternatives to foreclosure. Despite the clear intent of this provision, drastic understaffing in VA regional offices has meant that the counseling requirement too often is all but ignored, according to GAO testimony before the Committees on Veterans' Affairs. Veterans who tender substantial partial payments are in the best position to cure their default. Thus, they are the best candidates for counseling. Unfortunately, current law provides no mechanism for VA to distinguish these veterans from other defaulting veterans. The notification requirement for tenders of partial payments would be a small expansion of current notification procedures and should not greatly burden lenders. This information should, however, provide a means by which overburdened VA counselors can better target their efforts to reduce foreclosures.

COMPUTATION OF NET VALUE

Mr. President, subsection 5(b) of S. 1158 would amend sections 1832(a) and (c) of title 38 to alter the statutory formula VA applies to determine whether it will purchase at foreclosure a home securing a loan on which a veteran has defaulted, by specifying that VA is to consider half of the amount by which the imputed interest cost of the funds necessary to buy the home exceeds the imputed interest cost of paying the guaranty.

Current law does not state specifically whether VA may consider the cost of borrowing funds in determining the net value of a home for purposes of determining whether it will bid on the property at foreclosure. This calculation, known as the no-bid formula, compares the cost of paying the guaranty with the cost of purchasing and reselling the home, to determine which option would be most profitable for VA. The joint explanatory statement accompanying the conference report on the Deficit Reduction Act of 1984, stated that the conferees never intended to permit VA to consider the cost of funds in its no-bid formula. The explanatory statement directed that, if the VA decided to interpret the law to allow the cost-of-funds factor, it notify the Committees on Veterans' Affairs of this intention no later than the February 1 preceding the fiscal year in which it intended to include the cost of funds factor.

The then-Acting Administrator notified the committees on January 30, 1989 of VA's intent to propose regulations to consider the cost of funds in the no-bid formula, and specifically stated in that notification that VA would not implement the proposed regulations until on or after October 1, 1989, in compliance with the language

in the conference joint explanatory statement. On May 16, 1989, the Secretary notified me that VA intends to implement those proposed regulations on August 1, 1989, in direct contravention of the intent of the conferees and his predecessor's written commitment.

H.R. 1415 permanently would bar the Department from considering the cost of funds in calculating net value.

VA's proposed regulation is flawed as a matter of logic, regardless of whether it represents sound policy. The statutory no-bid formula is designed to provide a comparison of two possible courses of action—acquiring the home at foreclosure or simply paying the lender the amount of the guaranty—and to direct VA to follow the more economically advantageous course. The proposed regulation, however, would establish an unbalanced comparision by taking into account the cost of borrowing funds to acquire a home, while completely ignoring the cost of borrowing funds necessary to follow the other possible course—paying the guaranty. S. 1158 would correct this error by requiring that the guaranty amount be subtracted from the total amount necessary to buy the home at foreclosure—the total amount of the indebtedness—before any interest cost is added to the cost of acquiring the home.

Mr. President, S. 1158 also would cut this amount of imputed interest cost in half in order to avoid a drastic change in the number of situations in which VA decides not to bid on a foreclosed property. The Congressional Budget Office estimates that no-bids would increase from 25 percent of foreclosures to 35 percent if the VA proposal were allowed to take effect. Such a radical increase—by 40 percent—in no-bids poses a significant threat of a marked reduction in participation in the VA Loan Guaranty Program, which in turn could reduce significantly the access by veterans to this important entitlement. This is not a risk I believe veterans should be asked to take.

COST

Mr. President, according to the Congressional Budget Office estimate of the costs of the House bill, which appears on pages 18 through 21 of the House committee's report (H. Rept. No. 101-964), the new revolving fund established under the House bill would have a significant unobligated balance through at least fiscal year 1993. However, VA, in its testimony on H.R. 1415 at the April 18, 1989, hearing of the House Veterans' Affairs Committee's Subcommittee on Housing and Memorial Affairs, stated that, according to an analysis of H.R. 1415 by Peat, Marwick, Main, and Co., the new fund would begin showing a deficit in fiscal year 1994 and the deficit "would continue indefinitely."

In response to VA's stated concerns in this respect, I have included in S. 1158 provisions which should bolster both the short-term and long-term solvency of the new fund. These include the requirements that the Government contribute the loan fee on behalf of those who would be exempt from paying it, an increased fee for assumptors—who would, in conjunction with the increase be included in the indemnification provision—a limited opportunity for veterans to purchase additional entitlement in certian cases, and authority for the Secretary to make a limited adjustment in the fees.

CONCLUSION

Mr. President, I believe that we must ensure that VA's Home Loan Program continues to meet the needs of our Nation's veterans and help them—as it already has helped over 13 million veterans and their families—achieve the American dream of owning their own homes, a dream many veterans would never realize without a VA home loan guaranty.

CHINESE STUDENTS IN RHODE ISLAND DEMAND DEMOCRACY IN CHINA

Mr. PELL. Mr. President, last Friday, June 9, I had an emotional meeting with Chinese students attending Brown University in Providence. These students were justifiably outraged and saddened by the brutal horror of the mass murders committed against their fellow students in Beijing on June 4. Their grief and outrage were tempered only by the pride and admiration they felt about the courage and determination demonstrated by their martyred compatriots.

The hard liners in Beijing appear to have prevailed in their effort to suppress the will of the Chinese people, but they may yet reap a whirlwind sowed by their descent to mindless brutality. The cleansing breeze of democracy, once stirred, will not easily be stifled.

The gathering of students and their supporters in Tiananmen Square reminded me very much of the civil rights March on Washington in 1963. At that time, black Americans came together on the Mall to dramatize their quest for justice and freedom. Unlike Deng Xiaoping, President Kennedy immediately took up the cause of the civil rights demonstrators as his own, and our Nation became stronger as a result. If only Deng had done the same, I believe he would have found that China, also, would have been strengthened.

The students with whom I met last week left with me a statement they prepared expressing their heart-felt support for democracy, freedom and human rights in China. They also gave me a copy of the Deng regime's grotesquely falsified version of the events that took place in Tiananmen Square.

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

There being no objection, the documents were ordered to be printed in the RECORD, as follows:

STATEMENT

The world has recently witnessed the government of Deng-Li-Yang resorting to brutal fascistic force to suppress a peaceful pro-democracy movement in China.

We, the Chinese scholars and students at Brown University, issue the following statements:

(1) As Chinese citizens, we do not recognize the Deng-Li-Yang regime, we will no longer cooperate with the present government in any aspect.

(2) We firmly support the students, workers, and all of the people in China fighting for freedom, democracy, and human rights.

(3) We appeal to all countries and people throughout the world who love life, democracy, freedom, and human rights to support the Chinese people and fight with us for a more peaceful and beautiful world.

THE OFFICIAL STORY

(This is a free translation of an article that appeared in June 6th's People's Daily overseas edition entitled: "Communist Party's Center Committee, Chinese Government: An open letter to Communist Party members and Chinese Citizens.")

Members of the Communist Party, People of every ethnic group: Today, the situation in the nation's Capital of Beijing is severe. For more than a month a extremely small group of ill-intentioned people, have purposely created chaos. Starting in the early morning of June 3rd, this chaos has already developed into an astonishing anti-revolutionary violent riot.

An extremely small number of rioters incited some people who did not know the real situation to create a number of violent incidents. They blocked troops enforcing martial law from entering the city and Tiananmen Square. They stoned and set on fire more than one hundred military vehicles and buses, they insulted, beat, and kidnaped officers, soldiers and security police personnel. They stole guns, ammunition and other military equipment; attacked sensitive installations such as government compounds, the People's Hall, the central T.V. station, the security police station, and looted stores and burned police traffic control posts. They also cruelly, savagely killed tens of PLA soldiers and armed policemen, and then even hung the bodies of the soldiers that they had killed from highway overpasses. The objective of the riots is to deny the Party the leadership of the country, oppose the socialist system, and to overthrow the People's Republic of China. They shouted publicly "Take weapons, overthrow the government", "Kill forty seven million communist cult members". The plotters and organizers of this anti-revolutionary riot are extremely small number of people, they are mainly people who for a long time have harbored bourgeois-liberal ideas, making political plots, establishing contact with overseas and foreign hostile forces, and providing state and Party secrets to illegal organizations. The people participating in the criminal acts of beating, breaking, robbery and arson are mainly uneducated released prison inmates, political gang members, fol-

lowers of the "gang of four" and other social garbage. In short, they are a group of anti-revolutionaries who betrayed the Communist Party and Socialist system. As everybody knows, for a month, the government has taken a tolerant, controlled attitude to the riot created by this extremely small number of people have being inciting the masses who do not know the reality. However, this extremely small number of people have taken this as a sign of weakness on the part of government, and have, therefore, accelerated their movement, finally starting this anti-revolutionary riot.

Facing this serious situation, the Chinese People's Liberation Army, enforcing martial law under intolerable conditions, took decisive action, in order to put to an end to this riot. In order to avoid hurting innocent people, beginning on the afternoon of June 3rd, the (Army) has repeatedly issued emergency warnings, convincing a majority of college students and city residents not to interfere with the military's enforcement of martial law. During the operation, the army again made maximum effort to avoid bloodshed. However, a few violent rioters ignored all these measures, furiously attacking the army. In this situation, some casualties occurred, most of them, soldiers and armed policeman. This is what we did not want to see to happen. However, without taking these actions, the riot could not be put to an end, which would have caused even greater bloodshed. The People's Republic the result of the sacrifice of tens of millions of revolutionaries might have been overthrown, the results of the construction of the socialist system and ten years of reform could have been ruined. The whole country could have been put under a White terror. Therefore, decisively squelching this riot is a totally justified action, and is a response to the will of Beijing's residents and the people of the whole country, and is in their fundamental interest.

With the heroic struggle of officers and soldiers of the People's Liberation Army, Army police and Security Force, and with the active support and cooperation of the majority of people and young students, we have won the first step in squelching this riot. But we must calmly realize that the anti-revolutionary riot has not been completely put to an end. An extremely small number of violent elements are not going to concede their defeat. They will look for occasions to provoke incidents. All comrades of the Party and all people must be alert, keep your eyes open, unite together, continue the fight against these elements, defend the fruits of revolution, construction, and reform. For as long as they have the audacity to continue their sabotage, we should fight them. We have the guidance of Marist-Leninist thought, a strong people's democratic government, tens of millions of members of the Communist Party, millions of soldiers of the People's Liberation Army loyal to the Party and the people, the support of the masses of factory workers, peasants, intellectuals, and other democratic political parties and partriots from all professions, we have the ability and the confidence to definitively defeat them, and definitively put this riot to an end.

All members of the Communist Party, all people and patriots should definitively answer the call of the Party and the government, distinguish right from wrong, attend to the interests of the country, quickly start actions, stand up to fight this extremely small number of people who provoked this violent riot, and not do any thing which will hurt friends and please the enemies. You should be confident that the Party and the government have the ability to stop this turmoil. Members of the Communist Party should play a leading role, and be examples. All managerial persons and employees should remain at your post, continue production, guarantee provisioning of the city, maintain social order and security, educate young students and masses of people, refrain from spreading and believing rumors, not pursue any kind of mobilizations, fight for a stable and peaceful social environment, united in pushing forward the construction and continuation of reform.

MESSAGES FROM THE PRESIDENT RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on June 9, 1989, during the recess of the Senate, received a message from the President of the United States submitting sundry nominations; which were referred to the appropriate committees.

(The nominations received on June 9, 1989, 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. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 4:38 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 joint resolution, without amendment:

S.J. Res. 63. Joint resolution designating June 14, 1989, as "Baltic Freedom Day," and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 16. Concurrent resolution calling on the Government of the Socialist Republic of Vietnam to expedite the release and emigration of "reeducation" camp detainees.

ENROLLED BILLS SIGNED

The PRESIDENT pro tempore (Mr. BYRD) reported that on today, June 13, 1989, he had signed the following enrolled bills, which had previously been signed by the Speaker of the House:

H.R. 2. An act to amend the Fair Labor Standards Act of 1938 to restore the minimum wage to a fair and equitable rate, and for other purposes; and

H.R. 964. An act to correct an error in Private Law 100-29 (relating to certain lands in Lamar County, AL).

REPORTS OF COMMITTEES RECEIVED DURING RECESS

Under the authority of the order of the Senate of June 8, 1989, the following reports of committees were submitted on June 12, 1989:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 341. A bill to amend the Federal Aviation Act of 1958 to prohibit discrimination against blind individuals in air travel (Rept. No. 101-45).

By Mr. PELL, from the Committee on Foreign Relations, without amendment:

S. 1160. An original bill to authorize appropriations for fiscal year 1990 for the Department of State, the U.S. Information Agency, the board for International Broadcasting, and for other purposes (Rept. No. 101-46).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 123. A bill to provide financial assistance to States and localities for high quality early childhood development programs for prekindergarten children, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FORD, from the Committee on Rules and Administration, without amendment:

S. 619. A bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr. in the District of Columbia (Rept. No. 101-47).

By Mr. BENTSEN, from the Committee on Finance, without amendment:

S. 1164. An original bill to authorize appropriations for fiscal year 1990 for the Office of the U.S. Trade Representative, the U.S. International Trade Commission, and the U.S. Customs Service (Rept. No. 101-48).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 673. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act to authorize appropriations for fiscal years 1990 and 1991, and for other purposes (Rept. No. 101-49).

By Mr. INOUYE, from the Select Committee on Indian Affairs, without amendment:

H.R. 881. A bill to provide for restoration of the Federal Coquille Tribe of Indians and the individual members consisting of the Coquille Tribe of Indians, and for other purposes (Rept. No. 101-50).

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. SHELBY:

S. 1161. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for dividends paid by corporations; to the Committee on Finance.

By Mr. KOHL (for himself and Mr. CONRAD):

S. 1162. A bill to amend the Congressional Budget Act of 1974 to require the Committees on the Budget to adopt the economic and technical assumptions of the Congressional Budget Office in preparing the concurrent resolution on the budget for a fiscal year; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977 with instructions that if one committee reports, the other committee has 30 days of continuous session to report or to be discharged.

By Mr. HATCH:

S. 1163. A bill to amend the District of Columbia Code to limit the length of time for which an individual may be incarcerated for civil contempt in a child custody case in the Superior Court of the District of Columbia and to provide for expedited appeal procedures to the District of Columbia Court of Appeals for individuals found in civil contempt in such case; to the Committee on Governmental Affairs.

By Mr. BENTSEN, from the Committee of Finance:

S. 1164. An original bill to authorize appropriations for fiscal year 1990 for the Office of the U.S. Trade Representative, the U.S. International Trade Commission, and the U.S. Customs Service; placed on the calendar.

By Mr. GLENN (for himself and Mr. MCCAIN):

S. 1165. A bill to provide for fair employment practices in the Senate and the House of Representatives; to the Committee on Governmental Affairs.

By Mr. LEVIN (for himself and Mr. RIEGLE):

S. 1166. A bill to correct the tariff classification of certain chipper knife steel products; to the Committee on Finance.

By Mr. MITCHELL (for himself and Mr. COHEN):

S. 1167. A bill to fund the Muskie Archives, and for other purposes; to the Committee on Labor and Human Resources.

Mr. Mr. KENNEDY:

S. 1168. A bill to amend the Internal Revenue Code of 1986 to assure access to health insurance for self-employed individuals and to simplify rules governing the inclusion in gross income of benefits provided under discriminatory group health plans; to the Committee on Finance.

By Mr. ROTH:

S. 1169. A bill to provide administrative procedures for noncontroversial tariff suspensions; to the Committee on Finance.

By Mr. INOUYE (for himself, Mr. ADAMS, and Mr. SIMON):

S. 1170. A bill to amend the Federal Aviation Act of 1958 to provide for the establishment of limitations on the duty time for flight attendants; to the Committee on Commerce, Science, and Transportation.

By Mr. DOLE:

S. 1171. A bill entitled the "ESOP Reform Act of 1989"; to the Committee on Finance.

By Mr. MACK:

S. 1172. A bill to authorize a certificate of documentation for a vessel; to the Committee on Commerce, Science, and Transportation.

By Mr. CHAFEE (for himself, Mr. BAUCUS, Mr. DANFORTH, Mr. WALLOP, Mr. RIEGLE, Mr. LAUTENBERG, Mr. BOREN, Mr. SYMMS, Mr. DURENBERGER, Mr. ROTH, Mr. GRASSLEY, Mr. HEINZ, Mr. LIEBERMAN, Mr. GORTON, Mr. CRANSTON, and Mr. MCCAIN):

S. 1173. A bill to amend the Internal Revenue Code of 1986 with respect to the allocation of research and experimental expenditures; to the Committee on Finance.

By Ms. MIKULSKI:

S.J. Res. 155. Joint resolution designating June 23, 1989, as "United States Coast Guard Auxiliary Day"; to the Committee on the Judiciary.

By Mr. CRANSTON (for himself and Mr. WILSON):

S.J. Res. 156. Joint resolution to commemorate the 50th anniversary of the National Aeronautics and Space Administration Ames Research Center; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MITCHELL (for himself and Mr. DOLE):

S. Res. 144. Resolution relating to the commemoration of the bicentennial of the Senate of the United States; considered and agreed to.

By Mr. PRESSLER (for himself, Mr. DOMENICI, Mr. D'AMATO, and Mr. DOLE):

S. Con. Res. 43. Concurrent resolution expressing the grave concern of the Congress regarding human rights violations in the Socialist Federal Republic of Yugoslavia; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SHELBY:

S. 1161. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for dividends paid by corporations; to the Committee on Finance.

ALLOWING A DEDUCTION FOR DIVIDENDS PAID BY CORPORATIONS

Mr. SHELBY. Mr. President, I introduce today a bill that would amend the Internal Revenue Code of 1986 to provide for a deduction for corporations for dividends paid during the taxable year. This deduction would be to corporate adjusted taxable income and would be for the entire amount of dividends paid in that year.

Mr. President, this legislation is intended to help balance the scales in the realm of corporate finance. Currently the Tax Code bias toward debt promotes leveraged buy outs by encouraging the issuance or assumption of debt and discouraging the issuance of equity. Corporations may deduct from adjusted taxable income the amount of interest paid each year on debt, while dividends must be paid in after-tax dollars. This double taxation of corporate earnings effectively makes dividends, and thus equity, far more expensive than corporate debt.

For this reason, the rash of corporate restructurings that has occurred over the past several years has resulted in a steady decrease in the issuance of equity and a dramatic increase in the issuance of debt. Alan Greenspan, Chairman of the Federal Reserve, recently testified before the House Ways and Means Committee that the 1980's has been characterized by the retirement of substantial amounts of equity, more than $500 billion since 1983, most of which was financed by borrowing.

Chairman Greenspan continues by noting that the "accompanying increase in debt has resulted in an appreciable rise in leverage ratios for many of our large corporations." Business Week estimates that the debt of nonfinancial companies has nearly doubled in the last 6 years, to $1.8 trillion.

Mr. President, I am not a foe of corporate restructuring. I believe that in many cases, takeovers, hostile or friendly, result in beneficial streamlining and increased efficiencies that make U.S. products and services more competitive in the global marketplace. Takeovers prune businesses or complacent management and unwidely bureaucracies and put pressure on management to adopt cost-efficient, competitive labor and production strategies.

However, I am concerned over the mounting debt burden on the shoulders of corporate America. While the aggregate debt-equity ratios of corporations have increased sharply, the ability of corporate America to service this debt is decreasing dramatically. The current ratio of gross interest payments to corporate cash-flow is approximately 35 percent. This is similar to the peak level in 1982, when interest rates were much higher and profits much slimmer. This current high, however, comes at a time when profits have been handsome and interest rates reasonable. What does this augur for the next cyclical recession?

The recent surge in debt is concentrated; a Morgan Stanley report states that 95 percent of the increase in net interest outlays is concentrated in industry sectors that account for 30 percent of gross national product. Interest outlays for the three industries—nondurables manufacturing, public utilities, and services—have risen at a rate of 10 percent per year, while net interest for the remainder of the economy has risen at the modest rate of 1.4 percent per year.

Morgan Stanley notes that two of these three sectors are less sensitive to recessionary pressures. Demand for

utilities and services remains fairly constant during economic downturns but the same is not true for the manufacturing sector. Alan Greenspan estimates in his testimony that roughly two-fifths of recent mergers and acquisitions have taken place in cyclically sensitive industries which are more apt to experience problems during a recession.

We cannot know until such cyclical downturn arrives what consequences will befall our economy. The rising interest rates and narrower profit margins that characterize a recession, associated with the inordinately high debt-equity ratios of sectors of corporate America could result in record defaults and a severely sharpened recession.

The impact of widespread default on the holders of corporate debt could be catastrophic. Chairman Greenspan, characteristically succinct, indicates that the Federal Reserve is concerned over the increasing share of the restructuring loans made by commercial banks and admits that massive failures of these loans could have broad ramifications.

Other pundits are less diplomatic. Barron's ran an article last December hailing LBO loans as the son of LDC's or rather, this decade's popular means for banks to chase high returns at the expense of high risk. Merger-related loans held by banks have increased from a total of $3 billion in early 1984 to a total of $115 billion in October 1988. Pending yearend deals brought this total to approximately $150 billion.

This loan increase phenomenon is, in part, due to innovation in the capital market place. The improvements and growth of the loan-sale market and the increased presence of foreign banks in the U.S. market have made it easier for banks to participate in the mergers and acquisitions business. However, the amount of LBO loans as a percentage of bank equity is reaching questionable proportion.

Barron's reported that manufacturers Hanover's LBO exposure equaled 64 percent of equity, while Bank of America's LBO loans totaled 71 percent of equity and Wells Fargo's LBO loans equaled a whopping 135 percent of equity. These numbers suggest the need for limits on LBO loan participation by banks. I believe that limits on the participation of banks, and thus the ultimate liability to the deposit insurer should be examined in depth by Congress and the banking regulators. However, this subject should be addressed in separate legislation.

I offer this measure today with the intention that it might serve as a catalyst for debate. Providing for the deductibility of dividends is not revenue neutral; to the contrary, providing for the full deductibility of dividends would cost the Federal Government an annual estimated $20 to $25 billion in lost tax revenue. I do not offer an alternative source of revenue; and in this ERA of big budget deficits, I do not foresee passage of legislation that results in such tremendous cost to the Government.

However, it is time to begin the effort to remove the bias toward debt that the Internal Revenue Code currently holds. While I do not want to manipulate or restrict the dynamics of the market place, I firmly believe that we should not encourage through the Internal Revenue Code the assumption of debt over the issuance of equity. Corporate restructuring for the sake of efficiencies and increased productivity is right; corporate restructuring for the sake of transactional and legal fees is wrong. I urge my colleagues to consider this issue.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1161

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

SECTION 1. DIVIDEND PAID DEDUCTION.

(a) GENERAL RULE.—Part VIII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to special deductions for corporations) is amended by striking out the table of sections and section 241 and inserting in lieu thereof the following:

"Subpart A. Dividend paid deduction.

"Subpart B. Dividend received deduction.

"Subpart C. Miscellaneous corporate deductions.

"SEC. 230. ALLOWANCE OF SPECIAL DEDUCTIONS.

"In addition to the deductions provided in part VI (section 161 and following), there shall be allowed as deductions in computing taxable income the items specified in this part.

"Subpart A—Dividend Paid Deduction

"Sec. 231. Dividend paid deduction.

"Sec. 232. Qualified dividend account.

"Sec. 233. Ineligible corporations.

"Sec. 234. Special rules.

"SEC. 231. DIVIDEND PAID DEDUCTION.

"(a) ALLOWANCE OF DEDUCTION.—In the case of a corporation, there shall be allowed as a deduction an amount equal to the dividends paid by such corporation during the taxable year.

"(b) LIMITATION BASED ON AMOUNT IN QUALIFIED DIVIDEND ACCOUNT.—The amount of the dividends paid during any taxable year which may be taken into account under subsection (a) shall not exceed the amount in the corporation's qualified dividend account as of the close of such taxable year determined after the application of section 232(b)(1) for the taxable year but before the application of section 232(b)(2) for such taxable year.

"SEC. 232. QUALIFIED DIVIDEND ACCOUNT.

"(a) ESTABLISHMENT OF ACCOUNT.—Each corporation shall establish a qualified dividend account. The opening balance of such account shall be zero.

"(b) ADJUSTMENTS TO ACCOUNTS.—As of the close of each taxable year beginning after December 31, 1989, the qualified dividend account—

"(1) shall be increased by the adjusted taxable income of the corporation for the taxable year, and

"(2) shall be reduced by the amount of the dividends paid by the corporation during the taxable year to the extent the amount so paid does not exceed the limitation of section 231(c).

"(c) ADJUSTED TAXABLE INCOME.—For purposes of this section—

"(1) IN GENERAL.—The term 'adjusted taxable income' means taxable income adjusted as provided in this subsection.

"(2) ADJUSTMENT FOR CERTAIN QUALIFYING DIVIDENDS.—Taxable income shall be increased by the deduction allowed under section 243 with respect to that portion of any qualifying dividend (as defined in section 243(b)(1)) for which such deduction is determined at a rate of less than 100 percent. Similar rules shall apply in the case of dividends for which deductions are allowable under section 245(b).

"(3) ADJUSTMENT FOR TAX CREDITS.—

"(A) IN GENERAL.—Taxable income shall be reduced by the deduction equivalent of the tentative nonrefundable credits for the taxable year.

"(B) DEDUCTION EQUIVALENT.—For purposes of subparagraph (A), the deduction equivalent of the tentative nonrefundable credits for any taxable year is the amount which (if allowed as a deduction for the taxable year) would reduce the tax liability (as defined in section 26(b)) for the taxable year by an amount equal to the tentative nonrefundable credits.

"(C) TENTATIVE NONREFUNDABLE CREDITS.—For purposes of this paragraph, the term 'tentative nonrefundable credits' means the amount of the credits which would have been allowable under part IV of subchapter A of this chapter for the taxable year (other than the credit allowable under section 34) if no deduction were allowable under section 231.

"(4) ADJUSTMENT FOR CORPORATE MINIMUM TAX.—If tax is imposed by section 55 on the corporation for any taxable year, taxable income for the succeeding taxable year shall be increased by an amount equal to $^{34}/_{100}$ of the amount of tax so imposed.

"(5) DIVIDEND PAID DEDUCTION NOT TAKEN INTO ACCOUNT.—Taxable income shall be determined without regard to the deduction allowed under section 231.

"SEC. 233. INELIGIBLE CORPORATIONS.

"(a) GENERAL RULE.—No deduction shall be allowed under section 231 with respect to any dividend paid by—

"(1) a regulated investment company,

"(2) a real estate investment trust,

"(3) an S corporation,

"(4) any organization taxable under subchapter T of this chapter (relating to cooperative organizations), or

"(5) a FSC or DISC.

"(b) FOREIGN CORPORATIONS.—In the case of a foreign corporation—

"(1) no deduction shall be allowed under section 231 for dividends paid by such corporation during any taxable year unless the corporation meets the requirements of section 245(a) for such taxable year,

"(2) only adjusted taxable income effectively connected with the conduct of a trade or business in the United States and attributable to the uninterrupted period referred

to in section 245(a) shall be added to the qualified dividend account, and

"(3) any distribution shall be treated as made ratably out of income effectively connected with the conduct of a trade or business in the United States and other income.

"SEC. 234. SPECIAL RULES.

"(a) CERTAIN DISTRIBUTIONS NOT TREATED AS DIVIDENDS.—For purposes of this subpart, the term 'dividend' does not include—

"(1) any distribution in redemption of stock, in liquidation, or in a reorganization (whether or not such distribution is treated as a distribution to which section 301 applies), and

"(2) any dividend described in section 244 (relating to dividends received on certain preferred stock).

"(b) DEDUCTION NOT TAKEN INTO ACCOUNT FOR PURPOSES OF CERTAIN LIMITATIONS BASED ON TAXABLE INCOME.—For purposes of sections 246(c), 613, 613A, and 593, taxable income shall be determined without regard to the deduction allowed under section 231.

"(c) TREATMENT OF DIVIDENDS RECEIVED BY 5-PERCENT TAX-EXEMPT SHAREHOLDERS.—

"(1) IN GENERAL.—For purposes of part III of subchapter F (relating to taxation of unrelated business income of certain exempt organizations), any dividend received by a tax-exempt organization from a corporation in which such organization is a 5-percent shareholder shall be treated as unrelated business taxable income to the extent of the amount of the deduction allowable under section 231 to such corporation with respect to such dividend. Except as provided in regulations, the amount of such deduction shall be determined on the basis of the return filed by the corporation for the taxable year.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) 5-PERCENT SHAREHOLDER.—The term '5-percent shareholder' means any tax-exempt organization which owns (or is considered as owning within the meaning of section 318)—

"(i) 5 percent or more (by value) of the outstanding stock of the corporation, or

"(ii) stock possessing 5 percent or more of the total combined voting power of all stock of the corporation.

"(B) TAX-EXEMPT ORGANIZATION.—The term 'tax-exempt organization' means any organization which is exempt from the tax imposed by this chapter.

"(C) RELATED ENTITIES.—A tax-exempt organization and 1 or more other tax-exempt organizations which have—

"(i) significant common purposes and substantial common membership, or

"(ii) directly or indirectly substantial common direction or control, shall be treated as 1 tax-exempt organization for purposes of this paragraph.

"(d) TREATMENT OF SUBSEQUENT ADJUSTMENTS.—If there is any adjustment which affects the amount of the adjusted taxable income of a corporation for any taxable year (whether by reason of any carryback to such taxable year or otherwise) for purposes of this subpart and subpart B, the amount of such adjustment shall be treated as made of the close of such taxable year.

"(e) ALLOCATION OF QUALIFIED DIVIDEND ACCOUNT IN CORPORATE SEPARATIONS, REORGANIZATIONS, AND REDEMPTIONS.—Adjustments similar to the adjustments provided in subsection (h) or (n)(7) of section 312 shall be made to the qualified dividend account in the case of a transaction described in either of such subsections.

"(f) MUTUAL LIFE INSURANCE COMPANIES.—

"(1) GENERAL RULE.—In the case of a mutual life insurance company, for purposes of this subpart, 80 percent of the differential earnings amount (as defined in section 809(a)(3)) shall be treated as a dividend paid to a shareholder.

"(2) REGULATIONS.—The Secretary may prescribe regulations applying rules consistent with this subpart to mutual life insurance companies. Such regulations may include rules treating an appropriate portion of the recomputed differential earnings amount (as defined in section 809(f)(3)) as an adjustment to the amount described in paragraph (1).

"Subpart B—Dividend Received Deduction

"Sec. 243. Dividends received by corporations.

"Sec. 244. Dividends received on certain preferred stock.

"Sec. 245. Dividends received from certain foreign corporations.

"Sec. 246. Rules applying to deductions for dividends received.

"Sec. 246A. Dividends received deduction reduced where portfolio stock is debt financed.

"Sec. 247. Dividends paid on certain preferred stock of public utilities."

(b) COMPENSATORY WITHHOLDING TAX ON DIVIDENDS PAID TO NONRESIDENT ALIENS OR FOREIGN CORPORATIONS.—

(1) GENERAL RULE.—Subpart C of part II of subchapter N of chapter 1 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 898. ADDITIONAL TAX ON DIVIDENDS TO REFLECT DIVIDEND PAID DEDUCTION.

"(a) GENERAL RULE.—In addition to any tax imposed by section 871 or 881, there is hereby imposed a tax equal to the applicable percentage of the dividends received from sources within the United States by a nonresident alien individual or foreign corporation.

"(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage is 30.4.

"(c) TAX NOT TO APPLY TO SHAREHOLDER'S EFFECTIVELY CONNECTED ITEMS.—The tax imposed by this section shall not apply to any dividend to the extent such dividend is effectively connected with the conduct of a trade or business by the shareholder within the United States.

"(d) CORRESPONDING INCREASE IN WITHHOLDING TAX.—In the case of any dividend subject to tax under subsection (a), the tax imposed by section 1441 or 1442 (as the case may be) shall be increased by an amount equal to the applicable percentage of such dividend.

"(e) EXCEPTION FOR CERTAIN TREATY COUNTRIES.—The tax imposed by subsection (a) shall not apply to any dividend paid to a resident or corporation of a foreign country during any period—

"(1) in which an income tax treaty between such country and the United States is in effect, and

"(2) during which there is in effect a certification by the Secretary that—

"(A) such income tax treaty has adequate provisions to prevent treaty shopping, and

"(B) if such foreign country imposes an income tax comparable to the tax imposed by this subtitle and grants relief from such tax to its residents, such country grants relief equivalent to that provided in section 231 with respect to dividends paid to United States persons.

The requirements of paragraph (2) shall not apply to dividends paid before January 1, 1992."

(2) CLERICAL AMENDMENT.—The table of sections for subpart C of part II of subchapter N of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 898. Additional tax on dividends to reflect dividend paid deduction."

(c) SECTION 381 TO APPLY TO QUALIFIED DIVIDEND ACCOUNT.—Subsection (c) of section 381 (relating to items of the distributor or transferor corporation) is amended by adding at the end thereof the following new paragraph:

"(27) QUALIFIED DIVIDEND ACCOUNT.—Under regulations prescribed by the Secretary, the acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and subpart A of part VIII of subchapter B of this chapter) the qualified dividend account of the distributor or transferor corporation."

(d) CLERICAL AMENDMENT.—Part VIII of subchapter B of chapter 1 is amended by inserting after section 247 the following:

"Subpart C—Miscellaneous Provisions

"Sec. 248. Organizational expenditures.

"Sec. 249. Limitation on deduction of bond premium on repurchase.

"Sec. 250. Certain payments to the National Railroad Passenger Corporation."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to dividends paid during taxable years of payor corporations beginning after December 31, 1989.

By Mr. KOHL (for himself and Mr. CONRAD):

S. 1162. A bill to amend the Congressional Budget Act of 1974 to require the Committees on the Budget to adopt the economic and technical assumptions of the Congressional Budget Office in preparing the concurrent resolution on the budget for a fiscal year; pursuant to the order of August 4, 1977, referred jointly to the Committee on the Budget and the Committee on Governmental Affairs.

CONGRESSIONAL BUDGET ACT AMENDMENTS

Mr. KOHL. Mr. President, I am here today to introduce a bill. I call it the honest economic assumptions bill.

Mr. President, the budget is the most important work of Congress. It represents our view of the country and it sets out priorities for the future. How we put that budget together is, therefore, very important. It needs to be done honestly.

Economic assumptions, Mr. President, are at the very foundation of any budget we construct. Assumptions about interest rates and economic growth will determine how much money we have to spend on programs. In the past, we have manipulated these economic assumptions to hide the magnitude of our deficits. I believe that this must stop.

We need to stick with honest numbers, not subject to manipulation by anyone. There is one agency that can do this and that is the Congressional

Budget Office. The CBO is a nonpartisan economic forecasting office and it is respected by all Members of both parties.

The CBO may not always be right, Mr. President, because forecasting is a very inexact science. But theirs will represent an objective projection that is not subject to influence from any party.

I am honored to be joined in introducing this bill by Senators CONRAD and ROBB. Senator CONRAD has carried this torch ever since he arrived in this body. And Senator ROBB has already demonstrated leadership on this issue in his work on the Budget Committee and elsewhere.

This bill is not perfect. There are many ways it could be improved. And I look forward to hearing suggestions that anyone might have.

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

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

S. 1162

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (g) of section 301 of the Congressional Budget Act of 1974 is amended to read as follows:

"(g) ECONOMIC ASSUMPTIONS.—

"(1) Subject to periodic revision based on changed economic conditions or technical estimates, determinations under titles III and IV for any fiscal year shall be based upon the economic and technical assumptions of the Congressional Budget Office.

"(2) It shall not be in order in the Senate or the House to consider any concurrent resolution on the budget for a fiscal year, or any amendment thereto, or any conference report thereon, that sets forth amounts and levels that are not determined in accordance with paragraph (1). A point of order under this paragraph may be waived or suspended only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

"(3) The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall clearly set forth the economic assumptions upon which such joint statement and conference report are based.".

Mr. CONRAD. Mr. President, I am pleased to join with Senator KOHL to introduce S. 1162 today. This bill is a very simple amendment to the Budget Act. It requires that preparation of the budget resolution be based on the economic and technical estimates prepared by the Congressional Budget Office.

As North Dakota State Tax Commissioner I was responsible for the revenue forecasts for the State. The one thing we could always be sure of was that whatever we forecast, it would be wrong. The goal was to be "least wrong". I believe that should be the goal of Congress, also. Congress should try to minimize the error, or be "least wrong" when implementing its budget decisions. Over the last several years, CBO projections have consistently been the closest to the actual budget deficit in its forecasts.

Since 1982, OMB has missed the deficit estimate by $296 billion. CBO has missed the target by $205.

This estimating difference in forecasting tells me two things: First, forecasting is a very complicated process and we can't hope to be perfect; and second, because it is so complicated, Congress should base its decisions on projections from the agency that is correct most often.

Given the track record of the two agencies, one would have to ask why Congress would ever choose to use the estimates from a partisan executive agency that is less accurate than its own agency. The answer is obvious and we have taken full advantage of those easier targets over the years. However, I believe the tough decisions must be made now. Putting them off does not make them easier.

As many in this Chamber know, I believe very strongly that Congress should make those decisions, reduce the budget deficit and set a more positive course for the Nation. I am encouraged that there may be some movement in that direction. The last budget agreement required that negotiations begin immediately on the fiscal year 1991 budget. If Congress chooses to honor that mandate we will have the opportunity to make significant progress on the budget deficit. However, the progress will be a mirage if Congress does not use credible underlying assumptions.

I urge Congress to favorably consider S. 1162 and bring credibility back to the budget process.

By Mr. HATCH:

S. 1163. A bill to amend the District of Columbia Code to limit the length of time for which an individual may be incarcerated for civil contempt in a child custody case in the Superior Court of the District of Columbia and to provide for expedited appeal procedures to the District of Columbia Court of Appeals for individuals found in civil contempt in such a case; to the Committee on Governmental Affairs.

LIMITING THE LENGTH OF TIME OF INCARCERATION FOR CIVIL CONTEMPT IN A CHILD CUSTODY CASE

Mr. HATCH. Mr. President, today I am introducing legislation which would amend the District of Columbia Code to limit to 1 year the length of time for which an individual may be incarcerated for contempt of court in a child custody case in the Superior Court of the District of Columbia. Currently there is no statutory limit.

INTRODUCTION: DANGERS OF THE CONTEMPT POWER

The contempt power is a significant tool for judges seeking to enforce their orders. Many commentators, and some courts, have noted that it is uniquely dangerous, since in civil contempt proceedings a judge has almost unfettered discretion. See, for example, Martineau, "Contempt of Court: Eliminating the Confusion Between Civil and Criminal Contempt," 50 U. Cin. L. Rev. 677 (1981).

Proceedings for criminal contempt include virtually all the protections extended to other criminal defendants: The contempt must be proven beyond a reasonable doubt; the defendant cannot be required to incriminate himself; double jeopardy is prohibited; the offense is pardonable; the accused is presumed innocent; and so on. Note, "Modern Discussion of a Venerable Power: Civil Versus Criminal Contempt and its Role in Child Support Enforcement: *Hicks* v. *Feiock,*" 22 Creighton L. Rev. 163, 170-71 (1988). Proceedings for civil contempt, however, lack many of these protections; the standard of proof is lower, for example, and the contemnor has no right to a jury trial. Id. at 171.

Clearly, the courts need sufficient independent authority to conduct their business and enforce their judgments, including the power to punish for contempt. But the broad civil contempt power must be exercised with prudence and self-restraint. Like any other power exercised by a government official, it can be abused. Any abuse of the civil contempt power is a very serious matter, for a civil contemnor may be subject to virtually unlimited fines and indefinite incarceration. Furthermore, the contempt hearing will be conducted by the very judge whose authority the contemnor challenges.

It is said that the contemnor has the jailhouse keys in his or her own hands. *In re Nevitt,* 117 F. 448, 461 (8th Cir. 1902), cited in *In Re Grand Jury Investigation,* 600 F.2d 420, 422-23 (3d Cir. 1979). In other words, the contemnor will be freed as soon as he or she complies with the court's order. However, in one poignant context this truism rings hollow. In a child custody dispute where one parent refuses to produce the child for the other pursuant to a court visitation or custody order, and the court invokes its civil contempt power to incarcerate the recalcitrant parent, the child is deprived of the nurturing, care, and love of both parents.

THE MORGAN CASE

There are several examples of this. One of the most publicized involves Dr. Elizabeth Morgan. On August 21, 1987, D.C. Superior Court Judge Herbert B. Dixon, Jr., ordered Morgan to deliver her daughter Hilary to her exhusband, Dr. Eric Foretich, for a 2-week unsupervised visit. Morgan refused, claiming that Foretich had sexually abused Hilary during past visits. During a partly closed hearing on August 26, 1987, Judge Dixon held

Morgan in contempt of court for defying the order and imposed a fine of $5,000 for each day she refused to comply. On August 28, 1987, Dr. Morgan began serving an indefinite jail sentence for contempt. She has now spent 22 months in jail and has resolutely asserted that she will stay until Hilary is 18—another 12 years—rather than allow Dr. Foretich access to her. Judge Dixon appears willing to keep Morgan imprisoned until she relents. Hers is a Hobson's choice: Either surrender her daughter to someone she believes sexually abused her child or stay in jail indefinitely.

The purpose of civil contempt is not to punish but to coerce compliance with the court's order. Once it is clear that the civil contempt sanction will not coerce a recalcitrant individual, that sanction must be removed. The failure to do so constitutes a deprivation of liberty or property without due process. That is, the coercive sanction is transmuted into a punitive sanction at the point of coercion can no longer fairly be said to be possible and, therefore, the contemnor is entitled to further procedural protections before the sanction can continue. See, for example, *Shillitani* v. *United States*, 384 U.S. 364, 371-72 (1966); *In re Grand Jury Investigation*, 600 F.2d 420, 423-24 (3d Cir. 1979); *Lambert* v. *Montana*, 545 F.2d 87, 89-90 (9th Cir. 1976); *Matter of Thornton*, 560 F. Supp. 183, 184 (1983).

Dr. Morgan has served longer than many convicted criminals, even though she endangers no one. Each prisoner costs the taxpayers tens of thousands of dollars a year. In a jurisdiction perpetually releasing these apprehended on drug busts and sweeps because the jails lack room for them, scarce jail space could be better used. Dr. Morgan's medical practice has disappeared, along with her home and other assets, and she is now the longest residing female prisoner at the D.C. Detention Center. She has nothing left to lose. She insists that she will never comply with the court order, an assertion to which her adamance thus far lends credence. There is no indication that continued imprisonment will change her mind. She appears immune to the coercive authority of the court.

After Dr. Morgan had been incarcerated for 16 months, Judge Dixon said, "The coercion has only just begun." [Washington Post, December 16, 1988.] Had she been imprisoned for criminal contempt in Federal court, her initial sentence would have been for a definite period, and a jury trial would have been required to incarcerate her for more than 6 months. See *Cheff* v. *Schnackenberg*, 384 U.S. 373, 380 (1966). Now, however, she is still serving indefinitely. No one in the District of Columbia has ever served as long on a civil contempt charge. During this whole time Hilary has been without benefit of either parent. Surely this result cannot be in the best interests of the child.

On Friday, June 9, 1989, Dr. Morgan's brother, Robert M. Morgan, appeared before Judge Dixon pursuant to subpoena. Mr. Morgan, an assistant U.S. attorney in the District of Columbia, refused 26 times to comply with the judge's orders to disclose Hilary's whereabouts, according to the June 10, 1989, Washington Post. Judge Dixon took no action against Mr. Morgan but directed him to report any change of address or employment and noted he could be jailed for contempt. Id. The specter is now raised of the court incarcerating Dr. Morgan's brother for civil contempt as a means of increasing the pressure on Dr. Morgan herself. If this happens, I suppose the judge could feel free to jail Dr. Morgan's relatives seriatim over the next 12 years before determining she will not be coerced. Enough is enough.

I am not taking sides in the Morgan-Foretich dispute. However, a brief comment on Morgan's stated reason for defying the court order may help illustrate the importance of this bill. When Dr. Morgan became concerned about possible sexual abuse, she took Hilary to several different examiners. Some of these failed to diagnose sexual abuse, but a very highly qualified specialist—Charles I. Shubin, M.D., a board certified pediatrician, associate professor of pediatrics at the University of Maryland, and cofounder and codirector of the first program in the United States for the training of pediatric health professionals in the diagnosis of child sexual injuries—found serious vaginal scarring and other injury indicative of abuse. Psychologist Mary Froning of the Chesapeake Institute in Chesapeake, MD, saw Hilary for 87 sessions from January 1986 to August 1987. Her notes document that in 21 of those visits Hilary described physical or sexual abuse. Froning explained that Hilary could not have fabricated the incidents or been coached to recite them because of the explicit detail and authentic emotional state with which she recounted them. [Washingtonian, December 1988.]

In a related case, according to the U.S. Court of Appeals for the Fourth Circuit, Dr. Shubin was prepared to testify that Heather, Foretich's daughter by his second wife—Morgan was his third—exhibited injuries similar to those suffered by Hilary. "[N]umerous other professionals and lay witnesses [were also] prepared to testify that Heather had been sexually abused during visitation periods with [Foretich and his parents]." *Morgan* v. *Foretich*, 846 F.2d 941, 943-44 (4th Cir. 1988). Evidence of Heather's injuries was excluded from both the D.C. and Federal court cases. The fourth circuit ruled that the evidence in the Federal case was excluded inappropriately. "The proferred evidence of sexual abuse suffered by Heather * * * was highly relevant," it said. In fact, "this evidence was essential in that it tended to identify the defendants [Foretich and his parents] as the perpetrators of the crime against Hilary since only the defendants had access to both girls. No other piece of evidence could have had a comparable probative impact as to the identity of Hilary's asailants. This evidence also negated several defenses raised by the defendants." *Morgan* v. *Foretich*, 846 F.2d 941, 944 (4th Cir. 1988).

Foretich denies ever molesting Hilary. Judge Dixon found the evidence of sexual abuse "in equipoise"—in other words, equally balanced. [Legal Times, December 5, 1988; New York Times, December 15, 1988.] Neither party won suits accusing the other of abuse; the courts cannot determine which party is telling the truth. Under such circumstances, a mother's protectiveness should not be punished forever. My bill makes the 12-month cap on civil contempt in such cases retroactive to January 1, 1987, and thus would free Dr. Morgan.

Elizabeth Morgan is only one of several mothers recently imprisoned under the contempt power for refusing to send their children to court-ordered visitations with ex-husbands accused of sexual abuse. Note, "Modern Discussion of a Venerable Power: Civil Versus Criminal Contempt and its Role in Child Support Enforcement: *Hicks* v. *Feiock*," 22 Creighton L. Rev. 163, 183 n.195 (1988). These cases have prompted reevaluation of the rules surrounding incarceration for contempt. Civil contempt is supposed to be coercive, not punitive; to entice the contemnor to obey the court, not to punish him or her for refusing to do so. Regardless of the merits of the Morgan case—the facts of which are detailed, complex, and partly secret—the present District of Columbia law regarding civil contempt does not take into account unique concerns arising in child custody cases.

THE 12-MONTH CAP

Under Rule 42 of the Federal Rules of Criminal Procedure, a criminal contempt may be punished summarily, but it must be prosecuted on notice, with a hearing, and the defendant is entitled to a trial by jury. If the contempt involves disrespect to or criticism of a judge, that judge is disqualified unless the defendant consents. Moreover, if found guilty, the defendant still receives a fixed punishment. Fed. R. Crim. P. 42.

Such protections are lacking for most civil contemnors. The Federal recalcitrant witness statute provides that an uncooperative witness before a

court or grand jury may be confined until he or she is willing to provide the requested information. The confinement is capped at 18 months. 28 U.S.C.A. 1826. For ordinary civil contempt, however, there is no cap either in the Federal courts or in those of 48 States. The exceptions are California, with a 12-month limit, and Wisconsin, with a 6-month limit. (For a detailed discussion of the Wisconsin law, see Martineau, "Contempt of Court: Eliminating the Confusion Between Civil and Criminal Contempt," 50 U. Cin. Rev. 677 (1981).

Moreover, if the contemnor has nothing left to lose, or demonstrates an unwillingness ever to be persuaded by the court's action, the imprisonment serves no remedial or potentially coercive purpose. Continued imprisonment under such circumstances is then punitive and is constitutionally impermissible as a deprivation of liberty without due process. See, for example, *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 442-52 (1911); *Jackson* v. *Indiana*, 406 U.S. 715, 738 (1972).

The bill I introduce today simply recognizes that after a year continued imprisonment is unlikely to coerce a contemnor in a child custody case to comply with the court order. H.R. 2136, a bill providing for an 18-month cap but otherwise virtually identical, has been introduced in the House of Representatives by Representative FRANK WOLF, with the cosponsorship of District of Columbia Delegate WALTER FAUNTROY and others. This is an appropriate exercise of congressional power. Under the Home Rule Act, only Congress can determine the jurisdiction of D.C. courts. The D.C. Council is not empowered to consider this matter itself.

As I mentioned earlier, this bill would apply to child custody cases in the District of Columbia only. This limited application has the advantages of disrupting little settled law and of preserving discretion for D.C. judges to address widely disparative civil contemnors in other kinds of cases. The limited changes applicable to child custody cases would affect basically honest people with honest disagreements. The child is the real loser in such cases, deprived indefinitely of both parents. The case for limiting the court's summary contempt power is strongest here.

Under present Federal law, imprisonment for criminal contempt may not continue for more than 6 months without a jury trial. Seen in that light, a 12-month cap on imprisonment for civil contempt in the context of child custody proceedings does not unduly restrict the power of the courts to regulate their own affairs; but it does afford an important protection to litigants in these cases—and to their children.

CONCLUSION

Traditional burdens of proof are exceptionally difficult to meet in cases of child sexual abuse, especially with respect to very young children. The evidence of abuse may be sufficient to convince a well-trained physician or therapist but insufficient to convince a court. In such a case, when the parent of the abused child refuses to submit to court-ordered demands to allow the alleged abuser access to the child, many courts are sentencing the recalcitrant parent, which is typically the mother, to contempt. Some mothers have gone underground rather than submit to the court, and taken the child with them. Others have gone to prison rather than risk endangering their children.

A 1-year limit on imprisonment for civil contempt in child custody cases before the D.C. Superior Court is a prudent and needed step to protect the interests of the children in these deeply unfortunate cases.

Mr. President, I ask unanimous consent that the text of the bill be placed in the RECORD at this point.

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

S. 1163

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

SECTION 1. LIMITATION ON TERM OF INCARCERATION IMPOSED FOR CONTEMPT IN CHILD CUSTODY CASES.

(a) SUPERIOR COURT.—Section 11-944 of the District of Columbia Code is amended—

(1) by striking "In addition" and inserting "(a) Subject to the limitation described in subsection (b), and in addition"; and

(2) by adding at the end the following new subsection:

"(b) In any proceeding for custody of a minor child conducted in the Family Division of the Superior Court under section 11-1101(1), no individual may be imprisoned for more than 12 months pursuant to the contempt power described in subsection (a) for disobediance of an order or for contempt committed in the presence of the court.".

(b) DISTRICT OF COLUMBIA COURT OF APPEALS.—Section 11-741 of the District of Columbia Code is amended—

(1) by striking "In addition" and inserting "(a) Subject to the limitation described in subsection (b), and in addition"; and

(2) by adding at the end the following new subsection:

"(b) In the hearing of an appeal from an order of the Superior Court of the District of Columbia regarding the custody of a minor child, no individual may be imprisoned for more than 12 months for disobediance of an order or for contempt committed in the presence of the court pursuant to the contempt power described in subsection (a).".

SEC. 2. EXPEDITED APPEALS PROCESS FOR INDIVIDUALS INCARCERATED FOR CONTEMPT IN CHILD CUSTODY CASES.

Section 11-721 of the District of Columbia Code is amended by adding at the end the following new subection:

"(f) The District of Columbia Court of Appeals shall hear an appeal from an order of the Superior Court of the District of Columbia holding an individual in contempt and imposing the sanction of imprisonment on such individual in the course of a case for custody of a minor child not later than 60 days after such individual requests that an appeal be taken from that order.".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to individuals imprisoned for disobediance of an order or for contempt committed in the presence of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals in the course of a case for custody of a minor child on or after January 1, 1987.

By Mr. GLENN (for himself and Mr. MCCAIN):

S. 1165. A bill to provide for fair employment practices in the Senate and the House of Representatives; to the Committee on Governmental Affairs.

CONGRESSIONAL FAIR EMPLOYMENT PRACTICES ACT

Mr. GLENN. Mr. President, I rise today to introduce legislation designed to eliminate the so-called double standard for the Congress in certain laws which we have passed. The double-standard is established when Congress passes legislation for the rest of the country and then exempts itself.

I am happy to have the Senator from Arizona [Mr. MCCAIN] as a cosponsor of this legislation.

The legislation addresses a nagging problem that exists because the Congress has traditionally excluded itself from civil rights laws, as well as health, safety, and certain labor laws that apply to the Federal executive branch and private industry but not here on Capitol Hill. These congressional exclusions, Senator Sam Ervin once said, "looks like a situation where the doctor is prescribing medicine for his patients that he himself will not take." I agree with that statement. I believe that this medicine is good for both the patient and the doctor.

I find back home when people bring this up that there is nothing that aggravates them any more than having a law that they have to comply with back home in whatever area—health, safety, or civil rights—we are talking about, but yet Congress exempts itself because we do not want to deal with it.

Mr. President, the legislation that I am introducing today attempts to take care of some of the problem areas that have been mentioned as impediments in the past with legislation of this nature. First of all, the bill mandates the application, of all the principles found in the following laws to congressional employees: Federal civil rights laws, primarily the Civil Rights Act of 1964, the Fair Labor Standards Act of 1938 which mandates a minimum wage, the Age Discrimination in Employment Act of 1976, the Occupational Safety and Health Act of 1970, and the Rehabilitation Act of 1973.

Since 1978, to my knowledge, the Senate has been on record in attempting to reach out to minorities and women in both hiring and promotions; that year we adopted a resolution stating that we would attempt to reach out to minorities and women. However, the overall record of this body is not a great record. On personal and professional committee staffs at the senior or top policy-making levels, blacks total less than 50 out of a total population of some 2,500, less than 3 percent. That is personal and committee staffs combined.

Women have done only slightly better. Less than 20 percent of the top jobs in the Senate are held by females while 80 percent of the lowest-paying jobs are reserved for female employees.

What are the implications of OSHA laws to the working conditions of many of the employees who work for the Superintendent of the Senate or the Architect of the Capitol?

Why is it, Mr. President, that we do not afford our employees the same basic rights and protection we routinely vote for other workers throughout this country.

There are two very important exceptions to the applicability of these laws to congressional employees and those two exceptions include the domicile of an individual and the political affiliation of the individual. Simply put, if I, the Senator from Ohio, wanted to give preference to an applicant from Ohio then the civil rights laws would not apply. If a Republican Senator hired all his staff on the basis of the fact that he or she wanted a purely partisan staff of Republicans, then none of the laws stated in the bill would apply to that hiring situation. The reason we included these two very important exceptions is the recognition that there are special circumstances that apply to congressional employment practices particularly with regard to personal staffs. However, it should be made very clear that those persons who prepare and serve our food, who maintain these picturesque grounds around Capitol Hill, who repair our office furniture, and who work generally in a non-legislative capacity, should have the same kind of protection that their counterparts in the executive branch and private sector enjoy. It is only fair.

The legislation establishes a procedure for the consideration of alleged violations and an enforcement mechanism in the form of the Congressional Employees Relations Office.

This takes care of the problem we had before with this legislation where we were afraid of having an executive branch group oversee the legislative branch on Capitol Hill.

A review panel consisting of House and Senate members will have final authority. If monetary awards are involved, the bill requires full Senate or House approval of any proposed settlement.

The process and procedures aspect of the legislation are self explanatory and I would invite my colleagues to read the bill and lend your support to this effort. I know that there are other Senators interested in legislating in this area including Senators LEAHY and BOSCHWITZ, both of whom have introduced their own bills to deal with this problem.

The Governmental Affairs Committee will schedule hearings on this and other bills pertaining to this issue, later this summer.

Mr. MCCAIN. Mr. President, I am pleased today to cosponsor the introduction of the Fair Employment Practices Act of 1989.

At the end of the last session, I introduced legislation designed to secure civil rights for Senate employees. That bill, similar to legislation passed by the House, would have banned discrimination based on sex, race, religion, age, or handicap.

At that time, the chairman of the Governmental Affairs Committee, Senator GLENN, stated his intent to work for a broadening of those standards. Together, we crafted a bill that applies to all congressional employees the principles embodied in the following laws: The Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1976, the Fair Labor Standards Act of 1938, the Occupational Safety and Health Act of 1970, and the Rehabilitation Act of 1973.

Mr. President, this law is long overdue. Congressional employees are completely unprotected against discrimination. In my experience, discrimination is not widespread on the Hill. We have all heard, however, of cases of discrimination against employees based on sex or age or other criterion.

Such bias is indefensible. Two issues are involved here. First, congressional employees have a right to the same protection as other citizens of this Nation. Second, it is, quite simply, hypocritical that Congress demands standards of other American employers that we are unwilling to apply to ourselves.

For some time, Congress had offered the explanation of "separation of powers" as a reason for nonapplication of antidiscrimination statutes. In short, Congress argued that it could not be judged by a separate, coequal branch of government.

The legislation that Senator GLENN and I are introducing today circumvents that argument by placing the mechanism for resolution of disputes within the legislative branch itself. Alleged violations would be considered by an office within the Congress, and enforcement would come from the Congressional Employees Relations Office. A review panel of Senators and Congressmen has authority to review and second such judgments. Monetary rewards would be approved by the full Senate or House.

I believe the time has long since passed when Congress could exempt itself from the laws it applies to other Americans. Recent activity in Congress has brought public esteem for this institution to an all-time low. Exempting Congress from laws that eliminate bias and discrimination can only further erode the confidence of the American people in their government. I hope that my colleagues will give serious consideration to our proposal.

By Mr. LEVIN (for himself and Mr. RIEGLE):

S. 1166. A bill to correct the tariff classification of certain chipper knife steel products; to the Committee on Finance.

RELATING TO CERTAIN CHIPPER KNIFE STEEL PRODUCTS

● Mr. LEVIN. Mr. President, the legislation which I am introducing with Senator RIEGLE today, would amend the Harmonized Tariff Schedule to correct an error in the customs classification of imported chipper knife steel.

Chipper knife steel is a specialty steel that is imported by American industrial knife companies for the production of wood chipping knives and other industrial knives.

In 1984, Senator RIEGLE and I sponsored legislation which extended duty free treatment to imported chipper knife steel. The bill passed and chipper knife steel was permanently classified for duty free treatment.

When the United States converted to the Harmonized Tariff Schedule on January 1, 1989, we adopted a new definition of bars which inadvertently excluded certain chipper knife bars. Consequently, about a third of all chipper knife imports are classified as flat rolled and are subject to an 11.6 percent ad valorem duty, instead of being duty free, as the 1984 legislation required.

The legislation Senator RIEGLE and I are introducing would correct this error in the classification of chipper knife steel, by making a technical adjustment to the Harmonized Tariff Schedule. Since the current classification is the result of unintended error, the technical correction would be retroactive and any duties collected since January 1, 1989 would be returned.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD following my statement.

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

S. 1166

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subchapter XV of chapter 72 of the Harmonized Tariff Schedule of the United States is amended by striking out subheadings 7226.91.10 and 7226.91.30 and inserting the following with the article description for subheading 7226.91.05 having the same degree of indentation as subheading 7226.91.50:

"7226.91.05	Of chipper knife steel ..... Other:	Free.....		34%
7226.91.10	Of a width of 300mm or more.	9.6%.....	Free (E, IL)	29%
7226.91.30	Of a width of less than 300mm.	11.6%.....	Free (E, IL)	34%"

SEC. 2. (a) The amendment made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

(b) Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the appropriate customs officer within 90 days after the 15th day after the date of the enactment of this Act, any entry which was made after January 1, 1989, and before such 15th day with respect to which there would have been no duty if the amendment made by the first section of this Act applied to such entry, shall be liquidated or reliquidated as though such amendment applied to such entry.●

By Mr. MITCHELL (for himself and Mr. COHEN):

S. 1167. A bill to fund the Muskie Archives, and for other purposes; to the Committee on Labor and Human Resources.

FUNDING FOR THE MUSKIE ARCHIVES

Mr. MITCHELL. Mr. President, today I am introducing legislation with Senator COHEN to authorize a $5 million endowment for the Edmund S. Muskie Archives at Bates College in Lewiston, ME.

With the exception of a few former Presidents, the Muskie Archives contains one of the largest collections of a public official. The collection documents Ed Muskie's life and career from his years at Bates, his law practice in Waterville, ME, and his public career as a State legislator, 1947-55, Governor 1955-59, U.S. Senator 1959-80, and his term as U.S. Secretary of State, May 1980-January 1981.

Unlike the Office of Presidential Libraries, which assumes the cost of storing, processing, and making Presidential collections available to the public, there is no counterpart for assistance in meeting archival standards for other prestigious public officials.

Bates College has already raised $375,000 to renovate an unused women's gymnasium on the campus to accommodate the collection.

However, the collection needs to be preserved as well as housed.

Currently, the archives holds an estimated 1,900 linear feet of textual records. In addition to the paper, the archives holds another 1,800 linear feet of books, periodicals, studies, photographs, plaques, framed pictures, and other political mementos as well as over 1,000 reels or cassettes of audio tapes, 69 videotape cassettes, and 120 reels of 16mm motion picture film.

In addition to preserving the Muskie collection, Bates would like to open the archives as a learning center for those in New England and beyond. One event already held under the auspices of the Muskie Archives was a three part series last fall on the 1988 Presidential election.

The Bates College community would like to hold a number of seminars and forums at the archives to encourage an understanding of how our Government works and educate students and interested citizens in important national and international issues.

The archives would hold conferences for public officials to examine complex and controversial issues such as solid waste disposal and land use management.

For the 1989-90 academic year, the Southern Center for International Studies will sponsor with the Muskie Archives its seventh annual meeting of former U.S. Secretaries of State. This will be the first time the conference is scheduled for outside the South.

Bates College plans a Maine Scholars Program to be held each summer for 30-40 Maine high school juniors to study the history of the Senate in the 1960's and 1970's, making full use of the archives. The Maine Humanities Council has approved a grant of $5,700 for the course and the State Department of Educational and Cultural Services plans to make a substantial contribution.

A number of studies have indicated that Maine high school students have low educational aspirations. Many young people complete high school and go no further. Bates plans to introduce young Maine students from across the State to the benefits of college and the study of issues of importance throughout the world.

The archives will have a dual function. It holds and will make available a collection of documentation on the political history of Maine and the Nation. And, it will develop into a center for public programs on topics of community interest with which Senator Muskie was indentified.

I urge my colleagues to consider this legislation and approve the endowment to underwrite the costs of running the archives programs and preserving the Muskie collection.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1167

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

SECTION 1. GENERAL AUTHORITY.

The Secretary of Education is authorized to provide financial assistance, in accordance with the provisions of this Act, to the Muskie Archives at Bates College, Lewiston, Maine, to establish an endowment for the Muskie Archives.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated $5,000,000 to carry out the provision of this Act. Funds appropriated pursuant to this Act shall remain available until expended.

Mr. COHEN. Mr. President, I rise today to introduce a bill to authorize funds for the Edmund S. Muskie Archives at Bates College in Lewiston, ME.

I believe it can be safely said that few people have had a greater impact on public life in Maine in the last half of this century than Ed Muskie.

In part, his influence has come through the positions he has held—Governor, Senator, candidate for President and Vice President, and Secretary of State.

But beyond the roles he played, Ed Muskie made his mark through a fierce will, a restless and probing intellect, a compassion for the underdog, and an approach to public life that combines action and passion.

When I came to this body in 1979, Ed Muskie took the time to become a very special friend to me. He could have easily ignored a junior member of the other party. Instead, he taught me, guided me, and looked for ways we could work together to help Maine.

We share more than our positions as Senators. We both grew up in modest circumstances. Ed's father was a tailor; my dad is a baker. Our success in Government seemed all the more sweet since our forbearers were fairly new to the country we were serving. We both entered the field of law, both believing in moderation and rationality instead of extremism.

To understand the full significance of Ed Muskie's role in Maine's history, one must look back to 1954. In that watershed year, Ed was elected Governor of Maine. To the occasional chagrin of those of us who are Republicans, Ed's election signaled the one-man rejuvenation of the near-moribund Democratic Party in Maine.

Dating back to 1916, Repubicans had won 17 of 19 gubernatorial elections. Then along came a tall, quiet lawyer named Ed Muskie, winning a solid victory in 1954 and a landslide in 1956. Those elections galvanized the Democratic Party and converted it into an effective political force for the first time in decades.

Even the most ardent Republicans in my State would grudgingly admit that Ed Muskie is responsible for the very healthy competition between the two

major parties in Maine that exists today.

During this resurgence, Ed also inspired a generation of talented young people to enter public life. In fact, another quiet young lawyer from Waterville, ME, whose family also came from modest circumstances sought out a position on Senator Muskie's staff and served him ably for years.

He both idolized and emulated Ed, developing along the way his own considerable flair and skill as a political figure. Today, that young man honors this body through his service as majority leader, and I know that my able colleague GEORGE MITCHELL still credits Ed Muskie as his greatest teacher and mentor.

Most of us are familiar with the highlights of Ed Muskie's career, in particular, his powerful advocacy of environmental issues at a time when such questions were either unheard of or unpopular. Though the environment continues to be threatened by many forces, we should thank Ed Muskie every day that the air we breathe and the water we drink are as clean as they are.

Ed was also instrumental in producing a more rational and coherent congressional budget process through the Budget Control and Impoundment Act, which curbed excesses of the executive branch. As always, Ed operated by a simple principle; tell people what they need to know, not what they want to hear.

Ed's first priority was to serve Maine, but Maine also took special pride as Ed grew in stature as a national figure. Ed's service as his party's vice presidential candidate in 1968 was carried out with great dignity during that volatile year, and solidified his position as a dominant figure in the national political environment through the 1970's.

After seeking the Presidency in 1972, Ed continued to serve Maine in the Senate for many more years, always winning reelection by comfortable margins. In 1980, President Carter called on Ed to become Secretary of State, a post he held for a short time but with great distinction.

When that brief chapter ended, Ed left public life for the first time in more than 35 years. But, in Tennyson's words, he "knew better than others how dull it is to pause, to make an end, to rust unburnished, not to shine in use." So he continued to be extremely active in his legal practice and many other endeavors.

He answered President Reagan's call to serve on the Tower Commission in 1986, and, as always, he brought great dignity and respect for the facts to his service.

I thought it was extremely telling that in April, just a week after Ed turned 75, a small announcement appeared in the Maine papers that Ed had assumed the chairmanship of a commission on the legal needs of poor people. At the stage in his life when most people are just relaxing, Ed is still searching for ways to help people less fortunate than himself.

The Muskie Archives will represent the legacy of all these various achievements, and will forever commemorate Ed Muskie's outstanding contributions during his remarkable public career. Located on the grounds of his alma mater in Lewiston, ME, the Muskie Archives contain an unusually large and rich collection of materials and will be an indispensable resource for anyone studying the history of Maine during the latter half of this century.

Bates College has invested, and will continue to invest, important resources to care for the Muskie collection. Unfortunately, the considerable financial burden of efforts such as these has fallen to institutions with severe financial constraints—colleges, universities, and historical societies.

There is no counterpart to the office of Presidential libraries to assume the cost of storing and processing materials and of making these collections available to scholars and the general public.

This proposed $5 million authorizaton will help the college greatly to develop a suitable repository for these invaluable documents.

Of course, Bates College will continue to defray the operating expenses of the archives, which will include preserving and expanding the Muskie collection as well as other collections the college plans to acquire.

Mr. President, I would conclude by saying that Ed Muskie is one of the most distinguished Americans ever to grace this body, one of the most talented people ever to come from the great State of Maine, and one of the most generous friends I've been privileged to know. Compared to the legacy he has left Maine and America, the funding of these archives seems a very modest gesture indeed.

I thank the Chair.

By Mr. KENNEDY:

S. 1168. A bill to amend the Internal Revenue Code of 1986 to assure access to health insurance for self-employed individuals and to simplify rules governing the inclusion in gross income of benefits provided under discriminatory group health plans; to the Committee on Finance.

INCREASE IN DEDUCTIBLE HEALTH COSTS FOR SELF-EMPLOYED INDIVIDUALS

Mr. KENNEDY. Mr. President, at the time I introduced the Basic Health Benefits for All Americans Act I announced that I would be introducing companion legislation to simplify the so-called section 89 rules and to provide fairer tax treatment for the owner-operators of unincorporated small business and for other self-employed individuals. The legislation I am submitting today fulfills those objectives. Similar companion legislation has already been introduced in the House by the House sponsors of the basic health benefits bill.

The section 89 provisions initially enacted in the Tax Reform Act had a laudable objective: to assure that the Federal tax preference granted for health insurance premiums would act to provide a benefit for all workers in a business, not just for a few highly compensated employees. Despite that laudable objective, the rules actually enacted to achieve this goal have proved excessively burdensome, particularly for small business. There have even been claims that some companies have actually dropped their coverage altogether rather than undergo the administrative burdens associated with complying with the section 89 rules. The bill that I am introducing today will dramatically simplify those rules and ease the burden of compliance. I also want to take this opportunity to say that I do not believe that section 89 is necessary in any form if Basic Health Benefits is enacted, and I would be willing to work with the business community to repeal that legislation under those circumstances.

The second part of the legislation I am introducing today would provide full tax deductibility for the health insurance premiums of the self-employed. Currently, there is a basic inequity in the Tax Code. The hired manager of a large corporation need not include in taxable income any health insurance premiums paid on his behalf by the company. The self-employed owner-operator of an unincorporated small business, however, may deduct only 25 percent of the premiums he pays to insure himself and his family from income. This is unfair and the legislation I am introducing today will correct it.

By Mr. ROTH:

S. 1169. A bill to provide administrative procedures for noncontroversial tariff suspensions; to the Committee on Finance.

PROVIDING ADMINISTRATIVE PROCEDURES FOR CERTAIN TARIFF SUSPENSIONS

● Mr. ROTH. Mr. President, I am today introducing, with Senator BRADLEY, a bill to create an administrative process for U.S. import duty suspensions. A similar bill was passed by the Senate last year. We believe it is a worthwhile bill and are reintroducing it this year with certain changes.

On occasion a domestic company discovers that there is no domestic supply for a component or article they import to distribute or use in manufacturing a product in the United States. They must therefore import the necessary article and pay the U.S. duty on

that importation. Since the duty increases the cost of the product and lessens the competitiveness of U.S. industry, Congress passes legislation temporarily suspending U.S. duties on such products. These duty suspensions are particularly important when an article is imported as a raw material or component of a final product manufactured by the U.S. industry. Because many final products compete with foreign products here and abroad, decreasing the cost of materials to the U.S. manufacturer increases its competitiveness and strengthens our domestic industry. Congress generally passes legislation suspending duties only if the suspensions are considered noncontroversial; that is, neither the administration nor any significant domestic company or group opposes the suspension.

Obtaining the suspension of duties on raw materials not manufactured in the United States has become increasingly important for domestic industries. At the same time the congressional calendar is growing to the point that it is difficult to ensure the timely passage of such legislation. For example, prior to the Omnibus Trade Act of 1988, it had been 4 years since the Congress passed any duty suspension bills.

Failure to obtain noncontroversial duty suspensions on a timely basis makes it extremely difficult for companies to schedule production or enter into contracts when the date on which duties may be suspended cannot be predicted with any certainty. This adversely affects the ability of companies in my State and elsewhere to compete with foreign products both here and abroad. This is particularly true in regard to Canada and the EC, both of which have streamlined procedures for duty suspensions. I am, therefore, proposing that an administrative process be created for noncontroversial duty suspension requests.

In contrast with last year's bill, the procedure will be applicable only if Congress fails to act on a bill within 12 months of its introduction. It would work as follows. Persons who want a duty suspended will file a petition with the International Trade Commission containing sufficient information to enable it to determine whether an investigation is merited. The procedure may also be used by persons requesting a reinstatement of duties because they manufacture a product on which duties are suspended.

After its investigation of all the facts, the ITC will submit a final report to the President. The President will review the report submitted by the ITC and will, in addition, consider revenue, foreign policy and trade policy issues. This is important particularly as we are presently involved in the Uruguay Round of Multilateral Trade negotiations. The public will have several opportunities to comment during the process, and the President will only be authorized to grant duty suspensions if no person has a valid objection to the suspension.

It should be emphasized that this proposal is intended to be a supplement to the current congressional system of granting duty suspensions. All bills would continue to be introduced in Congress. Persons would be free to continue to pursue the congressional option to suspend a tariff in any case where the administrative system is viewed as inadequate or unavailable.

At the same time that this bill will help individual American companies to compete, it includes a cap on the revenue that could be foregone under this new procedure, assuring this will not be a means of proclaiming sweeping changes in tariff rates. The President may also consider the effect a duty suspension would have on revenue in determining whether or not to grant a duty suspension.

Finally, this bill is supported by industries which regularly go through the uncertain process of tariff suspensions by legislation. They seek a regularized process so that business planning can occur.

I urge favorable and early consideration of this legislation. To facilitate consideration of this bill, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1169

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

SECTION 1. INITIATION OF INVESTIGATIONS.

(a) PETITIONS.—

(1) Any person who—

(A) uses an article in the production of a product in the United States,

(B) imports an article into the United States, or

(C) distributes an article in the United States,

may file with the United States International Trade Commission (hereafter referred to in this Act as the "Commission") a petition requesting the President to issue a proclamation under section 3(a) that suspends the duty imposed on such article by any chapter of the Harmonized Tariff Schedule of the United States other than chapter 98 or 99, if the rate of duty applicable to such article is provided in rate of duty column 1.

(2) Any person who—

(A) produces in the United States—

(i) any article for which a duty is suspended by reason of a proclamation issued under section 3(a),

(ii) any other article like, or directly competitive with, such article, or

(iii) any other article which is like, or directly competitive with, a product that is produced in the United States by means of a process which uses such article as a significant raw material or component,

(B) has—

(i) the capacity, and

(ii) the bona fide intent,

to produce such article, or any other article like, or directly competitive with, such article in the United States in significant quantities,

may file with the Commission a petition requesting the President to issue a proclamation under section 3(b) that reinstates such duty.

(3) The Commission shall not accept a petition under paragraph (1) or (2) for the suspension or reinstatement of a duty on an article before the date that is 1 year after the date on which a bill is introduced in the House of Representatives or the Senate that would, if enacted, effect such suspension or reinstatement.

(4) Each petition filed under paragraph (1) or (2) shall contain sufficient information (including a precisely defined article description) to enable the Commission to determine whether an investigation into the suspension or reinstatement of the duties is justified.

(5)(A) By no later than the date that is 15 days after the date on which a petition is filed with the Commission under paragraph (1) or (2), the Commission shall determine whether the information provided in the petition is sufficient to justify an investigation under section 2.

(B) If the determination made under subparagraph (A) is affirmative, the Commission shall—

(i) transmit a copy of the petition to the United States Trade Representative,

(ii) initiate an investigation under section 2 of the suspension or reinstatement of duties requested in the petition, and

(iii) publish in the Federal Register notice of—

(I) the initiation of such investigation, and

(II) the opportunity for public comment on such suspension or reinstatement of duties.

(C) If the determination made under subparagraph (A) is negative, the Commission shall dismiss the petition and notify the petitioner of the basis on which such negative determination was made.

(b) PRESIDENTIAL REQUEST OR SELF-INITIATION.—

(1) Upon request of the President, or upon the initiative of the Commission, the Commission shall initiate an investigation under section 2 of the reinstatement of any duties that have been suspended by any previous proclamation issued under section 3(a).

(2) Upon initiating an investigation under section 2 by the authority of paragraph (1), the Commission shall—

(A) transmit to the United States Trade Representative a written statement describing the article and duties that are the subject of such investigation and all information available to the Commission regarding justification of the reinstatement of such duties on such article, and

(B) publish in the Federal Register notice of—

(i) such investigation, and

(ii) the opportunity for public comment on such suspension or reinstatement of duties.

SEC. 2. INVESTIGATIONS BY THE COMMISSION.

(a) IN GENERAL.—If the determination made under section 1(a)(5)(A) is affirmative or section 1(b)(1) applies, the Commission shall conduct an investigation to determine—

(1) whether the article that is the subject of the petition filed under section 1(a), or of the notice published under section 1(b)(2)(B), is produced in the United States,

(2) whether any other article which is like, or directly competitive with, such article is produced in the United States,

(3) whether any other article is produced in the United States which is like, or directly competitive with, a product that is produced in the United States by means of a process which uses (or could use) such article as a significant raw material or component,

(4) whether any person has—

(A) the capacity, and

(B) the bona fide intent,

to produce such article, or any other article like, or directly competitive with, such article in the United States in significant quantities,

(5) whether any person who—

(A) produces in the United States—

(i) such article,

(ii) any other article like, or directly competitive with, such article, or

(iii) any other article described in paragraph (3), or

(B) is described in paragraph (4),

objects to a suspension of the duty imposed on such article by any chapter of the Harmonized Tariff Schedule of the United States other than chapter 98 or 99,

(6) whether any person not described in paragraph (4) or (5)(A) objects to that suspension of duty on such article,

(7) whether any quotas or other import restrictions are imposed by Federal law on such article,

(8) whether any international agreements to which the United States is a party affect trade in such article or in any other article like, or directly competitive with, such article,

(9) whether such article, or any article like, or directly competitive with, such article, is, or has been, the subject of any investigation under—

(A) title VII of the Tariff Act of 1930 or section 303 of the Tariff Act of 1930,

(B) section 337 of the Tariff Act of 1930,

(C) chapter 1 of title II of the Trade Act of 1974,

(D) chapter 1 of title III of the Trade Act of 1974, or

(E) section 232 of the Trade Expansion Act of 1962,

(10) the aggregate value of such articles imported into the United States during the calendar year preceding the calendar year in which such determination is made,

(11) the aggregate value of such articles consumed in the United States during the calendar year preceding the calendar year in which such determination is made,

(12) the principal uses of such article in the United States,

(13) the duties that are imposed by Federal law on such article and the rates of such duties, and

(14) the aggregate amount of Federal revenue derived from the duties imposed by Federal law on such article during the fiscal year preceding the fiscal year in which such determination is made.

(b) PUBLIC COMMENTS.—During the course of any investigation conducted under this section, the Commission shall provide an opportunity for any person to submit written statements regarding the subject of the investigation and, upon request and after reasonable public notice, shall hold a hearing for the oral presentation of views on the subject of the investigation.

(c) REPORTS.—

(1) By no later than the date that is 75 days after the date on which an investigation under this section is initiated, the Commission shall—

(A) complete a preliminary report on the investigation conducted under subsection (a),

(B) publish a summary of the preliminary report in the Federal Register,

(C) provide a copy of the preliminary report to the petitioner, and

(D) make the preliminary report available for public inspection.

(2) On the date that is 30 days after the date on which a summary of the preliminary report on the investigation conducted under this section is published in the Federal Register, the Commission shall submit to the President a final report on the investigation. Such report shall include—

(A) the determinations made under subsection (a),

(B) a summary of comments received by the Commission regarding such investigation, including comments on the preliminary report completed under paragraph (1), and

(C) a copy of the transcript of any hearings held in the course of such investigation.

(d) DETERMINATIONS NOT SUBJECT TO JUDICIAL REVIEW.—The determinations made by the Commission under subsection (a) shall not be reviewable in any court.

SEC. 3. ACTION BY THE PRESIDENT.

(a) SUSPENSION OF DUTIES.—

(1) During the 30-day period beginning on the date on which the Commission submits to the President under section 2(c)(2) a final report on an investigation concerning the suspension of duties on an article, the President may issue a proclamation that suspends the duty imposed on such article by any chapter of the Harmonized Tariff Schedule of the United States other than chapter 98 or 99 if the President determines that—

(A) no person has a valid objection to such a suspension,

(B) the sum of—

(i) the aggregate value of such articles imported into the United States during the calendar year preceding the calendar year in which such determination is made, plus

(ii) the aggregate value of all articles imported into the United States during such preceding calendar year that are the subject of a previous proclamation issued under this paragraph during the calendar year in which such determination is made,

does not exceed $100,000,000, and

(C) the sum of—

(i) the aggregate amount of Federal revenue derived from the duty imposed on such article by any chapter of the Harmonized Tariff Schedule of the United States other than chapter 98 or 99 during the fiscal year preceding the fiscal year in which such determination is made, and

(ii) the aggregate amount of Federal revenue derived during such preceding fiscal year from all the duties imposed on all articles that are the subject of a previous proclamation issued under this paragraph during the calendar year in which such determination is made,

did not exceed an amount equal to 0.01 percent of the aggregate amount of Federal outlays during such preceding fiscal year.

(2) The President may not issue a proclamation under paragraph (1) that suspends the duty imposed by the Harmonized Tariff Schedule of the United States on any article to which the rate of duty provided in rate of duty column 2 applies.

(3) In determining whether to issue a proclamation under paragraph (1), the President may take into account—

(A) the effect such a proclamation would have on the bargaining position of the United States in any continuing, planned, or prospective negotiations with any foreign country,

(B) the effect such a proclamation would have on the revenue of the United States,

(C) foreign policy considerations, and

(D) any other factors the President considers appropriate.

(4) If the President does not issue a proclamation under paragraph (1) with respect to any article that is the subject of a report submitted under section 2(c)(2) during the 30-day period described in paragraph (1), the President shall publish in the Federal Register the reasons why the President is unable, or has declined, to issue such a proclamation.

(5) The duration of any suspension of duties provided in any proclamation issued under paragraph (1) shall not exceed 3 years; but such suspension may be extended by proclamations issued under paragraph (1) with respect to subsequent investigations conducted under section 2 for periods which do not exceed 3 years per proclamation.

(b) REINSTATEMENT OF DUTIES.—

(1) During the 30-day period beginning on the date on which the Commission submits to the President under section 2(c)(2) a final report on an investigation concerning the reinstatement of duty on an article that have been suspended by a proclamation issued under subsection (a), the President shall—

(A) determine whether any person has a valid objection to such suspension, and

(B) if the determination made under subparagraph (A) is affirmative, issue a proclamation that reinstates the duty which would be in effect if such suspension had not been made.

(2) The President shall publish in the Federal Register any negative determination made under paragraph (1)(A).

(c) DETERMINATIONS NOT SUBJECT TO REVIEW.—Any determination made by the President under this section shall be final and shall not be reviewable in any court.

SEC. 4. ALTERNATIVE SCHEDULES.

The President may, by proclamation, establish—

(1) an annual deadline for the filing of those petitions under section 1(a) with respect to which—

(A) the Commission will be required to make determinations under sections 1(a)(5) and 2 during the calendar year, and

(B) the President will be required to make determinations under section 3 during the calendar year, and

(2) a schedule for the taking of other actions under sections 1, 2, and 3 that may differ from any time requirements set forth in such sections.

SEC. 5. EFFECTIVE DATE.

The provisions of this Act shall take effect on the date that is 6 months after the date of enactment of this Act.●

By Mr. INOUYE (for himself, Mr. ADAMS, and Mr. SIMON):

S. 1170. A bill to amend the Federal Aviation Act of 1958 to provide for the establishment of limitations on the duty time for flight attendants; to the Committee on Commerce, Science, and Transportation.

FLIGHT ATTENDANT DUTY TIME

● Mr. INOUYE. Mr. President, Senator ADAMS and I rise to introduce the Flight Attendant Duty Time Act.

The tragedy of United Flight 811 in which 9 passengers were killed when a portion of the 747's fuselage ripped open emphasizes the critical role played by alert, well-trained aviation professionals. To prevent fatigue and overwork which may threaten the ability of aviation professionals to perform their duties in a safe and effective manner, the Federal Aviation Administration [FAA] regulates the work hours permitted for airline pilots, flight engineers, flight navigators, dispatchers, and air traffic control operators.

A key group of aviation professionals unjustifiably excluded from the FAA's work-time limitations is the flight attendants. Our bill includes them under the FAA's protective regulations.

Mr. President, work as a flight attendant is a physically demanding job in a noisy, stressful and poorly ventilated environment. In addition to their routine safety procedures, flight attendants must be continually alert and prepared throughout the flight for such emergencies as rapid depressurization, cabin fires, passenger illness, and hijackings. The Department of Transportation [DOT] states that there is no conclusive evidence to demonstrate a correlation between a flight attendant's fatigue and passenger safety. However, common sense should tell you that if a flight attendant has not slept or rested for the last 18-24 hours, he or she will not be able to function in an alert and effective manner, let alone be able to respond to emergencies or other potential safety hazards that may occur on an airplane.

The DOT and the FAA have acknowledged many cases in which flight attendants have been required to work as many as 24 consecutive hours. A particularly alarming case is that of the accident involving Galaxy Airlines in Reno, NV, in 1985. An investigation disclosed that at the time of the accident, two of the flight attendants had been on duty for over 18 hours and were scheduled to continue for another 7 hours.

Irrespective of the danger that overworked flight attendants pose to the safety of our airways, as well as themselves, the DOT has consistently refused to include them in its protective class of "safety sensitive" aviation employees which currently includes airline pilots, flight engineers and navigators, dispatchers and air traffic controllers. Yet, the DOT has determined that flight attendants are "safety sensitive" employees for purposes of submitting to random drug and alcohol testing. The DOT's conflicting and inconsistent position—"safety sensitive" in one regard but not another—is not in the best interest of public safety.

Mr. President, our bill requires immediate action on the part of the DOT to rectify this inequitable situation. The DOT is mandated to initiate appropriate rulemaking within 60 days of enactment, and to promulgate final regulations within 8 months of enactment. If the DOT fails to take action, the bill provides for backup duty time limitations to be implemented. Thereafter, the Department may amend these limitations under its rulemaking authority.

The next time you fly and are greeted by flight attendants, ask them about their duty hours. You will probably be shocked and alarmed by their answers. Mr. President, I urge my colleagues to cosponsor and support the Flight Attendant Duty Time Act.●

● Mr. ADAMS. Mr. President, I rise today to introduce with Senator INOUYE the Flight Attendant Duty Time Act. This bill will limit the number of hours that flight attendants will be required to work at one stretch.

As it stands now, flight attendants are the only crew members that are not covered by Federal Aviation Administration regulations to limit work hours. Remarkably, some flight attendants have been required at times to work 24-hour shifts. Clearly, this is an aviation safety issue that must be addressed.

There is no question that fatigue is a safety risk and will diminish performance. We limit the number of hours that truck drivers can be on the road. We limit the number of hours that train engineers can operate their trains without rest. And we already limit the number of hours that pilots, air traffic controllers, navigators, dispatchers and flight engineers can work. Flight attendants must be included in the FAA regulations.

Flight attendants have many safety related functions. They are responsible for evacuating their aircraft after a crash; they must detect and extinguish in-flight fires; they treat passengers with in-flight medical emergencies; they monitor the aircraft for security threats; and they must manage the cabin during hijackings and other terrorist situations. Alert and well-trained cabin attendants are critical to maintaining air safety in emergencies. Conversely, a cabin attendant who is exhausted from long flights and quick turnarounds with no rest break is a potential hazard to passengers.

This bill requires immediate action by DOT to implement duty time regulations for flight attendants. If DOT fails to take action, the bill would limit the length of work periods required. It would impose a 14 to 20 hour duty time limit, depending on the type of flight, and require prescribed rest breaks after each duty period.

Mr. President, the FAA has consistently denied the flight attendants' petitions for rulemaking in this area, stating that flight attendants are not safety sensitive employees. Yet, they have determined that flight attendants are safety sensitive employees for the purpose of imposing random drug testing requirements. It is time that we rectified this situation and ensure that exploitation of flight attendants that hampers their performance will no longer be tolerated.●

By Mr. DOLE:

S. 1171. A bill entitled the ESOP Reform Act of 1989; to the Committee on Finance.

THE ESOP REFORM ACT OF 1989

Mr. DOLE. Mr. President, today I am introducing legislation which would help to get Wall Street out of the ESOP business.

Employee stock ownership plans were originally designed to provide tax incentives for companies to give their employees a stake in the success of the enterprise. Accordingly, repayments of loans used to establish an ESOP are fully deductible even though the proceeds of the loan remain with the sponsoring corporation as payment for stock purchased by the ESOP. My bill would not change this result.

In 1984, however, the Congress went one step further and allowed private lenders to receive one half of all interest paid by an ESOP tax-free. In effect, private corporations were authorized to issue 50 percent tax-exempt debt without limit to fund their ESOP contributions. Two weeks ago, the IRS put the final icing on this cake by ruling that Wall Street could transform these securities into publicly traded, half tax-exempt, bonds.

Mr. President, in the first 5 months of 1989, approximately 40 major companies have established ESOP's totaling $8 billion in value; the ESOP value for all of 1986 was only $1.2 billion. Now, as a result of the IRS ruling, the projected growth in ESOP's this year alone is estimated at 300-450 percent.

The legislation which I am introducing today is directed only at this last 300-plus percent of annual increase. It would repeal the lender interest exemption, effective last Wednesday—the date similar legislation was introduced in the House of Representatives by the chairman of the Ways and Means Committee.

Generally, I do not favor retroactive effective dates for tax legislation. However, I believe it is necessary in this case to stop the meters which are running nonstop on Wall Street, trying to complete leveraged ESOP transactions before the Congress can act. However, I can assure my colleagues that, when this legislation comes before the Finance Committee, I will support additional, reasonable

transitional relief crafted to protect those ESOP transactions which were negotiated in good faith before June 7, 1989. In addition, I believe the Finance Committee should consider retaining the lender interest exclusion for loans to ESOP's which acquire 50 percent voting control of a corporation.

Mr. President, tax savings are not the only factor in the ESOP explosion. ESOP's have become players in the LBO game—most recently as a favored takeover defense. Thus, rather than promoting greater worker participation in corporate affairs, ESOP's may now be protecting entrenched, mediocre, corporate managers.

For these reasons, Mr. President, I believe that it is time for the Congress to apply the brakes to this runaway benefit.

I ask unanimous consent for the text of the bill to be printed in the RECORD.

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

S. 1171

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

SECTION 1. REPEAL OF PARTIAL EXCLUSION FOR INTEREST ON CERTAIN LOANS USED TO ACQUIRE EMPLOYER SECURITIES.

(a) IN GENERAL.—Section 133 of the Internal Revenue Code of 1986 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 291(e)(1) of such Code is amended by striking clause (iv) and by redesignating clause (v) as clause (iv).

(2) Section 812 of such Code is amended by striking subsection (g).

(3) Paragraph (5) of section 852(b) of such Code is amended by striking subparagraph (C).

(4) Subsection (f) of section 7872 of such Code is amended by striking paragraph (12).

(5) 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 133.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to loans made after June 6, 1989, including loans made after such date to refinance loans made on or before such date.

(2) EXCEPTION.—The amendments made by this section shall not apply to any loan pursuant to a written binding commitment in effect on June 6, 1989, and at all times thereafter, or in connection with a tender offer, exchange offer or registration statement filed with the Securities and Exchange Commission on or before June 6, 1989, to the extent with the ESOP transaction is described in such documents. In addition, the amendments made by this section shall not apply to any loan used to acquire employer securities which were purchased by the employer on or before June 6, 1989, pursuant to a corporate resolution adopted on or before June 6, 1989, providing for the sale of the employer's securities to an ESOP. In addition, the amendments made by this section shall not apply if a public announcement of the ESOP plan was made by the employer on or before June 6, 1989, which announcement sets forth the amount or value of the employer securities to be contributed to the ESOP, or the employer reached an agreement in principle with its lenders, which agreement was evidenced by a written confirmation on or before June 6, 1989, setting forth the principal amount, interest rate or spread and maturity of the loan.

By Mr. MACK:

S. 1172. A bill to authorize a certificate of documentation for a vessel; to the Committee on Commerce, Science, and Transportation.

DOCUMENTATION OF VESSEL "PAPA JOE"

● Mr. MACK. Mr. President, today I am introducing legislation to authorize a certificate of documentation for a vessel titled the *Papa Joe*, owned by Charles Elmer Amerson. On March 23, 1987, the 38-foot wooden shrimp boat was found to be in violation of title 46, United States Code, section 12108.

Section 12108 requires vessels of at least 5 net tons engaged in fisheries to be documented under the laws of the United States with a fishery license. For a vessel to be used with a fishery license, the owner must present evidence that the vessel was built in the United States and owned by an American.

Mr. Amerson is an American. However, neither Mr. Amerson or my office has been able to locate the manufacturer's of the *Papa Joe*. The vessel certificate of title states that the *Papa Joe* was manufactured by NOVI. Through our research we have been unable to locate the NOVI corporation or any trace to the origin of the vessel.

Mr. Amerson purchased the *Papa Joe* in North Carolina. When he received the title, State law did not require that the vessel's origin or previous owner be recorded. This fact has contributed to the difficulty of locating the origin of the *Papa Joe*.●

By Mr. CHAFEE (for himself, Mr. BAUCUS, Mr. DANFORTH, Mr. WALLOP, Mr. RIEGLE, Mr. LAUTENBERG, Mr. BOREN, Mr. SYMMS, Mr. DURENBERGER, Mr. ROTH, Mr. GRASSLEY, Mr. HEINZ, Mr. LIEBERMAN, Mr. GORTON, Mr. CRANSTON, and Mr. MCCAIN):

S. 1173. A bill to amend the Internal Revenue Code of 1986 with respect to the allocation of research and experimental expenditures; to the Committee on Finance.

RELATING TO THE ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

● Mr. CHAFEE. Mr. President, concern about the ability of U.S. businesses to compete with foreign firms has been increasing in recent years. International competitiveness has become one of the top concerns of Congress, and rightly so. The balance of trade has gone from a surplus of $3.4 billion in 1975 to a horrendous deficit of $137.3 billion in 1988.

Given the importance of this issue, Government policies, especially in the areas of tax and trade, should be carefully scrutinized to ensure they enhance our ability to compete rather than hinder it. Our attention should be focused on helping Ameican businesses succeed in today's worldwide market. Even though a small business may not export its products, it is now competing inside the United States against the influx of imported products.

One area of tremendous importance in today's competitive environment is research and development which leads to technological innovation. Since 1929, more than two-thirds of our economic growth has resulted from technological innovation. The nations winning the competitiveness race are those that recognize the importance of advanced technology—because it results in new, marketable products and more efficient production and manufacturing. These countries work to attract companies that will establish research and development facilities within their borders.

To achieve greater economic competitiveness we must foster, not impede, U.S. investment in research and development. We must expand, not export, our technological base. With these goals in mind, Senator BAUCUS and I are introducing legislation to help U.S. business regain its competitive edge. Our bill will change a tax policy which actually impedes our ability to compete, and may, in fact, encourage the export of R&D activities and important technological advances.

Yet, the United States is falling behind in its development of new technologies. I believe one of the reasons for this is the research allocation rules contained in Treasury Regulation section 1.861-8, issued in 1977. In this environment, it is difficult to understand why the United States would adopt policies that discourage the pursuit of domestic R&D.

These rules require U.S. companies with foreign operations to allocate a portion of their domestic R&D to their foreign income. Of course, foreign countries do not allow our companies to use the cost of research performed in the United States as a deduction from the income earned in the foreign country. The net effect is to increase the worldwide tax liability of the companies performing R&D in the United States, encouraging American companies to locate their R&D efforts abroad.

While founded on perhaps valid technical tax principles, it was soon recognized that these regulations represent poor public policy, and Congress placed a moratorium on their implementation. Congress has renewed this moratorium five times. It's time to put an end to the controversy surrounding section 861—over a decade of

uncertainty is enough. We should adopt a permanent solution to the problem—we have an opportunity to do so with the legislation we are introducing today.

Stable public policies with regard to research and development are extremely important. Without stability, we cannot expect our major investors in R&D to make the long-range plans that are critical to some of our most promising research efforts. With permanent reform of section 861, we have an opportunity to both change a misguided policy and to increase long-term R&D investment.

I would like to address some of the misconceptions about reform of section 861. It has been alleged that reform is some type of tax break. I assure you that is not the case. Section 861 is a penalty on domestic R&D, in that it requires U.S. R&D performers to engage in an accounting fiction that leads to double taxation and increases their world-wide tax liability. Removal of this penalty simply allows American companies to be treated like their counterparts all over the world.

It has also been alleged that reform of section 861 will only benefit multinational corporations. In a way, this is true in that a U.S. company must have foreign operations in order to be penalized by Section 861. However, small companies that conduct U.S. R&D and sell abroad are also penalized by Section 861, just like the larger corporations. There are hundreds of small companies that will be burdened less, and made stronger and more competitive, if the section 861 penalty is removed.

Fortunately, President Bush has led the way toward settling this issue with a proposal to permanently resolve the section 861 problem. The President's proposal is consistent with the compromise agreement reached on this issue in 1987 and is identical to the legislation we are introducing today. I commend President Bush for his leadership and foresight in recognizing the need for stable, permanent, and procompetitive policies in this area.

Senator BAUCUS and I are pleased to be joined in the introduction of this procompetitiveness legislation by seven other members of the Senate Finance Committee and seven more of our fellow Senators, all of whom recognize the importance of encouraging domestic R&D. I urge my other colleagues to join us as we attempt to finally, permanently resolve the long-standing controversy surrounding Treasury Regulation Section 1.861-8 by supporting this important legislation.

Thank you, Mr. President and I ask unanimous consent that the full text of this bill appear in the RECORD following my statement.

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

S. 1173

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

SECTION 1. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) RULES FOR ALLOCATING RESEARCH AND EXPERIMENTAL EXPENDITURES.—Section 864 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new subsection:

"(f) ALLOCATION OF QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—

(1) IN GENERAL.—For purposes of sections 861(b), 862(b), and 863, qualified research and experimental expenditures shall be allocated and apportioned as follows:

"(A) any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction;

"(B) 67 percent of qualified research and experimental expenditures (after taking into account subparagraph (A)) shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States; and

"(C) the remaining portion of qualified research and experimental expenditures (after taking into account subparagraphs (A) and (B)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, and no limitation related to apportionment on the basis of gross sales (or otherwise) shall be imposed on apportionment on the basis of gross income.

"(2) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section, the term 'qualified research and experimental expenditures' means amounts—

"(A) which are research and experimental expenditures within the meaning of section 174, and

"(B) which are attributable to activities conducted in the United States.

For purposes of this paragraph, rules similar to the rules of subsection (c) of section 174 shall apply.

"(3) AFFILIATED GROUP.—

"(A) Except as provided in subparagraph (B), the allocation and apportionment required by paragraph (1) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5) of this section) were a single corporation.

"(B) For purposes of the allocation and apportionment required by paragraph (1)—

"(i) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(e)); and

"(ii) dividends from an electing corporation;

shall not be taken into account, except that this subparagraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) is not in effect

"(C) The qualified research and experimental expenditures taken into account for purposes of paragraph (1) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I)).

"(D) The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by subparagraph (C)."

(b) CONFORMING CHANGES.—

(1) Subsection (f) of section 861 of such Code is amended to read as follows:

"(f) CROSS REFERENCES.—

"(1) For treatment of interest paid by a branch of a foreign corporation, see section 884(f).

"(2) For the allocation and apportionment of qualified research and experimental expenditures, see section 864(f)."

(2) Section 862 of such Code is amended by adding at the end thereof the following new subsection:

"(c) CROSS REFERENCE.—

"For the allocation and apportionment of qualified research and experimental expenditures, see section 864(f)."

(3) Section 863 of such Code is amended by adding at the end thereof the following new subsection:

"(f) CROSS REFERENCE.—

"For the allocation and apportionment of qualified research and experimental expenditures, see section 864(f)."

(4) Paragraph (6) of section 864(e) of such Code is amended to read as follows:

"(6) ALLOCATION AND APPORTIONMENT OF OTHER EXPENSES.—Expenses other than interest and qualified research and experimental expenditures which are not directly allocable and apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after August 1, 1987; except that such amendments shall not apply to qualified research and experimental expenditures to which section 4009(c)(2) of the Technical and Miscellaneous Revenue Act of 1988 applies.●

Mr. BAUCUS. Mr. President, I am pleased to join my colleague, Senator CHAFEE, to introduce legislation to reform section 861 of the Internal Revenue Code, and thereby encourage U.S. firms to do their research and development in the United States. The legislation we are proposing will generally boost the American economy and create jobs.

As now written, the regulations known as section 861-8 discourage pursuit of domestic R&D because they require U.S. companies that operate in overseas markets to allocate a portion of their domestic R&D expenses abroad. Of course, other governments do not permit American companies to actually deduct U.S. R&D expenses from income earned in their country. As a result, U.S. R&D performers end up with a higher worldwide tax liability. None of our major competitors

impose a similar burden on their companies.

This is a misguided public policy. It penalizes the pursuit of R&D and encourages American companies to move their R&D efforts abroad—where they can fully deduct their R&D expenses and where they are often other incentives to establish research facilities.

If the United States is going to maintain, and enhance, its position as a technological world leader, we must encourage vigorous research and development here at home. Domestic R&D increases the American scientific community's knowledge base—as scientists share information on a regular basis. This results in greater, and sometimes unexpected, innovation. As cochair of the congressional competitiveness caucus, I am aware of the importance of technological innovation to a strong, competitive position in the world marketplace. I also know that leadership in the worldwide competitiveness race results in a stronger domestic economy with more jobs.

There have been allegations that, instead, reform of 861 will somehow decrease American employment. Proponents of this view argue that reform of 861 will encourage companies to move their manufacturing operations abroad because they will benefit from the 861 reform only if they have foreign operations. Nothing could be further from the truth. As discussed above, section 861 is a penalty for U.S.-incurred R&D expenses, and the presence of this penalty encourages companies to locate overseas. Reform of 861 will reduce the penalty, and thus reduce the incentive to locate abroad, but it in no way makes section 861 a tax benefit for foreign manufacturing.

We are a strong nation with significant resources, which include our highly trained, creative research community. It is time to end the years of controversy about 861 and to turn our attention to formulation of positive public policies that boost our economy—through investments in the technological innovation that we are so capable of producing. This legislation is an important, necessary step in this effort. I urge my colleagues to join us in support of this legislation.

By Mr. CRANSTON (for himself and Mr. WILSON):

S.J. Res. 156. Joint resolution to commemorate the 50th anniversary of the National Aeronautics and Space Administration Ames Research Center; to the Committee on the Judiciary.

THE 50TH ANNIVERSARY OF THE AMES RESEARCH CENTER

Mr. CRANSTON. Mr. President, I am pleased to introduce a joint resolution on behalf of Senator WILSON and myself to commend the NASA Ames Research Center on its 50th anniversary. One of the foremost centers of aeronautical and space science research and technology, California's NASA Ames has played an important role in our Nation's journey into space.

NASA Ames has been on the cutting edge of technology since its founding. Developments in atmospheric entry systems and aerodynamics made significant contributions to the Mercury, Gemini, and Apollo space programs. Advances in vehicle design and the development of materials for thermal protection contributed significantly to the space shuttle program.

Scientific discoveries at NASA Ames have paved the way for discoveries about the Earth and beyond. Spacecraft from NASA Ames have explored the solar system, enhancing our understanding of Venus, leading to the discovery of rings around Uranus, and closer to home, charting the Antarctic ozone hole in our atmosphere. In this era of heightened awareness about our environment, these contributions are invaluable.

NASA Ames developed and operated the best flight simulation complex in the world, including wind tunnels and arc-jets for model testing of aircraft. NASA Ames is also a world leader in the use of supercomputers, operating the most powerful supercomputer complex in the world.

Cooperative activities with the public and private sector, nationally and internationally, have made NASA Ames the unsurpassed leader in its field.

There being no objection, Mr. President, I ask unanimous consent that the resolution be included in the RECORD following my statement.

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

S.J. RES. 156

Whereas Santa Clara County, California is the home of the National Aeronautics and Space Administration Ames Research Center;

Whereas the NASA Ames Research Center supports America's goals and has a long tradition of award-winning advances in aeronautical, space and life science research;

Whereas the NASA Ames Research Center is a world leader in the utilization of supercomputers for computational analysis of fluid flow and such Center operates one of the most powerful supercomputer complexes in the world;

Whereas spacecraft from the NASA Ames Research Center were the first to travel through the asteroid belt between Mars and Jupiter and on to Saturn;

Whereas the NASA Ames Research Center pioneered the use of aircraft as airborne laboratories and applied such usage to chart the Antarctic ozone hole in the atmosphere of the Earth and to provide other essential information concerning the environment;

Whereas from the inception of the NASA Ames Research Center, the personnel of the NASA Ames Research Center have been the most important resource of such Center, and 2,200 civil servants and almost 3,200 contract personnel, university researchers, and research personnel from the United States Army currently work at the NASA Ames Research Center: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the NASA Ames Research Center is commended for 50 years of outstanding contributions to space science and technology through the work of exceptional personnel and the development and the use of premier facilities; and

(2) the President is authorized and requested to issue a proclamation acknowledging the 50th anniversary of the NASA Ames Research Center and commending the contributions of such Center.

ADDITIONAL COSPONSORS

S. 15

At the request of Mr. CRANSTON, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 15, a bill to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes.

S. 16

At the request of Mr. CRANSTON, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 16, a bill to require the executive branch to gather and disseminate information regarding, and to promote techniques to eliminate, discriminatory wage-setting practices and discriminatory wage disparities which are based on sex, race, or national origin.

S. 58

At the request of Mr. BOSCHWITZ, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 58, a bill to amend the Housing and Community Development Act of 1987 to improve the enterprise zone development program, to amend the Internal Revenue Code of 1986 to provide tax incentives for investments in enterprise zones, and for other purposes.

S. 110

At the request of Mr. KENNEDY, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 110, a bill to revise and extend the programs of assistance under title X of the Public Health Service Act.

S. 120

At the request of Mr. KENNEDY, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 120, a bill to amend the Public Health Service Act to reauthorize adolescent family life demonstration projects, and for other purposes.

S. 131

At the request of Mr. INOUYE, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 131, a bill to amend title 10,

United States Code, to exclude nurse officers from the computation of authorized grade strength.

S. 148

At the request of Mr. PRESSLER, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 148, a bill to require the Secretary of the Treasury to mint coins in commemoration of the golden anniversary of the Mount Rushmore National Memorial.

S. 231

At the request of Mr. MOYNIHAN, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 231, a bill to amend part A of title IV of the Social Security Act to improve quality control standards and procedures under the Aid to Families With Dependent Children Program, and for other purposes.

S. 260

At the request of Mr. MOYNIHAN, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 260, a bill to amend the Internal Revenue Code of 1986 to make the exclusion from gross income of amounts paid for employee educational assistance programs.

S. 335

At the request of Mr. MCCAIN, the names of the Senator from Wisconsin [Mr. KASTEN], the Senator from Oklahoma [Mr. NICKLES], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 335, a bill to amend title XVIII of the Social Security Act and other provisions of law to delay for 1 year the effective dates of the supplemental Medicare premium and additional benefits under part B of the Medicare Program, with the exception of the spousal impoverishment benefit.

S. 378

At the request of Mr. ROCKEFELLER, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 378, a bill to extend the Steel Import Stabilization Act for an additional 5 years.

S. 416

At the request of Mr. DOMENICI, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 416, a bill to provide that all Federal civilian and military retirees shall receive the full cost-of-living adjustment in annuities payable under Federal retirement systems for fiscal years 1990 and 1991, and for other purposes.

S. 434

At the request of Mr. REID, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 434, a bill to prohibit a State from imposing an income tax on the pension income of individuals who are not residents or domiciliaries of that State.

S. 435

At the request of Mr. REID, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 435, a bill to amend section 118 of the Internal Revenue Code to provide for certain exceptions from certain rules determining contributions in aid of construction.

S. 436

At the request of Mr. METZENBAUM, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 436, a bill to strengthen the protections available to employees against reprisals for disclosing information, to protect the public health and safety, and for other purposes.

S. 479

At the request of Mr. HATCH, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 479, a bill to amend the Internal Revenue Code to allow for deduction of qualified adoption expenses and for other purposes.

S. 501

At the request of Mr. D'AMATO, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 501, a bill to amend the Internal Revenue Code of 1986 to make permanent, and to increase the amount of, the exclusion for amounts received under qualified group legal services plans.

S. 511

At the request of Mr. INOUYE, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 511, a bill to recognize the organization known as the National Academies of Practice.

S. 519

At the request of Mr. LAUTENBERG, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 519, a bill to prohibit smoking on any scheduled airline flight in intrastate, interstate, or overseas air transportation.

S. 652

At the request of Mr. KENNEDY, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 652, a bill to revise the format of the Presidential report to Congress on voting practices in the United Nations.

S. 655

At the request of Mr. HATCH, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 655, a bill to amend the Public Health Service Act to require public conveyances to certify that the public is not involuntarily exposed to passive smoke when exposed to such conveyance, and for other purposes.

S. 656

At the request of Mr. GRASSLEY, the names of the Senator from Tennessee [Mr. GORE], the Senator from Alabama [Mr. HEFLIN], and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of S. 656, a bill to amend the Internal Revenue Code of 1986 to restore the deduction for interest on educational loans.

S. 681

At the request of Mr. BAUCUS, the names of the Senator from Pennsylvania [Mr. SPECTER], the Senator from Iowa [Mr. GRASSLEY], the Senator from Arizona [Mr. MCCAIN], the Senator from Mississippi [Mr. COCHRAN], the Senator from Mississippi [Mr. LOTT], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from New Mexico [Mr. DOMENICI], the Senator from Oklahoma [Mr. NICKLES], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of S. 681, a bill to require the Secretary of the Treasury to mint and issue coins in commemoration of the 100th anniversary of the statehood of Idaho, North Dakota, South Dakota, Washington, and Wyoming, and for other purposes.

S. 754

At the request of Mr. PACKWOOD, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 754, a bill to restrict the export of unprocessed timber from certain Federal lands, and for other purposes.

S. 785

At the request of Mr. ROCKEFELLER, the name of the Senator from West Virginia [Mr. BYRD] was added as a cosponsor of S.785, a bill to amend title XIX of the Social Security Act to provide States the option of providing quality home and community care to the elderly under their Medicaid Program.

S. 814

At the request of Mr. DOMENICI, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 814, a bill to provide for the minting and circulation of one dollar coins, and for other purposes.

S. 893

At the request of Mr. LAUTENBERG, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 893, a bill to establish certain categories of Soviet and Vietnamese nationals presumed to be subject to persecution and to provide for adjustments to refugees status of certain Soviet and Vietnamese parolees.

S. 919

At the request of Mr. PRYOR, the names of the Senator from Maryland [Ms. MIKULSKI] and the Senator from Maine [Mr. MITCHELL] were added as cosponsors of S. 919, a bill to enable producers of soybeans to develop, finance, and carry out a nationally coordinated program for soybean promotion, research, and consumer information, and for other purposes.

S. 933

At the request of Mr. HARKIN, the names of the Senator from North Carolina [Mr. SANFORD] and the Senator from California [Mr. WILSON] were added as cosponsors of S. 933, a bill to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

S. 956

At the request of Mr. COATS, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 956, a bill to exclude users of alcohol and illegal substances from the definition of handicapped individuals under the Rehabilitation Act of 1973, and for other purposes.

S. 969

At the request of Mr. MOYNIHAN, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 969, a bill to establish the President's Award for Addiction Research.

S. 975

At the request of Mr. METZENBAUM, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 975, a bill to amend the Job Training Partnership Act to encourage a broader range of training and job placement for women, and for other purposes.

S. 980

At the request of Mr. MITCHELL, the names of the Senator from Wisconsin [Mr. KASTEN], the Senator from Mississippi [Mr. COCHRAN], the Senator from Nevada [Mr. REID], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 980, a bill to amend the Internal Revenue Code of 1986 to improve the effectiveness of the low-income housing credit.

S. 1036

At the request of Mr. LEAHY, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Illinois [Mr. SIMON], and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 1036, a bill to improve the economic, community, and educational well-being of rural America, and for other purposes.

S. 1040

At the request of Mr. WILSON, the names of the Senator from Minnesota [Mr. BOSCHWITZ] and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 1040, a bill to require the Secretary of Defense to establish an Anti-Drug Task Force.

S. 1063

At the request of Mr. LUGAR, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1063, a bill to improve the conservation of cropland, and for other purposes.

S. 1091

At the request of Mr. GRAHAM, the names of the Senator from California [Mr. WILSON], the Senator from South Carolina [Mr. THURMOND], the Senator from New Jersey [Mr. BRADLEY], the Senator from North Dakota [Mr. CONRAD], and the Senator from Kansas [Mr. DOLE] were added as cosponsors of S. 1091, a bill to provide for the striking of medals in commemoration of the bicentennial of the U.S. Coast Guard.

S. 1129

At the request of Mr. BENTSEN, the names of the Senator from Vermont [Mr. LEAHY], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Illinois [Mr. SIMON], the Senator from Wyoming [Mr. WALLOP], the Senator from Maryland [Mr. SARBANES], the Senator from Delaware [Mr. BIDEN], the Senator from Indiana [Mr. LUGAR], the Senator from Illinois [Mr. DIXON], the Senator from Michigan [Mr. LEVIN], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of S. 1129, a bill to amend the Internal Revenue Code of 1986 to simplify the antidiscrimination rules applicable to certain employee benefit plans.

S. 1153

At the request of Mr. DASCHLE, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1153, a bill to amend title 38, United States Code, to provide for the establishment of presumptions of service connection between certain diseases experienced by veterans who served in Vietnam era and exposure to certain toxic herbicide agents used in Vietnam; to provide for interim benefits for veterans of such service who have certain diseases; to improve the reporting requirements relating to the "Ranch Hand Study;" and for other purposes.

SENATE JOINT RESOLUTION 15

At the request of Mr. PRESSLER, the names of the Senator from Nebraska [Mr. EXON], the Senator from Wyoming [Mr. SIMPSON], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of Senate Joint Resolution 15, a joint resolution to designate the second Sunday in October of 1989 as "National Children's Day."

SENATE JOINT RESOLUTION 57

At the request of Mr. PELL, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of Senate Joint Resolution 57, a joint resolution to establish a national policy on permanent papers.

SENATE JOINT RESOLUTION 120

At the request of Mr. BRADLEY, the names of the Senator from Florida [Mr. GRAHAM], the Senator from Iowa [Mr. GRASSLEY], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of Senate Joint Resolution 120, a joint resolution to designate the period commencing November 12, 1989, and ending November 18, 1989, as "Geography Awareness Week."

SENATE JOINT RESOLUTION 121

At the request of Mr. DECONCINI, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of Senate Joint Resolution 121, a joint resolution to provide for the designation of September 14, 1989, as "National D.A.R.E. Day."

SENATE JOINT RESOLUTION 132

At the request of Mr. SASSER, names of the Senator from Utah [Mr. GARN], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Georgia [Mr. NUNN], and the Senator from Pennsylvania [Mr. HEINZ] were added as cosponsors of Senate Joint Resolution 132, a joint resolution designating September 1 through 30, 1989, as "National Alcohol and Drug Treatment Month."

SENATE JOINT RESOLUTION 148

At the request of Mr. GORE, the name of the Senator from West Virginia [Mr. BYRD] was added as a cosponsor of Senate Joint Resolution 148, a joint resolution to designate the week of October 8, 1989, through October 14, 1989, as "National Job Skills Week."

SENATE CONCURRENT RESOLUTION 37

At the request of Mr. HARKIN, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of Senate Concurrent Resolution 37, a concurrent resolution expressing the sense of the Congress that the differential in Medicare payments made to urban and rural hospitals be eliminated.

SENATE CONCURRENT RESOLUTION 39

At the request of Mr. WILSON, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of Senate Concurrent Resolution 39, a concurrent resolution to commend the group of aviators known as the "Flying Tigers" for nearly 50 years of service to the United States.

SENATE CONCURRENT RESOLUTION 40

At the request of Mr. CRANSTON, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of Senate Concurrent Resolution 40, a concurrent resolution to designate June 21, 1989, as Chaney, Goodman, and Schwerner Day.

SENATE RESOLUTION 13

At the request of Mr. DOLE, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Alaska [Mr. STEVENS], the Senator from Massachusetts [Mr. KERRY], the Senator from Mississippi [Mr. COCHRAN], and the Senator from California [Mr. CRANSTON] were added as cosponsors of Senate Resolution 13, a resolution to amend Senate Resolution 28 to implement closed caption broadcasting for hearing-impaired individuals of floor proceedings of the Senate.

SENATE RESOLUTION 99

At the request of Mr. BOSCHWITZ, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of Senate Resolution 99, a resolution requiring the Architect of the Capitol to establish and implement a voluntary program for recycling paper disposed of in the operation of the Senate.

SENATE RESOLUTION 116

At the request of Mr. LAUTENBERG, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Resolution 116, a resolution commemorating the 50th anniversary of the U.S. Jewish Appeal.

SENATE CONCURRENT RESOLUTION 43—CONCERNING HUMAN RIGHTS VIOLATIONS IN YUGOSLAVIA

Mr. PRESSLER (for himself, Mr. DOMENICI, Mr. D'AMATO and Mr. DOLE) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 43

Whereas the Department of State's 1988 Country Report on Human Rights Practices cites many human rights practices in Yugoslavia that violate internationally accepted human rights standards, including infringement upon and abrogation of the rights of assembly and fair trial, freedom of speech, and freedom of the press.

Whereas the Country Report also indicates that these human rights violations are targeted at certain ethnic groups and regions, including Slovenians but most particularly against the ethnic Albanians in the Socialist Autonomous Province of Kosovo;

Whereas those human rights violations, in addition to recent actions taken to limit the social and political autonomy of the Socialist Autonomous Province of Kosovo have precipitated a crisis in that region;

Whereas the Yugoslav government's response to that crisis was a brutal police crackdown that led to the deaths of many civilians and police officers, the wounding of hundreds more, and the imprisonment of additional hundreds;

Whereas the these human rights abuses violate the high ideals of mutual equality, dignity and brotherhood among all of the country's nations and nationalities which has been a guiding principle of the Socialist Federal Republic of Yugoslav since 1945; and

Whereas the European Parliament of the European Community has condemned these actions: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Senate—

(1) expresses grave concern regarding the action of the Government of the Socialist Federal Republic of Yugoslavia for repeated human rights violations and for its unnecessary, violent and brutal handling of the crisis in the Socialist Autonomous Province of Kosovo;

(2) urges the Yugoslav government to take all necessary steps to assure that further violence and bloodshed do not occur in the Socialist Autonomous Province of Kosovo;

(3) urges the government of the Socialist Federal Republic of Yugoslavia fully to observe its obligations under the Helsinki Final Act and the United Nations Declaration on Human Rights to assure full protection of the rights of the Albanian ethnic minority in Yugoslavia;

(4) requests the President and the Department of State to continue to monitor closely human rights conditions in the Socialist Federal Republic of Yugoslavia; and

(5) calls upon the President to express these concerns of the Congress through appropriate channels to representatives of the Socialist Federal Republic of Yugoslavia.

Mr. PRESSLER. Mr. President, in conjunction with identical action in the House of Representatives today, I am now submitting a Senate concurrent resolution expressing the sense of Congress concerning the deplorable human rights situation in Yugoslavia.

As I have noted previously in the Chamber, Yugoslavians of Albanian ethnic descent have been treated brutally by Yugoslavian police. The time for Congress to express its point of view on this injustice is long overdue.

The concurrent resolution urges the Yugoslavian Government to stop the bloodshed, and adhere to its obligations under the Helsinki Final Act and the United Nations Declaration on Human Rights. It also requests the President and the Department of State to continue close monitoring of human rights conditions in Yugoslavia and to express the concerns of Congress to Yugoslavian officials through appropriate channels.

Mr. President, the political status and human rights of Albanian-Yugoslavians have deteriorated drastically during the past year. It is appropriate that Congress call for action to address this problem, just as we have done in instances of human rights abuses in other countries. I urge the Senate to act promptly and favorably on the concurrent resolution.

Finally, Mr. President, I take note of the fact that tomorrow, June 14, hundreds of Albanian Americans will gather at 11 a.m. on the west front of the Capitol to demonstrate their concerns on this matter. I urge all Senators to attend this event. It is fitting that it is being held on Flag Day, a day when patriotic Americans like these traditionally gather to show respect for our flag and the universal principles of liberty for which it stands. These principles are now being trampled upon in Yugoslavia.

SENATE RESOLUTION 144—RELATIVE TO COMMEMORATION OF THE BICENTENNIAL OF THE SENATE

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 144

Resolved,

SECTION 1. ESTABLISHMENT OF COMMISSION.

There is hereby established a Commission on the Bicentennial of the United States Senate (referred to as the "Commission") to coordinate ceremonial events and related activities as appropriate.

SEC. 2. MEMBERSHIP OF COMMISSION.

The Commission shall be composed of the following members:

(1) the President pro tempore of the Senate;

(2) the majority leader and minority leader of the Senate;

(3) three Members of the Senate to be appointed by the majority leader; and

(4) three members of the Senate to be appointed by the minority leader.

A Member of the Senate appointed pursuant to Senate Resolution 352, agreed to April 11, 1986, to serve during the 100th Congress shall serve until the termination of the Commission.

SEC. 3. CHAIRMANSHIP; QUORUM.

The Majority Leader, or his designee, shall serve as the Chairman of the Commission and the Minority Leader, or his designee, shall serve as the Vice Chairman of the Commission. Four members of the Commission shall constitute a quorum for the transaction of business.

SEC. 4. VACANCY.

Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment.

SEC. 5. DUTIES OF COMMISSION.

The Commission shall oversee the development of projects and activities as outlined in the Final Report of the Study Group on the Commemoration of the United States Senate Bicentenary. It shall seek to coordinate Senate bicentennial activities with related organizations outside the Senate, including the Commission on the United States House of Representatives Bicentenary and the Commission on the Bicentennial of the United States Constitution.

SEC. 6. STAFF AND SUPPORT.

(a) IN GENERAL.—The Commission shall have the staff support and the expertise of Senate support staff including the Senate Historical Office and the Office of Senate Curator, under the jurisdiction of the Secretary of the Senate, and the assistance of the United States Senate Commission on Art. The Chairman shall designate an Executive Secretary of the Commission.

(b) SERVICES OF CONSULTANT.—In carrying out its functions, the Commission may, with the prior approval of the Senate Committee on Rules and Administration, procure the temporary (not to exceed one year) or intermittent service of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services.

(c) GUEST SPEAKERS.—In carrying out its functions, the Commission is authorized to engage the services of guest speakers and provide such speakers (other than speakers who are Members of Congress or officers or employees of the United States) with appropriate honoraria, transportation expenses, and per diem in lieu of subsistence.

SEC. 7. PAYMENT OF EXPENSES.

(a) PAYMENT OUT OF THE CONTINGENT FUND.—The actual and necessary expenses of the Commission, including official reception and representation expenses, the employment of staff at an annual rate of pay, and the employment of consultants at a rate not to exceed the maximum daily rate for a standing committee of the Senate, shall be paid from the Contingent Fund of the Senate, out of the account of Miscellaneous

Items, upon vouchers approved by the Chairman of the Commission or his designee; except that no voucher shall be required to pay the salary of any employee who is compensated at an annual rate of pay. This subsection is effective with respect to expenditures incurred on or after the date of agreement to Senate Resolution 293, 100th Congress.

(b) AUTHORITY OF THE SECRETARY OF THE SENATE.—The Secretary of the Senate is authorized to advance such sums as may be necessary to defray the expenses incurred in carrying out the provisions of this resolution.

SEC. 8. PRIVATE SECTOR TASK FORCE.

The Commission shall seek to assemble a private sector task force to explore ideas and funding from private sources for appropriate projects to commemorate the bicentennial.

SEC. 9. REPORTS.

The Commission may submit periodic reports on its activities to the Senate and shall submit a final report at the time of its termination.

SEC. 10. TERMINATION OF COMMISSION.

The Commission shall cease to exist at the end of the one hundred and first Congress.

SEC. 11. REPEAL OF SENATE RESOLUTION 352.

Senate Resolution 352, agreed to April 11, 1986, is repealed.

AMENDMENTS SUBMITTED

NATURAL GAS DECONTROL ACT OF 1989

METZENBAUM (AND EXON) AMENDMENT NO. 191

Mr. METZENBAUM (for himself and Mr. EXON) proposed an amendment to the bill (H.R. 1722) to amend the Natural Gas Policy Act of 1978 to eliminate wellhead price and nonprice controls on the first sale of natural gas, and to make technical and conforming amendments to such act, as follows:

At the appropriate place, insert:

"SEC. 3. INDEFINITE PRICE ESCALATOR CLAUSES.

"An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.".

METZENBAUM (AND OTHERS) AMENDMENT NO. 192

Mr. METZENBAUM (for himself, Mr. REID, and Mr. LAUTENBERG) proposed an amendment, which was subsequently modified, to the bill H.R. 1722, supra; as follows:

At the appropriate place, insert:

SEC. . PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural-gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that—

was a violation of Federal or State environmental law; or

was an environmentally irresponsible act unless the natural-gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural-gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) The term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent;

METZENBAUM (AND KOHL) AMENDMENT NO. 193

Mr. METZENBAUM (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 1722, supra; as follows:

At the appropriate place, insert:

SEC. 3. TAKE-OR-PAY CLAUSES.

"A take-or-pay clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.".

METZENBAUM AMENDMENT NO. 194

Mr. METZENBAUM proposed an amendment to the bill H.R. 1722, supra; as follows:

At the appropriate place, insert:

"In the case of high-cost natural gas under section 107(c)(5) of title I of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission shall exercise its existing authority to rescind any incentive prices on that category of natural gas within 90 days of the date of enactment. Notwithstanding any other provision of the Code, nothing in this amendment shall affect the continuation of tax credits under the Internal Revenue Code with respect to natural gas production."

AMENDMENTS SUBMITTED DURING RECESS

Under the authority of the order of the Senate of June 8, 1989, the following amendments were submitted on June 12, 1989, during the recess of the Senate:

NATURAL GAS DECONTROL ACT OF 1989

BRADLEY AMENDMENT NOS. 151 THROUGH 156

(Ordered to lie on the table.)

Mr. BRADLEY submitted six amendments intended to be proposed by him to the bill (H.R. 1722) to amend the Natural Gas Policy Act of 1978 to eliminate wellhead price and nonprice controls on the first sale of natural gas, and to make technical and conforming amendments to such Act, as follows:

AMENDMENT No. 151

Insert the following at the appropriate place:

SEC. .

The Federal Energy Regulatory Commission may require, by rule or order, any interstate pipeline to transport natural gas. Such rules or orders may be issued under both the Natural Gas Policy Act and the Natural Gas Act.

AMENDMENT No. 152

Insert the following at the appropriate place:

SEC. .

The Federal Energy Regulatory Commission may require, by rule or order, any interstate pipeline to transport natural gas. Such rules or orders may be issued under both the Natural Gas Policy Act and the Natural Gas Act.

AMENDMENT No. 153

In lieu of matter proposed to be inserted, insert the following at the appropriate place:

SEC. .

The Federal Energy Regulatory Commission may require, by rule or order, any interstate pipeline to transport natural gas. Such rules or orders may be issued under both the Natural Gas Policy Act and the Natural Gas Act.

AMENDMENT No. 154

At the end of the amendment insert the following: "Such rules or orders shall be made in the public interest and shall require that natural gas be transported at just and reasonable rates. Nothing in this section shall be construed as affecting the authority of the Federal Energy Regulatory Commission with respect to the construction of new pipeline facilities.".

AMENDMENT No. 155

On page 3, line 23, strike "effective on January 1, 1993." and insert "effective on the later of—

"(1) January 1, 1993; or

"(2) the date that the Federal Energy Regulatory Commission issues regulations implementing its authority under the Natural Gas Act and the Natural Gas Policy Act of 1978 to require a natural-gas company to transport natural gas, at just and reasonable rates, in the public interest in order to prevent anticompetitive action; provided, that nothing in this subsection shall be construed as affecting the authority of the Federal Energy Regulatory Commission with respect to the construction of new pipeline facilities.".

AMENDMENT No. 156

On page 3, line 23, strike "effective on January 1, 1993." and insert "effective on the later of—

"(1) January 1, 1993; or

"(2) the date that the Federal Energy Regulatory Commission issues regulations implementing its authority under the Natural Gas Act and the Natural Gas Policy Act of 1978 to require a natural-gas company to transport natural gas.

METZENBAUM AMENDMENT NOS. 157 THROUGH 190

(Ordered to lie on the table.)

Mr. METZENBAUM submitted 34 amendments intended to be proposed by him to the bill H.R. 1722, supra, as follows:

AMENDMENT No. 157

At the appropriate place, insert:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 158

In lieu of the matter proposed to be stricken, insert the following:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 159

In lieu of the matter proposed to be inserted, insert the following:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 160

At the appropriate place, insert:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 161

To the language proposed to be stricken, at the appropriate place, insert the following:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 162

At the appropriate place, insert the following:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 163

In lieu of the matter proposed to be inserted, insert the following:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 164

At the appropriate place, insert:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 165

At the appropriate place, insert the following:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 166

At the appropriate place, insert the following:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

An indefinite price escalator clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 167

At the appropriate place, insert:

SEC. . PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that:

was a violation of Federal or State environmental law; or

was an environmentally irresponsible act, unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

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(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) the term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

AMENDMENT NO. 168

In lieu of the matter proposed to be stricken, insert the following:

SEC. . PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that:

was a violation of Federal or State environmental law; or

was an environmentally irresponsible act, unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) the term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

AMENDMENT NO. 169

In lieu of the matter proposed to be inserted, insert the following:

SEC. . PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that:

was a violation of Federal or State environmental law; or

was an environmentally irresponsible act unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) the term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

AMENDMENT NO. 170

At the appropriate place, insert:

SEC. . PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that:

was a violation of Federal or State environmental law; or

was a environmentally irresponsible act, unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) the term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

AMENDMENT NO. 171

To the language proposed to be stricken, at the appropriate place, insert the following:

SEC. . PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that:

was a violation of Federal or State environmental law; or

was a environmentally irresponsible act, unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) the term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

AMENDMENT NO. 172

At the appropriate place, insert the following:

SEC. . PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that:

was a violation of Federal or State environmental law; or

was an environmentally irresponsible act unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) the term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

AMENDMENT NO. 173

In lieu of the matter proposed to be inserted, insert the following:

SEC. . PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that:

was a violation of Federal or State environmental law; or

was an environmentally irresponsible act unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) the term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

AMENDMENT NO. 174

At the appropriate place, insert:

SEC. PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that:

was a violation of Federal or State environmental law; or

was an environmentally irresponsible act, unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) the term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) the term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

AMENDMENT NO. 175

To the text to be stricken out, at the appropriate place, insert the following:

SEC. . PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that.

was a violation of Federal or State environmental law; or

the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT NO. 176

At the appropriate place, insert the following:

SEC. 17. PROHIBITION OF PASSTHROUGH OF COSTS.

(a) PROHIBITION.—The Federal Energy Regulatory Commission (referred to as the "Commission") shall not permit a natural gas company to recover in its rates costs of any nature incurred directly or indirectly as a result of an act by the company or its employees or agents that:

was a violation of Federal or State environmental law; or

was an environmentally irresponsible act, unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and State agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committeed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) the term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

AMENDMENT NO. 177

At the appropriate place, insert:

SEC. 3. TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES

A take-or-pay clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that was an environmentally irresponsible act, unless the natural gas company can demonstrate, using substantial evidence, that such costs that were incurred are just and reasonable.

(b) DETERMINATION OF VIOLATION.—The Commission shall determine whether a violation of environmental law has occurred in accordance with the following standards:

(1) The Commission shall consult with Federal and state agencies having responsibility for enforcement of environmental laws in determining whether a violation has occurred.

(2) The Commission shall be bound by advice from authorized officials of an agency, whether or not in the form of a formal action, that an act was a violation of environmental law.

(3) The Commission shall not be bound by a decision by an agency not to pursue a possible violation or by advice that an act was not a violation of environmental law unless the decision or advice is a formal affirmative determination by the agency that a violation did not occur.

(4) The Commission shall be bound by a judicial determination, or an administrative determination not reviewed by a court, that a violation of environmental law did or did not occur.

(5) The Commission shall not be bound by a consent decree or a similar agreement entered in a judicial or administrative proceeding unless the decree or agreement specifically states a determination that a violation of environmental law did or did not occur.

(c) DETERMINATION OF ENVIRONMENTALLY IRRESPONSIBLE ACT.—Notwithstanding the absence of facts warranting prosecution of a possible violation of environmental law, the Commission may find that a natural gas company or its employee or agent committed an environmentally irresponsible act.

(d) PREVENTION OF VIOLATIONS.—Subsection (a) shall not be construed to prohibit the passthrough of costs incurred by a natural-gas company in an effort to prevent violations of Federal or State environmental law by the company or its employees or agents.

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "act" means an act or a failure to act, whether intentional, negligent, or inadvertent; and

(2) the term "environmentally irresponsible act" means an act that is inconsistent with the ends sought to be achieved by Federal or State environmental law.

AMENDMENT NO. 178

In lieu of the matter proposed to be stricken, insert the following:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

A take-or-pay clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT NO. 179

In lieu of the matter proposed to be inserted, insert the following:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

A take-or-pay clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT NO. 180

At the appropriate place, insert:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

A take-or-pay clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 181

To the language proposed to be stricken at the appropriate place, insert the following:

SEC. 3. TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

A take-or-pay clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 182

At the appropriate place, insert the following:

SEC. 3. TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

A take-or-pay clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 183

In lieu of the matter proposed to be inserted, insert the following:

SEC. 3. TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

A take-or-pay clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 184

At the appropriate place, insert:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

A take-or-pay clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 185

At the text to be stricken out, at the appropriate place, insert the following:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

A take-or-pay clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 186

At the appropriate place, insert the following:

SEC. . TAKE-OR-PAY AND CERTAIN OTHER TYPES OF CONTRACT CLAUSES.

A take-or-pay clause in a contract for the purchase of natural gas shall be held to be unjust and unreasonable under section 5 of the Natural Gas Act (15 U.S.C. 717d) unless the Federal Energy Regulatory Commission finds, on application of a party to the contract, that the clause is just and reasonable under the particular circumstances of the contract in question.

AMENDMENT No. 187

On page 3, line 24, insert immediately following the numeral:

"*Provided, however,* That in the case of high-cost natural gas under section 107(c)(5) of title I of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission shall exercise its existing authority to rescind any incentive prices on that category of natural gas within 90 days of the date of enactment.".

AMENDMENT No. 188

To the language proposed to be stricken, insert the following:

In the case of high-cost natural gas under section 107(c)(5) of title I of the Natural Gas Policy Act of 1978, permanent elimination of wellhead price controls pursuant to section 2(b) of the Natural Gas Wellhead Decontrol Act of 1989 shall not be effective unless the Federal Energy Regulatory Commission shall exercise its existing authority to rescind any incentive prices on that category of natural gas within 90 days of the date of enactment.".

AMENDMENT No. 189

In lieu of the language proposed to be inserted, insert the following:

In the case of high-cost natural gas under section 107(c)(5) of title I of the Natural Gas Policy Act of 1978, permanent elimination of wellhead price controls pursuant to section 2(b) of the Natural Gas Wellhead Decontrol Act of 1989 shall not be effective unless the Federal Energy Regulatory Commission shall exercise its existing authority to rescind any incentive prices on that category of natural gas within 90 days of the date of enactment.".

AMENDMENT No. 190

At the appropriate place insert:

In the case of high-cost natural gas under section 107(c)(5) of title I of the Natural Gas Policy Act of 1978, permanent elimination of wellhead price controls pursuant to section 2(b) of the Natural Gas Wellhead Decontrol Act of 1989 shall not be effective unless the Federal Energy Regulatory Commission shall exercise its existing authority to rescind any incentive prices on that category of natural gas within 90 days of the date of enactment.".

NOTICES OF HEARINGS

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

Mr. PRYOR. Mr. President, I would like to announce that the Subcommittee on Federal Services, Post Office, and Civil Service, of the Committee on Governmental Affairs, will hold a hearing on Friday, June 16, 1989. The focus of the hearing will be to examine policy issues regarding operational testing, as well as contracting practices. The Subcommittee will hear witnesses from the Office of Test and Evaluation, the General Accounting Office, and the Office of the Inspector General, Department of Defense.

The hearing is scheduled for 9:30 a.m., in room 628 of the Senate Dirksen Office Building. For further information, please contact Ed Gleiman, subcommittee staff director, on 224-2254.

Mr. President, I would like to announce that the Subcommittee on Federal Services, Post Office, and Civil Service, of the Committee on Governmental Affairs, will hold a hearing on Monday, June 18, 1989. The focus of the hearing will be to examine Federal recruitment policies and practices. The subcommittee will hear witnesses from the Office of Personnel Management, the General Accounting Office, the National Commission on the Public Service, the General Services Administration, the Department of the Air Force, and various employee groups.

The hearing is scheduled for 10 a.m., in room 342 of the Senate Dirksen Office Building. For further information, please contact Ed Gleiman, subcommittee staff director, on 224-2254.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding an Oversight Hearing on Friday, June 23, 1989, beginning at 2 p.m., in 485 Russell Senate Office Building on the administration of Indian programs by the Environmental Protection Agency.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GLENN. Mr. President, I would like to announce that the Governmental Affairs Committee will hold a hearing on Thursday, June 15, at 9:30 a.m., in SD-342 Dirksen Office Building on the subject of: "Averting Alcohol Abuse," new directions in prevention policy. For further information, please call Len Weiss, staff director, at 224-4751.

COMMITTEE ON SMALL BUSINESS

Mr. BUMPERS. Mr. President, I would like to announce that the Small Business Committee will hold a full committee hearing on Tuesday, June 13, 1989, to assess the impact on small business of proposed user fees by the Food and Drug Administration in conducting drugs and device reviews. The hearing will be held in room 428A of the Russell Senate Office Building and will commence at 2:30 p.m. This hearing was originally scheduled for 2 p.m. For further information, please call Nancy Kelley, of the committee staff at 224-5175.

Mr. President, I would like to announce that the Small Business Committee will hold a full committee hearing on Wednesday, June 21, 1989, to examine the impact of enterprise zones on small business growth and development. The hearing will be held in room 428A of the Russell Senate

Office Building and will commence at 9:30 a.m. For further information, please call Marja Maddrie, at 224-5175.

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

Mr. BINGAMAN. Mr. President, I would like to announce for the public that a field hearing has been scheduled before the Subcommittee on Mineral Resoruces Development and Production of the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, June 29, 1989, at 2:30 p.m. at San Juan College, 4601 College Boulevard, Farmington, NM.

The purpose of the hearing is to address the impact upon domestic natural gas producers of developments in natural gas markets, developments in Federal natural gas regulation, and legislative initiatives in the Congress that affect natural gas production. In particular, the hearing will focus upon the competitiveness of New Mexico natural gas producers in light of these developments.

For further information, please contact Lisa Vehmas of the subcommittee staff at (202) 224-7555.

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. FORD. Mr. President, I would like to announce for the Senate and the public that the hearing originally scheduled to begin at 9:30 a.m. before the Subcommittee on Energy Research and Development on June 14, 1989, will now take place at 2 p.m. The purpose of this hearing is to hear testimony on the Department of Energy's role in the area of magnetic fusion research and development and demonstration. The hearing will take place in room SD-366 of the Senate Dirksen Office Building in Washington, DC.

For further information, please contact Ben Cooper or Teri Curtin, (202) 224-7569.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Subcommittee on Courts and Administrative Practice of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Tuesday, June 13, 1989, at 2 p.m., to hold a hearing on S. 594, a bill to establish a specialized corps of judges necessary for certain Federal proceedings required to be conducted, and for other purposes.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on June 13, 1989, at 9:30 a.m. to hold a hearing on the nomination of Thomas J. Murrin, of Pennsylvania, to be Deputy Secretary of Commerce.

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

SUBCOMMITTEE ON EDUCATION, ARTS, AND HUMANITIES

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Subcommittee on Education, Arts, and Humanities, of the Committee on Labor and Human Resources, be authorized to meet during the session of the Senate on Tuesday, June 13, 1989, at 10 a.m. to conduct a hearing on the Educational Excellence Act of 1989, S. 695.

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

SUBCOMMITTEE ON STRATEGIC FORCES AND NUCLEAR DETERRENCE

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committee on Armed Services be authorized to meet on Tuesday, June 13, 1989, at 9 a.m. in closed session to receive testimony on strategic bomber and cruise missile programs in review of S. 1085, the Department of Defense authorization bill for fiscal years 1990 and 1991.

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

SUBCOMMITTEE ON SMALL BUSINESS

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Tuesday, June 13, 1989, at 2:30 p.m. The committee will hold a hearing on the impact of proposed user fees by the Food and Drug Administration on small business.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, June 13, 1989, at 2 p.m. to hold a closed hearing on intelligence matters.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 13, 1989, at 10 a.m. to hold an ambassadorial nomination hearing.

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

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 13, 1989, at 2 p.m. to hold an ambassadorial nomination hearing.

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

COMMITTEE ON FINANCE

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on June 13, 1989, at 2:30 p.m. to mark up the child care/child health legislation and the nondiscrimination rules applicable to employer-provided fringe benefits, referred to as section 89.

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

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on June 13, 1989, at 11 a.m. to hold a hearing on S. 800, a bill that provides for a moratorium on and study of certain State tax laws relating to the taxation of nonresidents.

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

ADDITIONAL STATEMENTS

NATIONAL AVIATION AUTHORITY

● Mr. INOUYE. Mr. President, during the 100th Congress I introduced legislation with Senator STEVENS to try and correct some of the problems that plague the Federal Aviation Administration. Senator STEVENS and I proposed a new National Aviation Authority that would have the operational flexibility and revenue base to run the Nation's air traffic control system more efficiently and effectively. Senator FORD initiated a similar effort to reform the FAA, and is pursuing the matter currently.

In a recent speech before the Aero Club of Washington, Robert Aaronson, president of the Air Transport Association, presented an excellent summary of this issue and emphasized the urgency of addressing the FAA's problems. Mr. President, I respectfully request that the text of Mr. Aaronson's speech be included in the RECORD. I believe its thoughtful approach should be of benefit to the Congress as it renews its exploration of this important matter.

The remarks follow:

REMARKS OF ROBERT J. AARONSON, PRESIDENT—AIR TRANSPORT ASSOCIATION

Today, I would like to survey briefly for you what I see as some of the major challenges confronting aviation; review what isn't being done; and perhaps point to some solutions.

I think many of you know I spent about three years at the FAA. So I'm returning to town with more than a little sense of how the problems of aviation are perceived inside as well as outside the Federal Government.

It will be exactly one year ago tomorrow—April 26, 1988—that Jack Albertine stood before this same Aero Club audience to present the findings of the President's Commission on Aviation Safety. That Commission had spent almost a year traveling around the country talking to hundreds of aviation experts and visiting dozens of facilities.

The Aviation Safety Commission concluded that the nation's air transport system was safe. But it also said that to maintain a safe system and improve its safety in the future, changes would have to be made, and they would have to be made quickly.

Central to the Commission's recommendations was that the FAA be removed from the Department of Transportation and be established as a user-funded authority which would, and I quote, "be freed from the constraints of the federal civil service and procurement system." They agreed unanimously that a major structural overhaul also was essential. The Commission's recommendations were not unique. Many of our aviation leaders have concluded the same thing.

It is inexcusable that so little has happened since last April. While there has been some shifting of responsibilities within FAA, it is mere tinkering that does not address the essential problems.

While government has failed to address its obligations, we believe that the airlines have been doing their part. Their responsibility is to provide the modern aircraft, personnel, maintenance facilities and all the rest that is needed to meet the rising demand for air travel. They have done so boldly. Airlines have bought billions of dollars worth of new aircraft, they have helped finance billions in airport facilities, and there are many more billions committed to modernize both the air and ground sides of the business. They are providing additional assurance of the airworthiness of their older aircraft by making sweeping recommendations to the FAA mandating new inspection procedures, modifications and component replacements. Deregulation of our industry, I believe, has inspired a very quick and highly professional response.

But, back to the scene here in Washington. Due in no small part to the dedication and hard work of many of you in this room, appropriations and staffing levels for the FAA have increased significantly in recent years. But the government simply does not currently have an adequate management, personnel and procurement mechanism to meet the demand. At present, the FAA doesn't even have an Administrator. Will there be one next week? No. Next month? No. Two months from now? I doubt it. Once we have one will he stay longer than his predecessor? Who knows? It is bad enough when DOT engages in micromanagement. It's really bad when there is no one they could micro-manage even if they wanted to!

The FAA's management, personnel, procurement and funding problems have been widely recognized and debated to death the last few years. Almost everyone in this room, I suspect, is aware of the many suggestions that have been put forward. The Air Transport Association played a leadership role back in 1986 in promoting the concept of a national aviation authority; that idea did not receive the needed support. Congressional leaders have since proposed that the FAA be an independent Executive Branch agency. But the Administration and others have opposed that approach.

Clearly we need some sort of meeting of the minds here because we need real reform and we need it real soon.

With that in mind, let me offer a possible scenario. It may not be everyone's ideal or entirely new. But a reasonable approach put into practice, is better than a perfect approach that we only talk about.

It is essential that air traffic control operations be conducted on a more business-like footing. An effective ATC organization must have management flexibility to hire, train, promote and transfer people quickly and easily and it must be able to procure and modernize equipment the way a private corporation does. It also must have the necessary, consistent stream of funding to do the job.

But that organization could be a public entity, and could enjoy a measure of independence, yet remain under the overall direction of the Secretary of Transportation. A public ATC corporation could provide its services much as if it were a private firm under contract to the Department.

After a significant improvement in 1988, ATC delays this year are once again increasing. Some say things have to get a lot worse before they get better. My friends, we cannot allow that to happen in aviation. Senator Ford and Congressman Oberstar, two of our key aviation leaders on the Hill, have fashioned reform legislation. We in the airlines applaud their leadership and urge them, Secretary Skinner and the Bush Administration to find the common ground necessary to solve these problems once and for all. We in the airlines want to do everything we can to support their legislative efforts.

The airlines will also continue, along with the airframe and engine manufacturers and others, to support the Partnership for Improved Air Travel (PIAT), which is gaining grass roots support around the nation for expanding and modernizing our air transportation system. The Partnership's Board has asked me, as ATA's new president, to help direct the activities of the organization and I am doing that.

Now for the page one topic of the day—Security. Recent terrorist incidents have raised new concerns about the safety of air travel, particularly international travel. Such incidents, however—are as rare as they are dramatic. Over the past six years, for example, there have been three bomb attacks on U.S. commercial aircraft. During the same six years, U.S. airlines operated approximately 36 million flights.

The record also shows that terrorist attacks are not unique to U.S. airlines, despite what some incredibly ill-advised U.S. company travel policies would have you believe. Over the past six years there have been four times as many bomb attacks against foreign airlines as there have been against U.S. carriers.

The nature of the security threat we face today is far different (and far more dangerous) from what it was in the early seventies when we first began screening passengers and their carry-on baggage. Back then, hijacking was the primary threat. Now, it is sabotage by international terrorists seeking to influence the behavior of governments through acts of violence against commercial aviation. Modification of government policy is their real goal, commercial aviation merely the surrogate target.

ATA and the airlines have made a number of recommendations recently on the subject:

People.—FAA security specialists should be assigned to airports where the threat of terrorism is greatest—specifically in Europe, the Middle East and the Far East.

R&D.—The government should speed the development and availability of emerging new technologies that detect hidden explosives.

Deployment.—Explosive detection systems should be installed on a priority basis at those foreign airports where the threat is greatest.

Funding.—The government should fund the initial purchase of explosives detection equipment, as was done in the early seventies with metal detectors installed at U.S. airports.

The government has a direct obligation to protect its citizens from criminal attacks, especially when those attacks are committed by international terrorists whose real targets are U.S. government institutions and policies and not airlines.

A few years ago the the Persian Gulf was being interrupted by Iranian gunboat attacks. We sent in the U.S. Navy for an extended period to protect the interests of our citizens and those of our allies. Our history is replete with such examples. The U.S. Marines stormed the shores of Tripoli to root out the Barbary Pirates who were attacking out ships. Laying off upgraded anti-terrorist security on private airlines, without the Government assuming any direct role, might be compared with the Pentagon telling us all to provide our own national defense albeit under their regulatory oversight.

The FAA also should impose the same security requirements on foreign carriers serving the United States as it imposes on U.S. carriers. Some 50% of U.S. citizen traveling abroad fly with foreign carriers, so beefing up security only for U.S. carriers is like having the police patrol only on odd numbered streets.

There is also another opportunity for our government to take action to combat terrorism. It's the British government's recent offer to consider preinspection of U.S.-bound passengers at British airports. Preinspection means that international passengers go through their INS inspection formalities before they board the airplane, not after they land. This offers significant security benefits. In 37 years of operation of preclearance, no precleared flight has ever been hijacked, sabotaged, or the target of any other criminal attack. The mere fact that passengers, baggage and travel documents would have to run the gauntlet of clearance by seasoned government experts with immediate access to the entire U.S. intelligence community's look-out list would make a real contribution to this part of our war against terrorism.

In sum, ladies amd gentlemen, we are now in an era where the Federal Government must act. It must act boldly and it must act quickly. That is true for capacity enhancement. It is true in security. And it is true in other areas of aviation.

America's failure so far to meet the challenge to expand and modernize its aviation system is a national mistake that has reached the crisis stage.

Successfully meeting that challenge will take strong and imaginative leadership, and I intend to be a part of that leadership.

I have returned to Washington to try to make a difference for our industry—so, you can view my remarks today as only an opening shot across the bow. Thank you.●

HERBERT HOOVER: POLITICAL ORPHAN

● Mr. HATFIELD. Mr. President, recently I had the opportunity to read the text of a talk delivered at the Hoover Institution on War Revolution and Peace on November 16, 1988, by Dr. George H. Nash, the premier biographer of our 33d President. His comments were entitled "Herbert Hoover: Political Orphan," and I will ask that his remarks appear in the RECORD following my statement.

To say that Herbert Hoover is the subject of ridicule is to state the obvious. He has become an archetype in public opinion, effectively characterized as the essence of one who maximizes greed over meeting need and "fiddles while Rome burns."

That is an absolutely false image of Herbert Hoover, as is so clearly laid out in Dr. Nash's short but incisive review of Hoover's political philosophy. Hoover was, at heart, one who stood for equality of opportunity. He felt that upward mobility was the goal of our society and that such movement should be based upon merit, not determined by race or arbitrary governmental decree. I commend to my colleagues the examples included in Dr. Nash's speech which give lie to the common perceptions of President Hoover.

That such a false impression has been so effectively fixed in the American mind is a subject for discussion itself. Dr. Nash gives four reasons: The incredible breadth and length of Herbert Hoover's career make it difficult to understand in its fullness; his laconic and private personality, with its emphasis on efficiency, hid from view the depth of his practical care for individuals; his successor in the Oval Office laid the blame for the Depression at his feet and effectively promoted this viewpoint during four terms in office; and, finally, the passions surrounding the national trauma during which Hoover left office and surrounding the radically different political and economic philosophy of his successor, have taken a great while to subside.

Thank you, Mr. President, for this opportunity to share Dr. Nash's careful examination with my colleagues.

I ask that the remarks to which I referred be printed in the RECORD.

The remarks follow:

HERBERT HOOVER: POLITICAL ORPHAN

(By George H. Nash) [1]

Many of you are no doubt familiar with a statement attributed to Abraham Lincoln: "You can fool some of the people all of the time, and all of the people some of the time, but you can't fool all of the people all the time." Some of you may also be familiar with H.L. Mencken's version of this remark. Said Mencken: "You can fool some of the people all of the time and all of the people some of the time—and that's enough!"

Perhaps some of you have heard of another mordant observation that has been ascribed to Mencken: "In politics a man must learn to rise above principle."

In 1988 it is easy to be cynical about politics. But no cloud of expediency surrounds the man whose career I shall examine this afternoon. In the half century since he left the presidency, few observers have accused Herbert Hoover of "fooling the people" or "rising above principle."

Yet for Hoover, twenty-four years after his death and more than a century after his birth, clouds of a different sort remain to be dispelled: an intellectual fog, if you will, which even now impairs our clear perception. Where in the spectrum of American statesmanship does he belong? A hero of libertarians like Rose Wilder Lane and John Chamberlain in the 1950s, he is today castigated by libertarians like Murray Rothbard as the true father of the New Deal interventionist state. A patron of *Human Events*, Young Americans for Freedom, and other conservative causes after World War II, he was hailed in the 1970s by New Left historians as a profound critic of global interventionist anti-Communism. The "principal founder" (in John Chamberlain's words) of *The Freeman* in 1950, an ally of William F. Buckley, Jr. in the founding of *National Review* in 1955, Hoover in more recent years has been stigmatized in conservative media as a cheerless apostle of balanced budgets and high taxes. Acclaimed in his day as "the greatest Republican of his generation," he has been likened in the 1980s—even on the Right—to Jimmy Carter. Surely it is noteworthy that one of Ronald Reagan's first acts as President was to hang a portrait of Calvin Coolidge in a prominent place in the White House and that he has been known to quote Franklin Roosevelt (but not Herbert Hoover) in his speeches. It is a curious datum that even now, nearly sixty years after his presidency, Herbert Hoover remains in considerable degree a political orphan, unwelcome in liberal and conservative pantheons alike.

The course of Hoover historiography has reflected this continuing confusion. Somehow, despite all the research and analysis, he remains an elusive figure. Was he, historians have wondered, an ossified nineteenth-century liberal or a sophisticated twentieth-century "corporate Liberal"? A spokesman for big business or a proto-New Dealer? A quintessential product of rural and small-town America or a modern managerial elitist? A failed adherent of "rugged individualism" or a rejected prophet whose message is valid still?

Many factors account for the historical haze that continues to envelop this man. First, there is the sheer breadth and duration of his career. Born in 1874 in a little Iowa farming community, Hoover was orphaned before he was ten. By the time he was twenty-one he had worked his way through Stanford University and had entered his chosen profession of mining engineering. At the age of twenty-four he was superintendent of a gold mine in the desolate outback of Western Australia. By the age of twenty-seven he had managed a gigantic coal-mining enterprise with 9,000 employees in northern China and had survived a harrowing skirmish with death in the Boxer Rebellion. By 1914, at the age of 40, Herbert Hoover was an extraordinarily successful mining engineer who had traveled around the world five times and had business interests on every continent except Antarctica.

With the outbreak of World War I Hoover rose to international prominence as director of the Commission for Relief in Belgium, a humanitarian relief agency that ultimately brought food to 9,000,000 French and Belgian civilians a day—an unprecedented undertaking in world history. After serving as head of President Wilson's wartime Food Administration, he returned to Europe after the armistice for ten months as Director-General of the American Relief Administration, organizing the supply of food for starving millions, facilitating the emergence of stable economies, and helping thereby to check the advance of Bolshevik revolution in central Europe. Thanks in considerable measure to the relief efforts of Hooever and his staff, perhaps one-third of the population of Europe was saved from privation and death.

In the 1920s, when he served as Secretary of Commerce under Presidents Harding and Coolidge, it was said that Hoover was undersecretary of every other department. Indeed, one distinguished historian has jocularly remarked, "While Hoover had only one term in the Presidency he had almost as many years in the White House as Franklin Roosevelt." Certainly it seems correct to say that in domestic affairs, at least, Hoover was the most influential man in American public life between 1921 and 1933. The first man to have his image transmitted over television (in 1927), the first President to have a telephone permanently on his desk, Hoover after his four years in the White House lived longer as an ex-President (31½ years) than any other former chief executive in our history. These were strenuous years, too; even in his mid-eighties he worked eight to twelve hours a day. Between the ages of eighty-five and ninety, he published a four-volume history of his gigantic relief efforts in World Wars I and II. From Wilson to Eisenhower, he served five Presidents of the United States. He wrote incessantly. A recent bibliography of his published writings and addresses contains over 1200 entries.

When Herbert Hoover died in 1964, he had lived ninety extraordinarily productive years, including a full fifty in public service. It was a record that in sheer scope and duration may be without parallel in American history.

If the formidable magnitude and variety of Hoover's accomplishments have tended to retard a complete assessment of his place in history, a second factor has also contributed, and that is the personality and character of the man himself. From the time he entered public life in World War I there was always something enigmatic about him. Blunt, laconic, protective of his personal privacy, with an aura about him of impersonal efficiency, Hoover was not an easy man to understand. Many contemporaries were puzzled by him. *Who's Hoover?* was the title of a book written about him in 1928. "Is Hoover Human?" asked a noted magazine article that same year. But if Hoover seemed almost machinelike to some, very few doubted his ability. Said a well-known Quaker to a friend about to visit Secretary of Commerce Hoover: "Don't let him get thy goat. He'll sit there and hear thee talk, and so far as thee can tell thee might just as well be talking to a stump or a stone; but he'll not miss a thing? And he was right.

Hoover's reticence and taciturnity, his tendency as an administrator to rely on intermediaries to achieve his objectives while

[1] This is the slightly revised text of a "Tower Talk" delivered at the Hoover Institution on War, Revolution and Peace on November 16, 1988.

he quietly masterminded their efforts from behind the scenes: these and other traits have made it difficult to discern his true, often catalytic role in crucial episodes throughout his career. So, too, with his benefactions: from the time he was a college graduate he systematically concealed his charitable acts toward others, preferring to give anonymously through surrogates. In the mid-1930s Hoover's brother estimated that Hoover had given away more than one-half of his profits for benevolent purposes. Characteristically, however, he did it without fanfare, with the result that even today the enormous extent of his benefactions is not known.

Given this panoply of character traits (some of them no doubt derived from his early orphanhood), it is not surprising that for many people Hoover has long remained what a famous journalist called him in 1928: "an enigma easily misunderstood."

A third, more practical factor has also contributed to the lingering perplexity about Mr. Hoover. It was only in 1966 that the bulk of his papers, comprising literally millions of documents, became available to scholars for the first time at the Herbert Hoover Presidential Library in Iowa. With this stroke all previous Hoover historiography was rendered, if not obsolete, at least subject to new and skeptical scrutiny. Only now is the "real Herbert Hoover," so to speak, emerging from obscurity.

And I might add that since 1966 new Hoover-related collections have become available here at the Hoover Institution, and old collections have been admirably processed by professional archivists, thereby facilitating research and permitting the task of historical revisionism to accelerate.

All of this helps to explain the continuing lack of consensus about our thirty-first President. To these factors I would add one more. Hoover left office in 1933 during the greatest national trauma since the Civil War. For a generation after he left the White House, he was the focus of highly personalized historiography in which he was portrayed as either the hero, or more frequently as the villain, of a great moral drama culminating in the New Deal. It has taken a long time for passions to subside, and, indeed, they have not vanished even yet.

Nevertheless, with the passage of time, the receding of partisan emotion, and the opening of the Hoover papers, we have entered a new era in Hoover scholarship. For the first time it is becoming possible to take proper measure of this unusual man.

Sixty years ago this fall, as Hoover was seeking the office of President, a certain mediocrity was running for city council in Augusta, Georgia. The candidate apparently knew his limitations, for he announced in his campaign advertisements, "I know I'm not much, but why vote for less?" With Herbert Hoover we do not, so to speak, have to "vote for less." For unlike most men in politics then or since, Hoover had a social philosophy, a coherent sense of what he was doing in public life—and why.

How, then, shall we understand this political orphan? I suggest we begin by asking how he understood himself. A son of Quaker parents living in Iowa a decade after the Civil War, Hoover grew up in a Republican village whose only Democrat, as he remembered it, was the town drunk. Identifying himself in 1910 with the Progressive wing of the Republican party, he contributed financially in 1912 to Theodore Roosevelt's Bull Moose campaign. Early in 1920, in response to pleas that he run as either a Democratic or Republican candidate for President, Hoover first labeled himself an "independent Progressive," alienated from Republican reactionaries and Democratic radical alike. A few weeks later he declared a Republican affiliation and allowed his name to be placed on the ballot in California. After losing that state's primary to Senator Hiram Johnson, Hoover declared:

"I do not believe that this country is either reactionary or radical. I believe that the country at heart is progressively liberal. . . . I believe that the better way to secure needed reforms in political, social and economic conditions is through the progressive element in the Republican Party."

This, then, was Hoover's own self-image in 1920, near the beginning of his active career in American politics. It was also how he was perceived by others. Early that year he was supported for the presidency by the *New Republic*, Justice Louis Brandeis, Walter Lippmann, and numerous other members of the "progressive" wing of American politics. It is very possible that he could have obtained the Democratic nomination. Franklin Roosevelt supported him; in a letter that historians like to quote, Roosevelt declared: "[Hoover] is certainly a wonder, and I wish we could make him President of the United States. There could not be a better one." Early in 1921, when Hoover was selected for President-elect Harding's cabinet, it was only after Harding quelled the opposition of the Old Guard of the Republican Party.

Herbert Hoover was a man of action, a man for whom the highest purpose of life was practical achievement. But he was also capable of philosophical reflection. Late in 1922, in a book entitled *American Individualism*, he expounded his understanding of the American sociopolitical system. According to Hoover, the revolutionary upheavals of World War I and its aftermath had produced a world in ferment. In this cauldron, collectivist ideologies alien to America were competing for the minds of men. To Hoover, who had just seen in postwar Europe the vicious results that emanate from the blending of "bestial instincts" (as he called them) with idealistic humanitarian jargon, the need for a definition of the American system was urgent. He called this alternative "American Individualism."

By this term he definitely did not mean unfettered, old-fashioned laissez-faire. Hoover was anxious that individual initiative always be stimulated and rewarded; initiative, in fact, was one of the character traits he most admired. Progress, he declared, "is almost solely dependent" on the few "creative minds" who "create or who carry discoveries to widespread application." These minds, he said, must be free to "rise from the mass." But "the values of individualism," he argued, must be "tempered"—tempered by "that firm and fixed ideal of American individualism—an equality of opportunity". Equality of opportunity, "the demand for a fair chance as the basis of American life"—this, in Hoover's words, was "our most precious social ideal."

Hoover did not believe that equality of opportunity was automatically self-sustaining in a modern, technological economy. As a Progressive, he believed that some governmental regulation and legislation (such as anti-trust laws and inheritance taxes on large fortunes) were necessary to prevent economic coagulation, inequality of opportunity, and the throttling of individual initiative. Like many other Progressives, Hoover abhorred the notion of a rigid, class-conscious society. To him it was imperative that "we keep the social solution free from frozen strata of classes." As he put it some years later, the uniqueness of American society lay in its ideal of "a fluid classless society." It was, he said, "the point at which our social structure departed from all others."

Hoover was not (to use today's terminology) a libertarian. He was not a "rugged individualist" in the Social Darwinist sense. He did not believe that an advanced economy could function without regulation. Many times, in fact, he explicitly rejected the philosophy of laissez-faire, which he defined as "every man for himself and the devil take the hindmost." It was, he stated, an outmoded social doctrine which America had abandoned "when we adopted the ideal of equality of opportunity—the fair chance of Abraham Lincoln."

In the context of 1921-1933 Hoover was undoubtedly a governmental "activist." As Secretary of Commerce he took the initiative in national waterway development, radio regulation, aviation regulation, stabilization of the coal and railroad industries, abolition of the twelve-hour day in the steel industry, and elimination of industrial waste. He was one of the foremost exponents of governmental public works expenditures as a form of countercyclical economic policy. Nominated in 1928 over the opposition of the Old Guard and some elements of Big Business, Hoover conceived his term of office as a reform presidency and set to work with characteristic drive. And when the Great Depression came, the Federal government under President Hoover responded with unprecedented interventions in a peacetime economy. This, he said later (and approvingly), "is hardly laissez-faire."

But if Hoover was not a free market purist, neither was he a proto-New Dealer. It is absolutely crucial, if we are to understand Hoover, that we comprehend the nature, guiding purpose, and boundaries of his activism. Time and again he insisted that the form and extent of governmental involvement in the economy must be carefully defined and, above all, kept consistent with the broad American traditions of voluntary cooperation, local self-government, and individual initiative. The purpose of Hoover's limited governmental regulation was to strengthen and preserve American Individualism, not to subvert or supplant it.

How was this to be done? As Hoover perceived it, the fundamental role of the federal government was to stimulate the private sector to organize and govern itself. "I believe cooperation among free men can solve many problems more effectively than government," he declared in 1937. During the 1920s and early 1930s Hoover in office willingly used government as a device to facilitate this cooperation—through publicity, collection and dissemination of statistical data, and the covening of conferences of private sector representatives. Between 1921 and 1924 alone, to take but one example, Hoover's Commerce Department sponsored over 900 such conferences on the single subject of efficiency and standardization.

Certainly there was much of the modernizer, the technocrat, the efficiency engineer in Hoover. Indeed, in some quarters during the 1920's, he came to be regarded as an aggrandizing bureaucrat. Franklin D. Roosevelt, for instance, told a friend in 1928 that Hoover "has always shown a most disquieting desire to investigate everything and to appoint commissions and send out statistical inquiries on every conceivable subject under Heaven. He has also shown in his own De-

partment a most alarming desire to issue regulations and to tell businessmen generally how to conduct their affairs."

Hoover, then, was no enemy of innovation. He believed in the conscious, rational use of modern social science for the amelioration of social ills. Gather the facts, publicize them, devise solutions that avoid the myopic partisanship of electoral politics (for which he had profound distaste): here, too, he showed the influence of pre-1914 Progressivism.

Yet, we must not lose sight of the fact that for all of Hoover's reforming and modernizing impluses, he also had a conserving purpose: the preservation, in an urban, industrial society, of the American tradition of equal opportunity. Whenever possible, Hoover searched for non-coercive, decentralized, cooperative arrangements to solve such problems as unemployment. In the 1920s, for instance, he tried to encourage insurance companies to establish a private system of old-age pensions long before Social Security. He organized and skillfully led such private institutions as the American Child Health Association and the Better Homes in America movement, the latter devoted to the profoundly conservative goal of wide diffusion of home ownership. He mobilized the resources of great private foundations in the cause of scientific and social research, such as studies of the business cycle. While an activist (for his time) in the use of governmental power, he employed it repeatedly to facilitate the growth of non-governmental, mediating institutions.

Hoover's apolitical and antistatist progressivism pleased neither the Left nor the Right. Not surprisingly, during his presidency his relations with Congress were abysmal. He labeled one senator "the only verified case of a negative IQ." When in 1930 one of Hoover's granddaughters was born, his first response was, "I'm glad she doesn't have to be confirmed by the Senate." In a whimsical mood one day he remarked, "There ought to be a law allowing the President to hang two men a year, and without being required to give any reason."

With the advent of the Democrats to power in 1933, Hoover, for the first time in his public life, found himself "in opposition." In the years ahead, he endeavored to define his social philosophy in the face of the challenge posed by the New Deal. "The impending battle in this country," he told an associate shortly after Roosevelt's first Hundred Days, would be between "a properly regulated individualism" and "sheer socialism." "That," he said, was "likely to be the great political battle for some years to come." As the months passed, Hoover increasingly identified his own philosophy as that of "historical liberalism" and excoriated the collectivist, regimenting "false liberalism" of the New Deal. "The New Deal," he said, "having corrupted the label of liberalsim for collectivism, coercion, concentration of political power, it seems 'Historic Liberalism' must be conservatism in contrast." And so, in the last third of his life, Hoover, the self-styled Progressive Republican of the 1920s, became in a sense a counterrevolutionary: a defender of what he called "true liberalism."

It was once remarked of Hoover that he was "too progressive for the conservatives and too conservative for the radicals." Such, I suspect, may be the response of some who appraise him today. Clearly there are elements of Hoover's thought that will not appeal to American conservatives of the 1980s: his energetic expansion of the federal government's role in economic life in the 1920s and 1930s, for instance, his unequivocal repudiation of laissez-faire; his faith is social science research as a basis for the rational reordering of our institutions. Some conservatives may be troubled by a feeling that Hoover conceived society as something to be deliberately, continuously, and endlessly reformed.

Yet if parts of Hoover's philosophy have an unconservative sound, it is also abundantly evident that he was not a modern liberal. First, as a tireless exponent of voluntarism, he emphatically repudiated the statist philosophies of Communism, socialism, fascism, and the New Deal. Unlike some of his contemporaries, Hoover never abandoned his aversion to the overweening regulatory State. He recognized in burgeoning bureaucracy a pernicious enemy of the creative impulses upon which freedom and prosperity depend. "True liberalism," he declared, "if found not in striving to spread bureaucracy but in striving to set bounds to it."

Secondly, unlike many latter-day liberals, Hoover did not believe that government exists for the primary purpose of redistributing wealth. To be sure, he believed, as he stated in 1936, that "economic fair play" required that "the economically more successful must through taxes or otherwise help bear the burdens" of "victims of misfortune and of the ebb and flow of economic life" by "providing for old age, unemployment, better homes, and health." Hoover accepted, if you will, the concept of a "safety net" provided by government and paid for by taxation. And, as I mentioned earlier, he favored stiff inheritance taxes on large fortunes. Yet he did so not out of a socialistic yen to "soak the rich" or penalize success, but because the notion of a wealthy, insulated, privileged class perpetuating its economic power for generations was anathema to his philosophy of American Individualism. Everyone should be free, he believed, to rise in the world, as he had done, without artificial encumbrance. Equality of opportunity, not equality of result, was his governing principle. "The human particles," he said, "should move freely in the social solution."

Another set of concerns that tended to separate Hoover from contemporary liberalism was his abiding interest in fostering productivity and economic growth. For all his efforts in the 1920s to rationalize and stabilize the economic order, Hoover never lost his vision of America as a perpetual frontier, offering even greater promise tomorrow. How he inveighed at the "economy of scarcity" which he believed the New Deal was imposing on our nation. "The notion that we get richer and more prosperous by producing less," he said in 1936, "is about as progressive as a slow-motion film run backwards." And how he citicized the view, popular in the 1930s and again in the 1970s, that the era of American abundance was over and that the frontiers of opportunity were closing:

"When we concede that progress is ended we concede that hope and new opportunity have departed. That is the concept of a static nation. It is necessarily the philosophy of decadence. No society can become static, it must go forward or back. . . . No society will function without confidence in its future opportunities."

Fundamentally, he was interested in multiplying wealth, not dividing it. And unlike many of his foes on the Left, he knew that the creation of wealth does not occur by accident.

Finally, more than any other man who has held the presidency, Hoover was profoundly acquainted with the social systems of the Old World. He had seen, as he later put it, "the squalor of Asia, the frozen class barriers of Europe." He had seen the haughty oligarchies of the Right, the bloody tyrannies of the Left, and the hatreds, injustices, and miseries they engendered. He had seen the terrible consequences of imperialism, war, and revolution as few Americans ever had. And he had seen America in contrast.

This perception of contrast between Old World and New was the experiential core of Hoover's social philosophy, and it had a profoundly conservative effect on him. It gave him a lifelong understanding of America as a uniquely free, humane, classless society that had come closer to implementing its ideals than any other nation on earth. Hoover judged the imperfections of the American system not as a man of the Left might—by theoretical standards never before realized and perhaps impossible to attain. He judged it as a conservative would—in the historical and the comparative perspective of other societies, other experiments, other ideologies, that had failed.

Some years ago a British member of Parliament addressed his constituency during an election campaign. Concluding his remarks, the orator proclaimed, "These are our principles. If you do not like them, we have others." Unlike this amiable cynic, Herbert Hoover was a man of principles—principles which found their touchstone in the concept of "equality of opportunity." Orphan, engineer, humanitarian, statesman, he was the veritable embodiment in his lifetime of a formative ideal in our history: the ideal of upward mobility. Since the time of Abraham Lincoln the American people by and large have stood for this principle and for the only kind of society in which such a principle makes sense: a free, dynamic, capitalist society, a society of promise and hope, in which men's and women's fulfillment in life is determined not by race, class, or arbitrary governmental decree but by their own inner resources—by merit. For as long as Americans cherish this deal and strive to create a society based upon it, they will find enduring appeal in the philosophy and vision of Herbert Hoover.●

NATIONAL BICENTENNIAL COMPETITION ON THE CONSTITUTION AND THE BILL OF RIGHTS

● Mr. MOYNIHAN. Mr. President, I wish to direct my colleagues' attention for a moment toward the outstanding achievements of a group of students from Half Hollow Hills High School, of Dix Hills, NY. These students, all members of Ms. Gloria Sesso's advanced placement American Government class of that school, recently won second place in the finals of the 1989 National Bicentennial Competition on the Constitution and the Bill of Rights.

Their achievement is considerable, not only in that they advanced so far and performed so well in an arena as competitive as the National Bicentennial Competition, but also because of the contest's basic subject matter

itself. These students competed on their depth and their breadth of understanding of the Nation's founding documents, upon which our system has depended and developed. In addition, they not only memorized and mastered the text of the Constitution and the Bill of Rights, but demonstrated their comprehension of the ideas contained in the texts by applying these ideas to the challenges and conflicts of the Nation's past, its present, and its future as well.

Clearly, the excellence of their work and the significance of their achievement is worthy of commendation. These are the citizens who will soon vote, who will serve in public office, and who will be both guardians and inheritors of the United States democratic system.

I am sure that my colleagues join me in congratulating the following students: Chad Brecher, Keith Brill, Michael Capell, Scott Davidoff, Tanisha Fazal, Jason Guttman, Craig Kurland, David Lessing, Samantha Leventhal, Shari Levine, Jeffrey Newelt, Ian Schwartz, Neil Siegal, Nayan Sivamurthy, and Debra Steinig.

Also worthy of praise is Ms. Gloria Sesso, their teacher in American Government, Principal James McCaffery on Half Hollow Hills High School, and Superintendent Kevin N. McGuire of the Half Hollow Hills Central School District.●

SALUTE TO WINIFRED BALKENOL

● Mr. BOSCHWITZ. Mr. President, many times tribute is paid to extraordinary accomplishments of famous people in this CONGRESSIONAL RECORD. Today, Mr. President, I wish to call attention to the career accomplishments of someone whose name has never appeared in front page headlines, even in her local paper, the Redwood Gazette. Winifred Balkenol, or Winnie as she is known by her friends and coworkers has worked for 45 years in dedication to her job and countless hours of volunteer work for her community and church.

Winnie's career in banking, beginning at the State Bank of Lismore, MN, in 1944 gave her the unique opportunity to serve her community at work as well as in her personal time, and she did both. She came to the Citizens State Bank of Redwood Falls, now known as Minnesota Valley Bank, in 1954. For the past 35 years she has helped build the community at work and through her many activities including the American Legion Auxiliary, VFW Auxiliary, Redwood Concert Association, and the National Association of Bank Women.

Mr. President, Winnie Balkenol is retiring from her banking career, but not her community service career. She never sought recognition, but she deserves a hearty thanks and appreciation for what she has done in contributing to her community and her country. Her hard work and dedication serve as an example to all Americans, and this Senator wishes to publicly thank Winnie and wish her a long and happy retirement.●

HOW TO MAKE AMERICA MORE COMPETITIVE

● Mr. LIEBERMAN. Mr. President, earlier this year I delivered a speech to the AFL-CIO discussing some ideas I have about how to make America more competitive. I believe that one way to do this is through strategic planning.

I hope that I will have an opportunity to further define some of the ideas I outlined in my speech as a member of the newly formed strategic planning group organized by our distinguished majority leader, Senator MITCHELL. He has asked Senator BRADLEY to head up this group which will help formulate an agenda for the Nation into the next century.

Clearly, one issue we must focus on is our Nation's ability to compete in the global economy. One way we can do this is to make certain that our economy is sound enough so that the business community will be willing to take the risks inherent in long-term investment. We must work with business as we look to the future.

I am inserting my AFL-CIO speech into the RECORD for my colleagues perusal. I look forward to working with them on these and other related issues.

The excerpts follow:

EXCERPTS FROM REMARKS OF SENATOR JOSEPH I. LIEBERMAN TO THE AFL-CIO, FEBRUARY 20, 1989

I want to share with you today some thoughts I've had about American politics that grow out of my recent campaign for the Senate in Connecticut, and the Democratic Party's third straight losing Presidential campaign, its fifth straight Presidential loss in Connecticut.

I am, as you know, a newcomer to the national scene, so these observations are fresh and personal to me. For many of you who have been here awhile, my ideas may seem naive or presumptuous, or just plain wrong. But, if so, I hope you will conclude that freshman Senators, like youth in general, deserve tolerance and the freedom to be brash.

I am fascinated and troubled by the paradox of the Democratic Party. We continue to lose Presidential elections while winning congressional and gubernatorial elections. And I believe that one of the reasons for that inconsistency is that state and congressional Democrats have continued to identify with the economic aspirations of average Americans, while Presidential Democrats have not.

Like you, I was brought up to believe in the work ethic, to respect those who labored, to have faith that America is a land of economic opportunity where people are fairly rewarded for their labor. If you work hard here, there is no limit to what you can achieve. That is our credo.

That ethic, that faith in economic opportunity, is still held by most Americans and, yet, the Presidential Democratic Party has come to be seen as a party that does not put economic growth high on its priority list.

During its greatest days in this century, the Presidential Democratic Party was seen as the party America could rely on for economic development as well as social opportunity.

Franklin D. Roosevelt and John F. Kennedy are certainly prime examples of Presidents who were elected because they had a program for economic growth. In fact, their economic policies came first. That is how they were elected, how they began to govern. Then, with that base in place, they began to meet America's social needs.

In our time, the Presidential Democratic Party lost that first issue, economic growth.

The truth is that we are never going to be able to afford to meet the social needs of our people unless we stop getting beaten in some basic economic battles by our global competitors.

If we do not act, if we do not lead, we're going to be looking at an American economy where our industrial base will shift to Asia and elsewhere, and we'll be left with an elite class of professionals in good jobs, and the bulk of our population in lower-paying jobs in the so-called service sector, or in no jobs at all.

That's not the future for America that you and I want for our children. And it's not the future that I want for the Democratic Party. In my opinion, our failure to hold high the flag of economic growth is at the the heart of the failure of the Presidential Democratic Party.

New voters are becoming Republican by a two-to-one margin, and one of the reasons is that they see it as the party of economic opportunity. Everybody talks about the lock the Republicans have on the South, and it is true that, except for Jimmy Carter, we haven't won one electoral vote in the South since 1964. But it is also true, and probably more perplexing, that Democrats haven't won a national election in California, Illinois, Kentucky, Michigan, New Jersey, Ohio, Pennsylvania and Connecticut in 20 years.

While 16 percent of Bush voters said they were dissatisfied with the field of candidates last year, 63 percent of Dukakis voters were dissatisfied. And 50 percent of Bush voters said they were against Michael Dukakis because he was a "liberal."

Yet, as you know, we win big in House, Senate and gubernatorial races. Why? Because we match candidates to the voters and their values, and one of the reasons I believe we do is that, at the state level, we are still seen as the party of economic opportunity and economic growth.

We must return to mainstream economic issues, and we must convince the average worker, investor and manager that we care about economic growth, that we are not just a bunch of social tinkerers who want to tax their money away and give it to others.

If we focus again on economic growth, our historic ability to deliver on equal opportunity, upward mobility and social justice will again fall into place. Without economic opportunity, we lose other opportunities—to educate, to house, to protect from drugs and crime.

The challenge before us today as a party is how to make our economy grow—how do

we create a strong, vibrant, job-producing, competitive economic base that will support an expanding standard of living for all our people and that will once again be the envy of the world? By working to answer that question, we can make our party a winning Presidential party and, more to the point, a party that America needs to win Presidential elections.

Let's look at some of the problems we now face. We're failing to invest in our future and in our people.

Thirty million of our people live in poverty; eight million remain out of work.

We've lost over two million jobs to overseas competition in the last six years.

One third of our students never finish high school, while our economy demands ever more well-trained workers.

We are becoming a nation of consumers, not producers. We're the market, not the makers. We're exporting American jobs and importing foreign products.

These are all symptoms of an economic disease we've caught. Let's look at the disease.

DEFICIT

First, the deficit. From 1982 to 1987, the federal government went $1.1 trillion into the hole. This deficit is tearing at our economic strength. Think about the debt service on this number! The interest on this debt is taking $75 billion a year out of our economy year after year, far into the future. This money could have gone into productive investment, but we're mortgaging our future. And to whom are we paying this debt service? Too much of it is going to Japan, Germany and many of our other trading partners. We are borrowing $10 billion a month from our economic competitors. Everyone has heard that we've gone from being the world's largest creditor nation to the world's largest debtor nation in a decade. But what that means, as you know, is that we're not going to have the money we need to have for economic development for our people.

EDUCATION

Our government is now so in debt that we're not investing in education. Our ability to compete is being damaged by inadequate investment in our most important resource—people. Put simply, we're not educating our work force for the kinds of demanding skills our economy increasingly needs. Our job force will have to depend more and more on minorities and women—but we're not teaching them the skills they will need. While one-third of our students never finish high school, as I mentioned before, 98 percent of Japan's graduate. We're in jeopardy of not having the work force we need for the economy we want.

NATIONAL SAVINGS RATE

And we're not saving money to invest in our economy, either. America's national savings rate is the second lowest in the industrial world. Our private/public savings rate has dropped from 7.5 percent in the 1970's to a terrible 1.8 percent in the 1980's. Why do we care? Because this is the money we could be investing in plants, in equipment, in jobs. And if the savings aren't there, we can't make these investments. You can bet that Germany, Japan and Korea aren't making this mistake.

RESEARCH AND DEVELOPMENT

R&D means jobs for tomorrow—new products, new technology, new industries and rebuilding existing industries. America has been the world's greatest inventor—the world's innovator. Time and time again we've come up with ideas, products and services that made our economy the envy of the world. But we're losing our edge. Our R&D growth rate is now leveling off. Our competitors are now plowing a higher percentage of their Gross National Product into R&D than we are.

Traditionally, our government has played an important role in R&D. We've sponsored countless research projects, putting R&D funds into many small baskets, and many of these efforts have worked, moving new products into our marketplace. However, we're shifting government R&D money into only a handful of huge R&D projects—like SDI—with high risks of limited returns.

LBO/TAKEOVER BINGE

If we are not putting our money into savings, economic investment, research and work force education, where is it going?

I'll give you one of the worst examples—the takeover and leveraged buyout binge. Between 1984 and 1987, we threw $160 billion into corporate debt for takeovers and LBO's. In the first few months of 1988 alone, we took another $50 billion out of possible economic investment and into these kinds of deals. These transactions amount to a kind of "musical chairs" for top management, with huge new debts built onto productive companies. Speculation is replacing productive investment. Instead of putting money into investments that will strengthen our economy for all of us, we're shifting it around among a few people at the top.

Our tax policies are partially to blame. We allow tax breaks that encourage these buyouts by taxing returns on equity investments, while letting interest on debt remain deductible. We're therefore actively encouraging these LBO's and "merger mania".

What we should have, instead, is a tax system that says: If you have wealth or want wealth, then build plants and products, and create jobs, and make money by strengthening our economy, not by gambling away our national investment funds.

We need a tax system that has a bias toward fundamental new investment, rather than the exchange of already existing assets.

QUALITY

Remember when "Made in the USA" meant the best in the world? Now there are too few world markets left where that is still true.

We invented the consumer electronics business—now we have an $11 billion trade deficit in that field. In 1960, we built nearly half the world's cars. Today, Japan is about to claim that title. The auto industry is an overall $37 billion trade imbalance for us. This is true in industry after industry.

In the words of journalist Otis Post, we're going to have to get better or get beat.

That's going to mean revitalizing aging plants and doing a much better job at turning our national talent for great ideas into actual production of new products. It's going to require a major new emphasis on education, training, and quality control.

What if we don't take action on these issues?

Our standard of living is now slipping. Average hourly earnings, when you adjust for inflation, are now below what they were in 1970. Because the growth rate in national output is over 25 percent lower than it was in the 1960-1970 period, more people have to work—two-earner families are becoming standard. But wages have stagnated. And Americans keep spending, even while their income is falling. And they're going deeper in debt—just like the federal government—to pay for it. Consumer debt is 16 percent higher now than it was in 1973. With higher personal debt and lower real income, our national living standard is falling.

The National Democratic Party must take on this challenge; one of the party's first priorities must be to put forward a program for national economic growth. Only economic growth is going to turn around this decline in our living standard; only economic growth will mean better jobs for all our people; and only economic growth will generate the funds for the social programs that will make life better for us all.

We need a national Democratic economic growth agenda.

It could promote such programs as:

Better education and training and retraining for our work force;

A turnaround in our national savings rate;

More tax incentives for research and development investment;

Incentives for revitalization of our industrial base;

Mechanisms for turning investment dollars toward productive, longer-term investments in plants, equipment and jobs;

Targeting equity investment into critical new and existing industries, possibly through an adjustment to our capital gains tax;

A strategic plan to turn around our trade imbalance and restore our national competitiveness;

A venture capital system that does a much better and faster job of bringing our inventions and ideas into actual production.

The fact that people of wealth will benefit more directly from some of these tax incentives is not reason enough to oppose them, if society benefits in new jobs, and new opportunity. After all, the aim of these tax policies is to get people with more money to invest it in ways that benefit America most.

Can we do it? Can we start competing abroad again, and expanding our economy, and improving our standard of living?

We have to, and we will.

Today and tomorrow, we need to make a national effort to compete with our world economic competitors, just as we have so successfully competed with and contained the Soviet Union in the military and diplomatic fields over the last 40 years.

U.S. businesses are still the world's best. American workers have proven that they can turn out products as good or better than the Asians and Europeans. But, until the United States places as much importance on economic development policy as it does on its social, political and military policy, the balance of world power will continue to shift to Asia and Europe. And our standard of living and our economic opportunities will go with it.●

MICHAEL CHANG

● Mr. WILSON. Mr. President, I rise today to pay tribute to the unparalleled athletic accomplishment by one of my truly unique fellow Californians, Michael Chang.

Michael has become the first American to win the French Open Men's Singles Tennis Title in 34 years. His bravery and physical stamina helped him overcome some of the greats in tennis today. Although seeded at a re-

spectable 15th in the world, young Michael bettered the No. 1 ranked Ivan Lendl in one of the early rounds. Facing debilitating muscle spasms and bouts of exhaustion, Michael relied on a reservoir of strength and perseverance normally found in a person much older than he. In the final match Michael fought back from near defeat and wrestled victory from the hands of No. 3 ranked Stefan Edberg.

It is enough that Michael Chang has brought the coveted "Simple Messieurs" trophy back to America for the first time in three decades, but to be the youngest player ever to win a "Grand Slam" men's singles title, and to do it on the trying red clay of Stade Roland Garros is a remarkable display of athletic excellence.

It is with great pride and honor that I join my fellow Californians and Americans everywhere in saluting Michael Chang for his remarkable achievement in this Chamber of the U.S. Senate.

I submit the following article detailing his achievement from the Los Angeles Times for the RECORD.

The article follows:

SEVENTEEN-YEAR-OLD STOPS EDBERG IN FIVE SETS FOR FRENCH MEN'S TITLE

(By Thomas Bonk)

PARIS.—For the first time seemingly since Mona Lisa was a baby, an American has won the French Open.

Frame this one and hang it in the Louvre.

It took 3 hours 41 minutes for a 17-year-old kid from Southern California to end a 34-year-old winless streak at Roland Garros, where the hopes of every U.S. male player since 1955 lay buried beneath its red clay.

On a sunny Sunday afternoon, Michael Chang became the youngest to win a Grand Slam men's singles title when he captured the French Open championship with a 6-1, 3-6, 4-6, 6-4, 6-2 decision over Stefan Edberg of Sweden.

Chang, from Placentia, weathered a blizzard of break points in the fourth set when Edberg, the latest in a long line of Swedes in the final here, seemed only a volley away from victory.

But Edberg found himself playing an iceberg.

And it started to wear on him in the fourth set, beginning in the third game.

From then on, 10 times Edberg was a point away from breaking Chang's serve and 10 times Chang turned him away when even he felt he couldn't.

"I really thought that the match was gone," Chang said. "But a chance went through my head. I thought, "Hey, maybe I can do this."

For Edberg, it was a demoralizing defeat. Ahead a set and a break, he was cruising along like one of those party barges on the Seine. The break points piled up, but one by one they disappeared.

Edberg had four break points that would have put him up 2-1. He had five more that would have made it 4-3 and another for 5-4. However, Chang saved them all, snatching the last one away from Edberg in what became typical fashion.

Chang sent a backhand pass at Edberg like a heat-seeking missile and the Swede volleyed the ball into the net.

So it was Edberg, not Chang, who was serving to stay in the set at 4-5 in the fourth.

Fatigued from trying to punch a volley past someone who patrolled the baseline as if he were on roller skates, Edberg double-faulted twice and put two volleys in the net to give the fourth set to Chang, 6-4.

Edberg was the 11th Swede in the past 12 years to play in the final here, but at this point he began to wonder why he ever crossed rackets with Chang.

"He played a lot of tough matches the whole tournament and he kept coming back all the time," Edberg said. "You have to admire him for that."

Maybe someone older wouldn't have, Edberg said.

"But he's young and he doesn't think that much."

Edberg, a two-time winner of the Australian Open and the reigning Wimbledon champion, had the look of a champion again. He began the fifth set by breaking Chang's serve.

But at 15-40, Chang broke back. On the first break point, he produced a Grand Slam quality drop shot, which he feathered over the net by just slightly touching the ball with his racket.

The beginning of the end for Edberg and the beginning for Chang arrived in the next game.

Quickly, Edberg fell behind 0-40. He saved two break points, but then Chang came up with a Grand Slam quality lob to get the break he needed.

Edberg forced Chang to retreat to the baseline with a powerful approach shot, but Chang put up a artful lob that flew over Edberg's head, bounced once and skipped away as if it were being pulled by a string.

The next game was longer than the French Revolution, but when it was over, Chang put the match in his bag.

Once again, he did it the hard way. Down two break points, Chang saw Edberg force the game to deuce four times, but pulled it out after the final one when two consecutive Edberg backhands sailed wide.

Chang won his service game at 15 to lead, 5-2. Edberg covered his over. It was the last one.

Another lob winner by Chang and Edberg could only wave at it with his racket. At 15-30, Edberg sent a forehand into the net.

A crowd of 16,500 filled the stadium court from the bottom row to the top and cheered in anticipation of what was soon to come. On match point, Edberg put one last forehand into the net and put Chang in the record books.

Chang, however, has to be content with being the youngest known male winner. In 1905, 17-year-old Rodney Heath of Australia won the first Australian championship, but his exact birth date is unknown.

Chang, who is 17 years 3½ months old, struggled with his new found place in tennis history, although he definitely seemed to like it.

"It's hard to really think about my head. It's definitely a great honor. It's definitely an achievement that will be with me no matter how I do the rest of my career.

"It's definitely probably the highest achievement that I could ever have."

But not definitely.

"I hope maybe one day I'll be able to achieve something greater than this."

His work began with unexpected ease. Chang closed out the first set in just 32 minutes with a forehand volley winner.

"He started playing unbelievable," Edberg said. "I don't think he made many mistakes the first hour."

Throughout the tournament, Edberg stuck to his serve-and-volley style, which although it presented a target for Chang's passing shots, often worked for him, just as it did when Yannick Noah won the 1983 final.

Chang had a tactic of his own. Edberg's serve is particularly devastating on clay because it bounces so high that returns are difficult. But Chang moved inside the baseline to take the ball quickly.

It worked. Edberg's serve, which had dismantled Alberto Mancini and Boris Becker, did not blow over Chang, who also made another change in his tactics by attacking Edberg's ground strokes.

Edberg's frustration grew.

On Chang's speed: "He's so quick, he gets a lot of time to hit the ball."

On Chang's accuracy: "He very seldom misses a passing shot."

But as well as Chang began, the middle of the match belonged to Edberg. Chang lost seven consecutive games at the end of the second set and the start of the third.

He was reeling. Then came the third set. He thought it was over.

Why wasn't it?

"I really don't know," Chang said. "The fourth set was just a couple of points here and there. Stefan gave me an opening, I guess, but I finally believed there was a chance I could come back."

The winner's share of the French Open is $291,752, which not only more than doubles his career earnings, but also goes along nicely with the distinction of winning one of his sport's biggest honors.

In the last week, Chang beat the No. 1 player in the world, Ivan Lendl, and the No. 3, Edberg. His No. 19 ranking is expected to improve to the top 10 when the new ranking come out today.

He becomes the sixth U.S. player to win the French Open, joining such players as Don Budge (1938), Don McNeill (1939), Frank Parker (1948-49), Budge Patty (1950) and Trabert (1954-55).

Chang's title is also the first Grand Slam singles title for a U.S. man since John McEnroe won the U.S. Open in 1984.

Now that he has one, Chang said there could be more.

"I don't want to limit myself," he said. "I don't want to say, 'OK, Michael, you've won Roland Garros and that's it.' I want to keep on going and do better."●

FIRST INTERNATIONAL VERY SPECIAL ARTS FESTIVAL

● Mr. KERRY. Mr. President, I rise today to call attention to an important event which will be happening this week throughout Washington. It is called the First International Very Special Arts [VSA] Festival. More than 1,000 stars will be performing at 231 events at 27 sites around the city. This event will help demonstrate that disabled Americans can and have achieve excellence in the arts, and certainly have the capabilities to excel and achieve in every aspect of life. I urge my colleagues and all who have the opportunity to attend and enjoy this festival of art.

Mr. President, I ask that an article concerning this event, from the Washington Post, be printed in the RECORD at this point.

IN WASHINGTON, IT'S THE CAN-DO ARTS FESTIVAL

(By Christina Del Sesto)

Nadine Wobus never thought she was different until the fourth grade.

"I remember going into the bathroom with some classmates," she says, "and one of them stood on the commode, looked over the stall at me and said, 'Do you need any help? and I thought: "Help with what?"'

Wobus had been stricken with polio at the age of 3. Now 35, she lives in Bowie and uses crutches, braces and most often a wheelchair to do such chores as caring for her 2-year-old daughter, teaching her music therapy students and belting out the blues at the Kennedy Center.

This week she'll be one of more than 1,000 stars at the first international Very Special Arts (VSA) Festival—231 events scheduled at 27 sites around the city—designed to celebrate the fact that people with disabilities need not be disabled.

As Wobus says, "I can do a lot of things."

An educational affiliate of the Kennedy Center, VSA was founded by Jean Kennedy Smith in 1974 to help integrate into society people otherwise isolated because of their disabilities.

"It's very important to understand the difficulties that those of us with special needs have to overcome to create art," Smith says. "Perhaps you wouldn't recognize the potential within yourself if you didn't watch a retarded child reciting Shakespeare. Seeing them makes you examine your own life."

But the art itself is the attraction, says the festival's creative director, Ron Miziker. "We don't want an audience to come because they're curious to see a disabled performer. They're all good performers and artists."

Adds Eugene Maillard, VSA's chief executive officer: "In some cases the public will see some great performances and exhibits by any standard."

Wobus' is one of them.

"I had the whole Broadway bit in mind when I was younger," she says. "Then I went to New York to pursue my dreams." What she found was that agents were reluctant to promote a women blues singer in a wheelchair.

"As much as they loved me, I knew what was going through their minds," she says. "Women are suppose to be svelt and sexy. That's still marketable if you're dealing with a blind women, but if she's in a wheelchair it doesn't look so great on stage or TV."

This week Wobus will be on stage a lot. Besides her own three performances, she's project coordinator of Special Gifts, Special Friends Musical Theater, which started 2 years ago to bring disabled and non-disabled children together. More than 20 elementary school children from Ivymount and Beverly Farms Day Care Center in Rockville will be performing "True Friends," which Wobus co-wrote, during the festival.

"Eventually a person with a disability has to deal with people that aren't disabled—your neighbors, employers, co-workers and friends," she says. "Very Special Arts is important because it emphasizes mainstreaming people with disabilities who would otherwise be at a disadvantage later on. This festival is a celebration of integration."

One of those celebrating is Tony Melendez, 27, born in Nicaragua without arms to a mother who had been prescribed the drug thalidomide during her pregnancy. Melendez hoped originally to be a priest but was told in inquiries to the Vatican that he needed hands to bless his congregation.

So Melendez changed his plans. Now he sings, and plays the guitar with his feet—so skillfully that he's won a recording contract, appeared on major television shows and—in what for him remains the apex of his career so far—played for Pope John Paul II last September in Los Angeles.

"Music has helped me express myself," he says. "Talent is within a person, and no matter what sort of disability they have, it eventually will shine."

Even though Melendez occasionally wishes he could do things quicker and "normal like everybody else," he's proud of his achievements. His album "Never Be the Same" was released just two months ago on the Starsong label, and now he's working on an entirely Spanish recording.

"If I was behind a curtain," he says, "no one would know" of his disability. "I know people are curious," he says. "It doesn't bother me because I've always been stared at. So I might as well be onstage."

Less at ease in the limelight is Randy McGill, 14, of Towson, Md. He's having his first solo exhibition this week. It's in the Atrium of the Kennedy Center, and so far, he says, "it's just been one big stage fright. . . . I'm shy."

Randy has suffered for years with a series of learning disorders, including one that affects his concentration. None of it, however, affects his talent for painting, which was noticed and nurtured by one of his teachers at the School of Contemporary Education in Baltimore.

"Most people don't realize how talented others with disabilities are," says Randy's mother, Sue. "They have these great talents because it's a way of compensating for another area of weakness. You just have to find out where the disabled person's strength is and work on it."

When she looks at her son's art she sees parts of this personality that he never reveals. "He's so reserved and quiet," she says, "but there's an exuberance about his paintings that has so much more to it than the subject he's depicting."

It's been an uphill struggle for Randy and his family to reach this stage of achievement. His mother remembers it well. At the public school he was attending, she says, other children taunted him and even wrecked his bike. "I've grown tremendously because of my two boys with learning disabilities," she says. "I've had to fight for my children."

Randy has grown too. He now feels ready to take on the challenges of attending high school next year.

"I really try hard," he says. "My painting makes me feel like I'm doing something with my life."

The effort involved for those with disabilities can barely be imagined by those without them. Zina Bethune, for example, grew up in New York determined to be a dancer. But there were a few problems, including dysplastic hips, tumors in her nerves and others. "I'm a doctor's picnic," she says, wryly.

But the picnic has included a double career as a dancer with the New York City Ballet and as a television actress (Gail Lucas in "The Nurses" during the mid- to late 1960s).

"People have always said, 'You'll never dance,'" she says. "But I never believed them."

She still doesn't. She'll be dancing at the Kennedy Center this week. Fitted with a prosthetic hip, she's also artistic director of the Bethune Theatredanse of Los Angeles and creator of Dance Outreach, a performance program to teach dance to children with all sorts of disabilities.

Bethune and one of her first pupils, 13-year-old Sarah Anderson, will be doing a ballet together. Anderson, who has osteogenesis, or brittle bones, uses a wheelchair.

"I was 8 when Zina told me she was going to teach me to dance," says Anderson. "And I thought to myself, 'Now wait a minute. I can't get out of my chair.' But I believed in her."

"She's graceful and has the soul of a dancer," says Bethune. "You quickly forget that her bottom half is stuck in a wheelchair."

"I like to transcend the technical and focus on the spiritual creativity within my student," she says. When a professional dancer is on stage, she notes, one leg is weaker than the other. "There's always an imbalance," she says. "It's the job of the artist to find the balance, disabled or not, and to learn what their speciality is so that the imbalance is perceptually eliminated."

Bethune and Anderson will be dancing to the theme from the film "The Rose." Bethune says they chose the music because it's about evolution and potential. "Art is a form of communication for all of us to share, and that is terribly important," she says.

Blues singer Wobus agrees. The way she figures it, her disability is a disadvantage in some ways but not with her audience. "Without my disability I might never have had the chance to perform at the Kennedy Center," she says. "And if there's one thing I've learned it's that you've got to use everything you've got. I know that as soon as I open my mouth people will realize that not only can I schlep my way out to the stage, but I can sing. I mean really sing."●

ELMER L. ANDERSEN—MINNESOTA'S PREMIER "SERVANT LEADER"

● Mr. DURENBERGER. Mr. President, this week, Minnesotans are helping one of our State's outstanding public servants celebrate his 80th birthday. And, as we honor former Gov. Elmer L. Andersen, an amazing cross section of the State is pausing to recall his contributions, not only as a public official, but as a business leader, environmentalist, journalist, and inspiration to all who view public service as a means rather than an end.

Others have described Elmer Andersen at various times in his distinguished career as "Minnesota's most respected public citizen," as "the best example of our State's enlightened establishment," as "unfailingly polite * * * capable of charming the socks off a snake."

At successive times in his career, Elmer has called himself a businessman, a farmer, and now a newspaper publisher.

I distinctly remember asking Elmer—at a time when he was my employer—what he considered to be his job. And, he answered without hesitation, "I'm a salesman."

But, with all his vocations—and avocations—no label better suits Elmer Andersen than the two words "servant leader."

This spring, I have had the privilege of being the commencement speaker at three of Minnesota's best educational institutions. And, at each, I have urged the graduating seniors to seek out—and become the very best kind of leaders—"servant leaders."

Elmer Andersen is just the kind of "servant leader" I have been talking about.

Robert Greenleaf describes servant leaders as those who lead by listening, learning and empowering others.

They do not grab power—or headlines—at the expense of others. They share in the fulfillment of the potential of those they serve with.

Elmer described himself in that same kind of role in an interview with the business publication, Corporate Report, almost 12 years ago.

Elmer's reference point that day was the Dutch Catholic scholar and theologian, Desiderius Erasmus. Erasmus, Elmer recalled, was neither a revolutionary nor an apologist for the status quo. In the midst of the Protestant Reformation, he was looking for common ground. His goal was to get rid of the abuses within the Catholic Church while preserving its more positive parts—to reform the church without leaving it.

"That's why he's so special to me," Elmer told his interviewer. "I'm all for finding the common ground, the area where those with different points of view can meet and agree on the basics. I'm all for conciliation, for working out the differences for the common good of all."

In an era of cynics, that attitude might be called deliberate avoidance of conflict—perhaps even copping out.

I would prefer to call it "servant leadership."

It took servant leadership to build popular support for Voyageurs National Park.

Servant leadership helped pass the Taconite amendment, opening up thousands of new jobs in the hard-pressed Minnesota Iron Range.

Servant leadership got the University of Minnesota through some of its most challenging days.

And, servant leadership is what has made Elmer Andersen the first citizen of a State known for the quality of its public leadership.

Mr. President, one of the first goals of a true servant leader is making it possible for others to serve—and lead—as well.

And, I hope you will allow me a point of personal privilege here to say "thank you, Elmer," for giving me that opportunity when he was my boss.

There are a lot of good corporate citizens in Minnesota—a lot of business people who know that there is much more to the bottom line than quarterly profits.

But, nobody practiced that principle better than Elmer Andersen.

And, the amazing thing is that he's still applying that principle today.

That is why Minnesotans are not throwing Elmer Andersen a retirement party. Rather, Minnesotans are celebrating the contributions of a man who is 80 years of age and still in his prime.

I am proud to have worked for Elmer Andersen and I am grateful for the opportunity he gave me to serve this State and this community.

Mr. President, because of the outstanding contributions Elmer L. Andersen continues to make to the betterment of his State and his Nation, I ask that the following article documenting both his contributions and the affection held for him by his State be printed at this point in the RECORD.

The article follows:

FORMER GOV. ANDERSEN'S 80TH IS OCCASION FOR A CAPITOL BASH

(By Bill Salisbury)

In 1945, Elmer L. Andersen wanted to do something special for the employees of the industrial adhesive manufacturing firm he headed, the H.B. Fuller Co. of St. Paul.

The workers got days off for Washington's birthday, Lincoln's birthday and a variety of other holidays recognizing other people, but nothing for themselves. Andersen decided to recognize each employee's value to the company by giving each a holiday on his or her birthday.

The idea was a hit. It was reported in newspapers around the country and quickly became a popular benefit at many companies.

It was a typical Andersen idea: It was innovative and warm-hearted and helped cement employee loyalty.

That's the sort of imaginative thinking and selfless approach that has made Andersen one of Minnesota's most popular public figures. He is a businessman and newspaper publisher and former governor, legislator, University of Minnesota regent, foundation president and member of numerous civic organizations.

"Usually historians are hestitant to say anything about living people, but in Elmer's case, there's no reason to wait," said Nina Archabal, director of the Minnesota Historical Society. "His accomplishments are so extraordinary on so many levels—in government, politics, the environment, education, philanthropy, the standards that he set for business. I can't think of another person in Minnesota history who represents that range and level of interests and accomplishments."

Gov. Rudy Perpich said Andersen was the most politically independent, centrist and open-minded governor in the state's history. "He had it all," Perpich said.

Andersen's friend Wheelock Whitney calls him "Minnesota's No. 1 citizen."

That's why all Minnesotans are invited to celebrate Andersen's 80th birthday on the front steps of the state Capitol on Friday.

Andersen is eager to see old acquaintances at the party.

"At 80, what really matters are family and friends," he said in an interview last week.

"It's wonderful to be 80. You're not a callow 20, a frustrated 30, a disappointed 40, an overweight 50 or a pill-ridden 60. All is wiped away, and you're a wise 80, and it's beautiful."

Born in Chicago on June 17, 1909, Andersen grew up in Muskegon, Mich. His parents both died when he was 14, and he worked as a paper boy and door-to-door salesman while attending high school and Muskegon Junior College.

After graduating from junior college in 1928, he arrived in St. Paul as a traveling salesman and fell in love with the Twin Cities. The next year, he enrolled at the University of Minnesota's school of business administration.

"I had three reasons for going to college," he recalled. "One was I wanted to find someone to marry, and I thought, boy, there's got to be a lot of wonderful young women over at that university.

"The second reason was to get a degree for protective purposes. I didn't want some guy to be pushed ahead of me because he had a degree and I didn't.

"My third reason was that I wanted to have a little college fun. I had been working steadily since I was 14—weekends, vacations, nights, whenever I could—and I had gotten ahead a little financially and thought I deserved to enjoy life a little."

During his first week at the university, he spotted "a spectacularly beautiful blonde woman" named Eleanor Johnson at a Lutheran student reception. They were married during his senior year. He also found time to serve as editor of the business school's newspaper, class president and member of the debate team.

In 1934, after two years of traveling as a salesman and being away from his wife, Andersen settled down and joined Fuller, "a little paste outfit," his previous boss called it. He became the firm's president in 1941.

That's where he honed a philosophy of business that differs markedly from the corporate raiders who dominate the news today.

"The only consideration, it seems to me, in all these takeovers is who's going to pay the shareholders the highest price. That's the big deal," he said. "Nowhere near enough consideration is given to how the customers and employees are going to come out of it.

"At Fuller, we said the first responsibility of this company is to serve customers. To be a U.S. corporation is a privilege that gives owners limited liabilities and other amenities. They only justification for giving all that to a corporation is that they produce a service or product that is a contribution to society."●

CONGRESSIONAL CALL TO CONSCIENCE VIGIL FOR SOVIET JEWS

● Mr. METZENBAUM. Mr. President, Vladimir Raiz is a refusenik. I had hoped that by this time, with the rapid changes taking place in the Soviet Union, the term "refusenik" would have become an anachronism.

Unfortunately, refusenik can still be used to describe the condition of Soviet Jewish men and women in the present tense. They are still living in fear, they are still being denied permission to emigrate, and they are still being forced to put their lives on hold.

I am sorry to say that the term "refusenik" still applies to over 600 families—more than 2,500 individuals who have applied to leave the Soviet Union.

Mr. President, the case of Vladimir Raiz, his wife Karmela, and sons Moshe and Saul is typical of the conditions of Soviet Jews. It is typical in that, amidst the veritable floodtide of exit visas that have been issued in the past year, the Raiz family lives under a cloak of fear imposed by the capricious Soviet emigration system. Although their case shares much in common with those of other refuseniks, the Raiz's situation is also unique. It is unique because of the four individual people waiting to emigrate. Over the years, refusenik has been a common title for tens of thousands of Soviet Jews. But we cannot view these people simply as numbers: These are each special individuals who continue to suffer the scourge of religious persecution.

Vladimir and Karmela Raiz first applied to emigrate from the U.S.S.R. in 1972. During the 17 intervening years, they have suffered continual harassment by the KGB, they have been subjected to prolonged interrogations, have lost their jobs—a natural consequence of applying to leave—and they have repeatedly had their appeals refused on the grounds that Vladimir's medical research exposed him to state secrets. The fact that they were able to start a family under this tremendous stress is a tribute to the Raiz's tremendous strength of character.

Mr. President, it goes without saying that Vladimir Raiz possesses no state secrets. The only work he has found since being dismissed from the Soviet Academy of Sciences in 1972 has been with the postal service. Even if he did hold a sensitive position, the knowledge is now 17 years old. The secrecy canard has been a frequent modus operandi for OVIR, the Government visa office. Karmela worked as a concert violinist with the Lithuanian State Philharmonic Orchestra. Apparently, OVIR fears the loss of Karmela's musical talent as well as Vladimir's phantom state secrets.

Mr. President, we are witnessing great changes in the Soviet attitude toward emigration, with upward of 50,000 Jews having left the U.S.S.R. in the past year. We all hope and pray that the changes are permanent, and that freedom of movement will become a simple matter of choice for Soviet citizens. There have been too many examples in the past of Soviet Jews being used as pawns in bilateral relations.

However, the changes in emigration levels must be accompanied by changes in emigration laws. The thousands of Jews who left in the past year did so because the Soviet Government decided to allow it. Emigration is still a matter of luck, a windfall arbitrarily granted by OVIR to the citizens it chooses. As Senator Henry Jackson, a great advocate for Soviet Jews, said in 1974:

> . . . We would expect that if there are 75,000 applicants there will be 75,000 visas, if there are 100,000 applicants there will be 100,000 visas, and so on.

Mr. President, there is clearly a human rights agenda yet to be fulfilled.

Mr. President, Vladimir Raiz and his family are at the top of that agenda. Most recently, one of Vladimir's former employing agencies indicated that it no longer opposes his emigration. However, he has not been informed of any change in his secrecy classification. What more does OVIR want? When will Raiz and his family get their exit visas?

While we rejoice at the recent wave of Soviet Jewish emigration, I implore my colleagues not to forget Vladimir Raiz and the many, many Soviet Jews who give the word "refusenik" painful relevancy each and every day.●

A CAPITAL GAINS DIFFERENTIAL IS VITAL FOR U.S. ECONOMIC GROWTH

● Mr. BOSCHWITZ. Mr. President, I rise today to share with my colleagues recent testimony which Charls E. Walker, the chairman of the American Council on Capital Formation, presented before the Senate Finance Committee. In his testimony, Dr. Walker makes a strong case for reinstating a capital gains differential in the Tax Code.

Mr. Walker presents data which clearly shows how the high current capital gains tax compares unfavorably with the capital gains rates of many of our rival trading partners—including Japan. In fact, according to Mr. Walker, the United States taxes capital gains at a rate higher than in most other industrialized countries. The bottom line is that Americans are at a great disadvantage when it comes to capital formation which makes the U.S. economy less competitive compared to other industrialized countries.

Dr. Walker outlines some of the benefits which a capital gains differential would provide. These benefits include improved U.S. savings rates and a reduction in the cost of capital which will encourage business startups and expansion. Furthermore, the capital formation "playing field" with our trading partners would be leveled. Clearly, a rate reduction would help the U.S. economy.

Mr. President, we need to reinstate a capital gains differential if we are going to remain competitive in world markets. President Bush recognizes this and has proposed a reduction in the capital gains rates which I support in principle. In my judgment, a reduction in the capital gains rates should primarily encourage long-term investments. That's why I have proposed legislation—S. 411—to create a two-tiered capital gains tax rate based on the length of the taxpayers capital amount holding period.

I encourage my fellow Senators to consider Mr. Walker's research carefully, and to join me in supporting a reduction in the capital gains rates.

Mr. President, I ask that Dr. Walker's testimony before the Senate Finance Committee be printed in full in the CONGRESSIONAL RECORD.

The summary follows:

A CAPITAL GAINS TAX DIFFERENTIAL IS VITAL FOR U.S. ECONOMIC GROWTH

(On April 13, ACCF President Mark A. Bloomfield testified in support of President Bush's proposal to restore a capital gains tax differential before the House Ways and Means Committee. His remarks were similar to testimony presented by ACCF Chairman Charls E. Walker when he appeared as an invited witness before the Senate Finance Committee in mid-March. The full text of Dr. Walker's testimony is available upon request. What follows is the executive summary of Mr. Bloomfield's testimony.)

EXECUTIVE SUMMARY

1. President Bush's capital gains tax initiative is an important first step toward a constructive, bipartisan dialogue on capital gains tax reform.

2. The restoration of a capital gains tax differential will benefit the U.S. economy in several important ways.

U.S. saving

The tax code contains numerous provisions which tend to encourage consumption and discourage saving. The President's proposal will help reduce the bias against saving by increasing the after-tax return on realized capital gains.

Cost of capital

The cost of capital in the U.S. is considerably higher than in Japan, West Germany, and most of our other foreign competitors. The President's proposal will reduce the cost of capital for U.S. firms. Lower capital costs promote higher investment and, ultimately, a higher standard of living.

International comparisons

U.S. capital gains taxes are among the highest in the world. Research indicates that the favorable treatment of capital gains in Germany and Japan is an important element in their lower capital costs. The President's proposal will reduce the U.S. disadvantage. (See Table 1.)

Entrepreneurial effort

Restoring a capital gains tax differential will have a particularly powerful impact on the entrepreneurial sector of the American economy, making possible new technological breakthroughs, new start-up companies, and new jobs.

3. A capital gains tax cut is "fair" in its impact on taxes paid by different income classes. The voluntary nature of the tax, historical data, and Treasury analysis show that capital gains taxes lower than current law result in higher government revenues from upper-income taxpayers because a reduced tax rate will stimulate the unlocking of their unrealized gains. Although a large percentage of capital gains is realized from these high-income taxpayers. IRS data show most taxpayers who would benefit from the Administration's proposal have low and moderate incomes. They also have a significant amount of actual capital gains. (See Chart 1.)

4. The Treasury estimate that the President's capital gains tax proposal will raise revenue can be substantiated by logic, historical experience, and recent academic and government studies. With lower capital gains taxes, taxpayers choose to realize accrued gains. When the capital gains tax was cut from 50 percent in 1978 to 20 percent in 1985, tax revenues from capital gains were 179 percent higher in 1985 than in 1978. The Treasury estimates of "elasticity" (behavioral response) are comfortably in the middle of the range of recent academic and government studies.

CHART 1.—*Who gets capital gains?*

	Percent
Non-capital-gains income: [1]	
Less than $20,000:	
Percent of returns with long-term capital gains	33.0
Share of total dollar volume of long-term capital gains	26.0
Less than $50,000:	
Percent of returns with long-term capital gains	74.0
Share of total dollar volume of long-term capital gains	44.0
Over $200,000:	
Percent of returns with long-term capital gains	1.8
Share of total dollar volume of long-term capital gains	26.2

[1] Adjusted gross income without capital gains for 1985; the major components are wage and salary income.

Source: U.S. Department of the Treasury data, March 1989. Chart prepared by the American Council for Capital Formation.

TABLE 1.—Comparison of Individual Taxation of Capital Gains on Portfolio Stock Investments in 1989

Countries	Capital gains tax rate [1]		Period to qualify for long-term gains treatment	Maximum annual net worth tax rate
	Maximum short term	Maximum long term		
Industrialized:				
United States [2]	33 percent	33 percent	1 year	None.
Australia [3]	50.25 percent	50.25 percent	1 year	None.
Belgium	Exempt	Exempt	None	None.
Canada [4]	17.51 percent	17.51 percent	None	None.
France [5]	16 percent	16 percent	None	None.
Germany [6]	56 percent	Exempt	6 mo	0.5 percent
Italy	Exempt	Exempt	None	None.
Japan [7]	5 percent	5 percent	None	None.
Netherlands	Exempt	Exempt	None	0.8 percent
Sweden	45 percent	18 percent	2 years	3 percent
United Kingdom [8]	40 percent	40 percent	None	None.
Pacific basin:				
Hong Kong	Exempt	Exempt	None	None.
Indonesia	35 percent	35 percent	None	None.
Malaysia	Exempt	Exempt	None	None.
Singapore	Exempt	Exempt	None	None.
South Korea	Exempt	Exempt	None	None.
Taiwan	Exempt	Exempt	None	None.

[1] State, provincial and local tax rates not included.
[2] The nominal tax rate for long- and short-term capital gains is 28 percent. The marginal rate, however, rises to 33 percent for joint returns between $74,850 and $155,370 and for single returns between $44,900 and $93,130 for calendar year 1989.
[3] Indexing is allowed on long-term gains.
[4] Canadian residents are allowed an annual capital gains exemption of Canadian $30,000 ($22,998—see footnote 2) subject to a cumulative exemption of up to Canadian $500,000 ($383,300 based on exchange rates of Mar. 31, 1987) in 1990.
[5] Gains from proceeds of up to FF 272,000 ($45,288 based on exchange rates of Mar. 31, 1987) are exempt from taxation in a given taxable year.
[6] The first DM 1,000 ($554 based on exchange rates of Mar. 31, 1987) of short-term capital gains is exempt from tax.
[7] Japan's tax reform plan, which takes effect in 1989, imposes a maximum tax of approximately 5 percent on the sale of securities.
[8] Only gains and losses accrued since 1982 will be taxed; gains since 1982 are indexed.

Source: Prepared by Arthur Andersen & Co. for the Securities Industry Association; updated by the ACCF Center for Policy Research, March 1989.

BUDGET SCOREKEEPING REPORT

● Mr. SASSER. Mr. President, I hereby submit to the Senate the latest budget scorekeeping report for fiscal year 1989, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report was prepared consistent with standard scorekeeping conventions. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

This report shows that current level spending is over the budget resolution by $0.9 billion in budget authority, and over the budget resolution by $0.4 billion in outlays. Current level is under the revenue floor by $0.3 billion.

The current estimate of the deficit for purposes of calculating the maximum deficit amount under section 311(a) of the Budget Act is $135.7 billion, $0.3 billion below the maximum deficit amount for 1988 of $136 billion.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 12, 1989.

Hon. JIM SASSER,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of congressional action on the budget for fiscal year 1989 and is current through June 9, 1989. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the most recent budget resolution, for fiscal year 1989, House Concurrent Resolution 268. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32, the 1986 first concurrent resolution on the budget.

Since my last report, Congress has taken no action that affects the current level of spending or revenues.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 101ST CONG., 1ST SESS., AS OF JUNE 9, 1989

[In billions of dollars]

	Current level [1]	Budget resolution H. Con. Res. 268 [2]	Current level +/− resolution
FISCAL YEAR 1989			
Budget authority	1,233.0	1,232.1	0.9
Outlays	1,100.1	1,099.8	.4
Revenues	964.4	964.7	−.3
Debt subject to limit	2,772.5	[3] 2,824.7	−52.2
Direct loan obligations	24.4	28.3	−3.9
Guaranteed loan commitments	111.0	111.0	.....
Deficit	135.7	[4] 136.0	[5] −.3

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval and is consistent with the technical and economic assumptions of H. Con. Res. 268. In addition, estimates are included of the direct spending effects for all entitlement or other mandatory programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.
[2] In accordance with sec. 5(a)(b) the levels of budget authority, outlays, and revenues have been revised for Catastrophic Health Care (Public Law 100–360).
[3] The permanent statutory debt limit is $2,800 billion.
[4] Maximum deficit amount (MDA) in accordance with section 3(7)(D) of the Congressional Budget Act, as amended.
[5] Current level plus or minus MDA.

PARLIAMENTARIAN STATUS REPORT 101ST CONG., 1ST SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1989 AS OF CLOSE OF BUSINESS JUNE 9, 1989

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			964,434
Permanent appropriations and trust funds	874,205	724,990	
Other appropriations	594,475	609,327	
Offsetting receipts	−218,335	−218,335	
Total enacted in previous sessions	1,250,345	1,115,982	964,434
II. Enacted this session:			
Adjust the purchase price for nonfat dry dairy products (Public Law 101–7)		−10	
Implementation of the Bipartisan Accord on Central America (Public Law 101–14)	−11		
Total enacted this session	−11	−10	
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Dairy indemnity programs	(2)	(2)	
Special milk	4		
Food Stamp Programs	253		
Federal crop insurance corporation fund	144		
Compact of free association	1	1	
Federal unemployment benefits and allowances	31	31	
Worker training	32	32	
Special benefits	37	37	
Payments to the Farm Credit System	35	35	
Payment to the civil service retirement and disability trust fund [1]	(85)	(85)	
Payment to hazardous substance superfund [1]	(99)	(99)	
Supplementary security income	201	201	
Special benefits for disabled coal miners	3		
Medicaid:			
Public Law 100–360	45	45	
Public Law 100–485	10	10	
Family support payments to States:			
Previous law	355	355	
Public Law 100–485	63	63	
Veteran's Compensation COLA (Public Law 100–678)	345	311	
Total entitlement authority	1,559	1,121	
VI. Adjustment for economic and technical assumptions	−18,925	−16,990	
Total current level as of June 9, 1989	1,232,969	1,100,103	964,434
1989 budget resolution H. Con. Res. 268	1,232,050	1,099,750	964,700
Amount remaining:			
Over budget resolution	919	353	
Under budget resolution			266

[1] Interfund transactions do not add to budget totals.
[2] Less than $500 thousand.

Note.—Numbers may not add due to rounding.●

JAPANESE TRADE PRACTICES

● Mr. BOSCHWITZ. Mr. President, the United States Trade Representative recently placed Japan on its list of super 301 countries with unfair trading practices. At the same time, it announced the formation of an interagency committee to propose negotiations with Japan on impediments to expanded United States trade. To be included in these talks would be subjects such as anticompetitive practices of Japanese businesses in the Japanese market. I wish to commend the administration on these initial steps, because it recognize the problems as significant.

On a related point, the Washington Post recently featured an article written by my good friend T. Boone Pickens, describing his experiences in investing in a Japanese manufacturing firm. It is an excellent account of the difficulties faced by Americans trying to invest in Japan and the differences in our business systems.

Because only a small percentage of a Japanese company's stock is freely traded and most shares are controlled by an informally closed system of interlocking corporate ownership, it is difficult for outside investors to make a serious investment in a Japanese company. Nevertheless, Boone managed to purchase 20 percent of the stock of Koito Manufacturing Co., which makes interior lights for automobiles and aircraft. He quickly found his presence as an outsider decidely unwelcome. Although he is the largest single shareholder, Boone was denied representation on the board of directors, at the same time that a Japanese investor with 5 percent of the stock was given a seat. The registration of his stock was delayed until the deadline for voting in the June stockholders meeting had passed. And at this meeting, Boone will not be allowed to attend with anyone but an interpreter.

If a businessman with as much experience and as many resources as T. Boone Pickens has such difficulty in dealing with Japan, Mr. President, what an we expect of our smaller and less experienced companies? How are American firms, accustomed to open, fair competition, going to break into the Japanese market? The United States Trade Representative's 1989 national trade estimate report on foreign trade barriers details a myriad of unfair trading practices in Japan. I support the administration in its effort to widen trade negotiations with Japan, for it appears that only through such efforts can we hope to achieve some sort of balanced trading relationship with that country.

Mr. President, I ask that the attached article by T. Boone Pickens in the June 4, 1989, Washington Post be printed in the RECORD.

The article follows:

[From the Washington Post, June 4, 1989]

T. BOONE TAKES ON TOKYO: HOW A CORPORATE DEALMAKER LEARNED THAT JAPAN DOESN'T PLAY BY TEXAS RULES

(By T. Boone Pickens)

Maybe I should have been worried when I got off the bullet train in Tokyo on April 16 and picked up a newspaper. I was amazed to read that the Japanese press was comparing my recent investment in a Japanese manufacturing firm and my trip to Japan with the historic "Black Ships in the Harbor" visit by another American, Commodore Matthew Perry, in 1853. Perry's visit forced Japan's economy to open to the outside world.

I'm not trying to sell the idea that T. Boone Pickens was so naive as not to have considered cultural and symbolic issues before acquiring, in March of this year, almost a billion dollars' worth of stocks in Koito Manufacturing Co., a Japanese supplier of automobile lighting. Still, I had observed how over the past decade the Japanese, with relative ease, invested billions of dollars in the American economy, and I took it almost for granted that our investment in Japan would be received similarly.

After all, I have been giving speeches since the early 1980s about the emerging global economy and the opportunities it would offer for U.S. as well as foreign investors. I can hear myself now. I would say that American executives should quit whining for protection and get back to the workbench and compete. I said I was skeptical about claims that countries like Japan played by two sets of rules, one for their home companies and another for ours. I said that with the right corporate leadership, all you would have to do is show us the court, tell us the rules, and Americans could win most of the time.

It was always a popular speech. I gave it, for example, to a middle management seminar at Harvard in 1986. There were about 30 managers from Japanese companies in the class. They grinned broadly throughout the speech and came up to me afterward to register their complete agreement. I think I understand better now what it was they were smiling about. The reason for my new understanding is this: When I visited Japan back in April, I got a first-hand introduction to what it is like to do business—wait a minute—to try to do business in Japan.

After my unexpected welcome in the press, my second tip-off to the fact that it wouldn't be business-as-usual came when I walked into a luncheon to deliver a speech to the American Chamber of Commerce at Tokyo's New Otani Hotel. The crowd was so large that they had to change rooms to accommodate it. I learned later from the Japanese press that the press conference that followed was the largest in Japanese business history.

What amazed me most, however, were the quizzical looks we received when my wife Bea accompanied me to the table from which my partner Sidney Tassin and I would answer the media's questions. It's well known that women are not included in Japanese business circles, but I didn't realize that a woman's presence in today's world would draw such attention. After all, it seemed natural that Bea would be by my side. She was there in 1976 when Mesa tested its discovery well off the coast of Scotland in the North Sea. She was there when I addressed Gulf Oil's shareholders in 1983. In fact, Bea has been at my side at every major juncture in my career since our marriage in 1972.

This reaction struck home not just because it ran contrary to American instincts, but because I was involved in one of the largest business transactions of my career. And I was quickly coming to realize that it involved conflicts of culture and custom the likes of which I had never experienced—and I have experienced some pretty good clashes of culture with entrenched management in this country.

Through shares in Japanese companies are ostensibly traded freely on world markets, a clubby system of interlocking ownership governed by an unwritten corporate

code ensures that control of these companies will remain in Japanese hands. It also ensures that stocks on the Tokyo Stock Exchange trade at unusually high multiplies of share price to earnings because only a small percentage of a company's shares actually trades freely.

In a typical Japanese public company, 60 to 80 percent of its shares are held by what is known as a *kierestu*—a web of "stable" stockholders, most of whom either do business directly with the company or with one of the company's major holders. Koito is a classic case. Toyota Motor Corp. owns 19 percent of Koito's shares—and at the same time is Koito's largest customer, buying almost half of its products. Another 40 percent is held by Koito's other customers, banks, insurance companies and suppliers. These stockholders do not expect to make money through the stock, but through the business relationships that come with being a member of the club.

The opportunity to purchase a 20 percent interest in Koito was unique: It was the first time in history that a major block of shares in a Japanese company had become available to an outsider without the approval of the kieretsu. We purchased the stock from a Japanese investor who had accumulated it from various sources, including disgruntled members of Koito's founding family.

The press reports that the Japanese markets were "stunned" by our investment caught me by surprise. I saw it as an unusual, but fairly straightforward, transaction posing no threat to Koito management. Our intention was to obtain representation on the company's board and to play a constructive role in planning Koito's future, especially in expanding its customer and operating base in America and Europe. We had no thoughts of taking over the company—that would be impossible given the structure of Koito's ownership. Nor did we have any plans for accepting greenmail, despite rumors to the contrary. In an April 19 letter, we expressed all these assurances, and requested a meeting with Koito's management.

The first roadblock we came to was Koito's concern about the completeness of our filings. We had consulted the Japanese Ministry of Finance and Ministry of International Trade and Industry on our transaction and had been assured that our filings were complete. Still, by March 31, the last day on which ownership entitled us to vote at the June stockholders meeting, Koito had not registered our stock. When we got to the bottom of the matter, it rested on Koito's complaint that we had failed to note that Koito did business with a "sensitive" national security-related industry because it produced inferior lighting for aircraft. Sensitive? Maybe they don't realize that American planes have interior lights too.

By the time we left for Japan on April 15 for my speech to the Chamber of Commerce, Koito had still not registered our stock or agreed to a meeting. Finally, on the day of the speech, Koito—having failed to convince the Japanese government that our filings were incomplete or inaccurate—agreed to register the stock in the name of Boone Co., a private company through which the investment was made. After the press conference, our Japanese lawyer received word that Koito would meet with us.

The next morning we met with Takao Matsuura, Koito's president, and other Koito representatives. After exchanging pleasantries, and briefly discussing Koito's U.S. operations, Matsuura stated that he was glad to have this first meeting but he did not want to address any "difficult" questions. He explained that in Japan, a first meeting was often just an exchange of business cards. But, objected my partner, Signey Tassin, we had come a long way, and none of our few questions seemed to us particularly difficult.

We asked for the date and time of Koito's annual shareholders meeting, and we asked to be allowed to send observers to their next board of directors meeting. Finally, we asked for representation on Koito's board of directors equal to that of their other large shareholder, Toyota, which has three representatives.

With this last question Matsuura stiffened. The Koito managers did a lot of talking and exchanged disdainful looks. In the end, all we got was the date and time of the shareholders meeting—10 a.m. on June 29.

As to the other questions, we were told that we didn't understand Japan's prevailing custom and practice. "In the future," said Matsuura, "we [Koito] would consider thinking about whether you [Boone Co. representatives] could be on the board. But we are not saying you could be."

To this I responded, "I am hearing that you do not consider us owners. That we have to work our way in. I understand your custom but not the logic."

Matsuura replied, "We have a different system. This will take time, trust must be built, logic is hard to explain. . . ."

They asked that we send a formal letter requesting representation on the board for "full consideration." I was about to learn that the Japanese notion of trust isn't much like the one we know in Texas.

Finally, Matsuura asked that we not discuss with the press what went on in the meeting—that we honor the Japanese custom of portraying the first meeting as cordial and introductory. We were not trying to put Koito's management in an uncomfortable position, so we agreed; and when I was later met by the press, I honored Matsuura's request.

We went directly from the meeting to Tokyo's Narita airport for the 10-hour flight back home. Upon arriving in Texas, we learned that Koito had held a press conference shortly after our meeting to announce that we had requested board representation and that our request had been turned down. So much for the required portrayal of first meetings—or for giving our request "full consideration."

Nevertheless, we went ahead and sent a formal request on April 21. We also asked that four representatives of Boone Co., including an interpreter, be allowed to attend the June 29 shareholders meeting. The first response we received was that Koito management was using its "best efforts" to accommodate the request—at the same time that Tokyo's financial press was reporting that our requests have been rejected. Then on May 23, we got a letter saying that it would be all right if I came to the stockholders meeting with an interpreter—but no one else!

I wonder what Matsurra meant by "building trust?"

At the same time, Koito denied our request for representation on their board. Yet at the very same meeting where the decision was made, Koito directors voted to add a new director to represent Matsushita Corp., a Japanese company with only a 5 percent holding in Koito stock, compared with Boone Co.'s 20.2 percent holding.

It's becoming very clear that Koito's management does not want me or any Boone Co. representatives on the inside. But why? We are requesting three seats. With Koito's 20-member board, we couldn't be a threat. What could we do to disrupt the company, and why would we want to? With a 20 percent investment, our interests are the same as all the shareholders and Koito's managers—to maximize Koito's potential.

Admittedly, I'm a four-day wonder on the subject of Japan (though negotiation of the purchase agreement did involve 10 lengthy meetings over four months), but I have come to the conclusion that investment between our two countries is not a two-way street. Every day we read about a Japanese company or investor making a major investment in American real estate or taking over an American corporation. I see that as healthy—but only if Americans have the same opportunities to invest with full rights in Japan. What makes this problem so tough to deal with is that the most powerful impediments are not legal restrictions but silent barriers produced by nationalistic custom and practice.

As the world's second largest economy, Japan wants to live by a double standard. It wants open markets in which to sell and invest, but it doesn't want to provide the openness at home on which stable global trading relationships must depend in the long run. In fact, after getting a glimpse of their financial structure, I don't buy all the rhetoric about how the Japanese are long-term thinkers. Their policy of exclusion is the shortest of short-term strategies. If Japan expects to go into the next century with a closed system, it's not going to work—especially when the rest of the world is headed in another direction.

I am convinced that Japan will never be a meaningful market for our products, and our $55 billion trade imbalance will not be reduced, until its financial markets—along with its whole approach to trade—are restructured. That's why I was delighted to read the week before last that, in deciding to list Japan as an "unfair trader" under Sec. 301 of the Trade Act, President Bush has also proposed undertaking wide-ranging talks with Japan aimed at altering "structural impediments to trade." This means truly free markets where shares are not locked up to facilitate clubby economic relationships but are bought and sold freely based on an underlying system of risks and rewards.

We plan to do our part by pressing on until we receive full and equal treatment commensurate with Koito's Japanese shareholders. I am looking forward to attending Koito's annual shareholders meeting on June 29 with my interpreter to let me know what's going on. And, I expect that Bea will join me.●

NATIONAL VALUES AND PRIORITIES

● Mr. KERREY. Mr. President, the mail that comes into our offices daily from our constituents is an important anchor for us. It enables us to keep in touch with the people we represent and provides us with a base from which to work. These letters help guide us, motivate us, and inspire us as we attempt to make this Nation and this world a better place.

But occasionally a letter arrives that touches us dramatically; that conveys

a message better than we could ever hope to.

I was fortunate to receive such a letter from a fellow Nebraskan, Lisa Shulman. This brave and thoughtful 17-year-old woman writes about our national values and priorities with an insight and clarity that I believe should impress, educate, and inspire each of us. Mr. President, I ask that Ms. Shulman's letter be printed in the RECORD, and I encourage all of my colleagues to read this letter, and benefit from Ms. Shulman's eloquent wisdom and insight.

The letter follows:

OMAHA, NE,
February 3, 1989.

Senator BOB KERREY,
194 Dirksen Building, Washington, DC.

DEAR SENATOR KERREY: As I sit at the dinner table each night with my parents, I am constantly reminded of the tragedy and plight of the human situations throughout the world as they are relayed to us through the network news. After listening to these types of things night after night, one tends to build up an immunity to them: rarely does any one story stand out to me.

However, on the February 2nd broadcast of NBC Nightly News, my attention was drawn to John Chancellor's commentary. He was addressing the problem of technological advancement in the U.S. as compared to that of Japan and West Germany, where the governments contribute largely to their country's research and development programs. He believed that the reason the U.S. was falling behind in the technology race was its lack of funding in that area: funding that was being spent on military advancements should perhaps be used to fund the research and development of consumer goods.

Later in the broadcast was a story about the small town of Blue Hill, Mississippi, where its residents were living, in 1989, as they always had—without running water or indoor plumbing. Imagine, in a time when my friends and I face computers, compact discs, and automatic ice-makers as everyday facts of life, that people in this supposedly wonderful nation are driving 35 miles a day to gather buckets of creek water just to take a bath! This not only frustrates me, but as an American, embarrasses me. Our government spends billions of dollars to build mechanisms to defend us in case of a war that we aren't even sure will ever happen, yet won't spend the money to give 2% of its population a standard of living that the other 98% practically take for granted. To me, this is absurd. If the government were to cut back just a small fraction of its defense spending and use that money to raise the standard of living not only of its own unfortunate, but perhaps, someday, for the world.

I am not what I would consider a great follower of politics and the many things that go on in our government each day. There are a lot of things that I don't know or understand, and I realize that what may sound like the ideal solution may not always be such. But I know that it is possible to overcome obstacles that lay in our path. When I was twelve I was diagnosed with cancer and though the battle has been long and hard, I have managed to come out winning so far (I am now seventeen). Were it not for the technology that we have, I would probably not be alive today. But just because I have survived does not mean that research for the cause and cure of cancer should stop. Likewise, just because our Nation has prospered or made a few advancements does not mean that we should delay further achievements. If our government continues to spend money on defending its people instead of enriching the projects that contribute to their well-being, it may someday have nothing to defend.

Sincerely yours,

LISA SHULMAN.●

DEDICATION OF THE GUS J. SOLOMON U.S. COURTHOUSE

● Mr. HATFIELD. Mr. President, on April 28, 1989, I had the honor and privilege of attending a ceremony which celebrated the renaming of the U.S. courthouse in Portland, OR, in honor of the late Judge Gus J. Solomon. The ceremony was attended by Judge Solomon's family, Gov. Neil Goldschmidt, Congressman LES AUCOIN, jurists from around the country and a host of dignitaries and friends.

The late Judge Solomon was an inspiration to everyone who had the pleasure of knowing him. He was a dedicated and honest man with a keen intellect and a fierce love of the law. His life was most eloquently honored by an address given by Stephen Gillers, a friend and former law clerk who is now a professor of law at New York University.

Mr. President, in honor of the late Judge Solomon, I ask that the comments of Professor Gillers be printed in the RECORD.

The comments follow:

Libby, Chief Judge Panner, Chief Judge Goodwin, Senator Hatfield, Congressman AuCoin, Governor Goldschmidt, relatives, friends and guests:

We gather today to place Gus J. Solomon's name on this stately courthouse. Gus Solomon worked here for more than thirty-five years, advancing the law in conscientious service to the United States and to the people of Oregon. I want to share with you some of my memories of this building and of Gus.

I spent a lot of time here: mornings, afternoons, evenings, Saturdays, Sundays. More Saturdays. Researching, writing, arguing, researching some more. Arguing some more. Gus worked hard and his clerks worked almost as hard.

I recall that Ted Goodwin was appointed to the district court during my clerkship year, after the elevation of Judge Kilkenny to the Ninth Circuit. At about that time, Judge Solomon had a case in which a man who owned a store in Portland had been convicted in state court of selling obscene books.

Paul Meyer represented the man in a First Amendment challenge to the conviction in federal court. "We" got the case and it was my dubious assignment to read all nine of the books that had been the subject of the criminal trial.

I did and found them without any redeeming literary value whatsoever, but also boring and in no sense obscene under what was then the Supreme Court's Roth test. Judge Solomon agreed and vacated the conviction, a decision the Ninth Circuit affirmed en banc.

At about that time Judge Goodwin had lunch (arranged by Gus) with all the district court clerks. I told him about this case. I remember Judge Goodwin's observation that, throughout history, elite groups in society used terms like "obscene," "blasphemous" and "seditious" to exercise control over the entertainment and diversions of the masses.

I recall my astonishment and joy at hearing a class-conscious view of history from a federal judge—and a Republican no less. I began to see the wisdom of the life tenure provision of Article III of the Constitution. And I realized that President Nixon had no chance of radically altering the federal bench—no President does.

The last time I was in this courthouse with Governor Goldschmidt he was a Legal Aid lawyer. He appeared before Judge Solomon on behalf of a class of tenants challenging the conduct of a public housing authority. I remember thinking that Neil's efforts for his indigent clients represented the purest and most noble work a lawyer could pursue. I could not imagine where Neil could possibly go, or want to go, from there. He could imagine, of course, and I have been proud and happy to watch his career from the sidelines.

But I bet if you asked Neil over a couple of glasses of Oregon wine, late at night, he'd admit that representing legally indigent people as a Legal Aid lawyer twenty years ago offered him some of the deepest professional satisfactions he has ever had.

Those are some of my memories of this building, and two of the people here today. Now I want to say a word about this dedication.

There's an old joke about the first Solomon, King Solomon. It goes this way: The Lord came to Solomon and offered him one of three choices. Solomon could have either wisdom, or fame, or wealth. Solomon chose wisdom and the Lord gave him wisdom. And, once wise, Solomon realized that he should have picked wealth.

The American public expects its judges to be wise but not wealthy. Today a federal judge's salary is less in real dollars than it was twenty years ago when I was a clerk. (A clerk's salary is also less.) My students earn more in the first year or two after graduation than do federal judges with thirty years experience.

What I see is a public ambivalence about the judiciary. On one hand, the public has deep regard for its judges collectively. Judges are probably the one group of officials about whom the public is willing to suspend the reflexive suspicion and cynicism often reserved for other categories of officeholders.

On the other hand, judges also take their share of undeserved blame. They are easy to scapegoat because they live and work under constraints that do not encumber the rest of us. For example, judges are often blamed for high crime rates. That's about as fair as blaming the weather forecaster for a storm or the family doctor for a flu epidemic.

Perhaps most interesting, given our purpose here today, is that judges are largely anonymous. The public is not generally aware of the identities of the particular men and women who set on its courts. For example, in this time when the national debate over Roe v. Wade is at a peak, probably very few members of the public can identify the Justice who wrote the opinion. I think, too, that most members of the public, even those

who consider themselves well informed, would be unable to name a majority of the judges of the United States or their state supreme courts.

The public's ambivalence about judges and the individual anonymity of judges may partly explain why it is so rare for the people, through their elected representatives, to name a building after a judge. Indeed, if it were not rare, our Supreme Court building in Washington would long ago have been named for Chief Justice John Marshall. The very rarity of our purpose here today therefore bespeaks Judge Solomon's importance to the people of this state.

Gus Solomon was, of course, decidedly not anonymous. Nor were Oregonians ambivalent in their fondness for him. Gus was a son of this state and this city. As lawyer, judge and citizen, he was visibly part of public life here for nearly six decades. I haven't done an opinion poll, but I bet that for the man or woman on the street, Judge Solomon's name recognition would set some kind of record. And outside the state, travelling, Gus was the best good will ambassador one could wish for.

It is entirely proper that the name of Gus J. Solomon should be physically linked with this building as, for so many years of his life, it was in fact linked in the minds of Oregonians.

Following Gus' funeral, I sent Edward Weinfeld, a friend of Gus' and a district judge in New York, a copy of the eulogy I gave. Judge Weinfeld, who died last year after a long and distinguished judicial career, wrote back the following letter:

"APRIL 27, 1987.

"DEAR STEVE: Thank you for sending on your moving and eloquent eulogy of my dear friend Gus Solomon. He was indeed a great man; he was a noble person and an outstanding jurist. I enjoyed reading how deeply he felt about being a District Court Judge and his relationship to his law clerks. He often talked to me about what that relationship meant to him and how proud he was of their achievements.

"As for the District Court judgeship, I read an item recently, I believe in a biography of Professor Zechariah Chafee, that William Howard Taft said that of all the public positions he held the District Court judgeship was the greatest.

"With warmest regards,

"Sincerely,

EDWARD WEINFELD."

I have imagined telling Gus that the courthouse in which he labored so long would be named after him. And I have imagined his response. At first, he'd wave it off. "Oh, they don't have to go and do that over there," he'd say.

"Well," I say in my imagination, "they're doing it anyway, and it's not because they have to. It's because they want to."

Then Gus would be silent for a moment, smile, look down, and say: "Well, heck, tell them that's a very nice thing for them to do."

Thank you.●

COMMENDING PRINCE HALL GRAND CHAPTER, ORDER OF THE EASTERN STAR

● Mr. LUGAR. Mr. President, it is my pleasure to commend Prince Hall Grand Chapter, order of the Eastern Star, jurisdiction of Indiana for their outstanding charitable work.

This grand body was organized at a conventional held in Greencastle, IN, at Rogan Hall No. 19, October 25, 1888, under the name Grand Court Order of the Eastern Star, State of Indiana.

Based on the recommendations of Charles Wills, attorney-at-law, the name of this grand body was changed in 1947 to Prince Hall Grand Chapter, order of the Eastern Star, State of Indiana.

During the Grand Session in South Bend, IN, in 1908, a resolution was passed to purchase a home for its indigent members and orphans. Subsequently 43 acres of land was purchased in Grant County near Marion, IN. Today, a small lake, pavilion, and picnic grounds provide a recreational area that is used by residents of the surrounding communities as well as members of the Prince Hall family.

Prince Hall Grand Chapter, order of the Eastern Star and its subordinate chapters have maintained a long history of providing aid to the less fortunate, providing scholarships and awards to students and are actively engaged in numerous community and civic involvements.

I would like to take this opportunity to urge my colleagues to join me in saluting this great institution.●

AMERICANS SUPPORT THE UNITED NATIONS

● Mr. KENNEDY. Mr. President, a recent Roper poll of the American public's attitudes on the United Nations reveals widespread support for the organization.

The poll shows that while the Congress continues to withhold funds from the United Nations—despite a treaty obligation to pay our assessments—60 percent of the American public believes that the United States should not withhold funds. Many Americans say we should be paying more than our current share to support a wide range of U.N. activities including improving world health care, controlling population, increasing food production, protecting the environment, and monitoring human rights violations.

Almost 50 percent of those surveyed support the use of U.N. forces in resolving international conflicts, including those in which the United States has an interest. And a majority also believe that we should abide by the decisions of the World Court, even when the Court's ruling is against the United States.

I believe this poll, which indicates strong support by the American public for the United Nations, will be of interest to my colleagues. I ask that the poll be printed in the RECORD.

The poll follows:

U.S. PUBLIC ATTITUDES ON THE UNITED NATIONS, A POLL CONDUCTED BY THE ROPER ORGANIZATION, SPONSORED BY THE UNITED NATIONS ASSOCIATION OF THE USA MARCH 1989

Q. 1. In general, do you feel that the United Nations is doing a good job or poor job in trying to solve the problems it has had to face?

	Percent
Good job	38
Poor job	29
Don't know	34

Q. 2. Do you think that the U.S. should increase or decrease its participation in the U.N.?

	Percent
Increase	34
Decrease	16
No change (volunteered)	31
Don't know	19

Q. 3. Do you think that the United States and the other U.N. member countries should provide the United Nations with more money that it has now to (read items below), or less money, or are they providing the U.N. with the right amount of money now for that purpose?

[In percent]

	More	Less	Right amount	Don't know
a. Stop disease and improve health care around the world	53	8	28	11
b. Help poor countries develop their economies	40	15	35	10
c. Slow population growth by providing birth control information and devices	48	11	30	12
d. Help increase world food production	58	7	26	9
e. Improve and protect the environment	58	6	26	10
f. Bring peace to regional conflicts	46	11	31	11
g. Provide relief to victims of disaster	53	6	32	9
h. Help manage the world's economy	31	20	36	14
i. Monitor violations of human rights throughout the world	45	12	31	12

Q. 4 (A) Should the member countries of the U.N. give or not give the United Nations the power to control the manufacture and spread of chemical weapons by the countries of the world, including the United States?

(B) What about nuclear weapons—should the U.N. have or not have the power to control the manufacture and spread of nuclear weapons in both the U.S. and other countries?

	Chemical weapons (percent)	Nuclear weapons (percent)
Should	49	46
Should not	33	36
Don't know	18	18

Q. 5 When there are conflicts among other countries where the United States has an interest, should the United States be prepared to use U.S. forces so that the conflicts are resolved the way we think they ought to be, or should we support the use of United Nations forces so that they are resolved in a way that tries to accommodate all sides?

	Percent
U.S. forces	17
U.N. forces	49
Depends (volunteered)	20
Don't know	14

Q. 6 Some say environmental problems are now worldwide and that unified international action on such things as pollution is needed. Others say different countries have

different priorities, and environmental problems should be handled on a country-by-country basis. Do you think the United States and other member countries should or should not give the United Nations more power to deal with environmental problems on a worldwide basis?

	Percent
Should	56
Should not	27
Don't know	17

Q. 7 As you may know there is an organization called the "World Court" that tries to settle international disputes peacefully among countries that accept its jurisdiction. If the World Court finds that actions by the United States Government have violated international law, should the U.S. accept the Court's decisions or should it feel free to ignore the Court's decisions if it disagrees with them?

	Percent
Accept Court's decisions	58
Ignore the Court	15
Don't know	26

Q. 8 Do you think that an international agency on trade negotiations should be given the power to settle trade disputes among nations, or should the U.S. and other countries rely on their own actions against trade competitors?

	Percent
International agency	25
Rely on own actions	54
Don't know	21

Q. 9 Do you believe that U.N. member states, including the U.S., should always pay their full dues to the U.N. on a regular basis, or should a country—perhaps even the U.S.—hold back its dues to pressure other members to agree to changes it believes are needed?

	Percent
Always pay	60
Hold back	14
Depends (vol.)	14
Don't know	12●

TRIBUTE TO ARCH PEASE

● Mr. DURENBERGER. Mr. President, it is with privilege and respect that I rise today to inform and inspire my colleagues through an article appearing in the Minnesota Star and Tribune. The article recognizes and commends the work and character of an exemplary newspaperman and fellow Minnesotan, Arch Pease. At age 80, after 43 years of leadership and initiative, the extraordinary Pease is retiring.

I believe, and I am confidant my colleagues in the Senate will share my opinion, that Arch Pease is worthy and deserving of America's thanks and recognition. Persons such as Pease exist in that rare but lofty and uncommon stratum, reserved solely for those individuals whose moral and social consciences demand fairness, equality, and keep the less fortunate in the forefront of consideration.

Pease demonstrated throughout his career an unrelenting and stubborn ability to pursue those objectives he felt in his heart to be correct, justifiable, and derived from the most distinguished motivations. Of course, this brand of bold conduct often necessitated disputes and conflicts with the dictates of politicians and authority figures. Yet, even in his seemingly disadvantaged position, Pease never backpedaled nor capitulated from his commitment to the people. In fact, no matter the weight, prestige, or relation of the foe or obstacle, Pease addressed the situation in the same manner: Do what it takes to defeat the problem, present the truth, and gain support. Furthermore, Pease always conducted himself in such a manner that gained the respect and esteem from even his worst enemies.

Pease never could be bullied from the outside. His purpose and motivation comes from within, and he is involved because he wants to be, because—my colleagues in the Senate—like other great Americans, Pease's obligations to the common benefit of the people comes above all else.

Arch Pease is not a faultfinder, a criticizer, or a complainer. He is, however, a builder and improver of the way things are and could be. Quite simply, the man constantly moved to explore the bounds of society's potential. Indeed, Arch Pease is an igniter, carving out the best atmosphere for all around him.

Mr. President, I ask that this article be inserted into the RECORD, and I hope it will serve as an inspirational path for my colleagues to observe and follow. I challenge everyone to act as Arch Pease did.

The article follows:

CONSCIENCE OF ANOKA COUNTY: PUBLISHER ARCH PEASE LAYS HIS SLINGS AND ARROWS ASIDE

(By Cheryl Johnson)

Politicians can relax. The days when Arch Pease might refer to you in print as rodents and kumquats are history.

Last week, the opinionated publishing curmudgeon of Anoka County sold his three newspapers and ad shopper in a move that means he's really retiring after two earlier tries at it.

"Haven't got anything to go back to, kiddo," said Pease, 80, as he lapsed into his familiar poker face pout.

For 41 years, Pease has been the feisty, but aloof conscience of Anoka County through the Anoka County Union, the Coon Rapids Herald and the Blaine-Spring Lake Park Life.

A player in most major decisions from the establishment of Mercy Medical Center to the Anoka County Airport. Pease has been a cheerleader for what he says was once a hillbilly county. At the same time, he has been willing to publicly whack political buddies over the head, especially when they got arrested for private foibles such as driving while intoxicated.

"Newspapers are good things," said Pease. "You can use them to swat flies, mosquitoes or politicians."

Once he labeled a politician, who had flimsy ideas, as a kumquat through Pease's favorite nonprofane name is any variation of the word rat.

"I called the Board of Regents the Board of Rodents because of the way they handle some things. Boy, I tell you, they have handled everything wrong. What the hell did they fire (Athletic Director Paul) Giel for? He didn't do anything.

"I've always liked Paul Giel * * * but * * * I told Paul this: 'Look, Paul, I supported the hell out of you when you wanted to put a roof on Memorial Stadium * * * and what did you do.' "

You got those big town guys down there in Minneapolis, Carl Pohlad, Wheelock Whitney, Curt Carlson, and pulled the rug out from under me because you decided you were going to build a dome and you were going to build it in downtown Minneapolis.

"And I said, 'That was stupid. That's a stupid act.' Called it stupid," he said with a vehemence.

Everyone was generally careful about running afoul of Pease, who was unpredictable. An oft-heard question from one commissioner to another during former County Board Chairman Al Kordiak's 32-year tenure was "I wonder what Arch would say?"

"We loved him and we feared him," said Kordiak. "We knew we could have lunch with him, shake hands and have a fine time and that the next day he might virtually blast us out of our chairs when that editorial came out. We learned to respect the man because he was deeply honest, committed."

Former County Attorney R.W. Johnson said, "I never asked him not to print something, even unflattering things. That was the quickest way to get it on the front page."

Pease was born in Anoka on Sept. 25, 1908. While he was still in Anoka High School, he was sports editor for the Anoka Union, the newspaper that his grandfather Granville Pease bought in 1866. Arch Pease later became publisher-editor-columnist-reporter-bookkeeper and also pan for the paper. He graduated from the University of Illinois in 1931 with a bachelor's degree in education.

Pease learned the importance of political connections before he went to work on the family paper.

In Missouri in the 1930s, he met a young National Guard officer named Harry Truman, to whom Pease became an aide and a life-long friend. He helped a Minnesota candidate win a congressional seat in 1940 and wound up an administrative aide in Washington, D.C., although Pease said he never wanted anything but to defeat the other guy.

Many, including Arch Pease, believe Anoka County is a better place because Pease settled there.

Kordiak—one of his best friends—said Pease has assisted in a long list of county amenities.

Without Pease's influence, Anoka County might not have been first to have a county administrator, first to have a countywide police radio dispatch system, first to have a major crimes investigation unit or have a high-quality park system. Kordiak said.

"Arch Pease was, in one way or another, back of all of (those projects)," said Kordiak. "He would support us on the County Board) editorially and the legislators paid keen attention."

Johnson said Pease always worried about losing his candor because he was friends with people who might someday be the subject of newspaper criticism.

If standing by his commitment to cover the news was hard on his friends, it also was difficult for Pease sometimes.

In November, Pease put Commissioner Nick Cenaiko's drunken driving arrest on

Page 1.

"That hurt me because Nick Cenaiko is a great guy. I was asked 'maybe you can soft pedal that?" And I said I can't soft pedal that. Too many people get killed' "

Pease took a hard line on public officials driving drunk long before it was the thing to do.

That special Page 1 treatment wasn't just reserved for politicians, it also was promised to Pease employees and family members.

Pease's wife, Amy, said, "We always told our children * * * if you get into any trouble, your name is going to be on the front page. Fortunately, they didn't. But that is what would have happened."

The couple has been married 54 years.

Once, while doing volunteer work at Mercy, a patient noticed Amy Pease's name tag and asked how she could stand being married to Arch Pease. "I said, 'It's real easy' and walked out of the room," she recalled with a faint chuckle.

Living with Arch has helped Amy Pease perfect an exit. "If he got mad, I always walked away. It takes two to fight," she said.

But even as often as Pease has been willing to fight for causes, there have been occasions when he wouldn't choose sides.

Attorney Charles Weaver, Sr., a former legislator, said that the first time he ran for office he was anxious to see whom Pease would endorse. "He wrote an editorial that said nice things about both of us and suggested 'Wouldn't it be nice if it was a tie?' "

Weaver recalled. "That wasn't exactly what I was looking for because he usually took strong stances and supported candidate for both parties."

Weaver won the election. "I always looked up to Arch. I always thought he knew more about what was going on than anybody else," he said. "He pretty much always made up his own mind on things, except that he didn't look for a lot of counsel on some of the positions he took over the years."

Although Pease enjoyed taking harsh positions, he was capable of kindness. Once a young bride asked that her marriage not be noted in the paper because she was pregnant at the altar and when the vital statistics about the birth were printed everyone would know.

Pease said he put the wrong date in the paper. How'd he justify that?

"I didn't say it. It was a typographical error in the paper," he said with a smile. "* * * the stigma was on the child. You don't want the kid going through life" being called names, Pease said.

"I've had a good life," he said. "I'm living on borrowed time."

Pease learned in July that he has a recurrence of cancer, which he thought he'd licked in 1982. This time, the disease is in his bones.

He's now channeling the spirit that even he characterizes as curmudgeonly into his fight with cancer.

"I want to be remembered for the fact that we put out a newspaper, we did a good job and we kept the community informed. We became the eyes and ears of the people," said Pease. "I want this on my headstone: 'Born in Anoka, lived in Anoka, moved to Coon Rapids, died in Coon Rapids.' I've got something to look forward to." ●

COMMEMORATION OF THE BICENTENNIAL OF THE SENATE OF THE UNITED STATES

Mr. MITCHELL. Mr. President, on behalf of myself and Senator DOLE I send to the desk a resolution commemorating the Bicentennial of the U.S. Senate and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 144) relating to the commemoration of the bicentennial of the Senate of the United States.

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

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

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

The resolution (S. Res. 144) was agreed to as follows:

S. RES. 144

Resolved,

SECTION 1. ESTABLISHMENT OF COMMISSION.

There is hereby established a Commission on the Bicentennial of the United States Senate (referred to as the "Commission") to coordinate ceremonial events and related activities as appropriate.

SEC. 2. MEMBERSHIP OF COMMISSION.

The Commission shall be composed of the following members:

(1) the President pro tempore of the Senate;

(2) the majority leader and minority leader of the Senate;

(3) three Members of the Senate to be appointed by the majority leader; and

(4) three members of the Senate to be appointed by the minority leader.

A Member of the Senate appointed pursuant to Senate Resolution 352, agreed to April 11, 1986, to serve during the 100th Congress shall serve until the termination of the Commission.

SEC. 3. CHAIRMANSHIP; QUORUM.

The Majority Leader, or his designee, shall serve as the Chairman of the Commission and the Minority Leader, or his designee, shall serve as the Vice Chairman of the Commission. Four members of the Commission shall constitute a quorum for the transaction of business.

SEC. 4. VACANCY.

Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment.

SEC. 5. DUTIES OF COMMISSION.

The Commission shall oversee the development of projects and activities as outlined in the Final Report of the Study Group on the Commemoration of the United States Senate Bicentenary. It shall seek to coordinate Senate bicentennial activities with related organizations outside the Senate, including the Commission on the United States House of Representatives Bicentenary and the Commission on the Bicentennial of the United States Constitution.

SEC. 6. STAFF AND SUPPORT.

(a) IN GENERAL.—The Commission shall have the staff support and the expertise of Senate support staff including the Senate Historical Office and the Office of Senate Curator, under the jurisdiction of the Secretary of the Senate, and the assistance of the United States Senate Commission on Art. The Chairman shall designate an Executive Secretary of the Commission.

(b) SERVICES OF CONSULTANT.—In carrying out its functions, the Commission may, with the prior approval of the Senate Committee on Rules and Administration, procure the temporary (not to exceed one year) or intermittent service of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services.

(c) GUEST SPEAKERS.—In carrying out its functions, the Commission is authorized to engage the services of guest speakers and provide such speakers (other than speakers who are Members of Congress or officers or employees of the United States) with appropriate honoraria, transportation expenses, and per diem in lieu of subsistence.

SEC. 7. PAYMENT OF EXPENSES.

(a) PAYMENT OUT OF THE CONTINGENT FUND.—The actual and necessary expenses of the Commission, including official reception and representation expenses, the employment of staff at an annual rate of pay, and the employment of consultants at a rate not to exceed the maximum daily rate for a standing committee of the Senate, shall be paid from the Contingent Fund of the Senate, out of the account of Miscellaneous Items, upon vouchers approved by the Chairman of the Commission or his designee; except that no voucher shall be required to pay the salary of any employee who is compensated at an annual rate of pay. This subsection is effective with respect to expenditures incurred on or after the date of agreement to Senate Resolution 293, 100th Congress.

(b) AUTHORITY OF THE SECRETARY OF THE SENATE.—The Secretary of the Senate is authorized to advance such sums as may be necessary to defray the expenses incurred in carrying out the provisions of this resolution.

SEC. 8. PRIVATE SECTOR TASK FORCE.

The Commission shall seek to assemble a private sector task force to explore ideas and funding from private sources for appropriate projects to commemorate the bicentennial.

SEC. 9. REPORTS.

The Commission may submit periodic reports on its activities to the Senate and shall submit a final report at the time of its termination.

SEC. 10. TERMINATION OF COMMISSION.

The Commision shall cease to exist at the end of the one hundred and first Congress.

SEC. 11. REPEAL OF SENATE RESOLUTION 352.

Senate Resolution 352, agreed to April 11, 1986, is repealed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the Acting Presi-

dent pro tempore, pursuant to Public Law 99-624, appoints the Senator from Pennsylvania [Mr. HEINZ] to the Eisenhower Centennial Commission, vice the Senator from Colorado [Mr. ARMSTRONG], resigned.

REPLICATION OF THE HOUSE OF REPRESENTATIVES TO THE ANSWER OF JUDGE WALTER L. NIXON, JR.

The PRESIDING OFFICER. The Chair submits to the Senate for printing in the Senate Journal and in the CONGRESSIONAL RECORD the Replication of the House of Representatives to the Answer of Judge Walter L. Nixon, Jr., to the articles of impeachment against Judge Nixon, pursuant to Senate Resolution 127, 101st Congress, 1st session, which replication was received by the Secretary of the Senate on June 12, 1989, and the Chair further notes for the RECORD the receipt by the Secretary of the Senate of the House of Representatives' Request for Discovery, which will be forwarded to the committee appointed under rule 11 of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials.

The replication is as follows:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 12, 1989.

Re impeachment of Judge Walter L. Nixon, Jr.

Mr. WALTER J. STEWART,
Secretary of the Senate, U.S. Senate, Capitol Building, Washington, DC.

DEAR MR. STEWART: Enclosed please find the Replication of the House of Representatives to the Answer of Judge Nixon to the Articles of Impeachment, and the House of Representatives' Request for Discovery, for filing in the above matter.

Sincerely,

PETER E. KEITH,
Assistant Special Counsel.

[In the Senate of the United States Sitting As a Court of Impeachment]

IN RE IMPEACHMENT OF JUDGE WALTER L. NIXON, JR.

REPLICATION OF THE HOUSE OF REPRESENTATIVES TO THE ANSWER OF JUDGE WALTER L. NIXON, JR. TO THE ARTICLES OF IMPEACHMENT

The House of Representatives, through its Managers and counsel, replies to the Answer to Articles of Impeachment of Respondent, Judge Walter L. Nixon, Jr., as follows:

Article I

The first paragraph of Respondent's Answer to Article I simply summarizes that Article and requires no response by the House of Representatives.

The House of Representatives denies each and every allegation set forth in the second, third and fourth paragraphs of Respondent's Answer to Article I.

Article II

The first paragraph of Respondent's answer to Article II simply summarizes that Article and requires no response by the House of Representatives.

The House of Representatives denies each and every allegation set forth in the second and third paragraphs of Respondent's Answer to Article II.

Article III

The first paragraph of Respondent's Answer to Article III simply summarizes that Article and requires no response by the House of Representatives.

With regard to all remaining paragraphs of Respondent's Answer to Article III, the House of Representatives denies each and every allegation in the Answer that denies the acts, knowledge, intent or wrongful conduct charged against Respondent in Article III, or that otherwise suggests that Respondent's grand jury testimony and interview statements were true and correct. The House of Representatives further states that Article III properly alleges an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives incorporates by reference, in its Replication to Respondent's Answer to Article III, its response to the Answer of Respondent to Articles I and II.

1. Article III(1)

In addition to the foregoing, the House of Representatives responds to Respondent's Answer to the specific allegations of Article III(1) (A) through (G) as follows:

(A) The House of Representatives denies that the impeachment charge alleged in Article III(1)(A) is "virtually identical" to the Count II perjury charge on which Respondent was acquitted by the jury, and further denies that the jury verdict of acquittal on Count II of Respondent's criminal indictment in any way bars consideration by the Senate of Article III(1)(A).

(B) The House of Representatives denies that the impeachment charge alleged in Article III(1)(B) is "virtually identical" to the Count II perjury charge on which Respondent was acquitted by the jury, and further denies that the jury verdict of acquittal on Count II of Respondent's criminal indictment in any way bars consideration by the Senate of Article III(1)(B). The House of Representatives also denies that the allegations in subsections (A) and (B) of Article III(1) are "duplicitous and redundant." Subsections (A) and (B) of Article III allege two distinct false or misleading statements by Respondent, and both subsections should be considered and adjudicated by the Senate.

(C) The House of Representatives denies that Article III(1)(C) "does not accurately describe or refer" to actual statements by Respondent.

(D) The House of Representatives denies that the statement by Respondent referred to in Article III(1)(D) is "vague and imprecise," and states that the Senate can and should deem this to be a material false or misleading statement.

(E) The House of Representatives denies that Article III(1)(E) "distorts" or "omits material portions" of Respondent's actual statement in a "misleading manner."

(F) The House of Representatives denies that the allegations in subsection (E) and (F) of Article III(1) are "duplicitous and redundant." Subsections (E) and (F) of Article III(1) allege two distinct false or misleading statements by Respondent, and both subsections should be considered and adjudicated by the Senate.

(G) The House of Representatives denies that Article III(1)(G) "does not accurately describe" Respondent's statement during the April 1984 interview.

2. Article III(2)

In addition to the foregoing, with regard to Respondent's Answer to the specific statements alleged in Article III(2), the House of Representatives agrees that the statement of Respondent set forth in Article I is also the basis for Article III(2)(A), and that the statements of Respondent set forth in Article II are also the basis for Article III(2) (D), (F), and (G). The House of Representatives denies that the statement of Respondent set forth in Article II is also the basis for Article III(2)(E), inasmuch as the specific statement set forth in Article III(2)(E) was not an "underscored material declaration" in Count IV of Respondent's criminal indictment found by the jury to be false. However, the House of Representatives acknowledges that the statements set forth in Articles II and III(2)(E) were each part of Respondent's response during his grand jury testimony to the question, "Judge, do you have anything you want to add?"

The House of Representatives denies that Article III(2) is "multiplicitous, redundant and fundamentally unfair." Article III properly alleges an impeachable offense, is distinct from Articles I and II, and should be considered and adjudicated by the Senate. The House of Representatives denies that any portion of Article III is defective, and will oppose any motion to dismiss all or part of Article III.

The House of Representatives denies that Article III(2)(B) "distorts and misstates" Respondent's actual grand jury testimony.

First Affirmative Defense

The House of Representatives denies each and every allegation of this purported defense. The House of Representatives further states that this purported defense is not relevant to the Impeachment Articles and is insufficient as a matter of law. This purported defense of "vindictive prosecution" is a question particularly appropriate for judicial resolution and has been finally resolved by the judicial branch against Respondent without pending appeal. Respondent should thereby be estopped from raising this issue during the impeachment proceedings. The House of Representatives further asserts that such "vindictive prosecution," even if true as alleged, cannot excuse or be a defense to the misconduct by Respondent set forth in the Articles of Impeachment.

Second Affirmative Defense

The House of Representatives denies each and every allegation of this purported defense. The House of Representatives asserts that this purported defense is not relevant to the Impeachment Articles and is insufficient as a matter of law. This purported defense of prosecutorial misconduct is a question particularly appropriate for judicial resolution and has been resolved by the judicial branch against Respondent. Respondent should thereby be estopped from raising this issue during the impeachment proceedings. The House of Representatives further asserts that such prosecutorial misconduct, even if true as alleged, cannot excuse or be a defense to the misconduct by Respondent set forth in the Articles of Impeachment.

Wherefore, the House of Representatives states that each of the Articles of Impeachment presents a valid basis for removing Respondent from office. Each of the three Articles should be considered and adjudicated by the Senate.

With regard to Respondent's demand for "trial before the full United States Senate," the House of Representatives denies that Article I, Section 3 of the Constitution requires that evidence be taken by the full Senate, rather than by a Committee formed pursuant to Senate Impeachment Rule XI.

Respectfully submitted,

The U.S. House of Representatives,
ALAN I. BARON,
Special Counsel.

Managers of the House of Representatives: Jack Brooks, Don Edwards, Benjamin L. Cardin, F. James Sensenbrenner, William E. Dannemeyer.

Impeachment Trial Staff: Alan I. Baron, Special Counsel; Peter E. Keith, Assistant Special Counsel.

House Judiciary Committee Staff Participating in the Impeachment Proceedings: William Jones, General Counsel; Daniel Freeman, Counsel; Catherine A. LeRoy, Counsel; Colleen Kiko, Counsel.

RECESS UNTIL 9 A.M. TOMORROW

Mr. MITCHELL. Mr. President, I now ask unanimous consent that the Senate stand in recess under the previous order until 9 a.m. on Wednesday, June 14, 1989.

There being no objection, the Senate, at 7:31 p.m., recessed until Wednesday, June 14, 1989, at 9 a.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate after the recess of the Senate on June 9, 1989, under authority of the order of the Senate of January 3, 1989:

DEPARTMENT OF STATE

THOMAS PATRICK MELADY, OF CONNECTICUT, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE HOLY SEE.

DEPARTMENT OF JUSTICE

WILLIAM BRANIFF, OF CALIFORNIA, TO BE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF 4 YEARS VICE PETER K. NUNEZ, RESIGNED.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SKIRMA ANNA KONDRATAS, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT, VICE JACK R. STOKVIS, RESIGNED.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

MARK L. EDELMAN, OF MISSOURI, TO BE DEPUTY ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT, VICE JAY F. MORRIS, RESIGNED.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

JAMES R. THOMPSON, JR., OF ALABAMA, TO BE DEPUTY ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, VICE DALE D. MYERS, RESIGNED.

Executive nominations received by the Senate June 13, 1989:

DEPARTMENT OF STATE

JOSEPH BERNARD GILDENHORN, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SWITZERLAND.

DEPARTMENT OF THE INTERIOR

MARTIN LEWIS ALLDAY, OF TEXAS, TO BE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR, VICE RALPH W. TARR, RESIGNED.

JOHN F. TURNER, OF WYOMING, TO BE DIRECTOR OF THE U.S. FISH AND WILDLIFE SERVICE, VICE FRANK H. DUNKLE, RESIGNED.

DEPARTMENT OF COMMERCE

DEBORAH WINCE-SMITH, OF OHIO, TO BE ASSISTANT SECRETARY OF COMMERCE FOR TECHNOLOGY POLICY, VICE D. BRUCE MERRIFIELD, RESIGNED.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be general

GEN. MAXWELL R. THURMAN [redacted] U.S. ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601(A), IN CONJUNCTION WITH ASSIGNMENT TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 610(A):

To be general

LT. GEN. JOHN W. FOSS, [redacted], U.S. ARMY.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED, UNDER IN CONJUNCTION WITH ASSIGNMENT TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 610(A) AND TO BE APPOINTED AS SENIOR ARMY MEMBER OF THE MILITARY STAFF COMMITTEE OF THE UNITED NATIONS UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 711.

To be lieutenant general and Army senior member of the Military Staff Committee of the United Nations

MAJ. GEN. GORDON R. SULLIVAN, [redacted] U.S. ARMY

IN THE NAVY

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370.

To be vice admiral

VICE ADM. JOSPEH B. WILKINSON, JR., [redacted] 1230, U.S. NAVY.