H.R. 1050: Mr. WHITLEY, Mr. JEFFORDS, Mr. BARNARD, Mr. HUCKABY, Mr. TRIBLE, and Mr. JENRETTE.

H.R. 1509: Mr. HUGHES, Mr. EDWARDS of Oklahoma, Mr. BEDELL, and Mr. STUMP.

H.J. Res. 110: Mr. ANDERSON of California, Mr. BEARD of Tennessee, Mr. BOLAND, Mr. BONIOR of Michigan, Mr. BROWN of Ohio, Mr. BROWN of California, Mr. BUCHANAN, Mrs. BYRON, Mr. COELHO, Mr. CONTE, Mr. CORCORAN, Mr. DORNAN, Mr. EVANS of Delaware, Mr. FAZIO, Mr. FLOOD, Mr. FLORIO, Mr. FORSYTHE, Mr. FROST, Mr. GREEN, Mrs. HOLT, Ms. HOLTZMAN, Mr. HOWARD, Mr. HYDE, Mr. KEMP, Mr. KINDNESS, Mr. LAGOMARSINO, Mr. LEDERER, Mr. LONG of Maryland, Mr. LUKEN, Mr. MINETA, Mr. MONTGOMERY, Mr. MURPHY of Pennsylvania, Mr. MURPHY of New York, Mr. PEPPER, Mr. SABO, Mr. SCHEUER, Mr. WAXMAN, Mr. WEAVER, Mr. WHITTAKER, and Mr. WIRTH.

H. Res. 93: Mr. BENNETT, Mr. PERKINS, Mr. KINDNESS, Mr. D'AMOURS, Mrs. BYRON, Mr. YOUNG of Florida, Mr. NOLAN, Mr. FUQUA, Mr. JEFFORDS, Mr. EDWARDS of Oklahoma, Mr. GUYER, Mr. GORE, and Mr. FOWLER.

H. Res. 105: Mr. HARKIN, Mr. ENGLISH, and Mr. BEREUTER.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

35. By the SPEAKER: Memorial of the Legislature of the State of Florida, requesting that Congress call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require a balanced Federal budget and to make certain exceptions with respect thereto; to the Committee on the Judiciary.

36. Also, memorial of the Legislature of the State of North Carolina, requesting that Congress propose, or call a convention for the exclusive purpose of proposing, an amendment to the Constitution of the United States to require a balanced Federal budget in the absence of a national emergency; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

59. By the SPEAKER: Petition of the Second National Indian Conference on Aging, Billings, Mont., relative to funding for construction of Senior Citizens' Centers under title V of the Older Americans Act, the eligibility age for the feeding program under title VII of the act, and minority hiring for Senior Employment Opportunities under title IX of the act; to the Committee on Education and Labor.

60. Also, petition of the Second National Indian Conference on Aging, Billings, Mont., relative to the proposed Indian Social Services Act; to the Committee on Ways and Means.

61. Also, petition of the Second National Indian Conference on Aging, Billings, Mont., relative to the Indian Health Service's request for supplementary funding for the care of elderly Native Americans; jointly, to the Committees on Interior and Insular Affairs, and Interstate and Foreign Commerce.

SENATE—*Thursday, February 22, 1979*

(Legislative day of Monday, January 15, 1979)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by Hon. BILL BRADLEY, a Senator from the State of New Jersey.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, Father of our spirits and comfort of the sorrowing, deal graciously with those who mourn the death of Adolph Dubs and Arthur Kuhl. We give thanks to Thee for their high service to the Nation, for ideals lived out in daily endeavor, and for friendship transcending all time and distance. Show us how to live better, to serve more effectively, and to love more deeply.

Pour out Thy spirit upon all who bear the burdens of government. Keep this Nation resolute and strong, firm in the right, correct in the use of power, and ever imbued with Thy spirit.

As we work this day, keep us ever mindful of the admonitions and the example of our first President.

In the Redeemer's name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 22, 1979.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BILL BRADLEY, a Senator from the State of New Jersey, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

THE JOURNAL

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

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

SPECIAL ORDERS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Missouri (Mr. EAGLETON) is recognized for not to exceed 10 minutes.

Mr. ROBERT C. BYRD. Mr. President, for whom is the second order?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin (Mr. PROXMIRE) is to be recognized.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that each of the two leaders or their designees have 1 minute each.

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

ORDER FOR SECRETARY OF THE SENATE TO SEND COPY OF PRAYER TO FAMILIES OF AMBASSADOR ADOLPH DUBS AND ARTHUR KUHL

Mr. STEVENS. Mr. President, I ask unanimous consent that the Secretary of the Senate be requested to send a copy of this morning's prayer by the Chaplain to the families of the two deceased members of the Government who were mentioned.

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

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, the vote in relation to the Stevens amendment is to occur at 10 o'clock. That was understood yesterday. I know that Senators have difficulty getting to the Capitol this morning.

I ask unanimous consent that there be a quorum call, the time to be charged equally against the three Senators who have orders. This is a little unfair to them, but I know of no other way to handle the situation.

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

Mr. ROBERT C. BYRD. I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. PRESSLER may begin without prejudice to the other speakers.

Mr. STEVENS. Mr. President, if the Senator will yield, could we determine how much time each speaker should have now?

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

The ACTING PRESIDENT pro tempore. Each speaker should have 9½ minutes.

Mr. STEVENS. Good.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from South Dakota is recognized.

IRAN

Mr. PRESSLER. Mr. President, among the casualties in the Iranian revolution is Iran's tradition of religious tolerance. I have been deeply disturbed by reports that a number of Iran's religious and ethnic communities may face discrimination, expulsion, and even destruction as a result of Iran's being transformed into an Islamic republic. Our own Nation, which since its inception has stood for religious freedom, has a responsibility to speak out now, to make clear to the Bazargan government that theocratic oppression of so-called infidels is a relic of another age, and cannot be excused in the name of religion or nationalism.

Chief among those communities apparently singled out for mistreatment are Iran's 200,000 to 300,000 Baha'is. Adherents of a peaceful Shi'ite Moslem offshoot more than 125 years old, the Baha'i community has won wide respect for its community endeavors and its role in Iran's economic development. According to sources close to the Khomeini leadership, the Baha'i community may now expect to be treated as schismatics under Moslem law. In this circumstance, the very survival of the community, and its presence in the country, would be dependent upon the whim of the new rulers.

Also endangered by the Islamic takeover are Iran's 110,000 Zoroastrians. They are practitioners of Irans' oldest religion, a sixth century B.C. monotheism which puts a premium on the good works of men. The Zoroastrians, like the Baha'is, have made cultural contributions far beyond their number. And like the Baha'is, the Zoroastrians are regarded as infidels by the new religious government.

Mr. President, I have also been less than reassured by the greetings extended by the Ayatollah Khomeini to Iran's 75,000 Jews. It is true that Islam regards Jews and Christians as people of the book, deserving of protection. But it is also unfortunately true that Islamic governments believe that Jews should be relegated to the position of dhimmis, second-class citizens with special taxes and a host of special restrictions. The anti-Jewish and anti-Israel aspect some of Iranian rioters, as well as the warm greeting extended to the PLO's Yassir Arafat by the Ayatollah, are very disquieting.

I think it is important to note that Israel stands ready at this very moment to take in Iranian Jews who wish to leave the country. I would point out that Israel's continuing policy of welcome to refugees from throughout the world is one more example of the ideals which Israel shares with the United States.

Mr. President, I am also concerned that as the new Iranian Government struggles to assert its authority, a number of Iran's ethnic communities may be oppressed in the name of national unity. The Kurds in the north, an ancient people who have sought independence for nearly 3,000 years, are a likely target. So are the Baluch tribesmen in the southeast, the Qashqais in the southwest, and the Turkomans in the far north.

It is undeniable that American policy toward Iran has been badly mishandled for the last year. The United States has suffered setbacks in its regional position and potential compromises of its military security. Indeed, the eventual costs of the policy and intelligence failures in Iran have yet to be revealed. I have noted with dismay reports that the United States chose not to remove advanced military equipment from Iran so as not to impair future relations with the Khomeini government. I would hope that in the field of human rights and religious freedom, the United States will not stand idly by. Silence in the face of what may be a massive repression of all non-Moslems in Iran would do nothing to enhance our influence in the country, or bolster America's position in the region.

I believe the administration should be aware that, as in times past, the Congress will take an active role in examining human rights abuses, and will not be coerced into silence in the name of diplomatic niceties and on the basis of classified secrets.

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

Mr. ROBERT C. BYRD. Mr. President, how much time was yielded back?

The ACTING PRESIDENT pro tempore. The Senator yielded back 5½ minutes.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, I ask unanimous consent that I may have control of that time.

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote which is scheduled for 10 o'clock in relation to the amendment by Mr. STEVENS be delayed until 12 o'clock noon today.

Mr. STEVENS. Mr. President, I am constrained to object. The cosponsor of the amendment, Senator HATFIELD, requested that time specifically so that he could vote and then keep a commitment of long standing. So I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, there are several Senators on my side of the aisle who are unable to get here as yet. I ask unanimous consent that the vote in relation to the amendment by Mr. STEVENS be delayed until 2 p.m., with the understanding that in the meantime other amendments could be called up and either voice voted or the rollcall votes, if ordered, stacked.

Mr. BAKER. Mr. President, reserving the right to object, and I must object, I am afraid, I will say to the majority leader that as the assistant leader on our side indicated a moment ago, we have a specific and direct request from the ranking Republican member of the Rules Committee in that respect. A unanimous-consent order was entered on that basis. If the Senator will withhold his request, I will be happy to try to reach Senator HATFIELD and see if we can readjust his schedule or reach some accommodation. But at the present moment, we are not at liberty to change that order at all.

Mr. ROBERT C. BYRD. Mr. President, I withdraw the request.

Mr. STEVENS. Mr. President, has the time for special orders expired?

The ACTING PRESIDENT pro tempore. The time has expired.

SENATE RESOLUTION 61—PROPOSED AMENDMENT OF STANDING RULES OF THE SENATE

Mr. STEVENS. Mr. President, I discussed last evening with the majority leader my——

The ACTING PRESIDENT pro tempore. Will the Senator withhold for a moment?

Mr. STEVENS. Yes.

AMENDMENT NO. 60

(Formerly UP Amendment No. 15)

The ACTING PRESIDENT pro tempore. The pending business is Senate Resolution 61, as amended. Under the previous order, there will now be 15 minutes for debate on amendment No. 60 by the Senator from Alaska (Mr. STEVENS), to be equally divided and controlled by the Senator from Alaska (Mr. STEVENS) and the Senator from West Virginia (Mr. ROBERT C. BYRD), with the vote in relation thereto to occur not later than 10 a.m. The yeas and nays have been ordered.

Mr. STEVENS. Mr. President, as I discussed with the majority leader last evening, it would be my intention to ask unanimous consent at this time to change the amount of time that could be yielded to another Senator in total, so that the total would be not more than 5 additional hours, and that change would appear on page 2, line 18.

I have discussed this with the majority leader. I understand his situation, but I have been specifically requested to make that request, so I do ask unanimous consent that the word "nine" on page 2, line 18, be changed to "five".

Mr. ROBERT C. BYRD. Mr. President, I am constrained to object, for this rea-

son: Although the distinguished minority whip is requesting that the time to be yielded to any other Senator be cut from 9 hours to 5 hours——

Mr. STEVENS. The total would be 6. You now have 2, and we have 10. We decided to see if we could compromise between the two figures. The total would be 5 hours from yielding, and each Senator has 1 hour under my amendment, so the total would be 6 hours.

Mr. ROBERT C. BYRD. Under the Senator's amendment, a Senator could yield to any other Senator?

Mr. STEVENS. The Senator is correct.

Mr. ROBERT C. BYRD. Under my proposal, Senators could yield only to the two leaders and the managers of the bill.

Mr. STEVENS. That is correct. Under my proposal, a Senator could yield to any Senator notwithstanding his position as manager of the bill or from the point of view of minority or majority leadership.

Mr. ROBERT C. BYRD. I would have to object on both points: First, that any Senator may yield to any other Senator, and second, the yielding of 5 hours. I cannot accept the amendment, because I would thereby be tacitly agreeing to 5 hours yielding. So I am constrained to object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. STEVENS. Mr. President, I might ask the Senator from Idaho, since we have half of the time, roughly 12 minutes, does the Senator seek any of that time?

Mr. McCLURE. Mr. President, will the Senator yield briefly?

Mr. STEVENS. Yes.

Mr. McCLURE. I do not really seek any of that time, except to address an appeal to the Senator from West Virginia in terms that we agreed to address the problem the Senator from West Virginia sought last Friday, to change the form of Senate Resolution 61, in whatever form he wanted to address the issue to the Senate, as he sees it, in whatever form he sees it. The Senator from Alaska has now sought to change his proposal so that it might be laid forward, not as your proposal but as his. It would seem to me that in a spirit of fairness, in trying to allow each side, on whatever argument may come up, to present their case to the body so that the Senate may work its will on these issues, I would hope the Senator from West Virginia might see fit to allow the Senator from Alaska to make that change so that he may present it in the form he wishes to present it.

Mr. ROBERT C. BYRD. The Senator from Idaho, in a spirit of fairness, calls on the Senator from West Virginia to allow the Senator from Alaska to modify his amendment by this change. May I remind the Senator from Idaho that in the spirit of fairness, the Senator from West Virginia yesterday asked unanimous consent that the Senator from Alaska might be allowed to offer his amendment to my resolution, which had already been amended—several times, in fact. I even asked unanimous consent myself, and not only that, but that the amendments of the Senator from Alaska be allowed to come in en bloc.

So I feel that I have been fair, to the extent that I have nothing to apologize for. Therefore, I am constrained to object, and do object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. McCLURE. Will the Senator from Alaska indulge me for a moment further?

Mr. STEVENS. Yes.

Mr. McCLURE. I do not mean to belabor this point, but on last Thursday and Friday, there were a number of things that could have been done by the opponents of the Senator from West Virginia's position had they chosen to do so, respecting these very issues. You have now suggested, I would say to the Senator from West Virginia, that you in fairness waived some things never even raised by this side, or never even asserted by this side. We did not just give you unanimous consent that they be injected; we never asked that they be injected, and never urged that they should be injected.

I perceive that the Senator from West Virginia is not going to change his mind because I think he perceives some advantage to his position in not doing so.

I am not asking him to apologize for not doing so, but certainly I think that the fairness or perceived fairness is not being equally treated on both sides of this issue.

I say that with some sadness because up until this point it has been a very amicable agreement to disagree, and I hope it might stay on that plane throughout the balance of the debate.

Mr. ROBERT C. BYRD. Mr. President, methinks the Senator from Idaho protesteth too much. He invokes the element of fairness now on this. If the Senator from Alaska does not complain, it was the Senator from Alaska's request to which I objected, he complaineth not, and the reason why the Senator from Idaho, I suppose, did not object on last Thursday and Friday was that the amendments I offered were liberalizing my own resolution. I would have been surprised had the opposition objected to any of those amendments.

Mr. STEVENS. Mr. President, one of the reasons I did not pursue the matter further, as the Senator from Idaho will recall, was that I was compelled to keep a long-standing speaking engagement and was not here Thursday and Friday, so I was not part of that situation.

I had discussed the matter with the majority leader and understood he was going to object. As far as I am concerned, his objection means that my amendment should have additional support because there would be four more Senators who could yield me time under it.

Mr. McCLURE. Will the Senator yield?

Mr. STEVENS. Yes.

Mr. McCLURE. The Senator from West Virginia assumes that the reason we did not object was because it moved the position of the Senator from West Virginia more in our direction.

I would say then, that is persuasive reason that he should not object to the request of the Senator from Alaska because it, indeed, moves us more in his direction.

Mr. ROBERT C. BYRD. Well, now, may I say to the distinguished Senator from Idaho, who prides himself on the Rules and being able to write appropriate changes into them, why does he not offer an amendment right at this point seeking exactly what the Senator from Alaska seeks to do?

He does not have to modify the unanimous consent. The Senator from Idaho can offer an amendment to the amendment. It is open to amendment.

I suggest that the Senator from Idaho, in fairness to the Senator from West Virginia, now offer an amendment to the amendment by Mr. STEVENS reducing the number from 9 to 6. He can do that.

Why does he not do it?

Mr. McCLURE. Will the Senator yield to answer the question?

Mr. ROBERT C. BYRD. Yes.

Mr. McCLURE. As the Senator knows from the colloquy that took place yesterday, we have a problem with respect to the ranking minority member of the Rules Committee, the Senator from Oregon (Mr. HATFIELD), who can be here at 10 o'clock for the rollcall, but he cannot be here later.

If, as a matter of fact, I would offer an amendment, as the Senator must know, the Senator from Oregon would be deprived of the opportunity to vote on the amendment offered by the Senator from Alaska, and, under those circumstances, I cannot offer it.

Mr. ROBERT C. BYRD. Oh, in the spirit of fairness, I will give the Senator from Oregon a live pair. Let the Senator from Idaho offer his amendment to that of the Senator from Alaska, cutting the hours from 9 to 5, I will give a pair to the Senator from Oregon on that amendment.

Mr. McCLURE. Will the Senator from Alaska yield briefly on that point?

Mr. STEVENS. Yes.

Mr. McCLURE. It is not the amendment of the Senator from Idaho that is important to the Senator from Oregon. It is the amendment offered by the Senator from Alaska.

Mr. ROBERT C. BYRD. I understand. But I am saying this, if the Senator from Idaho wishes to see the amendment by Mr. STEVENS modified, let the Senator from Idaho offer an amendment to do it.

I have objected to a modification, but I cannot object to amendments being offered.

I will give the Senator from Oregon a pair on that vote.

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

The ACTING PRESIDENT pro tempore. The Senator from Alaska has 1 minute remaining. The Senator from West Virginia has 4 minutes remaining.

Mr. ROBERT C. BYRD. Mr. President, I will yield to the Senator from Alaska half of my time in the spirit of fairness. So the Senator from Alaska now has 3 minutes and I have 2 minutes.

Mr. STEVENS. I am happy to have that time because it was a West Virginia clock, I think, that was running. I did not think I was talking that much.

Mr. President, let me take half the time left to again address this amendment to make certain the Members of the Senate understand the difference in philosophy that is involved in this amendment as far as the approach of the Senator from West Virginia and the approach of the ad hoc committee on

this side, which I chaired, and that is the reason I introduced this amendment.

Our amendment seeks to preserve the individual rights of Senators to 1 hour after cloture. It seeks to permit the yielding of that time by an individual Senator to another Senator without regard to a position of being manager of the bill, or a position of permanent leadership.

Senate Resolution 61 will provide a cap of 100 hours for the Senate itself, but no guarantee to an individual Senator of any of that time, except it perpetuates the existing rule, by saying that each Senator is entitled to use up to 1 hour. But under the circumstances of the rule, that time would not be available.

Furthermore, it authorizes the yielding of up to 2 hours to the minority or majority leader, or to the manager of the bill, or either side, but does not permit the yielding of time to those people who normally would be involved in the postcloture presentation of amendments; namely, those who would be involved in the filibuster that led to the cloture.

We seek to make certain that as we change our rules we do not get in the position where 60 Members having voted to terminate the debate could also vote to reduce the time.

Senate Resolution 61 will permit the same 60 Senators who voted to terminate the debate, to reduce the time to a total of 30 hours. We believe that that is wrong.

We concur in the spirit of the cloture rule that permits the 60 Members to indicate that debate should come to a close, but in postcloture we believe in the rights of each individual Senator, particularly the minority point of view, and this is not necessarily a partisan minority point of view. I remind the Senate that last year on the gas bill the minority was a partisan minority. But we are talking about the minority point of view, that on any issue they ought to have the assurance that they individually will be able to present their position on the legislation and present amendments as the postcloture period comes to an end.

That this amendment to Senate Resolution 61 would change the approach of Senate Resolution 61 so that there would be a cap of 100 hours made up of each individual Member's 1 hour.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The Senator from West Virginia has 2 minutes.

Mr. ROBERT C. BYRD. Mr. President, does the Senator from Alaska want more time?

Mr. STEVENS. No.

Mr. ROBERT C. BYRD. Mr. President, let us not lose sight of the purpose of cloture. The purpose of cloture is to bring the debate on the matter or measure before the Senate to a close, and even after cloture has been invoked there is still debate.

Now, we have seen the post-cloture filibuster and if Senators really—if they really—are serious about changing the rules in a way that will deal with this post-cloture filibuster efficiently and effectively, then they should support Senate Resolution 61 and vote to table—which I will move to table—the amendment by the distinguished Senator from Alaska.

My resolution has been amended now to provide that no Senator can call up more than two amendments until all other Senators have had an opportunity for recognition. This will guarantee that each Senator will call up his two most important amendments first. It will guarantee that recognition is spread around, that all Senators have a chance to offer amendments.

I have provided that each Senator, if he cannot get recognition in 100 hours, which is 12½ 8-hour days—if a Senator stands on his feet and cannot get recognition—then, at the end of the 100 hours, he can get up to 10 minutes inclusive, so that he can speak to the people back home and try to persuade the Senate; and a bullet will not appear on his speech in the RECORD.

I have also provided for the yielding of time to the managers of the bill and the majority leader and the minority leader. So far as I am concerned, I am willing to forget the two leaders and just see that the managers of the bill have a little additional time.

Mr. President, I ask unanimous consent that each side have 2 minutes.

The PRESIDING OFFICER (Mr. DECONCINI). Is there objection?

Mr. STEVENS. Reserving the right to object——

Mr. ROBERT C. BYRD. Mr. President, I withdraw my request, and I move to table the amendment.

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. My understanding is that this was to be an up-and-down vote.

Mr. ROBERT C. BYRD. Oh, no.

Mr. STEVENS. Let me quote from what the Senator from West Virginia said.

The PRESIDING OFFICER. It is a vote in relation to the amendment.

Mr. STEVENS. He said:

> Does the Senator want to get the yeas and nays now, in case we vote up or down?

And I did not object on that basis.

The PRESIDING OFFICER. The unanimous-consent agreement is phrased so that there will be a vote in relation to the amendment.

Mr. STEVENS. Very well.

Mr. ROBERT C. BYRD. I merely sought the yeas and nays in the event it might be difficult to get them this morning.

Mr. President, I am willing to carry on the debate a little while in order to help Senators——

The PRESIDING OFFICER. A motion to table is not debatable.

Mr. ROBERT C. BYRD. I am willing to ask unanimous consent that it be debatable.

I ask unanimous consent to proceed for 30 seconds.

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

Mr. ROBERT C. BYRD. I am willing to proceed with the debate for a little while, in order to help Senators who are trying to get here and who are having difficulty in traffic, in which case I would ask unanimous consent that the debate be prolonged for another 10 minutes.

Mr. President, I moved to table the amendment, and 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 to table the amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I also announce that the Senator from Georgia (Mr. TALMADGE) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Nevada (Mr. LAXALT), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

The result was announced—yeas 51, nays 38, as follows:

[Rollcall Vote No. 1 Leg.]

YEAS—51

Baucus	Exon	Nunn
Bayh	Ford	Pell
Bentsen	Glenn	Proxmire
Biden	Hart	Pryor
Boren	Heflin	Randolph
Bradley	Huddleston	Ribicoff
Bumpers	Inouye	Riegle
Burdick	Jackson	Sarbanes
Byrd, Harry F., Jr.	Leahy	Sasser
	Levin	Stennis
Byrd, Robert C.	Long	Stevenson
Cannon	Magnuson	Stewart
Chiles	Melcher	Stone
Church	Metzenbaum	Tsongas
Culver	Morgan	Williams
DeConcini	Moynihan	Zorinsky
Durkin	Muskie	
Eagleton	Nelson	

NAYS—38

Armstrong	Hatch	Pressler
Baker	Hatfield	Roth
Bellmon	Hayakawa	Schmitt
Boschwitz	Heinz	Schweiker
Chafee	Helms	Simpson
Cochran	Humphrey	Stevens
Cohen	Javits	Thurmond
Danforth	Jepsen	Tower
Dole	Kassebaum	Wallop
Domenici	Lugar	Warner
Durenberger	Mathias	Weicker
Garn	McClure	Young
Goldwater	Percy	

NOT VOTING—11

Cranston	Kennedy	Packwood
Gravel	Laxalt	Stafford
Hollings	Matsunaga	Talmadge
Johnston	McGovern	

So the motion to lay on the table amendment No. 60 was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 61

(Formerly UP Amendment No. 18)

The PRESIDING OFFICER. Under the previous order there will now be a period of 10 minutes for debate on an amendment by the Senator from North Carolina (Mr. HELMS), to be equally divided and controlled by the Senator from North Carolina and the Senator from West Virginia, with a rollcall vote to follow immediately.

The Senator from North Carolina is recognized.

The Senate is not in order. Senators will please be seated and cease conversations. The Senator from North Carolina.

Mr. HELMS. Mr. President, I ask that the amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from North Carolina, Mr. HELMS, proposes amendment No. 61.

On page 1, after line 3, insert the following:

"Between the invoking of cloture and the vote on final passage of the measure, motion, or other matter subject to cloture, consideration of such measure, motion, or matter shall be limited to not more than 8 hours per calendar day."

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

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, when time is reserved it counts equally against both sides, does it not?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, I oppose this amendment. The object of cloture is to bring a matter to a close, to bring the Senate to a decision on a matter or measure on which cloture has been invoked.

The amendment of the distinguished Senator from North Carolina would preclude the Senate from acting on any single day following cloture more than 8 hours on the matter on which cloture has been invoked. Obviously, if the Senate was in a situation in which it was about to adjourn sine die, it was Christmas or thereafter, and I have seen the Senate in session on January 2, then the matter on which the Senate might have worked for months or even years would automatically die.

So I feel that if we are going to continue to seek cloture as a manifestation of the Senate's will to bring to a close the debate and action on a measure or matter on which cloture was invoked, then we ought not straitjacket the Senate and say that it can only debate a matter for 8 hours on a given day and then it must go to something else. Obviously, it would be counterproductive of the action of the Senate in invoking cloture, and I therefore have to oppose it.

Mr. BAKER. Will the Senator from North Carolina yield?

Mr. HELMS. I yield 2 minutes.

Mr. BAKER. Mr. President, I rise in support of this amendment I think it is an eminently practical amendment. I think it moves us in the direction of a regular, predictable, and appropriate ordering of the times and affairs of the Senate.

I disagree with my friend the majority leader. I do not think that a limitation of 8 hours of consideration of a matter after cloture is invoked in any way straitjackets the Senate. I think, instead, that it does something that we ought to do anyway, that makes us provide in advance for the useful commitment of our time and resources. Unless we start running the Senate with some deference and respect to the limitations of physical vigor and mental agility, unless we organize our resources so that we address the issues and that we do not commence a marathon against the clock, we do a disservice to the issues involved. I support the amendment and commend the Senator from North Carolina for offering it.

Mr. HELMS. I thank the distinguished minority leader.

Mr. President, as a Senator who is 57 years old, I do not have the problem a number of younger Senators have, and I do not have the problem that a number of Senators who are my senior may have. It does not matter to me personally how long we stay in session on a given day, but Senators who have been here know that they are seldom ever able to plan to be with their families. They are not able to make any arrangements with any feeling of security.

I personally feel that 8 hours a day on any matter on which cloture has been voted is sufficient, as the minority leader has just said, in terms of the mental and physical ability to consider the matter.

I will say to Senators that it does not matter to the Senator from North Carolina if they want to be in the position of never knowing what they are going to be able to do on a given date when cloture has been voted. Fine, vote with the majority leader and table this amendment. But if the Senators want to have some reasonableness in their lives, they better think twice before they vote to table this amendment. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, I yield back the remainder of my time if the majority leader will yield back his.

Mr. ROBERT C. BYRD. I yield back the remainder of my time, and I move to table the amendment.

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

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

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

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Hawaii (Mr. MATSUNAGA) and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I also announce that the Senator from Georgia (Mr. TALMADGE) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Nevada (Mr. LAXALT) and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

The PRESIDING OFFICER. Does any other Senator wish to vote?

(Mr. PERCY voted in the negative, as indicated below.)

The result was announced—yeas 52, nays 39, as follows:

[Rollcall Vote No. 2 Leg.]

YEAS—52

Baucus	Exon	Muskie
Bayh	Ford	Nelson
Bentsen	Glenn	Nunn
Biden	Hart	Pell
Boren	Heflin	Proxmire
Bradley	Huddleston	Pryor
Bumpers	Inouye	Randolph
Burdick	Jackson	Ribicoff
Byrd, Harry F., Jr.	Javits	Riegle
Byrd, Robert C.	Johnston	Sarbanes
Cannon	Leahy	Sasser
Chiles	Levin	Stennis
Church	Long	Stevenson
Culver	Magnuson	Stewart
DeConcini	Mathias	Tsongas
Durkin	Melcher	Williams
Eagleton	Metzenbaum	Zorinsky
	Moynihan	

NAYS—39

Armstrong	Hatch	Roth
Baker	Hatfield	Schmitt
Bellmon	Hayakawa	Schweiker
Boschwitz	Heinz	Simpson
Chafee	Helms	Stafford
Cochran	Humphrey	Stevens
Cohen	Jepsen	Stone
Danforth	Kassebaum	Thurmond
Dole	Lugar	Tower
Domenici	McClure	Wallop
Durenberger	Morgan	Warner
Garn	Percy	Weicker
Goldwater	Pressler	Young

NOT VOTING—9

Cranston	Kennedy	McGovern
Gravel	Laxalt	Packwood
Hollings	Matsunaga	Talmadge

So the motion to lay on the table amendment No. 61 was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 19

(Purpose: To prohibit the reduction of the post cloture cap below 100 hours)

Mr. STEVENS. Mr. President, I have an amendment at the desk for myself and the Senator from Virginia (Mr. HARRY F. BYRD, JR.).

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS), for himself and Mr. HARRY F. BYRD, JR., proposes an unprinted amendment numbered 19:

On page 2 line 9 strike the comma and all language thereafter up to the comma after the word "hours" on line 14.

On line 19 strike the words "reduce time and only one motion to".

Mr. STEVENS. Mr. President, the purpose of this amendment would be to delete the power of 60 Members of the Senate to reduce the time down to 30 hours. We have not yet worked out a change that would entitle each Senator to 1 hour, but at least this would preserve the 1 hour in theory for each Senator so that the 100-hour cap, read

together with the existing rule, which says:

Thereafter no Senator shall be entitled to speak in all more than 1 hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks.

Would remain the same.

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

Mr. STEVENS. I am happy to yield to the Senator from New York.

Mr. JAVITS. Mr. President, I would like to suggest to the Senate that this is the most important of them all, and I hope very much it carries notwithstanding our party consciousness.

I do not believe it is in the interests of the majority to suppress the minority, and I believe the debate of yesterday made it very clear that so much time could be chewed up in quorum calls and rollcalls, to which Members are entitled, and which they should consider as being one of their dearest rights, and not surrender, that I believe it would result in many Senators being deprived of their hour because it would be charged against no one but the 100-hour cap and it would reduce that cap very materially.

So I hope very much, based on the very conclusive—what I consider conclusive—debate of yesterday, that this amendment may carry with bipartisan support.

I thank my colleague for yielding.

Mr. STEVENS. Mr. President, I thank the Senator from New York. I want to point out, as I have in drafting this, that it still would be in the provision of Senate Resolution 61 that the 100 hours could be increased by a vote of 60 Members, the same number that would be required to terminate debate. They could determine that additional time should be allocated on a particular measure, and it would be theoretically possible, although I myself do not think that would happen too often, but it would be theoretically possible, that the time could be increased.

I would like to yield to the cosponsor of this amendment, and I ask unanimous consent that the Senator from North Carolina (Mr. MORGAN) be added as a cosponsor to this amendment, along with the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.).

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

Mr. HARRY F. BYRD, JR. Mr. President, it seems to me that this is a proposal that could be beneficial to those who oppose any rules change and, at the same time, not really do violence to the intent of the proposed postcloture rule change.

I think the 100-hour limitation cap should be preserved. The Senate should hesitate before adopting a rule change that would bring down drastically the opportunity for each Member to debate post-cloture. So I think the proposal introduced by the distinguished Senator from Alaska (Mr. STEVENS), by the Senator from North Carolina (Mr. MORGAN), and myself is a reasonable one, and one which I hope, as noted by the Senator from New York (Mr. JAVITS), would have bipartisan support.

On the two previous votes, the Senator from Virginia was not able to vote for the amendment offered by the Senator from Alaska because it occurred to the Senator from Virginia that that proposal was not any real improvement over the resolution now before us.

But I think this Stevens-Byrd-Morgan amendment does greatly improve Senate Resolution 61, and I hope it will be considered in a bipartisan way and receive bipartisan support. It would eliminate from Senate Resolution 61 the opportunity to reduce the 100 hour cap.

Mr. STEVENS. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER (Mr. BAUCUS). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BUMPERS. Mr. President, I would like to ask the sponsor of this amendment, the distinguished minority whip, a question. If a Senator uses 55 minutes of his time in debate and then asks for a rollcall which would take 15 minutes, he has used an hour and 10 minutes; is that correct?

Mr. STEVENS. That is correct.

Mr. BUMPERS. What if he also asks for a quorum call at the end of 50 minutes of debate? Is the quorum call automatically called off as soon as 10 minutes elapse?

Mr. STEVENS. No; that was in my other approach in the substitute. This is an amendment to Senate Resolution 61 and it has no reference to chargeability of time.

All I can say is that by leaving in the ability of the Senate to increase the time over the 100 hours, the conscience of the Senate would have to be heard in terms of the circumstances the Senator describes. We are taking out the ability of the Senate to decrease the time, but leaving in the ability of the Senate to increase the time.

I think if we had a situation where Senators still sought to present amendments and the time had run there would be a very persuasive case for the Senate to increase that 100-hour cap. There is no limit on the amount that can be increased. We sought in my other amendment—and it has still not been voted on, the substitute really—to assure each Senator 1 hour and to charge against that Senator the time taken for procedural activities that he requested. If he requested a vote it would be charged to his hour; if he requested a quorum call it would be charged to his hour; if he debated it would be charged to his hour, and he could debate it up to the 1 hour.

We have not pursued that, but what we are trying to do now is by an individual amendment to Senate Resolution 61 raise the issues in the substitute.

Mr. BUMPERS. Does the Senator's present amendment eliminate the section of the resolution that allows the Senate to increase 100-hour cap?

Mr. STEVENS. Our amendment would remove from Senate Resolution 61 the power of the Senate to decrease the time. It would preserve the language of Senate Resolution 61 that will allow the Senate to increase the time above 100 hours. So if the situation occurred, the situation the Senator describes, it would be possible for the Senate to respond to such a claim for equity and to extend the time sufficiently so that the Senators who had not been heard could have time.

But I admit, as I said in my opening statement, it is theoretical and would remain to be seen whether the 60 Members who decide that debate should be brought to a close would, or at least part of them would, join with those who sought additional time to extend that 100-hour cap.

As the Senator from New York indicated, this is to us one of the significant amendments, that the power to decrease the time contained in Senate Resolution 61, which was presented in its amended form, be eliminated because that power to decrease the time, coupled with the time that would be running on quorum calls and voting would not be chargeable against anyone but would be chargeable to the cap, could eliminate the ability of a Senator to seek the time that the rules imply he is entitled to.

They do not say today that each Senator is entitled to 1 hour. The rules say no Senator may use more than 1 hour. We are not changing that provision of the rule. Senate Resolution 61 does not seek to change that provision of the rule, as I understand it, and the majority leader's proposition is that that remains the same, but the 100-hour cap goes in. His approach would have permitted both the increase and the decrease of the cap by a vote of the 60 who brought about the cloture procedure in the first place.

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

Mr. STEVENS. Let me see if the Senator from Arkansas has completed his questioning.

Mr. McCLURE. Mr. President, will the Senator yield for a response?

Mr. BUMPERS. I would like to ask the majority leader a question. What is the maximum time any one Senator can use under Senate Resolution 61, given the worst case scenario? Let us assume he speaks for 59 minutes and then asks for a quorum call. Now, that quorum call conceivably could go live. It is not going to be charged to that Senator but it is charged to the 100-hour cap; is that correct?

Mr. ROBERT C. BYRD. That is correct.

Mr. BUMPERS. If it takes 2 hours to get a live quorum and no other Senator will have been recognized during that time, only one Senator will have had the floor during that entire time.

Is that correct?

Mr. ROBERT C. BYRD. Under the Senator's scenario, that is correct.

Mr. BUMPERS. If the Senator asks for a quorum call, and, then asks for his, that would take 2 hours and 15 minutes.

Mr. STEVENS. The worst case scenario is 100 hours. I could use the 100 hours——

Mr. BUMPERS. How can one do that? I cannot conceive that happening.

Mr. STEVENS. Just call up an amendment, do not speak, have a rollcall, suggest the absence of a quorum before the rollcall.

I think the Senator from West Virginia

would agree, if the Senator really wants to be heard, that is, we could use 100 hours in an hour.

Mr. ROBERT C. BYRD. No.

Mr. SARBANES. Will the Senator yield?

Mr. BUMPERS. I am happy to yield.

Mr. SARBANES. We could not work out that scenario, which is, essentially, what we encounter now under the post-cloture procedure, because of the provision that says that no Senator, once he has called up two amendments, will be recognized to call up another amendment until other Senators who wish to call up amendments have been recognized to do so.

If we did not have that provision in here, then we would really be right back with at least the potential of running time completely.

We have got these quorums and rollcalls. We have to calculate that time to the extent we can use it off the two amendment provision, assuming we get recognized immediately to offer the second amendment, which may also not happen.

I mean, the Chair would then, I assume, recognize someone else. But there is that preferential recognition which occurs with respect to those who have not offered amendments, which provides assurance to someone who offers an amendment that he will have an opportunity to get in there.

It is conceivable that if all 100 Members of the Senate want to offer amendments, every single Member of the Senate, and the first people in, the first 40 or the first 50 or the first 60, use a quorum and a rollcall, that we will count down to where the time on the 100-hour cap is running out on the end. But I must say that I think, as a practical matter, that is not only not likely, but is not going to occur.

Mr. STEVENS. It is theoretically possible, if no one sought the floor, for one Senator to use the whole cap.

Mr. SARBANES. But that is an advantage. If the Senator will yield further, that is an advantage of Senate Resolution 61 over the other approach of just giving a Senator an hour period and letting him use it, because under Senate Resolution 61, if we get into a situation where we have five or six Senators who really are concerned about trying to amend the bill—it could well be the Senator from Alaska on the lands bill which is of particular interest to his State—under Senate Resolution 61, if he is the one who desires to offer amendments and no one else is really very interested in doing that, he will have an opportunity, really, to use a lot of the 100 hours because no one else in the Senate wishes to assert his right to offer amendments.

So, in a sense, he gets the chance to use a big chunk of that time if no one else around here wants to use it.

In that respect, in that scenario, it provides a great deal of protection or opportunity for a minority Senator or a small group of minority Senators.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote occur on the amendment by Mr. STEVENS, Mr. HARRY F. BYRD, JR., and Mr. MORGAN, at 11:30 a.m. today, which precludes a motion to table.

The PRESIDING OFFICER. Is there objection?

Mr. McCLURE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, the only reason I objected is that I have been seeking recognition to address the question asked by the Senator from Arkansas. He, apparently, has left the room in spite of the fact that he asked the question. Apparently, he was either satisfied with the answer or did not want the answer.

The Senator from Maryland was correct, of course, in saying that if no one else seeks recognition a Senator can offer as many amendments as he can offer within his 1 hour and can consume as much time as the Senate will allow him to consume until somebody else seeks recognition.

But as we went into that debate yesterday, on precisely the same issue, it is also quite possible that somebody who does not want the measure amended exerts his preferential right to interject some other amendment after the person has offered one, or, certainly, after he has offered two, and that if there are several such Senators that want to preclude the amendment, they can use up the time, and that Senator who is very interested in that bill might very well never have the opportunity to offer more than two amendments no matter how much time he had consumed off 1 hour.

I am not saying that is going to happen, but that is entirely possible under Senate Resolution 61 as it is drafted.

I just do not think there should be any illusions about the rigidity of the cap.

Again, I will reaffirm what I tried to say yesterday, that our real problem is, how do you accommodate the guarantee of rights for each individual Member of the Senate and, at the same time, preserve the inviolability of the 100-hour cap?

Senate Resolution 61 seeks to do it by saying that everybody is entitled to 10 minutes. That takes me back to the days when I served in the other body where, as a matter of fact, we often times got down to the closing debate and were entitled to be recognized for 15 seconds.

That is a great honor and a great privilege, but it really does not do much for one to shape the legislation or even make any arguments on the legislation.

Ten minutes guarantee is a guarantee. But what does it guarantee? It guarantees 10 minutes. It guarantees no more than that. If we used more than our time at any time in the debate, then we would be out at the end.

So there is no way I can see. There will be no possibility, it may, as a practical matter, not exist, and that a Senator with a series of amendments will be limited.

It is quite possible that will not occur, but it is equally possible it will occur. If there is a determined opposition to the bill, a group of Senators who are determined to prevent the amendment of that bill can by their own devices, each offering two amendments, each debating for 50 minutes, each asking for a quorum call, each asking for a rollcall on his amendment, then preclude the opportunity of any one else to get in and offer the amendments, certainly, the one or two Members that have the overriding interest, as the Senator from Alaska has been trying to point out.

Mr. SARBANES. Will the Senator yield?

Mr. McCLURE. I am happy to yield to my friend.

Mr. SARBANES. Because we can obviously sketch out different scenarios.

Under the other approach which was earlier tabled and, thereby, not followed by the Senate, of the hour and the time running, at most, that meant a Member could get, say, three amendments with rollcalls, conceivably four.

Mr. McCLURE. Mr. President, will the Senator yield on that point?

Mr. SARBANES. I yield.

Mr. McCLURE. He could be assigned the time by the aggregate of 10 hours, as was in the amendment offered by the Senator from Alaska. He certainly would have the opportunity to offer more than three or four amendments.

Mr. SARBANES. That is a different issue. I think the whole question of being able to yield time to others, as a general practice in the Senate, raises very fundamental questions.

Mr. McCLURE. It certainly does raise very fundamental questions; but I do not think that just because the Senator from Maryland wants to exclude it, it can be said that the proposal does not include it. The proposal does include it; and until it was stricken from the proposal, that was the option presented to the Senate. Whether it is wise or good or bad is a matter of judgment.

Mr. SARBANES. The matter that is before us now, of the 100-hour cap, it seems to me, offers for the keenly interested Senator, in the scenario being sketched by the Senator from Idaho, a situation in which it is highly unlikely that he would have a very extended opportunity to offer his amendments to shape the legislation.

I can understand the concern to which the amendment now before us is directed, because that amendment goes to the provision in Senate Resolution 61 that would allow three-fifths of the Senate, once cloture had been invoked, to go on and reduce the cap downward to the 30 hours; so that then you are making all your calculations against a 30-hour cap, as against a 100-hour cap.

I ask the Senator from Alaska this question: As I understand his amendment, it would knock out the power to reduce the 100-hour cap at all. Is that correct?

Mr. STEVENS. I do not have the time.

Mr. McCLURE. Mr. President, I yield to the Senator from Alaska, in order that he may respond, without losing my right to the floor.

Mr. SARBANES. As I understand the amendment, what it would do to help address this problem of the time under a cap being chewed up by a few people is

that it would eliminate the provision that the 100-hour cap would be reduced downward. So once you went into the postcloture period, the 100 hours would be in effect. It would be there to be used, unless no one wanted to use anymore time or unless you got some sort of unanimous-consent agreement. Is that correct?

Mr. STEVENS. That is correct.

However, I say further that the reason I did not delete—and we originally discussed deleting the power to increase time, too—was that the question that the Senator from Arkansas raised was also raised in my mind; and I think the Senate should have the power to extend the time if a situation develops in which some Senators have not been able to present all their amendments and the Senate determines that they are not dilatory, that they are not part of a delay, but that they are issues the Senate should address before the bill comes to a final vote.

I am still of the opinion that some mechanism for having an amendment to an amendment should be available, and we still have our staffs working on the issue. I withdrew that amendment yesterday. I hope we can work out a consensus whereby somehow the amendments themselves must be at the desk long enough so that any Member really interested can look at them and offer an amendment to an amendment prior to the vote on cloture, so that we would have a chance to have an amendment to an amendment. But, still, those would be there, at the desk, prior to the cloture vote.

Mr. SARBANES. I indicated to the Senator from Alaska yesterday an understanding of the concern he expressed with respect to the authority to reduce the 100 hours down to 30 and the problem that might arise in terms of two people then being able, in effect, to consume the 30 hours, to the exclusion of other Members of the Senate. I think he has pointed to a problem, and therefore I appreciate the amendment he has now offered.

Mr. McCLURE. Mr. President, I am glad the Senator from Maryland has indicated his approval of the pending amendment, because I think it does reduce the threat of the shutout of Members that is implicit under Senate Resolution 61.

I should not allow my remarks to be construed outside the context of understanding that the question of germaneness, the question of dilatory tactics, is not affected by this rule and still can be raised at any point within the 100-hour cap, to affect either the people who want to amend or those people who are trying to obstruct the amendment. I do not say that because I think it should be raised casually. I say it because it still is a mechanism that is there, that is unaffected by the rule and still is in effect.

So it became obvious that if the amendments offered by some who wished to obstruct the attempt to offer legitimate, bona fide amendments were obviously dilatory, the Chair would have the capacity to deal with it, if, as a matter of fact, it obviously were the case.

While I am in favor of this amendment, I think the Senator from Arkansas, had he remained here for the debate after he raised the question, should have recognized that indeed it is possible under Senate Resolution 61—perhaps not practically going to happen, but it is possible—that a Member be frozen out of the opportunity to offer the amendment simply because someone else has used up the time under the rules of the Senate, as embodied in Senate Resolution 61.

I yield the floor.

Mr. STEVENS. Mr. President, the Senator from Idaho objected to the prior request of the majority leader. I now have an indication that a vote at noon would be agreeable on our side. Is that agreeable?

Mr. McCLURE. On this amendment? I am ready to vote now.

Mr. STEVENS. There is another Senator, who has gone to an interview and will return at noon. So if the Senator would agree to have a vote at noon——

Mr. ROBERT C. BYRD. We could have a voice vote now.

Mr. STEVENS. We have been asked for a rollcall vote on this.

Mr. McCLURE. Mr. President, will the Senator from Alaska yield?

Mr. STEVENS. I yield.

Mr. McCLURE. I said it quietly, and I would like it to be said on the record: I would like to vote now. I did not object earlier for any other reason than to protect my right to speak.

Mr. ROBERT C. BYRD. If we can get unanimous consent to withdraw the order for the yeas and nays, we can vote now.

Mr. STEVENS. I have had a request for a rollcall vote.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on the amendment by Mr. STEVENS occur at 12 noon today.

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

Mr. ROBERT C. BYRD. Mr. President, this precludes a motion to table.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. ROBERT C. BYRD. Mr. President, a vote will occur on the amendment, up or down, and I intend to vote for this amendment. I believe it is a reasonable amendment, and the remainder of the resolution remains as it is at this point. Possibly, it can be improved further.

I have no objection to this amendment, because I think that, from a practical standpoint, the problems are going to take care of themselves. Senators who do not want to use their time will not use it, and the time thereby will be reduced automatically. I think that once it is established that there is a cap, and at the end of that time judgment day has arrived, two or three Senators will not exercise themselves in attempting to prolong unduly the debate on the matter, after the Senate has indicated by a cloture vote that it wants to reach a final decision after due time.

I believe this is a reasonable amendment, and I urge my colleagues to support it.

Mr. President, I ask unanimous consent that the amendment may be set aside so that other amendments may be called up.

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

UP AMENDMENT NO. 20

(Purpose: To allow transfer of time between Senators in the postcloture period)

Mr. STEVENS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an unprinted amendment numbered 20:

On page 3 delete all the language in lines 6 through 11 and insert in lieu thereof the following:

"Notwithstanding other provisions of this rule a Senator may yield all or part of his one hour to any Senator, but no Senator shall have more than two hours so yielded to him."

The PRESIDING OFFICER. The amendment is out of order. The amendment seeks to amend language which already has been amended.

Mr. STEVENS. Mr. President, I ask the Chair to withhold that. I ask unanimous consent that it be in order to present this amendment. It was the amendment that the majority leader mentioned prior to the vote on the last amendment I presented, and it should be presented separately.

Actually, this goes further than that one. This one indicates that it would be 2 hours. My last amendment would have made it 6 hours.

I wish to ask the majority leader to permit us to have this amendment be in order. It is to language that was admittedly amended, although I might say to the Chair that is a strange ruling because the language that was amended begins at the end of line 11. This language was never amended before, to my knowledge.

The PRESIDING OFFICER. The language that the Senator seeks to amend was added by previous amendment.

Mr. STEVENS. It was my understanding that the language beneath the language which the Senator seeks to amend was deleted by a specific amendment, but I do not recall that that language was amended in the version as it was submitted on the legislative day of February 8, which I understand it was to be the original text. The understanding of February 8 was the original text. We had no such agreement for February 9 language or February 21 language. But that provision was in the first amendment to be presented as a separate part of Senate Resolution 9.

Mr. ROBERT C. BYRD. Mr. President, at no time have I asked that any of the amendment language be considered as original text.

Mr. STEVENS. I misunderstood. I thought the time when the majority leader did pull out Senate Resolution 61 as a portion of Senate Resolution 9 that it became original text.

Mr. ROBERT C. BYRD. No.

Mr. STEVENS. When it was intro-

duced as Senate Resolution 61 it was original text.

Mr. ROBERT C. BYRD. That is true. But I thought that the Senator meant that the amended portions of Senate Resolution 61 had become original text by virtue of unanimous-consent requests. I misunderstood.

Mr. STEVENS. I did not make that motion. I may not have conveyed my request or my understanding. It was my understanding that that provision of lines 6 through 11 was in Senate Resolution 61 when it was originally introduced, that the language beneath that, which commenced on line 11 that was deleted, was also part of the original Senate Resolution 61.

The PRESIDING OFFICER. No. Lines 6 through 14 were added.

Mr. ROBERT C. BYRD. Yes, those were added by amendment, may I say to the Senator from Alaska. That was my amendment.

Mr. STEVENS. It was part of Senate Resolution 9.

Mr. ROBERT C. BYRD. No, I do not believe it was. No. I offered this as an amendment.

Mr. STEVENS. No. I was out of town that day. My understanding is incorrect.

I again renew my request, though, that it be in order. I ask unanimous consent that it be in order to present this amendment, the purpose of which would be to permit a Senator to yield his time to any Senator. Under the provisions of Senate Resolution 61, that yielding can be only to the majority or minority floor managers or the majority or minority leaders. I have taken the position that it should be possible for a Senator to yield to any other Senator and not just to the floor managers or to the leadership because so often in the postcloture procedure it is not the leadership, it is not the managers who seek the time to present the amendments that they have presented, and I really think that we will be taking an unfortunate step if we limit the yielding only to the leadership.

Will the majority leader indicate whether it would be possible to have an agreement that this amendment would be in order notwithstanding the rule? It is possible, of course, to present this amendment in a form that would be in order. All I have to do is to say, "Notwithstanding the provision of lines 6 through 11, any Senator may yield 2 hours up to another Senator." If you want to go through that I will be happy to do it.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. STEVENS. I am happy to yield.

Mr. ROBERT C. BYRD. Mr. President, I am not going to object to his request to offer the amendment, but I do object to the amendment. So I have no objection to the Senator offering his amendment.

The PRESIDING OFFICER. Without objection, the amendment will be in order.

Mr. ROBERT C. BYRD. Now, Mr. President, I object to the amendment.

Under the present rule, unanimous consent is required to yield time to any other Senator following the invoking of cloture. That has been the rule.

First of all, the object of cloture is to bring the matter eventually to a close and for the Senate to reach a decision up or down. We seem to forget that there are going to be days of debate before cloture is invoked. Even if a cloture motion is offered the instant that a matter is before the Senate, there are going to be 2 days of debate unless the Senate recesses or adjourns in the meantime, and this majority leader is not going to use that way of depriving Senators of an opportunity to debate and to amend a measure before cloture is invoked.

So we have that time in which to debate and in which to amend, and then after cloture is invoked, under the resolution there will be up to 100 hours that can be used by any Senator to debate and to amend the measure or matter on which cloture is invoked.

Under the rule that has been in effect now for 62 years, it has been necessary to obtain unanimous consent to transfer time, and I have seen Senators transfer time especially to managers of bills. It becomes necessary. And I think we should continue that rule that requires unanimous consent to yield time because the object of cloture is not to extend the debate, not to make it possible for Senators to go on and on and on and thwart the will of the constitutional majority of Senators who have indicated by their votes that they want to see the matter brought to a close.

The object of cloture is not to thwart the will of the majority once it has spoken. But the object of the cloture is to bring the matter to a close after due debate, and 100 hours, Mr. President, is provided in the resolution. I think it would be a mistake to allow the rule to be changed so that any Senator may yield all or part of his 1 hour to any Senator with the provision, of course, that no Senator shall have more than 2 hours so yielded to him.

To do that would make invalid the rule that we have followed all these years requiring unanimous-consent to transfer time and it would serve to prolong the consideration of the measure. It make it possible for Senators, whose desire it is only to obstruct, delay, and thwart the will of the three-fifths majority, to extend the time not by 1 hour but by hours, and, of course, it would all come to an end when the 100-hour cap had been reached. That is granted.

That is the saving grace of this resolution. They can chew up 100 hours, but then it is all gone; there is not anything to digest any further. There are no further motions or amendments or debate upon which to masticate, except one or two that are provided for in the resolution itself.

So if we allow time to be yielded without unanimous consent, then it would be possible for 50 Senators to each yield an hour to 50 Senators, and those 50 Senators could have 2 hours each, and could spin out the time needlessly.

Let me ask a rhetorical question. Who on the other side of the aisle would deny a Senator on that side of the aisle who asked to be yielded an hour? Who would deny him? Only a Senator who needed to use the hour himself would deny him, and that would be understood. Otherwise, he would say, "OK, I will yield you my hour." So Senator X yields Senator Y his hour. Then Senator A goes to Senator B and says, "How about yielding me your hour?" Senator B says, "OK, here it is." So Senator A has an extra hour.

Then Senator C goes to Senator D and asks him, "How about yielding me your hour?" Senator D says, "Fine, you can have my hour."

So before it is over with, you have 20 Senators yielding 20 other Senators their hour, and you have 20 Senators with 2 hours each, and that can be extended with certain maneuvers to 10, 15, or even 20 hours, though thank heaven there is an ultimate cap of 100 hours.

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

Mr. ROBERT C. BYRD. Yes.

Mr. SARBANES. Actually, 40 Senators could yield to 20 Senators, giving them each 2 hours plus the hour they already have, so that each Senator would have 3 hours, his own hour and the 2 hours yielded to him by two other Senators.

Mr. ROBERT C. BYRD. Oh, yes.

Mr. SARBANES. Or make it a smaller number, just to dramatize it even more.

Mr. ROBERT C. BYRD. Yes.

Mr. SARBANES. Suppose you have 8 or 10 Members of the Senate who wanted to drag it along throughout the entire period. They could be yielded time by 20 other Senators, 2 hours each. Those 10 Senators would then each have 3 hours, so you get a total of 30 hours.

Mr. ROBERT C. BYRD. Yes, the Senator is correct. I thank him for the correction. I was taking into consideration—I understood that the amendment only allowed a Senator to have 1 additional hour yielded to him. The Senator from Maryland has pointed out that the errors that I have mentioned have been compounded 100 percent. He can have two Senators yielding time to him; then he has a total of 3 hours.

Mr. President, I can understand how the manager of the bill and the ranking minority member ought to have 3 hours each. I am willing to wipe out the amendment I offered the other day to include the majority leader and the minority leader among those to whom as much as 2 hours could be yielded. I am willing to wipe that out; just give him his own hour, and if he does not finish within that hour, it is his bad luck.

But let us not open the gates here and let the flood tide in by letting any Senator yield to any other Senator his hour without unanimous consent, with any Senator allowed to have as much as 2 hours to be yielded to him, thus having control of 3 hours.

Mr. President, I oppose the amendment and I hope the Senate will vote it down; and I shall move to table the amendment at the appropriate time. I do not wish, however, to deny other Senators the right to be heard.

UP AMENDMENT NO. 21

Mr. McCLURE. Mr. President, I have an amendment to the amendment, which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 21.

Delete the word "two" and insert in lieu thereof the word "five."

Mr. McCLURE. Mr. President, this is to carry out what we had discussed earlier when we were talking about the possibility of a compromise between the 2-hour period and the 10-hour period. It was impossible for me at that time to offer the amendment, which would have offered the compromise of an aggregate of 6 hours. I do not suppose there is any real point in belaboring the issue. I think those few Senators who are here have heard it discussed at length.

Let me add only this much: I think the Senator from Maryland and the Senator from West Virginia are correct when they point to the fact that the aggregation of time in the context of Senate Resolution 61 may aggravate the danger of a few Senators using up all of the 100 hours cap. Therefore, I concur in the wisdom of acceding to the language in the Stevens amendment that out of whatever time Senators could get assigned to them, whatever they used would be charged to them. Quorum calls, rollcalls, or anything else they caused to happen would be used up within their time; and if they had an aggregate of 6 hours, as my amendment would permit, they would then be charged with all of that time, and it could not come out of the cap unless it were charged to their time, with the exception of the possibility of a prolonged time at the end of their time period that would go beyond their time period, involved in the establishment of a quorum or a rollcall vote that could not be completed within their time frame.

That still seems to me to be a superior mechanism, and I hope again, before we get to final passage, we will have an opportunity to revisit that. But if it is not to be revisited, I hope we can aggregate this so that we get away from the temptation for an individual Member to ask for a whole series of amendments, which is the problem in postcloture we are attempting to address, with the sure knowledge that the time consumed in the consideration of that amendment will not be charged to his time.

I hope if this amendment is adopted—and I hope it will be adopted by amendment to the Stevens amendment, and that then the Stevens amendment itself is adopted—that we can then return to the concept that now, having given a Member 6 hours, or 3 hours, as the case may be, the time that he consumes will be charged to him and him alone, and will not come out of the 100-hour cap except with the minor exception I have already referred to, with the assurance that thus the 100-hour cap remains inviolate, and all the rest of the Senators are completely protected.

I think that is a much superior way to guarantee individual rights, and a much superior way to guarantee the inviolability of the 100-hour cap.

Mr. President, I think the issue has been ventilated and cross-ventilated from a number of different sources and a number of different openings. I would hope we can get a yea and nay vote on the adoption of my 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.

Mr. ROBERT C. BYRD. Mr. President, either of these amendments would allow certain Senators to yield their time without unanimous consent, thus automatically diminishing the time of other Senators who wish to maintain control of as much of their time as they can, and deprive those same other Senators of the right to object to the transfer of the time. So I hope that Senators will carefully consider these amendments.

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

Mr. ROBERT C. BYRD. Yes, I yield to the Senator from Louisiana.

Mr. LONG. Mr. President, I am sure the Senator understands, and I believe he has made it clear to the Senate, that the heavy burden falls on whoever it is that is managing the bill.

Mr. ROBERT C. BYRD. Exactly.

Mr. LONG. So that you have one man who is manager of the bill, he is doing the best he can to speak for his committee, and under the existing cloture rule, even though the chairman of the committee, or the manager, as the case may be, understands the measure probably better than anybody else, and presumably may be speaking for the majority here, he has to run and find somebody else who does not understand it as well as he does to debate the issue. Because each Senator has an amendment, they have an hour to present their side of the argument, and from their point of view that one amendment is the most important thing that is going to be voted upon. But from the point of view of the manager of a bill, he has to defend perhaps against 100 amendments. Therefore, he would only be in the position to allot himself about 30 seconds on each amendment when to do justice to the argument he would need more time than that.

It is bad enough that he would have to let the other side have far the better of it, a great deal more time to explain their position, than the one managing the bill for the committee, but to have it where those speaking for an amendment to the bill have what amounts to a 10-to-1 edge on the time to make the argument is not in keeping with the theory that there ought to be equal time on both sides.

To try to move toward that objective, the majority leader has sought to modify the rule so that it does not require unanimous consent to yield some time to the person who is explaining the committee position.

Does not the amendment as it stands, as amended by the majority leader, provide that those on the other side of the aisle have some time to use the same way?

Mr. ROBERT C. BYRD. The ranking manager would have the same amount of time.

Mr. LONG. And we would expect the same customary fairness that we have under the unanimous-consent agreement.

Mr. ROBERT C. BYRD. Yes.

Mr. LONG. So if we assume for the sake of argument that the ranking member might be opposed to the amendment, but at the same time wanting those on his side to have adequate opportunity to support their position, he would probably yield them some of his time to be sure that both sides were adequately heard.

Mr. ROBERT C. BYRD. Yes.

Mr. LONG. Mr. President, it seems to me that it makes a lot better sense to give us enough flexibility that those who have the most knowledge of a subject could present it to the Senate rather than those who have the least knowledge.

Mr. ROBERT C. BYRD. Yes.

Mr. LONG. We can be sure that the man who presents the amendment will ordinarily be the best expert in the Senate on that particular amendment. Those on the other side should be in a position to provide time for whomever might be the best informed on the subject to present the other side of the argument.

Mr. ROBERT C. BYRD. Yes.

I thank the Senator for making that cogent point.

Additionally, he, as the manager of the bill, under my resolution could be yielded 2 additional hours, so he has a total of 3 hours. Under the amendment by Mr. McCLURE, 20 Senators on that side of the aisle could each yield 1 hour to 10 Senators. Then the manager of the bill would have 10 Senators over there, each with 3 hours, offering amendment after amendment after amendment and the manager of the bill has to stand up here and defend. He has 3 hours to defend against 30 hours over there.

I think the manager of the bill ought to have the right to object to the transfer of that time. As we have had it in the past there have been occasions when time was transferred without objection. But when those 20 Senators yield to 10 Senators, each 1 hour, they deprive the other 70 Senators in this body of an equal shot at that remaining time under the cap, and the other 70 Senators cannot even raise a rumor in interposing an objection. The time is being chewed away because Senators over here—or it could be over here—have yielded their time to people who oppose the bill. There are other Senators who just have to sit there and see time yielded away that will eventually come out of their hide under the cap. They cannot interpose an objection.

Mr. LONG. As the Senator understands, I think any of us who are managing a bill on the floor when cloture has been voted seek no more than an opportunity to be heard. It is sort of like the rule on television, where they have to give both sides a chance to be heard. An equal opportunity is all we seek. What the majority leader has sought to do, where time could be yielded both to the manager of the bill and his counterpart on the other side of the aisle, moves us in that direction.

Unfortunately, it seems to me, the amendment now being offered would move us away from that.

Mr. ROBERT C. BYRD. It would.

Mr. SARBANES. Mr. President, I believe the Senator from Louisiana is absolutely correct. Senate Resolution 61 as now before us contains a very limited provision for the yielding of time without unanimous consent. It is, of course, a departure from standard Senate practice. But it is very limited. In other words, the majority leader, the minority leader, and the two managers, the majority and minority managers, can be yielded time, but only 2 hours, no more than 2 hours, for each of them. They can, in turn, yield it out if they choose.

The argument for allowing them to get some extra time is exactly the one that the chairman of the Finance Committee put; namely, when a Senator comes in with an amendment. He is prepared for that amendment. He has 1 hour on that amendment if he chooses to use that entire hour, or he may have two amendments and take a half hour on each. He lays it out, explains, puts up his charts and diagrams, and finishes making his presentation. It falls on the manager of the bill to respond to that. Of course, at the moment he has an hour, since everyone is equal. In responding, maybe the manager takes 10 minutes. Then another Senator comes in with his amendment and takes a half hour or 40 minutes to explain his amendment. Eventually, the chairman has used up all his time. He has to get up on some other amendment and try to give a 30-second or 90-second response, sort of explaining why the Senate should not do it, if he is opposing it, and he really cannot present the case. So this is a limited effort to try to provide some extra time there.

The proposal, that Senators should be able to yield to anyone, and in the instance of the Senator from Alaska they could get 2 more hours and the Senator from Idaho would give 5 more hours, means that individual Senators can collect time.

I am very frank to tell you, Mr. President, if you provide a yielding provision, any Senator, I believe, would be able to get all the time that is available. He will go to another Senator. He will say to him, "You voted for cloture. I did not vote for cloture. You are for the bill and I am against the bill. All I am asking you to do is to give me some of your time. That is a reasonable request. Why don't you just pass me some."

Who is going to deny that?

How many Senators here will deny a colleague that request?

Mr. STEVENS. Will the Senator allow me to answer that question?

Mr. SARBANES. Yes.

Mr. STEVENS. It is a reasonable request. The Senator answered it himself. That is what makes it reasonable. If you go to another Senator and he knows you have a good cause and you need time, he will give it to you. What is wrong with that?

If the Senator will permit me just one statement, take the bill that I know is coming to the floor in terms of the Alaskan situation. It could happen in Louisiana and certainly could happen in Virginia in terms of a dam that I remember. The time will come when we will see bills that affect only one State. The tradition of this body has been there has never been cloture voted against a bill that pertained to only one State, but I think we will see it happen this year.

At that time my colleague and I are going to need some time. We are not going to be the managers of the bill. We are going to be in the situation of trying to have amendments to the amendments of the committee. Where do we get our time beyond 1 hour?

I say to my good friend from Louisiana, what he said is true as manager of a bill. I have been manager of a bill, and we know the circumstance, normally. It is that there are one or two people managing the bill with just 1 hour each and the people who oppose the bill have the advantage. I will agree to that. But we will get to the situation where the bill affects only one State. Take RARE II, for example, which will come up in terms of the wilderness proposals in the national forest, or section 603, the review for wilderness in the public lands. There are only 17 public land States.

The PRESIDING OFFICER. Under the previous order——

Mr. ROBERT C. BYRD. Mr. President, I move to table the amendment by Mr. STEVENS, and the move to table automatically carries with it the amendment by Mr. McCLURE.

Mr. McCLURE. Mr. President, would the Senator from West Virginia withhold that motion to table? I would like the opportunity to respond to a couple of the other comments.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for 30 seconds.

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

Mr. ROBERT C. BYRD. Could we get a time agreement on it?

Mr. McCLURE. Sure.

Mr. HARRY F. BYRD, JR. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HARRY F. BYRD, JR. Is not the order of business to vote on the Stevens-Morgan-Byrd amendment this morning?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. Might I inquire of the majority leader is it anticipated that this rollcall on the Stevens-Morgan-Byrd amendment would be a 15-minute rollcall?

Mr. ROBERT C. BYRD. Yes.

Mr. McCLURE. Can we have a period of 15 or 20 minutes after that rollcall?

TIME LIMITATION AGREEMENT OF 20 MINUTES DEBATE

Mr. ROBERT C. BYRD. Very well. Mr. President, I ask unanimous consent that upon disposition of the amendment by Mr. STEVENS, Mr. HARRY F. BYRD, JR., and Mr. MORGAN that there be 20 minutes for debate on the amendment by Mr. STEVENS which can be used also on the amendment by Mr. McCLURE; that the 20 minutes in toto be equally divided in accordance with the usual form and that the vote in relation thereto then occur.

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

Under the previous order, the hour of 12 noon having arrived, the Senate will now vote on unprinted amendment numbered 19 proposed by the Senator from Alaska in which the yeas and nays have been ordered. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Colorado (Mr. HART), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I also announce that the Senator from Georgia (Mr. TALMADGE) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Oregon (Mr. HATFIELD) and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

The PRESIDING OFFICER (Mr. PRYOR). Is there any other Senator wishing to vote?

The result was announced—yeas 92, nays 2, as follows:

[Rollcall Vote No. 3 Leg.]

YEAS—92

Armstrong	Ford	Moynihan
Baker	Garn	Muskie
Baucus	Glenn	Nelson
Bayh	Goldwater	Nunn
Bellmon	Gravel	Percy
Bentsen	Hatch	Pressler
Biden	Hayakawa	Proxmire
Boren	Heflin	Pryor
Boschwitz	Heinz	Randolph
Bradley	Helms	Ribicoff
Bumpers	Huddleston	Roth
Burdick	Humphrey	Sarbanes
Byrd, Harry F., Jr.	Inouye	Sasser
	Jackson	Schmitt
Byrd, Robert C.	Javits	Schweiker
Cannon	Jepsen	Simpson
Chafee	Johnston	Stafford
Chiles	Kassebaum	Stennis
Church	Laxalt	Stevens
Cochran	Leahy	Stevenson
Cohen	Levin	Stewart
Cranston	Long	Stone
Culver	Lugar	Thurmond
Danforth	Magnuson	Tower
DeConcini	Mathias	Tsongas
Dole	Matsunaga	Wallop
Domenici	McClure	Warner
Durenberger	McGovern	Weicker
Durkin	Melcher	Williams
Eagleton	Metzenbaum	Young
Exon	Morgan	Zorinsky

NAYS—2

Pell	Riegle

NOT VOTING—6

Hart	Hollings	Packwood
Hatfield	Kennedy	Talmadge

So the amendment (UP No. 19) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 20

The PRESIDING OFFICER. The question now recurs on the amendment by the Senator from Alaska.

Mr. STEVENS. Mr. President, it is my understanding that the time is 20 minutes, equally divided, and includes the discussion of the amendment offered by the Senator from Idaho (Mr. MCLURE). I defer to the Senator from Idaho, if he wishes the time.

Mr. McCLURE. I thank the Senator from Alaska.

Mr. President, I assume from what transpired just before this last rollcall vote that the majority leader, at the conclusion of this debate, will offer a motion to table the Stevens amendment, and that it then would carry not only the Stevens amendment to the table but also the amendment of the Senator from Idaho to the Stevens amendment.

If that is the case, I think Senators should be aware that if they really want to get an opportunity to vote either upon the assignment of time to the aggregate of 6 hours or the assignment of time to the aggregate of 3 hours under the Stevens amendment, they must vote against the motion to table. That will be their only chance to get the opportunity to vote either on the 6-hour aggregate assignment or the 3-hour aggregate assignment.

It was argued a little earlier that it was somehow unfair to allow a committee chairman or ranking minority member to defend the position of the committee when he only had the same amount of time that another Member of the Senate had, and that because he had that responsibility, he had to have time that was equal to the aggregate of the remainder of the Members. That is the way I took the argument. That would mean, in terms of equal opportunity, that that one Member had to be equal to all the rest of the Senate combined. That seems to me to be patently fallacious.

I do recognize that a committee chairman, the floor manager of the bill, or the ranking minority floor manager of the bill do have unique responsibilities. But it is also quite possible under either the Stevens amendment or the McClure amendment to it to have time assigned to them.

Even under Senate Resolution 61, the minority leader and the majority leader each can have 3 hours, and the floor manager of the bill and the minority manager of the bill can have 3 hours on the bill, but nobody else gets anything extra, unless, as a matter of fact, somebody wants to give it to them.

That is a little like saying that the first amendment right of free speech is going to be granted to you; it is not your right. You have the right to speak, but you have the right to speak only if somebody lets you speak, if one of the people in a position of responsibility should grant you the right to speak. In my judgment, that is not a right; that is a privilege that is subject to being withdrawn.

It would be the same as if it were to be said, with respect to freedom of the press, which is guaranteed by the Constitution, "You can print whatever you want when I give you the right to print whatever you want. Don't worry about it. I'm going to be nice to you. I'm not going to restrict your right to print what you want, but you are going to print what you want only because I say you can print what you want."

That is not a right. It is not equal rights under the Constitution. It is not equal rights in this body, and it does not mean that there are 100 equal Members of the Senate.

You never can do away with the inequality of positions of responsibility. I recognize that. There always are going to be some who are more equal than others. But, for heaven's sake, let us not imbed in the rules what this seeks to do, which says that some, as a matter of rule, have a greater right than others to speak on the floor of the Senate in the postcloture situation.

Let us not get ourselves misled by the idea that the majority leader and the minority leader and the floor manager and the ranking floor manager will take care of you. I do not want to be taken care of. I want to have my right to speak, and I want to have my right to guaranteed under the rule, not granted to me benignly by some other Member, no matter how sweet and lovable he may be.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on Senate Resolution 61, as amended, occur no later than 6 p.m. today.

The PRESIDING OFFICER. Is there objection?

Mr. McCLURE. Mr. President, reserving the right to object—and I shall not object—I just want to record, for the benefit of the majority leader and the minority leader, the fact that I have no objection to that arrangement. I think it does accommodate all Members.

Mr. ROBERT C. BYRD. I thank the Senator.

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

Mr. ROBERT C. BYRD. Mr. President, I regret that I have to oppose the pending amendments, but I will simply restate my case.

The object of cloture is not for the purpose of providing a vehicle whereby debate can be extended. The object of cloture is to bring to a close—that is what the word means, a close—the consideration of a matter on which cloture has been invoked by three-fifths of the Members elected and sworn.

Once those three-fifths have manifested their will that the Senate reach a decision in due time, the rule should be so written that 1, 2, 3, 4, 5, or 10 Senators cannot unduly prolong the consideration of that measure on which cloture has been invoked.

As long as we have had the cloture rule, and that goes back 62 years, back to 1917, the administration of Woodrow Wilson, time could only be yielded postcloture by unanimous consent, and the purpose was to bring about the expedition of the business on the matter clotured and bring to a close in a reasonable time that debate and consideration.

That is the purpose of Senate Resolution 61.

We have seen the abuses of the rule to the point that rule XXII really no longer exists insofar as it having any strictures on postcloture filibusters are concerned.

Now, we have two amendments pending that would take us in the opposite direction and would even make it possible for time to be yielded without unanimous consent so that 20 Senators could each yield an hour to 10 Senators, resulting in the control of 3 hours each on the part of 10 Senators and the floor manager of the bill and the ranking manager, stand up here and they have to oppose amendments or speak to them. They have only a maximum of 3 hours each; whereas 10 Senators have a maximum of 30 hours, and do not forget this, that when a Senator is allowed to transfer his time automatically without unanimous consent a Senator who would otherwise object to the transfer of that time is denied that privilege and that right and is thereby caused to see his own time potentially diminished as a result thereof because we only have 100 hours. We have a 100-hour cap and quorums are going to come out of it, rollcall votes are going to come out of it, and if 10 Senators have 3 hours each that they can use the other 70 Senators have had taken from them a certain amount of their time under that cap and they will not be able to raise a finger and will not be able to object.

So, Mr. President, I am in favor of continuing the present rule in that regard. Let Senators transfer their time by unanimous consent. That is fair enough.

I am glad to yield time to Senators. Otherwise, I am going to yield back my time.

Mr. STEVENS. I am prepared with one statement. I do not know whether I understood the majority leader correctly. But it does seem to me that the managers of the bill are one thing, and the majority and minority leader or their designees is another thing. That is how you become a manager. You are the designee of the majority and minority leaders. But it seems to be a little bit redundant to see both echelons of leadership have the ability to have 3 hours and have those four Senators be the only Senators who have more than 1 hour.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for a correction?

Mr. STEVENS. I yield.

Mr. ROBERT C. BYRD. The majority leader has never in his 2 years as majority leader and has never in his 6 years as majority whip and has never in his 4 years as secretary of the Democratic Conference designated the managers of a measure. That is automatic. The chairman of the committee or the chairman of the subcommittee is the floor manager. When I bring in my appropriations subcommittee bill on the Department of the Interior no one designates me to handle that bill on the floor. I am the chairman. And the Senator from Alaska is my ranking member and one in whom I take exceedingly great pride, one whom I love, and one for whom I would not want to see any substitution. So no one designates that I manage that bill. No one designates that the Senator from Alaska be the ranking manager. The leadership does not do that. I thank the Senator for allowing me to respond.

Mr. STEVENS. I stand corrected in part. My memory of the unanimous-consent agreement is that it normally says the majority and minority leaders or their designees, but in any event——

Mr. ROBERT C. BYRD. No, it does not say that.

Mr. STEVENS. The problem I have——

Mr. ROBERT C. BYRD. It does not say their designees. That is not this resolution.

Mr. STEVENS. This one does not. That is what I am saying.

I just wonder if it is not redundant by saying majority and minority floor managers and the majority and minority leaders because that does amount to leadership time in the amount of 3 hours for each leader, and there would be four, the floor managers and the designated majority and minority leaders; whereas, each Senator would have but 1 hour.

Mr. ROBERT C. BYRD. Mr. President, I can understand the Senator's observation. It is apparent as to why the manager of a bill needs additional time. It is apparent as to why the ranking manager needs additional time. The majority leader and minority leader need additional time for making other motions, for propounding requests to keep the Senate operating, requests that have nothing to do perhaps with the matter over which cloture has been invoked, and also they will have time to yield to Senators on both sides of the aisle on both sides of the question additional time if perchance the time of such Senator has expired.

Mr. McCLURE. Mr. President, will the Senator yield on that point?

Mr. ROBERT C. BYRD. I yield.

Mr. McCLURE. I think that the language of Senate Resolution 61 is subject to either of two interpretations, and I think we should at least make the legislative history clear here. As I read the resolution and as I understand the majority leader, the author of the resolution, a Senator may yield all or a part of his 1 hour to any one of four people, the majority leader, the minority leader, the manager of the bill or the minority ranking manager of the bill.

Mr. ROBERT C. BYRD. Yes.

Mr. McCLURE. So any Senator in the body can yield all or a part of his time to any one of those four people assuming that they are not identical persons.

Mr. ROBERT C. BYRD. With the caveat that only a maximum of 2 hours can be accepted by any one of those four Senators.

Mr. McCLURE. And the Senator yielding the time, of course, might yield all or a portion of it to any one of the four or a little bit to each of the four or however he might want to so long as that person accepting had not been yielded more than 2 hours in addition to his 1 hour.

Mr. ROBERT C. BYRD. Yes.

Mr. McCLURE. And so long as the person yielding the time had not yielded more than 1 hour that is his to use or to yield; is that correct?

Mr. ROBERT C. BYRD. Yes. As to the latter, of course, the Senator would have no more than an hour to yield.

Mr. JAVITS. Mr. President, will the Senator yield to me for a question?

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. I thank the Senator.

I raise the question with the leader.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Alaska has time remaining.

Mr. JAVITS. Mr. President, will the Senator from Alaska yield to me 1 minute?

Mr. STEVENS. I yield whatever time is remaining.

Mr. JAVITS. I raise the question with Senator ROBERT C. BYRD about what happens if the minority and majority manager are together on a bill or an amendment. May the time then be yielded to the one who is truly leading the opposition? And the second question: May these 2 hours be broken up so, for example, you might yield in such a situation 10 or 15 minutes to a particular Member leading the opposition without yielding the whole 2 hours or whole hour by an individual Member?

Mr. ROBERT C. BYRD. The language, may I say to the distinguished Senator from New York, does not provide for an alternative yielding of time in the event that both majority leader and minority leader or both of the floor managers favor the same position, and I can see that weakness in the language, and I would certainly be amenable.

Mr. SARBANES. Mr. President, will the leader yield on that point?

Mr. ROBERT C. BYRD. I yield.

Mr. SARBANES. I think to help correct that potential weakness is the provision to yield time to the majority and minority leaders who would have an obligation to all of the Members on their respective sides and if the two managers of the bill were alined, I would assume they would compensate for that in terms of their own handling of the time that they receive and, therefore, we have at least some potential balance in that regard.

Mr. JAVITS. It may not be necessary. I was going to ask the Senator this: Are we clear now, that having been yielded the time any of these four Senators may yield to others?

Mr. ROBERT C. BYRD. Yes.

Mr. JAVITS. That is correct.

Mr. ROBERT C. BYRD. There is no problem there.

Mr. JAVITS. No problem? Well, why not think it over a little while, whether it is necessary to write it in?

Mr. ROBERT C. BYRD. Yes. The Senator from Maryland is correct. I do not have any doubt that the majority leader or the floor manager may yield time to others in opposition. But if we have a time agreement, if a Member is in favor of an amendment, then the time in opposition thereto would go to the minority leader or his designee; so that protects the opposition.

Mr. JAVITS. If the record is clear that that is the legislative intent, I may not seek an amendment.

Mr. ROBERT C. BYRD. That is the intent.

Mr. President, reluctantly, although I do so with gusto, I move to lay on the table the amendment by the very distinguished Senator from Alaska (Mr. STEVENS), the minority whip, whose heart is as stout as the Irish oak and as pure as the lakes of Killarney; and with that would go the amendment by Mr. McCLURE. 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 to lay on the table the amendment of the Senator from Alaska. The yeas and nays have been ordered, and the clerk will call the role.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I also announce that the Senator from Georgia (Mr. TALMADGE) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Oregon (Mr. HATFIELD), the Senator from Maryland (Mr. MATHIAS), and the Senator from Oregon Mr. PACKWOOD) are necessarily absent.

The result was announced—yeas 51, nays 43, as follows:

[Rollcall Vote No. 4 Leg.]

YEAS—51

Baucus	Exon	Nelson
Bayh	Ford	Pell
Bentsen	Glenn	Proxmire
Biden	Hart	Pryor
Boren	Huddleston	Randolph
Bradley	Inouye	Ribicoff
Bumpers	Jackson	Riegle
Burdick	Johnston	Sarbanes
Byrd, Harry F., Jr.	Leahy	Sasser
Byrd, Robert C.	Levin	Stennis
Cannon	Long	Stevenson
Chiles	Magnuson	Stewart
Church	Matsunaga	Stone
Cranston	McGovern	Tsongas
Culver	Melcher	Williams
Durkin	Morgan	Zorinsky
Eagleton	Moynihan	
	Muskie	

NAYS—43

Armstrong	Hatch	Pressler
Baker	Hayakawa	Roth
Bellmon	Heflin	Schmitt
Boschwitz	Heinz	Schweiker
Chafee	Helms	Simpson
Cochran	Humphrey	Stafford
Cohen	Javits	Stevens
Danforth	Jepsen	Thurmond
DeConcini	Kassebaum	Tower
Dole	Laxalt	Wallop
Domenici	Lugar	Warner
Durenberger	McClure	Weicker
Garn	Metzenbaum	Young
Goldwater	Nunn	
Gravel	Percy	

NOT VOTING—6

Hatfield	Kennedy	Packwood
Hollings	Mathias	Talmadge

So the motion to lay on the table (UP amendment No. 20) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

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

Mr. ROBERT C. BYRD. Mr. President, before the Senator does that, will he allow me——

Mr. JAVITS. I withhold.

Mr. ROBERT C. BYRD. Will the Senator allow me to offer an amendment?

Mr. JAVITS. I withhold.

UP AMENDMENT NO. 22

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. STEVENS and myself I send an amendment to the desk and ask that it be stated by the clerk.

The PRESIDING OFFICER (Mr. LEAHY). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for himself and Mr. STEVENS, proposes an unprinted amendment numbered 22:

At the end of the resolution, add the following:

"The last paragraph of Paragraph 2 of Rule XXII is amended by striking the second sentence and inserting in lieu thereof: "Except by unanimous consent, no amendment shall be proposed after the vote to bring the debate to a close, unless it had been submitted in writing to the Journal Clerk by 1 o'clock p.m. on the day following the filing of the cloture motion if an amendment in the first degree, and unless it had been so submitted one hour prior to the beginning of the cloture vote if an amendment in the second degree."

Mr. ROBERT C. BYRD. Mr. President, in the past, as we have seen from time to time happen, cloture is invoked on a measure or matter. No amendments earlier, before the rule was amended, would be eligible to be called up once cloture was invoked unless they were germane and unless they had been read prior to the cloture vote.

Recently the rule was amended to provide that amendments, once cloture had been invoked, had to be germane and had to be submitted in writing to the desk prior to the announcement of the vote.

The problem which arose and brought about the amendment of that rule lay in the custom in some recent years that just prior to a vote on cloture the majority or minority leader would ask unanimous consent that all amendments at the desk at the time of the cloture vote be considered as having been read. Thus it made all such amendments, if they were germane, qualified under the rule to be called up.

On one occasion such a request was not made. The majority leader, the majority whip, neither of us—Mr. Mansfield nor I—made that request. Consequently, amendments that had not been read at the time cloture was invoked could not qualify, and the then distinguished Senator from Massachusetts, Mr. Brooke, sought to call up an amendment but it had not met the reading requirement, and Senators, many Senators, were astounded that the leadership had not made the customary request. It was not one that was required, but they had not made the customary request that all amendments at the desk at the time of the cloture vote be considered as having been read so as to meet the reading requirements of the rule as then written.

So the rule was changed to provide that amendments in writing at the desk, not printed amendments, but amendments in writing, if they were germane, at the time the vote was announced on cloture, were qualified.

This made it possible for a Senator to walk up to the desk during a cloture vote, turn in 500 amendments, and Senators who might otherwise be disposed to vote for cloture if they had known the content of those amendments at the desk might not have voted for cloture.

Also, and in addition, once those amendments were called up in the first degree no Senator could write an amendment in the second degree because his amendment had not been in writing at the desk at the time the vote was announced on cloture.

Often as discussions with respect to amendments occur it became apparent to most Senators that a second degree amendment should be allowed because the amendment in the first degree would raise a question which might need a remedy but that remedy could not be provided except by an amendment in the second degree. The amendment in the second degree is automatically ruled out because it was not at the desk in writing when the vote on cloture was announced.

No Senator could have foreseen the need for a second degree amendment to a first degree amendment of which he had no knowlege at the time that the cloture vote occurred.

So this amendment I have offered on behalf of the distinguished Republican whip and myself would cure both of these problems. One, it would require that all amendments in the first degree in order to qualify must continue to be germane, of course, and must be at the desk in writing by 1 p.m. on the day following the day on which the cloture motion was entered.

If cloture motion were to be entered on a Thursday, then all amendments in the first degree would have to be at the desk by 1 p.m. on Friday.

That would then give Senators an opportunity to examine the amendments in the first degree and write amendments to those amendments if their amendments to the amendments, to wit, amendments in the second degree, are at the desk at the time the vote on cloture begins, which would in this hypothetical case occur on the next Monday in the event the Senate is not in session on Saturday or on Sunday.

So this gives ample knowledge of what is at the desk in the form of amendments in the first degree.

Nobody is taken by surprise, and it gives ample opportunity for Senators to offer amendments—have at the desk amendments in the second degree to those amendments that were at the desk in the first degree, and thus those second-degree amendments would qualify under the rule, if it is so amended as we propose, once cloture is invoked.

I think it is a good amendment and it is a fair amendment. It is an equitable amendment, and I think it will be conducive to wise legislation.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, first let me state to my good friend from New York that I thought this was coming later. I know he intended to offer his amendment following the last vote and I am sorry I misled him.

With regard to the amendment itself, I am grateful to the Senator from West Virginia for joining me and his offering the amendment. This is the matter I have discussed previously and one that worries me a great deal about our ability to protect a State, or a region of the United States, in regard to amendments which are of national concern, mainly because we have in the past been unable to see them prior to their being presented and had no way under the existing cloture rule to present amendments in the second degree.

I think this is a fair compromise to the problem I discussed previously and, as the Senator from West Virginia knows, I withdrew the amendment I offered yesterday in the hopes that we could work out a fair compromise.

So I am delighted to be able to cosponsor it. I have discussed it with other Members on our side of the aisle and I know of no one who has an objection to it.

I would hope we could adopt it by voice vote.

UP AMENDMENT NO. 23

(Modification of UP Amendment No. 22)

Mr. ROBERT C. BYRD. If the Senator will yield, I would seek to modify it to write the words "at least" immediately preceding the words "1 hour," so that the amendment would read as follows, and I think it all adds up to the same thing, but this makes it clearer, makes it perfectly clear that they must be at the desk at least 1 hour ahead.

They can be 2 hours or 3 hours, but at least 1 hour prior to the beginning of the cloture vote if an amendment in the second degree.

Mr. STEVENS. I have no objection to that amendment.

Is the modification at the desk?

Mr. ROBERT C. BYRD. If the Senator will join me in the modification, we will add those.

Mr. STEVENS. I do.

Mr. ROBERT C. BYRD. I thank the Senator.

The PRESIDING OFFICER. The amendment will be so modified.

The amendment is as follows:

At the end of the resolution, add the following:

"The last paragraph of Paragraph 2 of Rule XXII is amended by striking the second sentence and inserting in lieu thereof: "Except by unanimous consent, no amendment shall be proposed after the vote to bring the debate to a close, unless it had been submitted in writing to the Journal Clerk by 1 o'clock p.m. on the day following the filing of the cloture motion if an amendment in the first degree, and unless it had been so submitted at least one hour prior to the beginning of the cloture vote if an amendment in the second degree."

Mr. SARBANES. Mr. President, I simply want to take a moment to commend the Senator from Alaska for pointing out in the course of this debate what I think was a very reasonable problem and with the majority leader framing his solution to it.

I think this gives everyone an opportunity to know what amendments are pending at the desk before they actually vote on cloture. It also provides for a more orderly amending process in the postcloture period.

Mr. STEVENS. I thank the Senator from Maryland very much.

Mr. President, I ask for a vote on the amendment.

Mr. ROBERT C. BYRD. So do I thank the distinguished Senator from Maryland. What he has said was well stated.

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

The amendment (UP No. 23) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 24

(Purpose: To increase the number of amendments allowable under postcloture to three)

Mr. JAVITS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes an unprinted amendment numbered 24:

On page 3, line 3, strike "two" and insert "three."

Mr. JAVITS. Mr. President, the purpose of this amendment is to raise two propositions. One proposition relates to the limitation on recognition of Senators who have already called up two or more amendments. The other proposition I will deal with in a moment.

As to the two or more amendments, I suggested to the majority leader that a little more——

The PRESIDING OFFICER. If the Senator would suspend a moment, the amendment sent by the Senator from New York seeks to amend an amendment already agreed to and would require unanimous consent to be in order.

Mr. ROBERT C. BYRD. Mr. President, the Senator from New York seeks to offer an amendment that would amend language which I have added to the bill by amendment.

I ask unanimous consent that it may be in order for him to do that.

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

Mr. JAVITS. Mr. President, I discussed it with the leader, and I am grateful to him for it being proper to offer it, simply to give Members more amplitude, more elbow room, in connection with their operation on the floor.

One does not know whether two or three is right, but in terms of the liberalizing of the rule, which we certainly have an opportunity to do now, I thought it was in order and I am glad the majority leader agrees.

I will not deter the Senate because I have another amendment which raises much more fundamental issues, which I shall offer in a moment.

But I had intended also to offer an amendment which I would refer to and read so that Members may be informed in this regard. That is, that where the Chair gets to the point where he has to give or deny recognition on this particular amendment, which would now be three instead of two, the Chair will recognize alternately the proponents and opponents of the measure, motion, or other matter which is before the Senate.

Now, I realize better than anybody else two things: One, the problem of making a distinction on political grounds, that is, that the Chair shall recognize alternately Republicans and Democrats. I recognize also the problem of providing that the Chair shall recognize those who may be for or against a given measure or a motion or an amendment. Often, that comes within the context of either support or opposition to the major matter upon which cloture may have been sought.

So, really, it is very much a matter of discretion in the situation which exists before the Senate at the moment.

What worried me was the fact that with the two-amendment limitation, it would be possible for a determined majority to simply abrogate all the time, everybody could have two amendments, and that would again, because of the 100-hour cap theory, shut out some Members who had not used any of their time or had not used much of their time.

As I said, I realize the difficulty of drafting a provision which will cover this situation. So what I have tried to do is to establish it clearly as an element of the legislative history, as this is a housekeeping proposition. It does not take the House and it does not take the President. It is just us, that it is understood between us that the provision, as now designed, that is, with an allowability of three amendments, will also not be used to particularly favor a particular side, but that the Chair in recognition, bearing in mind the situation which is then before the Senate, whether it is the proponents in a given case or the opponents, will give alternate recognition so that he just does not go down the line with one particular side or one particular proposition.

I am reminded, Mr. President, in that regard of what happened here in that famous situation where Senator BYRD, with the best motives in the world and supported by a great majority of the Senate, went right through a list of amendments, and, because he has priority of recognition, did not give the proponents of those amendments, Senator METZENBAUM and Senator Abourezk, an opportunity to be recognized to appeal—in order to appeal, we have to be recognized—and by constantly giving the majority leader his priority of recognition the time went by when an appeal could be taken.

This found great disfavor here in the Senate by me and by many members of the majority, and by others. It is a very dangerous thing.

I know we cannot make laws about everything, but I would hope Senator BYRD or whoever is speaking for him on the floor at the moment would accept it as a proposition, just as I took his a while ago, the proposition that if a minority leader or a majority leader is yielded time, he will see—because that is our way—that the people who need it will get it, in a particular situation where he may be on one side and others may be on another, or the managers of the bill if the time is yielded to them.

I am willing to rely on the same thing here if the understanding is explicit that it is our purpose and intention that, whether it is proponents or opponents in a given situation, they may not be frozen out based upon the invocation of this rule respecting three—now it would be three instead of two amendments.

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

Mr. JAVITS. I yield.

Mr. SARBANES. I would like to address both issues he has raised.

I must say to the Senator that I have some difficulty with increasing the number from two to three, and I will explain to the Senator why.

A number of Members on occasion have reflected a concern as to whether they would get a turn to offer an amendment in the post-cloture period. One of the assurances that was made that they would get the turn was to point out that no other Senator could offer more than two before they had a chance to come in and offer theirs.

Of course, we may have a situation in which many Senators are not interested in offering amendments and someone offers two and there is no one else who wants a turn. He can offer a third, and if there is no one else who wants a turn, he can offer a fourth, and he can go on amending at considerable length, if he or just a few are the ones who are interested. But if you have a lot of interest in offering amendments, then, of course, the two-amendment rule gives a greater assurance of a rotation among the 100 Members of the Senate.

We have now amended the resolution so that the 100-hour cap is a minimum. We have struck out that provision which would have allowed it to be knocked down to 20 hours plus 10, or for a minimum of 30 hours. That has come out altogether. So there is no way postcloture you can have less than a hundred hours, except by unanimous consent of every Member of the Senate.

That 100 hours, then, offers the opportunity for a Member who is very interested in the amendment process to have quite a whack at it. But it seems to me that we should balance that with the two-amendment rule, which is designed to assure the range of Members that they will have a chance to get in. I just raise that point for the Senator for the purpose of discussion.

I agree with the thrust of the second part of the Senator's amendment. I think the way to handle it is to establish some strong legislative history here, because to make it a rule would be very difficult for the Chair to handle, plus the fact that amendments may not fall exactly into either camp. But I believe it is an element of basic fairness, and we could establish the commitment to that approach and the effort to insure that in the recognition process for amending, we alternate in a way that gives any faction or any element an opportunity to bring its amendments before the Senate and to present its case.

However, on the three-amendment rule, we have tried to assure many Members that by the two-amendment rule we could pretty well insure that they would have an opportunity to gain recognition and to offer their amendments, if

they had an amendment they wished to present to the Senate. Taking it to three, of course, increases that by 50 percent and complicates that situation.

Mr. JAVITS. Mr. President, the only reason why I introduced the three-amendment proposition—I would not have done it otherwise, because I do not believe it has a prayer without the support of the majority leader. I certainly will not press that particular amendment if the majority leader opposes it or has reservations about it. He is under no commitment, I hasten to add.

As to the recognition factor, I think we have to leave it, but I would like his assurance for the record to that effect—because I may not be here, and I think he will be, for a very long time; that is, that it is understood that in the practice of the Senate, within the situation that faces us, there will be recognition alternately of opponents and proponents on the two-amendment rule.

Mr. ROBERT C. BYRD. Mr. President, there are two problems I find with that. I support the spirit of what the Senator is attempting to do by legislative history here. There are two problems.

If a Senator has not made up his mind and is neither an opponent nor a proponent, but merely wants to get recognized, there is no category for him.

Second, if there are 40 Senators on that side of the aisle who are, let us say, supporters of a proposition, and on this side of the aisle there are 40 who do not know which way they are going to go but the other 19 Senators on this side of the aisle are opposed—let us say it is not 19 but only two Senators on this side of the aisle who are opposed, or only one Senator opposed to the amendment, and everybody else is for it. Does it mean that that Senator who is in opposition is going to be recognized alternately? Does it mean that someone who is in the supportive group is recognized, and he gets recognized again, and somebody else gets recognized, and he gets recognized again? It could work to the detriment of a majority of Senators or almost to the totality of the Senate membership and to the benefit of one or two Senators who happen to be opposed, because they would be assured of recognition alternately, as between themselves and the supporters. I think it would put an unnecessary burden on the Chair.

I hope we would leave it to the discretion of the Chair and the fairness of the Senate; and, as in the past, I would hope to be able to assure the very distinguished Senator from New York (Mr. JAVITS) that I believe that if we leave it that way, the opposition will have its turn.

Mr. JAVITS. I do not want to leave it to the discretion of the Chair, period. What I am perfectly willing to do is to say, if the Senator will join me, that so long as, in substance, priority is given to those who want to offer amendments, there will be alternate recognition, given whatever situation is before the Chair. That is satisfactory.

Mr. ROBERT C. BYRD. In spirit, I agree with that.

Mr. JAVITS. Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

UP AMENDMENT NO. 25

(Purpose: A perfecting amendment to amend S. Res. 61)

Mr. JAVITS. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated. The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes an unprinted amendment numbered 25.

Mr. JAVITS. Mr. President, inasmuch as this amendment is printed and is before the Members, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 2, line 7, strike all after the period down through line 20 on page 2 and insert the following:

"The time consumed on a roll call vote on an amendment which is in order to the measure, motion, or other matter on which cloture has been invoked shall not be charged against the hours of consideration. Any Senator may make a point of order that any submitted amendment or amendments; whether pending or not, is violative of the rules, and the Presiding Officer shall then rule upon that point of order. Where such point of order is sustained, the amendment or amendments in question shall not then be considered further. The proponent of an amendment or amendments against which a point of order is made and sustained may take an appeal en bloc, or may choose specific amendments to make subject of the appeal. Whenever a Senator indicates an intention to appeal from a decision of the Presiding Officer, that Senator shall be given preferential recognition for that purpose. Such Member shall have a right to one such appeal (including the roll call vote on such appeal) and the time consumed by such roll call vote shall not be charged against the hours of consideration."

Mr. JAVITS. Mr. President, we had quite a debate here yesterday. As a result of that debate, I felt that we should have one opportunity to vote—win, lose, or draw—on another way to deal with the mutual problem we all have. I emphasize the word "mutual." I proposed this way—which I will now discuss—to the committee we had on this side, and it was included in their particular proposals but did not finally end up in the proposal made by Senator STEVENS and Senator MCCLURE which was defeated this morning. I point out that they did not represent, by any means, the entire committee. That was their view, and we honored it, and I happened to vote with them.

However, I felt that before we locked up the way in which the basic and fundamental proposition should be handled, that the way in which we can control post-cloture debate is by an absolute time cap, we should consider another idea.

I suppose, Mr. President, that whatever comes of it is not as important in even a personal sense as the fact that there should have been another concept before the Senate, and the Senate should have considered it and rejected or approved it.

We should not just go whole hog to the 100-hour cap without taking advantage of the discussion and what it developed.

This is the defect in the 100-hour cap, just as I pointed out yesterday there was a defect in the Stevens-McClure proposition, too. The defect is that quorum calls and rollcalls, which can be freely obtained and which generally speaking would average not less than 15 minutes to three-quarters of an hour for a quorum call and for a rollcall the statutory 15 minutes but no one around here is going to demand it cannot be 16 or 18 and they generally take 20 or 25 minutes, can chew up so much of the 100 hours and, mind you, any Member can ask for that. He does not use any of his time.

As Senator ROBERT C. BYRD pointed out, he took out his watch and he said, "You can call up an amendment, you can ask for a quorum, you can ask for a rollcall in 10 seconds, and to take 10 seconds you would have to speak awfully slow," and he did. He made a very good job of it.

But what happens then is that you touch off a proceeding which could deprive, and if it is a tough bill with a lot of amendments, and so on, many Members of their hour or most of it because there is no provision whatever, except the ability to make a speech for 10 minutes. That is all that is left to you. You cannot make an amendment in 10 minutes and do it any justice, and there may not be time to have a rollcall even if you have your 10 minutes and could snap in an amendment and talk about it in that time because the 100 hours is flat regardless of anything pending. After 100 hours, that is the end of the debate and you vote for the whole proposition.

So Members could be cut off of the fundamental rights which are very dear to Members.

I served in the House of Representatives for 8 years, and I know what it means to be cut off from an amendment and from a debate. How well I remember, and other Members who are here who served in the House of Representatives will remember, that someone would move the previous question, which cut off all debate unless we would agree to take, say, 20 minutes for the rest of the debate.

So what other alternative was there? The majority leader proposed that you knew he had the votes. All you could get was 20 minutes. But then the Speaker would say, "How many Members wish to speak on this?" Or "I have the names noted down of Members who have stood seeking the right to speak." There could be as many as 50; in this body there could be, let us say, 10 or 15. Everyone gets 30 seconds, and hence the pride of the Senate, which is that we really have an opportunity to consider a question without being dilatory, is lost. I am all for the inhibition against being dilatory in postcloture, which is what we are trying to formulate a rule for now.

Therefore, Mr. President, because of that that will not only be a danger, but that will also be a fact of life that Members will be deprived of the precious 1 hour which they have which is a decent allocation of time, and now we cannot yield to them either individually. It only relates to 2 hours which might be available to the leaders or the managers of the bill.

In order to deal, therefore, with that vital question and zeroing in and target-

ing the issue which has caused us to reconsider these postcloture rules, which has been the abuse of the amendment privilege, I have formulated a plan which is contained in this amendment which I will describe in a moment.

There is one other factor. The 100 hours may not only deprive Members of the opportunity for an amendment or a decent debate; the 100 hours could also deprive Members of rollcalls. That is again a very dearly won privilege of this body.

Again, I served in the House of Representatives where you had to get, as I recall it, 55 Members or thereabouts—20 percent of the House of Representatives, about that—in order to get a rollcall, and they were very tough to get, even on what should have been the subject of a rollcall. And how often simply by nod of a head between the majority and the minority leaders not enough Members, even if they favored the amendment, would stand up to get a rollcall.

Yet that is what we owe in this democratic process to our people.

We should be recorded so that our people may hold us properly accountable that everything be recorded.

So this strict 100-hour cap also would cut off the possibility of a rollcall on what deserves to have a rollcall, and even the 10 minutes does not save that because if there is no time for rollcall even if you get your 10 minutes, you will not get one. And in addition I think it is still unclear whether you could even call up an amendment in that 10-minute period that you have left, but let us assume you can. I am not going to debate that fine point of law now.

What is the plan that I am proposing to the Senate and which I hope my colleagues will be thoughtful on? This is an early time of the year and we are dealing with housekeeping, really, but very important housekeeping because we are trying to close a gaping loophole in our procedures. That is the reason why we are proceeding as we are. And also we will have to either feel that we dealt with the loophole properly or we will live to regret it, and it is we, you and I, who will live to regret it, no matter which side of the aisle we are on, when we have some matter to which we are passionately devoted.

The plan would be this: The plan would be to assure individual Members of the rollcall and not to charge that against the 100 hours so that rollcalls could be a matter of right for individual Senators.

But we still have to deal with a danger of all of these hundreds of amendments which have fouled us up before, and my proposal for dealing with that is again a targeted proposal aimed directly at the proliferation of amendments which may be ruled out of order by the Chair on the grounds that they are dilatory and for many other reasons under the very strong provisions of power given to the Chair under rule XXII.

The danger and difficulty is that as the practice stood, unless you go into the recognition proposition by which Senator ROBERT C. BYRD kind of worked us out of this dilemma before, and that is a very dangerous proposition, you have to deal with the question that each Member is entitled not only to put up an amendment, but he is also entitled to appeal from a ruling of the Chair that that amendment is out of order; therefore, the Chair is not quite so bold about ruling amendments out of order because it is subject to appeal.

So what I have suggested is that there may be a point of order lodged against any amendment pending at the desk whether it is called up or not. In other words, we deal with dangers which face us down the road before we vote as well as dangers which are immediately before us in a pending amendment which may be ruled out of order.

Any Member may challenge any amendment which is pending and get a ruling from the Chair then and there by raising the challenge that that amendment is in or out of order so that the Chair can do what Senator ROBERT C. BYRD sought through the recognition technique, to wit, rule out amendments en bloc.

My amendment gives an assurance to every individual Member that he may have one right of appeal where his amendments are ruled out en bloc. He cannot appeal from the ruling of the Chair on every amendment. When he does appeal, in the first place, of course, if an amendment is ruled out he cannot bring it up before the Senate until there is an appeal on the ruling he proposes to lodge. He may make an appeal from the ruling on all of his amendments. That is, if he has got 20, and 19 are ruled out of order, he may appeal on all 19; he has only 1 opportunity. Or he may select from the 19, 3 he wishes to appeal on. Therefore, when he rises, he will say, "I appeal from the ruling of the Chair on Nos. 3, 8, and 12." Then the Senate will vote on the appeal. If the appeal is rejected, the ruling stands, and all 20 are out of order. If the appeal is sustained, then those 3 are in order, or if he appeals from the ruling on the 20, they are all in order, which is as it should be.

It seems to me, Mr. President, that in that way we retain those precious rights of the Senate, first, to propose amendments regardless of the cap. Remember, as I argued yesterday and I argue again today, we are dealing only with postcloture procedure. We are not dealing with precloture procedure. Hence the idea that there will be plenty of time to propose amendments and have them considered is a fallacy, because we have seen bills here where there were filibusters to prevent amendments from being considered precloture. So, in dealing with that question, be very careful about what you have left to you in the postcloture period. That is all we are dealing with.

So in lieu of the strict 100-hour cap, the 100 hours would remain, but we would make this provision which would allow for amendments by individual Members and votes on those amendments—rollcall votes, again an indispensable privilege of the Senate. Sure, it takes 11 or 12 Senators in order to get you the rollcall, but we always give it. We gave it to METZENBAUM and Abourezk. notwithstanding our deep annoyance with the way in which the work of the Senate was being held up, because we realized the critical importance of this right.

So my proposal would retain these two what I consider to be immemorial rights of Senators, in practical effect, but it would facilitate the work of the Senate by permitting amendments to be ruled out of order en bloc. They do not have to be called up if they are at the desk once cloture is invoked; they may be dealt with by a point of order to the Chair on the part of any Member, including the leaders, then giving only one right of appeal from the ruling of the Chair to that Member, which will raise all issues which he has any right to raise before the Senate.

It seems to me that is a targeting of the remedy to the illness we have, which is the abuse of the amendment privilege, and at the same time would preserve to the Senators their fundamental and indispensable right to have their amendments considered when they are in order, legitimate, not dilatory, and so on, and to have a rollcall vote, which is as much a privilege of the individual Senator as I think he has in any other respect: not only to vote himself, but to have a rollcall on a proposition which he legitimately calls up here in the Senate.

For all those reasons, Mr. President, I hope this amendment may be favorably considered by the Senate.

Mr. SARBANES. Mr. President——

Mr. JAVITS. Mr. President, may I have the yeas and nays before I sit down?

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 Maryland.

Mr. SARBANES. Mr. President, I rise to oppose the amendment of the distinguished Senator from New York.

The problem that I see with it, very simply put, is that it really puts us right back into the postcloture filibuster situation, which is in large part the reason why we are here considering this matter on the floor of the Senate today, and have been here considering this matter since this Congress began on the 15th of January.

As I understand the Senator's proposal—and if I misstate my hypothesis, I hope the Senator will correct me—a Member could, let us say, have 60 amendments at the desk, all of which are germane in terms of their substance, and could proceed to call them up and spend a minute on each, and obtain rollcall votes on each, and the 15 minutes involved in the rollcall would not be charged.

That is 60 amendments. With 15 minutes each for rollcalls. that is 15 hours over and above the 1 hour.

Mr. JAVITS. Mr. President, will the Senator yield for correction?

Mr. SARBANES. Yes.

Mr. JAVITS. There are two corrections to be made in the Senator's hypothesis. First, a Senator could not call up more than two amendments until

all other Members have called up two amendments each. That is correction No. 1; keeping the floor for 50 or 60 amendments is out, if we adopt this particular measure, because my amendment does not replace that at all.

Second, it is not just the germaneness test, it is the dilatory test as well, and that is critically important, because where amendments are obviously duplicative and raise the same substantive issue, the Chair has already made its precedent in the energy case of ruling them out of order, and that is why I think that is a critically important point, because it will enable the Chair even more boldly to rule amendments out of order, as that Member can have but one appeal to the Senate.

Mr. SARBANES. Even taking those two comments into account, let us assume you have 5 Members of the Senate, or 10 Members of the Senate, who are interested in pursuing the 60-amendment route, and you move around the room, a Senator offers 2 amendments, no one else wants to offer any, so he can then go forward with his third or fourth, and so on, as long as no one asserts the right, so that it is quite possible for a small group to, in effect, formulate a great number of amendments, have them at the desk, and be in a position to offer them and obtain rollcall votes, and have the rollcall time added on to the 100-hour cap. Under the hypothesis, it would be 15 hours for that 1 Member; so with 10 Members, that is another 150 hours.

As to the ruling of an amendment out of order as being dilatory, I find it difficult to understand the basis upon which that would be done, if the amendment were substantive and germane. All that is required in order to assure that is a little bit of intelligence and ingenuity on the part of a Member in submitting the amendments to the desk.

The amendments that were ruled out of order in the last session, I think, lacked that quality of substance and germaneness. But if a Member knows there is that test, he can evolve amendments that will easily meet it, and then he is in a position, or a few Senators are in a position, by using the amendments and not having the rollcall time counted, of enlarging the 1 hour into an enormous usage of time, and we are right back into the postcloture filibuster situation. We have lost the cap, and it really has become open ended; and we then face the prospect that the invoking of cloture—which, after all, requires an extraordinary majority—means nothing in terms of the Senate then being able to move to a decision.

I do not think that the provisions for the point of order and the appeal from the point of order are going to work very well against a modicum of intelligence in structuring your amendments. I think you are going to be able to argue very clearly, "This is a substantive amendment, it is germane, and therefore a Senator should be able to present it."

I think one is going to be able to argue very clearly this is a substantive amendment, it is germane, and, therefore, one should be able to present it.

If that is the case, the other danger one falls into is that you begin to get rulings from the Chair which are knocking out legitimate amendments. That, in a way, is perhaps an even greater danger, to get the Chair in a push to find them dilatory, ruling out of order amendments which are really legitimate. My guess is that will not happen, that the Chair will bend backward to accord a Member of the opposite feeling the opportunity to present his amendment. Of course, the Member can then go ahead and get the vote. As I indicated, he can take the hour. He does not really need a minute to call up an amendment. He can call it up in less than 10 seconds. He could even speak to it for a minute and have 60 amendments in an hour and 60 rollcalls, each lasting 15 minutes. That is 15 hours. If there is a small group in opposition which is prepared to use this tactic, then we really have blown the cap off completely and we are into an almost virtually unlimited time period with respect to the postcloture situation.

Mr. JAVITS. Mr. President, I refrained from interrupting the Senator again because I thought he would like to have his argument continuous. I must say that I find the argument of that traditional basis which occurs when men look down the road and fall in the abyss at their feet because, Mr. President, one, the point of order may be made against all amendments at the desk which are pending. A Member does not have to wait until they are brought up. If a Member has to sit down after two amendments, others have plenty of time to analyze his amendments in order to make a point of order against him.

But more than that, Mr. President, if the amendment is really substantive and the amendment is really germane, that is all the more reason for passing my amendment, because you are not doing anything about precloture. Therefore, if the opportunity to amend is only postcloture do we really want to adopt a rule which is going to cut off germane, legitimate, and substantive amendments?

I should think that would be anathema to this Chamber. That is what the Senator is arguing, that we should cut them off.

Mr. SARBANES. Will the Senator yield?

Mr. JAVITS. Yes.

Mr. SARBANES The amendment may appear in form to be substantive and germane. The Chair then has no other recourse in ruling on it than to find it in order, even though the purpose of the Member may in fact be to use a string of amendments with a rollcall attached to them simply for the purpose of continued delay in the postcloture situation.

Mr. JAVITS. I invoke again that ancient rule of a voter when he goes in and votes. I do not care what his motive is, he has voted. It is the same here. If a Member has a legitimate amendment, which is germane and substantive, I think it is anathema to this Senate to divide his motive and cut him off.

Mr. SARBANES. Will the Senator yield?

Mr. JAVITS. Yes.

Mr. SARBANES. Then what the Senator is proposing is a continuation of the postcloture filibuster.

Mr. JAVITS. Not at all.

Mr. SARBANES. If the Senator is intending to do that, that should be made clear and be put before us. But if the Senator concedes that the form of the amendment can be done in such a way that it is germane and substantive and is not going to be ruled out of order by the Chair, that a Member is then in a position over the course of the time to call up a series of those amendments and obtain rollcall votes, with the time for the rollcall not to be charged against the cap, then you have in effect expanded it infinitely.

Mr. JAVITS. What remains of the Senator's argument, to wit, form, and the fact that the Chair must then sustain the validity of the amendment because of its form, falls in the light of experience.

I go back to the Metzenbaum-Abourezk experience. The Chair ruled that those fellows had studied, that they were smart, that they knew they had to qualify their amendments as to germaneness, and they knew they had to qualify them as to dilatoriousness. I will give that as an excellent example of the ability to do what the Senator from Maryland divines Members may do. But when they got down to the grist of their amendments, it was found that they would be ruled out of order by the dozen.

That broke the back of that particular filibuster.

So experience is against what the Senator argues.

Those were very complicated bills. I doubt that we could have a more complicated bill than the energy bill. They could not devise a procedure which would frustrate this design which I have. The fact is that notwithstanding all their devising, amendments went out wholesale, en bloc, and the back of the postcloture filibuster was broken. They could not qualify enough amendments to make a real difference in holding up the Senate, based upon rulings by the Chair that they were either dilatory or lacked germaneness. There was no question about it.

The only thing I could say with respect to germaneness is that it enables amendments which are at the desk to be ruled out en bloc. Members do not have to wait until they are actually called up any more than Senator BYRD waited. They were ruled out on the basis of the fact that they were on the desk and that any Member could call up any amendment, so long as it was qualified and at the desk.

Mr. SARBANES. Will the Senator yield?

Mr. JAVITS. Not yet.

It seems to me that the argument made here by Senator SARBANES and myself, if anything proves the case, because, one, Members can deal with the question wholesale instead of retail and, two, and very importantly, experience bears out what I say, that Members could easily break a postcloture filibuster by this

procedure. That is exactly what was done, except that it was done in a way which threatened our liberties and which many of us violently disapproved of. I yield.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I would submit to the Senator from New York that what happened in the energy postcloture filibuster was that new ground was broken with respect to the rulings from the Chair on dilatory amendments. On those amendments the point was made by the majority leader when he sought to rule them out of order. He went through them and he pointed out the fact that they were repetitious. He did exactly the same thing. And he mentioned the other defects which were in them.

Having had that experience, and experience is a great teacher, I submit to the Senator from New York, as I indicated earlier, it does not take much skill, or will not take much skill, to prepare amendments which are not subject to the attack to which those amendments were subject.

That is not a comment on the lack of the skill of those Senators because they were dealing with a situation which had never occurred before, the breaking of new ground with respect to rulings from the Chair.

If the Senator will look at the amendments which were ruled out of order in those cases, I think it is clear that no determined effort was made to evolve amendments that were substantive and germane. I submit there is no Member of this Senate who would have difficulty in preparing a great number of amendments to any bill of any complexity that the Chair would not be able to rule out of order, and that the Member would then be in a position to call up and obtain the 15-minute vote on each of the amendments, thereby blasting off the cap and throwing the Senate right back into the entire postcloture filibuster situation.

Mr. JAVITS. Mr. President, I am prepared to vote, but I want to make one additional point.

Let us remember again that while this is a housekeeping debate it involves, in terms of our being Senators, as much of our fundamental liberties as if we were dealing with the first 10 amendments of the Constitution. This is what we can do and what we cannot do, depending on this rule. We can put the handcuffs on ourselves in this 100-hour cap, which could deprive many of us of a big piece of a precious hour or all of it because they are trying to have a rifle shot to a given difficulty. Or we can make that rifle shot to a given difficulty and save our liberties. That is what is at stake. I felt it my duty to give the Senate that opportunity. Does anybody else have a better scheme by which those liberties, the liberty to get a rollcall, the liberty to debate a germane and substantive amendment, the liberty to get it done because you are protected after cloture and there is no control before cloture? You can be shut out completely by persistent debate which will bring on cloture and never give you a chance to offer an amendment.

So, in my judgment, whether this remedy is the perfect one or not it is a step along the right road and it protects our liberties, and these are our liberties.

I have a feeling in my heart as I stand here and argue this today that many times in this Chamber men have argued for the liberties of our people. I am arguing for the liberties of the representatives of our people. We were sent here to use our brains. We were sent here to fight when we thought fighting was right for our country and for our country's interests, and for peace in the world. Let us not shackle ourselves in a way in which we will be unable effectively to do that. That is why I propose this amendment, and I hope it is approved.

Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. ROBERT C. BYRD. Mr. President, I will be brief. I appreciate what the distinguished Senator is attempting to do, but I feel constrained to oppose the amendment for the following reasons:

First, Mr. President, it removes the cap of 100 hours and effectively does so by requiring that any time consumed on a rollcall vote on an amendment shall not be charged against the hours for consideration.

So if the votes occur on 112 amendments or let us say on 100 or 90—let us say votes occur on 90 amendments after cloture is invoked, this would mean that 4—or let us say on 100—25 hours would not be charged against 100 hours. If there were 100 amendments with 15 minutes to the amendment, that is 4 to the hour, and 25 hours would not be charged against 10 hours, so it breaks the cap.

Mr. BOREN assumed the chair.

Mr. ROBERT C. BYRD. Second, it requires the Presiding Officer—"and the Presiding Officer shall then rule upon that point of order." It, therefore, takes away from the Presiding Officer his option to submit a matter to the Senate. He is deprived of the rule; he can no longer submit a matter to the Senate.

Third, it says, "The proponent of an amendment or amendments against which a point of order is made and sustained may take an appeal en bloc, or may choose specific amendments to make subject of the appeal."

The question occurs to one: Can only the proponent appeal from the ruling of the Chair? The amendment specifically says that the proponent of an amendment or amendments against which a point of order is made and sustained may take an appeal.

It also says "The proponent of an amendment or amendments against which a point of order is made and sustained," et cetera, et cetera. How does one get amendments before the Senate? How does one get to call up amendments en bloc before the Senate? One can do it by unanimous consent. But if there is an objection, no motion is in order to call up amendments en bloc.

Mr. JAVITS. Mr. President, will the Senator yield for just a correction? I will make my own argument.

Mr. ROBERT C. BYRD. Yes.

Mr. JAVITS. What I have tried to provide is you accumulate your rights to appeal, and the points of order can be made to the amendments at the desk en bloc, depending upon the Member who is making the point of order. That is a new rules provision. You can make the point of order against 30 amendments, and that Member ultimately ought to have one appeal on all 30 or any of them he chooses to name in the appeal. That is the way I get around the fact that you cannot call up amendments. You cannot call up amendments but you can make a point of order en bloc.

Mr. ROBERT C. BYRD. Well, I respect the Senator's explanation and viewpoint. But, Mr. President, this would allow points of order to be made against amendments not pending before the Senate, amendments lying at the desk. A point of order could be made against those amendments before they become the property of the Senate, before they are called up, No. 1.

No. 2, it would allow the proponent against whom the point of order is made subsequently to take an appeal. At the present time an appeal must be taken immediately and before other business has intervened.

This would change that rule. The amendment would change that rule, so that the proponent against whom the point of order would lie could, after business has intervened, take an appeal and he could take an appeal en bloc.

Now, the rhetorical question is, or I ask the question of the distinguished Senator from New York, if the proponent is allowed then to take an appeal en bloc, can any other Senator exercise his normal right to request a division and, if so, if he can request a division, if there are 25 amendments out of the 100 which have been ruled out of order and the proponent decides to take an appeal en bloc of 25 amendments, and a Senator decides he wants a division on those votes, would he not be allowed such a division and, if so, there are 25 rollcall votes to which the Senate would have to respond, and none of the time would come out of the 100-hour cap?

Also it takes away—"Whenever a Senator indicates an intention to appeal from a decision of the Presidng Officer, that Senator shall be given preferential recognition for that purpose." Well, is he to be given preferential recognition over any other Senator, a Senator who may be seeking under the rule to get recognition, and the rules say the Chair shall, although the Chair has discretion, recognize the first Senator to seek recognition? That would mean that any other Senator seeking recognition would not be recognized.

It would deny the Chair the discretion he now has and, in addition to that, it would play havoc with the longstanding precedent that was announced, I believe, by Vice President Garner to the effect that the majority leader, if he seeks recognition, he shall be given recognition; and if the majority leader does not seek recognition, the majority whip seeks recognition, he is to be recognized; and if neither of these two seek recognition, then the minority leader shall be given

recognition if he seeks recognition; if he does not seek recognition, the minority whip is to be recognized if he seeks recognition.

That would do away with that long-standing precedent and, as I say, would create, I think, a great many problems that would prolong the consideration of the measure unduly and would not indeed bring about the result that the distinguished Senator from New York hopes to achieve and seeks to achieve, and I compliment him on his efforts to bring about this change.

But I am constrained to have to vote against it, and I shall move to table, but I will not do so immediately if the Senator wishes to speak.

Mr. JAVITS. Mr. President, I shall be very brief. I do wish to make a concluding argument. With respect to one mistake of fact, no 25 rollcalls will ever be called for, because the appeal is only divisible as requested by the appellant. That is a change in the rule. Another Member cannot appeal. But that is a way in which to get efficiency here, and that is what we want. So there is only one rollcall possible on that appeal, and the appellant has the right to pick out what he wants to appeal from.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield at that point? I am not clear. The appellant would have the right under the Senator's amendment to appeal en bloc.

Mr. JAVITS. Right, or he could appeal from any number that he wished to other than en bloc.

Mr. ROBERT C. BYRD. But any number could also be en bloc within the en bloc.

Mr. JAVITS. Exactly, but only one rollcall on the appeal, and he would have to take a chance that the Senate would go with him on all of them.

Mr. ROBERT C. BYRD. But the Senator then would deny or the amendment would deny the right of another Senator who may wish to sustain the Chair as to certain of the amendments and who may wish to stand with the author of the amendment on the remaining amendments the right to ask for a division on those amendments en bloc, and thus be able to determine one by one as to whether or not the Chair would be overruled; am I not correct?

Mr. JAVITS. Yes, it would, and that is exactly the point of my present argument.

This amendment is far from perfect, but it is the best that can be devised to preserve our liberties, and let me explain why. It is a real dilemma for you as well as for us.

We are in a condition now where it may be possible for a majority to amend. This is not very well liked by many of our Members. Once we pass this moment by, by voting as we will today or tomorrow on this postcloture proposition, then we will be again in that morass that there can be a filibuster against changing rule XXII, and that filibuster can only be decided, because that is the way the Senate has gone up to now, under the filibuster rule, and not only the filibuster rule, not only 60, but two-thirds.

So when we adopt that, we are locked in. We are not only locked in by a rule of majority, but by the rule of two-thirds.

So this is no child's play we are engaging in. This is very serious business. This can be fixed on us like a collar, whether a majority wants it or not. Right now the majority, as represented by the majority leader, does not want it. That is why he is invoking a rule, which is pretty interesting to me who has been fighting for this rule since 1957, to invoke.

So I know what it means and I know how hard it is to undo. That is why I am moving in this way. I feel the Senate ought to vote, and it will, and I do not know how it will vote, but that is the risk we all take, and I am glad the Senator feels warmly toward me for doing it.

We ought to have an option, even if what I propose is imperfect. In the first place, it is amendable. We can tack things onto the rule, if we do adopt what I have proposed, to deal with the priority recognition for leaders. We know I have no intention of annuling that. If I had thought of it, I would have written it in.

But it can be dealt with. The important point is to make the fundamental decision, do we want the cap to be in time or do we want the cap to be in function? That is really what I am trying to do.

The majority leader, more credit to him, has presented it to deal with a difficulty we all face, a cap in time, strict, tough, tight.

I have presented a cap in function, maybe not as strict and tough and tight, but it raises the issue, shall we go the functional route or shall we go the time route.

I have pointed out in the debate yesterday and today the dangers to our liberties as individual Senators of the time route. I believe those dangers are much greater to our liberties than the danger of the imperfections of my particular approach to the function route.

So, to make it clear to Members why, because this is still changeable, as I say, we can tack anything onto the end of this resolution that we want to, I hope that they will vote the principle rather than the details of either Senator BYRD's plan or mine and decide the fundamental issue, shall we go the time cap or shall we go the functional cap, and then I am confident we can work it out.

Mr. MATSUNAGA. Will the Senator from New York yield?

Mr. JAVITS. Of course.

Mr. MATSUNAGA. I can see a problem wherein the 100 hours have expired and there is a demand for a rollcall vote on an amendment which has been offered and 20 percent of the membership insists on a rollcall vote.

Now, under the Senator's proposed amendment, I suppose a rollcall vote could go on despite the expiration of the 100 hours.

Mr. JAVITS. That is correct.

Mr. McCLURE. Will the Senator yield?

Mr. MATSUNAGA. Now, under the amendment as proposed by the majority leader and I pose this question to the majority leader, after the 100 hours have expired and there is a demand for a vote by 20 percent of those present, will the vote then be in order, or would the rollcall vote be out of order?

Mr. ROBERT C. BYRD. Only those amendments, only that amendment or those amendments then pending, when 100 hours expire, it would be one amendment, it could be more amendments than one——

Mr. JAVITS. How can it be more than one?

Mr. ROBERT C. BYRD. It can be amendments to amendments.

Mr. JAVITS. Then they would only be in series. It would be just one rollcall.

Mr. ROBERT C. BYRD. No, no, no. Let me make legislative history. It is possible to line up a number of amendments to the point, I believe, we can have seven amendments pending at one time.

We can have a substitute for the amendment, that is a freebee. We can have a substitute for the substitute. We can have a substitute for the substitute for the substitute. We can have a perfecting amendment to the original substitute, and an amendment thereto. We can have an amendment in the first degree and an amendment in the second degree to the amendment to the language to be stricken, and we have to take those votes in order.

The first vote would come on the amendment in the second degree to the amendment in the first degree to the language to be stricken and then it would come down the line in the reverse order as they were offered.

So, under my resolution, may I say to the distinguished Senator, only that amendment, if there is one amendment, only those amendments which are lined up, as I have tried to indicate, and which can be found on the diagram on page—within the first 60-some pages of the book on procedure—only that vote or those votes would occur prior to the vote on the resolution itself.

There would be a motion to table that would be in order.

Page 59. As I said, within the first 60 pages, so I almost made it.

So that answers the question, I hope. Any amendments that are pending at the time the 100 hours have expired will be voted on.

Mr. MATSUNAGA. Would that be the case, I see no real need for the amendment being offered by the Senator from New York, because it is only when the 100 hours have expired that the Senators concerned enter into the picture.

Mr. JAVITS. That is not true and I will say why. I am going to answer the Senator's question.

That is not true because always the majority leader has conceded the only amendment upon which we can vote, and if we had enough brains to anticipate all the permutations in advance, because these all have to be on the desk when cloture is invoked, so we are not going to have seven.

The only amendment upon which we can vote is the amendment, actually, which has been called up and pending

before the Senate or any amendment to it at that time.

Other members who have been shut out, because of the fact that the 100 hours have been chewed up do not get any opportunity at all. They do not propose their amendments.

What I think the Senator is mistaking is the following, a pending amendment means like mine, before the Senate. It does not mean it is on the desk. That is the difference. Other Members may have every desire to call up more important amendments. They are shut out.

That is the principle upon which I hope the Senate will vote.

Mr. McCLURE. Will the Senator yield?

Mr. JAVITS. I yield.

Mr. McCLURE. I am not certain I understand what the Senator from Hawaii is getting at, because the amendment of the Senator from New York has nothing to do with the expiration of the 100 hours. It has to do with how we deal with the question of amendments which have been ruled out of order by the Chair either singly or sequentially or en bloc, and the right of the proponent of those amendments to have a vote in the Senate on an appeal of the ruling of the Chair, and that is within the 100 hours.

Mr. JAVITS. It was.

Mr. MATSUNAGA. If the Senator from New York will yield further, in response to the statement made by the Senator from Idaho, the Senator from Idaho served with me in the House of Representatives. As he knows, in the House of Representatives there is a rule whereby, after the determined hour has expired for debate, a Member may offer, from the floor, amendments which will be voted upon immediately, without any debate.

I think the Senator raised a vital question: What does the pending amendment mean? What do we mean by "pending"? Of course, my interpretation is that it is one which has been offered and——

Mr. JAVITS. Not at all. That is not what the amendment does. It cuts a Senator off even if it is at the desk. Even if it is qualified, even if it is germane, even if it is substantial, the Senator is out.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. MATSUNAGA. The Senator from New York has the floor.

Mr. JAVITS. I yield.

Mr. ROBERT C. BYRD. The Senator is right, if the amendment is not called up. But a Senator has at least 2 days, on the motion to invoke cloture, to call up amendments. If that fails, he has at least an additional day. If cloture is invoked, he has 100 hours in which to get recognition to call up his amendments. He will be guaranteed that he can call up at least two amendments, and I am sure he will pick the two that he feels are the most important. So he will have had his chance.

Fifty Senators each are not going to have two amendments they want to offer. I think the greatest number of Senators who have sought recognition after cloture has been invoked has been less than 30.

Theoretically, yes. One can nickel and dime this resolution to death, just shoot it full of theoretical holes. But from a practical standpoint, it does not work.

Mr. JAVITS. Mr. President, one can nickel and dime our liberties to death, and I will state how.

If rollcalls and quorum calls cut the 100 hours and do not count against anybody, many Members will be denied any recognition at all or only part of their recognition; and if there is no precloture control, we know constantly that you filibuster completely.

Until the time cloture is invoked, Members may not even get recognition to offer their amendments; or, if anybody offers one, he can take all the time to debate it until we get cloture. That is what we are getting ourselves into.

What is locked into this rule after today cannot be changed for 2 years—this time, I hope BOB BYRD will help us—when our contention, which is now some 20 years old, will prevail.

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

Mr. JAVITS. I yield.

Mr. McCLURE. Let us not confuse the pending amendment offered by the Senator from New York with the question of whether or not a Senator would be recognized to offer an amendment or to get a vote on an amendment. This amendment deals with the question of amendments which have been ruled out of order and an appeal from that ruling.

As the Senate knows, we have seen at least one instance in which amendments were ruled out of order, with no opportunity by the proponent of that amendment to get recognition, to make a motion for reconsideration, or to seek the vote of the Senate upon whether or not the ruling of the Chair was correct.

The amendment offered by the Senator from New York very wisely seeks to address that question by saying, "All right, the proponent of amendments which have been ruled out of order has one chance to have any one or any several of his amendments that have been so ruled out of order appealed to the vote of the Senate." It is not confused with the ending of the 100 hours of debate or the opportunity to present amendments otherwise, either in precloture or postcloture situations.

Mr. JAVITS. That is true.

I also provide—and that is why I have been arguing the liberties question—that Members having germane and proper amendments can get a rollcall, and I call that a liberty of the Senate, that they cannot be denied their hour, because it is chewed up by others in rollcalls and quorum calls.

Mr. McCLURE. I commend the Senator from New York for what I think is the fundamental issue here, of how you balance between the right of an individual Member of the Senate to have at least some opportunity in that postcloture period, as against the right of the majority to bring that to an end, irrespective of the right of an individual Member of the Senate. I believe the Senator's amendment is a constructive change. I hope it will be adopted.

Mr. ROBERT C. BYRD. Mr. President, if the distinguished Senator from New York, the author of the amendment, does not seek further time, I shall move, and do move, to table the amendment, and 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 table the amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Massachusetts (Mr. KENNEDY) are absent necessarily.

I also announce that the Senator from Georgia (Mr. TALMADGE) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from North Carolina (Mr. HELMS), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Wyoming (Mr. SIMPSON) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. HELMS) would vote "nay."

The PRESIDING OFFICER (Mr. BAUCUS). Are there any Senators who have not voted who wish to vote?

The result was announced—yeas 55, nays 37, as follows:

[Rollcall Vote No. 5 Leg.]

YEAS—55

Baucus	Exon	Moynihan
Bayh	Ford	Muskie
Bentsen	Glenn	Nelson
Biden	Gravel	Nunn
Boren	Hart	Pell
Bradley	Heflin	Proxmire
Bumpers	Huddleston	Pryor
Burdick	Inouye	Randolph
Byrd, Harry F., Jr.	Jackson	Ribicoff
Byrd, Robert C.	Johnston	Riegle
Cannon	Leahy	Sarbanes
Chiles	Levin	Sasser
Church	Long	Stennis
Cranston	Magnuson	Stevenson
Culver	Matsunaga	Stewart
DeConcini	McGovern	Tsongas
Durkin	Melcher	Williams
Eagleton	Metzenbaum	Zorinsky
	Morgan	

NAYS—37

Armstrong	Hatch	Schmitt
Baker	Heinz	Schweiker
Bellmon	Humphrey	Stafford
Boschwitz	Javits	Stevens
Chafee	Jepsen	Stone
Cochran	Kassebaum	Thurmond
Cohen	Laxalt	Tower
Danforth	Lugar	Wallop
Dole	Mathias	Warner
Domenici	McClure	Weicker
Durenberger	Percy	Young
Garn	Pressler	
Goldwater	Roth	

NOT VOTING—8

Hatfield	Hollings	Simpson
Hayakawa	Kennedy	Talmadge
Helms	Packwood	

So the motion to lay on the table UP amendment No. 25 was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, if no Senator seeks recognition——

Mr. CHAFEE addressed the Chair.

Mr. ROBERT C. BYRD. I was about to suggest the absence of a quorum. I withdraw that suggestion, and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I have a couple of questions I would like to address to the majority leader, if I might, in connection with the proposition that we have before us.

Mr. President, as I understand this, it is provided in the rules that nobody can speak more than an hour, but it is also provided—or it is not specifically provided—that rollcalls, quorum calls, et cetera, come out of the cap. I wonder if we might have order, Mr. President.

The PRESIDING OFFICER. The Senate will be in order.

Mr. CHAFEE. So, Mr. President, if a Senator gets the floor after cloture and starts on his way through a series of dilatory motions, quorum calls, et cetera, they could eat away at the 100-hour cap, so that, in effect, it does not work out that every Senator is guaranteed 1 hour. Is that correct? I direct that question to the majority leader.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. CHAFEE. So that the only protection that a Senator has that he will have his day in court, as it were, his chance to speak out, comes on page 3, where it is stated that notwithstanding any other provision, the Senator who has not used up his time will get 10 minutes to speak only, and not to call up any amendments or quorum calls or such. Am I correct?

Mr. ROBERT C. BYRD. "Notwithstanding any other provision of this rule, any Senator who has not used or yielded at least 10 minutes, is, if he seeks recognition, guaranteed up to 10 minutes, inclusive, to speak only."

Mr. CHAFEE. Mr. President, it seems to me—and I would like to have my fears allayed—that the concern here is that a few people getting the floor early can gobble up the 100-hour cap, so that the others who might be away perchance—let us not have any excuse for those, but those who are unable to get to the floor—will not have a change to speak except the 10-minute suffrance period.

That gives me concern. Is there anything that the majority leader might mention in connection with that problem?

Mr. ROBERT C. BYRD. Yes. I cannot for the life of me, one, envision a practical situation in the course of 100 hours, 12½ 8-hour days, that a Senator is not able to get recognition. That is No. 1.

No. 2, I have provided in the resolution by way of amendment the following: No Senator shall call up more than two amendments until every other Senator—meaning the other 99 Senators—shall have had the opportunity to do likewise.

So if a Senator does not sleep on his rights, if he is on the floor, he will be recognized in due time before the 100 hours are up. Even in a theoretical situation I have my doubts—I almost have my doubts that in theory—50 Senators are each going to have two amendments. It has never worked that way before in the 62 years since the cloture rule was first adopted.

There has never been a time, and I venture to say there will never be a time from now until the crack of doom, when every Senator among the 100 Senators will have two amendments he wishes to call up. But this provision guarantees that the Senator from Rhode Island (Mr. CHAFEE) will be guaranteed an opportunity for recognition to call up two amendments. If the Senator from Maryland, the Senator from Arkansas, the Senator from Montana, the Senator from Ohio, the Senator from Virginia, the Senator from Oklahoma, the Senator from Massachusetts, the Senator from Pennsylvania, or any other Senator——

Mr. CHAFEE. Were to gobble up time.

Mr. ROBERT C. BYRD (continuing). Were to gobble up time by calling up two amendments each, they would not be able to obtain recognition again until the Chair would say, "Does any other Senator seek recognition?"

At that time, the very able Senator from Rhode Island would stand up and say, "Mr. President, I have not had the chance to call up two amendments." He would be recognized.

Third, there is a provision in here now whereby the majority leader, the minority leader, the manager, and the ranking floor manager may each have additional time under their control, if other Senators wish to be merciful, considerate, and magnanimous, and offer up to 2 hours to any one of those four or to all of those four. Those four leaders will yield time, out of fairness. I will make a pledge here now and engrave it on the pages of this CONGRESSIONAL RECORD that if the distinguished Senator from Rhode Island at the end of 100 hours has not been recognized, he may resort to the amendment which I put in, supported by the Senate, that he can be yielded at least 10 minutes, if he has not used any of his time. Beyond that I will engrave it in the RECORD here and now that if I have any time remaining out of the 3 hours under my control, I will yield to the Senator from Rhode Island.

Beyond that, I have provided in this resolution that the Senate, by a three-fifths vote, may extend the time, extend the cap, to more than 100 hours. In an august body of 100 men who believe in justice who would dare say that three-fifths would not rise to the defense of the Senator from Rhode Island and say, "He is entitled. He has been seeking recognition. We have been watching him. He stood up every time that an amendment was disposed of or a Senator sat down. He has sought recognition repeatedly."

Three-fifths of the Senators, I am sure, I am positive, in fairness would give that Senator, just as if the junior Senator from West Virginia had been denied, whatever additional time might be needed for recognition.

I think there are a good number of provisions which have been written in which deal with that hypothetical situation, which not only concerns the Senator from Rhode Island but a good many Senators who have spoken to me before.

Mr. CHAFEE. Mr. President, I appreciate that explanation, but it appears to me that there is the fact that despite all these safeguards, the chance to extend, or the manager, or the ranking member of the committee handling the bill, all of them having the possibility of accumulating time and yielding time, and despite the fact that in the history of the Senate in 62 years not more than 30 Senators have spoken, to our best recollection, despite all that, the majority leader feels it necessary to include a provision that everybody gets 10 minutes in case they have all been cut out.

It seems to me that provision mitigates against the very point that the majority leader is trying to make. He is trying to say that everybody is protected, but recognizing that they might not be protected he throws them all a 10-minute little bit to say their piece, not a chance to amend, not a chance to hold any rollcalls.

It seems to me that that very provision is contradictory to everything the majority leader has said. It confuses me. Why have that in there? Maybe the Senator is trying to placate some group that is disturbed. I do not know.

Mr. ROBERT C. BYRD. No. There are so many Senators who dealt with the theoretical rather than the pragmatic, who kept saying, "But if so and so happens," and "I will be shut out in my time."

People in my State would look through the lengthy record of debate and they would say, "Where do I find anything that my Senator had something to say on this controversial measure?"

So in order that that Senator may be guaranteed in that most hypothetical of hypothetical situations, in that most theoretical of theoretical hypotheses, I have provided that if that person were over at Charles Town Race Track all throughout that debate and he happened to make it in just as the 100-hour curtain was drawn, he could stand up and say:

Mr. President, I have not used any of my time. I have not yielded any of my time. I do not want to insert something in the RECORD that the people in West Virginia will recognize because of that bullet there as having been just inserted in the RECORD. I am going to stand up here and say my piece. I am entitled to be heard. I am entitled to represent the people of West Virginia. One hundred-hours have passed by and I was unavoidably delayed in getting here.

Do not say anything about being at the Charles Town Race Track:

I was unavoidably delayed in getting here. Mr. President, am I not entitled to speak for the people of the great State of West Virginia, the State that is almost heaven, whose motto is that mountaineers are always free, or the State of North Carolina, whose motto is to be rather than to seem?

For that reason, Mr. President, I have

provided that a Senator may have 10 minutes.

Mr. CHAFEE. I heard the answer and it was eloquent.

Let me ask the majority leader where do we stand on this now? We are now on the resolution. As I understand, the agreement was that we would vote on or before 6 o'clock tonight.

Mr. ROBERT C. BYRD. Yes, no later than six.

Mr. CHAFEE. No later than six.

What happens next? There are no amendments at the desk, do I understand?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I have another amendment.

The PRESIDING OFFICER. No amendment is pending.

Mr. ROBERT C. BYRD. No amendment is pending.

Mr. CHAFEE. Does the majority leader—is there a time limit on his amendment?

Mr. ROBERT C. BYRD. No, there is not.

Mr. CHAFEE. Will there be?

Mr. ROBERT C. BYRD. I would be willing to enter into one.

Mr. CHAFEE. What I am thinking of is whether there would be time for another amendment should I so desire to offer one and just kind of work out the time. It depends on how much time the Senator takes.

Mr. ROBERT C. BYRD. Well, I will be very glad to delay offering mine for another 30 minutes and allow the Senator from Rhode Island to offer his amendment.

Mr. CHAFEE. That would be more than fair. If I am going to do it, I will do it in the next 10 minutes.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. CHAFEE. I would have a chance to vote on it then?

Mr. ROBERT C. BYRD. Yes, the Senator will have that chance.

Mr. CHAFEE. I thank the Senator.

Mr. ROBERT C. BYRD. In relation to the amendment, yes, he will, before I offer my amendment.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. 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. CULVER assumed the chair.)

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

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

Mr. ROBERT C. BYRD. Mr. President, I offer the following amendment.

Mr. President, before I ask unanimous consent to offer an amendment to language that has already been amended, I want to explain what the language would do.

Before the holiday, the language in the resolution was changed to provide that the majority and minority floor managers and the majority and minority leaders could each be the recipients of not more than 2 hours yielded to him from other Senators, or on the part of other Senators.

I have discussed with the distinguished minority leader knocking out the provision that would allow time to be yielded to the majority and minority leaders without unanimous consent, leaving in the provision that would allow Senators to yield up to a total of 2 hours to each of the floor managers.

The floor managers, obviously, need that additional time in which to oppose motions and amendments, but the two leaders have preferential recognition to begin with and I should think that if we cannot make it on the 1 hour, and that will be chipped away a little bit because we have a 100-hour cap, but if we cannot make it with preferential recognition, perhaps we ought not to be in this position.

I think the general persuasion of this would be improved if there was not a feeling that the leaders are being given an unfair advantage over other Senators, who are being asked to give up some of their time.

Quorum calls and roll calls are going to chew into the 100 hours and, by virtue of doing that, are going to also chew into the 1 hour of each Senator.

So I am going to ask unanimous consent that I be permitted to offer an amendment to strike from page 3 of the resolution the words, "or to the majority or minority leader."

Mr. CHAFEE. Mr. President, I do not want to lose my chances to speak. I would just as soon wait until the minority leader speaks and then I would like to make a point or two, if I could.

Mr. BAKER. Mr. President, I would prefer to hear the remarks of the Senator from Rhode Island.

I yield.

Mr. CHAFEE. Mr. President, one of the virtues, as we have discussed here earlier, of letting the leaders have this time is that the leaders may in turn yield such time to other Senators. As the distinguished majority leader pointed out a little earlier, when he and I had a colloquy on this subject, he assured me that should the situation ever arise in which I did not have time, he would yield me time from his time. I thought that was generous, and I was prepared to take him up on the offer. Now he is giving away that privilege, quickly giving away a privilege of his and a privilege of which I was a partial beneficiary.

I am not strong on strong leaders. I am always wary of leaders who have too much power. But I do not think that in 3 hours, they can go rampant.

They are always subject to the votes of their Members. I do not think any leader is going to proceed in a reckless fashion, disregarding the wishes of his Members, and thus, not only is he going to regard their wishes, but also, he will try to take care of them by ladling out to them a little time here and there, should they need it.

So I think it is bad to give up that point. Somebody may need it; and we cannot look to the majority or minority floor managers, because those people are not subject to the votes of their Members. Also, they are wrapped up very intently in the whole subject that is before the Senate, and they want to use every bit they can.

I would like to explain a little further why this time should be given up. As a matter of fact, I was supportive of the efforts by the Senator from Idaho and others who would have given up to 9 hours, a total of 10 hours, not just to the leaders but also to Senators generally.

I do not want to hold up this bandwagon, but a little more explanation would be helpful. Maybe it is not a bandwagon.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield?

Mr. CHAFEE. I am delighted to yield.

Mr. HARRY F. BYRD, JR. I say to the Senator from Rhode Island that I raised the point with the distinguished majority leader, and I did it for this reason: As the proposed legislation now stands, the majority and minority floor managers of legislation could have time yielded to them. Then, as the measure now stands, the majority leader and the minority leader, likewise, could have time yielded to them. All those hours have to come out of the time under the 100-hour cap, which means that all the other Senators have that much less time for themselves.

If the Senator from Rhode Island thinks that the membership as a whole is better off by permitting the majority leader and the minority leader to have the time mentioned in the pending legislation, as well as the majority and minority managers of the floor legislation, that is perfectly satisfactory to me.

It occurs to me that the more the Senate gives to the leadership or to the managers of the legislation, the less time there will be for everybody else. But if there is considerable feeling that the membership as a whole will be better off by permitting additional time to be yielded to these four individuals, I certainly would not make any issue of it. I have some question in my mind as to whether it is advantageous to the Senate to take the proposal in its present form, but I have no strong feeling about it at all.

Since I did raise it with the majority leader, and since the majority leader did rise to act on that, I wanted to state that he did not do it on his own initiative. It was raised by the Senator from Virginia, and I will not make any issue of it at all.

I just want to say to the Senator from Rhode Island that I question whether it is wise, from the point of view of individual Senators, to be putting into the hands of four Senators as much time as would be given under this proposal.

Mr. CHAFEE. Mr. President, I think those points are very well taken. It is not an easy thing to decide.

Of course, they are not taking the time from the body as a whole. They are not granted 3 hours under the bill. The majority leader and the minority leader only have an hour, just as, in theory, everybody else has. The only way they get additional time is if somebody should give it to them. Then they could use that time, it seems to me, in correcting any

inequities that may have arisen in the course of debate.

When I spoke with the majority leader and had a little colloquy with him earlier, he used this as an indication of one way—and it applied to the minority leader—to insure fairness in case somebody was caught in a squeeze; that here was a source of time which responsible people, who are subject to the approval of their peers, could give out in order to remove an inequity. That was the argument that was used, and I thought it made some sense.

Mr. HARRY F. BYRD, JR. The argument that the Senator from Rhode Island is making now was very ably made by the Senator from Maryland, in personal conversation with the Senator from Virginia. If both Senators feel that is a better procedure, I certainly will withdraw any objection I have to it.

However, the Senator from Rhode Island understands, of course, that this time would come under the cap, which means, as I see it, that the individual Members of the Senate, other than those four and those they may yield to, would have less time.

Mr. CHAFEE. I appreciate that. This, I understand, would not affect the proponents—the majority and minority floor managers. They are not involved in this. It is just the leaders. Is that correct?

Mr. SARBANES. That is correct.

The rationale for the extra time for the floor managers is somewhat different from the rationale when they have to deal with amendments coming from a whole host of Members and they very quickly use up their hour in responding to amendments.

It is reasonable that they should have the ability to have some extra time yielded to them in order to make their responses.

The rationale for yielding it to the two leaders was somewhat different. It was along the line that the Senator from Rhode Island has outlined. But it is my understanding that the two leaders are really amenable to the will of the Senate with respect to this matter, and they are not asserting or seeking or reaching out to get the extra time and to have it yielded to them.

There are arguments both ways, as we have heard on the floor of the Senate.

Mr. CHAFEE. Mr. President, I can see the points that have been raised by the Senator from Virginia. However, because of the problems that might come up, a possible inequity due to a series of things we cannot anticipate, and the ability of the leaders to parcel out that time to overcome an unsuspected and unforeseen inequity, I think it is a pretty good proposal to let them have that modest amount of time, and therefore I would object.

The PRESIDING OFFICER. Objection is heard.

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

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

RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 15 minutes.

There being no objection, at 3:45 p.m. the Senate took a recess for 15 minutes.

The Senate reassembled at 4 p.m., when called to order by the Presiding Officer (Mr. TSONGAS).

● Mr. RIBICOFF. I support the efforts of the distinguished majority leader to reform the filibuster rules.

Mr. President, the Senate is a great legislative body. It has enormous responsibilities. We must address very difficult and complex issues. This makes it essential that the rights of every Senator be protected; that there be opportunity for full and open debate. Certainly a procedural device should not be used to prevent any Member of the Senate from speaking on the merits of any issue before this body. Nor, however, should procedural ruses be used to avoid addressing the merits of a particular issue.

In the final analysis the Senate must function in an orderly manner. The Members of the Senate must record their collective judgment on the issues before this body. Each of us must stand up and be counted on the important matters before the Senate. Just as every Senator must have the right and opportunity to discuss the merits of the issue, so every Senator must have the right and the responsibility to vote on that issue.

The Senate today is involved in major domestic and foreign policy decisions. We deal with legislation to improve the operation of our Federal Government. We do not have the luxury of spending hours in unproductive activity.

I have opposed filibusters throughout my Senate career. The filibuster in the U.S. Senate does us no credit. I have voted for cloture in the face of filibusters mounted by liberal Senators and by conservative Senators. The business of the Senate must go on. Dilatory tactics should not allow a few Senators to prevent a vote on a substantive matter even after extensive debate on that matter.

Mr. President, the majority leader's proposals do not in any way affect the rights of a minority to conduct a filibuster. Sixty votes will still be needed to limit debate. The right to debate legislation and to offer amendments to it after cloture has been invoked will still be protected. The majority leader's modest proposals simply seek to limit the number of filibusters that can be conducted on any one piece of legislation.

This is consistent with the original intent of rule 22. The intent of rule 22 was to protect the right of extended debate by requiring more than a majority to invoke cloture. However, invoking cloture constituted a decision to limit debate and to have a final vote on the substantive matter before the Senate within a reasonable period of time. In recent years, however, ingenious postcloture delaying tactics have unjustifiably permitted one or two Senators to waste the time of the Senate even after cloture has been voted.

Senate Resolution 61 is now before the Senate deals only with this postcloture debate. The majority leader has been wise and generous in his proposal. Senate Resolution 61 simply eliminates the ability of a tiny minority to conduct a postcloture filibuster by counting the delaying moves as part of a Senator's debate time. Surely this is both reasonable and fair.

I myself would support efforts to go even further to expedite Senate procedures. I hope that we will have an opportunity during this session to address other improvements suggested by the majority leader in his original resolution (S. Res. 9).

However, the limited resolution on postcloture filibusters before us today is both reasonable and necessary. I hope that it will be approved so that we can get on with the business of the Nation.

Mr. President, two timely and perceptive editorials on this issue have recently appeared in newspapers circulated in my State of Connecticut. The Hartford Courant on February 7, 1979 had a lead editorial entitled "The Debate on Debating." The New York Times on January 30, 1979 had an editorial entitled "One Filibuster Per Issue." I ask that these two editorials be printed in the RECORD.

The editorials follow:

[From the Hartford Courant, Feb. 7, 1979]

THE DEBATE ON DEBATING

To filibuster a bill to death in the U.S. Senate does have a certain glamor. The image of the thunderous orator, using his wile to talk a law to death, is not without its Hollywood charm.

The patent obstructionism of unlimited debate is softened by a tradition that requires democracy not only to follow majority will, but also to defend the rights of minority opinion.

Thus, the common sense proposals before the Senate to revise the filibuster rules will meet with much resistance.

The art of obstructionism has been finely tuned in the recent past, to the point where a handful of senators can cripple the legislative process, or sabotage legislation with merely the threat of a filibuster. Such a tradition as that is not worthy of any legislative body that strives for rational lawmaking.

Senate Majority Leader Robert Byrd, who himself used the filibuster to great advantage against the nation's civil rights laws, is now proposing modest changes in those rules. His major goal is to end the fairly recent practice of piling filibusters on top of filibusters—all aimed at the same piece of legislation.

A gentleman's agreement had long restrained senators from delaying final action on bills, once a filibuster was broken. Since 1976, a new strategy has emerged, which produces endless amendments and procedural maneuvers designed to prevent final consideration, even after the majority has expressed the wish to proceed.

The Byrd plan is worthwhile. Sixty senators would still be required to end a filibuster, no matter how few were actually available to vote on cloture. But when that point is reached, a final vote could reasonably be expected to occur.

More vigorous reforms of the filibuster tradition have some backing, including one that would allow 60 percent of the senators present to invoke cloture. While we have

sympathy for significant changes in the filibuster rules, such progress in the near future is unlikely.

The filibuster ideal pits the relentless majority against the abused minority, but that ideal has little validity in the modern congressional setting.

Sophisticated special interest groups, modern communications systems and education that mark the legislative process today perform much of the leavening function that filibusters are supposed to offer. Few bills emerge spontaneously from the recesses of a majority conclave, to be pushed through Congress, untouched by minority impact.

The major resistance to filibuster is coming from the most conservative members of the Republican and Democratic parties. Yet, it was they who were the victims of the liberal filibuster last year that tied up the Congress for weeks, before the natural gas deregulation compromise finally won approval.

The filibuster remains a fascinating Senate tool, whether used for education or obstruction. But like most extreme options, it should be reserved for true emergencies, and then subject to reasonable constraints.

[From the New York Times, Jan. 30, 1979]

ONE FILIBUSTER PER ISSUE

By voting against a motion to stop a filibuster, 41 of the 100 members of the Senate can block any legislation. That is not necessarily pernicious and we agree with the Senate majority leader, Robert Byrd, that there is a right to filibuster. But we also agree strongly with him that on any one issue, one filibuster is enough. Still, present rules permit multiple filibusters. Even the threat of a filibuster has become a serious problem, making the Senate, in Mr. Byrd's term, "a spectacle." The time has come to do something about it.

Partly because of the parliamentary virtuosity of the late Senator Allen of Alabama, the Senator has been increasingly subject to multiple filibusters. Unless the leader calls up legislation under special circumstances, his very motion to proceed to consideration of the bill is subject to a filibuster. If the filibuster is then voted down through cloture, another filibuster can be undertaken when the bill becomes the pending business. And even when such a filibuster is defeated, there has been an increasing use of "post-cloture" filibusters in which one or a handful of Senators can tie up business for days with dilatory motions, interminable amendments, quorum calls and rollcalls.

Senator Byrd has now offered a resolution to change the rules and ease this "misery." He does not propose, probably wisely, to make filibusters easier to stop. A full 60 votes would still be necessary—but only once. Debate on motions to take up a bill would be limited and filibusters confined to actual consideration of the measure. Post-cloture stalling would be curbed.

Both Republicans and Democrats have named ad hoc committees, ostensibly to consider Senator Byrd's proposal but actually to negotiate both on its terms and on how a vote can be had on a rules change. Conservative members believe that 67 votes are needed to end a filibuster on a motion to change the rules. More liberal members believe a simple majority can vote to change the rules and cut off debate.

It would appear to be in the interest of Republicans and conservative Democrats to avoid a showdown. A loss would create a precedent that would make future rules changes easier and eventually undermine the rights of the minority. A showdown can be avoided by an agreement to limit debate on the Byrd resolution and to vote at an agreed time. There seems to be fairly widespread bipartisan agreement that something should be done to limit post-cloture filibusters, and there seems to be room for reasonable compromise on other elements of the Byrd proposal as well.

But if meaningful rules changes are not soon forthcoming, Senator Byrd reluctantly will have to force the showdown. Then it will be important that 51 Senators, including liberal and moderate Republicans, back him up. Senator Henry Cabot Lodge Sr. was right when he said many decades ago: "To vote without debate is perilous, but to debate and never vote is imbecile." ●

● Mr. BENTSEN. Mr. President, I rise in support of reform of the Senate Rules. I believe that the distinguished majority leader has presented careful and considered proposals, and I am inclined to support them.

In my years in the Senate, I have used and been used by extended debate. I have supported cloture; I have opposed cloture; I have been allied with liberals, conservatives, and groups that defy description.

I believe the human mind can devise rules that protect the legitimate rights of both the majority and minority within the Senate. I believe that Senate Resolution 61 meets the general standards we must set.

We must balance the needs of our Nation, the rights of all Senators, and the interests of both parties. We must seek fair and reasonable rules that will effectively guide our conduct. We live in dangerous times, when political paralysis can threaten our ability to address the most serious issues. We must meet these challenges. We must have rules that enable us to meet them. We must protect the minority, yet preserve the ability of a substantial majority to act.

Mr. President, we must be vigilant in protecting the rights of the minority. I support the concept of extended debate. When used as it was intended, this device can make the Senate a truly deliberative body.

When 60 votes are not obtained for cloture, the debate should continue. If the 60 votes cannot be obtained after repeated attempts, the legislation should fail. This is the right of the minority that must not be destroyed, distorted, or diluted. I will support this right. I oppose any effort to take it away.

We must recognize other rights at stake when the Senate has worked its will, and cloture has been invoked. In this event, the minority has made its stand and exercised its right, and it has lost. At this point that majority that voted to end debate has a right to have the Senate proceed to action. They have a right to work their will, to represent their constituents as they see fit.

We cannot allow this right to be destroyed by a small minority that has tried and failed to extend debate. We cannot permit anyone, conservative or liberal, to corrupt rule 22 and delay the Senate with dilatory tactics. This is not representative government they engage in. This is delay and obstructionism.

I remember the Pearson-Bentsen natural gas legislation. We had obtained the votes for cloture. The majority, the three-fifths majority, had spoken. Yet there were some in the minority who believed that the Senate should give way to their viewpoint, even though they had lost according to the rules. They then distorted the original intent of rule 22, and we spent days and nights in endless delay.

Mr. President, I can understand their deep feelings, and the feelings of all of my colleagues on the great issues that come before the Congress. Honorable people can disagree. We can disagree strongly. Yet there comes a time when the verdict of our colleagues must be accepted, when representative government compels us to compromise, or yield to the views of others.

Mr. President, I want to talk very briefly about a growing phenomena that troubles me. I refer to the growth of narrow or single issue political groupings in our country. The Founding Fathers called it factionalism. They warned us about it.

Increasingly, people say: "Do it my way, or not at all."

They say: "I want to know about your feelings on the one issue that concerns me, and I don't really care about all of those other issues facing the country."

They say: "My personal view must take precedence over the needs of the body politic."

James Madison warned us in Federalist No. 10. He said that a great danger facing the United—repeat, United States, was division from within.

In George Washington's Farewell Address, read eloquently this week by my colleague from Virginia, we were warned of dividing region against region, group against group, person against person. We were instructed that we must value national unity above all else, that we must accept pluralism under our Constitution.

Mr. President, in our country there is a temptation to fight on behalf of a narrow issue, and forget the broad political consent essential to our form of government. I say we may agree with the particular position in question, but we must never forget that we are part of a large nation with many particular viewpoints.

We must remember this in the Senate if we are to lead the country. We must remember that sometimes we will lose, but that always we must respect the ability of our representative system to work its will.

We must not tie the Senate in procedural knots. This does not make us a greater deliberative body. It erodes our ability to decide, after we deliberate. It demonstrates a lack of respect for the views of others. It demonstrates a lack of faith in the process itself. It reduces public respect for the institution of the Senate, and leads us on the dangerous road to political paralysis, factionalism, and ineffectiveness.

Mr. President, the American people want a government to respond to the troubles of our times. They want a government that can act.

Yes, we must protect the rights of the minority.

No, there is no justice in allowing a minority of 10 to paralyze a majority of 90.

There is no fairness in holding the U.S. Government hostage to the views of a few, no matter how sincere they are.

If 40 votes stand firm, and cloture cannot be invoked, then again I say the legislation should fail.

But when the three-fifths majority has spoken, the time for debate should draw to a close.

The precedents of the Senate, the great history of our institution, and the requirements of governing this large and diverse society all tell us that there comes a time when the Senate must be able to act.

In this spirit I will support reform of the Senate rules.

I believe we can protect the rights of our Members, and pursue the unfinished business that faces our country.●

● Mr. MATSUNAGA. Mr. President, I rise in strong support of Senate Resolution 61, as amended, the resolution proposed by the distinguished majority leader, the Senator from West Virginia, to amend rule 22 of the Standing Rules of the Senate.

Mr. President, it is with a sense of urgency that I join the distinguished majority leader in calling upon my colleagues, on both sides of the aisle and at each end of the political spectrum, to give thoughtful, deliberate, and, finally, favorable consideration to the majority leader's proposed rule modifications. In recent Congresses, we all have seen the extent to which one, two, three, or any small group of Senators may thwart the will and the overwhelming majority of the Senate. It has become clear, I believe, that rule 22, the procedure by which three-fifths of the Senators may invoke cloture, is not, as it now stands, an effective means of ending filibuster in the U.S. Senate.

By utilizing the present rules of the Senate to their fullest extent, it is now possible to engage the Senate in several filibusters on any given issue. First, when the majority leader makes a motion to proceed to the consideration of a particular matter, debate on that motion is unlimited. Any single Senator, or small group of Senators, may conduct a filibuster on the motion to proceed. Second, any Senator or small group of Senators may conduct a filibuster during the debate on the bill itself, or substance of the issue, once it is before the Senate. Third, and finally, the present Senate rules allow a Senator, after three-fifths of the Senate has voted to invoke cloture under rule 22, to conduct what is now referred to as a "postcloture filibuster."

Mr. President, many of us are well acquainted with the postcloture filibuster. Two years ago, during our consideration of the natural gas pricing bill, a small number of Senators employed an array of parliamentary tactics to carry on a filibuster against the bill for 2 weeks after cloture was invoked. To delay final action on the bill, the Senators requested numerous rollcall votes and quorum calls, demanded the reading of all amendments in their entirety, and asked for the full reading of the Journal. What made these and several other procedural tactics effective filibustering is that the time consumed did not count against the 1-hour of time allotted to each Senator after cloture had been invoked.

Moreover, under the Senate rules, any Senator who sends to the desk a germane amendment before the announcement of a successful cloture vote is eligible to propose it after cloture is invoked. Consequently, the filibustering Senators offered literally hundreds of germane amendments making changes in funding authorizations, establishing alternate dates for deadlines in the bill, redefining terms, and making various additions and deletions to the bill.

It is well known, Mr. President, that if the majority leadership did not resort to extraordinary procedural measures, the postcloture filibuster could have prevented the Senate—a three-fifths majority of the Senate—from voting up or down on the vitally important piece of energy legislation.

Mr. President, I strongly believe that we in the Senate must no longer tolerate such abuse of the Senate rules. One Senator, two Senators, three Senators, or any small group of Senators, must not have the absolute power to thwart the will not only of the majority, but also of a three-fifths majority of the Senate, which, having voted to invoke cloture, has signified that debate shall come to a close and that the pending matter shall be acted upon by the Senate.

Mr. President, although I do not approve of the postcloture filibuster, I do not fault the Senators who have chosen to utilize the rules of the Senate to extend debate after cloture has been invoked. Every Member of this body certainly has the legitimate right to use them as he so chooses. And so long as the rules remain as they are, I am sure that some Senator or Senators will continue to use them to their fullest extent.

Therefore, Mr. President, it is imperative that we move now to change the rules in a way that will once again allow the majority of the Senate to work its will on a measure. The Senate must be free to conduct the Nation's business, and I believe it is our duty as its Members, duly chosen and sworn, to see that the rules allow it.

I want to emphasize, Mr. President, that I do not advocate any modification of the Senate rules which would restrict or prohibit the legal right of any Senator to engage in a filibuster. On the contrary, I believe that every Senator should continue to have that right. However, I believe that Senators should filibuster on the merits of the particular matter before the Senate, not on the motion to proceed to the consideration of that matter, and not after the Senate, by a three-fifths majority, has voted to limit debate.

Mr. President, I can certainly understand the concern that many of my colleagues have expressed over the reforms proposed by the distinguished majority leader, particularly in terms of their effect on the delicate relationship between the majority and the minority in the Senate. I might add that I am not speaking of the majority or minority necessarily in the sense of a political party. In my judgment, it is vitally important that each and every Senator, of every party affiliation or political philosophy, consider carefully and deliberately the reforms proposed under Senate Resolution 61, for they will change the standing rules of this body and have a dramatic effect on the tone of the Senate's proceedings for many years to come.

During the course of our debate on this resolution, I have not heard a single Senator deny that in any parliamentary body, or in any democratic system for that matter, it is essential that the minority be allowed to speak, to debate, to criticize, and, in short, to participate fully in the legislative process. This concept and others designed to protect the rights and privileges of the minority are among the fundamental principles of our democratic form of government. James Madison, writing in "The Federalist," No. 10, discussed the power of the majority over the minority and the possible abuses of that power that may occur in a democracy, I quote:

> When a majority is included in a faction, the form of popular government . . . enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens . . . It may be concluded that a pure democracy . . . can admit no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by the majority . . . and there is nothing to check the inducements to sacrifice the weaker party. Hence it is such democracies which have ever been the spectacle to turbulence and contention . . .

Indeed, Mr. President, the framers of the Constitution concurred with Madison and went to great lengths to protect the rights of the minority. Under the Constitution, the Federal Government is divided into three separate and independent branches, and an important system of checks and balances is employed among them. The separation of powers doctrine was developed by the framers, in part, to insure that the Federal Government would protect the minority.

Within in the legislative branch, the bicameral nature of the Congress, and the intricacies of the legislative process involving the two Houses and the President, provide even further protection for the minority. Within the Senate itself, there are many built-in safeguards for the minority. Most importantly, the Constitution clearly provides that each State shall have two Senators, regardless of its size, and that no State, without its consent, shall be deprived of its equal sufferage in the Senate. I might also reiterate that any single Senator, or group of Senators in the minority, is, under the Senate rules, entitled to filibuster a matter before the Senate.

At the same time, Mr. President, we must not lose sight of the fact that the concept of rule by the majority, with adequate protection of the minority, was central to the political philosophy of the framers and remains today the very foundation of our representative form of Government. Alexander Hamilton, writing in "The Federalist," No. 22, emphasized the need for voting by majority to

prevent national control by a "pertinacious minority," I quote:

> In those emergencies of a nation, in which the . . . weakness or strength of its government . . . is of the greatest importance, there is commonly a necessity for action. The public business must, in some way or other, go forward. If a pertinacious minority can control the opinion of the majority . . . the majority, in order that something may be done, must conform to the views of the minority; and thus the sense of the small number will overrule that of the greater, and give a tone to the national proceedings.

For the purposes of our deliberations, Mr. President, Hamilton's insistence that "the public business must, in some way or other, go forward," is vitally important. When applied to the Senate, his words and ideas firmly support the contention that the Senate must be allowed to work its will and the majority of Senators must prevail.

Writing in The Federalist, No. 58, James Madison emphasized the importance of the principle of majority rule in both Houses of Congress and the need to insure against minority frustration of legislative power. I quote:

> It has been said that more than a majority ought to have been required for a quorum (in house of Congress) for a decision . . . But these considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice and the public good might require new laws to be passed . . . the fundamental principle of free government would be reversed. It would be no longer the majority that would rule; the power would be transferred to the minority.

Although James Madison wrote these words almost two centuries ago, we in the Senate find ourselves in a similar situation. Single Senators and small groups of Senators, representing a small minority of the Members of this body, are able to utilize the rules in such a manner as to thwart the will of the majority and even a three-fifths majority of the Senate. Permit me to again quote Madison from "The Federalist," No. 58:

> Were the defensive privilege (more than a majority for a quorum) limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or in particular emergencies to extort unreasonable indulgences.

Madison's fear that a minority, which has the power to overrule the majority, might "extort unreasonable indulgences" from the majority, should have a special meaning to us in the Senate today. It has certainly become clear, I believe, that under the present rules of the Senate, which allow a small minority to engage the Senate in filibuster after cloture has been invoked, that a three-fifths majority of Senators may be forced to accede to the wishes of that small minority.

Mr. President, we cannot, in good conscience, permit this situation to continue in the Senate of the United States. We must not permit the rules of this body to be used to prevent the Senate from working its will, particularly after three-fifths of the membership of the Senate has voted to limit debate on a particular issue. The postcloture filibuster is clearly contrary to the concept of majority rule and the intent of the framers of the Constitution.

We have a unique opportunity at the beginning of this new Congress to consider prudently and deliberately the majority leader's proposals to reform the Senate rules. I believe that they are fair reforms which do not go above and beyond the objective of eliminating the threat of and the exercise of the disruptive postcloture filibuster.

I concur fully with the majority leader in that if we permit Government by postcloture filibuster to continue in the Senate, the majority may one day rise up and make greater and more far-reaching changes in the rules of this body than those proposed by the Senator from West Virginia.

Mr. President, we have before us a resolution which will once again restore majority rule to the Senate, and at the same time, protect and defend the integrity of the legislative process and the rights and privileges of the minority, which are guaranteed under the Constitution. Let us pass this resolution expeditiously and return to our principle task of conducting the Nation's business.●

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

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

RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate recess for 30 minutes.

There being no objection, at 4:43 p.m. the Senate took a recess for 30 minutes.

The Senate reassembled at 5:13 p.m., when called to order by the Presiding Officer (Mr. MOYNIHAN).

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, on February 7, an agreement was entered by unanimous consent to the effect that the Senate would proceed immediately to the consideration as a separate resolution of that part of Senate Resolution 9 beginning on page 4, line 6, and concluding on page 5, line 6, dealing with postcloture procedure only.

Provided further, that no amendment that is not germane to post-cloture procedure shall be received—I am reading from the CONGRESSIONAL RECORD—and provided further, that if the vote on final disposition of the resolution does not occur by 6 o'clock p.m., on Thursday, February 22, 1979, the Senate proceed at that time to consider Senate Resolution 9.

Now, Mr. President, I have in my hand an amendment which would provide that once cloture has been invoked on a motion to proceed, the time for consideration of that motion be limited to not more than 3 hours, to be equally divided between and controlled by the majority and minority leaders, or their designees, who shall insure that the opponents of the motion receive at least half of the time on the motion.

That amendment clearly comes within the letter and spirit of the agreement because it is germaine to postcloture procedure; it deals with postcloture procedure only; it deals with postcloture procedure on a motion to proceed.

Mr. President, let me explain why this amendment occurred to me as being needed.

As I said, it already fits within the letter of the time agreement, but there are some Senators who would not like to see this amendment called up.

Time is short, although I have waited now something like an hour and a half before taking the floor to discuss it.

I showed it to the distinguished minority whip, I suppose 2 hours ago. I have shown it to other Senators on both sides of the aisle, including the distinguished Senator from Maryland (Mr. SARBANES), the distinguished Senator from Louisiana (Mr. LONG), and the distinguished Senator from Georgia (Mr. NUNN), and other Senators, and I feel that I have the votes to carry this amendment.

One of the big problems that I have been confronted with as majority leader has been the problem of taking up measures. Senators will have holds—h-o-l-d-s—on measures, and those holds are recognized and honored for a while. But from time to time, I go to the minority leader and I say, "Mr. Minority Leader, let's take up this bill." The minority leader says to me, "Well, I can't take that bill up because so-and-so is out of town, he has a hold on that bill, I can't agree to take that up until he is back in town."

I say, "OK, then let's go to this bill on the Calendar, why can't we take this one up?" I find no fault in the minority leader or the acting minority leader. I have dealt with him in the same way and he has dealt with me in the same way. I will say, "How about taking this matter up?" He says, "Well, I will have to see. We will have to call Senator so-and-so because he has a hold on that."

So we wait and put in a quorum. We wait 15 or 20 minutes, or 30, and then the leader on the other side comes back and he says, "Well, I'm having difficulty getting so-and-so, he is out on a boat in the middle of a lake," or something, "and we are having trouble reaching him. It will probably be 2 hours before we reach him."

I will say, "OK, let's go to this bill." The leader on the other side will say, "Well, so-and-so has a hold on that; maybe we can get this done. We can check that out. He is back in the cloakroom."

Mr. STEVENS. There was one that was not fishing?

Mr. ROBERT C. BYRD. There was one that was not fishing.

He will talk to his very able assistants, Mr. Hildebrand and Mr. Howard Green. He will say, "Go back and talk to so-and-

so and tell him to come back here." They come back with the word: "We have discussed it with Senator so and so, but he is not ready to take it up today. He is ready to take it up one day next week, but not today. So I can't give you unanimous consent as to that."

So where does that leave me?

I will say, "Mr. Minority Whip, I'll move to take it up."

He will say, "Well, go ahead and move. Who cares? Your motion is debatable."

So they can debate that motion to proceed for a day or two until Senator so-and-so gets back from the middle of the lake where he has been fishing, or the top of the mountain where he has been gazing at the Moon. So time has been awasting.

Rather than have the Senate go through 2 or 3 days of needless debate and futile talk, I say, "Well, what are we going to do?" So he scurries around, and he is in the same situation I am in. He is bound by his Members. He is bound to uphold their rights. He is obligated to object if I ask unanimous consent to take up something.

In every instance, the minority leader or the acting minority leader, whichever it may be at the time, does everything he can to help me. But he, too, is bound.

I have seen the time when we have gone out at 1 or 2 o'clock in the afternoon because we have found a piece of a bill that took 25 minutes. We finally did find a bill that we disposed of in 25 minutes. We get to the end of that, and what else can we do? "Let's recess for an hour or two and try to find something else." In that time we have a little old bill that we think we can do in 30 minutes, and we do that one and we go out.

In the meantime, my brethren on this side of the aisle come to me and say, "What are you going to have up tomorrow? What are you going to have up this afternoon?" They will come to me at 1 o'clock in the afternoon and say, "What are you going to have up this afternoon? At 4 o'clock I have to catch a plane."

Many times I have to say, "I don't know; I can't tell you."

They say, "What are you going to have up tomorrow?"

"I can't tell you."

They say, "Well, what kind of majority leader is this? Is this what I voted for, for a majority leader? He can't tell me what we're going to have up at 4 o'clock this afternoon. Boy, if we had Lyndon Johnson back here——"

[Laughter.]

"Or, if we had so-and-so back here."

"BOB BYRD is supposed to know all these things. He is supposed to know the history of the Senate rules from 1789, when they moved to observe—they did not adopt—they just moved to observe 19 rules. He is supposed to know all this business, and he can't tell me. He is the majority leader and he can't tell me what we're going to have up at 4 o'clock. I know how I'll find out whether we're going to have that bill up. I know how I'll find out whether we're going to have any votes tomorrow. I'll put in a call to the Republican cloakroom."

[Laughter.]

So he just calls the Republican cloakroom, God bless them. I applaud them; they are great people; they are the cream of the Earth.

He calls the Republican cloakroom and says, "What are you going to have up tomorrow, the gas bill or the other bill?"

No, they are not going to have up that bill. It is not going to be up.

"Are there going to be any votes tomorrow?"

"No, no votes tomorrow."

He calls my cloakroom, and my cloakroom cannot answer any question from A to Z. ALAN CRANSTON cannot put a thing on his whip notice that he can count on, and I cannot answer any questions. Why? Because my hands and my legs are bound in shackles and in chains, and I have only a stone for a pillow on which to rest my head. That is because my friends on the other side simply say, "You can't take that up because so and so is out there in the middle of the lake. He is boating, and we cannot reach him. There is no telephone on that boat."

So that is the predicament. That is why, Mr. President, I thought I should offer an amendment here that would provide that on a motion to proceed, if cloture is invoked, we then vote up or down on that motion to proceed within 3 hours, which allows 2 days, 1 hour, plus 3 hours for the Senate to vote on the motion to proceed.

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

Mr. ROBERT C. BYRD. I would like to continue my eloquent discourse, and then I will be glad to yield.

I thought that would be the thing to do—offer this amendment; and while I have the votes, I do not have to go the 51-vote route now. We have the momentum; we have done very well today. We are up to a vote now.

I could say then, and the minority leader could say, this would really unlock—I am thinking of him, really. We should think of the other fellow, not of ourselves. I am thinking of the minority leader and the distinguished acting Republican leader.

I will say, "Ted, let's call up this bill."

He will say, "So-and-so has a hold on it."

I will say, "Just call him and tell him I am going to call it up."

He will say, "I'm glad you got that amendment a while back, because I'm going to tell him that if he doesn't let you call that up, you're going to move to take it up. As soon as you move to take it up, you will offer a cloture motion, and then you'll find a way to displace that motion and you'll go to something else. If you can't take that up, you'll offer a cloture motion to that and take up something else. You might move to adjourn for 10 seconds.

"So I'm sorry, Mr. so-and-so, out on that lake. I hear you, while the waters are shimmering and the fishing is good. But Senator BYRD has the bear where the hair is short, as they say down in West Virginia, and he is going to move to take that up. You had better give him a time agreement."

How thankful Senator STEVENS would be and how thankful HOWARD BAKER would be if we offered this amendment. No longer could they then be shackled by those holds.

Well, all serious talk aside——

Mr. STEVENS. Mr. President, will the Senator yield before he gets serious?

Mr. ROBERT C. BYRD. If the Senator will permit me to complete my statement, I will yield. I want to yield; I am constrained to yield now.

Inasmuch as Senator STEVENS and others have been so cooperative and helpful in working on Senate Resolution 61, I hope that in view of the fact that I have decided perhaps—perhaps—not to offer this amendment, I will not be confronted in the future with the problem of Senators putting on holds, going off and leaving town, discommoding the other Members of the Senate, while they are out of town.

The leadership on both sides of the aisle is prevented from calling up a measure, simply to meet the convenience of a Senator who wants to be out of town for a week, perhaps. The leadership on both sides is, perhaps not tonguetied, but certainly straitjacketed. I do not think it is fair for Senators to put holds on measures and hold their leaders to protecting them while they go off the reservation for a few days and the Senate has to do the best it can. So it is not just I but the leadership on the other side as well that is hamstrung from time to time by the business of honoring holds. If you do not honor them, you can move; but that motion is debatable. So there is not much we can do in that regard.

I hope that in view of the magnanimous gesture on my part of not calling up this amendment at the time when I have the votes, have a time agreement which provides for a vote on the measure at 6 o'clock—so I have it all in my hands. I have the time agreement to vote at 6 o'clock; I have the votes. Let us say all the votes over there are against me. I still have the votes. I can put this amendment over. I can pass that resolution. But I am not going to have any Senator think—well, I am not going to have him say. I do not think any Senator would actually think it. I am not going to have any Senator be able to say, "Well, Senator BYRD had this thing in mind all along. We gave him a time agreement, and he had this pig in a poke. He had this amendment up his sleeve."

I am not going to do that. I am just going to let this golden opportunity pass me by, and it probably will never come again.

I do that in recognition of the cooperation that I have been given. I would hope that the distinguished minority leader and the acting minority leader would help me in the future to insist on cooperation of Senators on our respective sides. Incidentally, I never have any problems on my side of the list. Only one or two Senators on my side put holds on from time to time. That is not quite right. There are a few Senators who put holds on, but I cannot recall an occasion when a Senator has been obstinate in maintaining that hold.

I might send Tom Hart to call him and he might get it turned down. If I go call him myself, as the usual thing the Senator says, "Well, go ahead and let somebody else call up my amendment. I don't want to do it. But if you have to do it, go ahead and call it up."

But in consideration of the fine cooperation that has been shown by especially the acting Republican leader and the Republican leader today and yesterday and heretofore in connection with the pending resolution, I am willing to forego the bird in the hand and perhaps for some time give up two in the bush, but I want to not only be fair I want to appear to be fair, Mr. President, and there is not a Senator on the other side who can honestly in his heart say that this amendment does not come within the spirit and the letter of the agreement. The amendment is necessary, because the rules are abused.

I am going to withhold it. I hope that the same spirit of cooperation that we have experienced in the action on this resolution will permeate the atmosphere of this august Chamber throughout the remainder of this Congress and that when I go to the other side of the aisle and ask for unanimous consent to take up a measure I will be allowed to take it up so that my cloakroom can accurately inform Senators as to what is going to happen and so that I can, also.

I yield to Mr. STEVENS.

Mr. STEVENS. Mr. President, I believe my good friend from West Virginia should be from Alaska. You know we have long-haired bears up there. It is a little hard to get them by the short ones. Perhaps that gives us the experience to deal with a problem such as this.

But I think that the majority leader has made the proper decision. We have been through the process that we have gone through now and in a period of days reached the point where I am prepared to accept Senate Resolution 61, and I will vote for it.

We have, I think, made substantial changes in the precedents of the Senate. There will be a cap on postcloture procedure. However, there is a provision in this resolution that gives every Senator the right to speak at least 10 minutes before that time expires even if the time has expired.

We have provided for the transfer of time to the managers of the bill. I have always advocated that because of the difficulty of being a manager of the bill. I wish that it could be possible to transfer time to another Senator who might be in opposition. But in order to protect against that, the leader will have time that can be transferred to them and they in turn can yield that time, and I presume that time that the leader will have will in fact be used for the opposition to the position taken by the bill managers when it is necessary to be fair.

We also have a provision that will eliminate some of the vexatious points of order that have been raised in the past, because if the bill is reprinted after cloture the amendments which were in order prior to the reprinting will be conformed to the new reprinting. That I think is a fairly easy thing to accomplish and it eliminates the inequity that is involved in reprinting a bill.

We also have another provision that says that no Senator may call up more than two amendments before every other Senator has had a similar opportunity. The legislative history now shows that it is the intent of that concept that there will be recognition between proponents and opponents of a measure so that one side will not be able to burn up all of the time in the postcloture procedure. I assume that that recognizes, also, the fact that it will be necessary to recognize Senators on either side of the aisle as the time is used up in the 100 hours of the postcloture procedure.

We eliminated the possibility of the reduction of the 100 hours down to 30 by a vote of 60 Members. I think that amendment which was accepted make Senate Resolution 61 more in line with the recognition of the rights of the minority on any issue.

We provided that after cloture is invoked reading of the Journal will be dispensed with and the reading of amendments will be dispensed with if they are printed and available for 24 hours at a Member's desk, and that printing does not mean printing from the Government Printing Office, but a reproduction in typewritten form.

We also have now for the first time, since the cloture provision went into effect, adopted an amendment which will permit second-degree germane amendments to a first-degree amendment if those amendments are on the desk at least 1 hour prior to the vote on cloture.

Those are substantial revisions of the cloture procedure, all of which I am prepared to support.

There are some items which I wish were more precise in terms of protection of the rights of the minority, but I call attention to the fact that it is possible to increase the 100-hour cap in the event there are some Members who have substantive business to present to the Senate after cloture and have not been able to do so, because of the time limitations.

All in all, I think this is a good way to start this session of Congress. We have worked hard and long. I think that it would be hard to record really the number of meetings that we have had both on and off the floor since we have convened. And we have made substantial changes in the resolution as it was originally presented. The resolution as it will be voted on in a few moments, as I have indicated, makes many substantial and positive changes in the existing rule XXII.

The decision of the majority leader not to bring in the amendment pertaining to the issue of taking up a measure I think is a good one because, as I pointed out to him, in the last Congress we failed on only two occasions to get a time agreement. It is, I think, important to realize and the majority needs to realize that the unrestrained use of the majority power can lead only to the unrestrained exercise of the rights of the minority and that can eventually lead to just total hiatus in the legislative process.

We are the crucible of democracy as far as this country is concerned, and that crucible needs a good deal of mixing before anything is produced that is of consequence. That is why we are called the greatest debating society on Earth.

I like to believe that we might return to that and really be worthy of that appellation. I do not think we really are yet.

But certainly I would be remiss if I did not, first, thank the majority leader for his compliment to the Members of the Republican cloakroom. They are very accurate. They get their information, of course, from the majority staff who have a crystal ball on really what the majority leader is going to do.

I also think that before we wind up here, we ought to thank those people who have been involved in this whole process: Dr. Riddick, our Parliamentarian Emeritus, who has come back to us to help make certain that we are not abusing the rules too much as we seek to change them; Murray Zweben and Bob Dove and the others; the staff members that we have used on this side of the aisle, Marty Gold, Sheri Marshall, and my assistant, Steve Perles. I think we ought to thank them all for the long hours, and particularly the weekend hours that most people have not even seen, as we have gone through this procedure.

We have an agreement to vote not later than 6. I wonder if I might inquire of the majority leader if it might be possible to start that vote, so that it might be possible for some Senators to make an aircraft.

Mr. STENNIS. Mr. President, will the majority leader yield me 2 minutes?

Mr. STEVENS. I yield the floor.

Mr. ROBERT C. BYRD. Yes.

Mr. STENNIS. Mr. President, I have been concerned about the proposed changes. I have counseled with fellow Members; I have not taken part in the debate. I have been involved in other matters. But my plea was that the Senate must not surrender its distinctive features, the features that make it different—different from just the ordinary, regular run legislative body.

I am delighted to be able to support, now, wholeheartedly, what these gentlemen have worked out on both sides of the aisle through very earnest effort on their part. I think the measure as it now reads will clean up the cloture rule and provide a better cloture rule for minority and majority than we have now. It saves the distinctive features of the Senate, as I have said; it makes matters more workable here.

I like to recall that in the old days, when we did have a lot of filibusters, they ran strictly on the merits. Every speech was relevant. When cloture was voted, if at all, then the opposition tried to be graceful about withdrawing and bowing to the will of the Senate under its rules, and letting the vote come. I think we created good will thereby in the country and in this body—getting ready for the next filibuster, maybe, but it was good policy, and good will came about, as I believe good will will come about here.

I have a word to say about what the majority leader says about holding up his bills while someone goes to make a

speech. I am proud of him for having withdrawn his amendment here. I believe that is in the area of self-discipline, and we all have to discipline ourselves, every Member here. We have got to do that, lest we destroy the nature of this body. We have gone too far already in most of our debates. I think each Member should consider that it is his duty not to be holding up the Senate here just for his own convenience, or immediate convenience, or just to make a speech on a matter that he wants to do. I have to make a choice either to stay here or to leave, and as a Senator, that is the only privilege I have, to make that choice not to hold up everything here while I am gone.

Maybe in the caucuses we could discuss this. Maybe we could debate it. Maybe the leaders could urge us to. But let us have some move come from the floor here, of self-discipline, and I believe we can improve our situation.

I thank the majority leader for yielding to me, and I wholeheartedly support his resolution.

Mr. ROBERT C. BYRD. I thank the Senator for his comments and the support he has given the leadership in its effort to bring the resolution to this point. I have only a question or two.

May I make the following inquiry of the Chair?

The PRESIDING OFFICER (Mr. MATSUNAGA). The Senator from West Virginia.

Mr. ROBERT C. BYRD. The language beginning on page 1, line 4 of Senate Resolution 61 reads as follows:

> After no more than one hundred hours of consideration of the measure, motion, or other matter on which cloture has been invoked, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all amendments not then actually pending before the Senate at that time and to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins.

Now, Mr. President, in a situation such as this, in which there has been a time gap of 100 hours, and that will have expired the matter will have been voted on, and a motion to reconsider is made, would that motion to reconsider be debatable?

The PRESIDING OFFICER. The Chair advises the Senator from West Virginia that it would not be.

Mr. ROBERT C. BYRD. I thank the Chair. Now, Mr. President, I ask the Chair this question: Taking the same set of circumstances in which the 100 hours have expired, the measure is voted on up or down, a motion to reconsider is made, and a motion to table is made; the motion to table fails, the motion to reconsider carries, and the Senate is back on the measure. Does not the Senate have to immediately, without debate, without amendments, and without any motions, vote on the motion to reconsider?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. So that the reconsideration of the measure would not open it up to any additional time; all time would have been gone before the vote?

The PRESIDING OFFICER. The Senator is correct.

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

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. I want to state for the record that that is the understanding of the minority of the proper interpretation of the resolution at this time.

Mr. ROBERT C. BYRD. Mr. President, I, too, want to thank Senators and staffs, and especially want to thank, on my side of the aisle, Senator SARBANES, who has been on the floor at all times during the debate on this matter. I want to thank Senator NELSON, who has carried the ad hoc committee. May I say that Senator SARBANES has been a very able proponent of the resolution, and a very able exponent of its terms, and has very ably defended it against crippling amendments.

I want to thank Senator NELSON for chairing the Ad Hoc Committee on Rules, and for the effort, the work, and the contributions he has made in connection with bringing to the floor the resolution.

Also, I want to thank Senator CRANSTON and Senator NUNN, who were members of that ad hoc committee, and I want to thank Senators MOYNIHAN and HUDDLESTON, and Senator LONG, who was also a member of the ad hoc committee.

I express my appreciation to the acting Republican leader, who is chairman of the ad hoc committee on his side of the aisle. I express my gratitude to the members of that ad hoc committee, and to the Republican leader and all Senators who have made contributions and offered amendments.

Also, a moment ago, in mentioning my own ad hoc committee, I inadvertently omitted the name of Senator MUSKIE. I also wish to express my gratitude to him.

Mr. STEVENS. Will the Senator also permit me to mention Senator HATFIELD, Senator MCCLURE, Senator JAVITS, and Senator CHAFEE, who were members of the ad hoc committee on this side? I think it has been a very worthwhile exercise, and the result is one we should all be willing to support.

Mr. ROBERT C. BYRD. Mr. President, I want to thank the Parliamentarian Emeritus, Dr. Riddick, who is the author of this book on procedure, and also, incidentally, the author of another book on the Congress I used when teaching a course over at American University.

I want to thank Murray Zweben, the Parliamentarian, and his assistant, Robert Dove.

I want to single out one aide who has been especially sagacious and very helpful in connection with this entire matter, Mary Jane Checchi.

Now, Mr. President, as far as I am concerned, we are ready to vote.

Mr. STEVENS. Mr. President, we are also ready to vote.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the adoption of the resolution, as amended.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the resolution, as amended. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida (Mr. CHILES) and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I also announce that the Senator from Georgia (Mr. TALMADGE) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from North Carolina (Mr. HELMS). If present and voting, the Senator from Oregon would vote "yea" and the Senator from North Carolina would vote "nay."

The PRESIDING OFFICER. Is there any Member who has not yet voted? Is there any Senator who has not yet voted?

The result was announced—yeas 78, nays 16, as follows:

[Rollcall Vote No. 6 Leg.]

YEAS—78

Baker	Exon	Nelson
Baucus	Ford	Nunn
Bayh	Glenn	Pell
Bellmon	Gravel	Percy
Bentsen	Hart	Pressler
Biden	Hayakawa	Proxmire
Boren	Heinz	Pryor
Boschwitz	Hollings	Randolph
Bradley	Huddleston	Ribicoff
Bumpers	Inouye	Riegle
Burdick	Jackson	Roth
Byrd, Harry F., Jr.	Javits	Sarbanes
Byrd, Robert C.	Johnston	Sasser
Cannon	Kassebaum	Schweiker
Chafee	Leahy	Stafford
Church	Levin	Stennis
Cochran	Long	Stevens
Cohen	Lugar	Stevenson
Cranston	Magnuson	Stewart
Culver	Mathias	Stone
Danforth	Matsunaga	Tsongas
DeConcini	McGovern	Weicker
Domenici	Melcher	Williams
Durenberger	Metzenbaum	Young
Durkin	Morgan	Zorinsky
Eagleton	Moynihan	
	Muskie	

NAYS—16

Armstrong	Humphrey	Thurmond
Dole	Jepsen	Tower
Garn	Laxalt	Wallop
Goldwater	McClure	Warner
Hatch	Schmitt	
Heflin	Simpson	

NOT VOTING—6

Chiles	Helms	Packwood
Hatfield	Kennedy	Talmadge

So the resolution (S. Res. 61), as amended, was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the resolution, as amended, was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, in conformity with my promise to the distinguished minority leader, I will shortly adjourn for a very brief period so as to put the Senate into the second legislative day.

As the distinguished Senator from Tennessee knows, I can get the remainder of this on the Calendar, but I wonder if he would have objection if I just asked that the remainder of the Senate Resolution 9, excluding the portion we have adopted——

Mr. STENNIS. Mr. President, would the Chair maintain quiet?

The PRESIDING OFFICER. The point of order is well taken. The Senate will be in order, and Senators will cease conversations on the floor.

The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I am going to adjourn, the Senator has my word on that.

SENATE RESOLUTION 9—UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the remainder of Senate Resolution 9, stripped of the postcloture provisions that have been adopted now, amended, be placed on the calendar, and it can be understood that any motion to invoke cloture—well, first of all, a motion to proceed would be debatable because it is a motion to change the rules and it does not come within the morning hour exclusion. So that would be debatable and would require two-thirds to invoke cloture on that motion to proceed and would also require two-thirds to invoke cloture on the measure itself if it were ever called up.

With that understanding, I ask unanimous consent that the remainder of Senate Resolution 9 go on the General Calendar.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. Reserving the right to object, and I will not object——

The PRESIDING OFFICER. The Senator from Tennessee reserves the right to object.

Mr. BAKER. Mr. President, could we have order in the Senate?

The PRESIDING OFFICER. The point of order is well taken. The Senate will be in order.

The Senator from Tennessee.

Mr. BAKER. Mr. President, the majority leader, of course, correctly states the situation when he says that without unanimous consent he could very promptly take this matter to the calendar. Therefore, there is simply no purpose in objecting to this request, and I hope there will not be an objection to this request at this time.

I might also say briefly, Mr. President, that I wish to extend my congratulations to the distinguished majority leader for careful, thorough debate of this issue, and I think a good result after these many weeks of consideration.

I would like to pay special tribute to the distinguished Senator from Alaska, the Republican whip, who has performed in an extraordinarily capable way. He has been diligent in his attention to this detail. I think we have come through in such a fine fashion, having come so far from the original problem that confronted the Senate, that we owe a special debt of gratitude to him.

Mr. President, I do not have——

Mr. JAVITS addressed the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from New York reserves the right to object.

Mr. JAVITS. Mr. President, if we may have order, I wish to make an observation, too.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from New York.

Mr. JAVITS. Mr. President, after a considerable amount of soul-searching, I voted "aye" on this matter, and I would like to state to the Senate, especially the majority leader and the minority leader, why.

I do feel that we have enacted a major restraint on our liberties as Senators in respect of the time allotted to each Member and his ability to use it and the fact that the time cap can be chewed up by quorum calls and rollcalls so as to deprive Members of their rights for rollcalls on proper amendments, legitimate amendments, and for quorums if no quorum is here to hear them, and for proposing amendments and the resulting votes.

But, Mr. President, we are faced with an actuality and not a theory. That actuality is that it is an even greater restraint on our liberties if the ability to filibuster postcloture, as the ability to filibuster precloture, can deprive the Senate of the right to vote on a measure, which it could do if these practices should continue. Also, it encourages the kind of steamroller so damaging to Senator's liberties as the ruling out of amendments wholesale we saw in the Senate last year on the energy bills after cloture had been voted.

The majority leader has undertaken certain good faith commitments in respect of this debate. I hope and pray this works out and that all my fears are proven wrong, and I want to give it a chance. We will have another opportunity, if it does not work out, in 2 years to do exactly what he now has put himself on the side of as a proper procedure.

So, Mr. President, just for posterity, it is those reasons which dictated my doing what I did.

Mr. President, I do not wish what I have done to any way prejudice my ability, or that of any other Member who may be here in my place or anybody else's place, to raise this issue of the right of a majority of the Senate to change the rules of the Senate at the time of a new Congress. This is exactly the procedure the majority leader invoked on this very resolution.

I thank my colleagues.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

Without objection, it is so ordered. The unanimous-consent request is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of Senate Resolution 61.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be printed in the RECORD today Senate Resolution 61 as amended, as agreed to, and that a step-by-step analysis of Senate Resolution 61, as amended, be printed in the RECORD under my name in the RECORD of Monday, February 26, 1979.

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

The text of Senate Resolution 61, as amended, and as agreed to is as follows:

S. RES. 61

Resolved, That paragraph 2 of rule XXII of the Standing Rules of the Senate is amended by inserting at the end thereof new paragraphs as follows:

"After no more than one hundred hours of consideration of the measure, motion, or other matter on which cloture has been invoked, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all amendments not then actually pending before the Senate at that time and to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins. The one hundred hours may be increased by the adoption of a motion, decided without debate, by a three-fifths affirmative vote of the Senators duly chosen and sworn, and any such time thus agreed upon shall be equally divided between and controlled by the Majority and Minority Leaders or their designees. However, only one motion to extend time, specified above, may be made in any one calendar is reprinted after cloture has been invoked.

"If, for any reason, a measure or matter is reprinted after cloture has been invoked, amendments which were in order prior to the reprinting of the measure or matter will continue to be in order and may be conformed and reprinted at the request of the amendment's sponsor. The conforming changes must be limited to lineation and pagination.

"No Senator shall call up more than two amendments until every other Senator shall have had the opportunity to do likewise.

"Notwithstanding other provisions of this rule, a Senator may yield all or part of his one hour to the majority or minority floor managers of the measure, motion, or matter or to the Majority or Minority Leader, but each Senator specified shall not have more than two hours so yielded to him and may in turn yield such time to other Senators.

"Notwithstanding any other provision of this rule, any Senator who has not used or yielded at least ten minutes, is, if he seeks recognition, guaranteed up to ten minutes, inclusive, to speak only.

"After cloture is invoked, the reading of any amendment, including House amendments, shall be dispensed with when the proposed amendment has been identified and has been available in printed form at the desk of the Members for not less than twenty-four hours.".

Resolved, That the last paragraph of paragraph 2 of rule XXII is amended by striking the second sentence and inserting in lieu thereof: "Except by unanimous consent, no amendment shall be proposed after the vote to bring the debate to a close, unless it had been submitted in writing to the Journal Clerk by 1 o'clock p.m. on the day following the filing of the cloture motion if an amendment in the first degree, and unless it had been so submitted at least one hour prior to the beginning of the cloture vote if an amendment in the second degree.".

Resolved, That paragraph 1 of rule III of the Standing Rules of the Senate is amended—

(1) by inserting "(a)" before "The" in the first sentence;

(2) by striking "The" in the second sentence and inserting in lieu thereof: "Except as provided in subparagraph (b), the"; and

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

"(b) Whenever the Senate is proceeding under paragraph 2, rule XXII, the reading of the Journal shall be dispensed with, and shall be considered approved to date.".

DEATH OF U.S. AMBASSADOR TO AFGHANISTAN

Mr. PELL. Mr. President, it was exactly 1 week ago yesterday that our Ambassador to Afghanistan, Adolph (Spike) Dubs, was killed as a result of a reckless effort by Afghan authorities to rescue him from kidnapers in a manner contrary to the advice and pleadings of our Embassy. So far there has been no official apology or acceptance of responsibility by the Afghan Government for the tragic death of Ambassador Dubs; nor has the Carter administration done anything except to send a protest note—no more than a slap on the wrist—to register our Government's shock and disapproval over what happened to one of our finest career diplomats.

I would like to express my deepest condolences to the widow of Ambassador Dubs, Mary Ann Dubs, who has been an employee of the Senate for 8 years and is currently editor of the Senate Daily Digest. In fact, she occupies an office next to mine in the Capitol.

In my view, we should take strong action to demonstrate that nations that refuse to take the proper measures to insure the safety of American Ambassadors must expect a prompt and meaningful reaction from us. In this connection, I believe President Carter should take the following actions immediately and am writing him accordingly:

First. Inform the Afghan Government that we will not reappoint an Ambassador until an official apology is extended by the Afghan Government and full responsibility for Ambassador Dubs' death is accepted. The Afghan Government should also be required to provide adequate protection to all official U.S. Government personnel in Afghanistan and to provide assurances that in the future it will be guided by U.S. Government advice in the handling of threats to the lives of its representatives.

Second. Reduce our Embassy personnel by one-half and request the Afghan Embassy in Washington to do the same.

Third. Terminate our $15 million aid program and withdraw all of our AID personnel until further notice.

Fourth. Withdraw all Peace Corps volunteers until further notice.

I am frankly shocked and outraged that the Afghan Government has rejected even our note of protest over the mishandling of the Dubs case and sent only a midlevel Foreign Ministry official to the memorial service held in Kabul, the Afghan capital. Common decency alone would have dictated a higher level of attendance and official expression of regret for what happened.

Because of the gross insensitivity and rudeness of the Afghans, we must act immediately. Time is of the essence, as the longer we wait to demonstrate the depth of our disapproval, the less impact our actions will have. Frankly, I should have thought that options would have been in place for immediate action by the President in this case.

As an avid student of history, I am reminded that almost 250 years ago Great Britain initiated the War of Jenkins Ear when Spain had the temerity to cut off the ear of a British citizen. While I am not advocating dispatching the Marines to Afghanistan, I believe strongly that we must not supinely accept an outrageous action by a third rate power that has already made clear in so many ways that it is no friend of ours.

Furthermore, as a former career Foreign Service officer myself, I am deeply distressed that during the past 11 years five American Ambassadors have lost their lives abroad because of inadequate protection from host governments—John Mein in Guatemala (1968), Cleo Noel in Sudan (1973), Roger Davies in Cyprus (1974), Francis Meloy in Lebanon (1976), and now Adolph Dubs. By comparison, only seven military personnel of general officer rank lost their lives in combat during the entire Vietnam war.

Mr. President, our Government must send a strong message to the Government of Afghanistan and make it clear that we will not tolerate the kind of treatment that led to Ambassador Dubs' death. Now is the time to act.

A NEW AMBASSADOR NEEDED IN IRAN

Mr. EAGLETON. Recent news accounts have indicated that President Carter is considering the appointment of a new American Ambassador to Iran. As the scope of the American intelligence-gathering failure in Iran becomes more clear, so does the need for a new American Ambassador.

The intelligence failure in Iran was unique. Usually, such a failure is the result of misinterpretation of conflicting evidence. In Iran, there was no conflicting evidence. All of the evidence we allowed ourselves to gather pointed to the same conclusion, and all of it was absolutely wrong.

This was the result of a very curious policy followed by a succession of American Presidents, including Nixon, Ford, and Carter. Those administrations decided that we would deliberately close our eyes and ears in Iran, and take our intelligence there exclusively from the Shah and his minions. I know of no other nation on Earth where we have followed such a policy of consciously and intentionally restricting our intelligence gathering to a sole, and very obviously biased, source.

This policy was implemented in Iran by a series of American Ambassadors, including former Ambassador Richard Helms. When a Senate delegation of which I was a member visited Iran in 1976, I expressed to Mr. Helms my desire to ask the Shah some tough questions about American arms in Iran and other subjects. Ambassador Helms cautioned us that we should not ask any questions which might upset the Shah. Apparently, it was not enough that we limit our sources in Iran to just one person, the Shah. We also felt we had to limit our intelligence conversations with that sole source to only those topics he found pleasant to discuss.

The current Ambassador, William H. Sullivan, is the latest practitioner of this "see no evil, hear no evil" style of intelligence gathering. As late as September of last year, he was telling us that "all is well" with the Shah. Ambassador Sullivan thus marked himself either as the victim or as the perpetrator of our blind man's bluff foreign policy toward Iran. In either event, his use to us as Ambassador to the new Khomeini regime is ended.

Khomeini's followers cannot trust Ambassador Sullivan, whom they regard as the "Shah's man." Furthermore, the American people no longer can believe Ambassador Sullivan, whose rosy but baseless reports helped to lead us down the primrose path in Iran. The Ambassador's continued presence in Iran will be an impediment to the development of any working relationship between the United States and the new Iranian regime.

Mr. President, last Sunday's St. Louis Post-Dispatch featured an article by Thomas W. Ottenad which shed a great deal of light on our intelligence problem in Iran. I ask unanimous consent that Mr. Ottenad's article be printed in the RECORD.

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

"CRITICAL WEAKNESS" IN U.S. INTELLIGENCE

(By Thomas W. Ottenad)

WASHINGTON.—The revolution in Iran has dealt the United States a jolting aftershock with uneasy implications that stretch from the corner gas station to perhaps the world balance of power.

Most visible was a stunning failure by American officials, who seemed blissfully unaware of what was developing in the Middle East nation, which oil and successive presidents had made so important to this nation's security.

Their oblivion, their deliberate avoidance of anti-shah forces, continued even after the revolutionary movement led by Ayatollah Khomeini had swept to power.

As recently as 10 days ago, a foreign policy expert outside government ranks told the Post-Dispatch, he tried to arrange meetings here for Shahriar Rouhani, a self-described representative of the Moslem religious leader, now acting as a spokesman for Iranian diplomats in Washington.

Despite the American need for almost any kind of contact with the Khomeini forces,

two top officials of the State Department refused to see Rouhani, the source said. It would be "risky," they said, to talk to the 29-year-old former doctoral student at Yale.

This long-standing practice of virtually ignoring those who opposed the shah when he was in power is, in the judgment of congressional investigators, "the critical weakness" in American intelligence operations in Iran.

Their inquiry, triggered by complaints about the U.S. performance, led them to conclusions that are disturbing for the future. For while they found serious weaknesses in the intelligence community's operation, they warned that "simplistic charges of 'intelligence failure' do not accurately describe the situation."

In their report three weeks ago the staff of a House Intelligence subcommittee indicated that President Jimmy Carter and his top foreign policy officials must share the blame for the U.S. failure to assess accurately the political whirlwind that was developing in Iran.

"Policymakers must assume responsibility, perhaps to a greater degree than the intelligence community, for the unwritten considerations which restricted both open and clandestine intelligence field collection on the Iranian internal situation," the report stated.

It said that "long-standing attitudes toward the shah" not only inhibited actual collection of intelligence information but also "dampened policymakers' appetite for analysis of the shah's position and deafened policymakers to the warning implicit in available current intelligence."

The report did not mention Carter or his chief foreign policy advisers by name. However it referred pointedly to "users" of intelligence, noting that over the past year considerable intelligence on the developing crisis was "received" at the White House for inclusion in the president's daily reading and was distributed also to other senior officials.

With the benefit of hindsight the shortcomings cited in the congressional study are shocking:

—CIA intelligence reporting on the internal situation in Iran was "minimal" before late 1977 (the first religious riots in the current situation erupted in late 1977 and early 1978). In the two previous years the CIA produced no reports based on contacts with the religious opposition that was to lead the revolt against the Shah.

—No "significant insights" from contacts with opposition elements appeared before last September in the State Department's "Morning Summary," one of the two chief sources of current political intelligence for senior policy officials in Washington.

—Neither it nor the other major source, the CIA's "National Intelligence Daily," emphasized the Iranian situation in the early part of 1978 despite the most severe rioting in a decade.

—"Practically no production (intelligence analyses) addressed the question: Will the shah survive the challenge posed by current disturbances?"

—U.S. policymakers showed little interest in questioning the shah's performance in power although American policy in the Persian Gulf relied heavily on his actions.

—In early 1978 a CIA paper described the growing opposition in Iran as no more than "troublesome."

—In a "prognosis" last Sept. 28 the Defense Intelligence Agency reported that the shah "is expected to remain actively in power over the next 10 years." That was less than four months before the shah went into exile.

—The first major policy gathering of American intelligence officials and policymakers in the evolving crisis was not held until last Oct. 27.

The report concludes that there was "a warning failure," with the attention of top policymakers not being brought forcefully to bear on Iran until October 1978. Even after a review the next month of American policy options, the result was nothing but assurance to the shah by President Carter of support for the monarch's efforts to restore order.

It is not only outside critics like these congressional investigators who fault the American intelligence performance during events leading to the Moslem takeover in Iran. President Carter complained last fall about the quality of intelligence he was receiving. And CIA Director Stansfield Turner now concedes that his agency was caught by surprise by Iran's "truly national revolution."

If, as the administration hopes, the failures of intelligence agents and policymakers are now behind us, the impact of the Iranian upheaval on American foreign policy still lies ahead. And some analysts here already are worried by the first response of the Carter administration.

What concerns them is the same factor that worried former Sen. Fulbright at that secret Senate Foreign Relations Committee hearing 23 years ago: The tendency of the United States to seek security by pouring military aid into strategically placed nations, even those that are small and unstable.

Last Saturday, the day before the Tehran government fell to the forces of Ayatollah Khomeini, Secretary of Defense Harold Brown was in Saudi Arabia at the start of a 10-day Middle East trip to reassure nations there that the U.S. remains a reliable ally even though it failed to keep the shah of Iran in power.

In Riyadh he pledged publicly that the U.S. is ready to go to war to defend Saudi Arabia against an external military threat. He also said the U.S. is willing to sell jet warplanes to North Yemen and Sudan, two of the Saudis' client states.

That promise comes on top of last year's controversial package deal in which Carter decided to sell jet warplanes not only to Israel but to Saudi Arabia and Egypt as well.

"What worries me," remarked R. Adm. Gene R. LaRocque, head of a national security think tank here, "is that we are going in the same damn direction with Saudi Arabia as we did with Iran. In the long run, we helped bring about (the upheaval in Iran) by providing guns ($8 billion worth) to the shah."

Massive military assistance has not worked for either super-power, he asserted. The Soviet Union tried it, only to find itself later "kicked out of" China, Indonesia, Egypt and Somalia, he noted.

The U.S. had similar experiences, he went on, in Vietnam, Ethiopia, Libya and now Iran.

Noting Secretary Brown's assurance to the Saudis, LaRocque suggested, "The president doesn't want to be accused of losing Iran. And if he is, then he wants to be able to say he at least has Saudi Arabia."

He predicted, as Brown's action would appear to suggest, that the Iranian upheaval will lead the U.S. to try to develop a compensating military buildup elsewhere in the Middle East.

He warned, however, that such a move would rest on a "weak reed." He pointed out that states where such action could be taken are, like Egypt, North Yemen and Sudan, largely financed by Saudi Arabia. That might be a "heavy burden," even for the Saudis, he suggested.

The overthrow of the shah in Iran suggests that the same sort of thing could happen in other Middle Eastern countries, observed Carl Marcy, former head of the staff of the Senate Foreign Relations Committee.

"Forces operating in that part of the world," he remarked, "are disintegrative . . . and are becoming very strong. It's a kind of disintegration into factions, which may be catching and cannot be confined to national boundaries . . . There are more powerful forces than the military in that part of the world."

Marcy raised the possibility that this kind of upheaval may be occuring now in Afghanistan. A leftist coup occurred there last April. Adm. LaRocque predicted that Turkey and, in another part of the world, South Korea, might become targets of religious or other revolutionaries.

In the judgment of some, the new uncertainty in Iran may encourage new competition between the United States and the Soviet Union.

The competition already appears under way in Iran. The United States now has extended formal recognition to the regime set up by Ayatollah Khomeini. President Carter has offered cooperation by this country.

At the same time, the Russians appear to be fishing in the troubled waters there. They moved quickly to recognize the new Khomeini-run government. The Kremlin has been energetically promoting the view that Iran is heading onto a revolutionary socialist path similar to that already taken by Angola, Ethiopia and Afghanistan.

The Russians already have been active in Afghanistan. By some accounts Soviet advisers virtually have been running the Asian nation which lies just east of Iran.

Afghanistan already has put a new strain on Soviet-American relations. The U.S. made a spirited and angry protest over the presence of Soviet advisers on Wednesday when U.S. Ambassador Adolph Dubs was killed as Afghan police rushed kidnapers holding him hostage.

Reports from the Middle East indicate that the Islamic revolution in Iran has caused conflicting emotions in the Arab world. There is joy over the tough stand taken against Israel and, to a lesser extent, the U.S. by the new government in Tehran.

But for pro-Western Arabs there is not joy but fear. With the shah toppled from his throne, they are beginning to wonder whether the same fate may befall them.

Outside the Middle East, as well as within it, the fall of the shah is seen as a major defeat for the U.S. Recalling former President Richard M. Nixon's phrase, a Viennese newspaper last week described the Iranian events and the death of Ambassador Dubs as "only the latest of a number of setbecks which threaten to make a 'helpless, pitiable giant' out of the superpower."

While the international effects of the Iranian revolution are somewhat remote, the domestic impact may be felt every time Americans stop at the corner gas station or turn up their thermostat.

With the U.S. depending on Iran for 5 percent of its total oil supplies and with the revolution and its aftermath cutting deeply into production, the future is uncertain. Most forecasts, however, agree that gasoline is likely to be in short supply and prices are going to go up.

The Iranians themselves contradict each other as to what they intend to do. Shahriar Rouhani, the former student who now purports to speak in Washington for Iran's new government, offered a hopeful prognosis this week.

Within 8 to 10 weeks, he said, Iran will be able to resume oil production. And within a few months, he said optimistically, output will be near Iran's usual 6,000,000 barrels a day.

That scenario is far different from one sketched in Tehran last Saturday by one of Khomeini's closest economic advisers. Asserting that the rate at which Iran has been producing oil is unnecessarily high, he proposed reducing it by 60 percent.

A cutback of that amount would cut sharply into Iranian exports, which before

the revolution-induced reduction accounted for about 10 percent of the West's oil consumption last year.

And some American officials predict that cutbacks will be made by other oil producers also. Deputy Energy Secretary John F. O'Leary predicted that the uprising against the shah will frighten other nations like Saudi Arabia, Mexico and Kuwait into adopting conservative oil production policies. The result, he added, is that world oil supplies will tighten between 1981 and 1985.

Oil analysts predict that another general increase in world oil prices is likely because of the impact of reduced Iranian exports. Two small producers—Abu Dhabi and Qatar—boosted their prices last week. They raised them 7.2 percent above the increased price put into effect by members of the Organization of Petroleum Exporting Countries (OPEC) on Jan. 1.

In addition, Saudi Arabia recently put a special 5 percent surcharge on additional oil it is producing to compensate for the Iranian shutdown.

In the face of gloomy uncertainty, the Carter administration has attempted to remain moderately hopeful. Both President Carter and Secretary of Energy James R. Schlesinger have maintained, as the president said at his press conference on Monday, that "the situation is not crucial now, it is not a crisis."

They have warned, however, that if Iranian production does not resume soon, it may become necessary to deal with resulting shortages by requiring filling stations to close on Sunday and by other measures.

Despite the administration's optimism, there are some worrisome straws already in the wind. In Illinois, gasoline dealers have been requested by their state association to close on Sundays starting Feb. 25.

In addition, some airlines have curtailed their flight schedules because of a shortage of jet fuel.

At this point, it appears likely that the aftershock of the Iranian revolution will continue to rumble through the United States, perhaps with effects not yet anticipated, for some time to come.

ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in adjournment for 1 second.

The PRESIDING OFFICER. Is there any objection?

Without objection, it is so ordered.

Thereupon, at 6:18:06 p.m. on Thursday, February 22, 1979, the Senate adjourned for 1 second, until 6:18:07 p.m., the same day.

AFTER ADJOURNMENT

THURSDAY, FEBRUARY 22, 1979

The Senate met at 6:18:07 p.m., pursuant to adjournment, and was called to order by Hon. SPARK M. MATSUNAGA, a Senator from the State of Hawaii.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal be dispensed with.

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

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a 1-minute period for the transaction of routine morning business with no resolutions coming over under the rule.

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

Mr. HARRY F. BYRD, JR. Reserving the right to object.

The PRESIDING OFFICER. Is there morning business?

The Senator from Virginia.

Mr. ROBERT C. BYRD. The Senator from Virginia will be taken care of.

Mr. HARRY F. BYRD, JR. I thank the Senator.

SENATE JOINT RESOLUTION 3—MUTUAL DEFENSE TREATIES

The PRESIDING OFFICER. The Senate having adjourned, two resolutions having been read for the first time will now be read for the second time.

The second assistant legislative clerk read as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of the Congress that approval by the Senate of the United States is required to terminate any Mutual Defense Treaty between the United States and another nation.

Mr. HARRY F. BYRD, JR. I object to further consideration.

The PRESIDING OFFICER. Objection having been heard to further proceedings, the measure will now go to the calendar.

SENATE JOINT RESOLUTION 28—DIRECT POPULAR ELECTION OF THE PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES

The PRESIDING OFFICER. The clerk will read the second resolution.

The second assistant legislative clerk read as follows:

A joint resolution proposing an amendment to the Constitution to provide for the direct popular election of the President and Vice President of the United States.

Mr. BAYH. Mr. President, I object to further consideration.

The PRESIDING OFFICER. Objection having been heard, the matter will go to the calendar.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask that I may be recognized.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROBERT C. BYRD. Mr. President, I will yield to the distinguished Senator from Washington (Mr. JACKSON), who will make a motion which he is entitled to make under the law with regard to a resolution he has introduced and which he, himself, in conformity with the law, supports.

I yield to the Senator for that purpose.

Senators might be on notice that there will be a rollcall vote on that matter before this day ends.

Mr. JACKSON. Within 1 hour.

Mr. ROBERT C. BYRD. Under the law, there is a total of 1 hour allowed for debate. Is it up to 1 hour or 1 hour?

Not to exceed 1 hour, so it could be less.

Mr. DOMENICI. Mr. President, a parliamentary inquiry. Is that hour divided, under the rule?

Mr. ROBERT C. BYRD. Yes.

Mr. DOMENICI. Who will have the time on our side?

The PRESIDING OFFICER. The Senate will be in order.

In response to the parliamentary inquiry, the Chair advises the Senator from New Mexico that the time will be divided equally between the proponents and opponents.

Mr. DOMENICI. Might we ask that the minority leader be designated as the opponent for time on this matter?

Mr. JOHNSTON. Mr. President, I think it would properly come under——

The PRESIDING OFFICER. The Senator from West Virginia has the floor. Will the Senator from West Virginia yield?

Mr. DOMENICI. Will the Senator yield for an inquiry?

Mr. ROBERT C. BYRD. I yield.

Mr. DOMENICI. I am just trying to find out who will have control of the half hour in opposition to the proposal of the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington being the proponent, he will control the time for the proponents.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the minority leader or his designee be in control of the time for the opponents, regardless of what side he is on.

The PRESIDING OFFICER. Is there objection?

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from Virginia reserves the right to object.

Mr. HARRY F. BYRD, JR. A parliamentary inquiry: Is it not the normal procedure at this point to read the resolutions and motions, under the rules?

Mr. ROBERT C. BYRD. Will the Senator from Virginia repeat his question?

I have not yielded the floor.

The PRESIDING OFFICER. The Senator from Virginia reserved the right to object to a unanimous-consent request made by the Senator from West Virginia.

Mr. ROBERT C. BYRD. And I did not yield the floor.

The PRESIDING OFFICER. The Senator is correct.

Mr. HARRY F. BYRD, JR. My parliamentary inquiry is this: Before going to the matter——

The PRESIDING OFFICER. Does the Senator from West Virginia yield for a parliamentary inquiry?

Mr. ROBERT C. BYRD. Yes, I yield for a parliamentary inquiry.

Mr. HARRY F. BYRD, JR. Before going to the matter to be taken up by the Senator from Washington, is it not the normal procedure to read the resolutions and motions coming over under the rule?

The PRESIDING OFFICER. That would be the case, unless the unanimous-consent request made by the Senator from West Virginia is agreed to.

Mr. HARRY F. BYRD, JR. What unanimous-consent request?

The PRESIDING OFFICER. That we have morning business, without matters coming over under the rule.

Mr. HARRY F. BYRD, JR. No unanimous-consent request to waive that was made by the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I call attention to the fact that I ask for only 1 minute for morning business. Did I not?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Has the 1 minute expired long ago?

The PRESIDING OFFICER. The 1 minute has expired.

Mr. ROBERT C. BYRD. And do I not have the floor?

The PRESIDING OFFICER. The Senator from West Virginia does have the floor.

Mr. ROBERT C. BYRD. Does not that succession of events prevent the matter from coming over under the rule?

The PRESIDING OFFICER. It is supposed to come automatically.

Mr. ROBERT C. BYRD. How can it, under that succession of events?

The PRESIDING OFFICER. After the morning business, if we are still in the morning hour. The Senator from West Virginia, under the circumstances, should not have been rerecognized.

Mr. ROBERT C. BYRD. But the Senator has been recognized.

The PRESIDING OFFICER. The Senator has been recognized.

Mr. ROBERT C. BYRD. The Senator cannot be taken off his feet, can he?

The PRESIDING OFFICER. The Senator cannot be taken off his feet.

Mr. DOMENICI. Mr. President, will the Senator yield, without losing his right to the floor?

Mr. HARRY F. BYRD, JR. Reserving the right to object——

Mr. ROBERT C. BYRD. If Senators will be patient, I do not intend to hold the floor.

May I say that the item that would come over under the rule would be my resolution changing the rule. That would be ahead of the resolution offered by the Senator from Virginia. I do not want my resolution to come over, and I ask that no resolutions come over under the rule today.

Mr. HARRY F. BYRD, JR. I object.

The PRESIDING OFFICER. The Senator is correct. The Journal so shows.

Mr. ROBERT C. BYRD. The Senator has objected. What is the Chair going to do?

The PRESIDING OFFICER. The Journal shows that the request for 1 minute——

Mr. ROBERT C. BYRD. I asked unanimous consent earlier that no resolutions come over under the rule.

The PRESIDING OFFICER. The Senator is correct. The Chair was about to so state. Unanimous consent was granted.

Mr. ROBERT C. BYRD. Right.

The PRESIDING OFFICER. For 1 minute of morning business.

Mr. ROBERT C. BYRD. Right.

The PRESIDING OFFICER. Without measures coming over under the rule.

Mr. ROBERT C. BYRD. Exactly, precisely.

So I must say to the Senator from Virginia, in all kindness, that when I earlier asked that there be no morning business and no resolution come over under the rule, that kept my resolution from coming over and it kept his resolution from coming over, and it was not objected to.

Mr. HARRY F. BYRD, JR. The Senator just asked unanimous consent for his own.

Mr. ROBERT C. BYRD. On my own resolution.

Mr. HARRY F. BYRD, JR. The Senator from West Virginia made a unanimous-consent request a moment ago, to which I objected, that no resolutions or motions come over under the rule.

Mr. ROBERT C. BYRD. Yes; I had a temporary lack of memory. I had forgotten that. I had already made the request at the same time and coupled it with the request that there be only 1 minute for morning business. Suddenly, I remember. It was only a lapse of memory.

Mr. HARRY F. BYRD, JR. The Senator from Virginia shall be more careful when the Senator from West Virginia makes a unanimous-consent request from here on out.

Mr. ROBERT C. BYRD. I am sure the Senator is not angry and that he is going to be my bosom friend in the future, just as he has been in the past.

The PRESIDING OFFICER. The unanimous-consent request pending——

Mr. ROBERT C. BYRD. I withdraw that request.

The PRESIDING OFFICER. The request is withdrawn.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time in opposition be under the control of the distinguished Senator from Louisiana, who is the chairman, I believe, of the subcommittee which has jurisdiction over this matter.

Mr. JOHNSTON. That is correct.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Mr. President, reserving the right to object—and I will not object—I say to my good friend from Louisiana that I concur that he should have the time in opposition to the Senator from Washington in support of the President on this issue; and I suppose he will recognize some Republicans who intend to support his position in opposition to the Senator from Washington in support of the President. Am I right in that?

Mr. JOHNSTON. As usual, the Senator from New Mexico and I will speak with one great voice.

Mr. DOMENICI. I thank the Senator.

I have no objection.

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

The Senator from Washington is recognized.

Mr. DOMENICI. Mr. President, will the Senator yield for a unanimous-consent request as to staff?

Mr. JACKSON. I yield.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Danny Boggs, Dave Swanson, and Chuck Graybans of the Energy Committee have the privilege of the floor during the consideration of this matter.

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

SENATE RESOLUTION 54—TO DISAPPROVE ENERGY ACTION NUMBERED 3

Mr. JACKSON. Mr. President, pursuant to section 551(f)(4) of the Energy Policy and Conservation Act of 1975 (Public Law 94–163), I move to discharge the Committee on Energy and Natural Resources from further consideration of Senate Resolution 54.

Senate Resolution 54 is a resolution to disapprove energy action numbered 3, an executive branch proposal to exempt aviation gasoline and kerosene base jet fuel from mandatory petroleum allocation regulations.

Under the provisions of the Energy Policy and Conservation Act debate on this motion to discharge will be limited to 1 hour, equally divided between those favoring and those opposing the resolution. Furthermore, no amendment to the motion is in order.

On January 31, Energy Actions 3 and 4—the President's proposals to exempt aviation gasoline and kerosene-base jet fuel from mandatory price and allocation regulations—were transmitted to Congress. These proposals are submitted under authority granted to the President by section 12 of the Emergency Petroleum Allocation Act of 1973 and pursuant to procedure for congressional review specified in section 551 of the Energy Policy and Conservation Act. Section 551 provides that an "energy action"—for example, any rule exempting a particular oil or refined petroleum product from price or allocation regulations—becomes effective at the end of a 15-day period beginning the day after transmittal to Congress unless either House passes a resolution of disapproval with respect to such action. The 15-day period ends at midnight, Saturday, February 24.

Aviation gasoline is a petroleum fuel for piston-engined aircraft used primarily by general aviation—business, corporate, and personal travel, sport flying and air taxi, rental and commuter airline consumption. Refiner sales of aviation gasoline for the first half of 1978 amounted to 262 million gallons (or about 34,000 barrels per day). Additional information concerning the market for aviation gasoline is contained in the "Findings and Views Concerning the

Exemption of Aviation Gasoline From the Mandatory Petroleum Allocation and Price Regulations" published by the Department of Energy (DOE/ER–0024).

Kerosene base jet fuel is the fuel employed by the domestic and international airlines. Energy actions 3 and 4 relate primarily to civilian use of jet fuel. Military jet fuels were exempted from mandatory controls in 1976 by the energy action mechanism. Kerosene-based jet fuel demand was 838,000 barrels per day for the first half of 1978—just over 4 percent of U.S. petroleum consumption. "Findings and Views Concerning the Exemption of Kerojet Fuels From the Mandatory Petroleum Allocation and Price Regulations" (DOE/ER–0023) presents the Department's detailed analysis of the case for decontrol of kerojet fuel.

Mr. President, I have moved that the Energy Committee be discharged from further consideration of Senate Resolution 54 so that the Senate will have a more adequate opportunity to consider the potential impact on price and supply of exempting aviation gas and jet fuel from controls.

This week's unusual weather conditions prevented the committee from meeting to consider this issue. Thus, discharging the committee is the only way to get the issue before the Senate before the statutory deadline expires on Saturday.

I had hoped that the administration would withdraw these proposals and resubmit them in order to give us more time to decide on the merits. They did not agree to do so. Thus, I urge the adoption of the motion and approval of the Resolution of Disapproval.

Mr. President, if that is done, I will introduce and seek adoption of a sense of the Senate resolution urging the President to resubmit the deregulation proposals immediately so that the Senate will be able to give them the consideration that they deserve.

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

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

S. RES. 54

Resolved, That the Senate does not favor the energy action numbered 3 transmitted to Congress on January 31, 1979.

Mr. JACKSON. Mr. President, I am deeply concerned that the rapidly shifting situation with respect to oil supplies may have made the basis for the decontrol proposals; namely, that there are no present or impending supply shortages outdated before they will go into effect. Disapproval and resubmittal will give all of us an adequate opportunity to get the facts before we act.

Mr. President, that is the heart of this effort.

At this point in time, I have not made a final decision as to what my position will be. I can only point out that the procedural situation is such that it will not be possible for the committee to hold hearings and get the facts and the issues pro and con on the question of decontrol.

We do face currently some shortages that can be serious. These facts were not known at the time this matter was submitted to the Senate and to the House of Representatives.

So, Mr. President, procedurally I would hope that the motion to discharge the committee would be agreed to so that we could take the next step to act on the basic question of decontrol.

Mr. President, I yield 4 minutes to the distinguished Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 4 minutes.

Mr. DURKIN. Thank you, Mr. President.

I thank the chairman of the committee.

Mr. President, I agree with the chairman that the situation has changed drastically since the impact statement which was the basis for the administration's proposal was made last summer. It was updated in the past and was called an update in December.

The situation has changed dramatically.

I am concerned today. This very day we have a shortage of home heating oil in New Hampshire. Responsible dealers are calling my office saying there is a shortage of home heating oil.

There is a situation in Maine for the past couple of days that there is a definite shortage of home heating oil.

What I am concerned about is without adequate study, without hearings, without the chance of review, based on the impact analysis that is outdated, there is going to be increased pressure on the cost of gasoline not just in my home State, not just in New England, but all across the country.

We have had a very severe winter. It is not yet over in New England. There is going to be an incentive to continue distilling beyond the middle distilland range. The corporate seller can sell to the corporate buyer knowing full well the price will be paid, and it will aggravate the supply of home heating oil that is critically short today in New Hampshire and Maine and other parts of New England.

We do not know what the impact will be on the cost. Those of us who opposed decontrol of home heating oil were told that the price would not go up. It is 60 cents a gallon and going higher every day in my area of the country.

So we have again the split approach in this administration. We have Mr. Kahn slipping around on banana peels trying to contain inflation, and we have the Secretary of Energy trying to drive up the cost and may well drive up the cost with the middle distilland with this proposal.

I urge my colleagues to agree with the chairman and give us time to thoroughly assess this based on current data because we may well inadvertently drive up the price and reduce supply of critically short home heating oil during this winter and the gasoline problem in the months to come.

I thank the chairman, and I yield back the remainder of my time to the chairman.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield myself such time as I may need.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I am sorry we do not have more Senators in the Chamber because this is, I think, a very clear situation.

The distinguished Senator from Washington says that he has not yet made up his mind, that it is a procedural matter. I appreciate his candor in not stating that he is opposed to this because I submit on the facts it is unopposable.

First, let me deal with the procedure involved. Why has the Senate not had hearings? For a very simple reason. Because the matter has been here for 15 days and no hearings have been requested. I am chairman of the subcommittee with jurisdiction over these matters. Sure, we have had bad weather this week, but I have had hearings on Tuesday, on Wednesday, and on Thursday in other committees, but no hearing was requested in this committee.

A hearing was requested in the House of Representatives before Congressman DINGELL's subcommitee and a hearing was held in Congressman DINGELL's subcommittee. Do you know what? There was no opposition expressed in Congressman DINGELL's subcommittee other than by some foreign international air travelers.

No consumer group, no one testified in opposition to this decontrol of jet fuel before Congressman DINGELL's subcommittee. Those who testified for it included the Air Transport Association, which includes all scheduled, CAB-certified, interstate air carriers. All associations representing general aviation owners and operators, and all associations representing commuter and the taxi airlines also indicated their approval of decontrol of aviation gasoline.

It is just as simple as that. There was no resolution filed in the House of Representatives to disapprove this decontrol by anyone, not by anyone. They are not going to take any such resolution up in the House of Representatives, and that is after they had hearings.

So, on the procedural matter, Mr. President, I think it is very clear. Now let us go to the substance.

What are the facts on jet fuel decontrol? The facts are these: That we have deregulated the airline industry, and there are drastically shifting patterns, dramatically shifting patterns, of air transportation. Some airports and some carriers that in 1972 did not have heavy traffic now have dramatically heavy traffic. But remember that under the Emergency Petroleum Allocation Act of 1973 the authority for price controls, you have two aspects of control—price control and allocation.

Allocation is based on a 1972 base period. So what we are requiring the airline industry to do is to be ready to fly routes in response to entirely new patterns of demand under fuel allocations based on 1972 patterns of use.

What that means, Mr. President, is that you will have some airlines without jet fuel. It is already happening. At Kennedy Airport just last week there was a

National Airlines flight which had no fuel, and the flight had to be canceled. Let me tell you, that is going to happen with great proliferation if this is not passed.

Mr. President, it sounds very simple to adopt a resolution calling on the administration to resubmit this matter immediately, hold half a day of hearings on Monday, and then we have lost no time, maybe a week, and it sounds like no problem at all.

I asked Mr. Bardin, who is administrator of the Economic Regulatory Administration of the Department of Energy who has the responsibility for this program, about that. Mr. Bardin told me this afternoon that it could take as long as 4½ months to get this matter resubmitted to the Congress. He says, "You would have to have new findings and reviews, with 30 days notice being customary; then you have to submit the findings to the Federal Energy Regulatory Commission, which usually takes 2 weeks. Then the FERC gives notice of hearings, usually 30 days; then the FERC time for decision is a minimum of 30 days, so that would add up to some 4½ months before they resubmit it to Congress. Even if they resubmit it the same day, the Congress then has 15 days to act. All this time, you will have potential shortages of jet fuel."

And for what? Who is objecting? If you can name me one person, I will be surprised. Jim Flug did not appear. Not one single consumer group, other than the distinguished Senator from Ohio, who I guess himself constitutes a consumer group.

The opponents are not opposing decontrol, but only asking for a hearing, and while that is a reasonable request, in view of what Mr. Bardin says it could take up to 4½ months to get it resubmitted to Congress. I would submit that the prudent thing for this body to do is what the House of Representatives is doing: let the matter go through without opposition.

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

Mr. JOHNSTON. I yield 5 minutes to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 5 minutes.

Mr. DOMENICI. Mr. President, let me first thank my good friend from Louisiana for a very succinct argument. I do not think we have to take all the time that is allotted here this evening, but I want to make it clear from the standpoint of the Republicans on the Energy Committee where we stand on this proposal, and why we did not insist that there be some hearings by the Energy Committee on this matter.

That was because we agreed with the President of the United States, who, through the Secretary, sent up this proposal. We have had this proposal for a number of days. While I have great respect and admiration for our chairman, the Senator from Washington (Mr. JACKSON), let me make clear that the blizzard had nothing to do with the time lapsing here, because the blizzard occurred while we were in recess. The rules of the EPCA clearly provide that those days do not count, so we are in the third or fourth day of those 15 days, exclusive of the time when we were not in session. We all had the proposal in our hands, circulated to our staffs by the Department of Energy, under some specific rules where the President had the authority to deregulate under certain findings some or all of the petroleum cycle in America. They sent up this proposal on jet fuel many days ago. Nobody asked for a hearing, and all of a sudden the deregulation is about to occur.

The House subcommittees had a hearing, and agreed that the President is right. We have had a little more fighting in Iran, and so people are a little more concerned about crude oil, but we have all been concerned for a long time.

The Secretary of Energy, speaking for the President, as late as February 21—and most of the problems about the Iranian commitment to the world pool of oil were certainly there by that time—concluded, in a letter directed to our chairman, that even with all that, the President unequivocally recommends that he be granted this authority to deregulate. He indicates:

> We have concluded that supply and distribution problems are likely to be less without aviation fuels controls than with them.

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

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

DEPARTMENT OF ENERGY,
Washington, D.C., February 21, 1979.

Hon. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We have reviewed our actions to deregulate kerosene-base jet fuel and aviation gasoline in light of the Iranian situation and strongly believe that the continuation of existing controls is unnecessary to achieve the objectives of the Emergency Petroleum Allocation Act (EPAA).

We are concerned that the loss of Iranian production will be prolonged and that supplies of refined products in this Country could become tight. However, we have concluded that supply and distribution problems are likely to be less without aviation fuels controls than with them.

Deregulation of the airlines resulted in an unusually dynamic pattern of demand shifts. The allocation regulations have prevented refiners and distributors from efficiently shifting supplies among consumers and regions to deal with spot shortages and thus have tended to exacerbate them.

Moreover, under the EPAA we could reimpose controls if necessary and appropriate. We are prepared to do so by activating the standby petroleum product regulations adopted last month.

If I can answer any further questions regarding these pending actions, please let me know.

Sincerely,

JAMES R. SCHLESINGER,
Secretary.

Mr. DOMENICI. I would like to indicate to the Senate, so Senators will know, that Senator HATFIELD, who is not here, has consulted with us from the Energy Committee and, as our ranking member on on the full committee, concurs with the President and indicates that he does not support Senator JACKSON's effort, which basically would let us challenge the President in his deregulation of this one particular product in a different way than we would otherwise.

We would like to leave it in committee, where it belongs, so that the President will get his way. So we ask Senators to vote no on this resolution of discharging the committee of jurisdiction, so that the Senate will not vote, and leave it in the committee where it was, where the committee obviously tacitly decided not to consider the matter of sending it to the Senate.

Senator MCCLURE, who is here unequivocally supports that position, along with Senator WEICKER, Senator WALLOP, Senator BELLMON, Senator STEVENS, and myself; so, on my side, all of us, including myself, support the President's efforts to begin what we are certain will ultimately have to be done on a far broader spectrum. We support the position of the Senator from Louisiana as to why, and we urge that we get on with voting no, so that it will stay in committee and the President will get his way on this particular effort to begin deregulation.

Did I use my 5 minutes, I might ask the Parliamentarian?

The PRESIDING OFFICER (Mr. EXON). The Senator has used 4½ minutes.

Mr. DOMENICI. I want to spend the last half-minute to congratulate my friend from Ohio, who will now take the floor and, all by himself, represent all the consumers of America. If there are no others, I am sure he will do a more than adequate job, and the Senator from Louisiana and I will attempt in a modest way to rebut his arguments.

Mr. BUMPERS. Mr. President, will the Senator from Washington yield me 5 minutes?

Mr. JACKSON. I yield the Senator from Arkansas 5 minutes.

Mr. BUMPERS. Just to break up the continuity betwen the Senator from New Mexico and the Senator from Ohio.

Mr. President, there are some preliminary facts and preliminary information that my colleagues ought to know about.

First, we asked the Energy Department this afternoon to withdraw this resolution and resubmit it. We made that request for a very simple reason: So that the committee could hold hearings to determine, in the light of the Iranian crisis, whether or not their studies are correct in the light of current events.

That was a very simple request, and it was refused.

Second, everybody in this Chamber ought to know that the Department of Energy request to deregulate jet fuel is based on studies—about 100 pages of them—made in the summer of 1978, then updated in December of 1978, still not fully reflecting the Iranian crisis, in about half a page.

I am not suggesting that disaster is going to befall the country if the President's proposal to deregulate jet fuel is passed and approved by the Senate, or not disapproved, but I am saying it could

very well be the tip of the iceberg, and you ought to know tonight, before you vote on this procedural question, what is at stake.

Let me tell you one of the things at stake is the question of what shortages will occur in this country.

First of all, some people say there already is a jet fuel shortage. That has been stated here twice. I have here an article from the Wall Street Journal which says:

But the Energy Department disagreed. Federal officials, who said the local shortages of jet fuel and resulting disruptions of flight schedules are temporary, attributed the cutbacks to problems at two suppliers, Texaco and Continental Oil Co. The officials said these problems aren't related to the Iranian cutoff.

Mr. President, I ask unanimous consent that the entire article from the Wall Street Journal be printed in the RECORD at this point.

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

JET-FUEL CUTBACKS PROMPT SOME AIRLINES TO CUT FLIGHTS BUT PINCH ISN'T NATIONWIDE

Some airlines are being pinched by cutbacks in jet fuel supplies, although there isn't a nationwide shortage.

The cutbacks are particularly evident so far at Kennedy Airport in New York City, where Texaco Inc. is the main supplier. But supplies also have been sharply reduced at a number of other airports, and some airlines have had to curtail flights as a result.

Suppliers said the loss of Iranian oil is partly to blame, mainly because it has contributed to the world-wide tightness in availability of the lighter low-sulphur crude oils preferred by refiners for processing into jet fuel, gasoline and other lighter fuels.

But the Energy Department disagreed. Federal officials, who said the local shortages of jet fuel and resulting disruptions of flight schedules are temporary, attributed the cutbacks to problems at two suppliers, Texaco and Continental Oil Co. The officials said these problems aren't related to the Iranian cutoff.

There are some other factors—some suppliers and airlines blamed the Energy Department's pricing regulations on aviation fuels—in the fuel cutbacks. A key factor, observers suggested, is surging demand for jet fuel. Demand increased 12% last month, according to oil industry calculations.

FIRE AND FRIGID WEATHER

A refinery closing because of a fire some months ago has caused a jet-fuel problem in the Denver area. In other regions, cold weather has aggravated the problem because petroleum refiners have had to process more of their crude oil into heating fuels rather than jet fuel. In some areas, frigid weather has delayed deliveries of jet fuel by barge or truck.

Whatever the reasons, some airlines have run into difficulties. National Airlines has canceled three flights from New York to Amsterdam because of a shortage in its supplies, furnished by Texaco, at Kennedy Airport. A spokesman said National may have to cancel more flights but hasn't yet decided to do so.

Donald Lloyd-Jones, senior vice president of American Airlines, said that "this is a long-term problem. There is a world-wide shortage, and I anticipate it will become more severe."

American, which gets its fuel from Texaco, Standard Oil Co. (Ohio) and Conoco, has had shortages in the last week or so in New York, Oklahoma City, Omaha, Tucson, Phoenix, Cleveland, Columbus, Ohio, Chicago, Ontario, Calif., Little Rock, Des Moines, San Juan and Miami, Fla. Suppliers have told American that the airline must cut its fuel loading 5% to 25% at these cities.

CALCULATING OPTIMUM LOADS

American, which hasn't yet had to cancel any flights because of fuel shortages, has been loading its planes with fuel at an earlier stage of the flight, enabling them to complete their journeys through fuel-short areas.

But this is expensive. Because of the high costs of fuel, the airlines have set up banks of computers to calculate the optimum load of fuel for each plane's flight. Adding fuel at an earlier stage means the plane has to haul the fuel around longer, burning up more fuel in the process.

Because of the severe pinch at Kennedy in New York, American has had to resort to an even more expensive tactic. The airline has contracted with Shell Oil Co. for an extra million gallons of fuel per month in San Juan and is bringing the fuel in its planes from San Juan to New York during regular flights. "We're becoming a tanker airline," one executive said.

American Air officials said the Kennedy Airport shortages have been aggravated because a boat carrying fuel has been delayed. The fuel, being delivered by Texaco, is currently due to arrive tomorrow or Friday.

Trans World Airlines, supplied by Texaco, Shell, and Conoco, has had shortages in Denver, Kansas City, Mo., and New York, with New York's the worst. Thus far, TWA hasn't had to cancel any flights, but like American it has had to add more fuel at earlier stages of flights. TWA also is trying to buy more fuel on the so-called spot market. "But so is everybody else, so this is becoming very hard to do," a TWA official said.

TWA nonetheless has been able to purchase some jet fuel on the spot market. It bought 50,000 barrels in Corpus Christi, Texas, but isn't sure yet what the cost will be. It agreed to pay the prevailing spot price when it receives the fuel, starting next week.

Most other airlines reached haven't run into shortages yet. But, a spokesman for Frontier Airlines said, "everybody is becoming more fuel-conscious." Western Airlines reported that it has had to "do some juggling" because of jet-fuel cutbacks by Conoco in Denver and Minneapolis.

Conoco, a major supplier of jet fuel to Denver's Stapleton Airport, said it has been allocating supplies there at 55% of normal requirements for several weeks. That is because the company's Denver refinery is still closed as the result of the fire last October. The refinery has a capacity of 32,500 barrels a day, nearly 9% of Conoco's domestic refining capacity.

The company also is allocating jet fuel at a 70% rate to all other commercial customers, a spokesman said. The cities affected include Tulsa, Oklahoma City, Omaha, Minneapolis and Wichita.

Shell reported that, even though its aviation supply situation is tight, "we have been able to meet customers' demand estimates and aren't curtailing supplies." Shell supplies every major airline in the U.S.

But Texaco, one of the largest U.S. suppliers, has problems. The company cited the overall tightness in world crude oil supplies, a situation "complicated by the disruption of Iranian oil exports and the Department of Energy regulations on aviation fuels."

TEXACO OUTPUT OFF 10 PERCENT

Texaco confirmed that it has asked its airline customers at Kennedy to voluntarily reduce their purchases of aviation jet fuel from it as much as 50%, depending on their operational requirements, for the next few days. A few other U.S. airports are similarly affected but to a lesser degree, the company said.

Texaco has cut output of its U.S. refineries some 10% from the normal level of about one million barrels a day "due primarily to the shortage of crude oil, especially the light grades that are best suited for the manufacture of jet fuels and gasolines," it said. Meanwhile, the company said, it is trying to buy additional jet fuel.

In one case, Texaco said, it purchased a shipment of jet fuel from European sources for more than 65 cents a gallon, plus transportation cost, even though the maximum selling price under U.S. controls is about 20 cents a gallon less. "Some of the factors that have brought about the jet-fuel shortage have been the Energy Department's regulations on aviation fuels," Texaco said.

But, according to the department, Texaco, one of the four biggest suppliers of jet fuel, is suffering from a shortage because last August it decided to stop importing already-refined jet fuel from Trinidad. The New York and Kansas City airports have felt the Texaco pinch in particular, the Energy department said, because they formerly received much of the imported fuel.

W. Dean McClanahan, an Energy Department official who monitors aviation supplies, said Texaco has assured the government that it is shipping a new supply of jet fuel by sea for Kennedy, to arrive within two weeks. After that, it is expected, winter will begin easing, allowing Texaco's domestic refineries to reduce their output of heating oil and turn out more jet fuel instead.

The Kansas City shortage will be harder to cure, the Energy Department said, because that airport can't be resupplied by ship, and pipelines feeding the area are filled with heating oil.

Nonetheless, Mr. McClanahan maintained, the jet fuel problems "are momentary supply shortages." There aren't any indications, he said, of "limitations caused by the Iranian situation that would adversely affect airline operations."

Ironically, Energy Department officials said, there are surpluses of jet fuel in some parts of the nation, especially in the Gulf Coast states. Chicago also has a surplus, they said, because its giant O'Hare International Airport was closed by snow on a number of days this winter.

Mr. BUMPERS. Who gets the benefit of this? It is proposed that the price of jet fuel be deregulated, yet no one thinks that the price of jet fuel will remain at about 40 cents, as it is today. I would remind Senators that, under regulation, the price of jet fuel has gone from 12 cents in 1974 to 40 cents today, almost a 300-percent increase. Where is it going to go from here? Nobody knows. But we can rest assured that it is going to go up. Who is going to pay? The airlines are going to get the fuel because the major oil companies in this country are going to make as much of it as they can. Because it is deregulated, they can make a bigger profit on it.

The airlines are going to buy it, but because they cannot absorb the price increase, they will pass it on to the consumer.

Meanwhile, the refiners in this country are limited on how much jet fuel they can get out of a barrel of oil. They could probably increase the supply of jet fuel only slightly, even if they fully tilted their refiners toward jet fuel.

Where will they get more? They will

get some of it from the oil currently refined into home heating oil, which Mr. DURKIN is concerned about, and they will get the rest out of it from the oil currently refined into gasoline, which the whole country is concerned about. Those are the only two places they can get it.

Consider the supply situation of home heating oil. New England is now facing an impending shortage of home heating oil. Moreover, if the American people do not know it, I would like to announce that they also face an impending shortage of gasoline.

The significance of deregulating jet fuel is that the refiners and the oil companies of this country can shift their production to jet fuel from gasoline and exacerbate that shortage or from home heating oil and exacerbate that shortage.

Who is getting the benefit? Quite simply, the oil companies, who raise the price of jet fuel to the airlines, who will accept it, because they believe that if this is deregulated at least their supplies will be constant and assured.

Well, the truth of the matter is that refiners can only increase the supply of jet fuel a limited amount, and, if the demand for jet fuel continues to increase as it has in the past, the price will go out of sight. Who gets the benefit of these increases? The oil companies. Who pays it? The American people pay it.

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

Mr. JACKSON. Mr. President, I yield an additional 2 minutes to the Senator from Arkansas.

Mr. BUMPERS. I thank the Senator.

Mr. President, the pressures on the price of jet fuel will be irresistible and the price of jet fuel will rise inexorably. There is not a soul in this body who has any idea to the contrary. Members know what is going to happen. If they vote against the motion of the Senator from Washington they are saying that the price of jet fuel is going to go up and the American people are going to pay for it. At the same time they are saying that there is going to be less gasoline and less home heating oil. The next thing we know there will be a deregulation proposal from the White House to regulate the price of gasoline and home heating oil.

Finally, Mr. President, the big airlines are going to get supplies, but the little airlines, many of which are struggling to survive, are going to be pushed out of business because they cannot afford it. The big airlines will get their supply and they will continue to run their routes.

Mr. JOHNSTON. Will the Senator yield for a question?

Mr. BUMPERS. I will be happy to yield.

Mr. JOHNSTON. Is the Senator aware that the commuter airline association, representing all of the small airlines, is supporting the proposal?

Mr. BUMPERS. I am not familiar with that, but that is most unfortunate, because I guarantee those same people—and it will not be the first time it has happened here—will be back a year from now asking for tariffs, subsidies, and other protection. I have seen it happen too many times, and it will happen in this case.

I am telling you, Mr. President, it is inflationary. If the price of jet fuel increases, we will watch airline fares contribute significantly to the Consumer Price Index increase. So when Senators vote for this, just bear all those things in mind. And bear in mind, finally, what are you going to tell your constituents?

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

Mr. JACKSON. I yield——

Mr. BUMPERS. That is all right. I thank the Senator for his time.

Mr. JACKSON. I yield 6 minutes to the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise in support of the motion of the distinguished chairman of the Energy Committee. Through no fault of our own, the Energy Committee simply has not had sufficient time to review the administration's proposal, particularly in view of the new developments which have occurred in recent days and weeks.

We believe that the Senate would be derelict in its responsibility to allow this proposal to become law without the opportunity to conduct fair hearings. We believe that this proposal should be rejected until the Senate has had an opportunity to hold hearings on the subject and, as the chairman has indicated, he intends to introduce and support a resolution asking the President to resubmit this energy action immediately.

In essence, I say to Members of the Senate, he is asking for 15 more days.

The suggestion that the Department of Energy would need something like 4½ months to bring this same proposal back is totally absurd on its face.

I say that that is the same kind of information we get out of the Department of Energy over a period of many months. When we ask them for numbers, when we ask them for facts, when we ask them for figures, we always get the kind of answer that best accommodates their point of view.

I personally believe the administration's proposal to deregulate jet and aviation fuel is both ill-advised and poorly timed. It is poorly timed because of the chaos in the world oil situation today. The deteriorating situation in Iran has intensified in the last months. Early in January the administration hoped that Iran would stabilize and resume production by spring. But today that hope seems to have faded completly. As the Secretary of Energy testified before our committee, in the 2-week period between January 15 and February 1 the situation became more serious.

In his own words, Iran's decline toward chaos has not been arrested. With it, the supply of crude oil internationally and of imports to the United States become more uncertain and more costly. In very simple terms, how can we possibly justify decontrolling an oil product at the same time we are giving serious thought to rationing?

The proposal is ill-advised because it could be terribly inflationary. Right now, the spot market for crude oil is going berserk, with prices reaching $23.50 a barrel. But even more important is the fact that the spot market for jet fuel, which is the product we are talking about today, is also going through the roof. The spot price for jet fuel is 57 cents a gallon, 166 percent of the price of domestically controlled jet fuel.

And yet the Department of Energy in their report recommending this action says:

> Such oil or refined product category is no longer in short supply and exempting such oil or refined product category would not have an adverse impact on the supply of any other oil or refined product, and it would not have an adverse impact upon the price.

That just does not make sense. It is illogical. Such an assertion is absurd in the light of the fact that the imported product is being sold right now for 16 cents per gallon more than domestic jet fuel.

The pressures for big price hikes are there, and, as the distinguished Senator from Arkansas has just stated, the American people will ultimately pay the price. Even if the price went up only 4 cents, an unrealistic low increase, we are talking about charging the American people an additional $600 million and putting those dollars right into the pockets of the oil companies.

It would totally violate the Nation's inflation guidelines. At a time when we should be marshaling all of our energies to fighting inflation, and when the wholesale price index is escalating at a 15.6 percent rate and the food prices are going up at a 21.6 percent rate, I do not understand the logic of a proposal by the administration to decontrol the price of jet fuel.

The fact is we will have an adverse impact upon home heating oil prices, middle distillate. If the price of jet fuel goes up, then there will be more of that sold, less available for heating purposes, and the price of heating oil will go up. So, too, will the price of gasoline.

The fact is the pressure will be to take it away from that portion of a barrel of refined product and take it from the gasoline that is presently available to the American people and put it into the airlines of this country.

The airlines have no great problem about it because they can pass their costs on to the American people. But the average American has nobody to pass it on to. This strikes directly at his pocketbook.

The analysis done by the Department of Energy to justify jet fuel deregulation is based on a world that no longer exists. Rejection of this proposal is absolutely necessary so that we can sit down under less pressured circumstances with all the facts available to determine what the effects will be, the effects on consumers, on the airlines, on businesses which rely on small planes, on the stability of the many jobs that depend on the airline industry and, most importantly, if we think we are going to do something on the floor of the Senate—and this is one of the earliest actions on the floor of the Senate—if we really believe that the Congress of the United States should be indicating its intent to help in the battle against spiraling inflation, this is the

place where we ought to start regardless of whether the industry is willing to pay the extra costs.

I believe the American people are not willing to and should not be expected to.

Mr. JOHNSTON. Mr. President, I will be very short and then I think we will shortly be ready to vote.

I just want to make a couple of points. Why is it that no Member of the House put in a resolution of disapproval after the hearings on the matter were held in the House?

It is very simple, Mr. President, because jet fuel and aviation gasoline decontrol is necessary and essential in order to cope with the problems created by airline deregulation. If we do not have it we are in deep trouble with the airlines.

Why is it that the administration did not accede to the request to resubmit the matter? Because, very simply, as Mr. Bardin said this afternoon, it will take 4½ months to do so.

Finally, Mr. President, on this question of what it will do to prices, DOE says it may raise the cost of jet fuel a cent a gallon. If it raised the cost of jet fuel 4 cents a gallon up to the world price, then that would be 0.03 percent of the gross national product, that is, it would add 0.03 percentage point to the Consumer Price Index.

If DOE is right it would add one-fourth of that, or 0.0075, to the CPI, a minimal amount.

Mr. President, to my friends who represent consumers of home heating oil, I say that jet fuel and aviation gasoline decontrol is going to help the situation with home heating oil and not hurt it. Why? Because home heating oil is decontrolled.

Mr. DURKIN. Mr. President, will the Senator yield for a question?

Mr. JOHNSTON. I will yield in just a minute.

Home heating oil has been decontrolled since 1976. If you have to provide one fraction of a barrel, jet fuel, at a cost less than what is a fair price, and the other fraction of the barrel, home heating oil, is decontrolled, where do you think they put the extra cost? They put it on the decontrolled part, on home heating oil.

So to say that by raising the cost of part of the barrel that you are going to raise the cost of home heating oil just simply does not make sense, and the House did not believe it either.

So I will submit to my friend and I will now yield to my friend from New Hampshire for a question.

Mr. DURKIN. The Senator knows that a number of us opposed the decontrol of home heating oil and it lost. At that time the Department of Energy was saying it was going to raise the cost of home heating oil 4 or 5 cents, and the great competitive force in the marketplace, which exists only in eighth grade political science texts, would hold down the price of home heating oil. Home heating oil is over 60 cents a gallon today in New Hampshire, and there is a serious question of whether we will even be able to get it.

With the incentive of distilling beyond the middle distillate range, we have a corporate buyer and a corporate seller and the corporate buyer being able to pass it through in the charge of increased air fares, how in God's name will that not produce an incentive to produce more higher level distillates and shorten and eliminate or reduce the supply available for home heating oil? I would love to have that answer, and so would my constituents.

Mr. JOHNSTON. Mr. President, in answer to the Senator's questions, to quote from "Findings and Views Concerning the Exemption of Kerojet Fuels From the Mandatory Petroleum Allocation and Pricing Regulations" program, page 75, let me read this.

Mr. DURKIN. What was the date of that?

Mr. JOHNSTON. That was dated June 1978.

Mr. DURKIN. The Ayatollah was still in Paris then. [Laughter.]

Mr. JOHNSTON. Statistically updated to December 1978. It says this:

> In a market where the prices of some products are controlled and others are not, if cost increases are not recoverable in controlled products, they tend to be passed to the uncontrolled products. Particularly in view of the fact that middle distillate prices have been decontrolled, a refiner could recover kerojet costs in middle distillate products.

That is only commonsense. So, Mr. President, I think it is very clear.

We have had 15 days, 15 days while the Senate was in session to hear this matter. No request for a hearing has been forthcoming. I think this is one place where the administration is dead right and, Mr. President, we cannot afford to wait for 4½ months for this rule to be resubmitted. Because if we do we will have shortages of jet fuel around this country to the extent that what has happened last week at Kennedy Airport, when they canceled the National Airlines flight, and these shortages will be occurring everywhere across this country.

I hope we will vote down the motion to discharge. I am prepared to yield back the remainder of my time.

Mr. DOMENICI. Mr. President, will the Senator yield to me for a statement?

Mr. JOHNSTON. Yes.

Mr. DOMENICI. Mr. President, I rise in opposition to the motion to discharge the Energy Committee from consideration of the deregulation of certain aviation and jet fuel. I do so for both procedural and substantive reasons.

Senator JACKSON introduced these resolutions of disapproval as a vehicle for action 3 weeks ago, as soon as the administration sent these measures to Congress. There was a general feeling among Senators I spoke to that this was a good measure, and no opposition was expected.

Certainly it would have been open to any Member to ask for hearings on these resolutions, which would probably have been before the subcommittee on which I am the ranking minority member. There were no such requests to my knowledge. It is certainly an end-run to come to the floor today and try to have the Senate resolve the matter with little notice.

More fundamentally, however, the committee should not be discharged because the President's action was right. The President has repeatedly stated his desire to move toward deregulation. He recognizes the distortions and reduction of supply that Government regulations have caused. As long as we regulate in the pattern of the past, we will never be prepared to face the future.

I commend the President for this move and hope that he will continue to move toward deregulation in all the areas where he has the power to do so.

Jet fuel is a particularly appropriate area for deregulation. Aviation is a dynamic industry that is now prospering and increasing service to Americans under the deregulation that has been allowed by the CAB. There is no reason to continue controlling a product when the users want it decontrolled, and when the ultimate beneficiaries, the airline passengers, are certainly better off than the average American. Even the usual simplistic arguments for "protecting consumers" really do not apply here.

The final argument that has been made against the President's action seems to be that we should not move toward decontrol at a time of uncertainty and turmoil caused by the Iranian situation. Now, I have been one of those urging most strongly that the administration should move more strongly with measures to increase production and prudently reduce consumption.

But those should be comprehensive measures that address the total scope of our energy situation.

We already have a situation where some refined products are controlled and some are uncontrolled. This action is simply another step on the correct road, the road toward decontrol. By repudiating the President's action in this case, we will be telling the American people that the Senate wants more control, rather than less. I do not believe that is what the people want, and I know that it will not serve the interests of America.

I will vote to uphold the President's action and vote against discharging the resolution from the committee.

Mr. DOMENICI. Mr. President, may I have 10 seconds to say to my friend from New Hampshire that he took the same position on all of the subjects when the ayatollah was in France as when he was in Iran, so it does not make any difference where he is.

Mr. DURKIN. Mr. President, will the Senator yield? There was a substantial difference in that when the ayatollah was praying in the Paris suburbs there was oil flowing out of Iran. That oil is not coming today.

Mr. DOMENICI. What I was saying is that we will have another ayatollah in 3 or 4 months, and the Senator will have another ayatollah to blame the trouble on when the Senator and Senator METZENBAUM are going to try to get more petroleum products when we reduce the price. You have a new economic theory, which never has held for anything we produced in America, but particularly my good friend from Ohio persists in saying, that if we reduce the price, we

are going to produce more of all these products. That is why I think it is so good that we are having this debate here tonight.

Mr. DURKIN. I want to say to my friend from New Mexico that he is one of the few Republican Senators who is not up in New Hampshire, and I invite him to come up.

Mr. DOMENICI. I have enough problems in New Mexico. I am delighted to be the Senator from New Mexico.

Mr. DURKIN. And the people of New Hampshire are watching their paychecks disappear into the oil barrel week after week after week.

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

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

The yeas and nays were ordered.

Mr. JACKSON. Mr. President, I yield to the distinguished junior Senator from Massachusetts (Mr. TSONGAS).

Mr. TSONGAS. I thank my chairman.

Mr. President, this is the first of, what I would hope to be many, energy issues that would come before this Senate.

It seems to me that beyond the immediate question there is an opportunity to set a tone as to what the Senate is going to expect from the administration. If the administration had a clear sense of our energy future I think they could come to the Senate and request a kind of benefit of the doubt on the specifics. But I think the administration does not have a clear sense of where it is going and working on it.

Let me give an example of home heating oil. There was a discussion of that but not in the context of what is going to be critical, and that is not this winter but next winter.

I sat through committees and I will attest to enough of a series of briefings to suggest that, given the current depletion of reserves, it is going to be a very serious problem next winter.

On gasoline we have had hearings on rationing, and where we are going and where we might be going. That has not been resolved, and one that I am particularly concerned about, which is the alternative source of energy, there is a domestic policy review option paper before the President now and we do not know where he is going. We have no sense in terms of what the long term will be for renewables.

How can we, as a Senate, demand the administration come forth with a clear, long-term, comprehensive energy policy, which I think is vital for this country's survival over the long term, if we go ahead in a situation like this, case by case, and kind of ad hoc our way through a viable energy policy?

It seems to me, if the administration does not want to come up with this kind of policy, that is their prerogative, but that it is not ours then to concur in that approach.

I have asked my colleagues not only to be specific as to the deregulation, but, rather, to use this particular issue as a way of forcing the administration to give much greater thought as to where we are going in this country relative to our energy future.

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

Mr. JACKSON. Mr. President, if there is no one on our side, I am prepared to yield back the remainder of my time.

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

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the motion to discharge. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida (Mr. CHILES), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Maine (Mr. MUSKIE), the Senator from Mississippi (Mr. STENNIS), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I also announce that the Senator from Georgia (Mr. TALMADGE) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), the Senator from Maryland (Mr. MATHIAS), the Senator from Oregon (Mr. PACKWOOD), the Senator from Vermont (Mr. STAFFORD), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER. Does any other Senator in the Chamber wish to vote?

The result was announced—yeas 34, nays 53, as follows:

[Rollcall Vote No. 7 Leg.]

YEAS—34

Baucus	Hollings	Nelson
Bayh	Huddleston	Pell
Biden	Inouye	Proxmire
Bradley	Jackson	Pryor
Bumpers	Javits	Ribicoff
Church	Leahy	Riegle
Culver	Levin	Sarbanes
DeConcini	Magnuson	Sasser
Durkin	Matsunaga	Tsongas
Exon	McGovern	Zorinsky
Ford	Metzenbaum	
Glenn	Moynihan	

NAYS—53

Armstrong	Durenberger	Morgan
Baker	Eagleton	Nunn
Bellmon	Garn	Percy
Bentsen	Gravel	Pressler
Boren	Hart	Randolph
Boschwitz	Hatch	Roth
Burdick	Hayakawa	Schmitt
Byrd, Harry F., Jr.	Heflin	Schweiker
	Heinz	Simpson
Byrd, Robert C.	Humphrey	Stevens
Cannon	Jepsen	Stevenson
Chafee	Johnston	Stewart
Cochran	Kassebaum	Stone
Cohen	Laxalt	Thurmond
Cranston	Long	Tower
Danforth	Lugar	Wallop
Dole	McClure	Warner
Domenici	Melcher	Weicker

NOT VOTING—13

Chiles	Mathias	Talmadge
Goldwater	Muskie	Williams
Hatfield	Packwood	Young
Helms	Stafford	
Kennedy	Stennis	

So the motion to discharge was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

ORDER FOR DAILY RECOGNITION OF LEADERSHIP

Mr. ROBERT C. BYRD. Mr. President, now that the rules fight has been put aside or put behind us, I ask unanimous consent that the majority and minority leaders may daily, as during the past Congress, have up to 10 minutes each on each calendar day following the prayer and the disposition of the reading of or the approval of the Journal.

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. McCLURE. Mr. President, did I understand the request was for the recognition of the majority leader and minority leader daily following the prayer?

Mr. ROBERT C. BYRD. Following the prayer and the disposition of the reading of the Journal or the disposition of the approval of the Journal and that the request obtain throughout the remainder of the 96th Congress.

Mr. McCLURE. Mr. President, further reserving the right to object, and I shall not object, I think that is, if not a courtesy, certainly something that should be accorded the majority and minority leaders. The only reason I take this time is that I really am a little bit gunshy of blanket requests that will be in effect during the entire remainder of the year or the entire remainder of the Congress. But in this instance, I certainly have no objection.

I do not know if anyone here would object to it, but I did want at least to make that notation here at this time.

With that, I withdraw my reservation.

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

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

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

I agree with the observations of the distinguished Senator from Idaho, but I cannot remember a single case last year where a unanimous-consent request was made of general application for the remainder of the session, and I might say for the record that I would look on such a request with great concern.

But in this case, I think it furthers the orderly proceedings of the Senate, and I thank the Senator from Idaho for withdrawing his reservations.

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object.

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

Mr. HARRY F. BYRD, JR. I shall not object.

Mr. President, I think it is an appro-

priate procedure, but I wish to associate myself with the remarks made by the Senator from Idaho. I hope Senators will be notified in advance if any unanimous-consent request is going to be made for extended periods of time.

I think that it is only fair that Senators be so notified. I think this is a perfectly appropriate request. I have no objection to it. But I hope that we do not reach the point where unanimous-consent requests are being made covering long or extended periods of time.

I am a little gunshy on unanimous-consent requests at the moment.

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

Mr. ROBERT C. BYRD. Mr. President, I am sorry that this business of being gunshy has come up. I have been gunshy since I was a kid and for several good reasons.

But I do not know of any requests that I have made this year or during the past several years that extended throughout the Congress that were not for the benefit of the Members of the body.

The time that is going to be under the control of the minority leader and the majority leader will seldom be used by ourselves, if past experience is any indicator. As the usual thing, we use that time to yield to Senators who have not gotten orders in advance. And I daresay that my friend from Virginia will be the recipient of the time that I will have under my control from time to time, and I imagine that the distinguished Senator from Idaho will be the recipient on that side of the aisle and could be the recipient of my time.

As to other requests I will be very glad to have those stated in the RECORD. They were gotten at the beginning on the first calendar day of the session and on 1 or 2 days succeeding that. For example, it is by unanimous consent that Senators may turn in bills and joint resolutions at the desk with their names on them.

It is by unanimous consent that they may add cosponsors at the desk without having to take the floor and ask unanimous consent from the floor.

It is by unanimous consent that they may turn in at the desk names of aides whom they want on the floor. They do not have to stand up any more and ask unanimous consent for that.

So may I say to my friends the Senator from Idaho and the Senator from Virginia that I am very grateful for their not having objected to this request, but I am sort of unsure of myself. I am very wary of trying to obtain a unanimous-consent request here that I think would create any ill will toward me, and might ultimately lead to someone committing mayhem against the Senator from West Virginia, politically or otherwise. I am very careful not to propound a request that I think would do damage to the Senate, or that would impose on Senators' rights generally.

So I believe that both Senators may be able to rest without any concern about these requests that are made to cover the entire Congress. I understand their concern. I think they are exercising their rights, and I think they should be complimented on guarding the rights of others and the rights of the Senate as well as the rights of themselves. But, Mr. President, both Senators will note that I have stood up on the floor of the Senate with my microphone in my hand, in full view, and made the request here in their presence, and therefore gave everybody an opportunity to object if they wanted to object.

That is all I have to say.

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

Mr. HARRY F. BYRD, JR. Mr. President, I just want to say that I have always found the Senator from West Virginia to be generous with the time he has had as majority leader. Many times he has yielded me in the morning time that I needed and which he did not need. He has always been very generous, and I prefaced my remarks a moment ago by saying I thought it was an appropriate request that the majority leader made, and that I had no objection to it.

I did express the hope that on substantive matters Senators would be notified in advance, because all of us are not going to be here all the time, of any requests extending over a period of time dealing with substantive matters, though not with routine housekeeping matters. I hope the Senate realizes that.

ROUTINE MORNING BUSINESS

Mr. PROXMIRE addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, if the Senator will yield to me briefly, since there is nothing pending before the Senate and, therefore, no opportunity for Senators to speak, I ask unanimous consent that there now be a period for the transaction of routine morning business, and that Senators may be permitted to speak up to 5 minutes each therein.

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

THE GENOCIDE CONVENTION AND OUR HUMAN RIGHTS RECORD

Mr. PROXMIRE. Mr. President, as the U.N. Commission on Human Rights is now meeting in its 35th session, I would like to draw our attention to an important issue: Our position on human rights. Our country has an almost unsurpassed record in civil rights. Yet we consider ourselves a world leader in human rights. But are we? What is our record on human rights?

The Senate record on the ratification of U.N. human rights treaties is deplorable—as well as an embarrassment in our foreign policy. We have only ratified the U.N. treaties on slavery, the protocol relating to the status of refugees, and political rights of women. There remain at least 29 human rights conventions—29—the United States has not ratified. The consequence of this inaction is twofold:

First. We have become increasingly isolated from the international community concerned with human rights.

Second. U.N. work on human rights and, indeed, our own foreign policy, has been seriously impaired.

Of the remaining 29 U.N. human rights conventions to be ratified, by far the most significant is the convention on Genocide, the most horrifying of crimes. The inability of the Senate to ratify the Genocide Convention has been a grievous thorn in our side now for 30 years. Is there a sound reason why we should delay any longer the ratification of this essential treaty? No. Can delaying serve any purpose other than to further undermine our total human rights policy? No. The time is long overdue for us to ratify that which protects the most fundamental right of every human being—the Genocide Convention.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further morning business?

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM-40. A petition from a citizen of the United States, asking the Senate to reopen diplomatic relations with the Republic of China (Taiwan), to reaffirm American support of the 1964 Mutual Defense Treaty between Taiwan and the United States, and to continue arms sales to Taiwan; to the Committee on Foreign Relations.

POM-41. A joint memorial adopted by the Legislature of the State of Idaho; to the Committee on Finance:

"HOUSE JOINT MEMORIAL No. 2

"Whereas, the Internal Revenue Service, Department of the Treasury, has announced a proposed revenue procedure relating to private school tax exemptions; and

"Whereas, the proposed revenue procedure will, in effect, establish quotas for minority participation in tax exempt private schools; and

"Whereas, such quotas have been held discriminatory in a recent United States Supreme Court opinion; and

"Whereas, the use of private schools should be encouraged in order to help take the burden from public schools.

"Now, therefore, be it resolved by the members of the First Regular Session of the Forty-fifth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we are deeply concerned with such a proposed procedure and strongly urge that the Congress take such immediate action as necessary to prevent such proposed procedure from becoming effective.

"Be it further resolved that the Chief Clerk of the House of Representatives be, and he is hereby authorized and directed to forward copies of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the honorable congressional delegation representing the State of Idaho in the Congress of the United States."

POM-42. A resolution adopted by the legislature of the State of Kentucky; to the Committee on Finance:

"HOUSE RESOLUTION No. 5

"Whereas, the Congress of the United States has not permanently resolved the issues of the tax home and methods of determining income tax deductions for legislative business expenses as they relate to members of the state legislatures; and

"Whereas, while the Congress is to be commended for the substance of its temporary resolution of these issues in the 1976 Tax Reform Act and 1977 Tax Reduction and Simplification Act, a permanent solution is needed so that state legislators may antici-

pate their tax liabilities and file their federal income tax returns in a timely manner; and

"Whereas, the Kentucky Constitution and

"Whereas, federal regulation often adds unnecessary confusion and delay; and statutes, like those of many other states, embody the concept of a part-time, citizen legislator who resides and conducts his private business among his constituents and who is periodically called upon to conduct the public's business in legislative sessions and committee meetings in the state capital; and

"Whereas, the aforementioned temporary provisions of federal law have permitted a state legislator to elect to treat his business as a state legislator in a manner compatible with this state constitutional and statutory concept of his role;

"Now, therefore, *Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:*

"Section 1. That the United States Congress and, in particular, the members of the Kentucky Congressional delegation are respectfully requested to lend their support to the enactment of a permanent resolution of the tax home and per diem income tax deduction issues, as they relate to state legislators, in a manner similar to that temporarily provided by Section 604 of the Tax Reform Act of 1976, as extended by Section 307 of the Tax Reduction and Simplification Act of 1977, and to that supported by the National Conference of State Legislatures.

"Section 2. That the Legislative Research Commission is requested to monitor the progress of such legislation through cooperation with Kentucky's Congressional delegation and the National Conference of State Legislatures.

"Section 3. That the Clerk of the House of Representatives shall transmit a copy of this Resolution to each member of the Kentucky Congressional delegation, the Speaker of the House of Representatives and President of the Senate of the United States, and to the chairmen of the United States House Committee on Ways and Means and Senate Finance Committee."

POM-43. A resolution adopted by the Legislature of the State of Georgia; to the Committee on the Judiciary:

"HOUSE RESOLUTION 71

"Whereas, in 1945 the McCarran-Ferguson Act (Title 15, United States Code, Sections 1011–1015) was enacted into law; and

"Whereas, in that Act it was stated that "Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest"; and

"Whereas, in the course of such regulation, numerous States have encouraged and required continued improvements in insurance coverages and in the provision of insurance at reasonable rates; and

"Whereas, the States as a whole have continued to review, experiment with, and alter various approaches to regulation in an effort to assure the public of the availability of insurance at a reasonable cost; and

"Whereas, the business of insurance has moved in the direction of a more competitive structure; and

"Whereas, the public benefits from competition in the insurance industry including, at the retail level, the competition of a wide variety of organizations, which are often small businesses; and

"Whereas, federal regulation has often been shown to be no panacea to the nation's problems; and

"Whereas, it is felt by many that the establishment of federal regulation increases the cost of government, increases the cost of products and services to the consumer, and frequently does so without providing offsetting benefits to the public; and

"Whereas, there has been no conclusive finding that the several States cannot continue to regulate the insurance industry; and

"Whereas, there certainly has been no conclusive finding that federal regulation of the insurance industry, by limiting State regulation and permitting the application of the federal anti-trust laws, will have a salutory effect upon the industry or otherwise benefit the public; and

"Whereas, it is often necessary, subject to State regulations, to pool the resources of several insurance companies in order to provide for coordinated actions to provide effective insurance coverage of certain risks and to provide the public with reasonable prices, efficiency in which the services are rendered at reasonable cost, and innovation in which new products and services are made available; and

"Whereas, officials of the federal government have publicly, although unofficially, recommended amending the McCarran-Ferguson Act so as to limit State regulation of the business of insurance.

"Now, therefore, be it resolved by the General Assembly of Georgia that the Congress of the United States is respectfullly requested to examine carefully and scrutinize critically any legislation amending the McCarran-Ferguson Act and to reject any such legislation which is ill-conceived and which would defeat the purpose of providing good insurance at a reasonable cost to the citizens of the United States.

"Be it further resolved that the Clerk of the House of Representatives is hereby authorized and directed to transmit appropriate copies of this Resolution to the Secretary of the United States Senate, the Clerk of the United States House of Representatives, and to each member of the Georgia Delegation to the Congress."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. RIBICOFF, from the Committee on Governmental Affairs, without amendment:

S. Res. 79. An original resolution authorizing additional expenditures by the Committee on Governmental Affairs for inquiries and investigations. Referred to the Committee on Rules and Administration.

By Mr. STENNIS, from the Committee on Armed Services, without amendment:

S. Res. 81. An original resolution authorizing additional expenditures by the Committee on Armed Services for inquiries and investigations. Referred to the Committee on Rules and Administration.

S. Res. 82. An original resolution authorizing additional expenditures by the Committee on Armed Services for routine expenses. Referred to the Committee on Rules and Administration.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

Mr. WILLIAMS. Mr. President, as in executive session, from the Committee on Human Resources, I report favorably sundry nominations in the Public Health Service which have previously appeared in the CONGRESSIONAL RECORD and, to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they lie on the Secretary's desk for the information of Senators.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD on January 23, 1979, at the end of the Senate proceedings.)

Mr. STENNIS. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nomination of Rear Adm. Lee Baggett, Jr., to be vice admiral. Also in the Navy, there are 35 for promotion to the grade of rear admiral (list begins with William A. Williams III); Capt. Frances Teresa Shea to be rear admiral and there is a list of eight captains in the Naval Reserve to the grade of rear admiral (list begins with Nelson Otto Heyer). In the Marine Corps and Marine Corps Reserve, there are eight permanent appointments to the grade of major general (list begins with Kenneth L. Robinson). I ask that these nominations be placed on the Executive Calendar.

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

Mr. STENNIS. In addition, Mr. President, in the Air Force and Reserve of the Air Force, there are 78 appointments to the grade of colonel and below (list includes one officer to permanent professor of the Air Force Academy) (list begins with Arthur V. Magnuson to be major) and in the Air National Guard there are 96 officers for promotion in the Reserve of the Air Force to the grade of lieutenant colonel (list begins with Maj. Richard N. Allen). In the Navy and Naval Reserve, there are 1,325 for temporary promotion to the grade of commander (list begins with Robert P. Abbate); 2,878 in the Navy and Naval Reserve for appointment to the grade of captain and below (list begins with Barry R. Smith); 1,969 for temporary promotion to the grade of lieutenant commander (list begins with Roy C. Aasen; 45 in the Navy for temporary promotion/appointment to the grade of commander and below (list begins with Melvin D. Beck); and, 2,598 temporary promotions in the Navy to the grade of lieutenant (list begins with Lyle N. Aardahl). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's Desk for the information of any Senator.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD on January 31 and February 9, 1979, at the end of the Senate proceedings.)

FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, COMMITTEE ON FINANCE, OCT. 1, TO DEC. 31, 1978

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency [1]	Foreign currency	U.S. dollar equivalent or U.S. currency [1]	Foreign currency	U.S. dollar equivalent or U.S. currency [1]	Foreign currency	U.S. dollar equivalent or U.S. currency [1]
Senator Packwood:									
Japan	Yen	20,876	112.00		2,730.00			20,876	2,842.00
China	Yuan	1,463.67	900.00					1,463.67	900.00
Hong Kong	H.K. dollar	723.80	150.00	244.26	50.57			968.06	200.57
Senator Moynihan:									
Switzerland	Franc	749.90	436.00					749.90	436.00
France	Franc	1,174.80	267.00					1,174.80	267.00
England	Pound	259.61	502.86					259.61	502.86
Spain	Pesetas	5,136.99	75.00		1,003.50			5,136.99	1,078.50
Charles R. Johnston, Jr.:									
Switzerland	Franc	495.25	327.00	28	18.42			523.25	345.42
England	Sterling	41	86.00		751.00			41	837.00
F. David Foster:									
Switzerland	Franc	706.75	436.00		748.00			706.75	1,184.00
Robert C. Cassidy, Jr.:									
England	Pound	90.34	177.30		711.00			90.34	888.30
Switzerland	Franc	705.90	436.00					705.90	436.00
William Finan:									
Switzerland	Franc	882.35	545.00		711.00			882.35	1,256.00
France	Franc	1,148.10	267.00					1,148.10	267.00
F. David Foster:									
Switzerland	Franc	972.85	570.00		748.00			972.85	1,318.00
Charles R. Johnston Jr.:									
Switzerland	Franc	1,133.85	665.00		681.00			1,133.85	1,346.00
England	Sterling	41	86.00					41	86.00
Total			6,038.16		8,152.49				14,190.65

[1] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

Feb. 9, 1979.

RUSSELL B. LONG,
Chairman.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, U.S. SENATE DELEGATION VISIT TO THE SUPREME SOVIET OF THE U.S.S.R., NOV. 9-21, 1978

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency [1]	Foreign currency	U.S. dollar equivalent or U.S. currency [1]	Foreign currency	U.S. dollar equivalent or U.S. currency [1]	Foreign currency	U.S. dollar equivalent or U.S. currency [1]
Abraham Ribicoff:									
England	Pound	90	180.00						
Russia	Ruble	339.41	525.00						
Hungary	Forint	2,665.50	150.00						
Morocco	Dirham	296.25	75.00						
Henry Bellmon:									
England	Pound	90	180.00						
Russia	Ruble	339.41	525.00						
Hungary	Forint	1,332.75	75.00						
Quentin Burdick:									
England	Pound	90	180.00						
Russia	Ruble	339.41	525.00						
Hungary	Forint	2,665.50	150.00						
Morocco	Dirham	296.25	75.00						
Thomas F. Eagleton:									
England	Pound	90	180.00						
Russia	Ruble	339.41	525.00						
Hungary	Forint	2,665.50	150.00						
Morocco	Dirham	296.25	75.00						
Richard S. Schweiker:									
England	Pound	90	180.00						
Russia	Ruble	309.03	478.02						
Hungary	Forint	2,665.50	150.00						
Morocco	Dirham	146.58	37.11						
Adlai Stevenson III:									
England	Pound	90	180.00						
Russia	Ruble	314.28	486.14						
Hungary	Forint	2,665.50	150.00						
Morocco	Dirham	194.57	49.26						
Sam Nunn:									
England	Pound	63	126.00						
Russia	Ruble	295.32	456.80						
Hungary	Forint	2,113.56	118.94						
Paul Laxalt:									
England	Pound	90	180.00						
Russia	Ruble	339.41	525.00						
Hungary	Forint	2,665.50	150.00						
Morocco	Dirham	296.25	75.00						
John Glenn:									
England	Pound	90	180.00						
Russia	Ruble	339.41	525.00						
Hungary	Forint	2,665.50	150.00						
Morocco	Dirham	296.25	75.00						
John Durkin:									
England	Pound	90	180.00						
Russia	Ruble	339.41	525.00						
Hungary	Forint	2,665.00	150.00						
Morocco	Dirham	296.25	75.00						

See footnote at end of table.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S SENATE, U.S. SENATE DELEGATION VISIT TO THE SUPREME SOVIET OF THE U.S.S.R., NOV. 9-21, 1978—Continued

Name and country	Name of currency	Per diem: Foreign currency	Per diem: U.S. dollar equivalent or U.S. currency[1]	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency[1]	Miscellaneous: Foreign currency	Miscellaneous: U.S. dollar equivalent or U.S. currency[1]	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency[1]
Dennis DeConcini:									
England	Pound	90	180.00						
Russia	Ruble	339.41	525.00						
Hungary	Forint	2,665.50	150.00						
Morocco	Dirham	296.25	75.00						
J. S. Kimmitt:									
England	Pound	90	180.00						
Russia	Ruble	283.39	438.35						
Hungary	Forint	2,665.50	150.00						
Morocco	Dirham	146.58	37.11						
Arthur H. House:									
England	Pound	90	180.00						
Russia	Ruble	242.48	375.08						
Hungary	Forint	2,190.68	123.28						
Morocco	Dirham	116.80	29.57						
John P. Hardt:									
England	Pound	82.85	165.70						
Russia	Ruble	231.66	358.33						
Hungary	Forint	2,210.94	124.42						
Morocco	Dirham	116.80	29.57						
Gail S. Martin:									
England	Pound	76.45	152.90						
Russia	Ruble	219.93	340.20						
Hungary	Forint	2,280.42	128.33						
Morocco	Dirham	116.80	29.57						
Catherine Buchanan:									
England	Pound	90	180.00						
Russia	Ruble	218.97	338.71						
Hungary	Forint	2,155.50	121.30						
Morocco	Dirham	116.80	29.57						
David Schaefer:									
England	Pound	87.55	175.10						
Russia	Ruble	225.17	348.30						
Hungary	Forint	2,190.50	123.27						
Morocco	Dirham	116.80	29.57						
Douglas L. Jackson:									
England	Pound	70.80	141.60						
Russia	Ruble	259.24	401.00						
Hungary	Forint	1,070.46	60.24						
Jeffrey Record:									
England	Pound	90	180.00						
Russia	Ruble	301.50	466.35						
Hungary	Forint	2,521	141.86						
Robert Maynes:									
England	Pound	45	90.00						
Russia	Ruble	305.95	473.24						
Hungary	Forint	2,140.75	120.47						
Morocco	Dirham	116.80	29.57						
Roy A. Werner:									
Russia	Ruble	125.74	194.50						
Hungary	Forint	2,662.66	149.84						
Morocco	Dirham	114.27	28.93						
Jacob Javits:									
Russia	Ruble	242.44	375.00						
Hungary	Forint	1,332.75	75.00						
Albert Lakeland:									
Russia	Ruble	198.27	306.68						
Hungary	Forint	1,286.01	72.37						
Delegation expenses:									
England	Pound					1,495.87	2,991.73		
Russia	Ruble					8,486.79	13,127.29		
Hungary	Forint					77,301.10	4,350.09		
Morocco	Dirham					12,949.13	3,278.26		
Total			17,197.15				23,747.37		40,944.52

[1] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

Jan. 25, 1979.

J. S. KIMMITT,
Secretary of Senate.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1978

Name and country	Name of currency	Per diem: Foreign currency	Per diem: U.S. dollar equivalent or U.S. currency[1]	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency[1]	Miscellaneous: Foreign currency	Miscellaneous: U.S. dollar equivalent or U.S. currency[1]	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency[1]
Senator Lawton Chiles:									
Japan	Yen	17,182	75.00	3,436	15.00			20,618	90.00
China (PRC)	Dollar		825.00		[2] 2,897.00				3,722.00
Senator Thomas Eagleton:									
Italy	Lira	197,325	225.00	140,166	161 41				386.41
England	Pound	388.60	750.00	52.51	101.35				851.35
Senator Daniel Inouye:									
Phillippines	Peso	3,314.35	450.00		305.99				755.99
Air transportation from Washington, D.C. to Manila, Phillipines and return					2,497.36				2,497.36

See footnotes at end of table.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, EXPENDED BETWEEN JAN. 1 AND DEC. 31 1978—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency [1]	Foreign currency	U.S. dollar equivalent or U.S. currency [1]	Foreign currency	U.S. dollar equivalent or U.S. currency [1]	Foreign currency	U.S. dollar equivalent or U.S. currency [1]
Warren Kane:									
Switzerland	Sw. franc	313.10	181.82					313.10	181.82
Italy	Lira	191,475	225.00	33,000	39.13			224,475	264.13
Egypt	Pound	160	228.57	6	8.57			166	237.14
Sudan	Pound	128,740	258.00					128,740	258.00
Mexico	Peso	6,910.50	305.77					6,910.50	305.77
Richard Collins:									
Egypt	Pound	[3] 225.25	321.79	[3] 545.37	779.10			770.62	1,100.89
Syria	Pound	211	54.11					211	54.11
Jordan	Dinar	19.79	66.43					19.79	66.43
Israel	Pound	8,356.50	450.00					8,356.50	450.00
Italy	Lira	50,675	61.13					50,675	61.13
William H. Jordan:									
Austria	Schilling	6,429.25	432.50						432.50
Transportation from Washington, D.C., to Vienna, Austria and return					834.52				834.52
Phillipines	Peso	3,771.38	512.07						512.07
Korea	Won	144,000	300.00						300.00
Air transportation from Washington, D.C. to Manila, Phillipines; Seoul, Korea and return					1,469.44				1,469.44
Subtotal			5,722.19		9,108.87				14,831.06
AMENDED REPORT									
Chris E. Clouser:									
England	Pound	388.60	750.00	52.51	101.35			441.11	851.35
James D. Bond:									
Egypt	Pound	[3] 280.250	400.35	[3] 546.370	779.10			826.620	1,179.45
Syria	Pound	215	55.12					215	55.12
Jordan	Dinar	25.795	86.56					25.795	86.56
Israel	Pound	8,356.50	450.00					8,356.50	450.00
Italy	Lira	62,175	75.00					62,175	75.00
Subtotal			7,539.22		9,989.32				17,528.54
Steven Perles:									
England	Pound	281,88	525 00		821.00			281.88	1,346.00
Total			8,064.22		10,810.32				18,874.54

[1] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

[2] Transportation to and from China was by U.S. Air Force aircraft, last shown would be equivalent to commercial rate.

[3] Excess foreign currency.

Feb. 5, 1979.

WARREN G. MAGNUSON,
Chairman, Committee on Appropriations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and the second time by unanimous consent, and referred as indicated:

By Mr. WILLIAMS (for himself, Mr. JAVITS, Mr. RANDOLPH, Mr. PELL, Mr. LEVIN, Mr. MATSUNAGA, Mr. MELCHER, Mr. LEAHY, and Mr. RIEGLE):

S. 446. A bill to amend title VII of the Civil Rights Act of 1964 to prohibit discrimination against individuals because they are handicapped, and for other purposes; to the Committee on Human Resources.

By Mr. CANNON (by request):

S. 447. A bill to provide authorization of appropriations for the United States Railway Association, and for other purposes; to the Committee on Commerce, Science, and Transportation.

S. 448. A bill to authorize further appropriations for the Office of Rail Public Counsel; to the Committee on Commerce, Science, and Transportation.

By Mr. HATCH:

S. 449. A bill to amend the Internal Revenue Code of 1954 to provide that the tax exemption of certain charitable organizations and the allowance of a deduction for contributions to such organizations shall not be construed as the provisions of Federal assistance; to the Committee on Finance.

By Mr. DECONCINI (for himself and Mr. BUMPERS):

S. 450. A bill to improve the administration of justice by providing greater discretion to the Supreme Court in selecting the cases it will review, and for other purposes; to the Committee on the Judiciary.

By Mr. SCHWEIKER:

S. 451. A bill to amend the Public Health Service Act to revise and extend the programs of the National Institute of Arthritis, Metabolism and Digestive Diseases with respect to diabetes, to revise and extend the authorizations for the National Diabetes Advisory Board, and for other purposes; to the Committee on Human Resources.

By Mr. LAXALT:

S. 452. A bill for the relief of Gisella Maria Johanna Dunfield; to the Committee on the Judiciary.

S. 453. A bill for the relief of Joe L. Frazier of Elko, Nevada; to the Committee on the Judiciary.

By Mr. DOLE:

S. 454. A bill for the relief of Hector O. Fernandez; to the Committee on the Judiciary.

S. 455. A bill for the relief of Leonides T. Fernando; to the Committee on the Judiciary.

By Mr. STAFFORD:

S. 456. A bill to provide loans for the prevention or retarding of streambank erosion which threatens public and private facilities; to the Committee on Environment and Public Works.

S. 457. A bill to authorize the Corps of Engineers to provide technical assistance in streambank erosion control; to the Committee on Environment and Public Works.

S. 458. A bill to amend title XVIII of the Social Security Act for the purpose of including community mental health centers among the entities which may be qualified providers of service, and for other purposes; to the Committee on Finance.

S. 459. A bill to authorize the Corps of Engineers to assist communities in the control of river ice; to the Committee on Environment and Public Works.

S. 460. A bill to encourage bicycling and physical fitness by assuring greater safety for bicycles parked at Federal office buildings; to the Committee on Environment and Public Works.

S. 461. A bill to require that competitions be conducted to enhance the Nation's architecture and determine the design of certain new Federal office buildings; to the Committee on Environment and Public Works.

By Mr. WEICKER:

S. 462. A bill to exempt the price of natural gas imported from Mexico from regulation under any Federal or State law; to the Committee on Energy and Natural Resources.

By Mr. CHURCH (for himself, Mr. LONG, Mr. BENTSEN, Mr. WALLOP, Mr. YOUNG, Mr. JOHNSTON, Mr. STONE, Mr. MATSUNAGA, Mr. INOUYE, Mr. MCGOVERN, Mr. EXON, Mr. BAUCUS, Mr. BURDICK, Mr. MELCHER, and Mr. BOSCHWITZ):

S. 463. A bill to implement the International Sugar Agreement between the United States and foreign countries, to protect the welfare of consumers of sugar and of those engaged in the domestic sugar-producing industry, to promote the export trade of the United States, and for other purposes; to the Committee on Finance.

By Mr. INOUYE:

S. 464. A bill to amend the Internal Revenue Code of 1954 to expend the category of targeted groups for whom the new employee credit is available to include displaced homemakers; to the Committee on Finance.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 465. A bill to authorize the spouses of certain former members of the armed forces of the United States to use the services and facilities of post exchanges and commissaries; to the Committee on Armed Services.

By Mr. INOUYE:

S. 466. A bill to require that skilled nursing homes furnishing services under the medicare and medicaid programs be adequately equipped with wheelchairs and other appropriate equipment and supplies; to the Committee on Finance.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 467. A bill to amend title 38, United States Code, to provide that the Administrator of Veterans' Affairs may furnish outpatient dental services and treatment for a non-service-connected disability to any war veteran who has a service-connected disability of 80 per centum or more; to the Committee on Veterans' Affairs.

By Mr. INOUYE:

S. 468. A bill to allow an additional income exemption for a taxpayer or his spouse who is deaf or deaf-blind; to the Committee on Finance.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 469. A bill to amend chapter 67 of title 10, United States Code, to grant eligibility for retired pay to certain reservists who did not perform active duty before August 16, 1945, and for other purposes; to the Committee on Armed Services.

S. 470. A bill to amend title 10 of the United States Code relating to retention in active status of certain officers; to the Committee on Armed Services.

S. 471. A bill to amend title 10, United States Code, to authorize former members of the armed forces who are totally disabled as the result of a service-connected disability to travel on military aircraft in the same manner and to the same extent as retired members of the armed forces are permitted to travel on such aircraft; to the Committee on Armed Services.

S. 472. A bill to amend section 1002 of title 38, United States Code, to authorize the burial in a national cemetery of the parents of certain members of the Armed Forces who die in active service; to the Committee on Veterans' Affairs.

S. 473. A bill to amend section 1003 of title 38, United States Code, relating to memorial areas and appropriate memorials to honor the memory of certain deceased members of the Armed Forces whose remains were buried at sea, have not been identified, or were nonrecoverable; to the Committee on Veterans' Affairs.

S. 474. A bill to amend chapter 34 of title 38, United States Code, to authorize the Administrator of Veterans' Affiars to extend, under certain circumstances, the period within which a veteran must complete a program of education under such chapter; to the Committee on Veterans' Affairs.

By Mr. WALLOP (for himself, Mr. GOLDWATER, Mr. LAXALT, and Mr. MCCLURE):

S. 475. A bill to authorize the Secretary of the Interior to construct hydroelectric powerplants at various existing water projects, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. INOUYE:

S. 476. A bill to amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to prohibit the reduction of disability payments under employer-maintained disability compensation plans whenever certain social security benefit payments are increased; to the Committee on Finance and the Committee on Human Resources, jointly, by unanimous consent.

By Mr. WILLIAMS:

S.J. Res. 40. A joint resolution to authorize the President to proclaim annually the last Friday of April as "National Arbor Day"; to the Committee on the Judiciary.

By Mr. BURDICK:

S.J. Res. 41. A joint resolution to authorize the President to issue annually a proclamation designating that week in November which includes Thanksgiving Day as "National Family Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WILLIAMS (for himself, Mr. JAVITS, Mr. RANDOLPH, Mr. PELL, Mr. LEVIN, Mr. MATSUNAGA, Mr. MELCHER, Mr. LEAHY, and Mr. RIEGLE):

S. 446. A bill to amend title VII of the Civil Rights Act of 1964 to prohibit discrimination against individuals because they are handicapped, and for other purposes; to the Committee on Human Resources.

EQUAL EMPLOYMENT OPPORTUNITY FOR THE HANDICAPPED ACT OF 1979

● Mr. WILLIAMS. Mr. President, it is an anacronism in our laws that employers in the private sector are not under a general legal prohibition against discriminating irrationally against handicapped workers. Federal law prohibits employment discrimination against the handicapped by Federal agencies, Federal contractors, and Federal grantees; but there is no Federal law guaranteeing the right of our handicapped workers not to be victimized by employment discrimination in private sector employment.

The moral obligation of American employers, to treat handicapped persons fairly on the basis of their ability or inability to work, must be made a legal obligation. This legal obligation will provide important protection for the economic security and human dignity of our handicapped citizens; and it will pay large economic dividends to our society as a whole.

According to the 1970 census, there are approximately 12 million noninstitutionalized persons aged 18 to 64 years who are disabled. At least 7 million of these persons are able to engage in productive employment. The degree to which these handicapped citizens are being denied employment opportunities is shocking and demands legislative action.

Although handicapped persons make up only about 10 or 11 percent of our population between the ages of 18 and 64, handicapped men make up approximately 25 percent of our unemployed males. Disabled men have an unemployment rate twice as high as that of nondisabled men. And only about two-fifths of this group are employed during a typical year, compared with three-fourths of the nondisabled.

Our failure to provide equal employment opportunity to our handicapped citizens, on the basis of their ability to work, burdens our economy by wasting their skills and talents. Our taxpayers are burdened by the necessity of paying extensive income transfers to the disabled who are unemployed. And relatives of handicapped workers who cannot find employment must bear the burden of extra support and medical expenses.

It is also important to observe that employment discrimination against the handicapped has serious implications for other groups who are already protected against employment discrimination by Federal law. Statistics show that when a black American, an older American, or a woman is handicapped, their employment problems not only increase, they increase exponentially. This is particularly significant because the incidence of disability in our society is higher among workers who are in other protected groups. Similarly, workers who are disadvantaged by less than an average amount of formal schooling are also more likely to be physically or mentally handicapped. The compound effect of these employment disadvantages can be devastating to the worker's financial security.

The legislation which I am introducing today will go a long way toward meeting these problems. It gives the force of Federal law to the right of handicapped Americans to be treated fairly in the workplace, by amending title VII of the Civil Rights Act of 1963 to add a prohibition against discrimination on the basis of a person's handicapping condition.

The definition of "handicapping condition" adopted for this purpose is taken from the Rehabilitation Act of 1973, as amended. The term "handicapping condition" means the status of any individual who—first, has a physical or mental impairment which substantially limits one or more of such person's major life activities; second, has a record of such impairment; or third, is regarded as having such an impairment. Such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

For purposes of this definition, a handicapped individual is "substantially limited" if he or she is likely to experience difficulty in securing, retaining, or advancing in employment because of a handicap.

"Major life activities" within the meaning of this definition include, for example, communication, ambulation, self care, socialization, education, vocational training, employment, transportation, and adapting to housing.

The provision, "has a record of such an impairment" means that an individual who has recovered from a physical or mental impairment is protected against employment discrimination on the basis of their past impairment. Cancer victims, for example, regularly find themselves victimized by fears based upon misconceptions and misunderstanding. Even those who have been

treated successfully often find themselves discriminated against in employment.

The provision which prohibits discrimination against persons who are "regarded as having such an impairment" protects individuals who are perceived as having a handicap, whether an impairment exists or not, and who experience difficulty in securing, retaining, or advancing in employment because of discriminatory attitudes. Cases brought under the Rehabilitation Act, for example, have included instances of discrimination against persons with isolated episodes of epileptic seizures which have been successfully controlled. One remarkable case involved the denial of a position with the Peace Corps to a person who had a tendon disfunction of the small and ring fingers on the left minor hand. The employee clearly felt that this minor "disability" in no way affected a major life activity, but the potential employer "regarded" the employee "as having such an impairment."

Under this legislation, the exception for bona fide occupational qualifications provided by section 703(e) of title VII, will expressly be made applicable to the rights of handicapped applicants or employees. This means that an employer's business necessity will, under appropriate circumstances, justify limiting the employment opportunities of a person with a handicapping condition.

The effective date of this legislation is to be no sooner than July 1, 1980, or six months after enactment, if that is later. This effective date provision has been chosen to insure that the Equal Employment Opportunity Commission has at least 1 year to absorb its new responsibilities under the Age Discrimination in Employment Act and the Equal Pay Act, before any additional responsibility is given to that Commission.

Mr. President, I suggest that the time has come to give full legal protection to the employment rights of our handicapped citizens. Discrimination against the handicapped is rooted in misconceptions which are as groundless in their origin and as tragic in their consequences as the prejudices which have victimized other minorities and women in our society. Our handicapped citizens want and deserve a fair opportunity to work on the basis of their abilities. This legislation will provide an important part of what will be necessary to insure that they have that opportunity.

Mr. President, I ask unanimous consent that the bill, and a section-by-section analysis be printed into the RECORD.

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

S. 446

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunity for the Handicapped Act of 1979".

SEC. 2. Section 701 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following:

"(1) The term 'handicapping condition' means the status of any individual who—

"(A) has a physical or mental impairment which substantially limits one or more of such person's major life activities;

"(B) has a record of such impairment; or

"(C) is regarded as having such an impairment.

Such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.".

SEC. 3. (a) (1) Section 703(a)(1) of the Civil Rights Act of 1964 is amended by inserting immediately after the word "sex" a comma and the words "handicapping condition".

(2) Section 703(a)(2) of such Act is amended by inserting immediately after the word "sex" a comma and the words "handicapping condition".

(b) Section 703(b) of such Act is amended by inserting immediately after the word "sex" a comma and the words "handicapping condition".

(c)(1) Section 703(c)(1) of such Act is amended by inserting immediately after the word "sex" a comma and the words "handicapping condition".

(2) Section 703(c)(2) of such Act is amended by inserting immediately after the word "sex" a comma and the words "handicapping condition".

(d) Section 703(d) of such Act is amended by inserting immediately after the word "sex" a comma and the words "handicapping condition".

(e) Section 703(e)(1) of such Act is amended by inserting immediately after the word "sex" the first time it appears a comma and the words "handicapping condition," and by inserting after the word "sex" the second time it appears a comma and the following: "absence of a particular handicapping condition".

(f) Section 703(h) of such Act is amended by inserting after the word "sex" both times it appears in the first sentence of such subsection a comma and the words "handicapping condition".

(g) Section 703(j) of such Act is amended by inserting after "or group" the following: ", or because such individual or the members of the group have a handicapping condition," and by inserting after "national origin" the second and third time it appears the following: "or having a handicapping condition,".

(h) The section heading of section 703 of such Act is amended to read as follows:

"DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, HANDICAPPING CONDITION, OR NATIONAL ORIGIN"

SEC. 4. (a) Section 704(b) of the Civil Rights Act of 1964 is amended by inserting after the word "sex" each time it appears in such subsection a comma and the words "handicapping condition".

(b) Section 706(g) of such Act is amended by inserting after the word "sex" a comma and the words "handicapping condition".

SEC. 5. (a) Section 717(a) of the Civil Rights Act of 1964 is amended by inserting after the word "sex" a comma and the words "handicapping condition".

(b) Section 717(c) of such Act is amended by inserting after the word "sex" a comma and the words "handicapping condition".

SEC. 6. The amendments made by this Act shall take effect July 1, 1980, or six months after the date of its enactment, whichever is later.

SECTION-BY-SECTION ANALYSIS OF THE EQUAL EMPLOYMENT OPPORTUNITY FOR THE HANDICAPPED ACT OF 1979

Section 1 is the enacting clause which states that the Act may be cited as the "Equal Employment Opportunity for the Handicapped Act of 1979".

Section 2 adds a new subsection (1) to Section 701 of the Civil Rights Act of 1964, as amended. The new subsection defines the term "handicapping condition" for the purposes of the Act.

Section 3, subsections (a), (b), (c), and (d) amend Section 703, subsections (a), (b), (c), and (d) of the Civil Rights Act which make unlawful certain employment practices by employers, employment agencies, labor organizations, and joint labor-management committees by adding "handicapping condition" as an impermissible basis for discrimination, limitation, segregation, classification, or exclusion as prohibited by those subsections of the Act.

Section 3(e) amends Section 703(e) of the Act to make the provisions of that subsection regarding bona fide occupational qualifications applicable, under appropriate circumstances, in relation to an individual's particular "handicapping condition."

Section 3(f) amends Section 703(h) of the Act to make applicable in the case of an individual with a "handicapping condition" the provisions of that Section which state that it shall not be an unlawful employment practice for an employer to apply a bona fide seniority or merit system, or a piece rate system or other objective basis for pay rate differentials, or to employ appropriately developed and applied ability tests, provided these actions are not designed, intended or used to discriminate on the basis of "handicapping condition."

Section 3(g) amends Section 703(j) of the Act which states that employers, employment agencies, labor organizations, and joint labor-management committees subject to the Act shall not be required to grant preferential treatment to any individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of such handicapping condition in any community, state, section, or other area, or in the available workforce.

Section 3(h) amends the Section heading of Section 703 of the Act to include the term "handicapping condition."

Section 4(a) amends Section 704(b) of the Act to add "handicapping condition" as an impermissible basis for the expression of any preference, limitation, specification, or discrimination, in notices or advertisements related to employment, classification or referral for employment, membership in a labor organization or admission to or employment in an apprenticeship or other training program. The existing exception to this prohibition, with regard to bona fide occupation qualifications for employment, is also made applicable to handicapping conditions.

Section 4(b) amends Section 706(g) of the Act to make it clear that the limitation provided by that subsection, on the authority of a court to require the admission or reinstatement of an individual to a union or the hiring, reinstatement, or promotion of an individual, or payment of back pay to an individual not discriminated against in violation of the Act, also applies in the case of discrimination on account of "handicapping condition."

Section 5(a) amends Section 717(a) of the Act to extend the provisions of the Act to protect employees or applicants for employment by the Federal government against discrimination on the basis of "handicapping condition."

Section 5(b) amends Section 717(c) of the Act to provide that employees of the Federal government may bring suit on the grounds of discrimination based on "handicapping condition" against the head of the department, agency, or unit, as appropriate, under the circumstances described in that subsection.

Section 6 provides that the effective date of the amendments made by this legislation shall be July 1, 1980, or six months after the date of its enactment, whichever is later.●

● Mr. JAVITS. Mr. President, I am pleased to join with the chairman of the

Human Resources Committee, Senator WILLIAMS, in introducing the Equal Employment Opportunity for the Handicapped Act of 1979.

In the Civil Rights Act of 1964 this Nation established a new standard of justice and in title VII of the act prohibited discrimination in employment on the basis of race, color, religion, sex, or national origin. Workers were no longer to be treated on the basis of irrelevant characteristics but, instead, on the basis of individual merit. We now know that those individuals suffering physical or mental handicap are also all too often treated by employers on the basis of generalizations about particular disabilities, and not on their individual ability to perform a job. Accordingly, the bill we introduce today, S. 446 amends title VII to prohibit employment discrimination against handicapped workers.

In 1973 the Congress partially addressed the problem of assuring equal employment opportunities for the handicapped when it enacted title V of the Rehabilitation Act. Specifically, section 503 of that act prohibits employment discrimination against handicapped workers by Federal contractors and authorizes the Department of Labor to require such contractors to initiate and implement affirmative action plans. This was a significant step toward the important goal of promoting equal employment opportunity for the handicapped, but falls far short of covering all employment situations.

Coverage of the handicapped under title VII will demonstrate the Federal Government's firm commitment to ending discrimination against the handicapped and utilizes an enforcement mechanism already in place to insure that this goal is met.

During the course of hearings on this bill, it is important that we carefully examine the particular problems of physically and mentally handicapped workers as they relate to discrimination in employment. We will need to be sure that the definition of "handicapped" is sufficiently inclusive and at the same time appropriate for enforcement purposes. The committee will review the artificial barriers to hiring and promoting the handicapped to determine if some affirmative requirements, such as making "reasonable accommodation" to their particular needs is critical to true equality of employment opportunity. Similarly, bona fide occupational qualifications will need careful review in the context of handicapped workers. In addition, there will be an examination of the administrative and enforcement mechanisms of the Department of Labor under the Rehabilitation Act in relation to the Equal Employment Opportunity Commission which enforces title VII, and of what additional resources will be required.

These and other relevant issues must be addressed by the committee in its consideration of this bill to make certain that the proper tools will be in place to give handicapped workers the full protection of the Federal Government in their quest to achieve the right they are too often denied, to wit: an opportunity to pursue the careers of their choice and to earn a decent living without being doubly burdened by their handicap, which they can do nothing about, and by employment discrimination. Our Nation should now be ready to remedy employment discrimination against the handicapped.●

● Mr. LEVIN. Mr. President, the Equal Employment Opportunity for the Handicapped Act of 1979, which today I join in sponsoring, is a long overdue move to prohibit discrimination against the handicapped. This country's 7 million handicapped persons who are able to work should be given a chance to lead productive lives. They, as any of us, deserve to be judged on the basis of their abilities. It is as unfair to discriminate against persons because of a handicap as it is to discriminate against someone because of his or her race, color, religion, sex, or national origin. All of these have been prohibited by title VII of the Civil Rights Act of 1964, and this amendment to the 1964 act merely extends the same protection to the handicapped. It does not stop employers from applying legitimate criteria in hiring. It only prohibits them from setting standards that simply discriminate against the handicapped.

Federal law forbids discrimination against the handicapped by the Federal Government, most Federal contractors and those who have received Federal grants. We need to go further to be sure that this sort of discrimination is not practiced anywhere in this country.

My home State, Michigan, already has the language of this amendment in its civil rights statute. The Congress quickly should do the same.●

By Mr. CANNON (by request):

S. 447. A bill to provide authorization of appropriations for the United States Railway Association, and for other purposes; to the Committee on Commerce, Science, and Transportation.

● Mr. CANNON. Mr. President, I am introducing today by request legislation to amend the Regional Rail Reorganization Act of 1973 to authorize additional appropriations for the United States Railway Association. The legislation I am proposing would amend section 214(c) of the "3–R" Act by authorizing to the USRA $30,000,000 for fiscal year 1980.

The United States Railway Association was created by Congress to develop and implement a plan for restructuring the bankrupt railroads of the Northeast region. The Nation's largest railroad, the Consolidated Rail Corporation (ConRail) is the result of that restructuring effort. USRA has the responsibility for providing Federal funds to ConRail so that it can continue to rehabilitate and improve the facilities transferred to it by the estates of the bankrupt railroads and for monitoring the need for and use of these funds. The association also has the unique responsibility for representing the Government in the litigation to determine the value of the assets transferred to ConRail. The possible range of this determination is several billions of dollars. It is important, therefore, that the USRA has adequate funding to carry out its important responsibilities efficiently and effectively.

Mr. President, I ask unanimous consent that the text of the bill and letter of transmittal, with accompanying documents, from the United States Railway Association be printed in the RECORD.

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

S. 447

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 214(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 724(c)) is amended to read as follows:

"(c) ASSOCIATION.—For the fiscal year ending September 30, 1980, there are authorized to be appropriated to the Association for purposes of carrying out its administrative expenses under this Act such sums as are necessary, not to exceed $30,000,000. Sums appropriated under this subsection are authorized to remain available until expended.".

UNITED STATES RAILWAY ASSOCIATION,
Washington, D.C.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science and Transportation, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR CANNON: The United States Railway Association hereby requests that Section 214(c) of the Regional Rail Reorganization request for fiscal year 1980 of $30 million as indicated in the draft amendment, attached hereto.

The Association requests the opportunity to appear and testify before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, Science and Transportation of the Senate Committee on Commerce, Science and Transportation in support of its fiscal year 1980 request. Our request for an authorization of appropriations totalling $30 million in administrative expenses is explained in the attached justification.

While the Association is requesting an authorization of $30 million for fiscal year 1980, the President's budget includes $23.9 million for fiscal year 1980. The Association is requesting a $30 million authorization to enable it to meet changing circumstances and contingencies during the next fiscal year.

Sincerely,

DONALD C. COLE,
President.

AUTHORIZING LEGISLATION FOR ADMINISTRATIVE EXPENSES

The United States Railway Association was created by Congress to develop and implement a plan for restructuring the bankrupt railroads of the Northeast region of the country into an economically viable system that would meet the rail needs of the region served. As a result of the Association's efforts, the Consolidated Rail Corporation (Conrail) came into being on April 1, 1976 as the nation's largest railroad. The USRA has responsibility for providing funds to Conrail so that it can rehabilitate and improve the facilities transferred to it by the estates of the bankrupt railroads and for monitoring the need for and use of these funds. An authorization of $2.1 billion was enacted early in 1976 to provide for appropriations that would cover the new railroad's losses in its initial years and to provide for rehabilitation and improvement of the railroad's plant and equipment. Because Conrail's efforts to achieve financially self-sustaining operations have not proceeded as originally planned, an additional $1.2 billion was authorized by Congress in October, 1978.

The Association also has the responsibility for representing the Government in the litigation that has been initiated by the estates

concerning the value of the assets transferred to Conrail. An additional continuing function is the monitoring of loans to other railroads which qualified for assistance from the Association pursuant to the Regional Rail Reorganization (RRR) Act.

Section 214(c) of the Regional Rail Reorganizing Act provides authority for appropriations to support the Association's administrative expenses. The current authority is for $27.2 million to cover 1979 expenses. It is now necessary to further amend the Act and provide authority for appropriations of $30 million to cover 1980 administrative expenses.

Because of the unprecedented nature of its responsibilities, the Association has had great difficulty in forecasting its budget requirements for administrative expenses. The work of the Association is dictated in large part by the nature and timing of actions by the Special Court which was created to determine the value to be assigned to the conveyed properties. Likewise, with regard to Conrail, USRA must be responsive to many conditions beyond its control which can affect Conrail's profitability, and thus we have been unable to forecast accurately our need for resources with which to monitor Conrail.

On June 23, 1978 the Special Court issued its Second Pretrial Order in the valuation case. The order established a demanding schedule leading toward the initiation of evidentiary proceedings on values for transferred assets assuming the estates had been able to sell their assets for both rail use and non-rail use in the absence of the RRR Act. This schedule required the transferors to submit in writing their entire direct evidence concerning rail-use values prior to the end of calendar year 1978. By January 31, 1979, the Government parties must submit their affirmative defense evidence in writing to the Court.

Our major effort with respect to litigation throughout the remainder of FY 1979 will be concerned with the development of the Government case on selected rail-use issues, preparation of a defense against rail-use valuation put forth by the estates, and conducting depositions of witnesses for rail-use proceedings. It is the Court's intention to conduct the rail-use proceeding by the deposition process, thus eliminating the need for a traditional trial. Rail-use proceedings will start in the Spring of 1979 and will extend well into FY 1980.

This litigation schedule represents a major departure from the schedule we anticipated just one year ago when we requested our 1979 authorization. At that time the Association was preparing for Court hearings and trials on values relating to the sale of the transferred assets as scrap. The action of the Court on June 23rd which was a follow-up on an order issued on April 18th significantly revised our priorities, and forced us to initiate intensive efforts relating to the sale of transferred assets for both rail use and non-rail use. The Court's Third Pretrial Order directed the parties to use the deposition process for discovery and cross-examination of witnesses.

Significant changes have also taken place in the Association's monitoring role. The Association's Report to Congress on Conrail Performance, 1977, noted that the railroad's overall operating and financial performance had fallen behind the goals of the Final System Plan. We stated that there was a high probability that Conrail's Government investment requirements will substantially exceed the additional $1.3 billion suggested by Conrail in their latest five-year business plan. Given these conditions, the Association is examining options that would increase Conrail's prospects for attaining financial self-sufficiency and reduce its need for further Federal funding. The major variables which must be considered are:

(1) Plant size and configuration.
(2) Market structure.
(3) Productivity of equipment and the work force.

Studies of these broad areas have imposed an unanticipated workload on the Association and have substantially increased its need for funds in 1979.

Thus, the revised litigation effort, the increased monitorship of Conrail and efforts to develop alternatives to Conrail's present make-up result in increased fund requirements. These changes have forced the Association to seek a supplemental appropriation of $4.2 million for 1979 which will increase the funds appropriated for administrative expenses from $23 million to $27.2 million. A balance of $1.3 million from prior year appropriations plus $23 million already appropriated and a supplemental appropriation of $4.2 million will provide a total of $28.5 million for current year administrative expenses.

It is reasonable to assume that 1980 will bring a number of developments that we have been unable to forecast. Although our requirements might decrease as a result of these changes, in the past we have consistently underestimated our future requirements. The President's 1980 budget includes an estimate of $23.9 million for USRA administrative expenses. However, we are proposing an authorization for 1980 of $30 million. This authorization will provide the flexibility that is needed to adapt the Association's program to changing circumstances.

It is extremely important that USRA have resources that are adequate to discharging its responsibilities. Lack of adequate funding could have a very serious impact on the Federal budget. The purpose of the Special Court is to determine the compensation that must be paid to the estates of the bankrupt railroads for the properties that were conveyed to Conrail under the RRR Act. Ultimately the Federal Government will be responsible for assuring that the estates receive the amount that is determined by the Special Court to be just and equitable compensation. The ability of the Association to litigate effectively the basic issues of valuation could significantly affect the ultimate determination of the Special Court. The possible range of this determination is several billions of dollars.

Similarly, the work that USRA is doing on Conrail alternatives will have a substantial impact on the cost of achieving adequate and efficient rail service in the Northeast. Our success in developing feasible alternatives will make a substantial contribution toward achieving the goals of the Final System Plan at least cost to the Government.

The Association obligated $22.5 million for administrative expenses in fiscal year 1978. The FY 1979 requirement is estimated to be $28.5 million and $30 million may be needed for FY 1980. The following table summarizes, by major activity, estimated requirements for FY 1978, FY 1979 and FY 1980.

REQUIREMENTS BY PROGRAM

[Dollar amounts in thousands]

	Fiscal year 1978 actual	Fiscal year 1979 estimate	Fiscal year 1980 estimate
Litigation:			
General counsel	$4,420	$4,884	$6,487
Asset valuation	10,346	11,285	12,687
Operations and marketing	28	35	35
Computer support	1,067	1,366	1,276
Other support	2,788	2,510	2,469
Total	18,649	20,080	22,954
Monitoring:			
General counsel	64	96	101
Finance	462	689	573
Operations and marketing	1,162	1,815	1,837
Computer support	354	667	569
Other support	1,035	857	933
Total	3,077	4,124	4,013
Consideration of alternatives:			
General counsel	5	123	125
Finance	63	616	502
Operations and marketing	155	2,121	1,436
Computer support	364	791	380
Other support	182	627	590
Total	769	4,278	3,033
Grand total	22,495	28,482	30,000
Percentages:			
Litigation	83	71	77
Monitoring	14	14	13
Consideration of alternatives	3	15	10
Total	100	100	100

By Mr. CANNON (by request):

S. 448. A bill to authorize further appropriations for the Office of Rail Public Counsel; to the Committee on Commerce, Science, and Transportation.

● Mr. CANNON. Mr. President, today I am introducing, by request, the Rail Public Counsel Authorization Act of 1980 for appropriate reference.

The Office of Rail Public Counsel was established as an independent agency under section 304(a) of the Railroad Revitalization and Regulatory Reform Act of 1976. This agency was created to further, through administrative and judicial proceedings involving rail common carriers, the representation of the public interest in advancing safe and efficient rail transportation. The office has the responsibility to evaluate and present, as a participant in a pertinent proceeding, the views of communities and users of the rail system who would not otherwise be adequately represented.

The legislation amends section 27(6) of the Interstate Commerce Act, to authorize an appropriation not to exceed $1,850,000 for fiscal year 1980. Such a request has been made to meet the budgetary requirements for providing continued presentation of public interest considerations in appropriate rail proceedings.

Mr. President, I ask unanimous consent that the text of the bill and the letter of transmittal from the Office of Rail Public Counsel be printed in the RECORD.

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

S. 448

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 27(6) of the Interstate Commerce Act (49 U.S.C. 26b(6)) is amended—

(1) by striking out "and" immediately after "1977,"; and

(2) by inserting immediately before the period at the end thereof the following: ", and not to exceed $1,850,000 for the fiscal year ending September 30, 1980.".

OFFICE OF RAIL PUBLIC COUNSEL,
Washington, D.C., January 30, 1979.

HON. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a proposed bill, "To authorize further appropriations for the Office of Rail Public Counsel."

The Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. No. 94-210) established the Office of Rail Counsel for the purpose of representing before the Interstate Commerce Commission, other federal agencies and the courts the "public interest in safe, efficient, reliable, and economical rail transportation services". An authorization for fiscal year 1980 is necessary for the Office to continue performance of the functions and responsibilities contained in Pub. L. No. 94–210.

The proposed bill would authorize $1,850,000 for fiscal year 1980 and such sums as are necessary for fiscal year 1981.

This Office has been advised by the Office of Management and Budget that enactment of the proposed bill would be in accord with the President's program.

Sincerely,

HOWARD A. HEFFRON,
Director.●

By Mr. DECONCINI (for himself and Mr. BUMPERS):

S. 450. A bill to improve the administration of justice by providing greater discretion to the Supreme Court in selecting the cases it will review, and for other purposes; to the Committee on the Judiciary.

SUPREME COURT JURISDICTION ACT OF 1979

● Mr. DECONCINI. Mr. President, I am pleased today to introduce the Supreme Court Jurisdiction Act of 1979, a bill to improve the administration of justice by providing greater discretion to the Supreme Court in selecting the cases it will review, and for other purposes.

If the Supreme Court Jurisdiction Act is enacted into law it will be the culmination of a long and historic process converting the appellate jurisdiction of the Supreme Court from one totally obligatory in nature to one that, with a few minor exceptions, will be almost totally discretionary. In the modern era of burgeoning litigation, when the Court is overwhelmed with caseloads and workloads, the maintenance of any substantial amount of obligatory decisionmaking is inexcusable and counterproductive. It detracts from the Court's ability to control its own docket and to effectuate its constitutional mission of resolving only those matters that are of truly national significance. That essentially is why Chief Justice Burger, like so many other observers, has repeatedly proposed that "all mandatory jurisdiction of the Supreme Court that can be, should be eliminated by statute."

To understand why the enactment of this bill is so desirable and, indeed, so essential, one must examine the role that obligatory jurisdiction has played in the Supreme Court's execution of its appellate functions. It is a jurisdiction steeped in history, but productive of confusion and mismanagement. History has shown that imposing such mandatory functions on the Supreme Court tends to weaken the Court's capacity both to control its own docket and to confine its labors to the frontiers of national law. And history has further shown that the Court, in an effort to counteract the workload problems of this compulsory jurisdiction, has increasingly disposed of "insubstantial" appeals in summary ways that the bar, the lower courts, and many commentators often find confusing and opaque, if not inconsistent with the nondiscretionary theory underlying the disposition of appeals. Much of the criticism of the Court's treatment of appeals has emanated from some of those on the Court who have participated in the execution of these mandatory functions.

There are six major reasons for abolishing the Supreme Court's obligatory jurisdiction. First, it is unnecessary to the Court's performance of its role in our society.

Second, it impairs the Court's ability to select the right time and the right case for the definitive resolution of recurring issues.

Third, it imposes burdens on the Justices that may hinder the Court in the performance of its function as expositor of the national law.

Fourth, the existence of the obligatory jurisdiction has made it necessary for the Court to hand down summary dispositions that create confusion for lawyers, for lower court judges, and for citizens who must conform their conduct to the requirements of Federal law.

Fifth, the obligatory jurisdiction creates burdens for lawyers seeking Supreme Court review.

Finally, even if the idea of having an obligatory jurisdiction were sound, there is no practical way of describing, in legislation, the kinds of cases that should fall within it.

Congress would do well to eliminate, as proposed in this bill, the last large vestiges of a jurisdiction that has proved unnecessary, burdensome, and controversial. Whatever justification may once have existed for forcing the Court to decide the merits of all cases falling within certain arbitrary classifications, regardless of their importance or lack thereof, has long since disappeared.

The long historic experiment of imposing on the Supreme Court an obligation to resolve appeals taken to it as of right has utterly failed. The modern problems and practices of the Court simply do not permit the luxury of determining the merits of all cases within any designated jurisdictional class. To survive as a viable institution, to control its docket to perform its great mission, the Supreme Court must be given total freedom to select for resolution those few hundred cases—out of the several thousands that are filed each year—that are found truly worthy of review. The Supreme Court Jurisdiction Act will help to achieve that goal by reducing the needless mandatory burdens virtually to the vanishing point.

For all of these reasons, I urge your support of the enactment of this bill which would eliminate substantially all of the Supreme Court's mandatory appellate jurisdiction, leaving the Court with discretionary control of its appellate docket.

This bill was introduced last Congress as S. 3100 and was strongly supported by all nine Justices of the Supreme Court. I ask unanimous consent to insert in the RECORD at this point the bill, a letter I received signed by all nine Justices, and an excerpt from an opinion by Mr. Justice Stevens.

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

S. 450

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Supreme Court Jurisdiction Act of 1979".

SEC. 2. Section 1252 of title 28, United States Code, is repealed.

SEC. 3. Section 1254 of title 28, United States Code, is amended by deleting subsection (2), by redesignating subsection (3) as subsection (2), and by deleting "appeal;" from the title.

SEC. 4. Section 1257 of title 28, United States Code, is amended to read as follows:

"§ 1257. State courts; certiorari

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.

"For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals.".

SEC. 5. Section 1258 of title 28, United States Code, is amended to read as follows:

"§ 1258. Supreme Court of Puerto Rico; certiorari

"Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.".

SEC. 6. The analysis at the beginning of chapter 81 of title 28, United States Code, is amended to read as follows:

"Chapter 81.—SUPREME COURT

"Sec.
"1251. Original jurisdiction.
"1252. Repealed.
"1253. Direct appeals from decisions of three-judge courts.
"1254. Court of appeals; certiorari; certified questions.
"1255. Court of Claims; certiorari; certified questions.
"1256. Court of Customs and Patent Appeals; certiorari.
"1257. State courts; certiorari.
"1258. Supreme Court of Puerto Rico; certiorari.".

SEC. 7. Section 314 of the Federal Election Campaign Act of 1971, as added by section 208(a) of the Federal Election Campaign Act Amendments of 1974, as redesignated and amended (2 U.S.C. 437h), is amended:

(a) by deleting subsection (b); and

(b) by redesignating subsection (c) as subsection (b).

SEC. 8. Section 2 of the Act of May 18, 1928 (25 U.S.C. 652) is amended by deleting ", with the right of either party to appeal to the Supreme Court of the United States".

SEC. 9. Subsection (d) of section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652 (d)) is amened by deleting the last sentence.

SEC. 10. This Act shall take effect ninety days after the date of enactment. However, it shall not affect cases then pending in the Supreme Court, nor shall it affect the right to review, or the mode of reviewing, the judgment or decree of a court when the judgment or decree sought to be reviewed was entered prior to the effective date of this Act.

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., June 22, 1978.

Re S. 3100.

DEAR SENATOR DECONCINI: In response to your invitation and inquiries, we write to comment on proposed limitations of the Supreme Court's mandatory jurisdiction, specifically those contained in S. 3100. Various Justices have spoken out publicly on the issue on prior occasions, all stating essentially the view that the Court's mandatory jurisdiction should be severely limited or eliminated altogether. Your invitation, however, enables all of us, after discussions within the Court, to express our common view on the matter.

We endorse S. 3100 without reservation and urge the Congress to enact it promptly.

Our reasons are similar to those so ably presented in hearings before the Senate on June 20, 1978, by Solicitor General McCree, Assistant Attorney General Meador, Professor Gressman and others. First, any provision for mandatory jurisdiction by definition permits litigants to bring cases to this Court as of right and without regard to whether those are of any general public importance or concern. Thus, the Court is required to devote time and other finite resources to deciding on the merits cases which do *not*, in Chief Justice Taft's words, "involve principles, the application of which are of wide public importance or governmental interest, and which should be authoritatively declared by the final court." To the extent that we are obligated by statute to devote our energies to these less important cases, we cannot devote our time and attention to the more important issues and cases constantly pressing for resolution in an increasing volume—as witness the current Term now in its closing weeks.

The problem we describe is substantial. We are attaching to this letter an appendix consisting of statistical tables covering the October 1976 Term. As these tables indicate, during the 1976 Term almost half of the cases decided by this Court on the merits were cases brought here as of right under the Court's mandatory jurisdiction. Although presumably the percentage decreased during the 1977 Term because of Congressional action in 1976 severely limiting the jurisdiction of three-judge federal district courts, the burden posed by appeals as of right remained substantial and unduly expended the Court's resources on cases better left to other courts.

Second, the retention of mandatory jurisdiction at a time when the Court's caseload is heavy and growing requires the Court to resort to the generally unsatisfactory device of summary dispositions of appeals. There is no necessary correlation between the difficulty of the legal questions in a case and its public importance. Accordingly, the Court often is required to call for full briefing and oral argument in difficult cases of no general public importance. The Court cannot, however, accord plenary review to all appeals; to have done so during the October 1976 Term, for example, would have required at least 13 additional weeks of oral argument, almost a doubling of the argument calendar—an utterly impossible assignment. As a consequence, the Court must dispose summarily of a substantial portion of cases within its mandatory jurisdiction, often without written opinion. However, because these summary dispositions are decisions on the merits, they are binding on state courts and other federal courts. See *Mandel* v. *Bradley*, 432 U.S. 173 (1977); *Hicks* v. *Miranda*, 422 U.S. 332 (1975). Yet, as we know from experience, our summary dispositions often are uncertain guides to the courts bound to follow them and not infrequently create more confusion than clarity. From this dilemma we perceive only one escape consistent with past Congressional decisions defining the Court's mandatory jurisdiction: Congressional action eliminating that jurisdiction. Accordingly, we endorse S. 3100 and urge its adoption.

Cordially and respectfully,

Warren E. Burger, William J. Brennan, Potter Stewart, Byron R. White, Thurgood Marshall, Harry A. Blackmun, Lewis F. Powell, William H. Rehnquist, and John P. Stevens.

EXCERPT

On June 15, 1978, Mr. Justice Stevens prefaced his announcement of two opinions of the Supreme Court, affirming two decisions of state supreme courts, with the following oral statement on behalf of the Court:

These two cases will be of interest to a limited segment of the Bar that practices in tax law and more narrowly in taxation by the states of various business entities. They both come here by appeal from the highest court of a state, one from the State of Massachusetts and the other from the State of Iowa.

At least one of these cases almost certainly would not have been heard by the Court if the Court had discretion to decide whether or not to hear it. They are both here under our mandatory jurisdiction where the Court must decide on the merits the cases in which a state court has upheld a state statute against a federal constitutional challenge. They are examples, at least one of them, of the kind of cases in which the Court would hope that Congress would consider moving our mandatory jurisdiction.●

By Mr. SCHWEIKER:

S. 451. A bill to amend the Public Health Service Act to revise and extend the programs of the National Institute of Arthritis, Metabolism and Digestive Diseases with respect to diabetes, to revise and extend the authorizations for the National Diabetes Advisory Board, and for other purposes; to the Committee on Human Resources.

DIABETES RESEARCH AND TRAINING AMENDMENTS AND NATIONAL DIABETES ADVISORY BOARD EXTENSION ACT OF 1979

● Mr. SCHWEIKER. Mr. President, today I am pleased to introduce the Diabetes Research and Training Amendments and National Diabetes Advisory Board Extension Act of 1979.

This legislation reaffirms congressional commitment to the fight against diabetes and its many serious complications. It builds upon our past efforts—notably the Diabetes Mellitus Research and Education Act, the National Diabetes Advisory Board Act, and related appropriations Acts—and is designed to insure that our commitment to improved diabetes-related research, training, education, and treatment programs is maintained and upgraded.

Since passage of the Diabetes Mellitus Research and Education Act which I authorized and the subsequent report of the National Commission on Diabetes, there has been a growing realization in Congress and among the American people that diabetes is not an "OK disease," cured by insulin. Increasingly, we have become aware of the fact that our efforts to improve diabetes research, education, and treatment must be intensified. Diabetes is not an "OK disease." It ranks among the leading killers. It afflicts as many as 10 million Americans. It is the leading cause of adult blindness in this country, and its many devastating, sometimes fatal, complications include kidney and heart disease, diabetic neuropathy, and stroke. Disproportionately, it strikes the aged, poor, and black. Insulin is a lifesaving control for insulin insufficiency but not a cure for diabetes, and it does not check the progress of complications. Nor do widely used oral diabetes drugs cure milder forms of the disease; in fact, there is substantial evidence that treatment with these drugs may actually increase the diabetic's risk of dying from heart disease.

The bill I introduce today is designed to maintain and strengthen the Federal Government's efforts to improve prevention, diagnosis, and treatment of diabetes. Clearly the key to better care and, eventually, finding a cure, is research. Our research efforts through the National Institutes of Health have increased three-fold since 1976. The increase has paid off handsomely in promising research breakthroughs for example in the development of photocoagulation treatment for diabetic retinopathy and in support for basic research in recombinant DNA techniques leading to the synthesis of human insulin. The legislation I am submitting extends the Diabetes Research and Training Center program and strengthens the role of the associate director for diabetes within the NIH as the primary Federal official with responsibility for diabetes research and training activities. For too many years, diabetes efforts were split up among several institutes and agencies: What was everybody's responsibility was no one's chief priority. The establishment of an associate director for diabetes has changed that, and my new bill enhances his role.

The National Diabetes Advisory Board has performed a critical function in keeping our diabetes programs on track. The Board brings together responsible Federal agencies, scientists and health professionals, and concerned lay people. Together, they are charged with reviewing and evaluating the progress of diabetes programs, in light of the diabetes plan developed by the National Commission on Diabetes and making recommendations to the executive branch and the Congress. Public efforts and private voluntary agencies are linked, to their mutual benefit. I believe that the vital functions of the Board must be continued and the diabetes plan updated to insure its continuing relevance, as this bill provides.

My bill also acknowledges the increasing importance of diabetes activities at the National Institutes of Health and enhances program visibility by adding "diabetes" to the title of the National Institute of Arthritis, Metabolism, and Digestive Diseases.

Mr. President, I want to make it clear

that this bill does not create a new bureaucracy or call for any large new expenditures of Federal funds. In light of current fiscal restraints, there has been an effort to keep authorizations to a modest level. The National Diabetes Advisory Board is continued through 1985 at the same level as fiscal year 1978. Authorizations for Diabetes Research and Teaching Centers are reduced to $14 million in 1981, gradually rising to the fiscal year 1979 level of $20 million for the fiscal years 1983–85. In addition, as a strong supporter of the "sunset" concept, I have included a specific 5-year sunset for the advisory board.

In many ways, the organization of diabetes programs has become a model for the organization of Federal efforts aimed at combating a chronic, systemic disease that crosses the traditional boundaries of the research institutes and other Federal programs. It is a model that seems to have worked exceptionally well for diabetes, and I will be chairing a hearing of the Subcommittee on Health and Scientific Research of the Senate Human Resources Committee on Monday to examine accomplishments to date and any program changes that are needed to continue our progress in the search for a cure for diabetes and its complications.

In my role as ranking Republican on the subcommittee, and on the full Human Resources Committee, as well as ranking Republican on the Labor-HEW Appropriations Subcommittee, I intend to continue to focus on the need for improved diabetes programs during the 96th Congress. I want to acknowledge the important contributions of dedicated Federal officials like Dr. Frederickson and Dr. Salans of the National Institutes of Health and Dr. Foege and Dr. Flynt of the Center for Disease Control, and the critical work of private sector groups like the Juvenile Diabetes Federation and American Diabetes Association. With the continued support of my colleagues in the Congress, I am confident that our diabetes programs will be sustained and improved.

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. 451

SHORT TITLE; REFERENCE TO ACT

SEC. 1. (a) This Act may be cited as the "Diabetes Research and Training Amendments and National Diabetes Advisory Board Extension Act of 1979".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

(c) Whenever in the amendments made by this Act the title "Director" is used, the reference shall be considered to be made to the Director of the National Institute of Arthritis, Metabolism, Diabetes and Digestive Diseases unless otherwise indicated.

NATIONAL INSTITUTE OF ARTHRITIS, METABOLISM, DIABETES AND DIGESTIVE DISEASES

SEC. 2. (a) Section 434 (a) is amended by inserting "Diabetes," after "Metabolism," each place it occurs.

(b) Section 434 (b) is amended to read as follows:

"(b)(1) There are established within the National Arthritis, Metabolism, Diabetes and Digestive Diseases Advisory Council a subcommittee on diabetes, a subcommittee on arthritis, a subcommittee on digestive diseases, and a subcommittee on kidney diseases. The subcommittee shall be composed of members of the Council who are outstanding in the diagnosis, prevention, and treatment of diabetes, arthritis, digestive diseases, and kidney diseases, respectively. The subcommittees shall review applications made to the Director for grants for research projects relating to the diagnosis, prevention, and treatment of diabetes, arthritis, digestive diseases, and kidney diseases and shall recommend to the full Advisory Council those applications and contracts which they determine will best carry out the purposes of this part. The subcommittees shall also review and evaluate the diabetes, arthritis, digestive diseases, and kidney diseases programs under this part and recommend to the Council such changes in the administration of such programs as they determine are necessary.

"(2) The Advisory Council, taking into account the recommendations of the subcommittees, shall review the applications made to the Director for grants for research projects and recommend to the Director for approval those applications and contracts which the Council determines will best carry out the purposes of this part, and shall recommend to the Director such changes in program administration as it determines are necessary.".

ASSOCIATE DIRECTOR FOR DIABETES

SEC. 3. Section 434(d) is amended to read as follows:

"(d)(1) There is eestablished within the Institute the position of Associate Director for Diabetes, who shall report directly to the Director, except as provided in paragraph (4).

"(2) Acting through the Associate Director for Diabetes, the Director shall—

"(A) carryout programs of support for research and training in the diagnosis, prevention, and treatment of diabetes mellitus and related endocrine and metabolic diseases, and

"(B) establish programs of evaluation, planning, and dissemination of knowledge related to research and training in diabetes mellitus and related endocrine and metabolic diseases.

"(3) The Associate Director for Diabetes shall have primary responsibility for all diabetes mellitus-related activities supported or conducted by the National Institutes of Health, shall serve as an information resource and contact point for public and private agencies with respect to such activities; and shall report and make specific recommendations to the Director of the National Institutes of Health with respect to the functions described in paragraph (4) on a regular basis.

"(4) After consultation with appropriate Federal agencies, the Associate Director for Diabetes shall be responsible for—

"(A) development, through the Diabetes Mellitus Coordinating Committee, of a coordinated plan for the National Institutes of Health with respect to diabetes-related research; training; and data and information collection, analysis, and dissemination;

"(B) development of sound management approaches for diabetes-related activities within the National Institutes of Health;

"(C) collection and evaluation of epidemological data with respect to diabetes;

"(D) identification of research opportunities in Federal diabetes-related activities, including specific recommendations for means to take advantage of such opportunities;

"(E) coordination of information dissemination activities with respect to diabetes; and

"(F) preparation and submission to the Director of the National Institutes of Health of an annual, coordinated budget for all diabetes activities supported by the National Institute of Health, including specific recommendations with respect to fiscal issues relating to such activities.".

DIABETES RESEARCH AND TRAINING CENTERS

SEC. 4. Section 435 is amended by—

(a) redesignating subsection (b) as subsection (c), and inserting the following new subsection (b):

"(b) In connection with training programs conducted in accordance with subsection (a), the Secretary shall provide, from the amounts authorized to be appropriated in subsection (d), not to exceed 10 training stipends through each center in any fiscal year.".

(b) redesignating subsection (c) as subsection (d), striking the word "and" after "1979," in subsection (d), and inserting before the period ", $14,000,000 for the fiscal year ending September 30, 1981, $17,000,000 for the fiscal year ending September 30, 1982, and $20,000,000 for each of the next three fiscal years.".

NATIONAL DIABETES ADVISORY BOARD

SEC. 5. (a) Section 436A(a)(1) is amended to read as follows:

"(1) The following ex officio members: The Assistant Secretary for Health or his designee, the Director of the National Institutes of Health or his designee, the Director of the National Institute of Arthritis, Metabolism, Diabetes, and Digestive Diseases or his designee, the Director of the National Heart, Lung and Blood Institute or his designee, the Director of the National Eye Institute or his designee, the Director of the National Institute of Child Health and Human Development or his designee, the Director of the Center for Disease Control or his designee, the Administrator of the Health Resources Administration or his designee, the Administrator of the Health Services Administration or his designee, the Associate Director for Diabetes of the National Institutes of Arthritis, Metabolism Diabetes and Digestive Diseases or his designee, and the Chief Medical Director of the Veterans' Administration or his designee.".

(b) Section 436A(e) is amended to read as follows:

"(e) The appointed members of the Board shall be appointed for terms of three years each, except that, of the appointed members serving on the date of enactment of the Diabetes Research and Training Amendments and National Diabetes Advisory Board Extension Act of 1979, six shall be reappointed for terms of two years each.".

(c) Section 436A(f) is amended by—

(1) striking the word "and" at the end of paragraph (1) and inserting ", as amended and updated in accordance with paragraph (2),";

(2) redesignating paragraph (2) as paragraph (3) and inserting the following new paragraph (2):

"(2) amend and make such changes in the Diabetes Plan as the Board determines are necessary to ensure its continuing relevance, and".

(d) Section 436A(k) is amended by striking the "and" after "September 30, 1979," and inserting before the period ", and each of the next five fiscal years.".

(e) Subsection (1) is amended by striking "September 30, 1980," and inserting in lieu thereof "September 30, 1985.".●

By Mr. STAFFORD:

S. 456. A bill to provide loans for the prevention or retarding of streambank

erosion which threatens public and private facilities; to the Committee on Environment and Public Works.

STREAMBANK EROSION LOANS

● Mr. STAFFORD. Mr. President, today I am reintroducing legislation similar to a bill that I introduced last year. This bill would establish a program of loans that would be available to any person whose land is undergoing severe streambank erosion.

More can and should be done to meet the accelerating problem of streambank erosion. For that reason, this bill would make available $50 million in interest-free loans to assist individuals and communities in providing more effective erosion control.

Frankly, I cannot state that the dollar authorization figure in this bill necessarily reflects the full national need. Also, there may be a valid need to impose a modest interest charge on such loans. But I believe that a pressing need exists for streambank erosion control. I would hope that hearings can be held on this legislation hearings that will focus attention on the need and benefits from a stepped-up effort to control streambank erosion.

I ask unanimous consent that the bill be printed at this point in the RECORD.

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

S. 456

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress finds that streambank erosion destroys property, both public and private, creates and aggravates flooding, increases sedimentation in the Nation's rivers, adds to the needs for disaster assistance in many areas, and creates annual financial and environmental losses to the Nation.

(b) The Congress, therefore, determines that it is in the national interest to assist agencies and individuals, both public and private, in lessening, and when possible preventing, the erosion of streambanks, particularly when such erosion threatens, or can be expected to threaten, public and private facilities and structures.

SEC. 2. (a) The Secretary of the Army, acting through the Chief of Engineers (hereinafter referred to as the "Secretary") is authorized to provide loans of up to $10,000 to any public or private group or agency or individual for a period of ten years for the purpose of stabilizing streambanks when erosion of such streambank threatens, or can be expected to threaten, any facility or structure, or produce or seriously aggravate the danger of flooding. Plans for any work to be undertaken with a loan under this section shall be submitted to the Secretary. Approval by the Secretary of such plans shall be a commitment of the Secretary to such loan. Notwithstanding the first sentence of this subsection, any loan to a public agency may be for a period of twenty years and for a sum up to $25,000.

(b) Loans granted under this section shall be free of interest. Repayment shall be required in equal installments.

(c) The sum of $50,000,000 is authorized to be appropriated to the Secretary to carry out this section, and shall remain available until expended.●

By Mr. STAFFORD:

S. 457. A bill to authorize the Corps of Engineers to provide technical assistance in streambank erosion control; to the Committee on Environment and Public Works.

STREAMBANK EROSION TECHNICAL ADVICE

● Mr. STAFFORD. Mr. President, one of the more troublesome water-related problems for many areas of the Nation—certainly in the Northeast—involves streambank erosion, which cuts away at property, undermines homes, and produces severe siltation. At times of heavy rainfall, erosion often uproots trees, which then blocks streams and produces significant flooding.

During the 93d Congress, the Streambank Erosion Control Evaluation and Demonstration Act of 1974 was enacted, authorizing a number of demonstration projects.

The bill I am submitting today would provide a supplement authority, allowing the Army Corps of Engineers to assist local government and individuals in planning to combat serious streambank erosion. This legislation does not provide a penny toward the cost of construction work to retard erosion. But by making the corps' expertise available to local communities and property owners, this bill should enable the public more effectively to help itself.

Mr. President, the Senate adopted legislation similar to this last year as a part of the omnibus water resources legislation, which failed to win House approval. I am hopeful that this approach can again win approval by the Senate, for this form of assistance is needed.

I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 457

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Army, acting through the Chief of Engineers, shall provide technical assitsance in methods to retard streambank erosion to any person or agency requesting such assistance, if the applicant is experiencing, or can be expected to experience, ercsion threatening dwellings or loss of property. The Secretary may also provide assistance to an applicant who would be likely to be affected by flooding downstream from property threatened by erosion, provided the owner of such property agrees to allow the applicant to perform erosion retarding work.

SEC. 2. To carry out this act, the sum of $2,000,000 is authorized to be appropriated to the Secretary in each of the fiscal years ending September 30, 1980, September 30, 1981, and September 30, 1982.●

By Mr. STAFFORD:

S. 458. A bill to amend title XVIII of the Social Security Act for the purpose of including community mental health centers among the entities which may be qualified providers of service, and for other purposes; to the Committee on Finance.

COMMUNITY MENTAL HEALTH ASSISTANCE ACT OF 1979

● Mr. STAFFORD. Mr. President, it is my pleasure to introduce the Community Mental Health Assistance Act of 1979. This bill will amend title 18 of the Social Security Act to establish provider status under medicare for qualified community mental health centers, to provide coverage of partial hospitalization services for mental health care in lieu of inpatient hospitalization, and to provide for reimbursement of outpatient services provided by a community mental health center.

Medicare coverage of mental health services has been unchanged since 1965 and is extremely limited. The lack of adjustment to Federal, State and local deinstitutionalization efforts and strategies to promote ambulatory mental health services has contributed to the abandoning of many elderly and disabled Americans in need of mental health care. That the emphasis in current law is on institutionalization is borne out by the fact that more than 80 percent of medicare expenditures for mental health is concentrated on institutional inpatient hospital care. This is true even though the trend in the mental health field is toward deinstitutionalization and provision of care in the least restrictive setting.

Originally designed to concentrate Federal funds for active treatment, the current medicare program attempts to avoid refinancing of State institutions and nonmedical services by placing limits on the lifetime use of inpatient services and limiting outpatient mental health coverage to a maximum of $250 annually while requiring a 50 percent copayment by the elderly or disabled recipient, even if that person is poor.

As a result, the medicare system of financing has created numerous disincentives which first, do not allow services meaningful to the patient's choice; second, foster overinstitutionalizing; third, fund mental health services through health agencies and providers more than through specialties for mental health; fourth, promote unnecessary utilization of health care providers (particularly ICF's, nursing homes, and other inpatient facilities) when mental health services are needed.

Mr. President, the bill I am introducing today would first, eliminate economic barriers for the elderly to utilize mental health services; second, offer freer choice to the aged and disabled, who participate in medicare, so that they need not be placed in institutional settings; third, breach the gap in existing law between medicare and the Federal community mental health centers, so that services are more readily available to the elderly, and we do not neglect our original course of sponsoring community mental health care; fourth, provide cost-effective alternatives in services delivery, which insurance companies incorporate but which are not available in medicare; fifth, establish strict controls over the use of medicare funds, so that outpatient mental health services are provided only when stiff utilization review is in effect; sixth, take steps to concentrate medicare reimbursement and financing on the goals and outcomes of services rather than on the professional judgment of providers.

Mr. President, this proposal was devel-

oped in consultation with experts in the field and implements two of the most important mental health financing recommendations of the President's Commission on Mental Health, as well as the recommendations of the Rural Health Task Force and the Elderly Mental Health Task Force to the commission.

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. 458

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

SECTION 1. This Act may be cited as the "Community Mental Health Assistance Act of 1979."

SEC. 2. (a) Section 1812(a) of the Social Security Act is amended by striking out "and" in paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon and by adding the following two new paragraphs at the end thereof:

"(4) outpatient services provided by a community mental health center for up to 25 visits during a year; and

"(5) partial hospitalization services by a community mental health center for up to 60 visits during a year.".

(b) Section 1812(b) of such Act is amended by striking out "or" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon, and by adding the following two new paragraphs at the end thereof:

"(4) outpatient services furnished to him by a community mental health center after such services have been furnished to him for a total of 25 visits during a year; and

"(5) partial hospitalization services furnished to him by a community mental health center after such services have been furnished to him for a total of 60 visits during a year.".

(c) Section 1812(c) of such Act is amended by adding the following new sentence at the end thereof: "In determining the 190-day limit with respect to any individual under subsection (b)(3), the Secretary shall include one day for every three partial hospitalization visits to a community mental health center by such individual.".

(d) Section 1812(e) of such Act is amended by inserting "outpatient mental health services and partial hospitalization services furnished by a community mental health center," after "extended care services,".

SEC. 3. (a) Section 1814(a)(2) of the Social Security Act is amended by striking out "or" at the end of subparagraph (D), by inserting "or" after the semicolon at the end of subparagraph (E), and by adding the following new subparagraph after subparagraph (E):

"(F) in the case of outpatient services or partial hospitalization services furnished by a community mental health center, by or under the case management of a physician, such services are or were required for the mental health treatment of an individual, and such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary;".

(b) Section 1814(a) of such Act is amended by striking out "and" at the end of paragraph (6), by striking out the period at the end of paragraph (7) and inserting in lieu thereof a semicolon, and by adding the following two new paragraphs at the end thereof:

"(8) with respect to services furnished by a community mental health center in connection with a partial hospitalization visit, such center shall make available to the Secretary a statement, in writing and signed by the individual or his representative (pursuant to regulations issued by the Secretary) before receiving such services, indicating that the individual understands that three partial hospitalization visits will reduce by one day the number of days of inpatient psychiatric hospital services to which such individual is entitled during his lifetime under this part; and

"(9) with respect to services furnished by an inpatient hospital in connection with inpatient psychiatric care, such hospital makes available to the Secretary a statement, in writing and signed by the individual or his representative (pursuant to regulations issued by the Secretary) before receiving such care, indicating that use of inpatient hospital services will reduce on a daily basis the lifetime inpatient entitlement under this Act, and that the individual understands that.", one day of inpatient psychiatric hospital care will reduce by three the number of partial hospitalization visits to which such individual is entitled during such spell of illness.".

(c) Section 1814(b) of such Act is amended by adding the following new paragraph at the end thereof:

"( ) The amount paid with respect to community mental health center services shall be equal to the costs which are reasonable and related to the cost of providing such services or on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under Section 1861(v)(1)(A).

(d) Section 1814 of such Act is amended by adding the following new subsection at the end thereof:

"(K) Payments for partial hospitalization services by a community mental health center on behalf of an individual which are rendered for visits in excess of 10 visits per year shall be made only after a treatment review committee of a community mental health center has certified prior to the eleventh visit during a year and an external utilization review committee (as defined in section 1861(ee)) has certified prior to the thirty-sixth visit during such year, that such services are necessary and appropriate.".

SEC. 4. Section 1861 of the Social Security Act is amended by adding the following new subsections at the end thereof:

"OUTPATIENT SERVICES BY A COMMUNITY MENTAL HEALTH CENTER

"(bb) The term 'outpatient services by a community mental health center' means the following items and services furnished to an outpatient of a community mental health center by such center in accordance with a treatment plan:

"(1) active diagnostic, therapeutic, or rehabilitative mental health services, including crisis intervention outside the facility and home mental health visits, when provided by a physician or by another qualified mental health professional under the case management of a physician as prescribed by the Secretary;

"(2) such other related services necessary to the mental health of an individual, when provided by a physician or by another qualified mental health professional, under the case management of a physician, which are ordinarily furnished to outpatients in such center; and

(3) drugs and biologicals which cannot be, as determined by the Secretary, self-administered.

"PARTIAL HOSPITALIZATION SERVICES BY A COMMUNITY MENTAL HEALTH CENTER

"(cc) The term 'partial hospitalization services by a community mental health center' includes—

"(1) active, professional treatment (with at least 75 per centum of the time of attendance in active therapies) of a person with acute mental or emotional disabilities, with such treatment being based upon an individualized treatment plan which is regularly updated;

"(2) coordination of related services to assist treatment, and

"(3) demonstrated capacity to respond to crisis and emergencies of persons in treatment on a 24-hour basis, 365 days during a year (including medical emergencies while the person is in attendance at the facility).

"The treatment plan for such services may include, but is not limited to, diagnosis and evaluation (including psychological, physical, and nutritional assessment), formal and informal psychotherapy (individually or in groups or families), chemotherapy, and other modalities designed to improve the condition of the patient.

"The services of this section are limited to persons not requiring 24-hour inpatient care or 24-hour supervision in noninpatient care entities.

"COMMUNITY MENTAL HEALTH CENTER

"(dd) The term 'community mental health center' means a public or private entity which—

"(1) is primarily engaged in providing services for the diagnosis and treatment of emotionally disturbed and mentally ill persons, has a requirement that all mental health care will be under the supervision of one mental health professional, and has appropriate arrangements to insure that all patients requiring medical services are referred to a physician;

"(2) in the case of a center in any State in which State or applicable local law provides for the licensing of community mental health centers, is licensed pursuant to such law;

"(3) has bylaws in effect with respect to its staff;

"(4) meets such staffing requirements as the Secretary finds necessary;

"(5) maintains clinical records on all patients;

"(6) has in effect a utilization review plan pursuant to subsection (ee);

"(7) has in effect an agreement with a hospital pursuant to subsection (ff);

"(8) has appropriate procedures or arrangements in compliance with applicable State and Federal law, for storing, administering, and dispensing drugs and biologicals; and

"(9) meets the definition of—

"(A) a community mental health center in section 201 (a) and (c) of the Community Mental Health Centers Act and the requirements prescribed by regulation thereunder; or

"(B) a community mental health center which meets appropriate Joint Commission on Accreditation of Hospital Standards, and other additional regulations as the Secretary may prescribe.

"UTILIZATION REVIEW PLAN OF A COMMUNITY MENTAL HEALTH CENTER

"(ee) A utilization review plan of a community mental health center shall be considered sufficient if it is applicable to services furnished by the center to individuals entitled to insurance benefits under this title and if it provides—

"(1) for the review, on a sample or other basis, of admissions to the centers, and the professional services (including drugs and biologicals) furnished, (A) with respect to the mental health necessity of the services, and (B) for the purpose of promoting the most efficient use of available health facilities and services; and

"(2) for such review to be made by an external utilization review committee which is established in a manner as may be approved by the Secretary.

"TRANSFER AGREEMENT BETWEEN HOSPITAL AND COMMUNITY MENTAL HEALTH CENTER

"(ff) A hospital and a community mental health center shall be considered to have a

transfer agreement in effect if, by reason of a written agreement between them or (in case the two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that—

"(1) transfer of patients will be effected between the hospital and the community mental health center whenever such transfer is medically appropriate as determined by the attending physician; and

"(2) there will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.

Any community mental health center which does not have such agreement in effect, but which is found by a State agency (of the State in which such facility is situated) with which an agreement under section 1864 is in effect (or, in the case of a State in which no such agency has an agreement under section 1864, by the Secretary) to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of patients and the information referred to in paragraph (2), shall be considered to have such an agreement in effect if and for so long as such agency (or the Secretary, as the case may be) finds that to do so is in the public interest and essential to assuming extended care services for persons in the community who are eligible for payments with respect to such services under this title.".

SEC. 5. (a) Section 1861(u) of the Social Security Act is amended by inserting "community mental health center" after "health agency".

(b) Section 1861(w) of such Act is amended by inserting "community mental health center" after "nursing facility".

SEC. 6. (a) Section 1864(a) of such Act is amended—

(1) by inserting "or whether a facility therein is a community mental health center as defined in section 1861(dd)" before the period at the end of the first sentence;

(2) by inserting "a community mental health center," after "rural health clinic," in the second sentence; and

(3) by inserting "community mental health center" after "laboratory," in the fifth sentence.

(b) Section 226(c)(1) of such Act is amended by inserting "and partial hospitalization services and outpatient services furnished by a community mental health center" before "(as such terms" after "part C of Title XVIII)."

(c) Section 7(d)(1) of the Railroad Retirement Act of 1974 is amended by inserting "partial hospitalization services and outpatient services furnished by a community mental health center," after "inpatient hospital services,".

(d) Section 1861(i) of such Act is amended by inserting "or community mental health center" after "nursing facility" each time it appears therein.

(e) Section 1832(a)(2)(B)(i) of such Act is amended by striking out "or" at the end of subclause (I), and by striking out "and" at the end of subclause (II), and inserting in lieu thereof "or", and by adding the following new subclause after subclause (II):

"(III) a physician to a patient in a community mental health center; and".●

By Mr. STAFFORD:

S. 459. A bill to authorize the Corps of Engineers to assist communities in the control of river ice; to the Committee on Environment and Public Works.

ICE FLOODING

● Mr. STAFFORD. Mr. President, a seasonal problem afflicting many areas of our Nation might be termed "ice floods." When a sudden thaw follows a buildup in river ice, flooding is often produced by "ice dams" that accumulate at bridge abutments or other impediments in the river.

Ice flooding and ice damage occurs in many areas every winter. Last winter, there was a threat here in Washington to the bridges across the Potomac River from a buildup of ice. Such dangers from ice are likely to be even more severe with the coming of spring.

The danger of ice buildup can sometimes be handled effectively through the emergency work of the Corps of Engineers. Such a project was accomplished last winter at Montpelier, Vt. But these efforts often come too late, or may involve costly, last-minute activity using explosives.

I believe that, with systematic and coordinated planning, we can develop preventative methods for the control of river ice. I believe that we can and should successfully develop improved ice-breakup techniques, and to provide this information to affected communities. The Army Corps of Engineers is the proper organization to undertake this work.

To assist in that effort, my bill would strengthen the corps' ability to meet the ice-flooding problem. This legislation, I should point out, is nearly identical to legislation passed twice by the Senate last year. Its merits remain strong.

I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 459

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Secretary of the Army, acting through the Chief of Engineers, shall undertake a program of research to increase his capability to control river ice, and to assist communities in breaking up such ice that would otherwise be likely to cause or aggravate flood damage or severe streambank erosion.

SEC. 2. The Secretary is further authorized to provide technical assistance to local units of government to implement local plans to control or break up river ice. As part of such authority, the Secretary is authorized to acquire and loan necessary ice-control or ice-breakup equipment to local units of government.

Sec. 3. The sum of $5,000,000 is authorized to be appropriated to the Secretary in each of the fiscal years ending September 30, 1980, September 30, 1981, and September 30, 1982, to implement this Act.●

By Mr. STAFFORD:

S. 460. A bill to encourage bicycling and physical fitness by assuring greater safety for bicycles parked at Federal office buildings; to the Committee on Environment and Public Works.

BICYCLE SAFETY

● Mr. STAFFORD. Mr. President, I am today introducing legislation that is designed to assure that safe bicycle parking facilities will be available at Federal office buildings across the Nation. I would hope that the availability of such facilities at Federal buildings would serve as a catalyst to encourage a similar expansion in bicycle parking facilities in the private sector.

A growing number of Americans are now bicycling to their jobs, despite many impediments to such travel. One major inhibition is unsafe traffic conditions. Last year's highway bill should ameliorate that situation. But the lack of safe and convenient parking facilities, and absence of areas where cyclists can change from cycling clothes and wash up at the end of their journey, serves as another factor inhibiting this form of commuting.

The General Services Administration now has a policy, it says, to provide "bicycle racks . . . where there is a demonstrated need." That appears to be a chicken-and-egg situation. Is a "demonstrated need" likely to exist if no racks are in place? Very likely not. The GSA has informed me that bicycle locking facilities are now available at only 438 GSA buildings, a small fraction of the buildings operated by GSA. This bill requires the installation of such facilities to enable the use to develop properly.

To the extent that encouraging cycling enables the public to substitute bicycles for private motor vehicles, we will modestly conserve energy and other resources, reduce traffic congestion, lessen air and noise pollution, increase physical fitness, and decrease the need for more and more parking garages.

To help overcome the lack of adequate bicycle parking facilities, this legislation directs the Administrator of the General Services Administration to provide, within 1 year, at all buildings and installations under his direction, bicycle parking facilities for use by employees and visitors. This would include buildings leased by the Federal Government, when they are under the direction of the GSA Administrator.

In the event the Administrator provides more than a simple rack for bicycle parking—a locker for example—this bill would authorize, but not require, that GSA charge a reasonable fee for the use of the device. The fee would be intended to be proportionate to the fee charged for motor-vehicle parking in connection with that building or installation. For example, if the Administrator charged a $455 a month for auto parking, a reasonable parking fee might be something on the order of $3 a month, if the bicycle locker takes up about one-fifteenth of the space needed for an automobile.

The Administrator should keep in mind the experience of the Environmental Protection Agency, where bicycle lockers are provided employees without charge. In deciding on the number and type of bicycle parking facilities and whether there should be user charges, the Administrator should consult beforehand with interested bicyclists working at the building or installation in question.

The bill would also authorize the Ad-

ministrator to provide, when suitable, facilities where cyclists and others may shower and change clothes. The Administrator would also be authorized to charge a reasonable fee for the use of such facilities. Again, the Administrator would be expected to consult with interested persons in deciding upon such facilities.

The bill defines "bicycle parking facility" to make it clear that the minimum facility should be more than the standard rack, which is often inadequate for safely locking a bicycle. The Administrator should also alter the present restrictive GSA policy to permit the use of spaces such as courtyards, storage areas, or other areas where bicycle parking could be operated without interfering with normal use of the building. The most desirable facility would be one under guard or attendant; if parking for motor vehicles is provided under the surveillance of a guard or attendant, the GSA would be expected to provide protected bicycle parking for the same building or installation.

Mr. President, I introduced legislation very similar to this bill as S. 3621 in the 95th Congress. It was introduced at the end of the session to obtain comment from interested individuals and groups. Since the date I introduced S. 3621 last year, a new publication called Bicycle Forum, carried an article discussing the issue of bicycle parking. I ask unanimous consent that a letter from GSA, the text of the bill, and the article from Bicycle Forum be printed in the RECORD.

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

S. 460

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Administrator of the General Services Administration (hereafter referred to as the "Administrator"), within one year of the enactment of this Act, shall provide, at all buildings and installations under his direction, bicycle parking facilities for use by employees and visitors. Wherever the Administrator fulfills the requirement of this Act by use of a system that is more elaborate and costly than the use of a simple metal rack, he is permitted to charge a reasonable fee for the use of such system.

(b) The Administrator is also authorized, within a reasonable period and where feasible, to provide suitable support facilities, including clothing lockers and changing facilities, and to charge a reasonable use fee.

(c) For the purpose of this Act, the term "bicycle parking facility" means a device or an enclosure, located within a building or installation, or conveniently adjacent thereto, that is easily accessible, clearly visible to guards, well-lighted, and so located as to minimize the danger of theft of bicycles. Such a device shall consist of a parking rack, locker, or other device constructed to enable the frame and both wheels of a bicycle to be secured with ease by use of a padlock in a manner that will minimize the risk of theft.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., October 4, 1978.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STAFFORD: This is in further reply to your letter of August 21, 1978, regarding bicycle racks.

As of September 20, 1978, there were 438 buildings where bicycle locking facilities were provided by the General Services Administration (GSA). Of this number, there are a total of 14,407 parking spaces nationwide of which 4,218 (29 percent) are indoors or otherwise protected from the weather. There are a total of 2,108 spaces (14.6 percent) which we consider to be protected from theft. Each bicyclist is responsible for providing his or her own lock and chain or cable. We are presently experimenting with several makes of secure bicycle locking devices and lockers. During the year 1977, there were 37 bicycle thefts and 703 incidents of vandalism.

Thank you for your interest in this matter. If we can provide any additional information, please let us know.

Sincerely,

JAY SOLOMON,
Administrator.

THE BICYCLE PARKING LINK

(By John J. Protopappas and Joseph Anderson)

(If bicycles could be more securely parked, their use would increase as a means of commuting, especially in connection with mass transit)

The availability of secure bicycle storage is a prerequisite to any urban bicycle trip, yet there is a definite, pervasive deficiency in the amount and/or security of bicycle parking facilities throughout urban areas. Both the social, economic and environmental desirability of bicycling and the public's interest in bicycling are apparent. It is a stated policy or goal in many communities that "bicycling should be encouraged". To this end, many improvements to benefit bicycling have been studied and some have been implemented. Many bicycle paths and lanes have been constructed, but little attention has been paid to "incidentals" such as bicycle parking. Bicycle parking is an essential link in the chain of improvements that must be made to serve existing and potential bicycle users.

Why has bicycle parking, relatively easily and inexpensively implemented, fared so poorly in the "chain" of improvements? Most official public attention has focused on bicycle riding. Bicyclists have been competing for road space for years, raising the ires of motorists, precipitating reported accident statistics and expressing a certain amount of dissatisfaction with the inevitable traffic mix. Pressure has been brought from motorists and bicyclists alike for bikeway, education and enforcement programs. Bicycle parking, on the other hand, is a personal problem, one which raises little public sensitivity.

As slight as the public pressure for bicycle parking may be . . . the problem of securing a bicycle from theft is real and is shared by every individual bicyclist. This need can be met by public action and has the potential of being a substantial benefit and encouragement to the bicycling community.

An example of the magnitude of the problem was cited recently in a survey in the City of Baltimore. Based on survey data, 25 percent of the bicyclists had been victims of a bicycle theft and of these, 20 percent had given up bicycling. These facts are indicative of the problem which is commonly known in most American cities. The vulnerability and value of bicycles have made them attractive targets for theft. As the value and demand for bicycles have increased, the total number of bicycle thefts has also gone up.

A well thought-out and effectively executed bicycle parking program which appeals to both the implementors and the users is the answer to reducing bicycle theft and is a positive factor in encouraging bicycle use. In addition to implementing a program to provide adequate, secure bicycle parking, serious attention should be given to a bicycle registration program and user education. These are complimentary elements. Mandatory registration is a logical means for identifying and returning stolen bicycles, for limiting resale potential, for providing a record of the mignitude of bicycle ownership and for discouraging theft from the outset. Education, as an instructive tool as well as a marketing element, should provide information on the building permit approval to include the provision of bicycle storage facilities.

Other policy considerations may be incorporated into codes and regulations to benefit bicycle security. For example, provisions for allowing bicycles on public transit vehicles or in the public areas of buildings and private offices can improve the bicyclists' mobility and/or avoid having to leave the bicycle unattended. The AC Transit and BART systems in San Francisco, the San Diego Transit Corporation and the New Jersey New York PATH system have all instituted forms of bicycle "carry-on" service.

BICYCLE STORAGE FACILITY TYPES AND DESIGN

The facets of design must be considered in providing bicycle parking area:

1) Degree of security and safety from vandalism and theft;

2) Location—convenience of parking relative to destination;

3) Weather protection (sun and rain).

Each factor elicits certain criteria which must be considered in determining what type of parking facility is best for the situation at hand. Bicycle storage needs may be differentiated between long-term parking and short-term or convenience parking. The distinction is similar to that for automobiles. The most important criterion for short-term convenience parking (shopping centers, libraries, post offices, etc.) is for the bicycle storage facility to be located *immediately contiguous* to the building entrance. For long-term/commuter parking (places of employment, apartment buildings, schools, transit stations, etc.) security from theft is the *most* critical consideration.

LOCATION

The closer bike parking is to a bicyclist's destination, the more likely it (and the bicycle) is to be used. "Many bikers, particularly those with more expensive machines, have such a case of theft paranoia (a not unreasonable affectation) that they prefer not to be separated from their bikes at all and would blithely wheel into elevators, dentist's offices, bank lobbies and ice cream parlors if allowed to." [4] Many people make it a practice to ask for space for their bicycle when first accepting a new job so there are no misunderstandings when they arrive at a new office with a 10-speed.

The point-to-point convenience of bicycle travel is undermined when parking is located in the far corner of a parking lot. It is best to locate a parking facility as near a building entrance as possible and (in high visibility areas) within the sight-lines of passersby. The location availability of parking, its proper use and practical theft preventive measures.

In designing a parking program, facilities must be selected to meet the need of bicyclists who are, in many cases, not involved in the decision making process. Three features must be considered: (1) incorporation of bicycle parking policy requirements into parking or zoning ordinances and local building codes, thus tying facilities into the public and private development process; (2) developing design standards to insure proper location, weather protection, equipment integrity and degree of security; and (3) budgeting funds for implementing public bicycle parking facilities. Each program must be

Footnotes at end of article.

tailored to local needs and resources. Where it may not be possible to successfully budget public funds to construct parking, it may be possible to require private developers to provide adequate facilities in conjunction with new development.

BICYCLE PARKING ORDINANCES AND CODES

In order to insure that there is adequate space allocated for bicycle parking on an ongoing basis, a bicycle parking ordinance may be formulated for incorporation into local zoning regulations. This is much like the typical regulations which require automobile parking spaces based on the square footage of building development.

A number of forward-looking communities have bicycle parking ordinances and a number of others have ordinances under consideration. One of the more notable of these is Palo Alto, California. In this city, developers are required, by Zoning Ordinance, to dedicate 5 percent of the total required parking space to secure bicycle storage facilities. This ordinance not only details what percentage of space must be dedicated to bicycle parking, but it goes on to define what type of storage facility (Class I, II or III) must be provided.[3]

Another jurisdiction, Montgomery County, Maryland, updated off-street parking space requirements in the Zoning Ordinance to incorporate compact car, bicycle, handicap, and motorcycle spaces. The ordinance stipulates that all owners of parking facilities containing more than 40 parking spaces must provide 1 bicycle parking space or locker for each 20 automobile parking spaces. Not more than 20 bicycle parking stalls or lockers are required on any one lot. It further states. . . . "Bicycle parking facilities shall be so located as to be safe from motor vehicle traffic and secure from theft. Interior storage and lockers are encouraged. They shall be properly repaired and maintained. Facilities that are used for overnight parking must be protected from the weather when they are part of an enclosed parking facility." Owners of existing parking facilities who take advantage of the space savings of compact car layout must also abide by the requirement for bicycle parking facilities. This ordinance revision reduces the amount of land necessary for parking facilities, making more efficient use of existing space. Other jurisdictions, such as Arlington County, Virginia, have rewritten guidelines for subdivision and yield satisfactory results. A good variety of locking and parking devices currently exists but careful selection is still necessary. Three categories of bicycle parking devices according to degree of security, have been suggested.[5]

Class I: Lockers or controlled access areas where bicycles may be stored, protected from theft, weather, and vandalism.

Class II: Devices which lock the bicycle frame and wheels, secured from theft of the unit. The individual may have to provide a padlock.

Class III: Bicycle racks or fixed objects to which a bicycle may be secured by the individual's own locking device.

Class III or "bicycle racks" are the traditional and currently predominant facility for bicycle parking. It is left to the bicyclists to shoulder the responsibility for protecting their investment by buying and using lock sets. Unfortunately, the value and theft experience of today's bicycle has outmoded this approach.

Independent tests conducted across the country confirm that there are no really secure bike lock hardware systems in this class. Some locks carried by cyclists are better than others, but in a high crime setting, none would last longer than 10 minutes; in fact most will give way to under two minutes according to the *Consumer Report*.[6] Another testing report confirms that no lock will last longer than two minutes.[7] In the words of one lock manufacturer, a bicycle lock will delay a thief momentarily, but ". . . if somebody sees a $150 bicycle and plans to get it, it is his. Basically what you're protecting against is the chance thief or opportunist." Though suitable for short-term convenience parking, long-term parking requires more than a system which provides only a moral deterrent.

Class II bicycle parking devices are designed to secure the bicycle frame and wheels in an upright position, typically by a post and chain construction. Accessory parts of the bicycle, such as the seat, air pump, tool kits, are not protected. Weather protection may be provided by a special structure or by selecting a location under an existing overhang. Different locking mechanisms are available: coin operated, key-operated or the bicyclist's own padlock. The locking mechanism is an important consideration. Key or coin operated equipment costs twice as much initially, requires more maintenance, and necessitates a user charge.

Generally, the padlock systems are most popular. The added costs of the other systems cannot be justified unless it is imperative that revenue be collected or tourists without padlocks are the anticipated users. Transit systems which have utilized the Class II devices include: Marta in Atlanta, Seattle's Transit System, Bart in San Francisco, Path in New York-New Jersey, Patco in Pennsylvania-New Jersey. Many universities have also installed these parking devices.

Table A lists the various manufacturers of secure parking devices, (Class I and II) including products and approximate prices. The prices range from $25 to $250 per parked bicycle. Class II devices have been tested by two independent investigators. The Bicycle and Pedestrian Research Center, Philadelphia and the University of Maryland, College Park, Maryland.

The University of Maryland Planning Department made an in use study of eight of the Class I and II bicycle racks available today.[9] Table B summarizes test results. As these results indicate, no rack is perfect. Each rack has its pros and cons. The use intended, site location, and economics will define which rack will serve a particular situation better than another. The University of Maryland set up the following criteria and then made their choice after testing eight racks over a year's time.

WEATHER PROTECTION

Protecting the bicycle from the elements—sun and rain—is particularly important for long-term/commuter parking. For trips with a shorter parking duration, such as shopping and other personal business, open air parking may be acceptable. These trips are generally more flexible in schedule and may be delayed to a better time or day. It is best, however, under any circumstances, to utilize a location that already provides weather protection, if otherwise suitable. For long-term parking in particular, consideration must be given to protection by awnings, canopies, interior spaces or lockers (where warranted for theft protection).

SECURITY & SAFETY

Protection from theft is the individual's primary concern when leaving the bicycle unattended. Procuring the ultimate security parking device has been the relentless pursuit of many manufacturers. Separate attempts by both BART in San Francisco and Metro in Washington, D.C. to specify custom-made bicycle lockers failed to produce cost-effective equipment.

* * * * *

The Bicycle and Pedestrian Research Center tested three Class II devices considering security, ease of operation, versatility (to accept locks), and aesthetics. All models were reported superior to traditional bike rack lock set security when subjected to most methods of attack. Three high security locking devices were tested for compatibility with each parking device. Results are summarized on Table C. Economics were not a consideration in the ranking; the top rated Rack III unit costs $10 to $15 more than other units, a small difference relative to the average personal investment in a bicycle.[20]

Class I, bike lockers or storage spaces, are a significant, important step forward in protecting bicycles. They afford virtually complete protection from theft, vandalism and weather. There are two approaches: a locker unit similar to baggage storage lockers and controlled storage areas which are attended or accessible only by keys held by a limited number of individuals or responsible attendants.

In urban areas with attended parking garages or lots, areas can be adapted to store bicycles with relative ease, although without mandates or enforced ordinances, garages are reluctant to do so. In Washington, D.C., where some of the private parking garages installed bike racks, the same fees as charged to automobiles were levied against the cyclists. This parking program was not well received by bicyclists. A good example of controlled storage area is found in Union Station, the Amtrak & commuter rail terminal in Washington, D.C. A caged area for bicycle storage is provided inside the station, administered and maintained by the National Park Service. For a small initiation fee, bicyclists obtain a key to the storage area. Most of the bike/rail commuters use the storage for overnight parking, using their bicycles for the work trip end of their commute.

Standard bicycle lockers are currently available from three manufacturers (Table A) ranging in price from about $160 to $250 per bicycle stored. Construction is either steel or aluminum and fiberboard and all units are wedge-shaped, allowing a variety of layout patterns—circular and rectangular (back-to-back). Although little data is available, one source notes that no successful thefts have occurred at either Bart or Southern California Rapid Transit District installations.

Lockers can be coin operated, locked by separate padlock, or a cyclist can be issued a key on a lease basis. The latter system is used in Washington, D.C. and San Francisco where lockers have been installed at several of the new rail transit stations.

The first ten lockers installed at Metro's Silver Spring Station were offered for lease for variable period rates to $70 per year. All lockers were leased for a full year prior to the station's opening day (without the benefit of advertising). Although the $70 per year fee was regarded as high, the public's response indicates a high demand for this type of facility.

Based on an installed cost of $320 per double locker unit, the Metro locker rentals will cover the capital investment in two and one-half years. Since all the lockers were leased for a full year the first day offered, almost half of the capital cost was covered immediately after installation. With demonstrated high demand, 16 more lockers have been ordered for the Silver Spring Station and the District of Columbia has 250 on order to be installed at stations throughout the city.

The Bart system in San Francisco has a relatively long-standing experience with lockers. Bart planners indicate that the initial installation of 60 lockers throughout the system would have been recommended for increase if based on current experiences. It is believed that the initially inadequate supply of bike racks and lockers has been a deterrent to many potential bicycle users. In response to demand, 648 additional lockers are in the process of being installed. At first Bart offered

Footnotes at end of article.

lockers at 25¢ per day or on a lease basis for $5 per month. Daily coin rental has since been abandoned in favor of a wholly leased system. "Leasing is preferred among regular bike commuters because it guarantees a place in a locker, which are available in limited numbers." As stated earlier, both Bart and Metro also include Class II parking devices in their parking programs which are free of charge and well-utilized.

THE FUTURE

There are many signs that the future looks bright for the bicycle commuter. The Federal government allows federal highway monies and transit capital funds to be spent on bicycle facilities including parking.* Local governments including the traffic engineers, architects, and planners are recognizing the needs of the cyclists. With the proper amount of interest and forethought by these people we can hope to see a continuation of the trend toward installing first class bicycle parking facilities. The first step is establishing the need for parking and making a specific proposal. Bike parking is easy, simple, and inexpensive to implement relative to many other improvements being considered to enhance bicycling. With initiative, care and thought, very high quality parking can be provided to the benefit of user and community alike.

FOOTNOTES

[1] Traffic Engineering, Vol. 47, No. 3, March 1977.

[2] Baltimore County Bikeways Task Force, "Bicycling Parking, a Design Manual", January 1976.

[3] City of Palo Alto, "Zoning Regulations", adopted March 20, 1978. Sections 18.83.040 through 18.83.070.

[4] Skrabek, Darryl, "Bike Law", Bicycling Magazine, March 1975.

[5] Baltimore Bicycling Parking Manual.

[6] "Bike Lock Sets", Consumer Reports, November 1975.

[7] "Most bicycle locks yield to thieves in seconds", The Minneapolis Star, August 5, 1974.

[8] The Minneapolis Star, August 5, 1974.

[9] "UMCP Bicycle Parking—Stage Two", Department of Physical Plant, Office of Plans, Programs and Campus Development, University of Maryland, April 14, 1976.

[10] "Bicycle Parking: Tests of Parking Racks", Bicycle and Pedestrian Transportation Research Center, Philadelphia, Penn. 1976.

[11] Skrabek, Darryl, "Bike Law", Bicycling Magazine, March 1975.

*See Federal Funds for Bicycles, this issue.

TABLE A.—AVAILABLE BICYCLE STORAGE FACILITY TYPES

Name of device and manufacturer (city, State)	Class	Model	Price (each)	Notes
1. Rack III: Rack III, 1714 Stockton St., San Francisco, Calif.	II	Key	$120.00	Used at many locations throughout United States. Each rack holds 1 bicycle.
		Coin-op	120.00	
		Padlock	41.75	
2. Rally Rack: Rally Enterprises, Inc., Box 299, Sonoma, Calif. (minimum order: 6).	II	RR-100	22.00	Each rack holds one bicycle. Used by PATH system (NY-NJ) at Journal Sq. Transportation Center.
	II	RR-200	25.00	Used by WMATA (District of Columbia) at present and future stations.
	II	RR-300	55.00	PATCO (PA-JN) installing 171 RR-300's.
	II	RR-400	160.00	Key-coin operated.
3. Cycle-Sentry: Sentec Industries, P.O. Box 4043, San Francisco, Calif.	II	Galvanized	36.00	Each rack holds 1 bicycle.
		Painted	39.00	
4. Bike Safe: Patterson-Williams, P.O. Box 4040, Santa Clara, Calif.	II	1615-2	100.00	Holds 2 bicycles.
		1615-5	210.00	Holds 5 bicycles.
5. Bala-Byk Lok-Rak: Bala-Byk-Lok-Rak, 691 Parkview Circle, Pacifica, Calif.	II	Padlock	31.50	Installed at University of Maryland.
		Coin-op	65.50	Each rack holds 1 bicycle.
6. Bike Lock Up: Howard Enterprises, 1250 Wilson Way, Stockton, Calif.	II	Standard	31.00	Do.
		Deluxe	35.00	Installed University of Maryland.
7. Park-A-Bike: Park-A-Bike Systems, 180 Coor St., Suite 111, Denver, Colo.	II		25.00–75.00	Holds 1 bicycle. Installed University of Maryland.
8. U-Lok: Sunshine Recreation Co., 22713 Ventura Blvd., Suite A, Woodland, Calif.	II	Security stand/	45.00	Holds 2 bicycles: installed at various colleges, special lock option.
9. Bike Root, Bike Rack: The Bike Root Co., 31½ Mount Vernon St., Charlestown, Mass.	II		28.50	Holds 1 bicycle.
10. Bike Lokr: Bike Lockers, P.O. Box 978, North Highlands, Calif.	I	Padlock	320.00	2 bicycles per locker; installed by BART, EPA, Metro Maryland.
		Coin-op	320.00	
		Key-op		
11. Bike Stable: Bike Stable Co., P.O. Box 1402, South Bend, Ind.	I	do	214.00	Holds 1 bicycle. No units have been sold up to this date.
12. Mac Cycle Vault: BMR Fabrications, P.O. Box 610, Tocca, Ga.	I	Padlock	194.00	1 bicycle per locker.
		Coin-op	250.00	Do.

TABLE B.—UNIVERSITY OF MARYLAND RACK COMPARISON

TRADE NAME, ADVANTAGES, AND DISADVANTAGES

Rally Rack RR-100

ADVANTAGES

Secures rear wheel and frame with a single lock; Rack consists of a single post and has no moving parts; Rack is very easy to use; Rack has aesthetic appeal by virtue of its good design.

DISADVANTAGE

Does not secure the front wheel.

Rally Rack RR-200

ADVANTAGE

Rack has the advantages of the RR-100 with the addition of a cable attached to the post which secures the front wheel.

Rally Rack RR-300

ADVANTAGE

Rack has the advantages of the RR-100 with the addition of a formed steel plate which prevents removal of the front wheel.

DISADVANTAGE

Cost is more than twice that of the Rally Rack RR-200.

Standard Rack

ADVANTAGE

Least expensive of all rack systems.

DISADVANTAGES

Provides the least security of all rack systems, requiring an unusually long chain or cable supplied by the user to secure both wheels and frame of a bike making it vulnerable to bolt or wire cutters; Bikes parked in these racks are easily damaged; Rack design encourages inefficient and cluttered parking arrangement.

Bala Byk-Lok Rak

ADVANTAGES

Secures both wheels and frame with a single lock;

All locking components are constructed of steel.

DISADVANTAGES

Poorly constructed—welds break with normal use;

Not easy to use—requires four steps to secure bike;

Does not provide arrangement flexibility;

Visually clutters the environment—has no aesthetic appeal;

Rusts over time.

Howard Bike Lockup

ADVANTAGE

Secures both wheels and frame with a single lock.

DISADVANTAGES

Disadvantages are identical to those listed for the Bala Byk-Lok Rak.

Park-A-Bike

ADVANTAGES

Secures both wheels and frame with a single lock.

Relatively easy to use.

DISADVANTAGES

Visually clutters the environment—has no aesthetic appeal;

Cable which secures both wheels may be vulnerable to bolt or wire cutters.

Rack III

ADVANTAGES

Secures both wheels and frame with a single lock;

All locking components are constructed of steel.

DISADVANTAGE

Secures bicycles with a pivoting three-pronged device—this moving part may prove troublesome.

UNIVERSITY OF MARYLAND PLANNING DEPARTMENT BICYCLE RACK CRITERIA

The rack must secure both wheels and the bicycle frame.

Securing the bicycle in the rack is to be a simple operation.

The rack is to accommodate a wide range of bicycle types and locking mechanisms.

Securing the bike must be possible with only a user-supplied lock.

Although data is not available on durability, racks should be selected for their apparent quality. Members and joints should be rustproof and designed to minimize or eliminate structural and mechanical failures.

The appearance of the rack is to be "aesthetically pleasing" within the financial and functional parameters.

The rack design is to allow for flexibility in site development.

While racks must be capable of being securely anchored, the ability to relocate them is an option to be considered.

The final University of Maryland report

states that . . . "Research has determined that the Rally Rack Models RR-200 and RR-300 are superior to all other manufacturers in meeting the established criteria."

Table C.—Test results

(Bicycle and Pedestrian Transportation Research Center)

Rack	Rack III	Rally Rack 200	Bala Byk-a-Lok-Rak
Security	second	third	first
Ease of Operation	first	second	third
Versatility	first	third	second
Aesthetic Quality	first	second	third

●

By Mr. STAFFORD:

S. 461. A bill to require that competitions be conducted to enhance the Nation's architecture and determine the design of certain new Federal office buildings; to the Committee on Environment and Public Works.

ARCHITECTURAL EXCELLENCE ACT OF 1979

● Mr. STAFFORD. Mr. President, last year I introduced S. 2402, legislation to require that architectural competition be held in the design of larger buildings of the General Services Administration. I am today reintroducing similar legislation, in the expectation that it can be considered in the context of the GSA reforms that need to be undertaken by the Congress.

The Architectural Excellence Act of 1979 is legislation intended to foster improvements in the architectural design of new Federal office buildings. The United States, in one recent year, spent $140,000,000 in architectural fees on 3,400 projects of the GSA and other agencies. Surely, we can set aside a small portion of that expenditure in a search for greater architectural innovation and excellence.

The architectural critic, Wolf Von Eckhardt, testified to our committee that "practically all the best buildings in the world have been the result of competition." Let me cite just a few of the better known ones: The White House, the U.S. Capitol, the New York Public Library, the State Capitols of Missouri and Washington, the Houses of Parliament in London, the new Coventry Cathedral in England, the Boston City Hall, the Cathedral of St. John the Divine in New York, and the Sydney Opera House in Australia. Many of these buildings are structures for the ages, structures deserving worldwide attention. I do not claim that this bill would necessarily produce such exciting and important buildings. But I do believe it will create a better atmosphere for architectural innovation and excitement.

Federal buildings now built often appear to be cut from molds, with little imagination or recognition of what we hope are the lofty ideals upon which our Government stands. Contrast that with the view early in this century, when one Member of Congress said: "No youth or citizen ever looked upon a Federal building in which the business of his country was being conducted but that he became a better American."

Seven years ago, the Congress added what I believe was the first requirement that GSA assure architectural excellence in its new designs. But testimony before the Committee on Environment and Public Works has shown little impact from that directive. In 1976, the Congress enacted an important new initiative in the area of public buildings policy. This was the Public Buildings Cooperative Use Act (Public Law 94-541). I was pleased to be a sponsor of that law, which encourages the Federal Government to acquire and preserve buildings of historic or cultural importance, converting the space into new Federal offices. Flexibility of this nature should improve our Federal buildings program, making the Federal Government a better neighbor.

We can and we should utilize the Federal building policy as an innovative tool in architectural design for new buildings. Such policy would serve to encourage new, young architects, giving them opportunities they may not otherwise obtain for years.

I recognize that such an approach may not be a popular one among some architects. But it is working elsewhere. The British Government is using competitions wisely. And my approach involves a very limited first step. It would mandate competitions on each Federal building project that is expected to cost $25,000,000 or more. That figure is an arbitrary one, I admit. But it is designed to test the concept, and thus should be a valid starting point.

My bill would set aside between one-half of 1 percent and 1 percent of the cost of the building to be used to run the competition, with the prize limited to a maximum of $250,000. These figures, too, are arbitrary. But I would hope that we will obtain testimony on how a more valid figure can be established, if this one is considered to be inappropriate. The actual architectural fee, of course, would then be negotiated as if the winner were selected as the most qualified applicant, under the normal procedure.

Mr. President, this bill also requires that all the proceedings of the panel of judges be held in public so that the public and local community officials can observe and participate.

I believe that this approach merits the support of the Senate.

I ask unanimous consent that the bill be printed at this point in the RECORD.

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

S. 461

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Architectural Excellence Act of 1979".

Sec. 2. The Public Buildings Act of 1959, as amended, is amended further by inserting a new section 8 as follows, and renumbering subsequent sections accordingly:

"SEC. 8. (a)(1) Whenever the Administrator is authorized under the terms of this Act to construct a public building at a cost that is estimated to be in excess of $25,000,000, the Administrator shall set aside a sum of not less than one-half of 1 per centum or greater than 1 per centum of the estimated cost of such public building to finance a competition for determining the design of such public building. Such competition should stress innovative designs that will be compatible with the community, conserve energy and materials, encourage public use of and access to the building, and reflect the dignity, enterprise, vigor, and stability of the Government of the United States.

"(2) Notwithstanding paragraph (1) of this subsection, the Administrator may conduct a competition for determining the design of any building which he is authorized to construct: *Provided,* That not greater than 1 per centum of the estimated cost of such project is utilized for such competition.

"(b) The Administrator shall establish the prize to be awarded to the winner of each competition under this section in accordance with the scope of each project, but in no event shall such prize exceed $250,000.

"(c) To determine the most appropriate design under the terms of this section, the Administrator shall appoint a panel of five persons. Such panel shall be composed of an architect who shall not be associated with any entrant in the competition and who shall serve as chairman, a representative of the municipality in which such building will be constructed, a nominee of the National Endowment of the Arts, an architectural educator or critic, and a representative of the Administrator. Meetings of such a panel shall be open to the public, and the decision of such panel shall be final. The winner selected by the panel shall be considered as the 'highest qualified firm' for the purposes of section 904 of the Federal Property and Administrative Services Act of 1949.

"(d) The requirements of this section include any public building, whether owned initially by the United States or to be so owned as part of a long-term financing arrangement, or to any public building constructed specifically for the United States under a lease arrangement.

"(e) For the purposes of this section, the word 'design' includes the general architectural appearance and general engineering of a public building, together with such information as will be reasonably required to provide detailed architectural and engineering plans and specifications for such public building.".●

By Mr. WEICKER:

S. 462. A bill to exempt the price of natural gas imported from Mexico from regulation under any Federal or State law; to the Committee on Energy and Natural Resources.

NATURAL GAS FROM MEXICO

● Mr. WEICKER. Mr. President, I am today introducing a bill that will exempt the price of natural gas imported from Mexico from regulation under any Federal or State law.

The effect of this proposal will be to remove from the executive branch of Government the power to approve or disapprove contracts made by American businesses for the importation of Mexican natural gas.

For too long this administration has failed to develop a coherent national energy policy and has repeatedly flipped-

flopped with respect to its energy directives and goals.

Instead of providing clarity and direction to the energy problem, it has created confusion and misdirection. Instead of generating confidence in our people and our allies, it has undermined our relations with foreign nations and created distrust and scepticism at home.

This is most particularly true with respect to our southern neighbor, Mexico. After protracted negotiations in 1977, between various companies and the Government of Mexico, Secretary Schlesinger summarily disapproved contracts for the purchase of Mexican natural gas that were the outgrowth of these negotiations. Not only did the Secretary say no to the contracts, he refused to discuss what terms would be acceptable to him.

This arrogance has naturally exacerbated the mistrust, suspicion, and lack of confidence of the Mexican Government in its dealings with the United States.

We must now try to repair the damage. The time has come to treat the Mexicans as we ourselves expect to be treated—with respect and dignity. We must seek cordial and mutually advantageous relationships with Mexico. This cannot occur when we have Government intervention of the abortive sort that characterized Secretary Schlesinger's actions.

The administration has had a unique opportunity to negotiate in good faith with the Government of Mexico. Not only has the administration come away with no gas, it has actually turned this splendid opportunity into a diplomatic disaster.

Now it is time to give American enterprise the opportunity to regain the ground lost by the floundering of the administration.

By allowing American enterprise and the Mexican Government to negotiate in an environment unencumbered by Government regulation, the spirit of mutual respect, confidence and trust will be reborn.

In essence this bill will be the first positive step in many years in fostering a more stable political relationship with Mexico.

In a more tangible way, this legislation will accomplish the following:

First, it will increase the security of future natural gas supplies to the American consumer. Although we have a so-called natural gas glut or "bubble" at this time, in 3 to 4 years according to the Department of Energy (and in even less time by private estimates), the bubble will burst. Then we must look to outside sources to supplement our own domestic production. It would be nice to know that because of stabilized relations, we would be turning to a friend and close neighbor.

Second, this bill will reduce our dependence on OPEC oil which in turn will strengthen our national security. By purchasing Mexican natural gas at cheaper prices than those which American industry would pay for alternative fuels, such as residual oil, American industry will be displacing by that amount of Mexican natural gas purchased, the Btu equivalent amount of OPEC imported oil.

We will be further strengthening our national security because increased Mexican natural gas production will make possible additional Mexican oil for the world market. It is to our advantage, if the need arises, to have a close, uninterrupted friendly source of foreign crude such as that in Mexico. To remain dependent upon the whims and caprice of the politically unstable OPEC nations is folly when viewed in the context of a friendly source to the south.

This administration has failed to provide our Nation with a substantive, hard-hitting energy program. President Carter promised in Bonn to reduce our consumption of oil. Yet, what do we have to show for it but a toothless piece of legislation that we call a national energy policy.

Controls and Government intervention have failed to do the job as witnessed by such events as the natural gas shortages in 1977, and by the problems that exist in the area of oil price controls.

This administration has flatly rejected negotiated contracts for a stable supply of Mexican natural gas. Now all we have is the administration's vague promise to resume "talks" with the Mexicans on this critical issue.

It is time to remove governmental bureaucracy from the energy arena. It is time to permit the American producers and suppliers of energy, who are meeting increasing consumer demand, to operate in an unfettered atmosphere with their Mexican counterparts.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 462

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 207 of the Natural Gas Policy Act of 1978 is amended by inserting at the end thereof the following:

"(d) IMPORTS FROM MEXICO.—The price, including acquisition and transportation, of natural gas imported from Mexico shall not be subject to regulation under this Act, the Natural Gas Act, or any other provision of Federal or State law.●

By Mr. CHURCH (for himself, Mr. LONG, Mr. BENTSEN, Mr. WALLOP, Mr. YOUNG, Mr. JOHNSTON, Mr. STONE, Mr. MATSUNAGA, Mr. INOUYE, Mr. MCGOVERN, Mr. EXON, Mr. BAUCUS, Mr. BURDICK, Mr. MELCHER, and Mr. BOSCHWITZ):

S. 463. A bill to implement the International Sugar Agreement between the United States and foreign countries, to protect the welfare of consumers of sugar and of those engaged in the domestic sugar-producing industry, to promote the export trade of the United States, and for other purposes; to the Committee on Finance.

SUGAR STABILIZATION ACT OF 1979

● Mr. CHURCH. Mr. President, I am joined today by 14 of my colleagues in introducing the Sugar Stabilization Act of 1978. This legislation will provide implementation authority for the proposed International Sugar Agreement (ISA) and establish a complementary domestic sugar program to preserve a viable domestic sweetener industry.

This bill bears some similarities to the Sugar Stabilization Act of 1978, which received the approval of the Senate last fall. However, a conference committee version of that bill was defeated by a few votes in the closing hours of the 95th Congress. Since that time, the domestic sweetener industry has continued to shrivel under the onslaught of "dumped" foreign sugar. At least four more sugar-beet processing plants are scheduled to close next month, one of them in Idaho Falls, Idaho. Beet acreage planting intentions for this year are down over 11 percent. Similar economic woes continue to plague the cane and corn segments of our domestic sweetener industry.

Last year opponents of this bill charged that passage would be inflationary and lead to consumer rip-offs. It is instructive to note that following the defeat of a sugar bill last year, the Hershey Candy Co. announced price increases amounting to 9 percent. The soft drink machines in the Senate were replaced with machines dispensing canned drinks for a 17 percent higher price. Meanwhile, the Treasury Department announced this month that it has determined that sugar from France, Belgium, and West Germany is being sold in the United States at lower prices than its fair value.

The result, Mr. President, of failure to enact the Sugar Stabilization Act last year has been disaster for consumers and our sweetener industry. Large and profitable multinational corporations, which purchase about 75 percent of the sugar used in this country and turn it into cookies, soft drinks, and candy bars, seem to be the only ones unaffected by the failure to enact a workable domestic sugar policy.

The bill I am introducing today is designed to protect American consumers from the wild gyrations of the world sugar market and to provide an opportunity for our domestic sweetener industry to survive. If our domestic industry is allowed to further waste away, our consumers will become increasingly dependent on imported sugar. Roughly half of our domestic consumption of sweeteners is currently imported and adds about $1 billion per year to our foreign trade deficit. The value of the dollar will not be strengthened by adding to that deficit. Moreover, it clearly serves the best interests of our Nation's consumers to avoid becoming dependent on foreign sugar, as we are now dependent on foreign oil and coffee.

The world sugar market historically swings up and down in price. During 1974, the world price for sugar shot up to nearly 70 cents per pound. The impact of that price, however, was substantially moderated in the United States because we could produce much of our own needs at a far lower price. Without a viable domestic industry, our consumers can expect extreme sugar price gyrations in the future, further increases in trade deficits, and rising unemployment and welfare payments to displaced domestic workers. The U.S. sweetener industry employs

about 100,000 of our citizens and contributes about $10.5 billion annually to our economy.

Mr. President, I am encouraged by recent developments which indicate that the administration is now ready to respond more favorably this year to resolve this important farm and consumer problem. The Sugar Stabilization Act of 1979 would establish a domestic program providing a target price objective of 17 cents per pound and achieve that price through the marketplace. Fees would be collected on imported sugar and quotas used, if necessary, to reach that target price. This means that funds will flow into the Treasury. Estimates indicate that enactment of this bill could add over $400 million in new revenue during 1979 alone, thus assisting in the general effort to balance the budget.

The administration is now expected to propose a program offering a total price to growers of 16.3 cents per pound. However, half a penny of that price would be in the form of payments from the Treasury to growers. This payment approach would cost taxpayers about $60 million per year and decrease the revenue collected on imports in 1979 by over $100 million.

The endemic instability of the world sugar market prompted over 70 sugar producing and consuming countries to negotiate successfully the International Sugar Agreement (ISA), an attempt to cooperatively bring order to the chaotic world sugar market. The ISA proposes to collect fees to fund reserve stocks of sugar during years when supply is plentiful and release those stocks when supply is short. The overall objective is to stabilize world sugar prices within a "free trade" range of 15 to 19 cents per pound. It should be noted that the proposed target price objective for the domestic program, under the provisions of my bill, matches the midpoint of the ISA free trade range.

While the ISA represents an attempt to stabilize and improve world sugar prices, we cannot ignore the fact that such international commodity agreements have a very poor track record. A reliable, complementary domestic program to back up the ISA is mandatory. With no domestic program to cover the 1979 crop year, it would be reckless and unfair to ask our sugar growers to risk their all on so weak a reed as the ISA.

Mr. President, I ask unanimous consent that the text of the Sugar Stabilization Act of 1979 be printed at this point in the RECORD.

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

S. 463

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sugar Stabilization Act of 1979"

SEC. 2. DEFINITIONS.

For purposes of this Act—

(1) The term "person" has the same meaning as is given to such term in section 1 of title 1 of the United States Code.

(2) The term "Secretary" means the Secretary of Agriculture except as otherwise provided herein.

(3) The term "TSUS" means the Tariff Schedules of the United States (19 U.S.C. 1202).

(4) The term "United States", when used in a geographical context, means the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

TITLE I—INTERNATIONAL SUGAR AGREEMENT

SEC. 101. DEFINITIONS.

For purposes of this title—

(1) The term "Agreement" means the International Sugar Agreement, 1977, signed at New York City on December 9, 1977.

(2) The term "entry" means the entry or withdrawal from warehouse, for any purpose, in the customs territory of the United States.

(3) The term "sugar" has the same meaning as is given to such term in paragraph (12) of Article 2 of the Agreement.

SEC. 102. IMPLEMENTATION OF AGREEMENT.

On and after the entering into force of the Agreement with respect to the United States, and for such period before January 1, 1983, as the Agreement remains in force, the President may, in order to carry out and enforce the provisions of the Agreement—

(1) regulate the entry of sugar by appropriate means, including but not limited to—

(A) the imposition of limitations on the entry of sugar which is the product of foreign countries, territories, or areas not members of the International Sugar Organization, and

(B) the prohibition of the entry of any shipment or quantity of sugar not accompanied by a valid certificate of contribution or such other documentation as may be required under the Agreement;

(2) require of appropriate persons the keeping of such records, statistics, and other information, and the submission of such reports, relating to the entry, distribution, prices, and consumption of sugar and alternative sweeteners as he may from time to time prescribe; and

(3) take such other action, and issue and enforce such rules or regulations, as he may consider necessary or appropriate in order to implement the rights and obligations of the United States under the Agreement.

SEC. 103. DELEGATION OF POWERS AND DUTIES.

The President may exercise any power or duty conferred on him by this title through such agencies or officers of the United States as he shall designate.

SEC. 104. CRIMINAL OFFENSES.

Any person who—

(1) fails to keep any records, statistics, or other information, or to submit any report, required under section 102;

(2) submits any report under section 102 knowing that the report or any part thereof is false; or

(3) knowingly violates any rule or regulation issued to carry out this title;

is guilty of an offense and upon conviction thereof is punishable by a fine of not more than $1,000.

SEC. 105. REPORT TO CONGRESS.

The President shall submit to Congress, on or before April 1 of each year, beginning in 1980, a report on the operation and effect of the Agreement during the immediately preceding year. The report shall contain, but not be limited to—

(1) information with respect to world and domestic sugar demand, supplies, and prices during the year concerned;

(2) projections with respect to world and domestic sugar demand, supplies and prices; and

(3) a summary of the international and domestic actions taken during the year concerned under the Agreement and under domestic legislation to protect the interests of United States consumers and producers of sugar.

TITLE II—DOMESTIC SUGAR PROGRAM PROVISIONS

SEC. 201. DEFINITIONS.

(a) For purposes of this title—

(1) The phrase "average daily price for raw sugar imports" means the average for the applicable period of the daily domestic spot quotation or price reported by the New York Coffee and Sugar Exchange, C.I.F. duty paid basis, adjusted to exclude any special import duty imposed under this Act, at a United States port of entry north of Cape Hatteras: *Provided,* That if no such daily domestic spot quotation or price is reported for any market day or days in the applicable period, the Secretary shall determine for each such market day for use in calculating such average a daily market price for raw sugar which shall be the daily price (world) quoted by the International Sugar Organization for such market day (or if no such quotation is issued, an equivalent price determined by the Secretary), in United States cents per pound, F.O.B. and stowed Caribbean basis, in bulk, adjusted to a C.I.F. duty paid basis by adding estimated costs of delivery from Caribbean ports to U.S. ports North of Cape Hatteras, including freight, insurance, cost of discharge, financing, weighing and sampling and import duties, excluding any special import duty imposed under this Act.

(2) The term "entered" means entered, or withdrawn from warehouse, for consumption, or exportation pursuant to section 210 from, the customs territory of the United States; and the term "entry" means the entry, or withdrawal from warehouse, for such consumption or exportation.

(3) The term "price objective" means the price set forth in or determined pursuant to section 202(a).

(4) The term "quantitative restriction" means the total quantity of any sugar-containing product produced in all foreign countries, territories, or areas that may be entered, without regard to source, in any sugar supply year or semiannual period thereof.

(5) The term "raw value" has the same meaning as is given to such term in headnote 1 to subpart A of part 10 of schedule 1 of the TSUS.

(6) The term "sugar" means any sugar, sirup, and molasses provided for in terms 155.20 and 155.30 of the TSUS.

(7) The term "raw sugar" means any sugar which is to be further refined or improved in quality.

(8) The term "sugar supply year" means the 12-month period beginning on October 1 of each calendar year with each such year being designated by the year in which the beginning date occurs.

(9) The term "supply year quarter" means any of the 3-month period beginning on October 1, January 1, April 1, or July 1 of any sugar supply year.

(b) For purposes of section 207—

(1) The term "sugars" means any grade or type of saccharine product derived from an agricultural commodity, which contains sucrose, dextrose, or levulose.

(2) The term "direct-consumption sugar" means any sugars which are not to be further refined or improved in quality.

(3) The term "to be further refined or improved in quality" means to be subjected substantially to the process of (1) affination or defecation, (2) clarification, and (3) further purification by absorption or crystallization. The Secretary is authorized to determine whether specific processes to which sugars are subjected are sufficient to meet the requirements of this paragraph and whether sugars of a specific quality are direct-consumption sugar within the meaning of paragraph (2) of this subsection.

SEC. 202. PRICE OBJECTIVES AND AVERAGE DAILY PRICES.

(a) PRICE OBJECTIVES.—(1) The price objectives for sugar supply years beginning after September 30, 1978, are as follows:

(A) The price objective for the 1978 sugar supply year is 17 cents per pound, raw value;

(B) The price objective for the 1979, 1980 and 1981 sugar supply years shall be the price objective for the sugar supply year immediately preceding each such year, adjusted by the Secretary to reflect the percentage change between the average cost of production of sugar from sugar beets and sugar cane for—

(i) the two sugar supply years immediately preceding the sugar supply year for which the adjustment is made, and

(ii) the two sugar supply years immediately preceding the sugar supply year which immediately precedes the sugar supply year for which the adjustment is made.

(2) For purposes of this subsection, the average cost of production for each sugar supply year shall be determined by the Secretary on the basis of the results of the studies made pursuant to section 325 of this Act.

(3) The Secretary shall determine the price objective under this subsection for the 1979 sugar supply year and for each sugar supply year thereafter not later than June 30 of the year in which such sugar supply year begins.

(b) DAILY PRICES.—The Secretary shall (i) ascertain or determine for each market day the quotation or price to be used to calculate the average daily price for raw sugar imports, (ii) make the adjustments therein required by section 201(a)(1), and (iii) publish such quotations or prices as so adjusted, in the Federal Register on such periodic basis as he deems appropriate.

SEC. 203 SECRETARIAL RECOMMENDATIONS REGARDING SPECIAL IMPORT DUTIES.

(a) SPECIAL IMPORT DUTIES.—(1) Not later than 30 days before the beginning of each sugar supply year which commences after September 30, 1979, the Secretary shall—

(A) on the basis of best available information, estimate whether the average daily price for United States raw sugar imports during such sugar supply year will be below the price objective; and

(B) if the estimation under subparagraph (A) is in the affirmative, recommend to the President that he impose such special import duties on the entry of such sugar and, if appropriate, such sugar-containing products as the Secretary determines to be necessary to assure that the average daily price for United States raw sugar imports will result in the price objective for such sugar supply year being achieved.

(2) With respect to the 1978 sugar supply year, the Secretary shall make the estimation described in paragraph (1)(A) and, if applicable, the recommendations described in paragraph (1)(B) not later than 30 days after the date of the enactment of this Act.

(b) REVIEW AND ADJUSTMENTS OF DUTIES.—The Secretary shall review, on a supply year quarter basis, the effect of all special import duties imposed as a result of recommendations made by him under subsection (a). On the basis of such review, the Secretary shall determine and recommend the amount by which the special import duty shall be adjusted so that the special import duty shall equal the amount by which the average daily price for raw sugar imports for the first 20 consecutive market days preceding the 20th day of the month preceding the calendar quarter during which such recommendation shall be applicable is less than the price objective: *Provided*, That whenever the Secretary determines that the average daily price for raw sugar imports for ten consecutive market days within any calendar quarter (1) exceeds the price objective by more than .5 cent, or (2) is less than the price objective by more than .5 cent, the Secretary shall recommend to the President that the duty be decreased or increased, as the case may be, by the amount of such excess or deficit. The Secretary shall promptly certify to the Secretary of the Treasury determinations made under this subsection.

SEC. 204. SECRETARIAL RECOMMENDATIONS REGARDING QUANTITATIVE RESTRICTIONS.

(a) QUANTITATIVE RESTRICTION.—Whenever the Secretary has reason to believe that the special import duties imposed on the entry of any sugar or sugar-containing product on the basis of any recommendation made by him under section 203 are not resulting in the price objective for the sugar supply year being achieved, the Secretary shall recommend to the President that he impose, in addition to such special import duties, such quantitative restrictions on a semiannual supply year basis, on the articles concerned as the Secretary determines to be necessary to achieve such price objective.

(b) REVIEW AND ADJUSTMENTS OF QUANTITATIVE RESTRICTIONS.—The Secretary shall review, on a semiannual supply year basis, the effect of all quantitative restrictions imposed as a result of recommendations made by him under subsection (a). On the basis of such review, the Secretary shall recommend to the President such adjustments with respect to the amount of any such quantitative restriction, or with respect to sugar or sugar-containing products to which any such quantitative restrictions should be extended or removed, as the Secretary determines to be necessary to achieve the price objective for the sugar supply year concerned.

SEC. 205. SUBMISSION AND PUBLICATION OF REPORTS AND RECOMMENDATIONS TO PRESIDENT.

(a) TIMING OF REPORTS.—The Secretary shall submit a report to the President containing the results of each review conducted under sections 203(b) and 204(b), together with such recommendations the Secretary deems appropriate, not later than the 60th day after the beginning of the supply year quarter or semiannual period for which the review is made.

(b) PUBLICATION OF REPORTS AND RECOMMENDATIONS.—Each report and recommendation made by the Secretary to the President under sections 203 and 204 shall be promptly published by the Secretary in the Federal Register.

SEC. 206. IMPOSITION BY PRESIDENT OF SPECIAL IMPORT DUTIES AND QUANTITATIVE RESTRICTIONS.

(a) IN GENERAL.—Upon receiving any recommendation of the Secretary under section 203 or section 204, the President shall promptly proclaim, under the authority of the headnotes to subpart A of part 10 of schedule 1 of the TSUS and subject to subsection (b), such special import duties or quantitative restrictions, as the case may be, with respect to such sugar and sugar-containing products as the President deems necessary to achieve the price objective for the sugar supply year concerned.

(b) GLOBAL RESTRICTION.—A quantitative restriction imposed under subsection (a) shall be administered as a global quantitive restriction imposed in terms of raw value.

(c) SPECIAL PROVISIONS RELATING TO PROCLAMATIONS.—(1) Any proclamation issued by the President on the basis of any recommendation made by the Secretary under section 203 (a) regarding sugar with respect to the 1978 sugar supply year shall apply with respect to articles entered on or after the date of such proclamation.

(2)(A) any special import duty imposed by the President on the basis of any recommendation made by the Secretary under section 203(a) with respect to any sugar supply year after September 30, 1979, shall be proclaimed by the President not less than 5 days before the beginning of the sugar supply year in which such special import duties apply;

(B) any quarterly adjustment made by the President to any special import duty on the basis of any determination made by the Secretary under section 203(b) shall be proclaimed by the President not less than 5 market days before the beginning of the supply year quarter in which such adjustment first takes effect;

(C) any adjustment made by the President within a supply year quarter to any special import duty on the basis of any determination made by the Secretary under the proviso to section 203(b) shall be proclaimed by the President not later than 3 market days after the recommendation by the Secretary to the President thereunder; and

(D) any quantitative restriction imposed by the President on the basis of any recommendation made by the Secretary under section 204(a), and any adjustment made by the President to any quantitative restriction on the basis of any recommendation made by the Secretary under section 204(b), shall be proclaimed by the President not less than 30 days before the beginning of the period for which such quantitative restriction or adjustment, as the case may be, first takes effect.

SEC. 207. PROHIBITION OF IMPORTATION OF DIRECT-CONSUMPTION SUGAR.

(a) Except as provided in subsection (b), no direct-consumption sugar may be entered into the United States.

(b) Notwithstanding any other provision of this Act, if the President determines that a lack of refining capacity within the United States has created an imminent shortage of direct-consumption sugar for consumers in the United States, then he may impose a quantitative restriction permitting the entry of such quantity of direct-consumption sugar as is necessary to meet such imminent shortage. Determinations made under this section shall be made in accordance with section 553 of title 5, United States Code.

(c) The limitation imposed under subsection (a) may not be suspended under section 211 unless the President finds and proclaims that a national economic or other emergency exists with respect to direct-consumption sugar which requires such a suspension.

SEC. 208. PROHIBITED ACTS.

(a) CERTAIN IMPORTS AND EXPORTS.—No person may—

(1) bring or import into the Virgin Islands in any sugar supply year for consumption in such Islands, any sugar in excess of one hundred pounds if such sugar was produced from sugarcane or sugar beets grown outside the United States;

(2) bring or import into the United States any direct-consumption sugar except in accordance with section 207; or

(3) export to any foreign country any sugar entered under any quantitative restriction imposed under section 206.

(b) CIVIL PENALTY.—Any person who knowingly violates, knowingly attempts to violate, or knowingly participates or aids in the violation of subsection (a) shall forfeit to the United States the sum equal to three times the market value at the time of the commission of any such act, of that quantity of sugar involved in the violation, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

SEC. 209. EXEMPT ARTICLES OF SUGAR.

This title does not apply with respect to any sugar or sugar-containing product—

(1) of any aggregate value not exceeding $25 in any one shipment, if entered as samples for the taking of orders, for the personal use of the importer, or for research;

(2) entered for the production of alcohol, other than any alcohol or resulting byproduct for human food consumption;

(3) entered for the production of yeast or citric acid; or

(4) any sugar entered for the production of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar as a sweetener in human foods consumption.

SEC. 210. CERTAIN EXPORTATIONS OF SUGAR.

Sugar entered under a bond, established under rules promulgated by the Secretary of the Treasury, for the purpose of subsequently exporting an equivalent quantity of sugar as such, or in manufactured articles, shall not be considered to be sugar entering the United States for purposes of section 206. Sugar exported under the provisions of sections 309 and 313 of the Tariff Act of 1930 (19 U.S.C. 1309 and 1313) shall be considered to be sugar entered under this section.

SEC. 211. SUSPENSION OF TITLE.

If the President finds that a national economic or other emergency exists with respect to sugar, the President may by proclamation suspend the operation of this title, and headnote 2(b) to subpart A of part 10 of schedule 1 of the TSUS to the extent that it applies with respect to this title, until such time as the President finds and proclaims that such emergency no longer exists. The Secretary shall make such investigations, and prepare such reports, as the President may require for purposes of carrying out this section.

SEC. 212. REGULATIONS.

The Secretary shall issue rules and regulations as he determines to be necessary or appropriate to carry out his functions and duties under this title. Knowing violation of any rule issued by the Secretary under this section is punishable by a fine of not more than $1,000 for each violation.

SEC. 213. AMENDMENTS TO TSUS.

The headnotes to subpart A of part 10 of schedule 1 of the TSUS are amended—

(1) by amending headnote 1 to read as follows: "1. For the purposes of this subpart—

"(i) the term 'degree', as used in the 'Rates of Duty' columns of this subpart, means sugar degree as determined by polariscopic test;

"(ii) the term 'total sugars' means the sum of the sucrose and reducing or invert sugars contained in any grade or type of sugars, sirups, and molasses; and

"(iii) the term 'raw value' means the equivalent of such articles in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury. The principal grades and types of sugar shall be translated into terms of raw value in the following manner:

"(A) For sugar described in item 155.20, by multiplying the number of pounds thereof by the greater of 0.93, or 1.08 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion).

"(B) For sugar described in item 155.30, by multiplying the number of pounds of the total sugars thereof by 1.08.

"(C) The Secretary of the Treasury shall establish methods for translating sugar into terms of raw value for any special grade or type of sugar for which he determines that the raw value cannot be measured adequately under the above provision.";

(2) by amending headnote 2 by inserting "(a)" immediately after "2", and by adding at the end thereof the following:

"(b) In addition to the authority of the President under section 201 of the Trade Expansion Act of 1962 (19 U.S.C. 1821) to proclaim modifications of the rates of duty and quotas on imports of sugars, sirups, and molasses provided for in items 155.20 and 155.30, the President shall, subject to the conditions and requirements of (a)(1) and for purposes of carrying out, and subject to, Title II of the International Sugar Stabilization Act of 1979, proclaim special import duties on—

"(i) imports of any such sugars, sirups, and molasses, and

"(ii) the content of any such sugars, sirups, and molasses in imported products containing such sugars, sirups, and molasses. Any special import duty proclaimed under this subdivision on the entry of any article shall be in addition to any other duty imposed by law on such entry and may not be made the subject of any preferential concession under any law or international obligation of the United States."; and

(3) by amending headnote 3 by striking out "For purposes of this headnote," and all that follows thereafter.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. DEFINITION.

As used in this title the term "sugar" has the same meaning as is given to such term in section 201(6).

SEC. 302. JURISDICTION OF COURTS.

The several district courts of the United States are hereby vested with jurisdiction specially to enforce, and to prevent and restrain any person from violating, the provisions of this Act or of any order or regulation made or issued pursuant thereto. If and when the Attorney General shall so request, it shall be the duty of the several district attorneys of the United States, in their respective districts, to institute proceedings to enforce the remedies and to collect the penalties, fees, and forfeitures provided for in this Act. The remedies provided for in this Act shall be in addition to, and not exclusive of, any of the remedies or penalties existing at law or in equity.

SEC. 303. FURNISHING OF INFORMATION TO SECRETARY.

All persons engaged in the manufacturing, marketing or transportation or industrial use of sugar and other sweeteners, including those not derived from sugar beets or sugarcane, and having information which the Secretary deems necessary to enable him to administer the provisions of this Act, shall, upon the request of the Secretary, furnish him with such information. Any person willfully failing or refusing to furnish such information or willfully furnishing any false information shall upon conviction be subject to a penalty of not more than $2,000 for each such violation. The Secretary is empowered to subpoena witnesses and the production of such records, books, papers and documents which he determines necessary for the administration of this Act. All information required to be furnished to the Secretary under this section shall be kept confidential by all officers and employees of the Department of Agriculture.

SEC. 304. INVESTMENTS BY OFFICIALS PROHIBITED.

No person may, while acting in any official capacity in the administration of this title, invest or speculate in sugar, contracts relating thereto, or the stock of membership interest of any association or corporation engaged in the production or manufacturing of sugar or other sweeteners. Any person violating this section shall upon conviction thereof be fined not more than $10,000 or imprisoned not more than two years, or both.

SEC. 305. SURVEYS AND INVESTIGATIONS.

(a) REQUIRED SURVEYS AND INVESTIGATIONS.—Whenever the Secretary determines such action is necessary to effectuate the purposes of this Act, the Secretary from time to time shall conduct such surveys and investigations as the Secretary deems necessary regarding the manufacturing, marketing, transportation, or industrial use of sugar and other sweeteners. In carrying out the provisions of this subsection, information shall not be made public with respect to the separate operations of any person or company from whom such information has been derived.

(b) OTHER INVESTIGATIONS, SURVEYS, AND RESEARCH.—The Secretary may conduct surveys, investigations, and research relating to the conditions and factors affecting the methods of accomplishing most effectively the purposes of this Act. Notwithstanding any provision of existing law, the Secretary may make available to the public such information as the Secretary deems necessary to carry out the provisions of this Act.

(c) COST OF PRODUCTION STUDIES.—(1) The Secretary is directed to conduct studies on the cost of producing sugarcane, sugar beets, raw sugar, refined sugar, corn sweeteners and other sweetener products as deemed necessary by the Secretary for the administration of this Act.

(2) The Secretary shall determine on a sugar supply year basis the average cost of production of sugarcane, sugar beets, raw sugar, refined sugar and corn sweeteners.

(3) There are hereby authorized to be expended such amounts from the funds of the Commodity Credit Corporation as may be necessary to carry out the authority of this subsection.

(d) Whenever the Secretary determines that such action is necessary to effectuate the purposes of this Act, he is authorized, if first requested by persons constituting or representing a substantial proportion of the persons affected in any one of the five domestic sugar-producing areas, to make for such area surveys and investigations to the extent he deems necessary, including the holding of public hearings, and to make recommendations with respect to (a) the terms and conditions of contracts between the producers and processors of sugar beets and sugarcane in such area (b) the terms and conditions of contracts between laborers and producers of sugar beets and sugarcane in such area. In carrying out the provisions of this section, information shall not be made public with respect to the individual operations of any processor, producer, or laborer.

(e) The Secretary is authorized to conduct surveys, investigations, and research relating to the conditions and factors affecting the methods of accomplishing most effectively the purposes of this Act and for the benefit of agriculture generally in any area. Notwithstanding any provision of existing law, the Secretary is authorized to make public such information as he deems necessary to carry out the provisions of this Act.

SEC. 306. LOAN AND PURCHASE PRICE SUPPORT PROGRAMS.

(a) EXTENSION OF 1977 AND 1978 PROGRAMS TO 1979, 1980 AND 1981 CROPS.—Effective with respect to the 1979, 1980 and 1981 crops of sugar beets and sugarcane, section 201 of the Agricultural Act of 1949, as amended, is amended by—

(1) striking out in the first sentence "honey, and milk" and inserting in lieu thereof the following: "honey, milk, sugar beets and sugarcane"; and

(2) adding at the end thereof a new subsection (g) as follows:

"(g) The price of the 1979, 1980 and 1981 crops of sugar beets and sugarcane shall be supported through loans or purchases with respect to the processed products thereof at a level not in excess of 65 per centum nor less than 52.5 per centum of the parity price therefor.".

(b) WAIVER OF INTEREST ON 1977 AND 1978 CROPS.—Notwithstanding any other provision of law, the Secretary may waive a portion of the interest at such times and in such amounts as he determines necessary, in order to encourage the repayment of outstanding loans obtained from the Commodity Credit Corporation with respect to sugar produced from the 1977 and 1978 crops of sugar beets and sugarcane; except that such waiver au-

thority shall be exercised in such a manner as not to affect unduly the market prices for sugar.

SEC. 307. TERMINATION OF ACT.

Except for Title I and section 206(a), this Act shall cease to have force and effect as of the close of September 30, 1982.

Mr. JOHNSTON. Mr. President, I am pleased to cosponsor legislation introduced by the senior Senator from Idaho to establish a realistic domestic sugar policy and implement the International Sugar Agreement signed at New York City on December 9, 1977. This legislation, which is very similar to the Church bill which I cosponsored last year, will help stabilize world markets and will enable our domestic sugar industry to survive.

Title II establishes a price objective for the 1978 sugar supply year at 17 cents per pound (raw value), a level to be achieved through a system of import fees and quotas. This price objective is below the production costs of many sugar producers in Louisiana and would establish the price support for sugar at about 65 percent of parity—well below the parity level demanded by producers of other commodities this year. The price objective is also below the parity level received by many other agricultural producers. Milk, for example, is currently supported at 80 percent of parity while peanuts are supported at 67 percent of parity.

My State has a critical interest in this legislation. Sugar has been one of Louisiana's principal agricultural crops since the early 19th century. In 1976, sugarcane production was worth almost $100 million to Louisiana, according to the Department of Agriculture. Over 4,000 farmers in 18 rural Louisiana parishes grow sugarcane and in 1977 28 sugarcane mills processed raw cane. Altogether the sugar industry in Louisiana employed about 25,000 workers in farming and processing operations in 1977. It is not a few large conglomerates who produce sugar in my State and who benefit from our domestic program. Rather, it is a number of small farmers who must have this support to survive.

Some, including unfortunately the Secretary of Agriculture, say these farmers should switch to alternate crops if they are so inefficient that they cannot compete on the world market. This ignores the problem of huge capital investments in sugar production and processing equipment—most of which cannot be used for producing any other crop. It also ignores the fact that many other domestic sugar producers have high costs. For example, Louisiana's costs, according to USDA (U.S. Department of Agriculture) figures, are no higher than those in five other cane and beet producing States (Utah, Colorado, Kansas, Texas, and New Mexico) which produce about one-third of the Nation's beets.

I should emphasize that 17 cents per pound will not guarantee anyone a profit. Current production costs in Louisiana are 17.493 cents per pound on the average, almost a half a cent higher than the support price this legislation mandates. Even at the 17 cents level, then, there will be some attrition. In addition, the 17 cents level is the median of the price range for free trade sugar under the International Sugar Agreement. This range was presumably selected as an appropriate level for world prices and the median point is thus appropriate for the beginning domestic price.

Many objections were heard in the Senate to the sugar program considered last year. Some said that the 17-cents-per-pound objective would be inflationary. However, last year both the Senate Finance Committee and the Congressional Budget Office found that the potential impact of a 17-cents-per-pound price objective on the Consumer Price Index for all commodities would be an average of less than one-tenth of 1 percent over the life of the bill. I should also point out that sugar comprises only a small part of the costs of products containing sugar. Although the price of these products rose almost 48 percent from 1973 to 1978, the price of sugar rose only 6 percent during those same years. Furthermore, although many large industrial sugar users justified price increases in 1974 on the basis of increased sugar prices which rose to 60 cents per pound that year, we have yet to witness any corresponding price decrease by major users even though the price of sugar dropped by more than 50 cents per pound between 1974 and 1977. To put this in perspective, we should remember that a single 2-ounce candy bar today costs more than three times as much as the price a sugar farmer would receive, without import restrictions, for a full pound of sugar.

Moreover, if domestic producers go out of business, we will create just the shortage that made prices rise dramatically in 1974—for we would lose over 6 million tons of sugar annually which are used domestically. We already pay over $1 billion a year for imported sugar—and this could well double. Surely, these adverse trade figures should be of great concern to all American consumers.

Finally, let me say that there is no doubt in my mind that the domestic industry is in trouble. Five sugarcane mills went out of business between 1977 and 1978 and several others have gone under this year. I am sure that my friends from beet-producing States could cite similar statistics of closings in their area.

We could, of course, simply ignore these problems, let unemployment increase, let our imports increase and our balance of trade suffer, and hope that another world shortage does not develop. This, however, is neither responsible nor realistic. By providing the help our producers must have to survive, we can develop a good strategy to insulate consumers from market fluctuations (and hence sudden price increases), save jobs and tax revenues and save the burden which would inevitably be placed on the taxpayer if our producers and workers were forced out of business and had to rely on welfare. Providing help is the sensible choice and I urge the Senate to help us try to save this important source of income and these jobs.

By Mr. INOUYE:

S. 464. A bill to amend the Internal Revenue Code of 1954 to expend the category of targeted groups for whom the new employee credit is available to include displaced homemakers; to the Committee on Finance.

● Mr. INOUYE. Mr. President, today I am introducing legislation to aid a group of people whose contribution to the Nation's economic stability has been overlooked for far too long. I refer to the American homemaker, who traditionally has provided the foundation on which our economy is built. Although she receives no monetary reward for her services, the woman who stays to care for her husband and their children is invaluable to our national labor force. Yet, when she becomes displaced because of the death of a spouse or because of divorce or separation, her past service to her family and her country go unrecognized. Because of her prolonged absence from the labor force, she is at a disadvantage when circumstances force her to compete in the job market with younger, more experienced men and women.

Mr. President, an increasing number of homemakers are displaced in the middle years from their family role and left without any source of financial security. These displaced homemakers are often subject to discrimination in employment because of age, sex, and lack of recent paid work experience. To make matters worse, many of these women are ineligible for social security benefits or welfare assistance and desperately need to find work. I believe we owe a tremendous debt to this Nation's displaced homemakers and this bill would be one step toward repaying that debt.

This bill would give displaced homemakers a boost in their efforts to reenter the work force or to enter it for the first time by offering a tax credit to employers who hire them. It would amend the Internal Revenue Code of 1954 to add displaced homemakers to the list of people already targeted to benefit from this program, such as economically disadvantaged youth, welfare recipients, Vietnam-era veterans from economically disadvantaged families and economically disadvantaged ex-convicts. The current law provides employers with $3,000 credit per trainee for the first year and $1,500 for the second.

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

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

S. 464

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of section 51(d) of the Internal Revenue Code of 1954 (relating to members of targeted groups) is amended—

(1) by striking out "or" at the end of subparagraphs (E) and (F),

(2) by striking out the period at the end of subparagraph (G) and inserting in lieu thereof a comma and "or", and

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

"(H) a displaced homemaker (as defined in paragraph (7) of section 3 of the Comprehensive Employment and Training Act Amendments of 1978 (29 U.S.C. 802).".

SEC. 2. The amendment made by the first

section of this Act shall apply with respect to amounts paid or incurred after December 31, 1978, in taxable years ending after such date.●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 465. A bill to authorize the spouses of certain former members of the Armed Forces of the United States to use the services and facilities of post exchanges and commissaries; to the Committee on Armed Services.

● Mr. INOUYE. Mr. President, it has come to my attention over the past several years that certain laws regulating benefits for veterans and their dependents have contained weaknesses or omissions that should be corrected. I found this to be especially true in the case of the disabled veteran and his wife or widow, who pays a high personal price in indirect service to her country through caring for her handicapped husband. Government assistance often fails to provide adequate support, primarily because the law is broadly written and the personal lives and conditions of disabled families are specific and individual by nature. Thus, in certain cases where the law should apply, it does not, and for some families of veterans the result of service to their country is economic hardship and bureaucratic confusion.

I am introducing today a measure designed to rectify obvious inequities in the existing law relating to Government benefits for the widows of veterans who had 100 percent service-related disabilities at the time of death.

It is a bill to authorize the widows of certain former members of the Armed Forces of the United States to use the services and facilities of post exchanges and commissaries.

The widow of a serviceman who is 100 percent service-disabled is not entitled to exchange and commissary privileges if her husband died while on active duty. However, if he died after being honorably discharged from the service, she is eligible for these privileges.

This measure will help only a small number of people. But it is these very people who have paid such an extraordinarily high price on behalf of their country and whose lives thereafter have been dictated by their spouses' disabilities.

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

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

S. 465

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 53 of title 10, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 1041. Post exchange and commissary privileges for spouses of certain former members of the armed forces

"Subject to such rules and regulations as the Secretary concerned may prescribe, the spouse of any former member of the armed forces who is entitled to dependency and indemnity compensation under chapter 13 of title 38 or to death compensation from the Veterans' Administration and the spouse of any former member of the armed forces who, at the time of such former member's death, was totally disabled as the result of one or more service-connected disabilities (as determined by the Veterans' Administration) shall be entitled to use the services and facilities of post exchanges and commissary stores operated under the jurisdiction of any military department.".

SEC. 2. The table of sections at the beginning of chapter 53 of title 10, United States Code, is amended by adding at the end thereof a new item as follows:

"1041. Post exchange and commissary privileges for widows of certain former servicemen.".●

By Mr. INOUYE:

S. 466. A bill to require that skilled nursing homes furnishing services under the medicare and medicaid programs be adequately equipped with wheelchairs and other appropriate equipment and supplies; to the Committee on Finance.

● Mr. INOUYE. Mr. President, today I am reintroducing legislation designed to improve the services provided at our nursing homes. This bill requires that those homes which furnish services under medicare and medicaid programs be adequately equipped with wheelchairs and other appropriate equipment and supplies.

Nursing homes are an essential service to our elderly, who often have no other place to live. Unfortunately, the quality of nursing homes throughout our country varies; many can rightly be depicted as crimes against humanity. There is evidence, in many of these homes, that the physical facilities are totally inadequate.

More specifically, in many nursing homes now receiving medicare and medicaid reimbursements, patients are confined to beds due to a severe lack of wheelchairs and other equipment. Such physical limitation proves to be extremely frustrating and debilitating to the convalescent elderly. However, studies have shown remarkable improvement in nursing home patients when physical mobility and activities are encouraged and supplied.

I urge my fellow colleagues to join with me in alleviating this sorry situation of the elderly, confined members of our society. Although my bill does not allow for beneficial therapy, at least physical mobility, through the availability of wheelchairs and other such equipment, would be improved. We must not forget the needs of our elderly, infirm patients.

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

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

S. 466

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1861(j) of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (14),

(2) by inserting "and" at the end of paragraph (15), and

(3) by adding immediately after paragraph (15) the following new paragraph:

"(16) is adequately equipped (as determined under regulations of the Secretary) with wheelchairs and other appropriate equipment and supplies;".

SEC. 2. The amendment made by this Act shall take effect on the first day of the calendar month which begins more than ninety days after the date of enactment of this Act, and the Secretary of Health, Education, and Welfare shall, prior to such date, promulgate and have published in the Federal Register, the regulations which are referred to in section 1861(j)(16) of the Social Security Act (as amended by this Act).●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 467. A bill to amend title 38, United States Code, to provide that the Administrator of Veterans' Affairs may furnish outpatient dental services and treatment for a nonservice-connected disability to any war veteran who has a service-connected disability of 80 percent or more; to the Committee on Veterans' Affairs.

● Mr. INOUYE. Mr. President, I am introducing today legislation which would provide for free outpatient dental care to any war veteran who is 80 percent or more disabled as a result of his military service. Veterans will be eligible for this care even if their dental problems are unrelated to their service injuries.

Legislation passed by the 91st Congress provides free medical and outpatient care for veterans of all wars who were totally and permanently disabled by service-related injuries. This law, Public Law 91–102, was designed to care for the medical needs that would arise during their lives, but would be unrelated to their military wounds. It, however, specifically forbids payment for outpatient dental care. My bill seeks to fill the gap left by Public Law 91–102. I understand that both House and Senate Committees on Veterans Affairs plan to submit legislation including similar benefits to these deserving veterans.

According to one estimate, 175,000 veterans would be eligible for dental care if this bill is passed. Currently, these men get free care only if their problems are directly related to their service disability. But, as the Disabled American Veterans noted when they urged me to introduce this measure, many veterans live on limited, fixed incomes. Dental costs are rising along with everything else in these inflationary times, and an increasing number are being forced to go without proper dental care because they cannot afford it.

Until 1973, blind, paraplegic veterans were eligible for free outpatient dental services. But the regulation permitting that was rescinded in 1973, much to the dismay of the severely disabled veterans who were its beneficiaries. Even now, veterans who attend school or undergo on-the-job training and spend time at a VA hospital are eligible for dental treatment without regard to their degree of disability. But many veterans do not want to, or cannot, be admitted to our overcrowded and understaffed veterans hospitals.

This neglect of men who served their Nation with honor strikes me as nearly criminal. How can we ask young Americans to serve this country when they see

how it has ignored the needs of those who fought in past years to keep America free?

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

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

S. 467

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That clause (5) of section 612(b) of title 38, United States Code, is amended to read as follows:

"(5) which is a non-service-connected condition or disability of a veteran of any war who has a service-connected disability rated as 80 per centum or more; or".●

By Mr. INOUYE:

S. 468. A bill to allow an additional income exemption for a taxpayer or his spouse who is deaf or deaf-blind; to the Committee on Finance.

● Mr. INOUYE. Mr. President, today I am reintroducing legislation which will provide an additional tax exemption for a taxpayer or a taxpayer's spouse, who is deaf or deaf-blind. I originally introduced this bill in November 1973, and believe that the implementation of this legislation is long overdue.

In my judgment, the provisions proposed herein are more than just in helping to alleviate the present discrimination faced by deaf individuals. Let us consider the financial burden that many of these people must face in their efforts to lead normal lives. The purchasing of hearing aids, extra costs of automobile insurance, and higher educational expenses are only the most obvious examples. In addition, the fact of the matter is that most deaf people are underemployed with respect to their abilities and education.

Despite the support that members of the deaf community have shown in favor of this legislation, it has never been acted upon by the Senate Committee on Finance. While the Internal Revenue Service provides additional exemptions for blind taxpayers, the sad truth is that Hawaii is the only place in which the same exemptions are made for the deaf.

Further, there is little cause for fear that this will result in a great amount of lost revenue for the U.S. Treasury. There are approximately 450,000 profoundly deaf persons in this country. This number is slightly less than the 470,000 legally blind persons. Of the legally blind, only 179,000 persons claimed the additional exemption in 1976. It is reasonable to assume that approximately the same proportion of the deaf would claim the deduction.

Mr. President, I hope that my colleagues will give early and favorable consideration to this humanitarian measure. I ask unanimous consent that the text of this measure be printed in the RECORD.

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

S. 468

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 151(d) of the Internal Revenue Code of 1954 (relating to additional exemption for blindness of taxpayer or spouse) is amended—

(1) by inserting "or deafness" after "blindness" in the heading;

(2) by striking out "blind" each place it appears in paragraphs (1) and (2) and inserting in lieu thereof "blind, deaf, or deaf-blind"; and

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

"(4) DEAFNESS DEFINED.—For purposes of this subsection, an individual is deaf only if his average loss in the speech frequencies (500 to 2,000 Hertz) in the better ear is 86 decibels, I.S.O. or worse.

"(5) DEAF-BLIND DEFINED.—For purposes of this subsection, an individual is deaf-blind only if he is both deaf and blind."

(b) The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 469. A bill to amend chapter 67 of title 10, United States Code, to grant eligibility for retired pay to certain reservists who did not perform active duty before August 16, 1945, and for other purposes; to the Committee on Armed Services.

● Mr. INOUYE. Mr. President, regulations currently governing retirement pay for reservists do not provide benefits for those who did not serve on active duty before August 16, 1945, the end of World War II. Although these regulations are designed to insure that only the most deserving reservists are compensated for their sacrifice to our Nation, I believe that they are unnecessarily restrictive in that no benefits are provided to those who came to the aid of our country during the Berlin crisis, the Korean war, the Cuban missile crisis, and the Vietnam war, or who served for an extended period of time following the end of World War II. These men and women have performed services for our country fully as valuable as those rendered by activated reservists who served during World War II.

The legislation I am reintroducing today recognizes the contribution made by these individuals and corrects the current inequity in the law by granting them eligibility for retirement benefits. I urge that my colleagues in the U.S. Senate join me in rewarding these reservists for the service they rendered to the United States in its times of need.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 469

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 67 of title 10, United States Code, is amended as follows:

(1) Section 1331(c) is amended to read as follows:

"(c) No person who before August 16, 1945, was a Reserve of an armed force, or a member of the Army without component or other category covered by section 1332(a)(1) of this title except a regular component, is eligible for retired pay under this chapter unless he performed—

"(1) active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947;

"(2) active duty (other than for training) after June 26, 1950, and before July 28, 1953, after August 13, 1961, and before May 31, 1963, or after August 4, 1964, and before March 28, 1973; or

"(3) at least twenty years of service(computed under section 1332 of this title) after August 15, 1945.". (2) Section 1332(b) is amended by adding the following new clause after clause (7):

"(8) Service before August 16, 1945, if eligibility for retired pay is based on section 1331(c)(3) of this title.".

(3) Section 1333 is amended—

(A) by striking out "For" and inserting in place thereof "(a) Except as provided in subsection (b), for"; and

(B) by adding the following new subsection:

"(b) Service before August 16, 1945, may not be counted under subsection (a), if eligibility for retired pay is based on section 1331(c)(3) of this title.".●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 470. A bill to amend title 10 of the United States Code relating to retention in active status of certain officers; to the Committee on Armed Services.

● Mr. INOUYE. Mr. President, a situation has been called to my attention which I believe requires congressional action. Under the law presently in force, the Secretary of the Army may retain in an active status any consenting reserve officer in the Medical Corps, the Dental Corps, the Chaplaincy, the Army Nurse Corps, or the Army Medical Specialist Corps, until that officer reaches 60 years of age. Officers not included in the enumerated branches of the Army must retire when they satisfy the mandatory retirement requirements. In my judgment, this provision results in a significant loss of talent and taxpayer dollars. There are many situations in which Reserve officers continue to serve after they fulfill the conditions for mandatory retirement. Even though they want to give of their time and talent, even though thousands of taxpayers' dollars have gone toward training them, and even though the Army itself would like to continue to utilize their services the law forces these officers to retire.

The bill which I am reintroducing today would amend title 10 of the United States Code to allow the Secretary of the Army to retain a consenting Reserve officer in active status, regardless of his branch of service, until he reaches 60 years of age. Enactment of this bill will not result in an increase in the budgetary requirements of the Department of Defense. Therefore, I believe that this measure, which can offer so much at such a small cost, is deserving of the support of the Congress.

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

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

S. 470

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3855 of title 10 United States Code, is amended by striking out everything after

"reserve officer" down through the period and inserting in lieu thereof "until the date on which such officer becomes sixty years of age.".●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 471. A bill to amend title 10, United States Code, to authorize former members of the Armed Forces who are totally disabled as the result of a service-connected disability to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are permitted to travel on such aircraft; to the Committee on Armed Services.

● Mr. INOUYE. Mr. President, today I am reintroducing a bill which is of great importance to a group of patriotic Americans. This legislation is designed to extend space available travel privileges on military aircraft to those who have been totally disabled in the service of our country.

Currently, retired members of the Armed Forces are permitted to travel on a space available basis on unscheduled military flights within the continental United States and on scheduled overseas flights operated by the military airlift command. My bill would provide the same benefits for 100-percent service-connected disabled veterans.

Surely we owe these heroic men and women who have given so much for our country a debt of gratitude. Of course, we can never repay them for the sacrifice they have made on behalf of all of us but we can surely try to make their lives more pleasant and fulfilling. One way in which we can help is to extend military travel privileges to these distinguished American veterans. I have received numerous letters from all over the country attesting to the importance attached to this issue by veterans. Therefore, I ask that my colleagues show their concern and join me in saying "thank you" by supporting this legislation.

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

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

S. 471

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 53, relating to Miscellaneous Right and Benefits, of title 10, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 1032. Travel privileges on military aircraft for certain former members of the armed forces

"Any former member of the armed forces who is entitled to compensation from the Veterans' Administration for a service-connected disability rated total in degree by the Veterans' Administration is entitled, in the same manner and to the same extent as are retired members of the armed forces, to travel on a space-available basis on unscheduled military flights within the continental United States and on scheduled overseas flights operated by the Military Airlift Command.".

SEC. 2. The table of sections at the beginning of chapter 53 of title 10, United States Code, is amended by adding at the end thereof a new item as follows:

"1032. Travel privileges on military aircraft for certain former members of the armed forces.".●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 472. A bill to amend section 1002 of title 38, United States Code, to authorize the burial in a national cemetery of the parents of certain members of the Armed Forces who die in active service; to the Committee on Veterans' Affairs.

● Mr. INOUYE. Mr. President the United States has established national cemeteries around the world to provide a suitable resting place for those who have defended our Nation in its times of need. Under current regulations spouses and children of these patriotic men and women are permitted to lie beside their loved ones in these hallowed burial grounds. However, it has come to my attention that the existing law does not extend to the case of the parents of an only child who dies in the service of our country. Quite often, the bereaved parents wish to lie at rest near the body of their child. In order to make possible that final wish I am reintroducing legislation to amend that section of the United States Code on veterans' benefits to authorize the burial in a national cemetery of the parents of an only child who dies in active service provided they survive his or her death. I hope that my colleagues will join in honoring these citizens who have made the supreme sacrifice for our Nation by supporting the bill.

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

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 472

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1002 of title 38, United States Code, is amended by redesignating paragraph (6) as paragraph (7) and adding after paragraph (5) a new paragraph (6) as follows:

"(6) The surviving parents of any member of the Armed Forces who was the only child of such parents and whose death occurred under honorable conditions while such member was serving on active duty for a period of more than thirty days.".●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 473. A bill to amend section 1003 of title 38, United States Code, relating to memorial areas and appropriate memorials to honor the memory of certain deceased members of the Armed Forces whose remains were buried at sea, have not been identified, or were nonrecoverable; to the Committee on Veterans' Affairs.

● Mr. INOUYE. Mr. President, it has recently come to my attention that there are certain veterans who have every right to be honored by burial in a national cemetery, but who are presently ineligible to receive the honor which they deserve. I am referring to those veterans who are eligible to be buried in a national cemetery, but who continue to serve our Nation and humanity even after their deaths, by donating their bodies for use in medical research or training. I believe that the Congress of the United States should act to give them the recognition and honor they deserve, and which by rights is theirs. I believe action also should be taken to memorialize those deceased veterans whose bodies have been cremated and the ashes scattered rather than inurned in a national cemetery. The service to the Nation provided by these veterans gives them the right to be honored, as other veterans are honored, after their deaths. They should not be deprived of this right because of the manner in which their bodies are put to rest.

I am introducing at this time a bill to amend section 1003 of title 38, United States Code, relating to memorial areas and appropriate memorials to honor the memory of certain deceased members of the Armed Forces whose remains were buried at sea, have not been identified or were not recoverable, to include deceased members of the Armed Forces who have donated their remains for use in medical reseach and training and those who have been cremated and their ashes scattered.

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

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

S. 473

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1003(a) of title 38, United States Code, is amended by striking out "or have been determined to be nonrecoverable" and inserting in lieu thereof ", have been determined to be nonrecoverable or have been donated for use in medical research or training.".●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 474. A bill to amend chapter 34 of title 38, United States Code, to authorize the Administrator of Veterans' Affairs to extend, under certain circumstances, the period within which a veteran must complete a program of education under such chapter; to the Committee on Veterans' Affairs.

● Mr. INOUYE. Mr. President, the men and women who have served our Nation as members of the Armed Forces must be given every opportunity to lead productive lives when they return to their homes. After proudly serving their country, they must never be forced to suffer pain and humiliation that comes from a lack of education or skills. Thus, I am introducing a bill that would extend the delimiting period within which a veteran must complete a program of education when such a veteran can provide a compelling reason for his or her inability to complete a program.

Presently, veterans who are released from active duty after January 31, 1955 are eligible for 10 years after being discharged with the stipulation that this time limit does not go beyond December 31, 1989. An extension of the time limit is provided to veterans who are prevented from beginning or completing their chosen program of education because of a physical or mental disability not the result of their willful misconduct.

The President of the United States last year expressed concern that veterans be afforded adequate time for educational pursuits and supported the extension of the delimiting period beyond 10 years. The debt of gratitude that we owe these men and women will not be paid in full if they cannot continue to hold their heads as high when they return home as they did in their Nation's service.

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

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

S. 474

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1662 of title 38, United States Code, is amended by adding at the end thereof a new subsection as follows:

"Extension of Delimiting Period

"(c) Notwithstanding the provisions of subsection (a), the Administrator is authorized to extend, for such period as the Administrator deems appropriate, the delimiting period applicable to any veteran when such veteran can demonstrate a compelling reason for such veteran's inability to complete such veteran's educational program within the delimiting period otherwise applicable. The Administrator shall issue regulations specifying the reasons for which extensions under this subsection will be granted.".●

By Mr. WALLOP (for himself, Mr. GOLDWATER, Mr. LAXALT, and Mr. MCCLURE):

S. 475. A bill to authorize the Secretary of the Interior to construct hydroelectric powerplants at various existing water projects, and for other purposes; to the Committee on Energy and Natural Resources.

● Mr. WALLOP. Mr. President, every hour of every day energy opportunities are flowing unutilized or underutilized through the dams of America. Energy may be our No. 1 domestic priority for the rest of the century, yet we are failing to make maximum use of even our existing hydroelectric potential. The retrofitting and upgrading of hydroelectric powerplants at existing dams is probably the most environmentally sound, safe, and cost-effective source of energy for the last quarter of the 20th century. The bill which we introduce today constitutes another step toward fully utilizing this existing resource.

Last year, the late Senator Metcalf, together with Senator HANSEN and myself, introduced a similar bill. When Senator Metcalf introduced that bill, S. 2187, he aptly pointed out that over the last few years the energy spotlight has often concentrated on the more exotic suggestions for solutions to the fuel and energy supply problems facing our Nation. Our headlines, and thus our national attention, has emphasized new technology as answers to impending shortage. While these technologies are important, we must not focus upon them to the exclusion of our more traditional, renewal, resources.

This bill will authorize the Secretary of the Interior to install additional generating facilities at two existing Bureau of Reclamation projects where new storage or regulating structures would not be required to produce additional power. The two projects are: The Buffalo Bill Dam powerplant replacement in Wyoming, and the Hoover Dam powerplant modification in Arizona.

Mr. President, the total authorization of $134,700 for construction will average about $330 per kilowatt of installed capacity. This is an excellent deal at today's prices. The equivalent cost per kilowatt hour of installed capacity at nuclear powerplants is $900 and for fossil fuel fired plants between $700 and $750 per kilowatt hour.

What is more, the installation of these facilities has the potential to save the equivalent of 180,000 barrels of oil annually for years to come.

In addition to the two projects authorized for construction under section 3 of the bill, the Secretary of Interior is authorized to investigate the feasibility of additional hydroelectric powerplants at five additional sites. These five sites are drawn from the Department of Interior's "Western Energy Expansion Study" of February 1977 which inventoried the opportunities on existing reclamation projects to develop hydroelectric energy. Many projects with positive costs-benefit ratios were identified by the exhaustive study including 27 opportunities for the addition of conventional plants at existing facilities, 12 all new conventional plants, 6 low-head plants, 10 pump storage units at existing facilities, and 13 all newpump storage facilities. These figures represented only those projects with positive cost-benefit ratios.

The five projects authorized for further investigation represent the most promising of these projects.

Mr. President, I ask unanimous consent that the bill, together with a section-by-section analysis and a brief description of each of the projects be printed in the RECORD.

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

S. 475

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior acting pursuant to the Federal Reclamation laws (Acts of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto) is authorized to construct, operate, and maintain hydroelectric powerplants and appurtenant switchyards on existing reclamation project facilities at locations and in the approximate capacities set forth in section 3 of this Act. In carrying out the purposes of this Act, the Secretary of the Interior is authorized to modify the capacity of the powerplant as determined to be necessary and desirable during postauthorization study and design, and after consultation with the approval by the Secretary of Energy.

SEC. 2. The Secretary of Energy is authorized to construct, operate, and maintain transmission interconnections as required physically to interconnect the hydroelectric powerplants authorized by section 3 of this Act to existing power systems as he determines necessary to accomplish distribution and marketing of power generated pursuant to this Act.

SEC. 3. (a) Buffalo Bill Dam powerplant replacement, Wyoming, consisting of one twenty thousand kilowatt turbine generator unit in replacement of an existing five thousand kilowatt unit.

(b) Hoover Dam Powerplant Modifications, Arizona-Nevada, consisting of replacing existing powerplant units A-8 and A-9 with a single generating unit of three-hundred fifty thousand kilowatts.

SEC. 4. (a) Hydroelectric power generated by facilities constructed pursuant to this Act shall be delivered to the Secretary of Energy for distribution and marketing through existing Federal hydroelectric power marketing systems in accordance with existing law and policy consistent with the provisions of this Act.

(b) The plants authorized by section 3 of this Act shall be financially integrated with and the power marketed under rate schedules in effect for the several systems as follows:

(1) Buffalo Bill Dam powerplant unit shall be marketed through the Western Division, Pick-Sloan Missouri Basin program power system; and

(2) Hoover Dam Powerplant Modifications shall be marketed through the Boulder Canyon Project power system;

SEC. 5. Powerplants authorized by this Act shall be designed, constructed, and operated in such a manner as to not limit, restrict, or alter the release of water from any existing reservoir, impoundment, or canal adverse to the satisfaction of valid existing water rights or water delivery to the holder of any valid water service contract.

SEC. 6. The interest rate used for computing interest during construction and interest on the unpaid balance of the reimburseable costs of the facilities authorized by this Act shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction of the works authorized by each subsection of section 3 is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for fifteen years from date of issue.

SEC. 7. There is hereby authorized to be appropriated to the Secretary of the Interior for construction of the work authorized by this Act the amounts set forth below on the basis of January 1977 price levels plus or minus such amounts as may be justified by reason of ordinary fluctuations of construction cost indexes applicable to the type of construction involved herein:

(a) Buffalo Bill Dam Powerplant replacement, $17,000,000.

(b) Hoover Dam Powerplant modifications, $117,000,000.

There is also authorized to be appropriated such sums as may be required by the Secretary of Energy to accomplish interconnection of the powerplants authorized to be constructed by this Act; together with such sums as may be required for operation and maintenance of all works authorized herein.

SEC. 8. The Secretary of the Interior is authorized to engage in feasibility investigations of the following potential hydroelectric power projects:

(1) Friant Powerplant Unit, Central Valley Project, California.

(2) Palisades Powerplant Enlargement, Palisades Project, Idaho.

(3) Wiskeytown Powerplant, Central Valley Project, California.

(4) Canyon Ferry Powerplant Additions, Canyon Ferry Unit, Pick-Sloan Missouri Basin Project, Montana.

(5) Yellowtail Afterbay Powerplant, Yellowtail Unit, Pick-Sloan Missouri Basin Project, Montana.

The Secretary is directed to transmit feasibility reports authorized by this section to Congress within 24 months from the date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS

The bill is comprised of eight sections as follows:

Section 1 is the authorizing section of the act and provides that the Secretary may alter the capacity of the powerplants if it is found to be necessary and desirable during post-authorization design. Such alterations would require consultation with the Secretary of Energy who will be the marketing agent for the power.

Section 2 authorizes the Secretary of Energy to construct, operate and maintain transmission facilities to interconnect the plants constructed under this act with existing power systems.

Section 3 enumerates the hydroelectric powerplants authorized for construction by the act, identifies the project of which they are a part, and establishes the generating capacity to be installed in each instance.

Section 4 provides that power generated by plants authorized by the act will be delivered to the Secretary of Energy who will market the power under existing law and policy governing the system to which the plant is interconnected. The section specifies the system to which each plant will be connected and requires the plants be financially interconnected with those systems.

Section 5 requires that the plants be operated so as not to interfere with existing rights to the use of water.

Section 6 sets forth the formula for establishing the interest rate for return of the costs of the facilities authorized by the act.

Section 7 provides authorization for appropriations for construction, operation and maintenance of the hydroelectric plants and transmission interconnections.

Section 8 authorizes the Secretary of the Interior to investigate the feasibility of hydroelectric and related powerplants at additional sites and directs that the reports be forwarded to Congress within 24 months of the date of the act.

PROJECT AUTHORIZATIONS

Buffalo Bill Dam Powerplant Replacement, Shoshone Project, Wyoming. The project would involve the replacement of an existing 5 megawatt turbine generator with a unit rated at 20 megawatts. Authorized cost: $17,700,000.

Hoover Dam Powerplant Modifications, Boulder Canyon Project, Arizona-Nevada. The project would involve replacement of the existing powerplant units A–8 and A–9 with a single generating unit of 350 megawatts. Authorized cost: $117,000,000.

FEASIBILITY STUDY AUTHORIZATIONS

Friant Powerplant Unit, Central Valley Project, California. The study would investigate the installation of three powerplants with a total installed capacity of 22.7 megawatts. Included would be a 2.7 megawatt powerplant on the San Joaquin River at the outlet to the River from Friant Dam, a 5 megawatt powerplant on the outlet from Friant Dam to the Madera Canal, and a 15 megawatt powerplant on the outlet from Friant Dam to Friant-Kern Canal. One switchyard and six miles of transmission lines would be required. Estimated cost of study: $130,000.

Palisades Powerplant Enlargement, Palisades Project, Idaho. The study would investigate the feasibility of adding an additional 90 megawatt powerplant to the existing 118 megawatt Palisades Powerplant at the outlet on the Snake River. Estimated cost of study: $500,000.

Whiskeytown Powerplant, Central Valley Project, California. The study would investigate the feasibility of installing a 3 megawatt powerplant located below Whiskeytown Dam on Clear Creek.

Canyon Ferry Powerplant Addition, Canyon Ferry Unit, Pick-Sloan Missouri Basin Project, Montana. The study would investigate the feasibility of installing a 90 megawatt powerplant downstream from the existing Canyon Ferry Dam and Powerplant on the east side of the Missouri River. Estimated cost of study: $200,000.

Yellowtail Afterbay Powerplant, Yellowtail Unit, Pick-Sloan Missouri Basin Project, Montana. The study would investigate the feasibility of installing a 11.4 megawatt low-head bulb turbine powerplant in the existing Yellowtail Afterbay Dam located below Yellowtail Dam on the Bighorn River. Estimated cost of study: $150,000.●

By Mr. INOUYE:

S. 476. A bill to amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to prohibit the reduction of disability payments under employer-maintained disability compensation plans whenever certain social security benefit payments are increased; to the Committee on Human Resources, jointly, by unanimous consent.

● Mr. INOUYE. Mr. President, today I am reintroducing a bill designed to deal with a serious inequity, currently legal, which allows insurance companies to reduce private disability benefits paid to policyholders by the amount of cost of living increases in social security payments.

Congress, in providing periodic cost of living increases in social security payments, intended to allow the income of beneficiaries to keep pace with inflation. That intent is completely subverted when insurance companies can reduce benefit payments by the amount of the cost-of-living increases. By using that practice insurance companies force disabled social security beneficiaries to live on fixed incomes subject to the ravages of inflation, while earning an unfair windfall profit themselves on each increase in social security payments. The disabled, who may well be unable to supplement their income with other employment and who often require ever more expensive medical treatment, can ill afford to have the cost-of-living increases intended for them diverted to subsidize insurance companies.

Therefore, I wish to take some corrective action. My bill will accomplish the reform so urgently needed in this area without disturbing the customary State regulation of the insurance industry. It amends the 1974 Employee Retirement Income Security Act and the 1954 Internal Revenue Code to prohibit the accrual of increased social security benefits toward defraying, reducing, or subrogating the payments owed beneficiaries under private insurance contracts.

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. 476

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 206 (b) of the Employee Retirement Income Security Act of 1974 is amended by striking out "pension plan" in paragraph (1) and inserting in lieu thereof "employee welfare benefit plan".

SEC. 2. (a) Section 264 of the Internal Revenue Code of 1954 (relating to certain amounts paid in connection with insurance contracts) is amended by adding at the end thereof the following new subsection:

"(d) Certain Disability Compensation Plans.—Notwithstanding the provisions of sections 162, 212, and 404, no deduction shall be allowed for amounts paid or contributed to or under a disability compensation plan by the employer maintaining that plan if under the plan the benefits payable to an individual receiving benefits under the plan are reduced, or any scheduled increase in such benefits is omitted, on account of any increase in monthly insurance benefits to which such an individual is entitled under title II of the Social Security Act if such increase occurs after such individual begins to receive benefits under such plan. For purposes of this subsection, the term 'disability compensation plan' means a program (including a program of insurance) established by an employer under which employees receive periodic payments or a lump-sum payment in compensation for physical or mental disability resulting from their employment.".

(b) (1) The caption of section 264 of such Code is amended by inserting after "CONTRACTS" the following: "OR UNDER CERTAIN DISABILITY COMPENSATION PLANS".

(2) The table of sections for part IX of subchapter B of chapter 1 of such Code is amended by striking out the item relating to section 264 and inserting in lieu thereof the following:

"Sec. 264. Certain amounts paid in connection with insurance contracts or under certain disability compensation plans.".

SEC. 3. The amendment made by the first section of this Act applies to plan years beginning after the date of the enactment of this Act. The amendment made by section 2 applies to taxable years beginning after the date of the enactment of this Act.●

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill introduced by Senator INOUYE dealing with ERISA be referred jointly to the Committee on Finance and the Committee on Human Resources.

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

By Mr. WILLIAMS:

S.J. Res. 40. A joint resolution to authorize the President to proclaim annually the last Friday of April as "National Arbor Day;" to the Committee on the Judiciary.

NATIONAL ARBOR DAY

● Mr. WILLIAMS. Mr. President, today I am introducing a joint resolution directing the President to proclaim an annual "National Arbor Day" the last Friday of April.

Since ancient times, trees have symbolized life, strength, and renewal. Tree worship and tree planting ceremonies have been part of many cultures in history. The Aztec Indians celebrated the birth of a newborn child with a newly planted tree. Ancient governments planted a tree to mark the accession of a new monarch to the throne.

Arbor Day, however, is a distinctly American tradition. On the barren plains of Nebraska, J. Sterling Morton led a citizen effort to encourage the planting of trees. As President of the Nebraska Board of Agriculture, Morton in 1872

introduced a resolution to designate one day in April as State Arbor Day.

A man of foresight and wisdom, Morton realized the importance of protecting existing trees, as well as cultivating new ones. There were many practical as well as esthetic reasons for planting trees. They provided shade and shelter, prevented erosion, and were a source of fuel and building materials. Morton also recognized the social and educational, moral and even spiritual functions of tree planting.

Unfortunately, as the frontier disappeared and our Nation became increasingly urbanized, interest in Arbor Day waned. The need to plant and maintain trees, however, is greater than ever. For the desolate landscape of the Great Plains has given way to the desolation of asphalt and concrete. The trees which refresh and beautify our cities have increasingly fallen victim to budget cuts, diseases, and environmental stresses. They are often inadequately cared for, and when they die, they are not replaced.

A uniform National Arbor Day would refocus our attention on the manifold benefits of trees, and would renew our commitment to nuturing them. The planting of a tree on National Arbor Day would symbolize the natural heritage we leave to future generations.

As J. Sterling Morton remarked, the public observance of Arbor Day is "destined to become a blessing to posterity as well as to ourselves."

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

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

S.J. RES. 40

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized and requested to issue annually a proclamation designating the last Friday of April "National Arbor Day" and calling upon the people of the United States to observe such day with appropriate ceremonies and activities.●

By Mr. BURDICK:

S.J. Res. 41. A joint resolution to authorized the President to issue annually a proclamation designating that week in November which includes Thanksgiving Day as "National Family Week"; to the Committee on the Judiciary.

NATIONAL FAMILY WEEK

● Mr. BURDICK. Mr. President, I am today introducing a joint resolution that authorizes the President to issue an annual proclamation designating the week in November which includes Thanksgiving Day as National Family Week.

We have celebrated National Family Week for the last 3 years, as well as in 1972. Many States adopted their own resolutions in 1971 as well. In 1976, 1977, and again in 1978, both houses of Congress approved resolutions authorizing this celebration. The legislation I am introducing today would establish National Family Week as an annual event, and, with the consistent support past Congresses have shown, I would hope that a permanent authorization will be considered. If not, however, I hope Congress will not fail to authorize National Family Week 1979.

The purpose of National Family Week is simple: it is a specific time to recognize the importance of the family in American life and the fundamental role it has played in forming the values upon which our Nation is based. Although many may be skeptical about the proliferation of official holidays, I think it is important to remember that National Family Week is neither commercial nor promotional. Its purpose is not to promote sales or festivities. Rather, it is a way to encourage people to pause for a moment and reflect on the way families have affected their lives and the course of the Nation.

The role of the family has changed dramatically in this century. From the basic economic and social unit of our society in the 1900's, the family today has evolved into a much different and less central role. For many, the family unit is breaking down, and an extended family living under one roof is virtually a thing of the past.

Despite these changes, however, the family unit is still the basic moral and economic unit for most of us. It is still where the values and experiences of one generation are passed on to the next. Because of this, I believe it is imperative that we recognize the importance of the family and do all we can to preserve it.

Last year 38 Senators cosponsored the National Family Week resolution with me, and over half the Members of the House cosponsored a similar measure. I am very hopeful that both Houses will again recognize the value of National Family Week and approve the resolution I am introducing today.

I ask unanimous consent that the resolution be printed in the RECORD.

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

S.J. RES. 41

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized and requested to issue annually a proclamation designating the week beginning on the Sunday preceding the fourth Thursday in November of each year as "National Family Week", and inviting the Governors of the several States, the chief officials of local governments, and the people of the United States to observe such day with appropriate ceremonies and activities.●

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. DOLE, the Senator from Illinois (Mr. PERCY) and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 12, a bill to provide for cost-of-living adjustments in individual tax rates and in the amount of personal exemptions.

S. 14

At the request of Mr. CHURCH, the Senator from Idaho (Mr. MCCLURE) and the Senators from Montana (Mr. MELCHER and Mr. BAUCUS) were added as cosponsors of S. 14, a bill to amend and supplement the acreage limitation and residency provisions of the Federal reclamation laws.

S. 55

At the request of Mr. BENTSEN, the Senator from Nevada (Mr. CANNON), the Senator from Indiana (Mr. BAYH), and the Senator from Idaho (Mr. CHURCH) were added as cosponsors of S. 55, the Meat Import Act of 1978.

S. 105

At the request of Mr. WALLOP, the Senator from Michigan (Mr. LEVIN), the Senators from New Mexico (Mr. SCHMITT and Mr. DOMENICI), and the Senator from New York (Mr. MOYNIHAN) were added as cosponsors of S. 105, the Parental Kidnapping Prevention Act of 1979.

S. 123

At the request of Mr. INOUYE, the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 123, a bill to amend the Social Security Act to provide for the payment under medicare of services by psychologists.

S. 195

At the request of Mr. BUMPERS, the Senator from Arkansas (Mr. PRYOR), the Senator from Florida (Mr. CHILES), the Senator from Florida (Mr. STONE), the Senator from Michigan (Mr. RIEGLE), and the Senator from California (Mr. CRANSTON) were added as cosponsors of S. 195, a bill to extend through October 1, 1979, provisions which expired on October 1, 1978, relating to payment under the Social Security Act for services of physicians rendered in a teaching hospital.

S. 221

At the request of Mr. WALLOP, the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 221, a bill to establish a congressional award program for the purpose of recognizing excellence and leadership among young people.

S. 227

At the request of Mr. ROTH, the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 227, a bill to improve the operation of the adjustment assistance programs for workers and firms under the Trade Act of 1974.

S. 233

At the request of Mr. CANNON, the Senator from Louisiana (Mr. JOHNSTON) was added as a cosponsor of S. 233, a bill to amend the International Travel Act of 1961, to authorize additional appropriations, and for other purposes.

S. 240

At the request of Mr. RIBICOFF, the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 240, the Federal Computer Systems Protection Act.

S 244

At the request of Mr. STEVENSON, the Senator from Alabama (Mr. STEWART) was added as a cosponsor of S. 244, the Space Policy Act of 1979.

S. 248

At the request of Mr. DOLE, the Senator from Florida (Mr. STONE) was added as a cosponsor of S. 248, a bill to modify criteria regarding self-employment in-

come derived from sale of certain agricultural or horticultural commodities.

S. 261

At the request of Mr. McGOVERN, the Senator from Nebraska (Mr. ZORINSKY) was added as a cosponsor of S. 261, a bill to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities.

S. 268

At the request of Mr. DURKIN, the Senator from New Mexico (Mr. SCHMITT) and the Senator from South Dakota (Mr. PRESSLER) were added as cosponsors of S. 268, the Soft Drink Bottlers' Protection Act of 1979.

S. 270

At the request of Mr. BUMPERS, the Senator from Montana (Mr. MELCHER), the Senator from North Dakota (Mr. YOUNG), the Senator from Indiana (Mr. LUGAR), and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 270, a bill to amend the Occupational Safety and Health Act of 1970 to insure equal protection of the laws for small business and to provide that any employer who successfully contests a citation or penalty shall be awarded a reasonable attorney's fee and other reasonable litigation costs.

S. 377

At the request of Mr. ROTH, the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 377, a bill to establish as an executive department of the Government of the United States a Department of International Trade and Investment.

S. 378

At the request of Mr. BELLMON, the Senator from Rhode Island (Mr. PELL), the Senator from Michigan (Mr. RIEGLE), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Vermont (Mr. STAFFORD) were added as cosponsors of S. 378, a bill to authorize funds for the Robert A. Taft Institute of Government.

S. 380

At the request of Mr. DURKIN, the Senator from Idaho (Mr. CHURCH) was added as a cosponsor of S. 380, a bill to amend the Bank Holding Company Act of 1956 to limit the property and casualty and life insurance activities of bank holding companies and their subsidiaries.

S. 395

At the request of Mr. CHILES, the Senator from Montana (Mr. BAUCUS), the Senator from Kentucky (Mr. FORD), the Senator from New Jersey (Mr. WILLIAMS), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from South Dakota (Mr. PRESSLER) were added as cosponsors of S. 395, the Medicare Supplemental Health Insurance Information Disclosure and Protection Act of 1979.

SENATE JOINT RESOLUTION 16

At the request of Mr. WALLOP, the Senator from Nevada (Mr. LAXALT) was added as a cosponsor of Senate Joint Resolution 16, to balance the Federal budget.

SENATE JOINT RESOLUTION 20

At the request of Mr. ZORINSKY, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of Senate Joint Resolution 20, to increase the price for milk, wheat, corn, soybeans, and cotton to not less than 90 per centum of the respective parity prices thereof, and for other purposes.

SENATE JOINT RESOLUTION 37

At the request of Mr. SASSER, the Senator from Massachusetts (Mr. TSONGAS), the Senator from Michigan (Mr. LEVIN), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Wisconsin (Mr. NELSON), and the Senator from Minnesota (Mr. DURENBURGER) were added as cosponsors of Senate Joint Resolution 37, authorizing the President to proclaim May 1, 1979, as National Bicycling Day.

AMENDMENT NO. 58

At the request of Mr. DURKIN, the Senator from West Virginia (Mr. RANDOLPH), the Senator from Kentucky (Mr. FORD), and the Senator from Montana (Mr. MELCHER) were added as cosponsors of Amendment No. 58 intended to be proposed to S. 333, a bill to effect certain reorganization of the Federal Government to strengthen Federal programs and policies for combating international and domestic terrorism.

SENATE RESOLUTION 78—SUBMISSION OF A RESOLUTION WITH RESPECT TO THE NEED FOR ENERGY EMERGENCY PREPAREDNESS

Mr. HATFIELD (for himself, Mr. JACKSON, Mr. DOMENICI, Mr. STEVENS, Mr. BELLMON, Mr. WALLOP, and Mr. BUMPERS) submitted the following resolution, which was referred to the Committee on Energy and Natural Resources:

S. RES. 78

Whereas, the United States remains highly dependent on foreign energy, especially petroleum;

Whereas, the interruption of oil exports from Iran may continue for an extended period;

Whereas, the Iranian situation makes the United States and the rest of the world much more vulnerable to any other reduction of oil supplies;

Whereas, continuation of the current situation may lead to shortages of petroleum products, and could lead to the use of the International Energy Agreement to distribute petroleum shortfalls among the IEA nations, resulting in additional obligations for the reduction of United States consumption; and

Whereas, prompt and measured action can reduce the human cost of this supply disruption and reduce the possibility of later panic reactions: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President of the United States should immediately initiate measures to increase American energy supplies and reduce demand, and should present plans to the Congress for maintaining this balance of supply and demand in the event of protracted supply problems. Such actions should include, but not be limited to, submission to the Congress of plans for readying the Strategic Petroleum Reserve for withdrawals, enforcing a mandatory conservation program, requiring substitutions of alternative fuels for petroleum, updating the petroleum allocation regulations, and increasing fuels production incentives.

Be it further resolved, that it is the sense of the Senate that the President should submit to Congress a standby gasoline rationing plan which can be implemented in the event that other measures become ineffective during periods of severe shortage.

● Mr. HATFIELD. Mr. President, the Energy and Natural Resources Committee has held three hearings which have dealt with the tightening world oil situation and our preparedness for handling it. The committee has further held two top-secret briefings in order to assess the Iranian problem. Finally, the minority members of this committee requested a briefing at CIA Headquarters in order to explore the effect the Iranian situation may have in the Persian Gulf generally, the outlook for stability in our oil imports from that part of the world, the elements necessary for resumption of Iranian exports and the likely level of these exports, and the American supply options for the immediate future and into the 1980's. I believe we have emerged from these sessions with a commonsense of the likelihood of protracted oil supply problems in this country. And to that view I submit a resolution which calls on the administration to get off its hands.

In recent days we have heard Secretary Schlesinger, Secretary Blumenthal, and Administrator Bardin telling distinctly different stories to the American people about the seriousness of the problem of world oil supplies. It is time the Government spoke with one voice, gave one signal to the citizenry, and prepared itself for dealing with shortages. It is estimated that usable petroleum inventories in the United States—"usable" being that part of the total inventory which may be built up and drawn down, as opposed to the inventory that is an unavoidable part of production and transportation—will be down to 5 days' supply by the end of the first quarter. Spot shortages of certain products in certain areas are an inevitable consequence of such low stocks. Several companies have already begun allocating to their distributors and dealers.

It is my hope that we can make a united call for action through this resolution. It has been more than 4 years since the Arab embargo, and there is no excuse for our present lack of preparedness to meet an oil shortage situation. ●

SENATE RESOLUTION 79—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. RIBICOFF, from the Committee on Governmental Affairs, reported the following original resolution, which was referred to the Committee on Rules and Administration:

S. RES. 79

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Governmental Affairs is authorized from March 1, 1979, through February 29, 1980, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2)

to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $4,348,100, of which amount not to exceed $46,585 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee, or any duly authorized subcommittee thereof, is authorized to study or investigate—

(1) the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and acivities of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Government; and the compliance or noncompliance of such corporations, companies, or individuals or other entities with the rules, regulations, and laws governing the various governmental agencies and its relationships with the public: *Provided,* That, in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of the particular branch of the Government under inquiry, and may extend to the records and activities of persons, corporations, or other entities dealing with or affecting their particular branch of the Government;

(2) the extent to which criminal or other improper practices of activities are, or have been, engaged in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of interests of the public, employers, or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities;

(3) syndicated or organized crime which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur, and, if so, the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, what facilities, devices, methods, techniques, and technicalities are being used or employed, and whether or not organized crime utilizes such interstate facilities or otherwise operates in interstate commerce for the development of corrupting influences in violation of the law of the United States or the laws of any State, and further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activities have infiltrated into lawful business enterprise; and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against the occurrences of such practices or activities;

(4) all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety;

(5) riots, violent disturbances of the peace, vandalism, civil and criminal disorder, insurrection, the commission of crimes in connection therewith, the immediate and long-standing causes, the extent and effects of such occurrences and crimes, and measures necessary for their immediate and long-range prevention and for the preservation of law and order and to insure domestic tranquillity within the United States;

(6) the efficiency and economy of operations of all branches and functions of the Government with particular reference to—

(A) the effectiveness of present national security methods, staffing, and processes as tested against the requirements imposed by the rapidly mounting complexity of national security problems;

(B) the capacity of present national security staffing, methods, and processes to make full use of the Nation's resources of knowledge, talents, and

(C) the adequacy of present intergovernmental relationships between the United States and international organizations principally concerned with national security of which the United States is a number; and

(D) legislative and other proposals to improve these methods, processes, and relationships;

(7) the efficiency, economy, and effectiveness of all agencies and departments of the Government involved in the control and management of energy shortages including, but not limited to, their performance with respect to—

(A) the collection and dissemination of accurate statistics on fuel demand and supply;

(B) the implementation of effective energy conservation measures;

(C) the pricing of energy in all forms;

(D) coordination of energy programs with State and local government;

(E) control of exports of scarce fuels;

(F) the management of tax, import, pricing, and other policies affecting energy supplies;

(G) maintenance of the independent sector of the petroleum industry as a strong competitive force;

(H) the allocation of fuels in short supply by public and private entities;

(I) the management of energy supplies owned or controlled by the Government;

(J) relations with other oil producing and consuming countries;

(K) the monitoring of compliance by governments, corporations, or individuals with the laws and regulations governing the allocation, conservation, or pricing of energy supplies; and

(L) research into the discovery and development of alternative energy supplies:

Provided, That, in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of the particular branch of the Government under inquiry, and may extend to the records and activities of persons, corporations, or other entities dealing with or affecting that particular branch of the Government.

(b) Nothing contained in this section shall affect or impair the exercise of any other standing committee of the Senate of any power, or the discharge by such committee of any duty, conferred or imposed upon it by the Standing Rules of the Senate or by the Legisaltive Reorganization Act of 1946, as amended.

(c) For the purpose of this section the committee, or any duly authorized subcommittee thereof, or its chairman, or any other member of the committee or subcommittee designated by the chairman, from March 1, 1979, through February 29, 1980, is authorized, in its, his, or their discretion (1) to require by subpena or otherwise the attendance of witnesses and production of correspondence, books, papers, and documents, (2) to holding hearings, (3) to sit and act at any time or place during the sessions, recess, and adjournment periods of the Senate, (4) to administer oaths, and (5) to take testimony, either orally or by sworn statement.

SEC. 4. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 29, 1980.

SEC. 5. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SENATE RESOLUTION 80—SUBMISSION OF A RESOLUTION RELATING TO THE FEDERAL BUDGET

Mr. HART submitted the following resolution, which was referred to the Committee on Governmental Affairs and the Committee on the Budget, jointly, pursuant to the order of August 4, 1977:

S. RES. 80

Whereas, the United States is in a new economic era of increased interest in the magnitude and disposition of Federal spending;

Whereas, the Budget of the United States Government, as presently submitted to the Congress, recommends funding of Federal programs according to their missions and functions, and from this the Congress and the public can judge the amount of resources that are applied to meeting various purposes and objectives of the Government;

Whereas, the Budget contains levels of total spending and levels of income from Federal taxes and presents the anticipated size of the Federal deficit, and by looking only at the Federal deficit and the Budget according to missions and functions, the public may receive an incomplete financial picture.

Whereas, under non-emergency circumstances, the Government should not borrow to pay for current programs or purposes which provide benefits primarily in the year they are made, since it is basically unfair, and financially unwise, to obligate future populations to pay for a previous population's consumption;

Whereas, if at all, the Government should borrow funds only for capital items and investment-type programs or purposes that yield benefits in future years, since a long-term investment made in one year will benefit citizens in future years and it is fair, under these circumstances, to obligate future citizens to pay for some present investments;

Whereas, it is sound financial and customary business practice to borrow funds for capital items and long-term investments;

Whereas, while Federal borrowing for long-term investments is good business practice, a Federal deficit can be inflationary under ordinary economic circumstances and thus should be avoided; and

Whereas, by providing a Budget distinguishing capital and investment spending for current programs or purposes, the President and the Congress will show the American people the degree to which a budget deficit, which may be needed in some circumstances to promote economic growth, is also appropriate from a financial management viewpoint: Now, therefore, be it

Resolved, That it is the sense of the Senate to increase the public's general understanding of the objectives of Federal spending, especially in relation to revenue-raising practices, the Budget submitted by the President for each fiscal year under section 201 of the Budget and Accounting Act, 1921, and the

budget reported by the Committee on the Budget pursuant to Section 301 of the Congressional Budget Act of 1974 should prominently and accurately distinguish proposed outlays for capital items and investment-type programs and purposes from proposed outlays for other programs and purposes and should, therefore, divide proposed outlays between those for capital items and investment-type programs or purposes, those for operating or current programs or purposes, and those for other purposes.

Mr. HART. Mr. President, today I am submitting a Senate resolution requiring the President and the Congress to structure the Federal budget in a new way. This resolution requires the President's budget message to Congress to distinguish between Federal spending on long-term investments, and Federal spending on current programs which provide benefits primarily in the year they are made.

Most people do not understand that one of every 5 dollars in the Federal budget goes to long-term capital investments the Government makes. Although most businesses would account for those expenditures separately from current outlays, the Federal Government makes no such distinction.

This resolution is designed to make the Federal Government structure its budget the way a sound business does. It does not directly relate to the current debate over the nature and size of budget deficits. Rather, it will help people understand where their tax dollars are actually going.

First, let me explain the difference between "investment" outlays and "current" outlays.

Current programs provide benefits primarily in the year they are made. They include: payments for retirement, disability, and other income maintenance; social and employment service; subsidies or other payments—to agriculture, business and transportation systems and other institutions—that are not directly used to purchase physical assets; payments for the repair, maintenance, and operation of established physical assets; and regulatory, law enforcement, and other operating costs of the Federal Government.

Investment-type or capital programs are those that yield benefits in future years, through the acquisition of physical assets, financial assets, or through expenditures for less tangible long-term benefits such as education. They include the construction, rehabilitation, or acquisition of physical assets; education, training, and vocational rehabilitation; research and development; international development; and financial investments such as loans.

The Federal Government has never produced a capital budget in which capital or investment-type programs are accounted for separately from current expenditures. However, the President's Office of Management and Budget does provide figures distinguishing two types of spending in a volume entitled "Special Analyses, Budget of the U.S. Government."

I ask that this analysis for fiscal year 1980 be printed at the conclusion of this statement.

(See exhibit 1.)

Mr. HART. The data in this analysis may be surprising. Investment-type outlays account for $115 billion of the total estimated outlays. Of this, $44 billion is for defense purposes, primarily for the acquisition of major equipment.

The remaining $71 billion is spread among other areas, including $24 billion for construction of physical assets such as highways, mass transit, and pollution control facilities; $15 billion for research and development; and $21 billion for education and training; $4 billion for loans; and so on.

Investment in physical assets account for more than half of the capital outlays. Outlays for physical assets such as military equipment and highways are estimated to amount to $64 billion in the 1980 budget. Spending on these physical assets, whether they are owned by the Federal Government or by State, local or private entities, should not be considered in the same category as current outlays. On an accountant's balance sheet, they would be listed as fixed assets of the country. In the Federal budget, they are ordinary expenditures. It is noteworthy that the fiscal year 1980 budget deficit at $29 billion is less than half of the $64 billion in spending for physical investments. Nondefense spending on construction alone totals $24 billion, which almost equals the projected Federal deficit.

We should eliminate the deficit and balance the budget to prevent inflation in times of economic prosperity. But it is obvious that if we organized the budget correctly the Federal deficit question would look very different.

Another type of investment is for education and training. In the past 20 years, economists have been working to measure the financial rewards from investment in education. As we might expect, such investments do, in fact, provide a return, and one which is roughly comparable to the return on investment in physical assets.

Of course, a private firm cannot place a value on the education-capital invested in its workers, because workers cannot be "owned" or sold. But from a public perspective, a more highly educated workforce is desirable because productivity and wages can be increased without causing inflation.

In today's era of budgetary stringency, the American people need a better understanding of what their tax dollars do for them. By restructuring the Federal budget to show the capital expenditures separately from the current ones, the taxpayers will be better informed. In this spirit, I urge my colleagues to support this resolution.

EXHIBIT 1

ANALYSIS—INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS

This analysis divides outlays between those of an "investment" or capital nature, and those devoted to "current" or operating purposes. Investment-type programs are those that yield benefits in future years through the acquisition of physical assets, financial assets, or through expenditures for less tangible long-term benefits such as education. They include: the construction, rehabilitation, or acquisition of physical assets; education, training and vocational rehabilitation; research and development; international development; and financial investments such as loans. Current programs provide benefits primarily in the year they are made. They include: payments for retirement, disability, and other income maintenance; social and employment service; subsidies or other payments—to agricultural, businesses and transportation systems and other institutions—that are not directly used to purchase physical assets; payments for the repair, maintenance, and operation of established physical assets; and regulatory, law enforcement, and other operating costs of the Federal Government. Some budgetary transactions, notably the allowance for contingencies, cannot be classified as either investment or current in nature.

This special analysis reflects a number of improvements relative to past years that are designed to make it more useful and more accurate. Proprietary receipts from the public, which are counted as offsets to outlays in the budget, are now included as offsets to those items to which they most nearly apply. This treatment more nearly reflects the net Federal expenditures in various sectors. In addition, employment—but not training—programs are classified as current in nature. This action reflects the fact that these programs provide, on the whole, current benefits to people employed rather than long-term benefits. International development grants and foreign military sales have been shifted to the investment-type category to reflect the long-term benefits of these programs. A new investment-type category has been created encompassing collection of information. Included are general purpose statistics, censuses, and engineering and natural resource surveys. These programs are classified as investment-type since they provide a data base from which long-term benefits are derived.

The Federal Government has never produced a capital budget in the sense of one in which capital or investment-type programs are financed separately from current expenditures. One major reason is that a capital budget could be misleading as a measure of the Government's effect on the demand for economic resources. Another is that such a budget might favor programs with intensive expenditures for physical assets, such as construction, relative to other programs for which future benefits cannot be accurately capitalized, such as education or research. Likewise, physical assets might be favored relative to current operations in any given program, since deficit financing for capital would be easier to justify. A capital budget would also pose formidable accounting problems involving the measurement of depreciation on government property, especially weapons systems.

There are also inevitable classification difficulties, as illustrated in preparing the kind of analysis presented here. This analysis classifies programs in the category where most of the outlays are expected to occur. However, some programs—such as general revenue sharing or payments to individuals—can be utilized for both investment-type or current purposes and the classification of them into one category necessarily results in understating the other. Another difficulty is that current expenses for special assistance to a particular sector can be misleading since they are incomplete measures of Federal aid. For example, the category "aids to agriculture, commerce, and transportation" reflects current benefits such as payments for subsidies and operating expenses to water and air transportation and railroad programs. It does not include subsidies for the construc-

tion of private merchant ships, which are investment-type outlays included under "acquisition of major equipment". The Federal Government also assists many sectors through loan guarantees, tax expenditures, off-budget Federal entities, and other ways that are not reflected in the budget, and therefore, are not included in this analysis.

An additional difficulty is that even after the basic classification between investment-type or current programs has been made, several alternative subclassifications are possible. For example, grants for construction of education facilities could logically be considered to be either the acquisition of physical assets or the conduct of education and training. In this analysis, these grants are classified as physical assets. This is in part because complete discussions and tables of the total amount of education outlays are available elsewhere in the budget, which is not true for Federal outlays for physical assets. This principle is also observed in the treatment of the categories "conduct of research and development" and "other investment." It is applied, in addition, to all outlays for financial investments, so that a complete presentation of all Federal outlays for financial and physical assets is available.

Investment-type outlays account for over one-fifth of total estimated outlays in 1980. Of these, nearly two-fifths are for national defense programs, with procurement of major equipment and conduct of research and development being the predominant investment-type defense activities. (In this analysis, defense refers to the national defense function as defined in the budget). The remaining three-fifths are for nondefense purposes, with "construction and rehabilitation of physical assets"—such as highways and mass transit, pollution control facilities, and energy related facilities—being the predominant programs. Outlays for "conduct of education and training"—including student assistance, elementary and secondary education, and veterans readjustment benefits—are the second largest investment-type nondefense category.

Current outlays made up almost four-fifths of total estimated outlays in 1980. National defense programs account for about one-fifth of total current outlays, with nearly half of that amount required for "repair, maintenance, and operation of physical assets". The remainder includes salaries for active military employees and retired pay for military personnel as well as general overhead costs. In the nondefense area, "provision of benefits"—including retirement, disability, health and welfare benefits—accounts for nearly three-quarters of nondefense current outlays and almost one-half of total budget outlays. Nearly 14% of nondefense current outlays—9% of total budget outlays—is for net interest.

A small portion of outlays are not classified as either defense or civil outlays. These include allowances for contingencies.

Four tables are presented in this analysis. Table D–1 presents a summary of Budget outlays, separated by national defense and civil programs. Table D–2 provides detailed backup to entries of Table D–1. An additional view of budget outlays is included in Table D–3, which separates outlays by grants-in-aid, loans, and direct Federal programs. This table makes no distinction between national defense and civil programs. Table D–4 provides detailed backup to Table D–3.

TABLE D–1. SUMMARY OF INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS

[In millions of dollars]

	1978 estimate	1979 estimate	1980 estimate
National defense:			
Investment-type programs:			
Construction and rehabilitation of physical assets	2,330	2,283	2,496
Acquisition of major equipment	20,105	22,607	25,915
Conduct of research and development	12,077	13,437	14,790
Other investment-type programs	546	706	831
Subtotal, investment-type programs	35,057	39,034	44,032
Current programs:			
Provision of benefits	9,207	10,324	11,487
Repair, maintenance, and operation of physical assets	34,658	37,121	39,932
Other current programs	26,265	28,024	30,318
Subtotal, current programs	70,129	75,470	81,737
Unclassified			61
Total National defense	105,186	114,503	125,830
Civil:			
Investment-type programs:			
Loans and financial investments	9,501	5,964	3,646
Construction and rehabilitation of physical assets	23,974	24,804	23,941
Acquisition of major equipment	522	640	722
Conduct of research and development	12,434	14,416	15,191
Conduct of education and training	18,399	21,066	21,000
Other investment-type programs	4,868	7,108	6,955
Subtotal, investment-type programs	69,698	73,999	71,456
Current programs:			
Provision of benefits	198,455	218,506	243,629
Social service and employment programs	13,175	13,825	12,922
Aids to agriculture, commerce, and transportation	10,962	12,893	12,894
Repair, maintenance, and operation of physical assets	391	−253	−586
General purpose fiscal assistance	9,877	9,193	9,123
Regulation, control, and law enforcement	5,795	6,211	6,333
Net interest	35,435	42,984	46,082
Other current programs	1,862	1,506	3,385
Subtotal, current programs	275,952	304,865	333,780
Total civil	345,650	378,864	405,236
Unclassified			500
Grand total	450,836	493,368	531,566

Loans and financial investments.—A loan creates a financial asset equal to the outlay. For domestic loans, the Government's asset is matched by the liability of the private sector. Most Federal domestic loans—to both State and local governments and private borrowers—finance the acquisition or improvement of either physical assets or human capital, especially in community and regional development, education, and transportation. Loans to foreign borrowers represent an increase in financial assets held by the United States. Most foreign loans are for economic development programs or the promotion of U.S. exports, including military equipment and farm commodities. Net loan outlays are expected to total $2.5 billion in 1980. However, a significant and growing Federal involvement in loan programs occurs through loan guarantees, where the Federal Government promises to pay a part or all of the principal or interest of a loan that is made by the private sector. Loan guarantees may achieve ends similar to those for direct loans except that there are no outlays except in cases of default. Additional analysis of loan programs is contained in Special Analysis F, "Federal Credit Programs."

Financial investments in international organizations such as the World Bank, are designed to enhance economic and social development in many parts of the world. This is expected, in turn, to be beneficial to U.S. interests in both the present and future. Outlays for financial investments are estimated to be $1.1 billion in 1980.

Physical assets.—Construction and rehabilitation of physical assets, acquisition of major equipment, and establishment of commodity inventories are of a long term nature. Purchases of these assets are treated as investment-type outlays regardless of whether the asset is owned by the Federal Government, or by State, local or private entities. Total outlays for physical assets are estimated at $57.5 billion in 1980; of this amount $29.2 billion is in the national defense function. Most national defense outlays for physical assets are for the procurement of military equipment. A large portion of Federal outlays for nondefense physical assets is in the form of grants-in-aid to State and local governments, especially for construction programs. Highway and mass transit programs, and pollution control construction grants are the largest items in nondefense outlays for physical assets, accounting for $8.4 billion and $3.6 billion respectively, or over two-fifths of estimated nondefense outlays for physical assets in 1980.

Conduct of research and development.—Outlays for research and development provide benefits in the future even though it is

difficult to know ahead of time what the benefits will be. Total outlays for the conduct of research and development are estimated at $30 billion in 1980. Most national defense research and development outlays are for weapon system development. In nondefense programs, outlays for health, energy and space account for more than half of nondefense research and development outlays. Additional analysis of research and development programs is contained in Special Analysis L, "Research and Development."

Conduct of education and training.—Outlays classified in this category are designed to add to the stock of human capital by developing a more skilled and productive labor force. These outlays represent direct payments to individuals, scholarships and grants to institutions and other means of financing education and training. As with physical assets, the benefits accrue over a considerable period of time. Outlays are estimated at $21.0 billion in 1980, with education programs (including veterans education benefits) accounting for nearly three-fourths of the total.

Collection of information.—This category includes outlays for collection of information, censuses, topographic or other natural resource surveys and programs that benefit both the present and future by establishing a base of knowledge. Outlays of $1.7 billion are estimated for 1980.

International development.—Foreign assistance for general international economic development is included in this category. These outlays are expected to prove beneficial to U.S. interests by enhancing the economic development of foreign governments. These outlays are estimated to be $1.6 billion in 1980.

Current programs.—Programs that provide benefits in the current year are divided into several major categories. Total current outlays are estimated at $415.5 billion in 1980. Outlays classified as current may be used for investment-type purposes; however, the intent of these outlays is to provide short-term benefits—such as unemployment compensation, retirement and disability payments, and public service employment—rather than providing the means for future benefits.

Outlays for "provision of benefits"—including retirement, disability, and other income support payments, health care and nutrition, and housing subsidies are estimated to be $255.1 billion in 1980; more than three-fifths of current outlays and almost one-half of total budget outlays.

Current outlays for "social service and employment programs" are also estimated at $12.9 billion in 1980, while "aids to agriculture, commerce, and transportation" are also estimated to total $12.9 billion.

Other current outlays are largely for operation of the Federal Government, including: the "repair, maintenance, and operation of physical assets"; regulatory and law enforcement activities, personnel, and other administrative or operating expenses of the Government. Net interest payments are estimated at $46.1 billion in 1980.

Unclassified.—These outlays have not been placed in either the investment or the current category. The allowance for contingencies is not classified because it is for unforeseen circumstances and therefore, it is not know how it will be used.

TABLE D–2.—INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS

[In millions of dollars]

	1978 actual	1979 estimate	1980 estimate
National defense investment-type programs:			
Construction and rehabilitation of physical assets:			
Military construction	1,836	1,844	1,906
Family housing	215	92	104
Atomic energy defense activities	274	342	484
Other	5	5	2
Subtotal, Construction and rehabilitation of physical assets	2,330	2,283	2,496
Acquisition of major equipment:			
Procurement	19,976	22,476	25,749
Atomic energy defense activities	129	131	166
Subtotal, Acquisition of major equipment	20,105	22,607	25,915
Conduct of research and development	12,077	13,437	14,790
Other investment-type programs:			
Atomic energy defense activities—other physical assets	540	803	1,025
Other	6	—97	—194
Subtotal, Other investment-type programs	546	706	831
Subtotal, Investment-type programs	35,057	39,034	44,032
National defense current programs:			
Provision of benefits:			
Retired military personnel	9,171	10,281	11,435
Other	35	44	52
Subtotal, provision of benefits	9,207	10,324	11,487
Repair, maintenance, and operation of physical assets:			
Department of Defense, Military	34,656	37,119	39,930
Other	1	2	2
Subtotal, Repair, maintenance and operation of physical assets	34,658	37,121	39,932
Other current programs:			
Military personnel	26,641	27,755	27,974
Allowance for civilian and military pay raises	-------	--------	2,154
Other national defense	—376	270	190
Subtotal, Other current programs	26,265	28,024	30,318
Subtotal, Current programs	70,129	75,470	81,737
Unclassified	-------	--------	61
Total National defense	105,186	114,503	125,830
Civil investment-type programs			
Loans and financial investments:			
Loans to State and local governments:			
Community and regional development	87	12	—80
Other	50	53	146
Subtotal, Loans to State and local governments	137	65	66
Loans to other borrowers:			
International affairs	1,326	1,401	1,705
Community and regional development	2,307	891	176
Agriculture	3,073	814	—632
Transportation	903	1,009	521
Education	429	446	389
Other	447	362	298
Subtotal, Loans to other borrowers	8,486	4,921	2,458
Other financial investments	878	978	1,123
Subtotal, Loans and financial investments	9,001	5,964	3,646
Construction and rehabilitation of physical assets:			
Highways and mass transit	7,200	8,152	8,425
Air transportation	796	854	860
Other transportation	162	146	119

	1978 actual	1979 estimate	1980 estimate
Community development block grants	2,464	2,875	3,272
Local public works	3,057	2,051	319
Other community and regional development	1,321	1,394	1,421
Pollution control and abatement	3,189	3,103	3,603
Water resources	2,134	2,052	2,010
Other natural resources and environment	730	869	797
Energy	2,054	2,188	1,943
Other	867	1,120	1,173
Subtotal, Construction and rehabilitation of physical assets	23,974	24,804	23,941
Acquisition of major equipment:			
Energy	152	128	150
Transportation	276	362	399
Other	94	151	172
Subtotal, Acquisition of major equipment	522	640	722
Conduct of Research and development	12,434	14,416	15,191
Conduct of education and training:			
Income support programs:			
General education	2,283	2,921	3,195
Veterans benefits	3,592	2,978	2,552
Other	186	294	235
Subtotal, Income support programs	6,061	6,193	5,983
Other education and training programs:			
Elementary, secondary, and vocational education	5,505	6,343	6,892
Other education	1,662	2,436	2,332
Training	3,834	4,892	4,679
Health	601	467	464
Other	736	736	650
Subtotal, Other education and training programs	12,338	14,873	15,017
Subtotal, Conduct of education and training	18,399	21,066	21,000
Other investment-type programs:			
Commodity inventories:			
Energy	959	2,516	2,039
Agriculture	44	93	7
Subtotal, Commodity inventories	1,003	2,609	2,046
Other physical assets	1,579	1,754	1,565
International development	1,290	1,393	1,597
Collection of information	996	1,352	1,747
Subtotal, Other investment-type programs	4,868	7,108	6,955
Subtotal, investment-type programs	69,698	73,999	71,456
Civil current programs:			
Provision of benefits:			
Retirement and survivor benefits:			
Social Security and Railroad Retirement benefits	80,856	89,944	101,424
Civil Service retirement and survivors benefits	9,307	10,426	11,792
Other retirement and survivor benefits	930	1,071	1,130
Subtotal, Retirement and survivor benefits	91,093	101,441	114,347
Disability benefits:			
Social security and Railroad Retirement disability benefits	12,246	13,617	15,187
Civil Service disability benefits	2,058	2,423	2,856
Veterans disability benefits	9,604	10,681	11,682
Other disability benefits	248	629	980
Subtotal, Disability benefits	24,157	27,351	30,705
Other provision of benefits:			
Cash payments:			
Medicare	24,267	28,117	31,017
Medicaid	10,680	11,751	12,354
Supplemental security income	5,283	4,843	5,699
Nutrition programs	8,126	9,185	9,793
Unemployment compensation	10,776	9,244	11,291
Assistance payments program	5,724	5,728	5,647
Subsidized housing programs	3,592	4,221	5,105
Other	3,328	3,571	4,289
Subtotal, Cash payments	71,776	76,660	85,195
Direct provision of services:			
Hospital and medical care for veterans	4,518	5,098	4,975
Other veterans benefits	573	673	626
Housing payments and subsidies	−31	93	57
Other	384	464	552
Subtotal, Direct provision of services	5,443	6,328	6,210
Subtotal, Other provision of benefits	77,219	82,988	91,404
Administrative expenses:			
Social Administration	2,866	3,099	3,259
Nutrition programs	527	646	685
Unemployment compensation	993	1,053	1,119
Medicare	936	1,023	1,053
Other	664	905	1,056
Subtotal, Administrative expenses	5,986	6,726	7,172
Subtotal, Provision of benefits	198,455	218,506	243,629
Social service and employment programs:			
Human development service	1,446	1,434	1,613
Temporary employment assistance	4,769	3,181	2,571
Other employment	2,166	3,641	3,737
Social services and child welfare services	2,740	2,893	2,945
Other	2,053	2,675	2,055
Subtotal, Social service and employment programs	13,175	13,825	12,922
Aids to agriculture, commerce, and transportation:			
Agriculture	3,430	4,340	4,044
Postal Service	1,778	1,803	1,698
Small business assistance	550	654	624
General aids to commerce	414	584	582
Ground transportation	1,770	2,250	2,297
Air transportation	1,849	1,962	2,022
Water transportation	841	856	909
Other	330	444	717
Subtotal, Aids to agriculture, commerce, and transportation	10,962	12,893	12,894
Repair, maintenance, and operation of physical assets:			
Conservation and land management	680	349	276
Water resources	590	580	612
Recreational resources	425	481	513
Energy	−586	−789	−1,019
Other	−718	−873	−968
Subtotal, Repair, maintenance and operation of physical assets	391	−253	−586

TABLE D–2.—INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS—Continued

[In millions of dollars]

	1978 actual	1979 estimate	1980 estimate
General purpose fiscal assistance:			
General revenue sharing	6,823	6,852	6,853
Other general purpose grants-in-aid	2,010	892	918
Shared revenues	1,044	1,449	1,342
Subtotal, General purpose fiscal assistance	9,877	9,193	9,123
Regulation, control, and law enforcement:			
Regulatory and inspection activities:			
Natural resources and environment	554	725	815
Transportation	604	647	672
Health	553	600	612
Energy	388	475	571
Agriculture	223	277	239
Commerce	−702	−1,229	−1,397
Other	608	665	670
Subtotal, Regulatory and inspection activities	2,226	2,159	2,183
Law enforcement activities:			
Federal law enforcement	1,817	2,034	2,049
Federal litigative and judicial	933	1,178	1,317
Federal correctional activities	256	303	320
Other law enforcement assistance	563	538	464
Subtotal, Law enforcement activities	3,569	4,052	4,150
Subtotal, Regulation, control, law enforcement	5,795	6,211	6,333
Net interest:			
Interest on the public debt	48,695	59,800	65,700
Other interest	−4,729	−7,034	−8,678
Interest received by trust funds (−)	−8,530	−9,782	−10,940
Subtotal, Net interest	35,435	42,984	46,082
Other current programs:			
International security assistance	1,145	1,784	1,789
International affairs	1,422	1,558	1,759
Legislative branch	924	1,020	1,116
Other general government	2,409	2,837	2,804
Other	944	−305	499
Employer share, employee retirement (−)	−4,983	−5,388	−5,482
Allowances for civilian agency pay raises	-------	-------	898
Subtotal, Other current programs	1,862	1,506	3,385
Subtotal, Current programs	275,952	304,865	333,780
Total, civil	345,650	378,864	405,236
Unclassified	-------	-------	500
Grand total	450,836	493,368	531,566

An additional view of Federal outlays is presented in tables D–3 and D–4, in which outlays are separated by grants-in-aid, loans and direct Federal programs.

Grants-in-aid are resources provided by the Federal Government in support of State and local programs of governmental service to the public. Special Analysis H, "Federal Aid to State and Local Governments," discusses grants-in-aid in greater detail. *Loans* are made by the Federal Government to various borrowers to fulfill express program purposes. *Direct Federal programs* are programs carried out directly by the Federal Government.

TABLE D–3—SUMMARY OF BUDGET OUTLAYS FOR GRANTS-IN-AID, LOANS, AND DIRECT FEDERAL PROGRAMS

[In millions of dollars]

	1978 actual	1979 estimate	1980 estimate
Grants-in-aid:			
Investment-type programs:			
Construction and rehabilitation of physical assets	18,043	18,435	17,860
Conduct of education and training	9,508	11,106	11,574
Other investment-type programs	678	668	864
Subtotal, investment-type programs	28,229	30,209	30,298
Current programs:			
Provision of benefits	25,144	27,370	28,759
Social service and employment programs	12,305	12,752	11,829
Aids to agriculture, commerce, and transportation	894	1,096	1,364
General purpose fiscal assistance	9,910	9,228	9,158
Regulation, control, and law enforcement	805	849	828
Other current programs	600	626	702
Subtotal, current programs	49,660	51,920	52,639
Total, Grants-in-aid	77,889	82,129	82,937
Loans:			
To State and local governments	137	65	66
To other borrowers	8,485	4,922	2,456
Total, Loans	8,622	4,986	2,522
Direct Federal programs:			
Investment-type programs:			
Construction and rehabilitation of physical assets	8,260	8,652	8,577
Acquisition of major equipment	20,577	23,220	26,613
Conduct of research and development	24,259	27,586	29,715
Conduct of education and training	8,891	9,961	9,426
Other investment-type programs	5,918	8,419	8,336
Subtotal, investment-type programs	67,904	77,838	82,667
Current programs:			
Provision of benefits	182,517	201,460	226,357
Social service and employment programs	870	1,074	1,093
Aids to agriculture, commerce, and transportation	10,068	11,797	11,530
Repair, maintenance, and operation of physical assets	34,729	36,517	38,875
Regulation, control, and law enforcement	4,990	5,362	5,504
Net interest	35,435	42,984	46,082
Other current programs	27,812	29,221	33,437
Subtotal, current programs	296,421	328,415	362,879
Total, direct Federal programs	364,325	406,252	445,546
Unclassified	-------	-------	561
Grand Total	450,836	493,368	531,566

Grants-in-aid to State and local governments are estimated to be $82.9 billion in 1980. Of this amount, over one-fifth is for construction and rehabilitation of physical assets. Transportation programs account for over half of these grants-in-aid for 1980, largely for highway and mass transit programs. Community and regional development, and construction of pollution control and abatement facilities also account for large shares of grants-in-aid for construction of physical assets. Grants-in-aid for education and training account for nearly 14% of the total.

Grants-in-aid providing current benefits are largely for health care or health services, nutrition, and housing assistance. General revenue sharing and shared revenues provide aid to State and local governments with few limitations or the use of the funds.

Most Federal loans are made for international programs. Other major loan programs provide assistance to agriculture, community and regional development, and transportation.

More than four-fifths of estimated 1980 outlays are for direct Federal programs. These programs are where the Federal Government directly provides benefits, services, and other assistance. The largest share of these programs is for provision of benefits, including retirement and disability payments under Social Security and Civil Service, and military and foreign service retirement. Veterans compensation and pensions and unemployment compensation are also included in this category.

Investment-type programs include military procurement and research and development; construction and rehabilitation of physical assets for natural resources and environment, including water resources and conservation, and land management projects; and research and development programs focused primarily on general science, space and technological programs, energy, and health.

The remaining direct Federal programs include general administrative costs of the Federal Government, net interest, and other defense and nondefense programs.

TABLE D–4. BUDGET OUTLAYS FOR GRANTS-IN-AID, LOANS, AND DIRECT FEDERAL PROGRAMS

[In millions of dollars]

	1978 actual	1979 estimate	1980 estimate
Grants-in-aid			
Investment-type programs:			
Construction and rehabilitation of physical assets:			
Highways and mass transit	7,200	8,151	8,425
Other transportation	660	653	602
Pollution control and abatement	3,187	3,100	3,600
Other natural resources and environment	233	261	213
Community development block grants	2,464	2,875	3,272
Local public works	3,057	2,051	319
Other community and regional development	1,083	1,133	1,249
Other	159	211	179
Subtotal, Construction and rehabilitation of physical assets	18,043	18,435	17,860
Conduct of education and training:			
Employment and training assistance	3,256	3,986	3,952
Elementary and secondary education	2,801	3,017	3,428
Other education	2,853	3,511	3,666
Other	598	592	528
Subtotal, Conduct of education and training	9,508	11,106	11,574
Other investment-type programs	678	668	864
Subtotal, Investment-type programs	28,229	30,209	30,298
Current program:			
Provision of benefits:			
Medicaid	10,680	11,751	12,354
Nutrition programs	2,855	3,138	3,195
Assistance payments	5,724	5,728	5,647
Housing payments and subsidies	2,393	2,834	3,375
Other	1,272	1,497	1,558
Administrative expenses:			
Social Security Administration	890	940	1,054
Nutrition programs	392	487	520
Unemployment compensation	939	996	1,055
Other	*	*	1
Subtotal, administrative expenses	2,221	2,422	2,629
Subtotal, Provision of benefits	25,144	27,370	28,759
Social service and employment programs:			
Employment and training assistance	995	2,284	2,359
Temporary employment assistance	4,769	3,181	2,571
Employment programs	1,006	1,123	1,159
Human development services	1,380	1,361	1,533
Social service and child welfare services	2,740	2,893	2,945
Other	1,414	1,909	1,261
Subtotal, Social service and employment programs	12,305	12,752	11,829
Aids to agriculture, commerce, and transportation:			
Transportation	856	1,037	1,192
Other	38	59	172
Subtotal, Aids to agriculture, commerce, and transportation	894	1,096	1,364
General purpose fiscal assistance:			
General revenue sharing	6,823	6,852	6,863
Other	3,087	2,375	2,295
Subtotal, General purpose fiscal assistance	9,910	9,228	9,158
Regulation, control, and law enforcement:			
Law enforcement	494	486	418
Other	311	363	411
Subtotal, Regulation, control, and law enforcement	805	849	828
Other current programs	600	626	702
Subtotal, current programs	49,660	51,920	52,639
Total, Grants-in-aid	77,889	82,129	82,937
Loans			
To State and local governments:			
Community and regional development	87	12	−80
Other	50	53	146
Subtotal, To State and local governments	137	65	66
To other borrowers:			
International affairs	1,326	1,401	1,705
Community and regional development	2,307	891	176
Agriculture	3,073	814	−632
Transportation	903	1,009	521
Education	429	446	389
Other	446	362	296
Subtotal, To other borrowers	8,485	4,922	2,456
Total, Loans	8,622	4,986	2,522

TABLE D-4. BUDGET OUTLAYS FOR GRANTS-IN-AID, LOANS, AND DIRECT FEDERAL PROGRAMS—Continued

[In millions of dollars]

	1978 actual	1979 estimate	1980 estimate
Direct Federal Programs			
Investment-type programs:			
Construction and rehabilitation of physical assets:			
National defense	2,308	2,268	2,485
Water resource projects	2,032	1,975	1,934
Other natural resources and environment	601	688	663
Energy	2,054	2,188	1,943
Transportation	297	348	377
Veterans hospitals	243	284	318
Health	167	217	212
Other	557	684	646
Subtotal, Construction and rehabilitation of physical assets	8,260	8,652	8,577
Acquisition of major equipment:			
National defense	20,102	22,604	25,913
Energy	152	128	150
Transportation	276	362	399
Other	47	127	150
Subtotal, Acquisition of major equipment	20,577	23,220	26,613
Conduct of research development	24,259	27,586	29,715
Conduct of education and training:			
Assistance to veterans	3,576	2,937	2,496
Higher education	2,941	4,206	4,333
Elementary and secondary education	381	44[illegible]	449
Employment and training assistance	501	827	668
Health	587	499	493
Other	906	1,050	987
Subtotal, Conduct of education and training	8,891	9,961	9,426
Other investment-type programs:			
Financial investments	878	978	1,123
Commodity inventories	912	2,483	1,808
Other physical assets	1,818	2,289	2,225
International development	1,386	1,403	1,642
Collection of information	925	1,265	1,539
Subtotal, Other investment-type programs	5,918	8,419	8,336
Subtotal, Investment-type programs	67,904	77,838	82,667
Current programs for:			
Provision of benefits:			
Retiremen and survivor benefits	100,299	111,765	125,834
Disability benefits	24,157	27,351	30,705
Medicare	24,267	28,117	31,017
Other health	687	752	793
Unemployment compensation	10,776	9,244	11,291
Nutrition programs	5,271	6,048	6,597
Housing payments and subsidies	1,168	1,480	1,802
Medical care for veterans	4,518	5,098	4,975
Supplemental security income	5,244	4,793	5,649
Earned income tax credit	881	841	1,547
Other	1,483	1,667	1,603
Administrative expenses:			
Social Security Administration	1,976	2,159	2,205
Nutrition programs	135	159	165
Unemployment compensation	54	57	65
Medicare	933	1,028	1,053
Other	664	905	1,055
Subtotal, administrative expenses	3,765	4,304	4,543
Subtotal, Provision of benefits	182,517	201,460	226,357
Social service and employment programs:			
Community and regional development	326	345	359
Other	544	729	734
Subtotal, Social service and employment programs	870	1,074	1,093
Aids to agriculture, commerce, and transportation:			
Agriculture	3,430	4,340	4,044
Postal Service	1,778	1,803	1,698
Small business assistance	550	654	624
Commerce	401	567	553
Ground transportation	915	1,215	1,107
Air transportation	1,849	1,962	2,022
Water transportation	841	856	909
Other	304	400	572
Subtotal, Aids to agriculture, commerce, and transportation	10,068	11,797	11,530
Repair, maintenance, and operation of physical assets:			
National defense	34,656	37,119	39,930
Water resources	590	580	612
Conservation and land management	680	349	276
Other natural resources and environment	−380	−465	−490
Energy	−644	−978	−1,332
Other	−173	−88	−122
Subtotal, Repair, maintenance, and operation of physical assets for	34,729	36,517	38,875
Regulation, control, and law enforcement	4,990	5,362	5,504
Net interest	35,435	42,984	46,082
Other current programs:			
Military personnel	26,641	27,755	27,974
Other national defense	−410	235	155
Other nondefense	1,581	1,231	2,256
Allowance for Department of Defense pay raises			2,154
Allowance for civilian agency pay raises			898
Subtotal, Other current programs	27,812	29,221	33,437
Subtotal, Current programs	296,421	328,415	362,879
Total, Direct Federal programs	364,325	406,252	445,546
Unclassified			561
Grand total	450,836	493,368	531,566

SENATE RESOLUTION 81—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON ARMED SERVICES

Mr. STENNIS, from the Committee on Armed Services, reported the following original resolution, which was referred to the Committee on Rules and Administration:

S. RES. 81

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Armed Services, or any subcommittee thereof, is authorized from March 1, 1979, through February 29, 1980, in its discretion (1) to make expenditures from the contingent of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $763,900, of which amount not to exceed $60,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 29, 1980.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 82—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON ARMED SERVICES

Mr. STENNIS, from the Committee on Armed Services, reported the following original resolution, which was referred to the Committee on Rules and Administration;

S. RES. 82

Resolved, That the Committee on Armed Services is authorized to expend from the contingent fund of the Senate, during the Ninety-sixth Congress, $100,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1946.

NOTICES OF HEARINGS

SELECT COMMITTEE ON SMALL BUSINESS

● Mr. NELSON. Mr. President, on February 27 at 9:30 a.m. in room 424 of the Russell Senate Office Building, the Select Committee on Small Business will hold hearings on S. 388, The Small Business Employee Ownership Act. This bill would authorize the Small Business Administration to guarantee loans to employee-owned companies and to employee organizations seeking to purchase their companies when they would otherwise close or relocate.

Persons desiring additional information should contact committee staff at 224–5175.●

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

● Mr. McGOVERN. Mr. President, I wish to announce that the Committee on Agriculture, Nutrition, and Forestry will meet Wednesday, February 21 at 10:00 a.m. to organize for the 96th Congress. Subcommittee assignments will be made and the committee rules will be determined.

The full committee will also consider the nomination of James H. Williams of Florida to be Deputy Secretary of Agriculture. Mr. Williams is a former lieutenant governor of Florida and he has had a lifelong involvement with agriculture.

In addition, the committee's agenda will include S. 292, which reduces the 1980 authorization for appropriations for the supplemental food program, and S. 41 which authorizes the Secretary of Agriculture to relinquish any interest in lands held by the United States in Bell County, Ky., to the Bell County Board of Education.

The meeting will be held in room 322. Anyone wishing to submit testimony on Mr. Williams' nomination should contact Denise Alexander, hearing clerk, at 224–0014.●

COMMITTEE ON ENERGY AND NATURAL RESOURCES

● Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public that the Senate Committee on Energy and Natural Resources will hold a hearing on February 27, 1979, on the current international oil supply situation in light of the continued curtailment of Iranian crude oil production.

The hearing will begin at 9:30 a.m. in room 3110 of the Dirksen Senate Office Building.

Testimony will be received from the Department of Energy concerning the impacts of the present crude oil supply interruption which are being experienced by other nations, particularly those which are participating members of the international energy program. A prognosis of the anticipated actions to be considered by the Board of Governors of the International Energy Agency at its forthcoming meeting in Paris on March 1 and 2, 1979, will be solicited by the committee.

The committee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the RECORD. Statements submitted for inclusion in the RECORD should be typewritten, not more than 25 double-spaced pages in length and mailed with five copies by March 13, 1979, to George Dowd, counsel, Committee on Energy and Natural Resources, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510.●

SUBCOMMITTEE ON ENERGY REGULATIONS

● Mr. JOHNSTON. Mr. President, the Subcommittee on Energy Regulation of the Committee on Energy and Natural Resources is scheduling hearings on the administration's forthcoming proposals for emergency energy conservation and gasoline rationing. These hearings will be held on February 28 and March 19 and 20. Energy conservation contingency and gasoline and diesel fuel rationing plans were originally required by title II of the Energy Policy and Conservation Act (42 U.S.C. 6261). The act requires congressional review of the proposed plans within 60 days after submission and an affirmative vote of each House of Congress to place the plans on standby status (42 U.S.C. 6422). In addition, before a gasoline and diesel fuel rationing plan could actually be implemented each House of Congress would have a right to veto the implementation decision within 15 days.

At a hearing held by the subcomittee on February 5, 1979, David Bardin, Administrator of the Economic Regulatory Administration of the Department of Energy indicated that a gasoline rationing plan and four energy conservation contingency plans (dealing with gasoline service station hours, automobile parking, thermostat settings and advertising lighting) would be submitted on February 26. The proposed rules for these plans appeared in the Federal Register on May 28, 1976 (41 F.R. 21908) and June 28, 1978 (43 F.R. 28134). Assuming the schedule for submission announced by DOE is kept, the hearing scheduled for February 28 will be devoted to the administration's explanation of its plans. The March 19 and 20 dates will be available to receive testimony from other interested persons. These hearings will begin at 10:00 a.m.

Questions about these hearings should be addressed to Benjamin S. Cooper or James T. Bruce of the subcommittee staff at 224–9894.●

SUBCOMMITTEE ON NUTRITION

● Mr. McGOVERN. Mr. President, I wish to announce that the Subcommittee on Nutrition will hold hearings on the fiscal year 1980 Food and Nutrition Service proposed budget. FNS is an agency within the U.S. Department of Agriculture.

The subcommittee will hear the administration's position from Assistant Secretary Carol Foreman on Tuesday, February 27, and public witnesses will be heard Wednesday, February 28. Both hearings will begin at 9 a.m. in room 324.

These hearings have been scheduled to honor a commitment made to the President when he signed the Child Nutrition Act of 1978. At that time, he requested that all future FNS budgets be given a thorough and objective review.

Anyone wishing to testify on February 28 should contact Denise Alexander, hearing clerk, at 224–0014.●

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON SURFACE TRANSPORTATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Surface Transportation Subcommittee of the Committee on Commerce, Science,

and Transportation be authorized to meet during the session of the Senate today to hold a hearing on the authorization of the Rail Public Counsel and the United States Railway Association.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY AND SPACE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Science, Technology, and Space Subcommittee of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate today to hold a hearing on the NASA authorization.

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

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION AND FEDERAL SERVICES

● Mr. GLENN. Mr. President, I wish to announce hearings by the Governmental Affairs Subcommittee on Energy, Nuclear Proliferation and Federal Services. On February 27 and March 1, the subcommittee will hold oversight hearings on the 1980 census. The hearing on February 27 begins at 9 a.m. in 3302 Dirksen Senate Office Building, and on March 1 the hearing will begin at 10 a.m. in 5110 Dirksen Senate Office Building.

The subcommittee will also hold a hearing on February 28, 1979, at 10 a.m. in 357 Russell Senate Office Building on the price impact of oil shortages and U.S. energy planning.

Finally, the subcommittee will hold hearings on March 6 and 7 on the Federal responsibilities for radiation protection. The hearings on both days will begin at 9:30 a.m. in 3302 Dirksen Senate Office Building.●

ADDITIONAL STATEMENTS

TRAPPED

● Mr. WILLIAMS. Mr. President, I would like to call to the attention of my colleagues a recent New York Times column written by John B. Oakes. Mr. Oakes makes an excellent case for prohibiting the use of the inhumane steel-jaw, leghold trap.

I have introduced a bill to ban this trap throughout the Nation, and was most gratified by Mr. Oakes' cogent article.

Mr. President, I ask that the article be printed in the RECORD.

The article follows:

[From the New York Times, Feb. 13, 1979]

TRAPPED

(By John B. Oakes)

The men and women who carelessly toss the furry skin of a wild animal across their shoulders—just as their ancestors did in the forests of Northern Europe and Asia several thousand years ago—may not know it, and if they do, surely prefer not to think about it, but with few exceptions what they're really doing is flaunting evidence of many hours or even days of torture suffered by each wild animal whose pelt they wear.

There is no escape from this ugly fact, nor can it be hidden by ridicule of the "do-gooders" who are trying to put a stop to this anachronistic form of cruelty or by the false claim that abolition of the steel leg-hold trap will destroy the fur industry.

For those who prefer facts to emotion on this touchy subject, a look at the facts will show that:

The steel leg-hold trap, as normally used on land throughout the United States and Canada, is a monstrously brutal method of capturing wild animals.

The overwhelming preponderance of wild (as distinct from ranch-raised) animals whose pelts are used in the American fur industry are caught by the steel leg-hold trap although more humane, if more expensive, alternatives are available.

Use of this trap has already been outlawed or restricted in a number of fur-producing countries and in a few American states.

The recent shift in fashion toward "fun" furs has raised the demand (and prices) for pelts of relatively common wild animals, usually taken by this barbaric device.

When the steel trap is sprung on an animal's leg, the traumatic effect has been compared to that of a car door smashing a human finger caught between the hinges. But (unless the trap has been set underwater, in which case the animal fairly quickly drowns) the agony does not end there; it only begins.

The trapped animal will almost certainly thrash wildly about in terror, rage, pain and panic, breaking its teeth on the steel trap or the chain that holds it in place. Occasionally the victim will succeed in gaining freedom, after hours of struggle, by wrenching or biting off its own foot at the point where the steel jaws have already dug into the bone. This is known in the trade as "wring-off" and the animals that thus leave one paw behind them are the lucky ones.

The others—the vast majority of the millions trapped on land each year—are eventually worn out by the struggle and lie inert and exhausted, without food or water, until the trap line is visited, which may easily be two, three or more days later. At that point, the victim at last is put out of its misery, usually by clubbing or strangulation—provided it has not already starved or frozen to death. It has been estimated by Government trappers (and the United States Government is the biggest single trapper of all with its indefensibly wasteful predator-control program) that about 75 percent of the unwanted animals caught in traps set for other species are so badly injured that they have to be destroyed.

More than six and one-half million muskrats and three million raccoon were trapped and killed in the United States in 1976–77; nearly 175,000 coyotes; 21,000 badger, etc. etc.—to a total of more than 16 million wild animals in that year alone, taken by an estimated two million trappers, licensed and unlicensed.

Various substitutes for, or modifications of, the leg-hold trap have been tried but are not in general use in this country, except perhaps for an "instant kill" trap that has its own dangers and defects.

Nearly a dozen countries, including Denmark, Norway, Sweden and the United Kingdom, forbid use of the steel leg-hold trap. So, to a limited degree, do a few American states, including New Jersey, where a battle is going on right now to extend the prohibition to all counties in the state. Senators Harrison A. Williams of New Jersey and Birch Bayh of Indiana have introduced comparable legislation at the Federal level.

The fur industry itself has been enjoying an economic revival in the last few years, sparked in part by the new emphasis on "fun" furs trapped in the wild. The rise and use of wild-animal furs (80 percent of which in the United States are caught in the steel leg-hold trap) accounts for a significant part of what today has become a $700 million business.

That's why it's becoming more urgent than ever that the abominable cruelty of the leg-hold trap and the needless suffering it entails be brought to the attention of otherwise sensitive men and women who through ignorance or indifference don't hesitate to wrap themselves in the skin of an animal that probably died under frightful torture.●

CHINA POLICY

● Mr. HATCH. Mr. President, our Nation is now immersed in a great debate regarding the benefits and faults of the Carter administration's controversial decision to recognize Red China and to withdraw recognition from the Republic of China on Taiwan. It is my view that our Nation can no longer afford the luxury of so cavalier a severance of ties with an ally to which we once bound ourselves with a solemn treaty. Either our word means something solid or it is nothing, like the illusion of the oasis on the desert.

Mr. Anthony Harrigan, the executive vice presdent of the United States Industrial Council, which is headquartered in Nashville, Tenn., recently addressed the question of our China policy and its impact on our economic health. As is so often the case with the Harrigan column, the analysis in this instance is precise and prescient. Briefly, Harrigan contends that American aid in modernizing Red China's economy could lead to the creation of an economic gargantua of frightening proportions to those of us concerned about protecting Americans' jobs here at home.

Mr. Harrigan also addresses the moral aspects of this controversy and concludes that the balance sheet simply comes out in the red. I commend this excellent article to my colleagues and ask that it be printed in the RECORD following these remarks.

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

RED CHINA—"ECONOMIC GARGANTUA"

(By Anthony H. Harrigan)

In capitulating to Peking's demands on Taiwan, the Carter administration reduced both America's moral standing and the world's respect for America's ability to deal realistically with global problems.

The Peking regime is desperate for American approval and assistance. It was wholly unnecessary as well as wrong for the president to abandon the free Chinese on Taiwan and strengthen the totalitarian system on the Chinese mainland.

The act of "normalization of relations" (what a distorted phrase that is, as though it were normal international practice to recognize an expansion of tyranny) was only the beginning, however. One can be sure that giant efforts soon will be made to provide financial guarantees for those who want to do business with the Peking regime—guarantees established at the expense of American taxpayers.

Unfortunately, not a few American companies have been pushing hard for trade with the Chinese Communists, though this trade would be contrary to the interest of the United States. These companies ignore the sorry record of "trade" with communist countries. Communist countries always are delighted to engage in trade when free world nations and their private institutions offer credit.

Looking beyond the financial folly of such trade, however, it's important to bear in mind that the transfer of agricultural and indus-

trial know-how to China seriously damages U.S. national interests, no matter how the transfers are financed. A more powerful Communist China will be a threat to the United States.

V. H. Krulak, former president of the Copley Press, set forth the realities of playing the "China card" in the Fall number of the *Strategic Review*. He wrote:

"In practical terms this translates into our doing what the Chinese want us to do: provide them with economic support—foodstuffs and fertilizer; military support—weapons sales and technical advice; industrial technology and education."

Krulak said that with American help, Red China could become an economic colossus. "If we provide China with fertilizer plants, agricultural machinery, computers, machine tools, automated rolling mills, tire factories, ball bearing plants and precision instruments—if we provide her with the means to feed herself, along with the sinews of modern industry, and most particularly if we do it all on credit without great and certain return for ourselves—we will create an economic gargantua whose shadow will fall everywhere, with no palpable benefits to ourselves in return."

If the Chinese Communists propose to pay for goods received from the United States, it almost certainly will be in the form of textile exports. The American market already is flooded with textiles from other Asian countries.

It takes little imagination to comprehend the devastating effect Chinese imports would have on many industries in the United States. The United States already is paying a heavy penalty for providing Japan's industries with advanced equipment and know-how after World War II. The penalty is being paid in lost jobs and earnings. Hundreds of millions of Chinese, working without any limitation on hours or conditions of employment, could produce goods for a fraction of production costs in the United States.

Both economic and strategic factors underline the folly of providing Communist China with modern industrial equipment and know-how. Unfortunately, a large number of influential Americans, beginning with the Carter administration policy planners, are too shortsighted to discern the hurtful long-range effects of U.S.-China trade.●

LIBYA AND IDAHO

● Mr. McGOVERN. Mr. President, William Safire who describes himself as a "registered, rightwinger and unabashed hawk" in his column for the February 15 New York Times has written in praise of the new chairman of the Senate Foreign Relations Committee, FRANK CHURCH. Mr. Safire has done a great service in underscoring the dangers involved in attempts by foreign interests to involve themselves directly in the internal politics of this country. In this instance, the country is Libya and the politics are in Idaho. In Mr. Safire's account, real courage has been shown by Senator CHURCH in withstanding such political pressures. Mr. President, I believe this column entitled "Libya and Idaho" should receive the Senate's attention, and I ask that it be printed in the RECORD.

The column follows:

LIBYA AND IDAHO

(By William Safire)

WASHINGTON, February 14.—Muammar el-Qaddafi, radical Arab strongman of Libya, has a problem: Nearly five years ago, Libya bought eight C–130 troop-transport jets for $45 million from Lockheed Corporation. But the Nixon Administration, sensing the mischief that could be undertaken if the most pro-terrorist Arab state had a strike force to deliver paratroops, refused to grant an export license.

Today, those eight Libyan-owned C–130's sit mothballed in Marietta, Ga. Since Libya has become the most militant of the Arab "rejectionists," providing support for terrorists and seeking to engineer coups in Yemen, each succeeding Administration has refused to permit delivery of the jets.

A couple of years ago, Colonel Qaddafi set about trying to change American policy. The U.S. President comes from the state of Georgia, and the next chairman of the Senate Foreign Relations Committee, Frank Church, comes from Idaho. Colonel Qaddafi zeroed in on those two states.

The seduction of the President's brother, Billy Carter, to the Libyan cause in Georgia is well known, and is the subject of foreign-agent registration queries by the Justice Department. Not so well known is the Libyan campaign to win the hearts and minds of the voters of Idaho.

Through Ahmed James Araji, an Iraqui-born American professor at the University of Idaho, the Libyans arranged an invitation to visit Idaho to study the possible purchase of farm commodities. The Idaho Farm Bureau, entranced with the possibilities of dealing directly with an oil-rich foreign customer, helped set up appointments with local and state politicos.

Soon, delegations of Idaho farmers and businessmen were being entertained in Libya. Unfortunately, the kind of wheat that is grown in Idaho is not the kind that is eaten in Libya, but about $30 million in wheat deals were reportedly consummated that enabled Idahoans to be middlemen for Midwestern wheat.

Also invited to Libya was Republican Senator James McClure, an intelligent, soft-spoken conservative who is likely to become a far more effective spokesman for Arab causes than the recently retired James Abourezk. Another Idaho politician who met with Colonel Quaddafi was Representative Steven Symms, a Republican who intends to contest in 1980 the Senate seat held by Frank Church. Congressman Symms is frank to say of the Libyans that "the first question they ask everybody is how they're going to get their jets delivered."

Recently, when Billy Carter helped the Libyan emissary, Ahmed el-Shahati, play host at a Washington reception, the only Congressional staffer in view was a man working for Senator McClure; next day, the Libyan envoy lunched with the Idaho Senator.

During that week, Idaho Congressman Symms sought to have an off-the-record luncheon for members of the Agriculture Committee with Mr. Shahati; however, columnist Jack Anderson discovered the invitation that promised "no public exposure" to those who attended, and the attendant publicity cut the attendance.

Of course, the real target of Mr. Qaddafi is Senator Church, who the Libyans think could change Administration policy regarding the C–130 troop transports. The let's-get-friendly-with-the-Libyans message has been delivered by the Farm Bureau and Idaho businessmen, asking for Mr. Church's sponsorship of a "trade office"; Mr. Church replies that his approval is "irrelevant," since any country can open a trade office wherever it wishes.

Reporters Charley Blaine of The Idaho Statesman and Lonnie Rosenwald of The Twin Falls Times-News have been exposing the Libyan attempt to bring pressure to bear on Idaho's representatives in Washington. To my mind, it is an international rather than a local story.

Senator Church has withstood the pressure: "This C–130 sale was canceled by the State Department as contrary to our national security interests. This policy was begun under President Nixon and continued under Presidents Ford and Carter. I support it. Libya is not only hostile toward Israel but also toward Egypt and other moderate Arab governments. I see no reason to sell the Libyans any military equipment, including C–130 military transports."

That's a gutsy statement, especially in view of the way his probable Senate opponent is allowing himself to be used by the Libyans. Representative Symms tells me he, also, now opposes the arms sales, and fails to see how he is being manipulated: "There are no Libyan votes in Idaho." He is closing his eyes to the growing Libyan economic influence.

As a registered right-winger and unabashed hawk, I have often flayed Frank Church—including, ironically, for his unwillingness to use trade as a weapon. But when a dictator uses his money to get businessmen to exert influence on the chairman of Senate Foreign Relations to get the U.S. Government to cave in to arms demands—that is a blatant attempt to subvert American institutions, and conservatives from Washington to Boise should close ranks to resist.●

COORDINATION COUNCIL FOR NORTH AMERICAN AFFAIRS

● Mr. DOLE. Mr. President, on Thursday of last week, February 15, the Government of the Republic of China announced that it had reached agreement with our own Government on the manner in which it will continue to be represented in the United States. After March 1, the interests of the Republic of China and its citizens will be administered in this country by the "Coordination Council for North American Affairs," which will consist of an office in Washington, and eight branch offices in other major American cities.

Considering the adverse circumstances under which this agreement was negotiated, it seems to me that our friends from the Republic of China have salvaged the most they could from the present situation. Notified only 8 weeks ago that our Government would no longer maintain official relations with their government, the citizens of the Chinese Republic entered into discussions with our State Department officials—clearly in a weak bargaining position—and did their best to "mitigate damage" and to "protect the interests of the country and people," as President Chiang Ching-Kuo has stated.

It seems to this Senator that the final agreement announced on Thursday belies the charade which this administration has sought to foster regarding our future relations with Taiwan—the charade that those relations will be "unofficial" despite the fact that Federal funds sustain the new "American Institute in Taiwan," and that all of our existing government-to-government treaties and accords will remain intact, except for the mutual defense treaty.

The administration has acceded to the fact that our future bilateral relationship with Taiwan will have the "qualities of officiality," and few observers will be misled by evasive diplomatic jargon designed to pacify Peking's leadership.

For, in truth, if the administration insists on calling an "apple" an "orange," despite the fact that it looks, feels, and

tastes like an "apple," that does not make it any more an "orange" than an "apple." Those of us who recognized the inevitability of diplomatic relations with Peking, but who object to the shabby way in which the Republic of China has been treated by this administration, respect the manner in which the representation issue has been resolved. Yet, we will have no great difficulty in peering beyond the diplomatic sleight of hand performed by the State Department, and recognizing the realities of our continued relationship with our friends in Taipei.

Mr. President, I submit for the RECORD the text of the UPI news release relating to this action, and the text of the February 15 telegram to the Republic of China embassy concerning the announcement in Taipei.

The material follows:

SINOEMBASY,
Washington, D.C.

Dr. James Soong, Acting Director-General of Government Information Office, made the following announcement on February 15: Quote. In order to continuously safeguard the rights and interests as well as other related mutual benefits of the Peoples Republic of China and the United States of America, the Government of the Republic of China has decided, under the principle of equality and reciprocity, to establish the "Coordination Council for North American Affairs" and appointed Dr. Wei-ping Tsai, Mr. Chi-Ching Chen and Mr. George Y. L. Wu as council members with Dr. Tsai as the chairman of the council.

The council will be set up in Taipei and will have its office in the United States of America in Washington, D.C. with branches in New York, San Francisco, Chicago, Los Angeles, Honolulu, Seattle, Houston, and Atlanta. The council is charged with the responsibilities of handling and coordinating all related matters between the two countries.

All treaties and agreements as well as other executive arrangements in force between the Republic of China and the United States of America on January 1, 1979 will remain in full force. Unquote.

After his announcement, Dr. Soong, in reply to the press inquiry about the nature of the future relations between the Republic of China and the United States, stated that the future relationship between the two countries will have the qualities of officiality.

TAIWAN.

TAIPEI.—Taiwan said today it had agreed with the United States to establish a "coordination council" in nine American cities to replace its diplomatic mission, resolving the most difficult issue between the governments.

Government spokesman James Soong said the Nationalist Chinese mission in Washington will be called "The Coordination Council for North American Affairs" and will have branch offices in eight other cities.

Taiwan and the United States have been negotiating for two months—since President Carter announced his decision to recognize Peking—on the nature of ties between the two allies once diplomatic relations are severed March 1.

The name of Taiwan's mission to the United States and related details had been the major stumbling block to a new arrangement. The remaining details, centering on such topics as arms sales, are considered less troublesome.

Soong said in a statement that the council will be the "counterpart of the 'American Institute in Taiwan,' but the future relationship between the two countries will have the qualities of officiality."

Soong's statement was in direct contrast to statements repeatedly made by U.S. authorities that future Washington-Taipei relations will be on 'unofficial basis.'

Reports from Washington earlier indicated the U.S. Government had agreed not to dispute the Nationalist Chinese claim of officiality but neither will Washington confirm it.

According to previous agreement, the two organizations will take over the handling of trade, culture and other relations, including visas, on March 1 when diplomatic missions of both countries cease functioning in Taipei and Washington.

Soong said the eight branches of the coordination council will be in New York, San Francisco, Chicago, Los Angeles, Honolulu, Seattle, Houston and Atlanta.

Before the United States severed diplomatic relations with Taipei, the Nationalists had 14 consular offices in the United States. But Nationalist Government officials consider the eight branches they will have a 'victory' because they said Washington originally had agreed on only four branches.

The Nationalist Government announcement also said that "all treaties and agreements as well as other executive arrangements in force between the Republic of China (Taiwan) and the United States of America on Jan. 1, 1979, will remain in full force."

Soong conspicuously neglected mention of the Washington-Taipei mutual defense treaty, which the United States had said officially it will terminate at the end of 1979, the two countries earlier agreed that all other 58 treaties and agreements will remain in force despite the lack of official ties.

The announcement said Dr. Tsai Wei-ping, retired vice foreign minister, has been named chairman of the coordination council, Tsai is 67.

Government forces in Taipei said the bulk of the Nationalist Chinese diplomats now in the United States will remain to serve with the supposedly unofficial organization.

President Chiang Ching-kuo issued a message to his 17 million people on Taiwan to explain the decision his government had to make on the new setup.

"In the last two months, we have endured the heavy pain in our hearts in order to negotiate and talk with the United States amidst danger and concern," he said. "We wanted to do all we could to mitigate damage from the tragedy and protect the interest of the country and people."

Chiang also praised as "The Voice of Justice" criticisms voiced in the U.S. Congress of Carter's decision to recognize Peking at the sacrifice of Taiwan.

Washington reports earlier said the United States used several types of pressure—including what some pro-Taiwan sources call an ultimatum—to get the Nationalist Chinese Government to agree to unofficial future relations.

The sources said Taiwan's special envoy Vice Minister H. K. Yang reluctantly agreed to establishment of the unofficial Taiwan organization after the United States applied several forms of pressure.●

PROTECTING OLDER AMERICANS AGAINST OVERPAYMENT OF INCOME TAXES

● Mr. CHILES. Mr. President, in recent years the Senate Committee on Aging has published during the early part of each session of Congress a checklist of itemized deductions for individual taxpayers.

This publication is designed to protect older Americans, as well as younger Americans, from overpaying their Federal income tax.

Hearings conducted by the Committee on Aging have made it abundantly clear that many elderly persons needlessly overpay their taxes each year.

Large numbers are simply unaware of helpful deductions which can save them precious dollars.

Some are overwhelmed by the complexity of the tax law.

Others are confused by the tax forms and instructions.

The Internal Revenue Service has repeatedly emphasized over the years that it wants no individual to pay more income tax than legally due. Each person should be entitled to every deduction, credit, or exemption authorized by law.

The committee's checklist can provide an important safeguard for taxpayers who may not be completely current on recent changes in the Internal Revenue Code. Several important tax relief measures became law late last year, including:

A one-time, up to $100,000, exclusion from capital gains tax for persons 55 or older who sell their homes; and

A 15-percent credit on up to $2,000 in qualifying expenditures for energy conserving devices, such as insulation, weather-stripping, or storm windows.

These provisions can provide significant relief for older Americans, especially the capital gains exclusion.

The checklist though, can be valuable in other ways. Taxpayers, for example, may find it useful in determining whether it would be more advantageous to claim the standard deduction or itemize deductible expenses.

In addition, persons who have already filed a tax return may be helped by this summary—especially those who may have overlooked allowable deductions. These persons can file an amended return and receive a refund for items not initially claimed on their tax return. They may submit form 1040X within 3 years after the original return was due or filed, or 2 years after the tax was paid, whichever is later. In some cases, these persons may even receive interest on the refund.

Finally, the checklist can provide guidance for individuals in planning their personal affairs.

Mr. President, I commend this publication—entitled "Protecting Older Americans Against Overpayment of Income Taxes"—to my colleagues, and ask that it be printed in the RECORD.

The material follows:

PROTECTING OLDER AMERICANS AGAINST OVERPAYMENT OF INCOME TAXES

(A revised checklist of itemized deductions for taxable year 1978)

(Prepared by the staff of the Special Committee On Aging, U.S. Senate; Lawton Chiles, Florida, *Chairman*)

MEDICAL AND DENTAL EXPENSES

Medical and dental expenses (unreimbursed by insurance or otherwise) are deductible to the extent that they exceed 3% of your adjusted gross income (line 31, Form 1040).

INSURANCE PREMIUMS

One-half of medical, hospital or health insurance premiums are deductible (up to $150) without regard to the 3% limitation for other medical expenses. The remainder of these premiums can be deducted, but is subject to the 3% rule.

DRUGS AND MEDICINES

Included in medical expenses (subject to 3% rule) but only to extent exceeding 1% of adjusted gross income (line 31, Form 1040).

OTHER MEDICAL EXPENSES

Other allowable medical and dental expenses (subject to 3% limitation):

Abdominal supports (prescribed by a doctor).
Acupuncture services.
Ambulance hire.
Anesthetist.
Arch supports (prescribed by a doctor).
Artificial limbs and teeth.
Back Supports (prescribed by a doctor).
Braces.
Capital expenditures for medical purposes (e.g., elevator for persons with a heart ailment)—deductible to the extent that the cost of the capital expenditure exceeds the increase in value to your home because of the capital expenditure. You should have an independent appraisal made to reflect clearly the increase in value.
Cardiographs.
Chiropodist.
Chiropractor.
Christian Science practitioner, authorized.
Convalescent home (for medical treatment only).
Crutches.
Dental services (e.g., cleaning, X-ray, filling teeth).
Dentures.
Dermatologist.
Eyeglasses.
Food or beverages specially prescribed by a physician (for treatment of illness. and in addition to, not as substitute for, regular diet; physician's statement needed).
Gynecologist.
Hearing aids and batteries.
Home health services.
Hospital expenses.
Insulin treatment.
Invalid chair.
Lab tests.
Lipreading lessons (designed to overcome a handicap).
Neurologist.
Nursing services (for medical care, including nurse's board paid by you).
Occupational therapist.
Ophthalmologist.
Optician.
Optometrist.
Oral surgery.
Osteopath, licensed.
Pediatrician.
Physical examinations.
Physical therapist.
Physician.
Podiatrist.
Psychiatrist.
Psychoanalyst.
Psychologist.
Psychotherapy.
Radium therapy.
Sacroiliac belt (prescribed by a doctor).
Seeing-eye dog and maintenance.
Speech therapist.
Splints.
Supplementary medical insurance (Part B) under Medicare.
Surgeon.
Telephone/teletype special communications equipment for the deaf.
Transportation expenses for medical purposes (7¢ per mile plus parking and tolls or actual fares for taxi, buses, etc.).
Vaccines.
Vitamins prescribed by a doctor (but not taken as a food supplement or to preserve general health).
Wheelchairs.
Whirlpool baths for medical purposes.
X-rays.

Expenses may be deducted only in the year you paid them. If you charge medical expenses on your bank credit card, the expenses are deducted in the year the charge is made regardless of when the bank is repaid.

TAXES

Real estate.
State and local gasoline.
General sales.
State and local income.
Personal property.

If sales tax tables are used in arriving at your deduction, ordinarily you may add to the amount shown in the tax tables the sales tax paid on the purchase of the following items: automobiles, trucks, motorcycles, airplanes, boats, mobile homes, and materials used to build a new home when you are your own contractor.

When using the sales tax tables, add to your adjusted gross income any nontaxable income (e.g., Social Security, Veterans' pensions or compensation payments, Railroad Retirement annuities, workmen's compensation, untaxed portion of long-term capital gains, dividends untaxed under the dividend exclusion, interest on municipal bonds, unemployment compensation and public assistance payments).

CONTRIBUTIONS

In general, contributions may be deducted up to 50 percent of your adjusted gross income (line 31, Form 1040). However, contributions to certain private nonprofit foundations, veterans organizations, or fraternal societies are limited to 20 percent of adjusted gross income.

Cash contributions to qualified organizations for (1) religious, charitable, scientific, literary or educational purposes, (2) prevention of cruelty to children or animals, or (3) Federal, State or local governmental units (tuition for children attending parochial schools is not deductible).

Fair market value of property (e.g., clothing, books, equipment, furniture) for charitable purposes. (For gifts of appreciated property, special rules apply. Contact local IRS office.)

Travel expenses (actual or 7 cents per mile plus parking and tolls) for charitable purposes (may not deduct insurance or depreciation in either case).

Cost and upkeep of uniforms used in charitable activities (e.g., scoutmaster).

Purchase of goods or tickets from charitable organizations (excess of amount paid over the fair market value of the goods or services).

Out-of-pocket expenses (e.g., postage, stationery, phone calls) while rendering services for charitable organizations.

Care of unrelated student in your home under a written agreement with a qualifying organization (deduction is limited to $50 per month).

INTEREST

Home mortgage.
Auto loan.
Installment purchases (television, washer, dryer, etc.).

Bank credit card—can deduct the finance charge as interest if no part is for service charges, loan fees, credit investigation fees, or similar charges.

Other credit cards—you may deduct as interest the finance charges added to your monthly statement, expressed as an annual percentage rate, that are based on the unpaid monthly balance.

Points—deductible as interest by buyer where financing agreement provides that they are to be paid for use of lender's money and only if the charging of points is an established business practice in your area. Not deductible if points represent charges for services rendered by the lending institution (e.g., VA loan points are service charges and are not deductible as interest). Not deductible if paid by seller (are treated as selling expenses and represent a reduction of amount realized).

Penalty for prepayment of a mortgage—deductible as interest.

Revolving charge accounts—may deduct the separately stated "finance charge" expressed as an annual percentage rate.

CASUALTY OR THEFT LOSSES

Casualty (e.g., tornado, flood, storm, fire, auto accident provided not caused by a willful act or willful negligence) or theft losses—the amount of your casualty loss deduction is generally the lesser of (1) the decrease in fair market value of the property as a result of the casualty, or (2) your adjusted basis in the property. This amount must be further reduced by any insurance or other recovery, and, in the case of property held for personal use, by the $100 limitation. Report your casualty or theft loss on Schedule A. If more than one item was involved in a single casualty or theft, or if you had more than one casualty or theft during the year, you may use Form 4684 for computing your personal casualty loss.

MISCELLANEOUS

Appraisal fees to determine the amount of a casualty loss or to determine the fair market value of charitable contributions.
Union dues.
Cost of preparation of income tax return.
Cost of tools for employee (depreciated over the useful life of the tools).
Dues for Chamber of Commerce (if as a business expense).
Rental cost of a safe-deposit box used to store income-producing property.
Fees paid to investment counselors.
Subscriptions to business publications.
Telephone and postage in connection with investments.
Uniforms required for employment and not generally wearable off the job.
Maintenance of uniforms required for employment.
Special safety apparel (e.g., steel toe safety shoes or helmets worn by construction workers; special masks worn by welders).
Business entertainment expenses.
Business gift expenses not exceeding $25 per recipient.
Employment agency fees under certain circumstances.
Cost of a periodic physical examination if required by employer.
Cost of installation and maintenance of a telephone required by your employment (deduction based on business use).
Cost of bond if required for employment.
Expenses of an office in your home if used regularly and exclusively for certain business purposes.
Educational expenses that are: (1) required by your employer to maintain your position; or (2) for maintaining or sharpening your skills for your employment.

Political Campaign Contributions.—You may claim either a deduction (line 31, Schedule A, Form 1040) or a credit (line 38, Form 1040), for campaign contributions to an individual who is a candidate for nomination or election to any Federal, State, or local office in any primary, general, or special election. The deduction or credit is also applicable for any (1) committee supporting a candidate for Federal, State, or local elective public office, (2) national committee of a national political party, (3) State committee of a national political party, or (4) local committee of a national political party. The maximum deduction is $100 ($200 for couples filing jointly). The amount of the tax credit is one-half of the political contribution, with a $25 ceiling ($50 for couples filing jointly).

PRESIDENTIAL ELECTION CAMPAIGN FUND

Additionally, you may voluntarily earmark $1 of your taxes ($2 on joint returns) for the Presidential Election Campaign Fund.

ADDITIONAL INFORMATION

For any questions concerning any of these items, contact your local IRS office. You may also obtain helpful publications and additional forms by contacting your local IRS office.

Other tax relief measures

Filing status	Required to file a tax return if gross income is at least—
Single (under age 65)	$2,950
Single (age 65 or older)	3,700
Qualifying widow(er) under 65 with dependent child	3,950
Qualifying widow(er) 65 or older with dependent child	4,700
Married couple (both spouses under 65) filing jointly	4,700
Married couple (1 spouse 65 or older) filing jointly	5,450
Married couple (both spouses 65 or older) filing jointly	6,200
Married filing separately	750

Additional Exemption for Age.—Besides the regular $750 exemption, you are allowed an additional exemption of $750 if you are age 65 or older on the last day of the taxable year. If both a husband and wife are 65 or older on the last day of the taxable year, each is entitled to an additional exemption of $750 because of age. You are considered 65 on the day before your 65th birthday. Thus, if your 65th birthday is on January 1, 1979, you will be entitled to the additional $750 exemption because of age for your 1978 Federal income tax return.

"Zero Bracket Amount."—The "zero bracket amount" is a flat amount that depends on your filing status. It is not a separate deduction; instead, the equivalent amount is built into the tax tables and tax rate schedules. Since this amount is built into the tax tables and tax rate schedules, you will need to make an adjustment if you itemize deductions. However, itemizers will not experience any change in their tax liability and the tax computation will be simplified for many itemizers.

Tax Tables.—Tax tables have been developed to make it easier for you to find your tax if your income is under certain levels. Even if you itemize deductions, you may be able to use the tax tables to find your tax easier. In addition, you do not have to deduct $750 for each exemption or figure your general tax credit, because these amounts are also built into the tax table for you.

Multiple Support Agreements.—In general, a person may be claimed as a dependent of another taxpayer, provided five tests are met: (1) Support, (2) gross income, (3) member of household or relationship, (4) citizenship, and (5) separate return. But in some cases, two or more individuals provide support for an individual, and no one has contributed more than half the person's support. However, it still may be possible for one of the individuals to be entitled to a $750 dependency deduction if the following requirements are met for multiple support:

1. Two or more persons—any one of whom could claim the person as a dependent if it were not for the support test—together contribute more than half of the dependent's support.

2. Any one of those who individually contribute more than 10% of the mutual dependent's support, *but only one of them,* may claim the dependency deduction.

3. Each of the others must file a written statement that he will not claim the dependency deduction for that year. The statement must be filed with the income tax return of the person who claims the dependency deduction. Form 2120 (Multiple Support Declaration) may be used for this purpose.

Sale of Personal Residence.—You may exclude from your gross income some or all of your gain from the sale of your principal residence, if you meet certain age, ownership, and occupancy requirements at the time of the sale. These requirements, and the amount of gain that may be excluded, differ depending on whether you sold your home before July 27, 1978, or on or after that date. The exclusion is elective, and you may elect to exclude gain only once for sales before July 27, 1978, and only once for sales on or after that date.

If you sold your home before July 27, 1978, and you were age 65 or older before the date of sale, you may elect to exclude the gain attributable to $35,000 of the adjusted sales price if you owned and occupied the residence for 5 of the 8 years ending on the date of sale. If you sold the home after July 26, 1978, and you were age 55 or older before the date of sale, you may elect to exclude $100,000 of gain on the sale if you owned and occupied the residence for 3 of the 5 years ending on the date of sale (or 5 of 8 years under certain circumstances). Form 2119 (Sale or Exchange of Personal Residence) is helpful in determining what gain, if any, may be excluded.

Additionally, you may elect to defer reporting the gain on the sale of your personal residence if within 18 months before or 18 months after the sale you buy and occupy another residence, the cost of which equals or exceeds the adjusted sales price of the old residence. Additional time is allowed if (1) you construct the new residence; (2) you were on active duty in the U.S. Armed Forces; or (3) your tax home was abroad. Publication 523 (Tax Information on Selling or Purchasing Your Home) may also be helpful.

Credit for the Elderly.—You may be able to claim this credit and reduce taxes by as much as $375 (if single), or $562.50 (if married filing jointly), if you are:

(1) Age 65 or older, or

(2) Under age 65 and retired under a public retirement system.

For more information, see instructions for Schedules R and RP.

Credit for Child and Dependent Care Expenses.—Certain payments made for child and dependent care may be claimed as a credit against tax.

If you maintained a household that included your dependent child under age 15 or a dependent or spouse incapable of self-care, you may be allowed a 20 percent credit for employment related expenses. These expenses must have been paid during the taxable year in order to enable you to work either full or part time.

For detailed information, see the instructions on Form 2441.

Earned Income Credit.—If you maintain a household for a child who is under age 19, or is a student, or is a disabled dependent, you may be entitled to a special payment or credit of up to $400. This is called the earned income credit. It may come as a refund check or be applied against any taxes owned. Generally, if you reported earned income and had adjusted gross income (line 31, Form 1040) of less than $8,000, you may be able to claim the credit.

Earned income means wages, salaries, tips, other employee compensation, and net earnings from self-employment (generally amount shown on Schedule SE (Form 1040) line 13). A married couple must file a joint return to be eligible for the credit. Certain married persons living apart with a dependent child may also be eligible to claim the credit.

For more information, see instructions for Form 1040 or 1040A.

ENERGY TAX ACT

The Energy Tax Act of 1978 is directed at providing tax incentives for energy conservation measures and for conversion to renewable energy sources.

A credit of up to $300 may be claimed for expenditures for energy conservation property installed in or on your principal residence, whether you own or rent it. The residence must have been substantially completed by April 20, 1977. Items eligible for the credit are limited to the following: insulation (fiberglass, cellulose, etc.) for ceilings, walls, floors, roofs, water heaters, etc.; exterior storm (or thermal) windows or doors; caulking or weatherstripping for exterior windows or doors; a furnace replacement burner which reduces the amount of fuel used; a device to make flue openings (for a heating system) more efficient; an electrical or mechanical furnace ignition system which replaces a gas pilot light; an automatic energy-saving setback thermostat; and a meter which displays the cost of energy usage.

A maximum credit for renewable energy source property is $2,200. Equipment used in the production or distribution of heat or electricity from solar, geothermal, or wind energy sources for residential heating, cooling, or other purposes may qualify for this credit.

Energy credits may be claimed by completing Form 5695 and attaching it to your Form 1040. Credit for expenditures made after April 19, 1977, and before January 1, 1979, must be claimed on your 1978 tax return. Do not file an amended 1977 return to claim a credit for expenditure in 1977.

Examples of items which do not qualify for energy credit are the following: carpeting, drapes, wood paneling, exterior siding, heat pump, wood or peat fueled residential equipment, fluorescent replacement lighting system, hydrogen fueled residential equipment, equipment using wind energy for transportation, expenditures for a swimming pool used as an energy storage medium, and greenhouses.

For further information, consult the instructions for Form 5695 and IRS Publication 903, Energy Credit for Individuals.●

LITHUANIAN INDEPENDENCE DAY

● Mr. GLENN. Mr. President, recent events overseas have sensitized many Americans to the fragile state of the world and to yearnings for freedoms that we too often take for granted in this country.

Every February 16 Americans of Lithuanian ancestry and their millions of friends celebrate an occasion that reminds us that those freedoms are indeed precious. I am speaking of Lithuanian Independence Day, which notes the creation in 1918 of an independent Lithuania after more than a century of Czarist domination.

Last year it was my very great personal honor to address Cleveland's Lithuanian community on this important occasion. I wish all of my colleagues could have witnessed the outpouring of heartfelt respect for this country shown that afternoon in Cleveland. People who have suffered firsthand from the tyranny of oppression joined their sons and daughters to give thanks, first of all, to the United States, where they have used their abundant talents to carve out positions of respect and importance.

They also were sending a strong message, Mr. President, to those who would choose to ignore the many millions of Eastern Europeans whose ideal of liberty has been eclipsed by Soviet domination since World War II. There will be no forgetting these citizens behind the Iron Curtain, Mr. President, because the

people of this country share political, cultural, religious, and social ties with Eastern Europe that no force of arms and no passage of time have been able to eradicate.

I visited the Soviet Union last year and was astounded that Soviet leaders fail to appreciate the seriousness of American concern for the captive nations. Those leaders view nations like Lithuania, Hungary, Poland, Czechoslovakia, and Yugoslavia, as "buffer" states protecting the Soviet Union from European invasion. What the Soviet Union did at the end of World War II, these Russians say, is buy insurance that their country will not be brutalized again from the likes of Napoleon and Hitler.

Almost in the same breath, these high Soviet leaders could not understand why Americans speak about "a Soviet threat."

After hearing this several times at different stops on our visit, I felt I had to confront this rhetoric and I expressed quite specifically why I feel Americans see a Soviet threat to world peace. Very high on my list was the continued Soviet domination of Eastern Europe and the willful neglect of pacts such as Helsinki as they affect these nations' human rights. My message to the Kremlin was as direct as I knew how to be. I told the Russians that as a Senator from Ohio it is my privilege to represent hundreds of thousands of individuals whose families remain behind the Iron Curtain or who fled oppression, despite their love of homeland, for reasons that literally took on life-and-death dimensions.

And I told the Russian leaders that Americans cannot forget what happened, nor will time erode the impact. I and many other Americans attend prayer meetings and rallies where citizens by the thousands gather to remind our entire Nation that, even as we work to correct the social ills of America, our problems here are minor compared with those who in this century knew liberty but who now have oppression as their constant condition.

Lithuania stands as a shining example. Here is a Baltic State that was free more than 20 years and saw dramatic increases in freedom, education, and industry. Then Hitler and Stalin combined to devour this land, and during Stalin's regime more than 200,000 Lithuanians were exiled.

I am proud, Mr. President, that the Government of the United States has never legitimatized this brutality by acknowledging the Soviet action in seizing Lithuania. We continue to maintain diplomatic relations with representatives of the former Government in Washington.

Will Americans forget lands like Lithuania? I do not think so.

The surge of interest in ethnicity is no passing fancy, and anyone who resides in a State like Ohio knows that for a fact. Whether they be young or old, pride of homeland and pride in America dominate the actions of those whose heritage began abroad and who came to America because they knew firsthand what hatred and oppression mean.

The Soviet Union indulges in wistful thinking if its leaders dream that someday the sons and daughters, grandsons and granddaughters of these individuals will forget history—their own history—and say that freedom can never exist in Eastern Europe.●

BUILDINGS REBORN: NEW USES, OLD PLACES

● Mr. STAFFORD. Mr. President, the "Talk of the Town" section in the New Yorker magazine recently carried a most interesting article discussing the reuse or recycling of older buildings. This is precisely the type of activity the Congress sought to encourage when it enacted the Public Buildings Cooperative Use Act of 1976 (Public Law 94–541).

Because of the importance of this law and the evidence that many Federal bureaucrats have shown great disinterest in implementing the directives of the act, I ask that this article be printed in the RECORD.

The article follows:

NEW USES

It was too expensive to tear down the old torpedo factory on the Potomac in Alexandria, Virginia, because the walls were built to stay standing even if one of the torpedoes went off at the wrong time. What could be done with such a place? The building now provides studio space for a couple of hundred painters, printmakers, sculptors, photographers, jewellers, and stained-glass makers, and there's enough room left over for four galleries which display the work of twelve hundred artists a year. Three hundred and fifty thousand people flock to the old eyesore every year now to peer, appraise, poke around, and buy. Was there any point in saving six old Quaker Oats mill buildings and an adjacent small forest of one-hundred-and-two-foot-high grain silos built long ago in Akron, Ohio, by Ferdinand Schumacher, the oatmeal king? What could be done with such a place? Well, if some of the old equipment was sold off, and some other interesting-looking stuff—say, the conveyor-belt gears and the man belts that moved mill hands from one floor to another—was left in place, and if everything was polished and scrubbed, and the old floors were varnished, and you put in some stained-glass windows from some old buildings in town that were going to be torn down anyway, then, just maybe, a few lawyers or small businesses would like to lease space on the top floor, and a housewares store and an ice-cream parlor and a leather worker and a scarf seller and a cookie baker could open up on the ground floor, and a restaurant might set up in the basement, where Quaker Puffed Wheat and Quaker Puffed Rice used to be shot from guns. Done! Quaker Square now houses fifty businesses, including the world's largest model-train layout; four hundred locomotives pulling eleven hundred cars tootle over a mile of track, and there are real, life-size old dining cars on nearby sidings which can be rented for parties or conferences. Three and a half million people come to Quaker Square every year to shop and stroll; and, meanwhile, in nearby downdown Akron ninety per cent of the businesses that had closed their doors a few years ago when word got around that downtowns were a thing of the past have reopened, and an old bank that didn't reopen has become a jazz club. In Las Cruces, New Mexico, an old hotel that was once an adobe fortress, with walls three feet thick to keep out the Apaches, has become a bank. In Jersey City, an old bank has become an apartment house. In Mobile, Alabama, a general hospital has been turned into government offices, while in Brooklyn the old American Machine & Foundry Company buildings, on the waterfront near Bush Terminal, have been turned into the Lutheran Medical Center, a five-hundred-and-thirty-two-bed teaching hospital.

Two weeks ago, Phyllis Lambert, the woman who when she was just out of college persuaded her father to hire Mies van der Rohe to build the Seagram Building, came down to New York from Montreal, her native city, to talk to the chairman of our Landmarks Preservation Commission and the chairman of our Landmarks Conservancy and an official of our Municipal Art Society about getting started on her latest project, the preservation of old Montreal. The mayor of Kansas City called up the director of the Institute of Museum Services in Washington, a federal agency that gives museums money to help defray operating expenses, with a question: he wanted to turn his railroad station into a museum, but should he install an American Indian exhibit or a museum of science and technology? (Lee Kimche, the director, told him that she couldn't presume to say what Kansas City people would like but that museums of science and technology are now the fastest growing and most popular in the country.) And last week four hundred and twenty-five architects, city planners, bureaucrats, bankers, businessmen, newspapermen, builders, developers, curators, artists, and professors, along with a member of Congress and our mayor, gathered at the Museum of the City of New York for a picnic lunch and a day-long symposium called "Buildings Reborn: New Uses, Old Places" to talk about a phenomenon that has ignited interest so quickly around the country that it doesn't yet have a single name—some call it renovation, others rehabilitation, or remodelling, or recycling, or retrofitting, or environmental retrieval, or extended use, or the adaptive reuse of old buildings. As architect talked to banker over cold lemon chicken and ratatouille and apricot mousse, as planner and builder shared giant gingerbread cookies fashioned in the beautiful old shape of the soon to be adaptively reused former Police Headquarters on Centre Street, a common theme of the conversations was that a meeting like this one would have been unimaginable a few years ago, when only a handful of people wanted to save old buildings, when only a gnat's weight of people were thinking not just about saving buildings but about putting them to sensible uses.

Jay Solomon, the head of the General Services Administration, and thus the rental agent of the federal government, which manages some two hundred million square feet of floor space in two thousand federally owned and seven thousand federally leased buildings, told Lew Rudin, the New York builder, that it was now definite that twenty-five million dollars would be included in the G.S.A.'s budget request for 1981 to remodel the Cass Gilbert Beaux-Arts United States Custom House so that federal workers could move back into it. Lew Rudin pinned a golden apple pin on Mr. Solomon's lapel. "Here I am, helping save downtown," Jay Solomon said, "and I'm a man who used to make a living building suburban shopping centers."

"It makes sense to reuse wherever we can," Gerald Turetsky, the G.S.A. regional head, said, and, turning to Barbaralee Diamonstein, the symposium chairperson and the author of the just published book "Buildings Reborn," he added, "Because it takes us from six to ten years to build a new federal building."

"How did you get interested in preservation?" a bearded young mayoral advance man

asked Representative John Brademas, of Indiana, the majority whip, a Brasenose College, Oxford, graduate, and the keynote speaker of the day.

"Because it was drummed into me when I was little that there are things that need preserving," said Brademas. "My dad was from Greece and always told me I was an heir of Phidias and Praxiteles. And my mom's dad, a college history teacher and a school superintendent, had a library of five thousand history books in Swayzee, Indiana. In grade school, I read a book about the Mayas, and as a result I almost became an archeologist. When we obliterate the places of our past, we are insensitive to what we were and disdainful of what we still, in part, are."

And a young woman said, "This movement couldn't have happened at a better time. I keep thinking of swords and plowshares. We all know that the energy crisis is going to get worse, so why throw away the energy that went into building these old buildings in the first place? Making do—my grandmother used to talk about that. My boyfriend's an architect, and he says that taking someone else's building and scrunching it around to make it work another way is the most exciting problem in his business. The older architects in his firm don't agree—they still want to build their own buildings. My uncle says that we're in for a rollback of technology—that my grandchildren will ask me, 'What was airconditioning like, Grandma?' My uncle says, 'People always said New York would be nice if they finished building it. I'm going to live to see it finished.' And he says he'll be able to walk down the street without the dread that when he turns the corner some old friend of a building will be gone. But I look at it slightly differently. There's a building near me that has been turned from a sweatshop into studios. It's a handsome enough old building on the outside, and now it's been spruced up with a new coat of paint, and that's fine. But the change is on the inside. They gutted the building completely, and where it was dark and cramped it's light and open and polished and gleaming. Whenever I change something in myself—well, sometimes I get a new coat or a new dress, and people say how nice I look, but they don't necessarily see that inside I've gone on to something else and I'm no longer the person I was." ●

TIME IS RUNNING OUT ON SOUTH AFRICA

● Mr. McGOVERN. Mr. President, in the February 22, 1979, issue of the New York Times, there appeared a column by Tony Lewis entitled "I'm a South African." It deserves the attention of all of my colleagues. I had the opportunity to visit South Africa last December and had extensive meetings with a number of the white government officials as well as many of the black community leaders. The official South African Government policy of apartheid should make every American tremble with indignation. The fact that the Government sanctioned policy dictates that the color of people's skin should subject them to such injustice and degradation is a moral slap in the face to every decent citizen of the world's community. Tony Lewis puts it well—"The daily humiliation is beyond the imagination of a white American—or even a white South African."

Before I left South Africa, I met with a number of representatives from the press and made the following points. There are five essential steps that have to be taken by the South African Government. First, it must upgrade the quality of black education. Second, it must end the degrading passbook system, and repeal the influx control laws. Third, it must end the practices of detention without charge and banning without just cause. Fourth, it must extend the principle of free enterprise to blacks so that they have equal rights to own property and operate businesses as whites do. Fifth, they must extend full and equal political participation to all its citizens.

Time is running out on South Africa. Apartheid will not survive the end of this century. It will either be yielded peacefully by the white power structure, with steps such as these, or it will go out in a sea of blood as slavery did in the United States a century ago.

I ask that Tony Lewis' column be printed in the RECORD.

The column follows:

I'M A SOUTH AFRICAN

(By Anthony Lewis)

CAPE TOWN.—On the freeway to the airport an exit sign says Langa. Few visitors, and for that matter few residents of Cape Town, ever turn off here. For Langa is a "black township," one of the few places in the Cape where black Africans are officially allowed to live.

Down a dusty road in Langa you come to a brick building with a corrugated metal roof, about 20 feet by 60. Inside, the space is divided by what looks like chain-link fencing, with an aisle down the middle and little cubicles on each side. In each cubicle there are two double-decker beds.

Forty-eight men live in that building. They have a cold-water tap in the back, and a gas ring for cooking. Nearby is a washhouse, with toilets and cold showers. Each man can keep his possessions locked in a small wire cage that helps form the walls of the cubicles.

Why should people live in such a way? The all-male hostel, as it is called, is a commonplace here, an accompaniment of the official racial system.

It is South African Government policy to keep blacks out of the Cape Town area, reserving it for whites and the mixed-race "Cape Coloreds." In fact, economic reality frustrates that aim. Employers, including Government agencies, need black workers, and the blacks need jobs that are only available in "white" cities. But the law makes them sojourners on sufferance.

Black men who have lived and worked in Cape Town for as long as 20 years may not have a legal right to live here. The stamp in their passbooks defines them as contract laborers, theoretically resident in some distant "homeland." That means that they cannot lawfully have a family with them, and they are supposed to live in a hostel.

Langa has some family houses, tiny one-story boxes in rows. But there are nowhere near enough for the black families in the Cape Town area, and in any case many of them cannot get the right permit from the white administrators. The result is widespread illegality: men living lawlessly with their wives and children.

In another building in Langa I met a man named Edmund, a small, chipper character who said he had been in Cape Town for 25 years. His wife, a well-dressed, articulate woman of about 40, showed me where they live: in a cubicle eight feet square, with two beds in it. They use one bed, another couple the second.

The official barriers to normal family living are one reason for squatters' camps, where blacks build their own shacks of tin and cardboard. One of these, Crossroads, has become known around the world.

Studies of the 20,000 Crossroads residents show that in 80 to 90 percent of the households at least one person is employed. Most have worked in Cape Town for many years, and their pay is well above the poverty line. So they live in what outsiders see as pitiful shacks not because they are unable to pay for regular housing but because there is none where they can live with their families.

Langa is less dramatic than Crossroads, and few outsiders see it. (Because it is an official black township, whites are not supposed to enter it without a permit.) But Langa is more characteristic of the way back life is controlled in South Africa.

The point is that no black can live in any urban area of South Africa except on the terms set by the Government: the white Government. Beyond the fundamental interference with family life there is a network of regulations that affect not just the workers of Langa but the most eminent black lawyer or doctor or writer.

I spent an evening with a distinguished professional couple. When they left, they remarked drily that it was late and that the police would probably stop them on the way into their black township. Last time they were made to stand with their hands on the roof of their car, and were searched at gunpoint.

The daily humiliation is beyond the imagination of a white American—or even a white South African. The surprising thing in South Africa is that blacks have borne it so patiently. But the patience is wearing thin. There is a new edge evident in the talk of black people, as I learned when I attempted to question Edmund, the man I met in Langa.

Q. Do you have a right to be here?

A. A right? What rights does any of us have?

Q. Do you carry a passbook?

A. Why should I carry a passport in my own country? I'm a South African, man.

Q. What about permission to live in Langa?

A. Who are you, then? How do I know who you are?

Q. Can't you tell by my accent that I'm American?

A. You can go to America for a few months and have an accent.

Q. Where are you from?

A. I'm a bloody South African, I tell you. ●

MERITS OF MERIT SELECTION

● Mr. HATCH. Mr. President, the concept of merit selection of our Federal judiciary is a noble one, and one that I strongly support. At the same time, however, I recognize that it is not as clearcut a concept as some would have us believe. Merit selection does not mean the same thing to everyone. As was made clear during the first day of hearings by the full Judiciary Committee, merit selection, to some, simply represents a means by which to appoint more representatives of various minority groups to the Federal bench. While I recognize the need to insure some measure of balance and diversity among our Federal judges, I am not entirely sure that this objective ought to be confused with pure merit selection. If there are other values than pure merit selection that should be pursued with respect to the Federal judiciary, they should be made explicit, rather than through a torturous interpretation of merit selection.

A perceptive article on this matter re-

cently appeared in the Wall Street Journal. I ask that it be printed in the RECORD following these remarks.

The article follows:

[From the Wall Street Journal, Jan. 31, 1979]

"MERIT" SYSTEM FOR PICKING JUDGES

(By David Ignatius)

WASHINGTON.—President Carter's effort to replace politics with "merit" in judicial appointments may not be as meritorious an idea as it sounds.

Mr. Carter, in the classic tradition of "good-government" reform, has been urging Senators to use commissions to select candidates for 117 newly created federal district court judgeships. The commissions, it's hoped, will pay more attention to "merit" than do Senators under the existing system of patronage appointments.

Ideally, the merit approach is supposed to work like this: Lawyers seeking judgeships submit their names to statewide screening panels, much as if they were applying to law schools. The commission members review the applications, interview the candidates, make some phone calls, and then, after due deliberation, submit to the President the names of the five most meritorious candidates.

From those names, the President nominates his choices. If any dubious nominees somehow slip through the net, the American Bar Association is expected to blast them during confirmation hearings.

It's a tidy little system, and it has its virtues. Most important, it will probably check the appointment of truly bad judges, like the notorious, now-deceased Judge Willis Ritter of Utah, who is said to have threatened once to jail the operators of a noisy courthouse elevator. Like any bureaucratic system, the merit panels will tend to screen out such eccentric troublesome characters.

But in addition to raising the floor under judicial appointments, the merit approach may also lower the ceiling—and inhibit the appointment of truly outstanding judges. That's because some of the best potential judges may be too modest or too busy to apply to the commissions in the first place and others may be too political or controversial to be selected.

SOME CASE HISTORIES

If you doubt that the merit approach might have such unfortunate effects, consider the case histories of some prominent judges, who were appointed under the old "political" system that Mr. Carter seems to dislike. In the dawning merit era, these judges might never have made it to the bench:

Judge John Minor Wisdom, for example, knows perfectly well why he was named an appeals court judge by President Eisenhower in 1957. At the Republican convention in 1952, he had delivered the Louisiana delegation for Ike. Judge Wisdom's appellate opinions helped usher in a new era of race relations in the South, but they were the product of an eminently political man.

Judge Robert Merhige wouldn't have gotten near a merit commission. Prior to becoming a federal district judge in Richmond in 1967, he was making a good living in private practice, and as he says, "why go looking for a cut in pay." But as president of the Richmond bar and as co-chairman of Virginians for Johnson in the 1964 campaign, he had won the respect of prominent Virginia lawyers, who pressed him to go on the bench. Since then, he has been widely praised for his handling of some 43 school desegregation cases and other complex litigation.

Judge Marvin Frankel isn't sure whether he would have applied to a merit commission. He was teaching law at Columbia in 1965 when Sen. Robert Kennedy inquired whether he would be interested in becoming a judge. Before retiring from the bench last year, Judge Frankel ably handled many complex cases, including the big antitrust suit by Berkey Photo Inc. against Eastman Kodak Co. "Don't put civil-service blinders on," Judge Frankel advises judicial nominating panels. Although he supports the merit approach in principle, Judge Frankel worries that it may deter would-be judges from getting involved in politics.

Attorney General Griffin Bell has supported the President's merit efforts and has been lobbying Senators to create commissions in their states. But Mr. Bell stresses that candidates shouldn't be rejected simply because they have been involved in politics. Mr. Bell ought to know: He was named an appeals court judge in 1961 by President Kennedy after serving as Mr. Kennedy's campaign manager in Georgia in the 1960 election.

Mr. Bell (or "Judge" Bell, as he likes to be called) notes that some of the nation's most distinguished jurists have been political men. They include William Howard Taft, who served as President before he became Chief Justice; Charles Evans Hughes, who ran for President before he was named Chief Justice; and Earl Warren, who was governor of California before he became Chief Justice.

But for all Judge Bell's kind words about political judges, the underlying premise of the merit-commission approach is that politics should be kept out of the judicial nominating process as much as possible. And while that may keep some political hacks off the bench, it's likely to lead to the appointment of some unobjectionable, uninspired attorneys who have a taste for self-promotion.

Senators don't have to use merit commissions, and some have insisted on keeping the power to propose district judges themselves. One such Senator, Adlai Stevenson, maintains that selection by commissions "doesn't guarantee better results." In fact, the Illinois Democrat argues, the process may "produce a high level of mediocrity."

There are more mundane problems with the merit system as it has been structured. The most obvious is that Senators appoint the commissions. Thus, Senators who would make bad nominations can fill commissions with cronies who will also make bad nominations.

What's more, it is likely that Senators will still have considerable power to block judicial nominations in their home states, despite changes in the Senate's "blue slip" veto procedure proposed last week by Sen. Edward Kennedy, the new chairman of the Senate Judiciary Committee. And even the limited changes proposed by Sen. Kennedy have been criticized by some Judiciary Committee members, who want to retain absolute veto power.

Some of the loudest proponents of merit selection see it as a way of appointing more minorities and women to the bench. This is surely a worthy goal, but it's also a political one. The National Women's Political Caucus says it's "very troubled" that only five women have been included in more than 70 nominees sent to the Justice Department so far. "We urge the President to go back to the Senators and insist that they recommend more women and minority candidates," the group says.

Minority politics can introduce some unusual issues in the selection of new judges, as is suggested by the case of Janie Shores, a former law professor and currently an associate justice of the Alabama Supreme Court. Mrs. Shores applied last year to a commission for a federal appeals court slot in Alabama. She wasn't among the five nominees, and her supporters believe that she lost out because women members of the commission doubted her feminist credentials.

Francena Thomas, who is a member of the nominating commission that considered Mrs. Shores's application, says that when she interviews female candidates, she is "intensely interested in the women's perceptions of the women's movement," and in other "philosophical" issues, such as abortion. Mrs. Thomas is director of the office of minority affairs and women's concerns at Florida International University.

The new system, Mrs. Shores observes, "can be just as political as the old system."

MR. ADAMSON'S VIEW

Terrence Adamson, a special assistant to Attorney General Bell, concedes that there may be "potential problems" with some aspects of the commission approach. But he argues that whatever its faults, the new system is "light years away" from the backroom flavor of the old patronage policy. Mr. Adamson expects that commissions will be used to fill at least 75 of the new judgeships created last year by Congress, and all of the 35 new appeals court positions.

It's possible that the merit system will indeed produce some good, apolitical judges who never would have been appointed under the old system. But the most likely result is that, for the most part, the new system will produce safe candidates and few surprises. At least, that's the impression that emerges from a study published last November by Sheldon Goldman, a professor of political science at the University of Massachusetts.

Mr. Goldman analyzed Mr. Carter's nominees for appeals court judgeships, which have all been screened by commissions under an Executive Order signed by Mr. Carter in early 1977. He found that Mr. Carter's appellate nominees have included more Protestants, more graduates of Ivy League colleges, more attorneys from large firms and also more blacks than those of President Ford.

In Mr. Goldman's view, the creation of so many new judgeships at one time gives President Carter this year "a rare opportunity to fundamentally reshape the third branch of government." The bureaucratic details of the nominating process shouldn't obscure what ought to be Mr. Carter's real goal: picking the best judges.●

TRIBUTE TO NELSON ROCKEFELLER

● Mr. BUMPERS. Mr. President, Nelson Rockefeller's death was a great loss to the Nation. His remarkable record of public achievement will be a lasting memorial that will not be equaled by many public figures in our lifetime.

A recent editorial in the New York Times pointed out that—

Rockefeller stood for enlightened internationalism against recurrent waves of jingoism and for liberal capitalism against a persistent undertow of reaction.

In espousing these principles, he displayed a great deal of courage.

His inherited wealth would have made it easy for him to shrink from public service, but he enthusiastically accepted difficult assignments for the good of the Nation. An example of this was his unselfish leadership following the Watergate crisis. His presence in the administration added stability and confidence to the institution of the Presidency.

I join my colleagues in extending my deepest sympathy to his family.

Mr. President, I ask that the text of

the January 28 editorial from the New York Times be printed in the RECORD.

The editorial follows:

THE ROCKEFELLER GIFT

Nelson Rockefeller was born, of course, to every conceivable advantage and made the most of it through years of political and personal trial. For those so blessed with wealth and influence, he set an extraordinary standard of concern and effort in the service of the country, New York State and his family, always promoting the nation's economic and military strength and fostering public as well as private support for the arts, education, science and health. He stood for enlightened internationalism against recurrent waves of jingoism and for liberal capitalism against a persistent undertow of reaction.

In time, this farsighted man well understood that events were conspiring to make him choose between principle and the Presidency for which he pined. He tried periodically to play the hard-hearted scourge of criminals and other easy targets, but he lacked the hypocrisy he would have needed to pay his party's price for nomination. For a critical decade, he was the Republicans' real alternative to Richard Nxion and he went down defiantly, serene in his choice of values.

More than monuments and museums, therefore, mark Nelson Rockefeller's passage in our politics. With remarkable good cheer he gave himself, and not merely his money, to the demands of public life and ambition. Repeatedly, he subjected his views and deeds, including his most private financial and family affairs, to the rough judgment of the voters. Because he bore the name Rockefeller, this made him a truly historic figure in the pageant of American democracy.●

THE REGULATORY REFORM ACT OF 1979—S. 445

● Mr. TOWER. Mr. President, I am pleased to join the distinguished Senator from Illinois (Mr. PERCY) as a cosponsor of the Regulatory Reform Act of 1979 to provide for a more effective mechanism for congressional oversight of regulatory agencies.

The bill provides that over a period of 8 years, the President would submit to Congress comprehensive plans for reforming regulation in specified areas. If the President fails to submit a plan in a timely fashion, then the appropriate committee would report its own plan. Should Congress fail to pass comprehensive reform legislation according to schedule, the affected agencies would lose their authority to make new regulations and finally go out of existence. An important and innovative aspect of this legislation is the "sunset" feature, which would force Congress to take affirmative action to maintain the existence of an agency. This provision would assure that both the President and Congress face up to their responsibility to review the need for the continuation or improvement of a regulatory program.

The crux of the problem is that there has been a rapid growth in Federal programs which escape any systematic and thorough congressional oversight. Too often, the programs and agencies are created with permanent authorizations. Seldom are there termination dates attached to a program. Even where there are annual authorization requirements, the review practically never results in the elimination of an agency or a program.

Mr. President, I urge that this body give careful attention to this new and innovative approach to congressional oversight. ●

LITHUANIAN INDEPENDENCE DAY

● Mr. ZORINSKY. Mr. President, Lithuanian Independence Day, February 16, passed last week while the Senate was not in session. I have made it a practice in the past to mark that occasion with a statement on this floor. My message is no less relevant this week than it would have been if delivered earlier.

Lithuania today is a colony in a vast Russian empire. She saw a period of freedom, and economic and industrial expansion between this century's world wars. During that time, she was given the Russians' "sacred word of honor," in a peace treaty and nonaggression pact, that they would respect her neutrality and independence.

Free Lithuania's economic and political achievements were impressive. The four Baltic countries, Lithuania, Latvia, Estonia, and Finland, were so active in world commerce that by 1938, their combined volume of trade was significantly greater than that of the Soviet Union, a country with 18 times as many people. Living standards were far higher in Lithuania, and remain better today.

Politically, the country greatly liberalized its system of government. Political parties representing diverse interests were given representation in the cabinet.

In June 1940, Soviet soldiers marched in, forced a coalition government to resign, and installed a regime of their own choosing.

The Soviet Union was the only great power to make territorial gains during World War II. While our European allies were freeing hundreds of millions of colonial subjects around the globe, the Russians were busy consolidating their gains and slapping their new satellites rigidly into line.

Americans have never recognized Soviet Russia's annexation of Lithuania. Our policy was best stated by Sumner Welles on July 23, 1940.

Mr. Welles said:

The policy of this government is universally known. The people of the United States are opposed to predatory activities no matter whether they are carried on by the use of force or by the threat of force.

Nor can we watch without protest when powerful states intervene in the domestic affairs of their less powerful neighbors, he added:

The United States will continue to stand by these principles because of the conviction of the American people that, unless the doctrine in which these principles are inherent once again governs the relations between nations, the rule of reason, of justice, and of law, in other words the basis of modern civilization itself, cannot be preserved.

Journalist Robert Kaiser reported in his book "Russia: The People and the Power" that there have been unconfirmed but credible reports of riots in recent years in Soviet cities:

Some of the most violent occurred in Lithuania, where local nationalists protested against Soviet rule and Russian domination.

Let us not forget, on this 61st anniversary of modern Lithuania, our commitment to these peoples' freedom.●

LITHUANIAN INDEPENDENCE DAY

● Mr. LUGAR. Mr. President, each year on July 4, all Americans pause to celebrate our Nation's independence and to give thanks for two centuries of freedom. Every February, many of our fellow Americans commemorate another declaration of independence, that of their homeland Lithuania.

The people of Lithuania declared their independence from the Russian Czar on February 16, 1918, and established a democratic government free from foreign domination. But independence was not to last. In 1940, the Soviet Union occupied Lithuania, and a generation has come of age without ever knowing a free Lithuania. As Lithuanians gather all over the world to celebrate their heritage, they have a special message for all of us who have grown accustomed to the precious blessing of freedom.

Decades of russification have failed to break the spirit of the Baltic peoples, and their brothers and sisters in America have been unflagging in their efforts to maintain a national identity and to keep hope alive. The United States has refused to recognize the Soviet Union's occupation of the Baltic nations: Estonia, Latvia, and Lithuania. Our Nation must follow the example of Lithuanian Americans, remaining steadfast in refusing to condone this blatant violation of human rights.

I salute the determination and tenacity of the Lithuanian nation, and I call upon Americans to join in celebrating their independent spirit, as they pursue the dream of making that independence once again a political reality.●

ASSISTANCE FOR SMALL AND DISADVANTAGED BUSINESSES

● Mr. NELSON. Mr. President, the Senate Select Committee on Small Business is continuing to explore ways to increase assistance for small and disadvantaged businesses. Last year, the committee reported, and the Congress approved several significant recommendations to improve the Federal Government's ability to deliver effective and efficient service to the small business community at the least cost. Unfortunately, that legislation was vetoed. The committee is again reviewing those proposals.

In this regard, the Economic Development Subcommittee of the U.S. Conference of Mayors, under the excellent leadership of the mayor of the city of St. Paul, Mayor George Latimer, approved a policy issue to be presented to the parent Community Development, Housing and Economic Development Committee's annual meeting in June. I ask that the subcommittee's policy issue be printed in the RECORD.

The material follows:

ASSISTANCE FOR SMALL AND DISADVANTAGED BUSINESSES

The Conference of Mayors strongly supports the development of small and minority businesses, particularly in disadvantaged areas. Small businesses are labor intensive

and account for the majority of central city employment. The USCM has already adopted policy in support of the SBA and a minority business program. The Administration, in its plans for a White House Conference on Small Business and through the new law broadening federal procurement from and assistance to disadvantaged businesses has already begun to show increased interest in this area.

The mayors urge the President and the Congress to continue and expand programs available throughout the federal government for assisting small and disadvantaged businessmen and women. In HUD, SBA, the Department of Commerce and elsewhere, a wide array of services exist, including loans, loan guarantees, management and technical assistance to small and disadvantaged businesses. These programs should be perpetuated and should be directed to areas so that they complement local development strategies and they should be closely linked to other local economic and business development policies and programs.

The federal government should expand its efforts to coordinate the various kinds of assistance available to small and disadvantaged businesses. SBA, HUD and EDA are already working to bring together their small and disadvantaged business assistance in cities on a demonstration basis, and this kind of coordination should be expanded to include other agencies, other cities and other kinds of assistance such as procurement by governments at all levels. Furthermore, the Conference urges the Administration to recognize and support current local efforts to coordinate federal, state and local policies and programs for small and disadvantaged business development.

The subcommittee recommends that the support of the USCM be made known to the various agencies and to the Congress through a policy to be developed and presented at the Annual Meeting in June 1979.●

COLAUTTI AGAINST FRANKLIN

● Mr. HATCH. Mr. President, in the infamous case of *Roe* v. *Wade*, 410 U.S. 113 (1973), the U.S. Supreme Court, in limiting the authority of the States to regulate the performance of abortions, recognized nevertheless that at the point of "viability" the State interest in protecting the unborn fetus became sufficiently compelling to permit it to proscribe abortions "except when necessary to preserve the life or health of the mother." The term "viability" was defined a that stage at which a fetus was "potentially able to live outside the mother's womb, albeit with artificial aid."

In response to this, the State of Pennsylvania approved a statute reguiring individuals performing abortions to make determinations "based on his experience, judgement, or professional competence" of the viability of the fetus. If the determination is made that the fetus "is viable" or "if there is sufficient reason to believe that the fetus may be viable," then the abortionist is required to exercise that degree of care that would have been necessary had the fetus been intended to have been born alive.

On January 9 of this year, the Supreme Court, in its wisdom, struck down this statute as "void for vagueness." It seems that the burden of having to determine viability is an "ambiguous" one, imposing potential criminal liability upon an abortionist under circumstances where such a decision is "impossible to make with any certainty." A dissent to this remarkable decision was issued by Justices White and Rehnquist, and by Chief Justice Berger. They note that the decision

withdraws from the States a substantial measure of the power to protect fetal life that was reserved to them [in *Roe* v. *Wade*].

That the distinction carved out by the Pennsylvania statute between life, and the absence of life, has become a "vague" and "ambiguous" distinction is a measure of just how far the Supreme Court has read into the Constitution principles and values at odds with the majority of Americans. While the distinction may be too subtle for a majority of the Court, I am confident that it is one with which the average abortionist can reasonably conform.

The entire Supreme Court decision, *Colautti* v. *Franklin* (No. 77-891), follows. The majority opinion is a compelling argument why, more urgently than ever, a human life amendment is needed in our Constitution.

I ask that it be printed in the RECORD following these remarks.

The material follows:

Supreme Court of the United States

Syllabus

COLAUTTI, SECRETARY OF WELFARE OF PENNSYLVANIA, ET AL. v. FRANKLIN ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 77-891. Argued October 3, 1978—Decided January 9, 1979

Section 5(a) of the Pennsylvania Abortion Control Act requires every person who performs an abortion to make a determination, "based on his experience, judgment or professional competence," that the fetus is not viable. If such person determines that the fetus "is viable," or "if there is sufficient reason to believe that the fetus may be viable," then he must exercise the same care to preserve the fetus' life and health as would be required in the case of a fetus intended to be born alive, and must use the abortion technique providing the best opportunity for the fetus to be aborted alive, so long as a different technique is not necessary to preserve the mother's life or health. The Act, in § 5(d), also imposes a penal sanction for a violation of § 5(a). Appellees brought suit claiming, *inter alia*, that § 5(a) is unconstitutionally vague, and a three-judge District Court upheld their claim. *Held:*

1. The viability determination requirement of § 5(a) is void for vagueness. Pp. 11–17.

(a) Though apparently the determination of whether the fetus "is viable" is to rest upon the basis of the attending physician's "experience, judgment or professional competence," it is ambiguous whether that subjective language applies to the second condition that activates the duty of the fetus, *viz.*, "sufficient reason to believe that the fetus may be viable." Pp. 11–12.

(b) The intended distinction between "is viable" and "may be viable" is elusive. Apparently those phrases refer to distinct conditions, one of which indeterminately differs from the definition of viability set forth in *Roe* v. *Wade*, 410 U.S. 113, and *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52. Pp. 12–14.

(c) The vagueness of the viability determination requirement is compounded by the fact that § 5 (d) subjects the physician to potential criminal liability without regard to fault. Because of the absence of a scienter requirement in the provision directing the physician to determine whether the fetus is or may be viable, the Act is little more than "a trap for those who act in good faith," *United States* v. *Ragen*, 314 U. S. 513, 524, and the perils of strict criminal liability are particularly acute here because of the uncertainty of the viability determination itself. Pp. 14–17.

2. The standard-of-care provision is likewise impermissibly vague. It is uncertain whether the statute permits the physician to consider his duty to the patient to be paramount to his duty to the fetus, or whether it requires the physician to make a "trade-off" between the patient's health and increased chances of fetal survival. Where conflicting duties of such magnitude are involved, there must be greater statutory precision before a physician may be subjected to possible criminal sanctions. Pp. 17–21. —— F. Supp. ——, affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which BRENNAN, STEWART, MARSHALL, POWELL, and STEVENS, JJ., joined. WHITE, J., filed a dissenting opinion, in which BURGER, C. J., and REHNQUIST, J., joined.

[Supreme Court of the United States
No. 77-891]

ALDO COLAUTTI, SECRETARY OF WELFARE OF PENNSYLVANIA, ET AL., PETITIONERS, v. JOHN FRANKLIN, ET AL.

(On Appeal from the United States District Court for the Eastern District of Pennsylvania [January 9, 1979]

Mr. JUSTICE BLACKMUN delivered the opinion of the Court.

At issue here is the constitutionality of subsection (a) of § 5[1] of the Pennsylvania Abortion Control Act, Act. No. 209 of 1974, Pa. Stat. Ann., Tit. 35, § 6605 (a) (Purdon). This statute subjects a physician who performs an abortion to potential criminal liability if he fails to utilize a statutorily prescribed technique when the fetus "is viable" or when there is "sufficient reason to believe that the fetus may be viable." A three-judge Federal District Court[2] declared § 5(a) unconstitutionally vague and overbroad and enjoined its enforcement. App. 239a–244a. Pursuant to 28 U.S.C. § 1253, we noted probable jurisdiction. 435 U.S. 913 (1978).

I

The Abortion Control Act was passed by the Pennsylvania Legislature, over the governor's veto, in the year following this Court's decision in *Roe* v. *Wade*, 410 U.S. 113 (1973), and *Doe* v. *Bolton*, 410 U.S. 179 (1973). It was a comprehensive statute.

Section 1 gave the Act its title. Section 2 defined, among other terms, "informed consent" and "viable." The latter was specified to mean "the capability of a fetus to live outside the mother's womb albeit with artificial aid." See *Roe* v. *Wade*, 410 U.S., at 160.

Section 3 (a) proscribed the performance of an abortion "upon any person in the absence of informed consent thereto by such person." Section 3(b)(i) prohibited the performance of an abortion in the absence of the written consent of the woman's spouse, provided that the spouse could be located and notified, and the abortion was not certified by a licensed physician "to be necessary in order to preserve the life or health of the mother." Section 3(b)(ii), applicable if the woman was unmarried and under the age of 18, forbade the performance of an abortion in the absence of the written consent of "one parent or person in loco parentis" of the woman, unless the abortion was certified by a licensed physician "as necessary in order to preserve the life of the mother." Section 3(e) provided that whoever performed an abortion without such consent was guilty of a misdemeanor of the first degree.

Section 4 provided that whoever, intentionally and willfully, took the life of a premature infant aborted alive, was guilty of murder of the second degree. Section 5(a), set forth in n. 1, *supra*, provided that if the

Footnotes at end of article.

fetus was determined to be viable, or if there was sufficient reason to believe that the fetus may be viable, the person performing the abortion was required to exercise the same care to preserve the life and health of the fetus as would be required in the case of a fetus intended to be born alive, and was required to adopt the abortion technique providing the best opportunity for the fetus to be aborted alive, so long as a different technique was not necessary in order to preserve the life or health of the mother. Section 5(d), also set forth in n. 1, imposed a penal sanction for a violation of § 5 (a).

Section 6 specified abortion controls. It prohibited abortion during the stage of pregnancy subsequent to viability, except where necessary, in the judgment of a licensed physician, to preserve the life or health of the mother. No abortion was to be performed except by a licensed physician and in an approved facility. It required that appropriate records be kept, and that quarterly reports be filed with the Commonwealth's Department of Health. And it prohibited solicitation or advertising with respect to abortions. A violation of § 6 was a misdemeanor of the first or third degrees, as specified.

Section 7 prohibited the use of public funds for an abortion in the absence of a certificate of a physician stating that the abortion was necessary in order to preserve the life or health of the mother. Finally, § 8 authorized the Department of Health to make rules and regulations with respect to performance of abortions and the facilities in which abortions were performed. See Pa. Stat. Ann., Tit. 35, §§ 6601–6608 (Purdon 1977).

Prior to the Act's effective date, October 10, 1974, the present suit was filed in the United States District Court for the Eastern District of Pennsylvania challenging, on federal constitutional grounds, nearly all of the Act's provisions.[3] The three-judge court on October 10 issued a preliminary injunction restraining the enforcement of a number of those provisions.[4] Each side sought a class-action determination; the plaintiffs', but not the defendants', motion to this effect was granted.[5]

The case went to trial in January 1975. The court received extensive testimony from expert witnesses on all aspects of abortion procedures. The resulting judgment declared the Act to be severable, upheld certain of its provisions, and held other provisions unconstitutional. *Planned Parenthood Assn.* v. *Fitzpatrick*, 401 F. Supp. 554 (ED Pa. 1975).[6] The court sustained the definition of "informed consent" in § 2; the facility approval requirement and certain of the reporting requirements of § 6; § 8's authorization of rules and regulations; and, by a divided vote, the informed consent requirement of § 3(a). It overturned § 3(b)(1)'s spousal consent requirement and, again by a divided vote, § 3(b)(ii)'s parental consent requirement; § 6's reporting requirements relating to spousal and parental consent; § 6's prohibition of advertising; and § 7's restriction on abortion funding. The definition of 'viable" in § 2 was declared void for vagueness and, because of the incorporation of this definition, § 6's proscription of abortions after viability, except to preserve the life or health of the woman, was struck down. Finally, in part because of the incorporation of the definition of "viable," and in part because of the perceived overbreadth of the phrase "may be viable," the court invalidated the viability determination and standard of care provisions of § 5(a), 401 F. Supp. at 594.

Both sides appealed to this Court. While the appeals were pending, the Court decided *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U.S. 748 (1976); *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976); and *Singleton* v. *Wulff*, 428 U.S. 106 (1976). *Virginia State Board* shed light on the prohibition of advertising for abortion services. *Planned Parenthood* had direct bearing on the patient spousal, and parental consent issues and was instructive on the definition of viability issue. *Singleton* concerned the issue of standing to challenge abortion regulations. Accordingly, that portion of the three-judge court's judgment which was the subject of the plaintiff's appeal was summarily affirmed. No. 75–772, 428 U.S. 901 (1976). And that portion of the judgment which was the subject of the defendants' appeal was vacated and remanded for further consideration in the light of *Planned Parenthood, Singleton*, and *Virginia State Board*. No. 75–709, 428 U.S. 901 (1976).

On remand, the parties entered into a stipulation which disposed of all issues except the constitutionality of §§ 5(a) and 7. Relying on this Court's supervening decisions in *Beal* v. *Doe*, 432 U.S. 438 (1977), and *Maher* v. *Roe*, 432 U.S. 464 (1977), the District Court found, contrary to its original view, see 401 F. Supp., at 594, that § 7 did not violate either Tit. XIX of the Social Security Act, as added, 79 Stat. 343, and amended, 42 U.S.C. § 1396 *et seq.*, or the Equal Protection Clause of the Fourteenth Amendment. App. 241(a). The Court, however, declared: "After reconsideration of section 5(a) in light of the most recent Supreme Court decisions, we adhere to our original view and decision that section 5(a) is unconstitutional." App. 240a–241a. Since the plaintiffs-appellees have not appealed from the ruling with respect to § 7, the only issue remaining in this protracted litigation is the validity of § 5(a).

II

Three cases in the sensitive and earnestly contested abortion area provide essential background for the present controversy.

In *Roe* v. *Wade*, 410 U.S. 113 (1973), this Court concluded that there is a right of privacy, implicit in the liberty secured by the Fourteenth Amendment, that "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Id.*, at 153. This right, we said, although fundamental, is not absolute or unqualified, and must be considered against important state interests in the health of the pregnant woman and in the potential life of the fetus. "These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes 'compelling.'" *Id.*, at 162–163. For both logical and biological reasons, we indicated that the State's interest in the potential life of the fetus reaches the compelling point at the stage of viability. Hence, prior to viability, the State may not seek to further this interest by directly restricting a woman's decision whether or not to terminate her pregnancy.[7] But after viability, the State, if it chooses, may regulate or even prohibit abortion except where necessary, in appropriate medical judgment, to preserve the life or health of the pregnant woman. *Id.*, at 163–164.

We did not undertake in *Roe* to examine the various factors that may enter into the determination of viability. We simply observed that, in the medical and scientific communities, a fetus is considered viable if it is "potentially able to live outside the mother's womb, albeit with artificial aid." *Id.*, at 160. We added that there must be a potentiality of "meaningful life," *id.*, at 163, not merely momentary survival. And we noted that viability "is usually placed at about seven months (28 weeks) but may occur earlier, even at 24 weeks." *Id.*, at 160. We thus left the point flexible for anticipated advancements in medical skill.

Roe stressed repeatedly the central role of the physician both in consulting with the woman about whether or not to have an abortion, and in determing how any abortion was to be carried out. We indicated that up to the points where important state interests provide compelling justifications for intervention, "the abortion decision in all its aspects is inherently, and primarily, a medical decision," *id.*, at 166, and we added that if this privilege were abused, "the usual remedies, judicial and intra-professional, are available." *Ibid.*

Roe's companion case, *Doe* v. *Bolton*, 410 U.S. 179 (1973), underscored the importance of affording the physicial adequate discretion in the exericse of his medical judgment. After the Court there reiterated that "a pregnant woman does not have an absolute constitutional right to an abortion on her demand," *ib.*, at 189, the Court discussed, in a vagueness attack context, the Georgia statute's requirement that a physician's decision to perform an abortion must rest upon "his best clinical judgment." The Court found it critical that that judgment "may be exericsed in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient." *Id.*, at 192.

The third case, *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976), stressed similar themes. There a Missouri statute that defined viability was challenged on the ground that it conflicted with the discussion of viability in *Roe* and that it was, in reality, an attempt to advance the point of viability to an earlier stage in gestation. The Court rejected that argument, repeated the *Roe* definition of viability, 428 U.S., at 63, and observed again that viability is "a matter of medical judgment, skill, and technical ability, and we preserved [in *Roe*] the flexibility of the term." *Id.*, at 64. The Court also rejected a contention that "a specified number of weeks in pregnancy must be fixed by statute as the point of viability." *Id.*, at 65. It said:

"In any event, we agree with the District Court that it is not the proper function of the legislature or the courts to place viability, which essentially is a medical concept, at a specific point in the gestation period. The time when viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the responsible attending physician." *Id.*, at 64.

In these three cases, then, this Court has stressed viability, has declared its determination to be a matter for medical judgment, and has recognized that differing legal consequences ensue upon the near and far sides of that point in the human gestation period. We reaffirm these principles. Viability is reached when, in the judgment of the attending physician on the particular facts of the case before him, there is a reasonable likelihood of the fetus' sustained survival outside the womb, with or without artificial support. Because this point may differ with each pregnancy, neither the legislature nor the courts may proclaim one of the elements entering into the ascertainment of viability—be it weeks of gestation or fetal weight or any other single factor—as the determinant of when the State has a compelling interest in the life or health of the fetus. Viability is the critical point. And we have recognized no attempt to stretch the point of viability one way or the other.

With these principles in mind, we turn to the issues presented by the instant controversy.

III

The attack mounted by the plaintiffs-appellees upon § 5(a) centers on both the viability determination requirement and the stated standard of care. The former provision, requiring the physician to observe the care standard when he determines that the fetus is viable, or when "there is sufficient reason to believe that the fetus may be viable," is asserted to be unconstitutionally vague because it fails to inform the physi-

Footnotes at end of article.

cian when his duty to the fetus arises, and because it does not make the physician's good-faith determination of viability conclusive. This provision is also said to be unconstitutionally overbroad, because it carves out a new time period prior to the stage of viability, and could have a restrictive effect on a couple who wants to abort a fetus determined by genetic testing to be defective.[8] The standard of care, and in particular the requirement that the physician employ the abortion technique "which would provide the best opportunity for the fetus to be aborted alive so long as a different technique would not be necessary in order to preserve the life or health of the mother," is said to be void for vagueness and to be unconstitutionally restrictive in failing to afford the physician sufficient professional discretion in determining which abortion technique is appropriate.

The defendants-appellants, in opposition, assert that the Pennsylvania statute is concerned only with post-viability abortions and with prescribing a standard of care for those abortions. They assert that the terminology "may be viable" correctly describes the statistical probability of fetal survival associated with viability; that the viability determination requirement is otherwise sufficiently definite to be interpreted by the medical community; and that it is for the legislature, not the judiciary, to determine whether a viable but genetically defective fetus has a right to life. They contend that the standard of care preserves the flexibility required for sound medical practice, and that it simply requires that when a physician has a choice of procedures of equal risk to the woman, he must select the procedure least likely to be fatal to the fetus.

IV

We agree with plaintiffs-appellees that the viability determination requirement of § 5(a) is ambiguous, and that its uncertainty is aggravated by the absence of a scienter requirement with respect to the finding of viability. Because we conclude that this portion of the statute is void for vagueness, we find it unnecessary to consider appellees' alternative arguments based on the alleged overbreadth of § 5(a).

A

It is settled that, as a matter of due process, a criminal statute that "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute," *United States* v. *Harriss*, 347 U.S. 612, 617 (1954), or is so indefinite that "it encourages arbitrary and erratic arrests and convictions," *Papachristou* v. *City of Jacksonville*, 405 U.S. 156, 162 (1972), is void for vagueness. See generally *Grayned* v. *City of Rockford*, 408 U.S. 104, 108–109 (1972). This appears to be especially true where the uncertainty induced by the statute threatens to inhibit the exercise of constitutionally protected rights. *Id.*, at 109; *Smith* v. *Goguen*, 415 U.S. 566, 573 (1974); *Keyishian* v. *Board of Regents*, 385 U.S. 589, 603–604 (1967).

Section 5(a) requires every person who performs or induces an abortion to make a determination, "based on his experience, judgment or professional competence," that the fetus is not viable. If such person determines that the fetus is viable, or if "there is sufficient reason to believe that the fetus may be viable," then he must adhere to the prescribed standard of care. See n. 1, *supra*. This requirement contains a double ambiguity. First, it is unclear whether the statute imports a purely subjective standard, or whether it imposes a mixed subjective and objective standard. Second, it is uncertain whether the phrase "may be viable" simply refers to viability, as that term has been defined in *Roe* and in *Planned Parenthood*, or whether it refers to an undefined penumbral or "gray" area prior to the stage of viability.

The statute requires the physician to conform to the prescribed standard of care if one of two conditions is satisfied: if he determines that the fetus "is viable," or "if there is sufficient reason to believe that the fetus may be viable." Apparently, the determination of whether the fetus "is viable" is to be based on the attending physician's "experience, judgment or professional competence," a subjective point of reference. But it is unclear whether the same phrase applies to the second triggering condition, that is, to "sufficient reason to believe that the fetus may be viable." In other words, it is ambiguous whether there must be "sufficient reason" from the perspective of the judgment, skill, and training of the attending physician, or "sufficient reason" from the perspective of a cross-section of the medical community or a panel of experts. The latter, obviously, portends not an inconsequential hazard for the typical private practitioner who may not have the skills and technology that are readily available at a teaching hospital or large medical center.

The intended distinction between the phrases "is viable" and "may be viable" is even more elusive. Appellants argue that no difference is intended, and that the use of the "may be viable" words "simply incorporates the acknowledged medical fact that a fetus is 'viable' if it has that statistical 'chance' of survival recognized by the medical community." Brief for Appellants 28. The statute, however, does not support the contention that "may be viable" is synonymous with, or merely intended to explicate the meaning of, "viable."[9]

Section 5(a) requires the physician to observe the prescribed standard of care if he determines "that the fetus is viable or if there is sufficient reason to believe that the fetus may be viable" (emphasis supplied). The syntax clearly implies that there are two distinct conditions under which the physician must conform to the standard care. Appellants' argument that "may be viable" is synonymous with "viable" would make either the first or the second condition redundant or largely superfluous, in violation of the elementary canon of construction that a statute should be interpreted so as not to render one part inoperative. See *United States* v. *Menasche*, 343 U.S. 528, 538–539 (1955).

Furthermore, the suggestion that "may be viable" is an explication of the meaning of "viable" flies in the face of the fact that the the statute, in § 2, already defines "viable." This, presumably, was intended to be the exclusive definition of "viable" throughout the Act.[10] In this respect, it is significant that § 6 (b) of the Act speaks only of the limited availability of abortion during the stage of a pregnancy "subsequent to viability." The concept of viability is just as important in § 6(b) as it is in § 5(a). Yet in § 6(b) the legislature found it unnecessary to explain that a "viable" fetus includes one that "may be viable."

Since we must reject appellants' theory that "may be viable" means "viable," a second serious ambiguity appears in the statute. On the one hand, as appellees urge and as the District Court found, see 401 F. Supp., at 572, it may be that "may be viable" carves out a new time period during pregnancy when there is a remote possibility of fetal survival outside the womb, but the fetus has not yet attained the reasonable likelihood of survival that physicians associate with viability. On the other hand, although appellants do not argue this, it may be that "may be viable" refers to viability as physicians understand it, and "viable" refers to some undetermined stage later in pregnancy. We need not resolve this question. The crucial point is that "viable" and "may be viable" apparently refer to distinct conditions, and that one of these conditions differs in some indeterminate way from the definition of viability as set forth in *Roe* and in *Planned Parenthood*.[11]

Because of the double ambiguity in the viability determination requirement, this portion of the Pennsylvania statute is readily distinguishable from the requirement that an abortion must be "necessary for the preservation of the mother's life or health," upheld against a vagueness challenge in *United States* v. *Vuitch*, 402 U.S. 62, 69–72 (1971), and the requirement that a physician determine, on the basis of his "best clinical judgment," that an abortion is "necessary," upheld against a vagueness attack in *Doe* v. *Bolton*, 410 U.S., at 191–192. The contested provisions in those cases had been interpreted to allow the physician to make his determination in the light of all attendant circumstances—psychological and emotional as well as physical—that might be relevant to the well-being of the patient. The present statute does not afford broad discretion to the physician. Instead, it conditions potential criminal liability on confusing and ambiguous criteria. It therefore presents serious problems of notice, discriminatory application, and chilling effect on the exercise of constitutional rights.

B

The vagueness of the viability determination requirement of § 5 (a) is compounded by the fact that the Act subjects the physician to potential criminal liability without regard to fault. Under § 5 (d), see n. 1, *supra*, a physician who fails to abide by the standard of care when there is sufficient reason to believe that the fetus "may be viable" is subject "to such civil or criminal liability as would pertain to him had the fetus been a child who was intended to be born and not aborted." To be sure, the Pennsylvania law of criminal homicide, made applicable to the physician by § 5 (d), conditions guilt upon a finding of scienter. See Pa. Stat. Ann., Tit. 18, §§ 2501–2504 (Purdon). The required mental state, however, is that of "intentionally, knowingly, recklessly or negligently caus[ing] the death of another human being." Id., § 2501. Thus, the Pennsylvania law of criminal homicide requires scienter with respect to whether the physician's actions will result in the death of the fetus. But neither the Pennsylvania law of criminal homicide, nor the Abortion Control Act, requires that the physician be culpable in failing to find sufficient reason to believe that the fetus may be viable.[12]

This Court has long recognized that the constitutionality of a vague statutory standard is closely related to whether that standard incorporates a requirement of *mens rea*. See, for example, *United States* v. *United States Gypsum Co.*, — U.S. —, — (1978); *Papachristou* v. *City of Jacksonville*, 405 U.S., at 163; *Boyce Motor Lines* v. *United States*, 342, 337, 342 (1952).[13] Because of the absence of a scienter requirement in the provision directing the physician to determine whether the fetus is or may be viable, the statute is little more than "a trap for those who act in good faith." *United States* v. *Ragen*, 314 U.S. 513, 524 (1942).

The perils of strict criminal liability are particularly acute here because of the uncertainty of the viability determination itself. As the record in this case indicates, a physician determines whether or not a fetus is viable after considering a number of variables: the gestational age of the fetus, derived from the reported menstrual history of the woman; fetal weight, based on an inexact estimate of the size and condition of the uterus; the woman's general health and nutrition; the quality of the available medical facilities; and other factors.[14] Because of the number and the imprecision of these variables, the probability of any particular fetus' obtaining meaningful life outside the womb can be determined only with difficulty. Moreover, the record indicates that even if agreement may be reached on the probability of survival, different physicians equate viability with different probabilities

Footnotes at end of article.

of survival, and some physicians refuse to equate viability with any numerical probability at all.[15] In the face of these uncertainties, it is not unlikely that experts will disagree over whether a particular fetus in the second trimester has advanced to the stage of viability. The prospect of such disagreement, in conjunction with a statute imposing strict civil and criminal liability for an erroneous determination of viability, could have a profound chilling effect on the willingness of physicians to perform abortions near the point of viability in the manner indicated by their best medical judgment.

Because we hold that the viability determination provision of § 5(a) is void on its face, we need not now decide whether, under a properly drafted statute, a finding of bad faith or some other type of scienter would be required before a physician could be held criminally responsible for an erroneous determination of viability. We reaffirm, however, that "the determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the responsible attending physician." *Planned Parenthood of Missouri* v. *Danforth*, 428 U.S., at 64. State regulation that impinges upon this determination, if it is to be constitutional, must allow the attending physician "the room he needs to make his best medical judgment." *Doe* v. *Bolton*, 410 U.S., at 192.

V

We also conclude that the standard of care provision of § 5(a) is impermissibly vague.[16] The standard of care, when it applies, requires the physician to "exercise that degree of professional skill, care and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted and the abortion technique employed shall be that which would provide the best opportunity for the fetus to be aborted alive so long as a different technique would not be necessary in order to preserve the life or health of the mother."

Plaintiffs-appellees focus their attack on the second part of the standard, requiring the physician to employ the abortion technique offering the greatest possiblity of fetal survival, provided some other technique would not be necessary in order to preserve the life or health of the mother.[17]

The District Court took extensive testimony from various physicians about their understanding of this requirement. That testimony is illuminating. When asked what method of abortion they would prefer to use in the second trimester in the absence of § 5(a), the plaintiffs' experts said that they thought saline amnio-infusion was the method of choice.[18] This was described as a method involving removal of amniotic fluid and injection of a saline or other solution into the amniotc sac. See *Planned Parenthood of Missouri* v. *Danforth*, 428 U.S., at 75–79. All physicians agreed, however, that saline amnio-infusion nearly always is fatal to the fetus,[19] and it was commonly assumed that this method would be prohibited by the statute.

When the plaintiffs' and defendants' physician-experts respectively were asked what would be the method of choice under § 5(a), opinions differed widely. Preferences ranged from no abortion, to prostaglandin infusion, to hysterotomy, to oxytosin induction.[20] Each method, it was generally conceded, involved disadvantages from the perspective of the woman. Hysterotomy, a type of Caesarean section procedure, generally was considered to have the highest incidence of fetal survival of any of the abortifacients. Hysterotomy, however, is associated with the risks attendant upon any operative procedure involving anesthesia and incision of tissue.[21] And all physicians agreed that future children born to a woman having a hysterotomy would have to be delivered by Caesarean section because of the likelihood of rupture of the scar.[22]

Few of the testifying physicians had had any direct experience with prostaglandins, described as drugs that stimulate uterine contractibility, inducing premature expulsion of the fetus. See *Planned Parenthood of Missouri* v. *Danforth*, 428 U.S., at 77–78. It was generally agreed that the incidence of fetal survival with prostaglandins would be significantly greater than with saline amnio-infusion.[23] Several physicians testified, however, that prostaglandins have undesirable side effects, such as nausea, vomiting, headache, and diarrhea, and indicated that they are unsafe with patients having a history of asthma, glaucoma, hypertension, cardiovascular disease, or epilepsy.[24] See *Wynn* v. *Scott*, 449 F. Supp. 1302, 1326 (ND Ill. 1978). One physician recommended oxytosin induction. He doubted, however, whether the procedure would be fully effective in all cases, and he indicated that the procedure was prolonged and expensive.[25]

The parties acknowledge that there is disagreement among medical authorities about the relative merits and the safety of different abortion procedures that may be used during the second trimester. See Brief for Appellants 24. The appellants submit, however, that the only legally relevant considerations are that alternatives exist among abortifacients, "and that the physician, mindful of the state's interest in protecting viable life, must make a competent and good faith medical judgment on the feasibility of protecting the fetus' chance of survival in a manner consistent with the life and health of the pregnant woman." *Id.*, at 25. We read § 5(a), however, to be much more problematical.

The statute does not clearly specify, as appellants imply, that the woman's life and health must always prevail over the fetus' life and health when they conflict. The woman's life and health are not mentioned in the first part of the stated standard of care, which sets forth the general duty to the viable fetus; they are mentioned only in the second part which deals with the choice of abortion procedures. Moreover, the second part of the standard directs the physician to employ the abortion technique best suited to fetal survival "so long as a different technique would not be *necessary* in order to preserve the life or health of the mother" (emphasis supplied). In this context, the word "necessary" suggests that a particular technique must be indispensable to the woman's life or health—not merely desirable—before it may be adopted. And "the life or health of the mother," as used in § 5(a), has not been construed by the courts of the Commonwealth, nor does it necessarily imply, that all factors relevant to the welfare of the woman may be taken into account by the physician in making his decision. Cf. *United States* v. *Vuitch*, 402 U.S., at 71–72; *Doe* v. *Bolton*, 410 U.S., at 191.

Consequently, it is uncertain whether the statute permits the physician to consider his duty to the patient to be paramount to his duty to the fetus or whether it requires the physician to make a "trade-off" between the woman's health and additional percentage points of fetal survival. Serious ethical and constitutional difficulties, that we do not address, lurk behind this ambiguity. We hold only that where conflicting duties of this magnitude are involved, the State, at the least, must proceed with greater precision before it may subject a physician to possible criminal sanctions.

Appellants' further suggestion that § 5 (a) requires only that the physician make a good-faith selection of the proper abortion procedure finds no support in either the language or an authoritative interpretation of the statute.[26] Certainly, there is nothing to suggest a *mens rea* requirement with respect to a decision whether a particular abortion method is necessary in order to preserve the life or health of the woman. The choice of an appropriate abortion technique, as the record in this case so amply demonstrates, is a complex medical judgment about which experts can—and do—disagree. The lack of any scienter requirement exacerbates the uncertainty of the statute. We conclude that the standard of care provision, like the viability determination requirement, is void for vagueness.

The judgment of the District Court is affirmed.

It is so ordered.

FOOTNOTES

[1] Section 5 reads in pertinent part:

"(a) Every person who performs or induces an abortion shall prior thereto have made a determination based on his experience, judgment or professional competence that the fetus is not viable, and if the determination is that the fetus is viable or if there is sufficient reason to believe that the fetus may be viable, shall exercise that degree of professional skill, care and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted and the abortion technique employed shall be that which would provide the best opportunity for the fetus to be aborted alive so long as a different technique would not be necessary in order to preserve the life or health of the mother.

* * * * *

"(d) Any person who fails to make the determination provided for in subsection (a) of this section, or who fails to exercise the degree of professional skill, care and diligence or to provide the abortion technique as provided for in subsection (a) of this section . . . shall be subject to such civil or criminal liability as would pertain to him had the fetus been a child who was intended to be born and not aborted."

[2] The three-judge court was designated in September 1974 pursuant to 28 U.S.C. § 2281 (1970 ed.). This statute was repealed by Pub. L. 94–381, § 1, 90 Stat. 1119, but the repeal did not apply to any action commenced on or before August 12, 1976. *Id.*, § 7.

[3] The plaintiffs named in the complaint, as amended, were Planned Parenthood Association of Southeastern Pennsylvania, Inc., a nonprofit corporation; appellee John Franklin, M.D., a licensed and board-certified obstetrician and gynecologist and medical director of Planned Parenthood; Concern for Health Options: Information, Care and Education, Inc. (CHOICE), a nonprofit corporation; and Clergy Consultation Service of Northeastern Pennsylvania, a voluntary organization. Later, appellee Obstetrical Society of Philadelphia intervened as a party plaintiff. Named as original defendants were J. Emmett Fitzpatrick, Jr., District Attorney of Philadelphia County, and Helene Wohlgemuth, the then Secretary of Welfare of the Commonwealth of Pennsylvania. Subsequently, the Commonwealth's Attorney General and the Commonwealth itself intervened as parties defendant.

The District Court, in a ruling not under challenge here, eventually dismissed Planned Parenthood, CHOICE, and Clergy Consultation as plaintiffs. *Planned Parenthood Assn.* v. *Fitzpatrick*, 401 F. Supp. 554, 562, 593–594 (ED Pa. 1975).

The present posture of the case, as a consequence, is a suit between Dr. Franklin and the Obstetrical Society, as plaintiffs-appellees, and Aldo Colautti, the present Secretary of Welfare, the Attorney General, the Commonwealth, and the District Attorney, as defendants-appellants.

We agree with the District Court's ruling in the cited 1975 opinion, 401 F. Supp., at 561–562, 594, that under *Doe* v. *Bolton*, 410

U.S. 179, 188 (1973), the plaintiff physicians have standing to challenge § 5(a), and that their claims present a justiciable controversy. See *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52, 62 (1976).

[4] The court preliminarily enjoined the enforcement of the spousal and parental consent requirements, § 3(b); the penal provisions of § 3(e); the requirements of §§ 5 (a) and (d); the restriction on abortions subsequent to viability, § 6(b); the facility approval requirement, § 6(c); the reporting provisions, § 6(d); most of the penal provisions of § 6(1); the restrictions on funding of abortions, § 7; and the definitions of "viable" and "informed consent" in § 2. Rec. Doc. No. 16; see *Planned Parenthood Assn.* v. *Fitzpatrick*, 401 F. Supp., at 559.

[5] The court ruled that "the present action is determined to be a class action on behalf of the class of Pennsylvania physicians who perform abortions and/or counsel their female patients with regard to family planning and pregnancy including the option of abortion, and the sub-class of members of the Obstetrical Society of Philadelphia who practice in Pennsylvania." Rec. Doc. No. 57.

[6] See also *Doe* v. *Zimmerman*, 405 F. Supp. 534 (MD Pa. 1975).

[7] In *Maher* v. *Roe*, 432 U. S. 464, 471–477 (1977), the Court ruled that a State may withhold funding to indigent women even though such withholding influences the abortion decision prior to viability. The Court, however, reaffirmed that a State during this period may not impose direct obstacles—such as criminal penalties—to further its interest in the potential life of the fetus.

[8] The plaintiffs-appellees introduced evidence that modern medical technology makes it possible to detect whether a fetus is afflicted with such disorders as Tax-Sachs disease and Down's syndrome (mongolism). Such testing, however, often cannot be completed until after 18–20 weeks' gestation. App. 53a–56a (testimony of Hope Punnett, Ph. D.).

[9] Appellants do not argue that federal court abstention is required on this issue, nor is it appropriate, given the extent of the vagueness that afflicts § 5 (a), for this Court to abstain *sua sponte*. See *Bellotti* v. *Baird*, 428 U. S. 132, 143 n. 10 (1976).

[10] The statute says that viable "means," not "includes," the capability of a fetus "to live outside the mother's womb albeit it with artificial aid." As a rule, "[a] definition which declares what a term 'means' . . . excludes any meaning that is not stated." 2A C. Sands, Statutes and Statutory Construction, § 47.07 (Supp. 1978).

[11] Since our ruling today is confined to the conclusion that the viability determination requirement of § 5(a) is impermissibly vague, there is no merit in the dissenting opinion's suggestion, *post*, at 6, that the Court has "tacitly disowned" the definition of viability as set forth in *Roe* and *Planned Parenthood*. On the contrary, as noted above, *ante*, at 9, we *reaffirm* what was said in those decisions about this critical concept.

[12] Section 5(a) does provide that the determination of viability is to be based on the physician's "experience, judgment or professional competence." A subjective standard keyed to the physician's individual skill and abilities, however, is different from a requirement that the physician be culpable or blameworthy for his performance under such a standard. Moreover, as noted above, it is ambiguous whether this subjective language applies to the second condition that activates the duty to the fetus, namely, "sufficient reason to believe that the fetus may be viable."

[13] "[T]he requirement of a specific intent to do a prohibited act may avoid those consequences to the accused which may otherwise render a vague or indefinite statute invalid. . . . The requirement that the act must be willful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware." *Screws* v. *United States*, 325 U.S. 91, 101–102 (1945) (plurality opinion).

[14] See App. 5a–6a, 10a, 17a (testimony of Louis Gerstley, III, M.D.); App. 77a–78a, 81a (testimony of Thomas W. Hilgers, M.D.); App. 93a–101a, 109a, 112a (testimony of William J. Keenan, M.D.).

[15] See App. 8a (testimony of Dr. Gerstley) (viability means 5% chance of survival, "certainly at least two to three percent"); App. 104a (testimony of Dr. Keenan) (10% chance of survival would be viable); App. 144a (deposition of John Franklin, M.D.) (viability means "ten percent or better" probability of survival); App. 132a (testimony of Arturo Hervada, M.D.) (it is misleading to be obsessed with a particular percentage figure).

[16] The dissenting opinion questions whether the alleged vagueness of the standard of care is properly before us, since it is said that this issue was not reached by the District Court. That court, however, declared § 5(a) unconstitutional in its entirety, including both the viability determination requirement and the standard of care. App. 243a. Appellees, as the prevailing parties, may of course assert any ground in support of that judgment, "whether or not that ground was relied upon or even considered by the trial court." *Dandridge* v. *Williams*, 397 U.S. 471, 475 n. 6 (1970).

[17] In *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52, 81–84 (1976), the Court struck down a provision similar to the first part of the standard of care of § 5 (a), on the ground that it applied at all stages of gestation and not just to the period subsequent to viability. Except to the extent that § 5(a) is also alleged to apply prior to the point of viability, a contention we do not reach, see p. 11, *ante*, appellees do not challenge the standard of care on overbreadth grounds.

[18] App. 11a (testimony of Dr. Gerstley); App. 28a (testimony of Dr. Franklin).

[19] See, *e.g.*, App. 28a (testimony of Dr. Franklin) App. 36a (testimony of Fred Mecklenburg, M.D.).

[20] There was testimony that dilation and curettage and dilation and suction, two of the more common methods of abortion in the first trimester, normally are not used in the second trimester. App. 39a–40a (testimony of Dr. Mecklenburg).

[21] App. 23a (testimony of Dr. Franklin); App. 43a (testimony of Dr. Mecklenburg); App. 73a (testimony of Dr. Hilgers).

[22] See, *e.g.*, App. 13a (testimony of Dr. Gerstley); App. 28a (testimony of Dr. Franklin).

[23] See, *e.g.*, App. 11a–12a (testimony of Dr. Gerstley); App. 28a (testimony of Dr. Franklin).

[24] See App. 11a (testimony of Dr. Gerstley); App. 37a–38a (testimony of Dr. Mecklenburg); App. 72a (testimony of Dr. Hilgers).

[25] App. 12a (testimony of Dr. Gerstley).

[26] Appellants, again, do not argue or suggest that we should abstain from passing on this issue. See n. 9, *supra*.

[Supreme Court of the United States, No. 77–891]

ALDO COLAUTTI, SECRETARY OF WELFARE OF PENNSYLVANIA, ET AL., PETITIONERS, *v.* JOHN FRANKLIN ET AL.

On Appeal from the United States District Court for the Eastern District of Pennsylvania. [January 9, 1979]

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, dissenting.

Because the Court now withdraws from the States a substantial measure of the power to protect fetal life that was reserved to them in *Roe* v. *Wade*, 410 U. S. 113 (1973), and reaffirmed in *Planned Parenthood of Missouri* v. *Danforth*, 428 U. S. 52 (1976), I file this dissent.

I

In *Roe* v. *Wade*, the Court defined the term "viability" to signify the stage at which a fetus is "potentially able to live outside the mother's womb, albeit with artificial aid." This is the point at which the State's interest in protecting fetal life becomes sufficiently strong to permit it to "go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother." *Id.*, at 163–164.

The Court obviously crafted its definition of viability with some care, and it chose to define that term not as that stage of development at which the fetus actually *is* able or actually *has* the ability to survive outside the mother's womb, with or without artificial aid, but as that point at which the fetus is *potentially* able to survive. In the ordinary usage of these words, being *able* and being *potentially able* do not mean the same thing. Potential ability is not actual ability. It is ability "[e]xisting in possibility, not in actuality." Webster's New International Dictionary (2d ed. 1958). The Court's definition of viability in *Roe* v. *Wade* reaches an earlier point in the development of the fetus than that stage at which a doctor could say with assurance that the fetus *would* survive outside the womb.

It was against this background that the Pennsylvania statute at issue here was adopted and the District Court's judgment was entered. Insofar as *Roe* v. *Wade* was concerned, Pennsylvania could have defined viability in the language of that case—"potentially able to live outside the mother's womb"—and could have forbidden all abortions after this stage of any pregnancy. The Pennsylvania Act, however, did not go so far. It forbade entirely only those abortions where the fetus had attained viability as defined in § 2 of the Act, that is, where the fetus had "the *capability* to live outside, the mother's womb albeit with artificial aid." Pa. Stat. Ann., Tit. 35, § 6602 (Purdon) (emphasis added). But the State, understanding that it also had the power under *Roe* v. *Wade* to regulate where the fetus was only "potentially able" to exist outside the womb, also sought to regulate, but not forbid, abortions where there is sufficient reason to believe that the fetus "may be viable"; this language was reasonably believed by the State to be equivalent to what the Court meant in 1973 by the term "potentially able to live outside the mother's womb." Under § 5(a), abortionists must not only determine whether the fetus is viable but also whether there is sufficient reason to believe that the fetus may be viable. If either condition exists, the method of abortion is regulated and a standard of care imposed. Under § 5(d), breach of these regulations exposes the abortionist to the civil and criminal penalties that would be applicable if a live birth rather than an abortion had been intended.

In the original opinion and judgment of the three-judge court, *Planned Parenthood Assn.* v. *Fitzpatrick*, 401 F. Supp. 554 (ED Pa. 1975), § 5(a) was invalidated on two grounds: first, because it required a determination of viability and because that term, as defined in § 2, was held to be unenforceably vague; and second, because the section required a determination of when a fetus may be viable, it was thought to regulate a period of time prior to viability and was therefore considered to be invalid under this Court's cases. The District Court was not disturbed by the fact that its opinion declared the term "viability" as used in this Court's opinion in *Roe* v. *Wade* to be hopelessly vague since it understood that opinion also to have given specific con-

tent to that term and to have held that a State could not consider any fetus to be viable prior to the 24th week of pregnancy. This was concrete guidance to the States, and because the "may be viable" provision of § 5(a) "tend[ed] to carve out a . . . period of time of potential viability [which might cover a period of] 20 to 26 weeks gestation." 401 F. Supp., at 572, the State was unlawfully regulating the second trimester. Because it sought to enforce § 5(a), § 5(d) was also invalidated. Section 6(b), which forbade all abortions after viability, also fell to the challenge of vagueness.

The District Court's judgment was pending on appeal here when *Planned Parenthood of Missouri* v. *Danforth, supra,* was argued and decided. There, the state Act defined viability as "that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems." *Id.,* at 63. This definition was attacked as impermissibly expanding the *Roe* v. *Wade* definition of viability; the "mere possibility of momentary survival." it was argued, was not the proper standard under the Court's cases. *Ibid.* It was also argued in this Court that the "may be" language of the Missouri statute was vulnerable for the same reasons that the "may be" provision of the Pennsylvania statute had been invalidated by the District Court in the case now before us. Brief for Appellants 65–66, quoting *Planned Parenthood Assn.* v. *Fitzpatrick,* 401 F. Supp., at 571–572. This Court, however, rejected these arguments and sustained the Missouri definition as consistent with *Roe,* "even when read in conjunction with" another section of the Act that proscribed all abortions not necessary to preserve the life or health of the mother "unless the attending physician first certifies with reasonable medical certainty that the fetus is not viable," that is, that it has not reached that stage at which it may exist indefinitely outside the mother's womb. 428 U.S., at 63–64. The Court noted that one of the appellant doctors "had no particular difficulty with the statutory definition" and added that the Missouri definition might well be considered more favorable to the complainants than the *Roe* definition since the "point when life can be 'continued indefinitely outside the womb's may well occur later in a pregnancy than the point where the fetus is 'potentially able to live outside the mother's womb.' " *Id.,* at 64. The Court went on to make clear that it was not the proper function of the legislature or of the courts to place viability at a specific point in the gestation period. The "flexibility of the term," which was essentially a medical concept, was to be preserved. *Ibid.* The Court plainly reaffirmed what it had held in *Roe* v. *Wade:* viability refers not only to that stage of development when the fetus actually has the capability of existing outside the womb but also to that stage when the fetus *may have* the ability to do so. The Court also reaffirmed that at any time after viability, as so understood, the State has the power to prohibit abortions except when necessary to preserve the life or health of the mother.

In the light of *Danforth,* several aspects of the District Court's judgment in the *Fitzpatrick* case were highly questionable, and that judgment was accordingly vacated and remanded to the District Court for reconsideration. A drastically modified judgment eventuated. The term "viability" could not be deemed vague in itself, and hence the definition of that term in § 2 and the proscription of § 6(b) against post-viability abortions were sustained. The District Court, however, in a conclusory opinion adhered to its prior view that § (a) was unconstitutional, as was § 5(d) insofar as it related to § 5 (a).

Affirmance of the District Court's judgment is untenable. The District Court originally thought § 5(a) was vague because the term "viability" was itself vague. The Court scotched that notion in *Danforth,* and the District Court then sustained the Pennsylvania definition of viability. In doing so, it necessarily nullified the major reason for its prior invalidation of § 5(a), which was that it incorporated the supposedly vague standard of § 2. But the District Court has also said that the "may be viable" standard was invalid as an impermissible effort to regulate a period of "potential" viability. This was the sole remaining articulated ground for invalidating § 5(a). But this is the very ground that was urged and rejected in *Danforth,* where this Court sustained the Missouri provision defining viability as the stage at which the fetus "may" have the ability to survive outside the womb and reaffirmed the flexible concept of viability announced in *Roe.*

In affirming the District Court, the Court does not in so many words agree with the District Court but argues that it is too difficult to know whether the Pennsylvania Act simply intended, as the State urges, to go no further than *Roe* permitted in protecting a fetus that is potentially able to survive or whether it intended to carve out a protected period prior to viability as defined in *Roe.* The District Court, although otherwise seriously in error, had no such trouble with the Act. It understood the "may be viable" provision as an attempt to protect a period of potential life, precisely the kind of interest that *Roe* protected but which the District Court erroneously thought the State was not entitled to protect.[1] *Danforth,* as I have said, reaffirmed *Roe* in this respect. Only those with unalterable determination to invalidate the Pennsylvania Act can draw any measurable difference insofar as vagueness is concerned between "viability" defined as the ability to survive and "viability" defined as that stage at which the fetus may have the ability to survive. It seems to me that, in affirming, the Court is tacitly disowning the "may be" standard of the Missouri law as well as the "potential ability" component of viability as that concept was described in *Roe.* This is a further constitutionally unwarranted intrusion upon the police powers of the States.

Apparently uneasy with its work, the Court has searched for and seized upon two additional reasons to support affirmance, neither of which was relied upon by the District Court. The Court first notes that under § 5 (d), failure to make the determinations required by § 5(a), or otherwise to comply with its provisions, subjects the abortionist to criminal prosecution under those laws that "would pertain to him had the fetus been a child who was intended to be born and not aborted." Although concededly the Pennsylvania law of criminal homicide conditions guilt upon a finding that the defendant intentionally, knowingly, recklessly, or negligently caused the death of another human being, the Court nevertheless goes on to declare that the abortionist could be successfully prosecuted for criminal homicide without any such fault or omission in determining whether or not the fetus is viable or may be viable. This alleged lack of a scienter requirement, the Court says, fortifies its holding that § 5(a) is void for vagueness.

This seems to me an incredible construction of the Pennsylvania statutes. The District Court suggested nothing of the sort, and appellees focus entirely on § 5(a), ignoring the homicide statutes. The latter not only define the specified degrees of scienter that are required for the various homicides, but also provide that ignorance or mistake as to a matter of fact, for which there is a reasonable explanation, is a defense to a homicide charge if it negatives the mental state necessary for conviction. Pa. Stat. Ann., Tit. 18, § 304 (Purdon). Given this background, I do not see how it can be seriously argued that a doctor who makes a good-faith mistake about whether a fetus is or is not viable could be successfully prosecuted for criminal homicide. This is the State's submission in this Court; the court below did not address the matter; and at the very least this is something the Court should not decide without hearing from the Pennsylvania courts.

Secondly, the Court proceeds to find the standard of care provision in § 5(a) to be impermissibly vague, particularly because of an asserted lack of a *mens rea* requirement. I am unable to agree. In the first place, the District Court found fault with § 5(a) only because of its viability and may be viable provisions. It neither considered nor invalidated the standard of care provision. Furthermore, the complaint did not expressly attack § 5(a) on this ground, and plaintiffs' request for findings and conclusions challenged the section only on the grounds of the overbreadth and vagueness of the viability and the may be viable provisions. There was no request to invalidate the standard of care provision. Also, the plaintiffs' post-trial brief dealt with the matter in only the most tangential way. Appellees took no cross-appeal; and although they argue the matter in their brief on the merits in this Court. I question whether they are entitled to have still another provision of the Pennsylvania Act declared unconstitutional in this Court in the first instance, thereby and to that extent expanding the relief they obtained in the court below.[2] *United States* v. *New York Telephone Co.,* 434 U.S. 159, 166 n. 9 (1977).

In any event, I cannot join the Court in its determined attack on the Pennsylvania statute. As in the case with a mistaken viability determination under § 5(a), there is no basis for asserting the lack of a scienter requirement in a prosecution for violating the standard of care provision. I agree with the State that there is not the remotest chance that any abortionist will be prosecuted in the basis of a good-faith mistake regarding whether to abort, and if he does, with respect to which abortion technique is to be used. If there is substantial doubt about this, the Court should not complain of a lack of an authoritative State construction, as it does, but direct abstention and permit the state courts to address the issues in the light

---

[1] The District Court observed:

"*Roe* makes it abundantly clear that the compelling point at which a state in the interest of fetal life may regulate, or even prohibit, abortion is not before the 24th week of gestation of the fetus, at which point the Supreme Court recognized the fetus then presumably *has the capability* of meaningful life outside the mother's womb. Consequently, *Roe* recognized only two periods concerning fetuses. The period prior to viability, when the state may not regulate in the interest of fetal life, and the period after viability, when it may prohibit altogether or regulate as it sees fit. The 'may be viable' provision of Section 5(a) tends to carve out a third period of time of *potential* viability." *Planned Parenthood Assn.* v. *Fitzpatrick,* 401 F. Supp. 554, 572 (ED Pa. 1975) (emphasis added).

Thus, the court interpreted the term "viability" more restrictively than *Roe,* read in its entirety, permitted but coextensively with the definition in § 2. Based on its misapprehension of *Roe,* the court condemned § 5(a) essentially for reaching the period when the fetus has the *potential* "capability of meaningful life outside the mother's womb." *Ibid.*

[2] Unquestionably, rehabilitating § 5(a) to satisfy this Court's opinion will be a far more extensive and more difficult task than that which the State faced under the District Court's ruling.

of the Pennsylvania homicide laws with which those courts are so much more familiar than are we or any other federal court.

Although it seems to me that the Court has considerably narrowed the scope of the power to forbid and regulate abortions that the States could reasonably have expected to enjoy under *Roe* and *Danforth*, the Court has not yet invalidated a statute simply requiring abortionists to determine whether a fetus is viable and forbidding the abortion of a viable fetus except where necessary to save the life or health of the mother. Nor has it yet ruled that the abortionist's determination of viability under such a standard must be final and is immune to civil or criminal attack. Section 2 and § 6(b) of the Pennsylvania law, for example, remain undisturbed by the District Court's judgment or by the judgment of this Court.

What the Court has done is to issue a warning to the States in the name of vagueness, that they should not attempt to forbid or regulate abortions when there is a chance for the survival of the fetus, but it is not sufficiently large that the abortionist considers the fetus to be viable. This edict has no constitutional warrant, and I cannot join it.●

LITHUANIAN INDEPENDENCE DAY

● Mr. WILLIAMS. Mr. President, for Americans of Lithuanian descent, February 16 is a very significant day. It was on this day in 1918 that the elected representatives of the Lithuanian people proclaimed an independent Lithuanian state based on democratic principles.

Independence did not become an immediate reality, however. As soon as German troops evacuated Lithuania, the Red army entered the nation and installed a Communist government. Later, the Red army was driven out by the Polish Army and Lithuanian fighting units. In 1920 Russia signed a peace treaty with Lithuania, recognizing it as an independent nation and pledging itself to renounce forever all claims of sovereignty. During the ensuing period independent Lithuania embarked on an unprecedented and unsurpassed era of political liberty, economic prosperity, and cultural achievement.

Sadly, this did not last. When the outbreak of World War II seemed imminent, Lithuania attempted to maintain a policy of absolute neutrality. Within a short time, however, Lithuania's sovereignty was repeatedly violated by a series of onslaughts by Nazi and Soviet occupying forces. As the war drew to a close, Lithuania returned not to independence but to Soviet domination.

Since then, Lithuanians have been denied even the most elemental of human and civil rights, and have suffered severe assaults on their national identity and cultural heritage. The Lithuanian people have bravely refused to accept this oppression and have kept alive their determination to reclaim control over their own lives.

On the anniversary of their declaration of independence, it is appropriate that all Americans join those of Lithuanian heritage to salute the free spirit of a proud and courageous people, and to share their aspiration for national self-determination.●

THE NEW CHALLENGES OF UNITED STATES-LATIN AMERICA DEVELOPMENT COOPERATION IN THE 1980'S: A CALL TO ACTION

● Mr. JAVITS. Mr. President, the United States' relationship with Latin America has taken on increased significance in recent times as our economies have become more and more interrelated. This is best illustrated by the fact that Latin America is today our third largest market and purchases almost $20 billion of U.S. goods and services every year. Although Latin America continues to experience dynamic rates of economic development, the continent still faces many problems stemming from the severe poverty of much of its population.

What part can our bilateral assistance program play in Latin America's development process? I call to the attention of my colleagues an excellent speech by Abelardo L. Valdez, Agency for International Development Assistant Administrator for Latin America and the Caribbean, which provides us with insight into this important question. In his address, entitled "The New Challenges of U.S.-Latin American Development Cooperation in the 1980's: A Call to Action," Mr. Valdez discusses the problems of middle-income countries in Latin America and the need to channel private capital into areas most in need of accelerated development. He believes, as do I, that concerted action and cooperation are the essential building blocks of a strong relationship between the United States and Latin America.

I have a long-standing commitment to involving the private sector in the economic progress of developing countries. This commitment, in addition to my interest in Latin America, led to the establishment in 1964 of ADELA (Atlantic Community Development Group for Latin America). ADELA is a consortium of the leading private sector industrial and financial enterprises of the world—40 percent United States and 60 percent foreign. ADELA's objective is to stimulate economic development in Latin America by participation in equity investment in developmental private enterprise projects and by making available technical assistance. ADELA has proven to be a highly successful way of bringing private industry with targeted investment capital into developing countries.

I recommend highly this speech to my colleagues and ask that it be printed in the RECORD. I also ask that a recent editorial from the Journal of Commerce that quotes Mr. Valdez's statement and agrees with Mr. Valdez's conclusion that our policy of withholding economic assistance to middle-income developing countries should be reexamined be printed in the RECORD.

The material follows:

THE NEW CHALLENGES OF UNITED STATES-LATIN AMERICAN DEVELOPMENT COOPERATION IN THE 1980'S: A CALL TO ACTION

Over the last year and one half, I have been talking to people all over the Nation about our common potential and challenge in the economic future of this hemisphere. Everywhere the response has been thoughtful and supportive.

But I feel a singular pleasure and honor and encouragement to be with you today. For someone in quest of a dynamic, informed constituency for development cooperation in Latin America, coming here to the Council of the Americas is, in a sense, coming home.

In the more than thirteen years since its founding, this organization has been devoted to the cause of progressive economic collaboration between the United States and its Latin neighbors. You have been an invaluable forum for fresh and creative ideas, a meeting house for thinkers, officials and elected leaders from throughout the hemisphere. And, most important I think, a force for public education and political enlightenment—a calm, steady voice speaking out across boundaries and cultures and ideologies for the deeper human understanding that is the heart of international relations.

Your recent nationwide effort in support of the Panama Canal Treaty was a remarkable display of private citizen statesmanship to match President Carter's. The people of this country, of Panama, of the entire region, are in your debt for that campaign on behalf of policy sense and international sensibility.

In large measure because of your past contribution, the nations of this hemisphere have never been bound together more closely—or more hopefully—in a common economic destiny.

The United States is now the principal market for Latin America. And Latin America, registering unprecedented growth rates, is today our third largest market. The Continent is purchasing from the U.S. almost $20 billion every year, more than we sell to the rest of the developing world altogether and nearly as much as we export to the European Economic Community.

Our exports to Latin America have more than tripled over the last decade, an ever-expanding market at a time when 1 in 8 manufacturing jobs and 1 in every 3 acres of U.S. farmland depend on exports, when sales to the developing world mean a million jobs, and when our economy is buffeted by trade deficits and uncertainties in other regions.

In the last ten years, U.S. imports from the Region have grown from $5.0 billion to more than $20.0 billion providing us with many of the most vital resources that the U.S. must import—oil, bauxite, copper, tin and iron ore to name just a few.

Some 82% of U.S. direct foreign investment in the developing world is now in Latin America, totaling $28 billion and earning $4 billion a year. And, of course, the over 200 member firms of this Council represent some 86% of that investment. As the private sector has replaced government as the source of eight-tenths of all our financial flows to Latin America (an exact reversal of the 1960s), international business has long since, and for the future, become a major force in the development of this Hemisphere.

By the year 2000, Latin America and the Caribbean could be our leading foreign market and the home of some of the most extensive and profitable investments of U.S. business anywhere in the world.

Moreover, many economists now recognize in developing regions like Latin America the potentially crucial "engines or growth" for the developed world as well. As development brings to life new purchasing power in Latin America and the Caribbean, prosperity and jobs come to Miami and Houston and New York as well as Rio or Bogota or Mexico City. Much as the planned recovery of Europe and Japan under the Marshall Plan, the sustained, balanced, mutual growth of all of the Americas could help stem throughout the region the twin curses of the 1970s, high inflation and lingering unemployment.

Add to these economic ties the political and human reality that the United States now has the fourth largest Spanish-speaking population in the Hemisphere. Sixteen million U.S. citizens of Hispanic origin are about to become our single largest minority—and for all its diversity, an extraordinary and growing constituency of interest and interrelationship for continuing our vital partnership with Latin America.

Quietly—without fanfare and with hard work on all sides—the economic welfare of this hemisphere has become truly indivisible. The future brims with new prospects for shared growth, for shared prosperity, and for the shared strength and stability that come to neighbors who realize and act on their interdependence.

Many of you in this audience have helped shape that progress and promise. Just as surely, your sheer financial power—your momentous role as the predominant U.S. economic presence in Latin America—will have a major part in shaping the future.

And not only for Colombia and Chile, but also for California and Connecticut. For Houston as well as Mexico City. What happens to any nation, to any trade and investment in this Hemisphere, happens in a real sense to all of us.

We cannot choose *whether* to have a common fate with Latin America and the Caribbean. That choice has been taken by the economic history we have already made.

In a very real sense, our great border with Latin America and the Caribbean unites its two sides more than it divides them. It links us in a seamless web of economic, political and people-to-people relationships. A web that holds both sides in shared destiny, and an ever-deepening stake in what happens on either side of the border.

In many ways, of course, our common border bonds us most closely with Mexico. As Mexican President, Jose Lopez Portillo, said in a visit to the White House last February, "To be neighbors means to share everything—the good things and the bad things, too." And while we do indeed have common problems of migration, trade, energy, environment, and economic development—the possibilities in U.S.-Mexican relations have never been broader—or brighter.

Most important, there is a fresh sense in both Washington and Mexico City of how much these two nations mean to one another. That sense brought President Lopez Portillo to the White House as the first chief of state to be invited by President Carter in the new Administration. And it surrounds the President's trip to Mexico last month, a trip which expresses President Carter's abiding commitment to make the U.S. and Mexico not only good neighbors, but also good friends.

Yet, the common stake, the common opportunity, the common future do not stop at Mexico's southern boundary. There may have been a time when words like "interdependence" were political rhetoric. But no more.

On the eve of the 1980s, the issue is not whether—but what kind of future we will make together, what sort of 21st century Hemisphere, for all our endeavor, we will bequeath to our children, our country, our businesses.

I am here today—quite honestly—because that issue is in grave doubt. And because there can be no doubt where you should stand in the challenge ahead.

Because, despite our achievements, we have often been blind to how much neglected, unfinished development still exists throughout the Americas. Because in the economic development of Latin America we stand poised between hope and genuine hazard—with awesome choices that will no longer wait.

And because great organizations like the Council must see the crisis clearly, and act decisively. You can no more wait for the obscure but perhaps fatal undoing of our mutual economic interests than you could wait to be counted on the Panama Canal Treaty.

For the harsh truth is that all our hard-won progress and promise in Latin America is under attack. Quietly—perhaps almost without notice—we have come to what I believe to be a historic turning point in our relations. No headlines scream at us. No international disaster seems visible. But the threat is in many ways no less deadly.

On one front it is the savage assault of a festering and tragic poverty:

Nations apparently well off face development problems scarcely reflected in their beguiling statistics, and behind the skyscrapers and model farms of the region are some of the most squalid urban slums, some of the most grindingly impoverished rural areas, in the world.

Some 160 million people, half of the Continent's population, live on incomes of less than $250 a year.

Last year, one in every five Latin Americans received less than $100 a year and languished in desperate want.

Unemployment and underemployment in many countries climbs to between 20% and 50%, joblessness horribly worse than at the depths of the Great Depression.

Chronic malnutrition, inadequate health care, and a lack of relevant education or vocational training plague the entire region.

And by the year 2000, when Latin America's still swelling population has passed 600 million, when more than 300 million people may be desperately poor, when jobs and food and clinics and schools are all the more scarce, when cities are overwhelmed and the countryside so largely stagnant, will *that* . . . all that . . . be the monument to our efforts?

Yet I must tell you too what many of you already know or sense. That not only have the great capital-intensive investments of the last 20 years left half a Continent in poverty and despair, but also that Latin America is being blighted, and her development progress ransomed, by the very pains of growth itself.

Polluted aid chokes the great cities of the Americas from Mexico City to Rio.

As growing cities press on old sanitation systems, waste poisons Latin America's majestic rivers and lakes, while other pollution consumes once lovely beaches and the economic livelihood they provided.

From the shores of the Caribbean to the heights of the Andes, forests are stripped and precious soil eroded for lack of conservation.

Incredibly, but relentlessly, deforestation in the Panama Canal basin now threatens the ultimate survival of the Canal as a reliable international waterway. For all your work on the Canal Treaty, for all President Carter's foresight and diplomacy, our best efforts are in danger not from some foreign foe or local unrest, but from an unhealed, untreated massive wound—deforestation, that never entered the headlines or the debate.

Likewise, Latin America largely lacks the complementary development of science and technology to sustain its growth, the homegrown capacity to generate new knowledge or adapt foreign technologies to deal with the vast vestiges of poverty or the newer global problems bearing down on its societies. Problems not only of environmental destruction and failing conservation, but also the more familiar crises of energy and inflation.

At a moment when many Latin nations are poised precariously on the high wire of economic growth, they are being buffeted by costly, uncertain energy supplies and the ever higher cost of global living.

And left unattended, unrecognized, these newer structural challenges are no less insidious, no less a drain on development or the portent of a bleak, barren future, than the Continent's widespread rural and urban poverty. Without environmental planning and protection, the misery of Latin America's cities and countryside only deepen. Without adequate conservation, agricultural development can lead to permanent scars. Without indigenous science and appropriate technology, growth soon encounters its own needless barriers . . . and development whose purpose was the vitality and independence of a Continent soon leaves its people all the more dependent on the untender mercies of foreign energy and worldwide inflation.

Already, as many of you have seen, the economic advance of Latin America has begun ominously to slow. In recent years, growth rates in countries throughout the Continent averaged only some 60% of their level in the early 1970s. Many countries are groping for new models of development that can more effectively deal with fundamental problems of poverty, unemployment and income distribution.

Yet precisely at this moment of quiet but deadly serious crisis, precisely when Latin America needs more than ever a sense of cooperation from her Hemispheric neighbor in meeting this onslaught against our common future and progress . . . at this moment there has been a second assault on development. It has come, as it were, from the rear. And it has hurt.

I'm talking about the force of a new mythology . . . the assumption lately so widespread in official and private circles that the work of development is somehow done in Latin America. The awkward watchword of that myth, as many of you have heard, is "middle-income".

I think it was George Bernard Shaw who once observed that a hyphen was one of this century's concessions to barbarism. I wonder if he foresaw the havoc wrought in the name of "Middle-income."

Because many Latin and Caribbean nations register abstract per capita incomes relatively higher and populations relatively lower than the very poorest countries of Asia or Africa, they are deemed ineligible for added U.S. development cooperation. Because all but 3 Latin American nations now record per capita incomes over $550 a year—compared to $9,500 in the United States—they are termed "middle-income" and shunted aside in the apportioning of limited technical and economic cooperation funds.

As if a term could capture the anguish of people, 160 million people, without jobs or enough food for their children, or decent homes, or schools. As if a term could erase what a Latin poet once said of such poverty—"an evil tooth that has bitten the heart of man."

But no one has exposed the mythology more tellingly, I think, than President Lopez-Portillo of Mexico, whose nation is such a vivid example of the remaining challenges of economic and social development, and of the neglect of those problems in the "middle-income" mentality.

Mexico, of course, has made remarkable economic progress. It has a flourishing middle class, its statistics are often models for economic growth, it is a classic example of a "middle-income" country.

Yet its economic growth is also haunted by an underlying urban and rural poverty, its cities and countryside confront new environmental dangers, it is besieged by inflation, by new needs in science and technology, by its own progress and rising expectations.

And it sees the current system of international cooperation unresponsive to its needs . . . because it is "middle-income."

So President Lopez-Portillo told an interviewer this autumn:

"I would call it the zero hour. We still do not have sufficient resources we still do not have sufficient plans. We have great accumulated needs and expectations. And the modern world is not made for these kinds of countries . . . it is not made for middle countries that do not fit in . . ."

And what he said of Mexico is so largely true of many other nations in Latin America.

"Poor Mexico", goes the familiar political saying, "So distant from God, so close to the United States". The time has come to make our closeness to Mexico and the rest of Latin America and the Caribbean the blessing it can be for the Hemisphere. To take the curse of indifference, neglect and excess pride off our relations.

For I am convinced that if more balanced development does not forge ahead as it can in Mexico, and other Latin and Caribbean countries, if the benefits of that development cannot be more equitably shared, the resulting unrest and suffering could someday make the United States rue its location with equal feelings.

The "middle-income" term that is used to classify the developing countries of our Hemisphere is a cruel facade . . . a lifeless term behind which half the people of a Continent live in awful poverty and there are spreading blights on what progress we have made.

And to neglect the reality behind the facade, to pretend it does not exist, to wish it away with terms, is very much to hazard our own future.

I think many of you in this distinguished audience know that the other side of our vast opportunity, the other dimension of our interdependence, is that the waves of development failure in Latin America will soon come rolling toward the North.

Economies mired in root poverty cannot long be expanding markets for trade and investment.

Nations overwhelmed by natural resources crises, energy shortages, and lack of scientific and technological resources cannot long be healthy partners or an "engine of growth" for anyone.

And our neighbors in this Hemisphere cannot long be stable, secure, good neighbors with their societies torn by want and scarred by progress.

At stake in the sustained, balanced development of Latin America is what has always been at stake. Our prosperity as well as theirs. Our stability as well as theirs. Our security as well as theirs.

We are already feeling, of course, the first stirrings of that wave of migrating poverty, just as Latin economies are feeling the declining pace of growth. Those stirrings are in the millions of undocumented Latin and Caribbean workers who flee to the U.S. as refugees from a hopelessness that only development can defeat.

We will not solve that problem by police or barbed wire, some grotesque "tortilla curtain."

No, we have to deal with that tragic migration as only neighbors can and must—by recognizing that we must do everything we can to cooperate with Mexico and the rest of Latin America and the Caribbean to make real the promise of bread and freedom we joined in long ago.

And that is why I am glad to have "come home" to the Council today. Because we have great possibilities, and great risk. And because no other single group in the United States should understand more clearly than you in this audience what is at stake.

And, not least, because I need your help, the people of the Hemisphere—the North and South—need your voice and energy and compassion as never before, to make the year 2000 far brighter than the dark, dangerous picture I have drawn here today.

First, I want to tell you what I am trying to do inside government, and give you my personal views of an opportunity—and, I suspect, a battle—we are about to enter inside the policy-making process.

During the past year there has been increasing concern that the United States is losing its means of relating bilaterally to the major development problems of our closest neighbors. As a result, in the last session of the Congress, The House International Relations Committee requested A.I.D. to report to the Committee by February 1, 1979, on the future of U.S. Development assistance programs toward the middle income countries, particularly in reference to Latin America. Its report states the following:

"Concern has been growing . . . that U.S. bilateral development assistance is being reduced or terminated to countries classified as middle income at a time when these countries still have a great need for external assistance to support their economic development efforts. The Committee calls on A.I.D. to review its development objectives toward middle income countries, particularly in Latin America, and the resources which the United States is willing to devote to their development. The development of these countries is in the direct interest of the United States."

In my view, this Report should be a headline matter. It will help shape the future of U.S. development cooperation in Latin America and the Caribbean throughout the 1980s. And, to be frank, it is not now certain what recommendations will be provided to the Congress. I urge the Council to take a special interest in this Report and to make your views known.

Some of the critical issues that are being examined in this Report—and that will be considered by the Congress in the upcoming session—are the following:

—First, should the U.S. Government *continue* to reduce its bilateral economic and technical cooperation program in Latin America because of the so called "middle income" status of most of our developing neighbors? In other words, should we continue a bilateral policy of "benign neglect" of Latin American development?

During the past ten years, U.S. bilateral development cooperation in the Western Hemisphere has declined from over $600 million in the 1960s to just over $200 million today. But this reduction is not the full story. Soon repayments by Latin and Caribbean countries on older A.I.D. loans will almost equal new U.S. economic assistance in the Hemisphere. If the current declining trends are continued, the U.S. bilateral A.I.D. program may even begin draining resources out of the region in the 1980s. In other words, we are nearing the point when the Latins, as a whole, will be financing the entire U.S. bilateral economic assistance program. In my personal view, this is an unacceptable position for the richest country in the Hemisphere.

Another important issue being considered is whether the U.S. should continue to ignore the development needs of the largest Latin American countries—nations with the largest poverty problems in the Hemisphere. One half of the Region's poor—almost 80 million people, live in three middle income developing countries—Brazil, Colombia, and Mexico. Yet the U.S. Government currently has no bilateral cooperation programs with these countries for addressing poverty problems or for dealing with newer global concerns like food production, energy conservation, environmental protection, and science and technology development.

And finally, what role, if any, should U.S. bilateral development cooperation play in the middle income countries? Some will argue that trade, private investment and capital flows from the international financial institutions and private sources are providing the necessary resource transfers for the Region. Why is a bilateral program necessary?

U.S. bilateral economic and technical cooperation in Latin America is not currently designed as a resource transfer program. Its primary role is to transfer ideas and technical knowledge, to build indigenous capacity in Latin and Caribbean countries to analyze and deal with poverty and newer global problems. A.I.D.'s small loan projects—integrating research, training, technical assistance, institution-building, management systems and modest capital inputs—matched by local contributions, create the "absorptive capacity" so that host countries can better deal with their own critical development problems. The bilateral program—with some degree of concessionality—provides the "seed capital" and incentives for pioneering new development approaches and adapting new technologies that often cannot be done with other funding sources. In my personal view, such a program—adequately funded—is one of the indispensable instruments for managing our growing Hemispheric interdependence.

What I am striving to achieve in A.I.D. is nothing more nor less than a creative new mechanism for U.S. development cooperation. We seek neither the large capital transfers of the 1960s, nor the simple technical assistance programs of the post-war era. We will need neither billions of public dollars to do the job that free trade and investment can do, nor a legion of foreign experts doing the job in the field that Latin Americans, if only given the chance, can do for themselves. What is necessary instead is a careful blend of modest development loans and technical cooperation that can enable Latin America to foster the institutions, to nurture the human resources and to support the necessary policies to deal with widespread poverty and the newer global problems that I have been discussing.

The U.S. Government can no longer be—nor should it be—the main supplier of large capital transfers for the Continent. That essential role belongs to the natural flow of trade among neighbors, to international banks and to other instruments. Bilateral development cooperation, channeled into building the policy and institutional and human resource base to cope with neglected problems—coordinated with the large and growing flow of investments—this otherwise modest transfer of money and technology can have an impact far beyond its apparent size.

For only a relatively small investment, we can cooperate with Latin America in creating the necessary programs and delivery systems for dealing with rural and urban poverty, build new environmental protection and conservation agencies, establish the means for adopting alternative energy sources, and improve local scientific and technological resources. These are the vital new arteries of development, where so few now exist. We can, only if we will, help the Continent establish the institutional systems—the indispensable conduits—through which the international capital of the future will reach Latin America's most urgent needs. And, most important, we can meet these new challenges by giving Latin America not a hand-out—not some paternalistic welfare program—not some new dependence, but instead the capacity to recognize and to remedy for itself its own development problems.

For these reasons, I wanted to share with you my personal views on this special A.I.D. Report that will help chart our future development policy toward Latin America and the Caribbean. This is a policy issue that requires debate both within the public and private sectors. If we in the public sector

are to dispel the mythology of the middle income myopia, we will need *your* experience and *your* stature. We need *your* voices to put right our development priorities and to give Latin America the place its importance to us merits.

And, please, never underestimate the power, as the Chinese say, of a foolish idea with so many fathers. The middle-income misconception, the heedlessness and sometimes bias against Latin America can be deep. Nor are we talking only about some abstract, insider's debate over definitions or public relations.

Beyond this seemingly obscure discussion over a concept is a world of life-and-death, with real, flesh-and-blood human beings. In the year 2000 this Hemisphere may not remember the term or the debate at all. But everyone in it will be living with the consequences.

While we are waging that intellectual and political fight to make our case, we will also be doing all we can to augment what resources we do have. As I indicated, AID funds for Latin America have been steadily falling, and it will be a tough task to increase the slightly more than $200 million we now have available—though, again, we are going to give it all we've got.

We are also exploring possible new approaches—one of which would entail the reuse, or recycling, of repayment on past AID loans to Latin America. Repayments to the Treasury on those loans now run nearly $200 million a year, making, ironically, for almost no net transfer of U.S. funds to the Region at this critical juncture in history. But if we could somehow reuse those payments for priority development needs in poverty sectors and in new environmental, conservation and energy projects, we could virtually double our assistance. That, along with other ideas, we are examining for every possible means of dealing with poverty and other global problems in Latin America and the Caribbean.

But even if AID resources could be substantially increased—even though our lending programs on concessional terms are essential if many nations are to undertake long-range projects in urban and rural poverty or in preserving the environmental and natural resource base which will have to sustain future generations—we will also need the support and financial resources of the private sector.

For along with your financial power—and profit—goes a serious responsibility. Like past bilateral and multilateral AID programs before you, far too little of your investments have been channeled into that submerged half of Latin America, into projects that directly benefit the rural and urban poor.

We in the Latin America and Caribbean Bureau of AID are working on a new mechanism for channeling private capital into areas most in need of accelerated development. We are seeking to devise the means for a new collaborative arrangement between government and business to meet the tasks of unfinished development in Latin America. Private capital has a decisive contribution to make in the crisis I've been describing.

With your resources and our technical expertise and concessional loans * * * with Congressional approval of needed guarantees * * * with the cooperation of Latin nations who recognize the new challenges * * * we can begin to act.

I hope we can discuss the idea of that new mechanism here. We need your advice and your creativity * * * as well as your voice in Washington, and your investment in a more secure future.

And if we don't begin in this room, if not we who know Latin America, who have responsibilities in government and business for the larger welfare of this Hemisphere, who will?

So, again, I ask your help.

To rededicate this nation to its fellow nations, and to its own future, in this Hemisphere * * *

History will judge us sternly, I know, if this constituency, above all, does not join the challenge and the battle, here and in Latin America.

Thank you.

[From The Journal of Commerce and Commercial, Feb. 16, 1979]

MIDDLE INCOME MYOPIA

The middle class is viewed as a symbol of strength and stability. Every nation has its poor, and not a few countries—even those with little else—some rich people. But few countries are fortunate enough to enjoy a large and widely dispersed middle class. Where this does occur, it is evidence of something more, and affirmation of the homely virtues; belief in hard work, education, saving and investment, political diversity and national purpose.

In the world community of nations unfortunately, we tend to view the middle income countries—those midway in the scale between rich and poor as measured by per capita income—much as we view the middle class. Largely because of their own strengths and determination, we assume, they have moved beyond the place where they would benefit from the active help of rich countries like our own.

This is reflected in the Carter administration's budget for the fiscal year beginning next Oct. 1. In its proposals for development assistance, it emphasizes loan guarantees for the multilateral development banks—the World Bank group, the Asian, African and InterAmerican Development Banks. Guarantees are far cheaper than actual budget outlays. And in the relatively small outlays for bilateral assistance, the budget gives greatest weight to the poorest countries, mainly in Africa and southern Asia. The middle income countries are ignored.

The geography of the rich and poor is worth a moment's consideration. The World Bank has produced a new atlas that tells the story graphically. The rich countries, those with per capita national incomes of $5,000 and over, are clustered in North America, Western Europe, Japan and Australasia. Those not so rich but still quite well off, with per capita incomes of $2,000 to $4,999, span the northern reaches of Asia from Siberia into Eastern Europe and the Middle East.

The poor countries, those with per capita incomes of less than $200, and those only a bit better off, from $200 to $499, cut a wide swath across central Africa into India, China and the East Indies. The middle income countries, with per capita incomes of $500 to $1,999, are found in southernmost Africa, along or close to the shores of the Mediterranean and, importantly, in Latin America. Almost all of Latin America, including Mexico, falls into this category.

Classifications of this kind give rise to what Abelardo Valdez, the man in charge of Latin American programs for the U.S. Agency for International Development, terms a new mythology, "the assumption that the work of development is somehow done in Latin America." In a talk to the Council of the Americas, he explained:

"Some 160 million people, half of the continent's population, live on incomes of less than $250 a year. Last year, one in every five Latin Americans received less than $100 a year and languished in desperate want. Unemployment and under-employment in many countries climbs to between 20 and 50 percent, joblessness horribly worse than at the depths of the Great Depression. Chronic malnutrition, inadequate health care and a lack of relevant education or vocational training plague the entire region."

The House International Relations Committee, in the last session of Congress, asked Mr. Valdez' agency to report to the committee this year on the future of U.S. development assistance to the middle income countries, particularly those of Latin America. One of the issues being examined is whether this country should continue to trim its economic and technical aid because of the middle income status of most of the Latin American countries.

During the past 10 years, U.S. bilateral development assistance in the Western Hemisphere has dropped to $200 million a year from over $600 million in the 1960s. But this is not the full story. Soon repayments by Latin and Caribbean countries on old loans will almost equal U.S. aid. Indeed, if current trends continue, Latins may soon be financing the entire U.S. bilateral economic assistance program. In Mr. Valdez' view, this is an unacceptable role for the largest country in the hemisphere.

Another matter of concern is whether the United States should continue to ignore the development needs of the largest Latin American nations; **Brazil, Colombia and Mexico.** One-half of the region's poor, almost 80 million people, live in these three lands alone. Yet, the United States has no bilateral aid programs for dealing with poverty in these lands or with such newer concerns as energy conservation, environmental protection and the development of science and technology, including a modern agriculture.

Finally, there is the question: Why any bilateral aid at all? Why not help simply from the international financial institutions and the private sector? Mr. Valdez responds that the primary role of bilateral aid is not to transfer resources but ideas and technical knowledge:

"AID's small loan projects—integrating research, training, technical assistance, institution-building, management systems and modest capital inputs—matched by local contributions, create the absorptive capacity so that host countries can better deal with their own critical development programs."

The seed capital, in other words, to help Latin Americans do a better job for themselves.

Such matters are especially relevant in view of President Carter's visit this week to Mexico. The Mexican president, Jose Lopez Portillo, told an interviewer last fall that although his country still did not have sufficient resources or sufficient plans, it had accumulated great needs and expectations. "The modern world," he added, "is not made for these kinds of countries, middle income countries that do not fit in."

It is in this country's direct interest, politically as well as economically, to demonstrate that the middle income countries do fit into the modern world and that we stand ready to help.●

RULES OF THE SELECT COMMITTEE ON SMALL BUSINESS

● Mr. NELSON. Mr. President, section 133B of the Legislative Reorganization Act of 1946, as amended, requires each committee of the Senate to adopt rules governing the procedure of such committee, and to publish these rules in the CONGRESSIONAL RECORD.

On February 8, 1979, the select committee met in executive session, and with a quorum present, unanimously adopted rules of procedure for the 96th Congress. I submit for the RECORD the text of the Rules:

STANDING RULES OF THE SENATE SMALL BUSINESS COMMITTEE

1. GENERAL

All applicable provisions of the Standing Rules of the Senate and of the Legislative Reorganization Act of 1946, as amended, shall govern the Committee and its subcommittees. The Rules of the Committee shall

be the Rules of any subcommittee of the Committee.

2. MEETINGS AND QUORUMS

(a) Meetings may be called by the Chairman as he deems necessary, on three days notice where practicable. If at least three Members of the Committee desire the Chairman to call a special meeting, they may file in the office of the Committee a written request therefor, addressed to the Chairman. Immediately thereafter, the Clerk of the Committee shall notify the Chairman of such request. If, within three calendar days after the filing of such request, the Chairman fails to call the requested special meeting, which is to be held within seven calendar days after the filing of such request, a majority of the Committee Members may file in the Office of the Committee their written notice that a special Committee meeting will be held, specifying the date, hour and place thereof, and the Committee shall meet at that time and place. Immediately upon the filing of such notice, the Clerk of the Committee shall notify all Committee Members that such special meeting will be held and inform them of its date, hour and place. If the Chairman is not present at any regular, additional or special meeting, the ranking majority Member present shall preside.

(b)(1) Nine members of the Committee shall constitute a quorum for reporting any legislative measure or nomination.

(2) Six members of the Committee shall constitute a quorum for the transaction of routine business, provided that one minority member is present. The term "routine business" includes, but is not limited to, the consideration of legislation pending before the Committee and any amendments thereto, and voting on such amendments.

(3) In hearings, whether in public or closed session, a quorum for the taking of testimony, including sworn testimony, shall consist of one Member of the Committee or subcommittee.

(c) Proxies will be permitted in voting upon the business of the Committee by Members who are unable to be present. To be valid, proxies must be signed and assign the right to vote to one of the Members who will be present. Proxies shall in no case be counted for establishing a quorum.

(d) The Chairman and Ranking Minority Member shall serve as ex officio members of all subcommittees on which they do not serve as members.

3. HEARINGS

(a)(1) The Chairman of the Committee may initiate a hearing of the Committee on his authority or upon his approval of a request by any Member of the Committee. The Chairman of any subcommittee may, after approval of the Chairman, initiate a hearing of the subcommittee on his authority or at the request of any member of the subcommittee. Written notice of all hearings shall be given, as far in advance as practicable, to Members of the Committee.

(2) Hearings of the Committee or any subcommittee shall not be scheduled outside the District of Columbia unless specifically authorized by the Chairman and the Ranking Minority Member or by consent of a majority of the Committee. Such consent may be given informally, without a meeting.

(b)(1) Any Member of the Committee shall be empowered to administer the oath to any witness testifying as to fact if a quorum be present as specified in Rule 2(b).

(2) Any Member of the Committee may attend any meeting or hearing held by any subcommittee and question witnesses testifying before any subcommittee.

(3) Interrogation of witnesses at hearings shall be conducted on behalf of the Committee by Members of the Committee or such Committee staff as is authorized by the Chairman or Ranking Minority Member.

(4) Witnesses appearing before the Committee shall file with the Clerk of the Committee a written statement of the prepared testimony at least 24 hours in advance of the hearing at which the witness is to appear unless this requirement is waived by the Chairman and the Ranking Minority Member.

(c) Witnesses may be subpoenaed by the Chairman with the agreement of the Ranking Minority Member or by consent of a majority of the Members of the Committee. Such consent may be given informally, without a meeting. Subpoenas shall be issued by the Chairman or by any Member of the Committee designated by him. Subcommittees shall not have the right to authorize or issue subpoenas. A subpoena for the attendance of a witness shall state briefly the purpose of the hearing and the matter or matters to which the witness is expected to testify. A subpoena for the production of memoranda, documents and records shall identify the papers required to be produced with as much particularity as is practicable.

(d) Any witness summoned to a public or closed hearing may be accompanied by counsel of his own choosing, who shall be permitted while the witness is testifying to advise him of his legal rights.

(e) No confidential testimony taken, or confidential material presented to the Committee, or any report of the proceedings of a closed hearing, or confidential testimony or material submitted voluntarily or pursuant to a subpoena, shall be made public, either in whole or in part or by way of summary, unless authorized by a majority of the Members of the Committee.●

GASOLINE TAX DEDUCTION

● Mr. HATCH. Mr. President, I am pleased to join with the distinguished Senator from North Carolina (Mr. HELMS) in cosponsoring S. 79, a bill to restore the itemized deduction for State and local nonbusiness gasoline and motor fuel taxes. This deduction was deleted from the Tax Code by the Revenue Act of 1978 which was enacted into law during the final hours of the 95th Congress last October. I believe that Congress should restore the deduction for the following reasons:

First. The absence of this deduction will be felt most severely by middle-income taxpayers.

Second. Its elimination will help undermine the incentive for taxpayers to make use of itemized deductions.

Third. Its reenactment will not have a substantial effect on energy consumption.

Fourth. It was deleted without adequate deliberation by Congress.

Beginning this year, individuals who itemize will no longer be allowed to deduct State and local excise taxes imposed on gasoline, diesel, and other motor fuels, which are not used for business purposes. If Congress fails to restore this deduction, the middle-income taxpayer will bear the greatest burden in additional taxes. According to U.S. Treasury Department figures, over 70 percent of the revenue raised from the repeal of this deduction will come from taxpayers making less than $30,000 a year. In 1983 alone, the elimination of this deduction will, according to the Treasury, take an additional $2.2 billion from the pockets of the American taxpayer who must also face spiraling fuel prices. At a time when the Government is promising tax relief, it is using a "backdoor approach" to impose another new tax on a large segment of American society. Can the Senate permit such an increase during a period when taxpayers are saying "no" to more taxes? I do not believe so.

Mr. President, the repeal of this deduction is part of a much larger scenario of tax reform, a scenario that represents a changing attitude within the Treasury Department regarding tax legislation. The administration's decision to end the gasoline tax deduction is a disguised attack on the class of itemized deductions. By eliminating a deduction every year, the value of itemized deductions to all taxpayers will be gradually eroded.

Contrary to popular belief, those who benefit most from itemizing are not just a few "fat cats." According to the Treasury Department's own figures, taxpayers with an income under $25,000 accounted for over 65 percent of the itemized returns in 1975. These are middle-income people who work hard for their take-home pay.

It is my opinion that Congress should view itemized deductions as a class when making revisions in tax law. As each deduction is eliminated, fewer taxpayers are provided the incentive to itemize. I suggest that Congress avoid this piecemeal approach and consider the total effect that is created by the repeal of itemized deductions. We should not allow the Treasury to sneak tax reform past in such a manner.

Unfortunately, tax reformers have tricked both Houses of Congress into dealing with deductions by following an item-by-item approach. When it comes time to change the Tax Code, all attention is focused on the merits of one narrow issue. Last year it happened to be the gasoline tax. Will the itemized deduction for State income taxes be next? Followed by elimination of the itemized deduction for interest on home mortgages?

Mr. President, if we continue to chop down trees one by one, the forest will soon be gone. Do we want that? I believe we need more information before we go any further. We need to look at the broader picture. American taxpayers deserve that much. In fact, they demand it.

Concern about the conservation of energy and the reduction of oil imports has been the primary argument supporting the deletion of the gasoline deduction. In my opinion, Mr. President, the elimination of this deduction will have little effect in assisting our Nation achieve its energy goals. Instead, it will create an unfair tax burden for many taxpayers in Western and rural States. People who live in these areas must drive greater distances. Should we penalize them when they must drive their family automobiles to seek medical care or travel into town to purchase groceries or farm supplies? And what about commuters? Will the elimination of the gasoline deduction suddenly force them to flee to mass tran-

sit? I think not. We promise our constituents a tax cut and then turn right around and pull out a meaningful deduction. We disguise our actions by claiming that it will somehow help cure our energy crisis. If this measure is designed to save fuel, how can Congress allow business to maintain its fuel deductions? Or will business be next?

Mr. President, when the elimination of this deduction was considered by the Finance Committee last fall, it was added to the tax bill during the final hours of markup. When the tax bill reached the floor of the Senate, an amendment to restore the deduction was ruled "out of order," because it would have lowered projected revenues below the legal limit set by the budget resolution. The Senate, as a whole, was not allowed to vote on the measure. Because of this parliamentary technicality, the Finance Committee's supposed "recommendation" became law without adequate review by the Senate. Congress must act as soon as possible in this session to give this issue a full hearing.

I hope that my colleagues will understand the seriousness of this matter and join in supporting S. 79.●

NOMINATION OF MAX L. FRIEDERSDORF FOR COMMISSIONER OF THE FEDERAL ELECTION COMMISSION

● Mr. TOWER. Mr. President, I am pleased that on Wednesday of this week this body confirmed the nomination of Max L. Friedersdorf as a member of the Federal Election Commission.

Mr. Friedersdorf is currently the staff director of the Senate Republican Policy Committee. Before assuming that post in 1977, he served as assistant to the President for legislative affairs and was on the White House congressional relations staff for approximately 6 years, since April 1, 1971. From 1961 to 1970, Mr. Friedersdorf was administrative assistant to Representative Richard L. Roudebush of Indiana. He started his career as a newspaper reporter and city editor for the Franklin Evening Star in Franklin, Ind., and later reported for the Louisville Times and the Chicago Daily News.

Mr. Friedersdorf's employment by the Senate, the White House, and the House of Representatives uniquely qualifies him to serve on the Federal Election Commission. In these positions, he has grown to appreciate the time-honored traditions of these institutions. In addition, he has had the opportunity to observe firsthand the election of Members of Congress as well as Presidents.

Mr. Friedersdorf's early career as a newspaper reporter covering elections has given him an appreciation of the public interest in the integrity of the electoral process.

Mr. President, my association with Mr. Friedersdorf extends to the early seventies. During this period, I have come to know him as a man of great personal and intellectual integrity. He will serve the American people well as a member of the Federal Election Commission.●

S. 388—SMALL BUSINESS EMPLOYEE OWNERSHIP ACT

● Mr. HATCH. Mr. President, I am pleased to join with my colleague from Alabama, Senator STEWART, in cosponsoring the Small Business Employee Ownership Act. This bill will fill a current void in small business ownership, opening new potential for free enterprise involvement by formerly precluded employees, without the appropriation of new funds, the need for more bureaucrats, or the creation of more agencies. It provides for Small Business Administration (SBA) extension of funds to viable, but previously excluded groups.

Direct employee ownership of business has been unknown until this decade, and has usually arisen when a company would otherwise close, relocate or be sold to a third party. Studies concur that companies wholly or partly owned by their employees are 50 percent more profitable than comparable conventional firms. There is also a direct correlation between profitability and extent of employee ownership. Most importantly, employee ownership results in significant increases in productivity and worker satisfaction.

The present alternatives to employee ownership are plant closings, unemployment, and subsequent governmental welfare and unemployment costs, lost jobs, and the attendant emotional trauma of recovering employment.

This bill provides for the extension of SBA funds normally available under the 7(a) business loan program and 8(e) procurement assistance program to be made available to employee owned companies, companies with employee stock ownership plans (ESOP's) and employee stock ownership trusts (ESOT's), and employee organizations seeking to purchase their businesses. Under current SBA regulations, ESOT's are ineligible for assistance, and employee organizations must meet inappropriate criteria of eligibility.

This bill requires a feasibility study insuring the viability of business success after employee takeover, that all employees have the opportunity to participate without discrimination by salary level, and that ownership is consumated within a reasonable time.

Mr. President, this program could save millions of dollars in Government supported unemployment programs. It unlocks the potential of a latent free enterprise incentive that may not otherwise be fostered, but for the chance to participate in one's own business. Studies prove that the concept works, and this bill will provide the booster to propel employee hopes into reality.

Mr. President, I know of no community that could not benefit from the pride of ownership this bill will promote.●

GOVERNMENT REGULATION

● Mr. HEINZ. Mr. President, in this day of proposition 13 fever, the people of this great Nation are sending their elected representatives a very strong message. That message is: Get the Government off our backs. They are fed up with too much Government, too high taxes, and too much regulation.

Today the Federal Government regulates virtually everything from the food we eat, to the houses we live in, to the places we work. There is no doubt, Mr. President, that many of these regulations are necessary. But when we observe such actions as the Tris debacle, or the saccharin controversy, or other similar regulatory actions, we all begin to ask ourselves is it worth it?

That is the question; and through such initiatives as proposition 13, the people are telling us the answer in a resounding "no." The people are telling us that all this insidious Government intervention in our lives is not worth the cost in taxes, in inflation, in unemployment.

The effects of Government on our lives are, therefore, becoming quite clear. The Congress and the Federal regulatory agencies have to become more sensitive to the ultimate costs of regulation and to balance these costs against expected benefits.

This is the subject of an article that recently appeared in the Washington Post. Peter H. Schuck's article "On the Chicken Little School of Regulation" effectively argues the case for cost/benefit analysis as a tool of Government regulation. I commend this article to my colleagues and ask that it be printed in the RECORD.

The article follows:

ON THE CHICKEN LITTLE SCHOOL OF REGULATION

(By Peter H. Schuck)

Like Mark Green, I have had nightmares about regulation. But mine are different. In his, you will recall, big business and its minions gang up on Congress to defeat a regulation to end polio. In one of mine, a government agency mandates that children's sleepwear be flame-retardant only to learn—many millions of dollars and perhaps many cancers later—that the chemical that the agency knew would be used to comply was carcinogenic and the sleepwear could not be used.

In another, a government agency mandates that each new vehicle be armed with a costly system that prevents ignition until seat belts are fastened, only to find that consumers are disarming the systems in frustration. In another, a new government agency is created to increase the security of pensions, only to learn that its efforts have succeeded in discouraging the creation of pension plans and in helping to drive many small ones out of business.

In each of my nightmares, the regulatory scheme is preceded by analyses by academic economists, consulting firms, business organizations and the Council on Wage and Price Stability, all warning that the regulations will be costly, inequitable and produce fewer benefits than expected. Each, however, is implemented on a groundswell of righteous indignation fueled by congressional investigations, media exposes and Ralph Nader denunciations of cowardly politicians, passive bureaucrats and greedy corporations locked in unholy alliance against the public interest. And just before I awaken, as the predictions of the economists come true,

proponents of the regulations propose not that they be repealed but that the economists be killed.

The difference between Green's nightmare and mine, of course, is that while his is fanciful, as he admits, mine all actually occurred. (In fairness, he does not recommend death for economists, only that nobody listen to them—which to them amounts to much the same thing.)

FALSE CHOICES

Green properly points out that some particular regulatory schemes have been effective, that cost-benefit analysis is still a rudimentary decision-making tool, that opponents of particular regulations often abuse it, that costs are often easier to measure than benefits, and that many of society's most cherished values are not well suited to this sort of analysis.

If his ambitions had been limited to these points, his article would merit applause rather than rebuttal. In fact, however, he has set himself a larger task: to build a case for regulation in general.

Like a lawyer representing a defendant already convicted many times in the same court for the same offense, he attempts to discredit some of the witnesses for the prosecution, hoping that the presumption of innocence alone will be enough to get his client off.

In our political-economic system, however, government regulation in general should not enjoy a presumption of innocence or effectiveness, however justified a particular regulatory program may be. Indeed, this is a lesson which Green and Ralph Nader, in their numerous documentations of regulatory failure, have been at pains to teach us.

From reading Green's article, one would think that regulatory policy is shaped, indeed dominated, by persons who believe that all regulation is bad. Yet the fact is that virtually all participants in these debates—and certainly all those who are taken seriously—agree that regulation is appropriate under conditions of significant market failure (such as public utility monopolies or environmental pollution) or inadequate legal remedies to prevent significant harm (such as occupational health).

Nevertheless, the questions remain: How should government regulate? What are the likely benefits and costs of regulations? Can the regulations be enforced? Green suggests throughout that those who are critical of the way in which these questions have been asked and answered in the past are "trying to make citizens hate their government" or are seeking to "abolish" regulation. This inference is as logical as concluding that one who criticizes a proposed merger between two giant corporations is therefore hostile to the free enterprise system, a conclusion that Green would surely resist.

Closely related to the straw man that Green creates is the false choice that he poses: "The choice is between the president as a cost-benefit econometrician or as a tribune for the victims of marketplace abuse." Or, as Green characterizes the issue elsewhere: "Should health and safety regulation be sacrificed to the anti-inflation campaign?"

This reflects a view of the world as one of blacks and whites, either-ors, and goals which do not conflict. Neither the president nor any other policy maker, however, can afford the luxury of seeing the world in that utterly distorted way, but must find some acceptable balance between health goals, anti-inflationary goals, employment goals, capital formation goals and other goals, each of which conflict to some degree. To suggest that such an accommodation is a betrayal of trust, rather than constituting the essence of leadership, is truly to "make citizens hate their government."

FLAWED BUT NECESSARY

In his discussion of cost-benefit analysis, Green begins with two fundamentally sound premises: Cost-benefit studies are usually flawed, often seriously, and they are often used by political actors for political ends. Much like a rookie cop who encounters sin on his new beat, however, Green finds this reality profoundly disturbing and draws the conclusion that cost-benefit analysis is essentially a sham, designed to serve predetermined, corporate, anti-regulatory ends.

In truth, however, analysis is an effort to engage in rational decision-making, an effort that will always fall short to some extent. Green's critique confuses a process with the products of that process. It is rather like opposing democracy because it permitted Watergate to occur, or opposing sex because it sometimes leads to prostitution, venereal disease and unwanted babies.

If cost-benefit analysis is at best imperfect, which it is, what is the alternative? Green provides confusing signals on this question: He says that "obviously" officials devising regulations should do what sounds suspiciously like cost-benefit analysis (he calls it "impact review"). Yet the entire thrust of his article is that such analysis is pernicious.

In any event, let me offer a few modest suggestions. First, cost-benefit analysis, as a way of addressing complex problems, is inescapable. Although we do not often call it that, we all use it, with varying degrees of sophistication and rigor: The driver trying to decide how fast to drive and what route to take; the worker puzzling about whether to change jobs; the student figuring out whether to go to work or to graduate school; the Congress agonizing over whether to spend more money on jobs programs; the regulator trying to set safety standards, and lobbying groups like Public Citizen deciding on which bills to focus their limited resources. In short, we are stuck with cost-benefit analysis, and the only questions are how well it is done (analysis, after all, is not costless) and how honestly and openly its inevitable limitations are acknowledged.

Second, even when the analysis cannot help us to evaluate regulatory objectives, it can often help us identify the most cost-effective alternative for attaining a given objective (for example, reducing pollution through effluent charges rather than emissions standards).

Third, it is simply not true that the biases in benefit-cost analysis work only in an anti-regulation direction. Proponents of regulation routinely predict large benefits while downplaying costs in an effort to persuade others, and those predictions often turn out to be exaggerated. In short, numbers games are played by all sides—and, to judge by the outpouring of regulations in recent years, the deck can hardly be said to have been stacked against those of Green's persuasion.

Finally, his attack on the notion that "business-dominated cost-benefit studies should control regulatory decisions" is mere wrestling with phantoms. The political process constitutes an important safeguard against the inevitable shoddy and distorted analyses, a safeguard which Green ignores. Regulatory policy is made in an intensely competitive environment in which adversaries have every incentive—and many forums—to pinpoint and publicize the limitations and imperfections of any particular piece of analysis. His own article is replete with examples of this adversary process successfully at work.

Decision makers in the real world do not make decisions primarily on the basis of cost-benefit analyses (although they may haul them out as protective coloration once the decision is made), the limits of such analyses are too well-known to them—thought not always to the general public—to permit them to be decisive except in a few extreme cases on which almost everybody would agree, anyhow.

QUALIFIED BENEFITS

Most students of regulation, including those often critical of its particular manifestations, agree that regulation often yields important social benefits. Since Green catalogues them at great length, I can limit myself to pointing out some of the deficiencies in his analysis of benefits.

Regulation does often encourage innovation, as Green points out, but only in a restricted sense of the word. To be sure, a firm can be expected to find the least costly way of meeting a given regulatory standard, but that is innovation only in the sense that a driver presented by a detour sign from taking his accustomed route is engaged in innovation when he takes a different road. The regulation may well elicit a fresh response, but that does not tell us whether the standard itself, the detour, was the best road to have taken.

Moreover, many regulations actually prohibit innovation by prescribing a specific manner in which a standard must be met. In fact, most studies of the subject have concluded that regulation usually inhibits innovation or channels it into frivolous areas (such as the color of airplane fuselages).

Regulation, as Green's example indicates, both creates jobs and destroys jobs; in fact, it usually does both simultaneously. But the jobs which regulation "creates" in one sector (say, manufacture of pollution control equipment) will probably occur at the expense of jobs which existed (or, absent regulation, would have existed) in other sectors (say, in the regulated industry itself or in industries to which the capital used to produce the pollution control equipment would otherwise have flowed). And even a regulation that produces a net gain in jobs is undesirable unless it is the least expensive way to achieve the regulatory objective (a question, by the way, that cost-benefit analysis can help to answer).

Green asserts that regulation often has a beneficial redistributive effect, postulating a regulation that shifts costs "from hard-pressed workers to relatively well-off stockholders." If the world were that simple—if redistributive effects were so easily identified and socioeconomic groups were so easily categorized—social policy making would be almost as easy as Green seems to think it is. In fact, however, a regulation often benefits certain "hard-pressed workers" at the expense of other workers (now even more hard-pressed because unemployed) and equally hard-pressed consumers and small business people.

By the same token, the "relatively well-off stockholder" often turns out to be that same hard-pressed worker; indeed, he and his co-workers now own through their pension plans close to half of the stock in American corporations (according to Peter Drucker), and the percentage is steadily growing. Again, the point is not that regulation does not sometimes have redistributive effects of which Green and I might approve, but only that these effects are very difficult to predict and probably occur (when they do) as much by accident as by regulatory design. If we really wish to redistribute income, there are far better ways to do it than through regulation.

CHICKEN LITTLE REGULATION

Finally, there can be little doubt that some regulations do enhance health and safety.

In each case, however, the important questions will be: How much health and safety? For whom? At what cost? To whom? Could the money be more effectively spent in other ways? These difficult questions do not vanish just because Green invokes grisly images of children disfigured by fire and workers suffering from cancer, nor is our effort to answer them aided by reminding us that human life is priceless. Society measures the value of life many times every day, either explicitly (as when a jury must award damages or a person purchases life insurance) or implicitly (as when Congress, regulators or citizens make tradeoffs between safety goals and other goals, as in our refusal to set 30-mile-an-hour speed limit on interstate highways). The logical implication of Green's life-is-priceless litany is that we should spend the entire federal budget on health and safety, yet no one—least of all, the public—seems to think that makes sense.

Green properly warns us against what he calls "the Chicken Little School of Economic Analysis." An equal, if not greater, danger, however, is the Chicken Little School of Regulation, founded on the principle that one need only consult one's ethical precepts in order to know when and how to regulate in areas of complex human and institutional interaction, and that those who believe otherwise lack ethical precepts, are dupes (witting or unwitting) of business propaganda, or both. His article is a primer for this school. Fortunately, the administration and the public appear increasingly disposed to reject its false teaching.●

THE MEAT IMPORT ACT OF 1979—S. 441

● Mr. HATCH. Mr. President, I feel an imperative need to join with my colleague from Kansas, Senator DOLE, in cosponsoring the Meat Import Act of 1979.

The current law, the Meat Import Act of 1964, provides for a procyclical formula which restricts meat imports as domestic production declines, which results in aggravated production cycles and inflated meat prices, and thus promotes results which both consumers and cattlemen agree are diametrically opposed to the reactions the meat market should produce. During those periods of restricted import quotas the President has utilized his quota suspension authority in a reactionary manner. His decisions to allow massive increases of beef imports to satisfy consumer demands has been at the expense of the western cattleman, thus engaging in obvious misuse of authority to appease short term political pressures at the expense of long-range solutions. It is time that these indiscretions halt, and that the meat production cycle is legitimately solved.

The Meat Import Act of 1979, which I am cosponsoring, provides for a countercyclical formula which upwardly adjusts meat import quotas when domestic production slackens and, conversely, tightens quotas with increased domestic production. This measure also greatly restricts the President's ability to permit increased imports, and requires him to give a 30-day notice when circumstances allow a suspension or increase in import quotas.

Mr. President, cattle and milk production represent the two largest cash receipt commodities in Utah. Together they represent nearly half of Utah's agricultural commodities. To allow the continued Presidential and statutory aggravation of a problem beyond the control of the western ranchers is unacceptable. Under this bill the effects from the domestic meat cycle will abate without unjustified Presidential interference, and the always escalating roller coaster consumer price of meats will stabilize.

Mr. President, we have long needed a statutory basis for stabilizing cycles in the domestic market in a consistent, effective and rapid manner. Mr. President, this measure will realize that goal.●

WANTED: PARENT PARTICIPATION

● Mr. JAVITS. Mr. President, when Congress last year enacted the Elementary and Secondary Education Amendments of 1978 (P.L. 95–561), it provided in a new section 206 of the Elementary and Secondary Education Act for encouragement of activities to enlist the assistance of parents, working with the schools, to improve the skills of children in reading, mathematics and oral and written communications. This is important because a child's learning hours are not—and should not be—restricted to that part of the day spent in a schoolroom.

In its inaugural issue, the New Brooklyn Quarterly carries an interesting article, "Wanted: Parent Participation," by Lawrence Jackel, president of Litton Educational Publishing and chairman of the School Division of the Association of American Publishers and a Brooklynite, born and bred, Mr. Jackel's article merits reading.

I ask that it be printed in the RECORD following these remarks.

The article follows:

WANTED: PARENT PARTICIPATION

(By Lawrence Jackel)

Experience and research indicate that where parents are involved with their children and their education, educational performance improves. But too often parents just leave their children to the schools and hope for the best.

As more parents realize they can't take a hands off approach to the schools, they find they can make a real difference in the quality of their children's education. In many Brooklyn communities concerned parents are beginning to understand that the education of their children is not limited to the classroom and that literacy begins at home.

TV OR NOT TV: THAT IS THE QUESTION

Many of the habits a child carries with him through life are developed early, in the home, and are conditioned by parental example.

A pre-school tot, for example, who is placed in front of "the tube" for hours at a time may never learn the joy of reading. For many parents unwilling to give the child the time or attention required to instill the love of books, television often becomes a surrogate parent to which the child turns as a source of diversion and entertainment. And in too many homes, children have never seen Mom or Dad read a book. If a daughter learns a love of books and reading from her parents, she'll remain a reader for the rest of her life.

Introduce your children to the marvelous children's classics. You'll find the pleasure of sharing ideas in an intimate atmosphere of mutual discovery.

The nightly bedtime story was a wonderful tradition that many of us have lost. You might try turning off the television and reading aloud to your children. You'll both be richer for it.

Another bond which can be established between you and your child is helping with his homework. No, you shouldn't actually do the work for your son, but a sensitive parent can provide the personal and loving guidance that the busy teacher may not be able to provide in a hectic classroom.

THE SCHOOL VISIT: MORE THAN A FORMALITY

Periodic visits to the school are helpful, but they should be more than a perfunctory two minute conference, coffee, and a "We'll see you next year."

Concerned parents should start asking questions about the school's educational goals and priorities. Take a look at the instructional materials your child is using. Are they current or out of date? Do they reflect the latest knowledge and information? Have sexual and racial stereotypes been eliminated?

In a world where social, economic, political and scientific change takes place almost daily, textbooks may be outdated four or five years after they are published. You don't want your child's knowledge to be out of date before she's out of school. And just as nothing is duller than yesterday's news, nothing is less apt to motivate and inspire students than information and illustrations that are out of touch with the world as they see it.

Does your child's school provide a budget for the multi-media systems that help students learn? A full range of films, filmstrips, tapes, and other learning aids should be available, and up to date, to stimulate and motivate each child to discover the wonderful world of ideas.

TEACHER TRAINING: ARE YOUR SCHOOLS UP TO DATE?

Ask about the extent of in-service training programs in your schools. In-service programs expand and upgrade teacher skills to keep them current with new information and new teaching techniques. They should be an important part of your local school system; often they are not.

WORKING WITH THE SCHOOL: HELP WANTED

Many parents are taking an active role in education through volunteer work as professionals and teachers' helpers. The work is personally rewarding. It provides important insights into the educational process. Regardless of professional skills and time availability, there are important jobs where the volunteer parent can help. Volunteer work allows the teacher to devote more time to classroom instruction. It also provides a vital contact point between parents and schools bridging the gap between home and classroom.

Contact the PTA for volunteer work. If your school is not utilizing the time of volunteers, the PTA can often help to establish a program.

AS A TAX PAYER: SPEAK UP

Parents represent conceivably the largest single lobby in the nation. And yet by and large they constitute a silent majority. While political activism has spread to virtually every other area of American life, the voice of concerned parents has remained muted. Parents must insist that the future of their children receive the same attention that is routinely bestowed by politicians upon highway and defense legislation. They can force reluctant legislators to provide quality schools and quality educational materials. They have but to speak out and make their

feelings known to their school boards, their state boards of education and their elected officials.●

THE BALANCED BUDGET PETITIONS: IN DEFENSE OF THE STATE LEGISLATURES

● Mr. LUGAR. Mr. President, the opening salvos have now been fired in the frantic struggle by the vested interests encamped in this city to head off the demands of the American people for a stable dollar through a more balanced Federal budget.

It is apparent that a major stratagem in the obstructionists' campaign will be the attempt to intimidate the State legislatures, and through them the American people, with twin doomsday threats of punitive action and constitutional chaos.

Since the State legislative petitions for a Constitutional convention are the source of Congress nervous tension, it was probably inevitable that many Congressmen would lash out at the legislators who are voting such petitions. Blaming the victim is a natural reaction of a guilty party, but it is not a helpful contribution to solving our collective inflationary dilemma.

In a recent speech before the National Press Club, the distinguished senior Senator from Maine (EDMUND MUSKIE) warned State legislators against intruding on Congress special brand of business as usual. I was not privileged to be present in Washington that day. I was meeting with constituents in Indiana, where, unlike Washington, prudent fiscal practices are neither a recent discovery nor a danger to the resident political establishment. Americans and the State legislators who represent them do not take kindly to threats. One is reminded of the dire predictions to which the citizens of California were subjected prior to the passage of proposition 13, when bureaucrats and their elected allies issued daily warnings that police forces would be dismantled, schools closed, and vital services of all kinds severely curtailed. The people of California were too determined to be deterred by these tactics, and I wish to encourage the national constituency for fiscal reform to be similarly resolute.

There are a number of excellent reasons why Americans should not be frightened away from the policies to which commonsense, and the disastrous economic effects of a decade of deficits, clearly lead them. In the first place, thoughtful observers will see in this sabre-rattling a large measure of bluff. Those Congressmen whose first choice for budget cuts is aid to States are probably in the minority. With plain evidence of gross waste in the Federal Government employment all around us, it would be totally irresponsible to take a disproportionate share of funds from the hides of the States. And the States and localities are not without friends and defenders in this body and in the House.

Moreover, the States are not, as their detractors allege, attempting to have all things their own way. They are willing to participate to a fair degree in the restraint which will be required. The majority of State and local governmental officials with whom I communicate would gladly forgo large amounts of Federal largesse in exchange for an end to the inflation which is their No. 1 problem, year after year. Certainly very few tears would be shed among the Nation's Governors over cuts in the 500 categorical grant programs through which the Federal Government attempts to override and undercut State decisionmaking.

Some situations are even more clear. My own State of Indiana, penalized in various Federal funding formulas for its geography, its prosperity, and sometimes (as in the case of interstate highway construction) its efficiency, continues to rank last in the Nation in Federal funds received per tax dollar paid. If there is a State in the country with relatively little to lose from a revamped Federal spending policy, it is Indiana. But the general principle applies nationally that the States and the families of this country stand to gain far more from a stable dollar than they stand to lose from a reduction of what is loosely termed Federal "assistance."

Even if Congress acted out its vindictive fantasies and attempted to punish the rebellious State governments, the results would not be unthinkable. Very little of the revenue transferred from Federal to State government was originally requested by the States. In large measure the money involved represents schemes devised at the Federal level, in which the States have been either lured or coerced into participating. Reductions in such programs might cause discomfort to the grantsmen and administrators who spring up and flourish around such projects, but would create fewer problems for average citizens whose lives and plans are disrupted daily by the effects of Congress improvidence.

The second threat brandished against constitutional anti-inflation measures has to do with the potential of a new Constitutional Convention. We are threatened with the spectre of a runaway assembly of zealots, intent on rewriting the Bill of Rights. Such alarums are irresponsible, but instructive. They reveal the elitist, antidemocratic attitudes which lie at the heart of modern liberalism. In the first place, it demeans the character of the American people to assume that they would select an assortment of one-issue fanatics to represent them at this most important and solemn of meetings. Second, this argument ignores the fact that any proposal originating at a new convention would have to run the gauntlet of 38 State ratifications in order to become part of the Constitution. It requires an especially contemptuous view of the State legislatures of America to fear the results of such a process, and I suggest that the hysteria over the convention prospect is greatly overstated.

In the main, the State legislators of the country came carefully and even reluctantly to their convention calls. The vast majority of the balanced budget petitions passed in State legislatures so far express a preference for congressional action as opposed to another convention, reserving the convention call as a last resort. That is the responsible way for the Nation to proceed. Congress should act, thoughtfully but promptly. But if it refuses, the idea of a Constitutional Convention to effect the people's will ought not frighten those Americans who have confidence in the innate commonsense of our people and in our federal system.

Annually, with great ceremony and pomposity, Congress convenes hearings on dozens of relatively unimportant proposals. But, despite demonstrations of overwhelming popular support for the idea, the Senate Judiciary Committee has never met to consider proposals for requiring a balanced Federal budget in normal times. No sincere observer of Washington believes that any serious attention would ever have been paid to this movement, even now, had not the State petition drive gathered momentum. In this context, the calls of the intimidation lobby for "patience," their charges of "haste," and "panic" are especially hollow. If anything, the American people and their legislators should be commended for their remarkable forbearance. They have suffered more than a decade of mindless, indefensible overspending; of deficits during economic expansions, which Lord Keynes himself would have roundly repudiated; of deficits which no known economic theory can rationalize.

The State legislators demanding a balanced Federal budget are not acting selfishly. They are not acting in undue haste. They are not oblivious to the difficulties, the subtleties, and the need for flexibility associated with reforming the Federal spending process. They are prepared to work with the Congress in shaping a constructive, practical change in our national charter which will reestablish a balanced budget as the normal assignment of Federal budget-makers.

These legislators deserve our thanks, not disparagement and blame-shifting by those whose extravagance gave birth to the inflation crisis and the balanced budget movement.●

ARTHUR M. KUHL

● Mr. SASSER. Mr. President, we were all terribly saddened to learn of the sudden death of our friend, Arthur Kuhl, who was Assistant Secretary of the Senate.

Art's dedication to public service could not have been better exemplified than the effort he made to walk to work in Monday's blizzard.

I had the special privilege of working with this unique gentleman in my capacity as chairman of the Subcommittee on the Legislative Branch of the Appropriations Committee. He was always thorough and complete in his work and was a credit to all of the dedicated employees who serve us in the Senate.

I know my colleagues join me when I say that Art will be missed by all of us. His absence will surely be felt as the Senate continues its work this session.●

TAX DEDUCTIONS FOR BUSINESS MEALS

● Mr. INOUYE. Mr. President, the 95th Congress very wisely rejected efforts to

curtail tax deductions for business meals. A recent study which I would like to bring to the attention of the Members supports the wisdom of the 95th Congress.

Proponents of the proposal in the 95th Congress put forth a research paper done by the Congressional Research Service which concluded that the unemployment impact of the total food and beverage industry would be nil.

As far as I have been able to determine, neither the administration nor other supporters of the provision came forward with any other statistics or studies to support their claims that there would be little or no adverse impact on industry employees.

Most recently, we have been told that it is a national disgrace to cut back on the federally funded school lunch program in the name of budget austerity, while permitting business meals to be tax deductible.

Mr. President, I yield to no one in my commitment to the health and welfare of our children. To a nation, its children are its most precious resource and hope for the future. But there is absolutely no connection in fact or logic between tax deductions for business meals, and a cutback in Federal funds for our school lunch program. Each program is separate, and must succeed or fail on its individual merits. This is the kind of inflammatory rhetoric which would have us believe that every business meal consists of three martinis. It serves no useful purpose, in my judgment, and only obscures the real issues.

It is not my purpose today to debate the merits of the administration's budget proposals as it relates to the school lunch program. That is for another time.

I would however briefly like to review the statistics which show how adversely employment in the food and beverage industry will be affected if tax deductions for business meals are eliminated or curtailed. Specifically I would like to mention a new study prepared within the Bureau of Labor Statistics, but which is not attributable to the Bureau. This study concludes that the impact on unemployment would even be more severe than earlier estimates of the Hotel and Restaurant Employees and Bartenders International Union, AFL–CIO, the one-half million member union whose members would be the ones most affected.

When the study done by the Congressional Research Service concluded that there would be no adverse impact on employment in the food and beverage industry, it presented a distorted picture which only obfuscated matters.

The CRS study was able to reach the conclusion it did because it included projections for employment in the "fast food" segment of the industry—the McDonalds, the Burger Kings, et cetera, even though this is not the segment which serves the men and women who transact legitimate business at conventions, meetings, or lunches and dinners.

Unemployment would occur in other retail segments of the industry and the wholesalers that support it.

The Hotel and Restaurant Employees and Bartenders International Union, AFL–CIO, estimated that 135,000 of its members would lose their jobs. The most recent study done within the Bureau of Labor Statistics to which I have referred indicates that their figures may be too conservative by a substantial margin. It estimates that there could be a loss of about 200,000 jobs in the retail segment of the industry, and 19,781 in the wholesale segment of the industry. About a quarter of a million jobs. At the conclusion of my statement I ask to print in the RECORD a paper which describes that study entitled "The Employment Effects of the Proposed Change in the Tax Deductibility of the Three Martini Lunch."

Mr. President, should tax deductions for business meals be curtailed, the law will not be depriving many business men and women of three martinis. In view of the statistics and studies we have, there is a very strong probability a quarter of a million people will be deprived of a livelihood, however. And who are the vast majority of these men and women?

In the restaurant industry, for example, 2.8 million or 68 percent of the employees in food service occupations are women, accounting for 7.6 percent of total employed women. And 565,000 or 13.8 percent of the employees are black or other minority groups.

The study follows:

THE EMPLOYMENT EFFECTS OF THE PROPOSED CHANGE IN THE TAX DEDUCTIBILITY OF THE "THREE MARTINI LUNCH"

(By Steven D. Braithwait)

[NOTE.—I would like to thank Bob Sylvester, Office of Economic Growth, BLS for computational assistance with the BLS input-output model.]

This paper presents estimates of the primary direct employment effects by industry and occupation of the proposed changes in the tax deductibility of business meals.

The Administration proposal (see[2]) would limit the deductibility of business meals to one-half their value. In this study, the estimated effects of the proposal are obtained through the combined use of a large-scale consumer demand model which can be used to simulate the effect on consumer expenditures (and thus final demand) of a change in price of one or more commodities in the model, and the BLS input-output and employment-output models which relate employment to final demand. The tax change is treated as an effective increase in the price of the commodity business meals which is represented by two of the commodities in the demand model. The effect of the price increase is traced through the demand model in the form of changes in consumption, and then through the input-output and employment-output models to obtain the effect on employment.

The procedure for obtaining the employment effects thus involves a sequence of operations using several different models to relate changes in consumer expenditures to changes in employment by industry and occupation. The elements in the last part of the sequence are standard fixed-coefficient models which relate final demand to employment by industry and by occupation. These are described in detail in an appendix. The first part of the sequence—the demand model and the method of simulating the effect of the price change is described below. Finally, the results of the analysis are presented.

THE DEMAND FOR BUSINESS MEALS

Business meals can be tax deductible in two different ways. First, an individual may be on an expense account, in which case he pays nothing for the meal, while the business deducts the cost of the meal from its before-tax earnings as a cost of doing business. Alternatively, individuals may under certain circumstances deduct the cost of a meal as a business expense on their individual income tax returns. No information is available about how businesses allocate funds for their employees' expense accounts, or how they would react to the proposed tax change. However, a model of consumer behavior is available which includes meals and alcoholic beverages consumed away from home as commodities, and business meals can be considered a subset of these commodities. In the present analysis the entire response to the proposed tax change is considered in terms of individual consumers facing higher prices for certain commodities which they consume.

In evaluating this approach it should be realized that one probable reaction of businesses to the proposed tax change would be to impose stricter controls on employee expense accounts. Employees would find their budget for business meals reduced, which would leave them in a situation quite similar to that of individuals deducting their own business meals, who face tighter budget constraints due to the higher priced meals.

The change in demand estimated here is derived through a process involving several steps. At each step assumptions are made about the applicability of the data actually used to those individuals who would be affected by the proposed tax change. The most recent information from the BLS input-output and employment models is for 1976. Thus, the employment effects are estimated for that year. The data used in the demand model, however, end in 1973. It is assumed that the demand elasticities obtained for 1973 would hold in 1976 as well.

The target group for the present study is those individuals who claim deductions for business meals, and the commodity of interest is business meals. Data is available on aggregate consumption of purchased meals and alcoholic beverage, and estimates are available on the amount of business meals expenditures.

A first step in the analysis is a determination of the size of the effective price increase which would result from the proposed tax change. It is assumed that those individuals most likely to claim business deductions would be in the upper fifth of the income distribution, which for 1973 was above $20,000. At that level of income (using the standard deduction), the marginal tax rate was .29, which means the proposal to reduce tax deductibility of business meals creates an effective price increase of approximately 20 percent. That is, the actual cost of a fully deductible $10 meal is $7.10 for an individual facing a marginal rate of .29. If only half the meal is deductible the cost rises to $8.55, an increase of $1.45, or 20 percent. To investigate the sensitivity of the results to the amount of price increase we also examine the case which corresponds to a marginal tax rate of .44, implying an effective price increase of 40 percent.

The next step in the analysis is a simulation run of the consumer demand model using the new prices. The demand model which was used is a large-scale consumer demand model, of the "complete systems" type, having separate equations for 53 commodities and commodity groupings. In form, it is a multi-level linear expenditure system. The model specifies the demand for each commodity as a function of its own price, the prices of all other commodities, and total expenditure. The characteristics of the model and method of estimation are described in [1]. National Accounts data on 53 Personal Consumption Expenditure (PCE) categories were used in the estimation. The expenditure categories most closely related to business meals are "Food in purchased meals and beverages" and "Alcohol in purchased meals and beverages." The prices for those "commodities" were assumed to increase by the appropriate amount (that is, by 20 percent or 40 percent, as specified in

the preceding paragraph). The results of the simulation of the demand model are presented in Table 1.

For the present analysis, the changes in demand being simulated apply only to a portion of the total demand for Purchased meals and beverages, corresponding to business meals expenditures. Estimates from two alternative sources of expenditures on business meals are used in this study.

In computing the PCE sector of the National Accounts, (which includes the data used to estimate the demand model), the Bureau of Economic Analysis (BEA) includes only those expenditures that it considers personal consumption. Business meals are considered expenditures by businesses rather than individuals. Thus, in calculating the Purchased meals and beverages component of PCE, the BEA excludes that portion of the sales of eating and drinking places that it considers business meals. BEA's estimate of expenditures on business meals is allocated within the National Accounts to a dummy industry called Business Travel and Entertainment (BTE). However, since the BLS input-output and employment-output models are driven by final demand (which includes PCE), and the consumer demand model uses PCE, it is convenient to assume that the business meals commodity may be represented adequately by a portion of the PCE category, Purchased meals and beverages.[3] This category differs from business meals only in the type of purchaser of the commodity.

The BEA allocates approximately 74 percent of the total sales of eating and drinking places to the Purchased meals and beverages component of PCE. Nearly all the remainder is classified as business meals. Thus, using the BEA estimate of business meals expenditures, the changes in demand presented in Table 1 are applicable to about a fourth of the total sales of eating and drinking places. However, not all of those sales are represented as final demand because of the classification of business meals as transfers between businesses. To simulate the effect of the change in demand for business meals using the PCE final demand categories, Alcohol and Food in Purchased meals and beverages, the percentage changes in Table 1 (indicating the price-induced change in demand), are applied to a portion of the final demand categories equivalent to the amount of estimated expenditures on business meals.[3]

Two alternative estimates on business meals are used. One is the BEA estimate. The other is derived from an IRS survey of travel and entertainment deductions. The value for the final demand component, Purchased meals and beverages is $39.9 billion in 1973. The BEA estimate for business meals in the same year is $12.85 billion.[4] Alternatively, a 1969 IRS survey, adjusted to 1977 levels, estimated a total of $14.864 billion for business travel and entertainment deductions. The IRS also estimated that 25 percent of that amount was for entertainment, and that 90 percent of entertainment was accounted for by business meals. The resulting amount for business meals was $3.344 billion.[5] This figure was adjusted to a 1973 level of $2.411 billion, using the CPI component for restaurant meals. Table 2 presents the results obtained by applying the changes in demand in Table 1 to the portion of the final demand categories represented by the above estimates of business meals expenditures, following the method described in the previous paragraph. The entires in Table 2 represent the percentage changes in the final demand which are used to simulate the effect of the price increase of business meals.

The percentage changes in Table 2 were applied to the 1976 values of the appropriate commodities in the personal consumption sector of final demand in the BLS input-output model.[6] The input-output model first transforms the changes in final demand for *commodities* into changes in final demand by *industry*. Finally, BLS estimates of output per employee are used to calculate the employment effects in each industry of the changes in output.

RESULTS OF THE SIMULATION

The industry employment effects are presented in Table 3 for the two industries with the largest change in employment—Wholesale Trade (SIC 50) and Retail Trade (SIC 52–59). Unfortunately, in the BLS 162-industry model these two industries are not further disaggregated. In particular, the Eating and Drinking Places industry (SIC 58) which is of primary interest here is included in the Retail Trade Industry. However, due to the nature of the affected final demand commodities—purchased meals and beverages, and alcohol—it is not unreasonable to assume that nearly all of the change in employment in the Retail Trade industry is concentrated in the Eating and Drinking Places industry. Under that assumption the employment effects indicated in Table 3—21,917 to 114,898 for the 20 percent price increase, and 38,683 to 199,087 for the 40 percent increase, depending on the estimate of business meals expenditures, represent between .6 percent and 5.5 percent of the 3.6 million employees in the Eating and Drinking Places industry in 1976. Clearly, the results depend crucially on the estimate of business meals expenditures.

The employment reduction in Wholesale Trade is an indirect effect of the reduction in demand for business meals. It is presumably caused by decreases in the output of businesses supplying goods and services to the affected businesses in the Retail Trade industry. The location of the effect within the Wholesale Trade industry is less obvious than that for Retail Trade, but likely to lie mostly in the Food and Related Products (SIC 504) and Alcoholic Beverages (SIC 5095) industries.

The analysis may be carried one step further, to the occupational employment effects, by using the BLS industry-occupational matrix which gives the percent employment by occupation within each industry. Again assuming that the entire Retail Trade effect is in the Eating and Drinking Places industry, the employment effects in the major occupations in that industry are presented in Table 4. Thus, for example, with a 40 percent price increase and the IRS estimate for business meals, the estimated reduction in Food Service Workers is 32,532.

TABLE 1.—*Change in demand resulting from price increases*

Commodity	Price increase	
	20%	40%
Food in purchased meals	−17.2%	−29.8%
Alcohol in purchased meals	−13.3%	−23.1%

TABLE 2.—*Percentage changes in final demand commodities used to simulate decrease in business meals expenditures*

	Price increase			
	IRS estimate of business meals		BEA estimate of business meals	
Commodity	20%	40%	20%	40%
Food in purchased meals	1.1%	1.9%	5.5%	9.6%
Alcohol in purchased meals	.9%	1.5%	4.3%	7.4%

TABLE 3.—*Employment effects by industry*

	Price increase			
	IRS estimate of business meals		BEA estimate of business meals	
Industry	20%	40%	20%	40%
Wholesale trade	2,490	4,636	11,438	19,871
Retail trade	21,917	38,683	114,898	199,087

SUMMARY

The magnitudes of the employment effects estimated here (ranging from .6 to 5.5 percent of employment in the Eating and Drinking Places industry) depend crucially on the assumed amount of expenditures on business meals. Two different estimates of business meals expenditures were used, one from an IRS study of business deductions, the other from BEA's National Accounts calculations. In addition, the results depend on a set of assumptions relating business meals expenditures to personal consumption expenditures on restaurant meals. All business meals expenditures are treated as expenditures by individual consumers facing a budget constrained by the effective higher price of business meals.

The simulation of the consumer demand model is an attempt to approximate the behavior of high income households toward consumption of business meals. However, the parameters of the model were originally estimated using aggregate per capita consumption data, which included the commodities purchased meals and alcoholic beverages. Thus, the demand model relates to a kind of "average" consumer behavior, and for a number of reasons businessmen may have different behavior than other consumers (though the model was adjusted so that the estimates correspond to those of high income consumers). This would be true of almost any demand estimates that could be produced with available data, however.

The data and the analysis in this study are at a highly aggregate level. Thus, is it not possible to determine all the distributional effects of the proposed tax change. One important factor which cannot be measured here is the extent to which businessmen would substitute less expensive meals for more expensive ones. They could do so by purchasing less expensive meals in the same restaurants to which they are accustomed or by frequenting less expensive restaurants. In either case, the substitution is from more labor-intensive to less labor-intensive meals (e.g., serving ice cream rather than a crepe for dessert requires less labor). It is not possible to account for this type of substitution with the aggregate data used here. It is clear that the employment effects would likely not be uniform across establishments in the restaurant industry—the expensive, large-city establishments would undoubtedly feel the most impact.

Finally, it should be emphasized that this study is a partial analysis. It is designed to investigate the employment effects on a particular industry, not the economy as a whole. In fact, the particular tax proposal analyzed here is only part of a larger tax program whose overall effect on employment has been estimated elsewhere (see [2]).

Footnotes at end of article.

TABLE 4.—*Employment effects by occupation*

Occupation	Price increase			
	IRS estimate of business meals		BEA estimate of business meals	
	20%	40%	20%	40%
Retail Trade Industry:				
Restaurant, cafe, bar mgrs	3,485	6,151	18,269	31,655
Food service workers	18,432	32,532	96,629	167,432
Bartenders	1,490	2,630	7,813	13,538
Cooks	4,559	8,046	23,899	41,410
Waiters	7,671	13,539	40,214	69,680

NOTE.—These figures are obtained under the assumption that the entire employment effect in Retail Trade Industry is concentrated in the Eating and Drinking Places Industry.

FOOTNOTES

[1] The model was first simulated using actual 1973 prices, but with total expenditure 50 percent higher than the actual level in an attempt to approximate the behavior of higher income households. The model was run again using the higher prices for Purchased meals and Alcoholic beverages in purchased meals. The figures in Table 1 represent the change in demand for those two commodities between the two runs.

[2] In the demand model the 'Purchased meals and beverages' commodity was divided into 'Food in purchased meals and beverages' and 'Alcohol in purchased meals and beverages'.

[3] For example, consider the case of the final demand category Purchased meals and beverages, with a value of $750, and the commodity Business meals, with a value of $250. A 20 percent decrease in demand would be simulated as follows. The 20 percent decrease is applied to the value of business meals, yielding a $50 decrease. That amount is applied to the final demand category, yielding a decrease in final demand of 6⅔ percent (50/750). Equivalently, the final demand category is reduced by 20 percent of the ratio of business meals to the final demand category, Purchased meals and beverages (i.e., 20 percent of 250/750, or 6⅔ percent).

[4] The BEA estimate was computed by applying the ratio of Business meals to Purchased meals and beverages from the 1967 input-output tables (the values were obtained from BEA worksheets by George Swisko at BEA) to the 1973 value of Purchased meals and beverages.

[5] The IRS estimates were obtained from Eric Toder, "Employment Effects of Limiting Deductions for Entertainment, "memo, January 1978.

[6] The two commodities used were Food in purchased meals and beverages, and Alcohol. The commodity Alcohol in purchased meals and beverages used in the demand model comprises about 40 percent of the commodity Alcohol. The percentage changes in demand were adjusted accordingly.

REFERENCES

[1] Braithwait, Steven D., "An Empirical Comparison of Alternative Multi-Level Demand Systems for the U.S.," BLS Working Paper 74, 1977.

[2] The President's 1978 Tax Program: Detailed Descriptions and Supporting Analyses of the Proposals, U.S. Department of the Treasury, January 1978.

APPENDIX

The relationship between employment and final demand

Following the usual input-output notation, the vector of final demands by industry, F, may be written as (1) $F=(I-A)X$, where the elements of the matrix (I–A) are input-output coefficients, and X is the vector of output by industry. In addition, final demand by industry may be related to final demand for commodities (including personal consumption expenditures) by (2) $F=RG$, where G is a vector of final demands by commodities, and the elements, r_{ij}, of R represent the output the i^{th} industry created by a dollar of final demand of the j^{th} commodity.

The relationship between output and employment is established by the labor requirements matrix, L, such that (3) $1=LX$ where 1 is the vector of employment by industry, and the elements of L represent the employment in each industry necessary to produce a dollar of output in each other industry. Finally, employment by occupation, e, is determined by an industry-occupational employment matrix, E. That is (4) $e=E1$, where e is a vector of employment by occupation.

Thus, the sequence of operations in the present analysis is as follows:

Given a vector of final demands by commodity, G, equation (2) is used to obtain the corresponding vector of industry final demand. Total output is then obtained by transforming (1) to obtain $X=(I-A)^{-1}F$.

Employment by industry and occupation are found by applying (3) and then (4).

The input-output matrix, (I–A), and the matrix R, often referred to as the "bridge table," are updated by the BLS from data issued by the Commerce Department. The labor requirements matrix, L, is developed by BLS from industry productivity studies. The industry-occupational matrix, E, is compiled by BLS from various sources, including Census and BLS surveys.●

COSTS OF RAIL ABANDONMENT

● Mr. PRESSLER. Mr. President, in preparing for regulatory reform of the freight rail industry, Congress is undertaking a long-overdue study of our deteriorating railroads.

Increased competition and loss of traffic to trucks, barges, and pipelines, meager profits and increasing railroad bankruptcies, deteriorated track and equipment shortages which further reduce levels of service, and labor and inflationary pressures all operate against the specter of enormous Government subsidies for a system that is not otherwise viable. In working to avert that drastic nonsolution, we must be aware that there can be no panacea to solve the complex problems of the ailing rail industry.

Deregulation proposals target such areas as rate regulation, track swap and joint use agreements and abandonment. The thrust of all proposals embodies a cut-cost/raise-profit goal paring down excess trackage and eliminating unprofitable operations that drain resources.

A regional look at the problem shows varying degrees of impact of such alternatives. In the case of coal and electric utility industries and of other "captive shippers"—especially where area highway systems may not support an immediate influx of traffic from the railroad—many complex factors are introduced into the equation. Current Midwest rail problems provide a most acute illustration of these complexities.

The Chicago, Milwaukee, St. Paul & Pacific Railroad Co. operates an extensive rail network of about 10,000 miles of track in numerous Midwestern and Western States. Under bankruptcy reorganization plans, massive rail abandonments are being proposed to reduce the railroad's network to its most viable area of operation.

My State of South Dakota stands to suffer the heaviest losses in economic and social stability under this scenario. Not only will agricultural activity be enormously impaired, opportunity will be lost for industrial growth and new investment in the State.

These difficulties provide a striking illustration of the problems raised by the abandonment issue. Questions concerning the "captive shipper" and continued service to rural communities will be paramount to our consideration of the costs of abandonment. Any treatment of the problem of the deteriorating railroad industry will have to deal adequately with our responsibility in these areas while encompassing the needs of the entire industry.

In focusing attention on these difficult issues, I want to share an editorial by Merle E. Lofgren in the McLaughlin Messenger of South Dakota.

In his editorial, "Costs of Abandonment," Mr. Lofgren outlines some of the gravest difficulties posed to the rural dweller.

I hope that this message will alert my colleagues to the issues that confront the Senate in its consideration of freight rail regulatory reform.

I ask that the editorial be printed in the RECORD.

The editorial follows:

COSTS OF ABANDONMENT

Somebody observed a long time ago if there were no railroads they would have to be invented. In a country as big as the United States with the huge distances between producers and consumers it is hard to imagine getting along without railroads. Produce from the fields of the midwest have

to move to the consumers on the east and west coast. Machinery and other products from the industrial centers on the east and west coasts and the Great Lakes have to move to the midwest and across the continent.

It is hard to believe the Milwaukee railroad going through South Dakota is being considered for abandonment. With the main line gone the branch lines will be useless.

This country faces a fuel shortage. Rail transportation, despite deteriorating tracks and equipment, is still 4.2 times as effective fuel-wise as compared to trucks and 5.4 times as effective dollar wise, according to the National Science Foundation.

The Business Research Bureau at Vermillion conducted a study of the economic impact if all railroads in South Dakota were abandoned.

Highways would have to be upgraded for the increased truck traffic. The BRB study shows that would cost $300 million to initially upgrade the highways to carry the increased load and at current prices over a 40-year period it would cost a billion dollars more for maintenance.

The loss to farmers selling grain would be between 23 and 30 million dollars, extra cost of fertilizer for farmers, more than a million dollars, additional cost of farm machinery $500,000 and cost of miscellaneous commodities such as cement would be increased $45 million.●

HARRY KLEINMAN ABLY LED DEMOCRATS OF WEST HARTFORD FOR 17 YEARS

● Mr. RIBICOFF. Mr. President, our politics are based on participation by men and women at the local level who work long hours on behalf of the parties, candidates, and issues they believe in. The political system could not succeed without such men and women. They come from all walks of life, from all races, colors, and creeds, in all ages. The traits they share are dedication and generosity. Every elected official owes a debt of gratitude to these men and women.

Such a local political leader is Harry H. Kleinman, who is retiring this month as Democratic Party town chairman of West Hartford, Conn. A close friend of mine for many years, Harry Kleinman has been West Hartford chairman for 17 years. During that time he led Democratic Party activities effectively and successfully. An energetic, colorful, tireless, and dedicated Democrat, Harry Kleinman can look back upon a career as town chairman that saw the fortunes of the West Hartford Democratic Party progress markedly. He took the job when there were not many claimants; indeed, in West Hartford there were not many Democrats. Today, as Harry Kleinman retires as town chairman, he can take great pride in the fact that the party prospered during his stewardship.

Harry Kleinman did a fine job as democratic leader in West Hartford. Our party is better because of him—and the political system he participated in is enhanced. Town chairman or not, Harry Kleinman will continue to be a leader of his party. His counsel will always be sought, his judgment valued.

Mr. President, I ask that an article about Harry Kleinman's retirement, from the West Hartford News of February 8, 1979 be printed in the RECORD.

The article follows:

KLEINMAN: A RESPONSIBILITY FELT

(By Wick Sloane)

Harry H. Kleinman has been town Democratic Party chairman for 17 years. He surprised everyone this week with his announcement that he's retiring Feb. 20.

The additional surprise is that anyone would ever use the word "retiring" to describe the voluble, articulate, peripatetic, partisan party leader.

He's been chairman for so long that most people think he's a professional politician, but he only stepped into the political party dimension of government after six years as an alderman in Hartford, six years as a member of the Metropolitan District Commission, and six years as a deputy judge and judge in the old town court. This, he feels, gives him experience in the legislative, the administrative, and the judical branches of government.

These activities are only his avocations. Professionally, he's an attorney in the firm Kleinman, Steinberg and Lapuk.

The first duty of an attorney, he said interviewed at his Pratt Street office this week, is to insure that your client's interests are protected.

"That motif—if I may use that word—is the underlying concern of all my activities," he said. "That and tell your client the truth, even if he doesn't like to hear it."

In his years as town chairman he has been known as a straight talker who would let a Democratic Board of Education or Town Council member know about a vote which did not satisfy him, although in the end, he would always support whatever action office holders took.

His clients, he feels in the broad sense of the word, are the general public.

"I feel that we owe a responsibility to the community, state, local, and national to help in molding our society," he answered when asked why he became involved in politics.

"That's the preamble," he added with a twinkle in his eye.

"Government impinges or has its effect upon every person who lives in our country from the day they are born. Every birth has to be registered," he continued, "and every death recorded."

"Government does not operate in a vacuum," he said, explaining that political parties provide continuity to the governmental system by presenting candidates who "will be responsive to the desires and the needs of the times and of the people."

In his discussions, Kleinman, who went on to Yale Law School from Harvard, draws his examples from history, which he studied while he was an undergraduate, and which he still reads extensively.

Political parties have been around throughout the history of the United States with the exception of the time when George Washington was president, he said. The first political party was the Democratic-Republican party, the forefather of the present Democratic party, which Thomas Jefferson founded.

"Actually, the Republicans picked up the name which was cast off by the Democrats," he said, with his benevolent smile.

West Hartford was a Republican town when Kleinman first became involved in its politics in the early fifties. He said he was asked to be Democratic chairman in 1962.

"In those days people weren't looking for the job," he said.

Being a Democrat was not respectable, he added.

"It was socially unfashionable, and economically unwise and politically stupid. No person connected with a corporation who sought advancement, appointment or promotion was identified by registration or action with the Democratic party," he said.

Nonetheless he lead registration drives—the town now has more registered Democrats than Republicans—and eventually the party elected a mayor (Harold Keith) in 1955 although the 13,427 Republicans then out-numbered the Democrats by three to one.

While the Democratic Party was once a minority, it now represents "the entire spectrum of our heterogeneous society," Kleinman believes.

In his 17-year span as chairman, Kleinman has seen two more Democrats elected mayor, the late John Huntington in 1967 and Catherine C. Reynolds in 1973. There have been other victories on state and national levels, but he has shared in several defeats which point to the town's reputation as a "swing" political community in recent years.

Kleiman walks in quick short steps which match the energy and staccato delivery of his talking style. A short man, he leans forward when he stands and looks up at taller people over the tops of his glasses, often shaking a finger or placing a hand on the shoulder of a friend.

The fervor Kleinman brings to his politics he brings to other community efforts. He and his wife, the former Ruth Nestor, were one of seven couples which founded Beth El Temple, 2626 Albany Ave. about to celebrate its twenty-fifth anniversary. He is devoted to Israel. Of his role in the 1948 Arab-Israeli war, he will only say, "I helped to make sure that Israel was not defenseless."

His retirement from the party chair, he said does not mean he is retiring from public life to do nothing. "I hope to continue to speak up now and then," he said.

A native of Hartford, Kleinman and his wife live at 12 Pilgrim Rd. Both their sons are attorneys. Daniel, who lives in Farmington, works in his father's firm, and William who lives at 112 Hyde Rd., is an assistant state attorney general.●

ITEMIZED TAX DEDUCTIONS FOR OLDER AMERICANS

● Mr. INOUYE. Mr. President, this is the time of year in which our Nation's citizens, old and young, are usually preparing their individual income tax returns. Each year the Senate Special Committee on Aging, with the cooperation of the Internal Revenue Service, provides a valuable service to our citizens by publishing a list of itemized deductions for individual taxpayers.

Many recent changes in our Nation's tax laws, including some made by the 1978 Revenue Act, may be confusing, particularly to our elderly citizens. Many of our senior citizens actually overpay their Federal taxes because they are unaware of the many tax-saving deductions in the laws.

One newly adopted tax measure, for example, allows taxpayers 55 or over to exclude up to $100,000 in profit from the sale of their homes.

This and many other tax deductions are described in the checklist. While this is not intended to be an all-inclusive listing, it does provide a handy guide to help insure that taxpayers claim all the deductions, credits, and exemptions to which they are legitimately entitled.

In this time of economic difficulty, especially for elderly citizens living on fixed incomes, our taxpayers in Hawaii and elsewhere deserve every assistance we can provide to them. I ask to have the Senate Special Committee on Aging's publication printed in the RECORD.

The material follows:

PROTECTING OLDER AMERICANS AGAINST OVERPAYMENT OF INCOME TAXES

(A Revised Checklist of Itemized Deductions for Use in Taxable Year 1978)

(An information paper prepared by the staff of the Special Committee on Aging, U.S. Senate)

Checklist of itemized deductions for Schedule A (form 1040)

MEDICAL AND DENTAL EXPENSES

Medical and dental expenses (unreimbursed by insurance or otherwise) are deductible to the extent that they exceed 3 percent of your adjusted gross income (line 31, form 1040).

INSURANCE PREMIUMS

One-half of medical, hospital or health insurance premiums are deductible (up to $150) without regard to the 3 percent limitation for other medical expenses. The remainder of these premiums can be deducted, but is subject to the 3 percent rule.

DRUGS AND MEDICINES

Included in medical expenses (subject to 3 percent rule) but only to extent exceeding 1 percent of adjusted gross income (line 31, Form 1040).

OTHER MEDICAL EXPENSES

Other allowable medical and dental expenses (subject to 3 percent limitation):

Abdominal supports (prescribed by a doctor).
Acupuncture services.
Ambulance hire.
Anesthetist.
Arch supports (prescribed by a doctor).
Artificial limbs and teeth.
Back supports (prescribed by a doctor).
Braces.

Capital expenditures for medical purposes (e.g. elevator for persons with a heart ailment)—deductible to the extent that the cost of the capital expenditure exceeds the increase in value to your home because of the capital expenditure. You should have an independent appraisal made to reflect clearly the increase in value.

Cardiographs.
Chiropodist.
Chiropractor.
Christian Science practitioner, authorized.
Convalescent home (for medical treatment only).
Crutches.
Dental services (e.g., cleaning, X-ray, filling teeth).
Dentures.
Dermatologist.
Eyeglasses.

Food or beverages specially prescribed by a physician (for treatment of illness, and in addition to, not as substitute for, regular diet; physician's statement needed).

Gynecologist.
Hearing aids and batteries.
Home health services.
Hospital expenses.
Insulin treatment.
Invalid chair.
Lab tests.
Lipreading lessons (designed to overcome a handicap).
Neurologist.
Nursing services (for medical care, including nurse's board paid by you).
Occupational therapist.
Ophthalmologist.
Optician.
Optometrist.
Oral surgery.
Osteopath, licensed.
Pediatrician.
Physical examinations.
Physical therapist.
Physician.
Podiatrist.
Psychiatrist.
Psychoanalyst.
Phychologist.
Psychotherapy.
Radium therapy.
Sacroiliac belt (prescribed by a doctor).
Seeing-eye dog and maintenance.
Speech therapist.
Splints.
Supplementary medical insurance (Part B) under Medicare.
Surgeon.
Telephone/teletype special communications equipment for the deaf.

Transportation expenses for medical purposes (7¢ per mile plus parking and tolls or actual fares for taxi, buses, etc.)

Vaccines.
Vitamins prescribed by a doctor (but not taken as a food supplement or to preserve general health).
Wheelchairs.
Whirlpool baths for medical purposes.
X-rays.

Expenses may be deducted only in the year you paid them. If you charge medical expenses on your bank credit card, the expenses are deducted in the year the charge is made regardless of when the bank is repaid.

3

TAXES

Real estate.
State and local gasoline.
General sales.
State and local income.
Personal property.

If sales tax tables are used in arriving at your deduction, ordinarily you may add to the amount shown in the tax tables the sales tax paid on the purchase of the following items: automobiles, trucks, motorcycles, airplanes, boats, mobile homes, and materials used to build a new home when you are your own contractor.

When using the sales tax tables, add to your adjusted gross income any nontaxable income (e.g., Social Security, Veterans' pensions or compensation payments, Railroad Retirement annuities, workmen's compensation, untaxed portion of long-term capital gains, dividends untaxed under the dividend exclusion, interest on municipal bonds, unemployment compensation and public assistance payments).

CONTRIBUTIONS

In general, contributions may be deducted up to 50 percent of your adjusted gross income (line 31, Form 1040). However, contributions to certain private nonprofit foundations, veterans organizations, or fraternal societies are limited to 20 percent of adjusted gross income.

Cash contributions to qualified organizations for (1) religious, charitable, scientific, literary or educational purposes, (2) prevention of cruelty to children or animals, or (3) Federal, State or local governmental units (tuition for children attending parochial schools is not deductible).

Fair market value of property (e.g., clothing, books, equipment, furniture) for charitable purposes. (For gifts of appreciated property, special rules apply. Contact local IRS office.)

Travel expenses (actual or 7 cents per mile plus parking and tolls) for charitable purposes (may not deduct insurance or depreciation in either case).

Cost and upkeep of uniforms used in charitable activities (e.g., scoutmaster).

Purchase of goods or tickets from charitable organizations (excess of amount paid over the fair market value of the goods or services).

Out-of-pocket expenses (e.g., postage, stationery, phone calls) while rendering services for charitable organizations.

Care of unrelated student in your home under a written agreement with a qualifying organization (deduction is limited to $50 per month).

INTEREST

Home mortgage.
Auto loan.
Installment purchases (television, washer, dryer, etc.).

Bank credit card—can deduct the finance charge as interest if no part is for service charges, loan fees, credit investigation fees, or similar charges.

Other credit cards—you may deduct as interest the finance charges added to your monthly statement, expressed as an annual percentage rate, that are based on the unpaid monthly balance.

Points—deductible as interest by buyer where financing agreement provides that they are to be paid for use of lender's money and only if the charging of points is an established business practice in your area. Not deductible if points represent charges for services rendered by the lending institution (e.g., VA loan points are service charges and are not deductible as interest). Not deductible if paid by seller (are treated as selling expenses and represent a reduction of amount realized).

Penalty for prepayment of a mortgage—deductible as interest.

Revolving charge accounts—may deduct the separately stated "finance charge" expressed as an annual percentage rate.

CASUALTY OR THEFT LOSSES

Casualty (e.g., tornado, flood, storm, fire, or auto accident provided not caused by a willful act or willful negligence) or theft losses—the amount of your casualty loss deduction is generally the lesser of (1) the decrease in fair market value of the property as a result of the casualty, or (2) your adjusted basis in the property. This amount must be further reduced by any insurance or other recovery, and, in the case of property held for personal use, by the $100 limitation. Report your casualty or theft loss on Schedule A. If more than one item was involved in a single casualty or theft, or if you had more than one casualty or theft during the year, you may use Form 4684 for computing your personal casualty loss.

MISCELLANEOUS

Appraisal fees to determine the amount of a casualty loss or to determine the fair market value of charitable contributions.
Union dues.
Cost of preparation of income tax return.
Cost of tools for employee (depreciated over the useful life of the tools).
Dues for Chamber of Commerce (if as a business expense).
Rental cost of a safe-deposit box used to store income-producing property.
Fees paid to investment counselors.
Subscriptions to business publications.
Telephone and postage in connection with investments.
Uniforms required for employment and not generally wearable off the job.
Maintenance of uniforms required for employment.
Special safety apparel (e.g., steel toe safety shoes or helmets worn by construction workers; special masks worn by welders).
Business entertainment expenses.
Business gift expenses not exceeding $25 per recipient.
Employment agency fees under certain circumstances.
Cost of a periodic physical examination if required by employer.
Cost of installation and maintenance of a telephone required by your employment (deduction based on business use).
Cost of bond if required for employment.
Expenses of an office in your home if used regularly and exclusively for certain business purposes.
Educational expenses that are: (1) required by your employer to maintain your position; or (2) for maintaining or sharpening your skills for your employment.

Political Campaign Contributions.—You may claim either a deduction (line 31, Schedule A, Form 1040) or a credit (line 38, Form 1040), for campaign contributions to an individual who is a candidate for nomination or election to any Federal, State, or local office in any primary, general, or special election. The deduction or credit is also applicable for any (1) committee supporting a candidate for Federal, State, or local elective public office, (2) national committee of a national political party, (3) State committee of a national political party, or (4) local committee of a national political party. The maximum deduction is $100 ($200 for couples filing jointly). The amount of the tax credit is one-half of the political contribution, with a $25 ceiling ($50 for couples filing jointly).

PRESIDENTIAL ELECTION CAMPAIGN FUND

Additionally, you may voluntarily earmark $1 of your taxes ($2 on joint returns) for the Presidential Election Campaign Fund.

ADDITIONAL INFORMATION

For any questions concerning any of these items, contact your local IRS office. You may also obtain helpful publications and additional forms by contacting your local IRS office.

OTHER TAX RELIEF MEASURES

Filing status	*Required to file a tax return if gross income is at least—*
Single (under age 65)	$2,950
Single (age 65 or older)	3,700
Qualifying widow(er) under 65 with dependent child	3,950
Qualifying widow(er) 65 or older with dependent child	4,700
Married couple (both spouses under 65) filing jointly	4,700
Married couple (1 spouse 65 or older) filing jointly	5,450
Married couple (both spouses 65 or older) filing jointly	6,200
Married filing separately	750

Additional Exemption for Age.—Besides the regular $750 exemption, you are allowed an additional exemption of $750 if you are age 65 or older on the last day of the taxable year. If both a husband and wife are 65 or older on the last day of the taxable year, each is entitled to an additional exemption of $750 because of age. You are considered 65 on the day before your 65th birthday. Thus, if your 65th birthday is on January 1, 1979, you will be entitled to the additional $750 exemption because of age for your 1978 Federal income tax return.

"Zero Bracket Amount."—The "zero bracket amount" is a flat amount that depends on your filing status. It is not a separate deduction; instead, the equivalent amount is built into the tax tables and tax rate schedules. Since this amount is built into the tax tables and tax rate schedules, you will need to make an adjustment if you itemize deductions. However, itemizers will not experience any change in their tax liability and the tax computation will be simplified for many itemizers.

Tax Tables.—Tax tables have been developed to make it easier for you to find your tax if your income is under certain levels. Even if you itemize deductions, you may be able to use the tax tables to find your tax easier. In addition, you do not have to deduct $750 for each exemption or figure your general tax credit, because these amounts are also built into the tax table for you.

Multiple Support Agreements.—In general, a person may be claimed as a dependent of another taxpayer, provided five tests are met: (1) Support, (2) gross income, (3) member of household or relationship, (4) citizenship, and (5) separate return. But in some cases, two or more individuals provide support for an individual, and no one has contributed more than half the person's support. However, it still may be possible for one of the individuals to be entitled to a $750 dependency deduction if the following requirements are met for multiple support:

1. Two or more persons—any one of whom could claim the person as a dependent if it were not for the support test—together contribute more than half of the dependent's support.

2. Any one of those who individually contribute more than 10 percent of the mutual dependent's support, *but only one of them,* may claim the dependency deduction.

3. Each of the others must file a written statement that he will not claim the dependency deduction for that year. The statement must be filed with the income tax return of the person who claims the dependency deduction. Form 2120 (Multiple Support Declaration) may be used for this purpose.

Sale of Personal Residence.—You may exclude from your gross income some or all of your gain from the sale of your principal residence, if you meet certain age, ownership, and occupancy requirements at the time of the sale. These requirements, and the amount of gain that may be excluded, differ depending on whether you sold your home before July 27, 1978, or on or after that date. The exclusion is elective, and you may elect to exclude gain only once for sales before July 27, 1978, and only once for sales on or after that date.

If you sold your home before July 27, 1978, and you were age 65 or older before the date of sale, you may elect to exclude the gain attributable to $35,000 of the adjusted sales price if you owned and occupied the residence for 5 of the 8 years ending on the date of sale. If you sold the home after July 26, 1978, and you were age 55 or older before the date of sale, you may elect to exclude $100,000 of gain on the sale if you owned and occupied the residence for 3 of the 5 years ending on the date of sale (or 5 of 8 years under certain circumstances). Form 2119 (Sale or Exchange of Personal Residence) is helpful in determining what gain, if any, may be excluded.

Additionally, you may elect to defer reporting the gain on the sale of your personal residence if within 18 months before or 18 months after the sale you buy and occupy another residence, the cost of which equals or exceeds the adjusted sales price of the old residence. Additional time is allowed if (1) you construct the new residence; (2) you were on active duty in the U.S. Armed Forces; or (3) your tax home was abroad. Publication 523 (Tax Information on Selling or Purchasing Your Home) may also be helpful.

Credit for the Elderly.—You may be able to claim this credit and reduce taxes by as much as $375 (if single), or $562.50 (if married filing jointly), if you are:

(1) Age 65 or older, or

(2) Under age 65 and retired under a public retirement system.

For more information, see instructions for Schedules R and RP.

Credit for Child and Dependent Care Expenses.—Certain payments made for child and dependent care may be claimed as a credit against tax.

If you maintained a household that included your dependent child under age 15 or a dependent or spouse incapable of self-care, you may be allowed a 20% credit for employment related expenses. These expenses must have been paid during the taxable year in order to enable you to work either full or part time.

For detailed information, see the instructions on Form 2441.

Earned Income Credit.—If you maintain a household for a child who is under age 19, or is a student, or is a disabled dependent, you may be entitled to a special payment or credit of up to $400. This is called the earned income credit. It may come as a refund check or be applied against any taxes owed. Generally, if you reported earned income and had adjusted gross income (line 31, Form 1040) of less than $8,000, you may be able to claim the credit.

Earned income means wages, salaries, tips, other employee compensation, and net earnings from self-employment (generally amount shown on Schedule SE (Form 1040) line 13). A married couple must file a joint return to be eligible for the credit. Certain married persons living apart with a dependent child may also be eligible to claim the credit.

For more information, see instructions for Form 1040 or 1040A.

ENERGY TAX ACT

The Energy Tax Act of 1978 is directed at providing tax incentives for energy conservation measures and for conversion to renewable energy sources.

A credit of up to $300 may be claimed for expenditures for energy conservation property installed in or on your principal residence, whether you own or rent it. The residence must have been substantially completed by April 20, 1977. Items eligible for the credit are limited to the following: insulation (fiberglass, cellulose, etc.) for ceilings, walls, floors, roofs, water heaters, etc.; exterior storm (or thermal) windows or doors; caulking or weatherstripping for exterior windows or doors; a furnace replacement burner which reduces the amount of fuel used; a device to make flue openings (for a heating system) more efficient; an electrical or mechanical furnace ignition system which replaces a gas pilot light; an automatic energy-saving setback thermostat; and a meter which displays the cost of energy usage.

A maximum credit for renewable energy source property is $2,200. Equipment used in the production or distribution of heat or electricity from solar, geothermal, or wind energy sources for residential heating, cooling, or other purposes may qualify for this credit.

Energy credits may be claimed by completing Form 5695 and attaching it to your Form 1040. Credit for expenditures made after April 19, 1977, and before January 1, 1979, must be claimed on your 1978 tax return. Do not file an amended 1977 return to claim a credit for expenditure in 1977.

Examples of items which do not qualify for energy credit are the following: carpeting, drapes, wood paneling, exterior siding, heat pump, wood or peat fueled residential equipment, fluorescent replacement lighting system, hydrogen fueled residential equipment, equipment using wind energy for transportation, expenditures for a swimming pool used as an energy storage medium, and greenhouses.

For further information, consult the instructions for Form 5695 and IRS Publication 903, Energy Credits for Individuals.●

SENATOR CHAFEE ANALYZES THE HART BUILDING: "THE SENATE'S SHAMELESS TAJ MAHAL"

● Mr. DOMENICI. Mr. President, the current issue of the Reader's Digest magazine contains a very informative article by our colleague from Rhode Island (Mr. CHAFEE) discussing the costly Hart Senate Office Building. As a cosponsor and strong supporter of Senator CHAFEE's effort last year to halt work on the Hart Building, I ask that the excellent article be printed in the RECORD.

The article follows:

THE SENATE'S SHAMELESS TAJ MAHAL

(By Senator JOHN CHAFEE)

Last August, the House of Representatives stunned its colleagues on the other side of Capitol Hill by voting overwhelmingly to cut off additional funds for a palatial new Senate Office Building on Constitution Avenue. In doing so, House members repudiated the hallowed gentleman's agreement that neither house will interfere with the other's affairs.

Six months later, however, the girdered skeleton of this third Senate Office Building—named for the late Sen. Philip Hart—continues to expand. Ignoring the House mandate, the Senate decided to continue work into 1979. Now, with the election over and House members safe from voters wrath for nearly two years, Senate proponents of this Taj Mahal on the Potomac are confident that they can prevail upon their colleagues to quietly appropriate construction funds.

Make no mistake: if the House caves in to Senate pressure and reverses itself, the result will be the most outrageously bloated project in federal history, a gold-plated nine-story showplace crammed with luxurious amenities nobody needs and which taxpayers can ill afford. From the original appropriation of $47.9 million, construction estimates have already risen to more than $122 million. If cost overruns continue, the final price will be well over $200 million.

The imposing new building will contain more than 1.1 million square feet (compared with 700,000 for the Russell Senate Office Building and 660,000 for the Dirksen Senate Office Building). About 70 percent of that area will be office space—with sprawling two-story-high offices for 50 senators and one-story offices for their staffs. The building's designers have left plenty of room for unproductive, high-priced frills:

Office paneling, costing a cool $1.5 million; marble building facing with a $3-million price tag.

An eight-story central atrium with a five-story Alexander Calder sculpture.

A $350,000 gymnasium. (This will give the Senate three gyms—one of which appears to be used by only four or five senators.)

A $600,000 rooftop restaurant seating 100, that boosts the number of senatorial dining-room seats to 350—or 3½ seats per senator.

Such gold-plating, unnecessary even in prosperous times and totally out of place in a period of economic squeeze, cannot be justified. At $111 a square foot, construction costs of the Hart Building are double those of commercial buildings in downtown Washington. But a spokesman for Architect of the Capitol George M. White, who oversees the project, has a ready explanation: "We are building monuments to democracy."

Last March, Sen. William Proxmire (D., Wis.) gave the Senate his monthly Golden Fleece Award, asserting that the Hart Building "would make a Persian prince green with envy." A month later, I introduced a Senate resolution calling for a halt to the project. This had an immediate effect—but not the one I intended! Almost overnight, steel beams shot skyward from what had been a gaping hole for nearly a year.

My resolution was bottled up in the Rules Committee and never considered. In early August, when the Senate took up a supplemental appropriations bill containing additional millions for the Hart Building, I led the fight for an amendment to halt the work, tear down the girder framework and rescind all unspent funds. Others joined in. Sen. Jesse Helms (R., N.C.) urged his colleagues to do something about inflation—instead of just talking about it. Sen. Jack Danforth (R., Mo.) asked: "How can we convince the American people that we are doing something other than squandering on our own luxury the money they have earned by the sweat of their brow?" His question went unanswered. The Senate rejected my amendment, 45–29.

Fortunately, when taxpayers read about the Senate's action they bombarded Capitol Hill with letters demanding a stop to this outrageous project. And when the House took up the bill on August 15, Rep. Steve Symms (R., Idaho) introduced an amendment cutting off further building funds. No one really expected the rider to pass but, when the members voted, they turned thumbs down on the building by a stunning 245 to 153.

Senate reaction was stormy. Outraged solons threatened to cut off funds for pet House projects in retaliation. But tempers cooled when the Senate was able to round up enough money left over from previous appropriations to continue construction into the new year.

Early this session, the House will be asked to provide an additional appropriation for the Hart Building. Reams of detailed arguments will be trotted out. Let's examine two of them:

The Hart Building will relieve overcrowding. I am a firm believer in Parkinson's Law—that work expands to fill the time available. I also believe in Chafee's Law—that staff expands to fill the space available. Twenty-five years ago, one office building adequately met the needs of 96 senators. Since then, while adding only four senators, we have put up a second Senate office building and acquired a half-dozen hotels, apartment and office buildings to accommodate staff. In the past five years alone, we have increased available space 46 percent.

Has this alleviated "overcrowding"? Not at all. The Senate more than offset that increase with a boost of 50 percent in the number of its employes, who now total a remarkable 6500.

When the Hart Building is completed, that will be it. Actually, once that structure is finished, the contractors will move across the street for extensive renovations on the Russell and Dirksen buildings, creating magnificent new office suites. (With half the senators given 16-foot ceilings, how can we possibly deny the same amenity to the other half?) And once those renovations, possibly costing tens of millions of dollars, are completed, the Architect of the Capitol has a master plan that pinpoints sites and gives estimated square footage for six more House office buildings and four more Senate office buildings that may be built in the future.

In the final analysis, the basic obligation of Congress is to the taxpayer, not to its creature comforts. There are only two basic issues here: cost and need. The Hart Senate Office Building has already cost too much—and we clearly don't need it. If Congress really intends to curb inflation, it can start by calling a halt to this gold-plated palace.●

CONNECTICUT RIVER DIVERSION OPPOSED

● Mr. RIBICOFF. Mr. President, from time to time we learn of another proposal to divert water from the Connecticut River by the Boston Metropolitan District Commission.

I can understand the need to locate viable sources for Boston's water supply. However, the diversion of water from the Connecticut River would have a serious economic and environmental impact on many communities in Connecticut and Massachusetts. Particularly distressing is the fact that diversion is apparently being given priority consideration over the repair of the water distribution system in Boston, a source of considerable waste.

Mr. President, the diversion of Connecticut River water would reduce the river's flow during certain seasons, thereby preventing the natural cleansing process necessary to sustain its fragile ecosystem. Furthermore, a decrease in the river's flow will lead to additional settlement of suspended solids which will result in further despoilation along the banks and bottom. Such a condition creates the potential for additional flooding.

Yesterday a very timely editorial opposing diversion of the Connecticut River appeared in the Hartford Courant. I commend this article to my colleagues' attention and ask that it be printed in the RECORD.

The article follows:

NO DIVERSION OF THE RIVER

One of New England's greatest natural assets is an abundant water supply. In addition to its household uses, water has for many years attracted industries and businesses to the Northeast.

New England must manage, conserve and use this resource efficiently. Connecticut's officials have opposed the planned diversion of the Connecticut River by the Boston Metropolitan District Commission. The commission wants an annual average of 72 million gallons per day to replenish its reservoirs.

Opponents claim that Connecticut cannot afford the water loss, because of environmental and economic considerations. They say the water diversion is unnecessary and that Congress should take action to stop it.

Officials in Boston have acknowledged that their water system loses almost the same amount of water per day that they want to divert from the Connecticut River. This loss is the result of leakages in old distribution pipes.

Rather than face the cost of repairing the water system—estimated at $100 million—the Boston commission, along with the U.S. Army Corps of Engineers, favor the water diversion, which could be as expensive as fixing the city's pipes.

The conservationists' approach makes sense. They want the water drawn into Boston's system to be used more efficiently. They also recommend that Congress provide some financial aid, including grants or loans, to help rehabilitate public water systems, particularly those in older cities, which have water loss problems.

Before diversion schemes are seriously considered, it makes good sense to improve the distribution system. Leakage not only results in waste but it creates water contamination.

To merely increase the supply of water is to add to the volume of waste.●

SRI LANKA

● Mr. INOUYE. Mr. President, February 4, 1979, marked the first year in office of His Excellency J. R. Jayewardene, the First Executive President of Sri Lanka, and the 31st year of Sri Lanka's independence from the British Crown. Over the past year, Sri Lanka has successfully carried out a policy of modernization and international development. Particularly noteworthy was the country's adoption last September 7 of a new constitution which, among other things, provides for the direct election of the President and the Parliament. The constitution also devotes an entire chapter to the subject of human rights and includes all 30 clauses of the United

Nations' Universal Declaration of Human Rights.

Demographically, Sri Lanka's people are a blend of various ethnic, religious, and linguistic backgrounds. The vast majority speak Sinhala and nearly all of the remainder speak Tamil. Interestingly enough, in an effort to unify the country, the constitution designates both languages as "national languages." Both are used in schools, government, business, and the courts.

In foreign affairs, Sri Lanka has adopted a policy of nonalinement, but this is not the same thing as noninvolvement. Quite to the contrary, the Government has advocated arms control and has sought to maintain the Indian Ocean as a "zone of peace."

In the economic sphere, Sri Lanka's drive toward modernization has over the past year been accompanied by liberalization of its foreign trade policies and domestic regulations. I am told that both the World Bank and the International Monetary Fund have expressed great satisfaction over Sri Lanka's economic progress.

The people and Government of Sri Lanka are to be commended for the advances they have made toward democratic government, a more modern economy, and increased concern with international affairs.●

IMPEDIMENTS TO INTERNATIONAL TRADE EXPANSION

● Mr. STEVENSON. Mr. President, I call to the attention of my colleagues a paper entitled "Impediments to International Trade Expansion" prepared by the International Trade Club of Chicago. The International Trade Club has been very active in defining the issues surrounding U.S. export policy and making paper prepared by the ITC entitled "Observations and Recommendations on a U.S. Government Policy in Support of Exports" is also available from that office. Both papers contain a wealth of suggestions and findings which will be of great assistance to the Congress as we prepare to address trade issues this year.

I ask that the position paper be printed in the RECORD.

The material follows:

IMPEDIMENTS TO INTERNATIONAL TRADE EXPANSION

In a special position paper released on September 21, 1978, the International Trade Club of Chicago (ITC) offered initial recommendations on a viable program for export expansion, entitled "Observations and Recommendations on a U.S. Government Policy in Support of Exports." In this paper, the ITC urged key U.S. Cabinet members and Congressional legislators to adopt a "positive export policy" to enable the United States to compete in world markets. The International Trade Club of Chicago also emphasized the need to educate and increase public awareness of the critical role exports play in improving our standard of living. This is a second position paper which supplements the first and deals with impediments to international trade expansion.

Indeed, current international realities, such as the declining dollar, new monetary alignments, a continuing need to import oil, and our interdependence with other nations able to offer lower cost products for U.S. consumption, no longer permit Americans to be indifferent to the need to expand our exports if we are to maintain our standards of living.

Exports and related activities now provide more than eight million jobs in the United States, one third of U.S. corporate profits, and about 7 percent of our gross national product. An incremental increase in our exports of between one and two percent of total GNP would have, during the last few years, given us a balanced trade position rather than the deficits we have registered.

Although exports never have been more important, U.S. companies have lacked parity in the market place and have been steadily losing market shares to foreign competitors—backed and directly supported by their respective governments. Twenty years ago, U.S. companies held about 28 percent of the world market for manufactured exports—excluding exports to the United States. By 1968, our share had been reduced to 24 percent, and last year, we barely maintained 20 percent of this important world market.

Emphasis now has been placed on the reestablishment of the President's Export Council and the Inter Agency Committee on Export Expansion as an important step in promoting exports. Unfortunately, the plain facts are that the regulatory burdens and controls imposed by the U.S. government itself impedes such an expansion. And, these are not only the "finger prints" of past administrations, they continue to occur—consider, as an example, the new regulation which denies Export-Import Bank credits to any domestic company not in compliance with the Administration's 7 per cent price guideline.

This paper examines some of the impediments to expanded trade and offers the International Trade Club's recommendations to overcome them.

I. THE FEDERAL REGULATORY BURDEN

Federal regulation of business has become a major constraint on both domestic and foreign activity. While the underlying social and environmental objectives of government regulation are widely shared, the profusion of minute and often contradictory specifications for compliance has not only hindered attainment of these social goals, it has diluted and jeopardized the increased investment, productivity improvement, and inflation control required to keep the United States competitive internationally. In the process, creeping red tape and burdensome paperwork imposed by the Federal bureaucracy have also reduced business's incentive to develop, produce, and market internationally competitive products—therein also losing the capacity to create new jobs based on the associated export potential.

The costs of this regulatory burden are alarmingly large, and unfortunately still growing. Administrative expenses of regulatory agencies alone will reach almost $5 billion in fiscal 1979. Adding a conservatively estimated $95 billion in costs business must incur just to comply with Federal regulations brings the total bill to a minimum of $100 billion.

Government mandated regulations in just three fields—environment, safety, and health—now divert some $10 billion annually from productive business investment. According to recent studies, this diversion of already low investment outlays is costing the U.S. economy .5 percentage points of yearly GNP growth and fully one fourth of the potential annual increase in productivity.

The implications of these trends are grave since the United States already ranks behind Japan, France, the Netherlands, Belgium, and Germany in annual productivity increases, and in real GNP growth. While the U.S. can be proud to be the world's leader in safety, health, environmental, and related standards, the added cost of this compliance, when factored into the price of finished products, weakens the competitiveness of U.S. products in the U.S. marketplace against imports from countries having lower cost or no compliance standard.

The regulatory burden is harming our international price performance, innovative capacity, and customer responsiveness of today, as well as our longer-term ability to meet increasingly stiff foreign competition. Uncertainties about the scope and severity of new regulations, as well as the penalties for noncompliance, further compound the confusion and difficulty with which both established exporters and potential entrants must grapple in seeking to expand foreign sales.

To reduce these impediments to increased trade, the United States must examine, reform, and simplify its regulatory process. Specifically, the International Trade Club recommends:

1. All regulatory bodies should be required to prepare economic impact statements, with provision for public comment, before issuing new regulations. Any new regulatory standards should be limited to those instances in which the agency can demonstrate that the benefits clearly exceed the costs imposed. If costs exceed benefits, the Executive Branch should be authorized and expected to modify or eliminate the regulation.

2. There is a need to change the focus of our regulatory policies. New regulations should be limited to stating the specific goals and objectives sought and provide appropriate market-related incentives or penalties, allowing the private sector greater input to devise the most effective way of reaching agreed goals.

3. The implementation of a meaningful process to review, revise, or repeal on a continuing basis complex, ineffective, or outmoded rules and requirements. In fact, the system should provide for greater incentives and credit for those regulatory groups that achieve this objective rather than a continuation of unwarranted bureaucratic expenses.

II. A U.S. DEPARTMENT OF INTERNATIONAL TRADE AND INVESTMENT

The U.S. is the only major industrialized country without a cabinet-level department for foreign trade and investment; the only nation where vital international economic agencies, each with competing domestic concerns and a special set of interests to protect. While other countries successfully promote exports through a cooperative and coordinated industry-government effort, the U.S. has handicapped its export potential by creating an atmosphere of business-government confrontation. We need a single Cabinet officer charged with marshalling this country's fantastic resources, supporting the export efforts of its firms, and countering, where appropriate, the promotional efforts of our aggressive competitors. The scattered segments of the U.S. bureaucracy now charged with export activities must be replaced by a single U.S. Department of International Trade and Investment with a mandate to promote international trade aggressively.

III. U.S. EXPORT AND TRANSACTION CONTROLS

The U.S. government through the Export Administration Act prohibits the flow of certain product and technical information to Eastern Europe, China, and the U.S.S.R., and exercises more stringent control over exports to North Korea, Vietnam, Cambodia, and Cuba. Exports to South Africa, Namibia, and Southern Rhodesia are restricted as well.

Commerce department regulations on these trade restrictions and related Treasury regulations are bewilderingly complex. Greater attention should be placed on separating political considerations from commercial factors so that U.S. business does not become the primary victim of U.S. foreign policy. In a number of instances, the application of these regulations has resulted in the loss of business by U.S. companies to Western European

and Japanese companies having similar products.

The International Trade Club recommends:

1. The Export Administration Regulations and the Foreign Assets Control Regulations, together with the legislation underlying them, should be thoroughly reviewed and simplified. A new unified regulatory scheme covering both subjects should be placed under the supervision of a single government department.

2. The restrictions on sales to North Korea, Vietnam, Cambodia, and Cuba should be reviewed with a view toward placing them under the same criteria as those of the Eastern European countries.

3. As to exports of products or technical information to any country, the regulations should provide that a license will be issued in all cases where it can be demonstrated that the proposed transaction is available, and likely to be supplied, on reasonably competitive terms from a non-U.S. source.

4. The 1972 Trade Agreement with the Soviet Union should be approved, most-favored-nation treatment extended, and expanded credits made available. The Jackson-Vanik amendment should be repealed.

IV. ANTI-BOYCOTT LEGISLATION

The Ribicoff Amendment to the 1976 Tax Reform Act was passed by Congress only as an interim measure until the anti-boycott provisions of the Export Administration Act could be amended.

There is confusion among U.S. exporters on the mechanics of operating under the existing anti-boycott legislation and there is a prevailing view that this legislation is not only failing to achieve its intended objectives, but in fact is acting as a substantial deterrent to U.S. exports and other forms of business in the Middle East.

Many U.S. firms are passing up opportunities to bid on projects in the Middle East or are losing orders because they are prohibited under the legislation from furnishing information even though it would have no effect on their business conduct. Many of our smaller exporters have concluded that they cannot afford the costs involved in following the intricacies of the anti-boycott regulations and have therefore made a decision to avoid doing business of any kind with Middle Eastern countries.

The International Trade Club is concerned with these effects of the Export Administration Act and recommends one of the following changes:

1. Now that the anti-boycott provisions of the Export Administration Act have been amended, interim legislation of the Ribicoff Amendment, and the Treasury Regulations issued to enforce it, should be repealed.

2. Alternatively, the Ribicoff Amendment should be amended so as to make it in all respects consistent with the regulations issued by the Commerce department under the Export Administration Act.

V. FOREIGN CORRUPT PRACTICES ACT OF 1977

The Foreign Corrupt Practices Act limits the ability of American enterprises to give gifts or payments to foreign political officials, even where these may be customary as part of the normal course of business and is used by foreign competition as a factor in securing business which might otherwise accrue to a U.S. exporter. The Act in fact imposes a standard and penalty which exceed those imposed on companies operating within the United States.

The Act prescribes stiff *criminal* penalties for violators, but in many instances does not clearly define what constitutes a violation. The Act imposes expensive, unrealistic requirements for internal reporting and accounting systems which apply to foreign branches and subsidiaries of American companies—increasing operating costs and posing difficult problems of parent company control.

The International Trade Club recommends:

1. The Act should be amended to provide American business with greater flexibility in dealing with our competition in foreign markets. These amendments should clarify the exceptions to the Act.

2. The Justice Department, in conjunction with the SEC, should issue regulations to draw a clearer line concerning prohibited conduct under the Act so that American business can in confidence undertake certain transactions with assurance that they will not at some later time be subjected to criminal penalties or public harassment.

VI. U.S. AGRICULTURAL EXPORTS

Sale of agricultural products overseas has been a growing and important component of our balance of trade and last year contributed $24–25 billion in exports. This can increase as more finished products are sold rather than only raw materials. The 12 Midwestern states were the source of 60 percent of these exports (fully 24 percent were produced in the states of Illinois, Iowa, and Indiana alone).

Major Midwestern ports, such as Chicago and Detroit, are currently inadequate to handle the volumes and types of commodities sold for export.

In order to further expand the agricultural export sector and increase the dollars volume sold overseas, the International Trade Club recommends:

1. Assistance in development of improved port and transportation facilities in the Midwest, especially the Great Lakes, and Mississippi River system for handling a greater volume of bulk feed grain and meat commodities for shipment to export markets.

2. Restraint by the Federal Government in disrupting the worldwide free market pricing process by imposing Presidential controls on export agricultural commodities or in manipulating quotas on meat imports. Such restrictions and interference seriously undermine U.S. credibility, invariably result in market dislocation—often of a permanent nature, induce foreign customers to switch to alternate suppliers and discourage farmers from achieving maximum performance. In the final analysis such interference has an impact on our balance of trade.

3. Placing greater emphasis in GATT negotiations and in our bilateral dealings with Japan and the European community on a linkage between agricultural and industrial trade policies so that U.S. food products enjoy the same freedom of market access as foreign industrial products in the U.S.

VII. EXPORT INSURANCE

U.S. exporters need competitive export insurance and protection against the risks of foreign trade and investment.

The Foreign Credit Insurance Association (FCIA) is an organization of some 50 of the nation's leading capital stock and mutual property insurance companies. It was organized in 1961 to enable U.S. exporters to compete on more favorable terms with exporters in other countries and thus support and contribute effectively to the expansion of U.S. exports. The Association offers insurance coverage for stipulated commercial credit risks, and, under contract, serves as the agent for political risk insurance offered exclusively by the Export-Import Bank of the United States. Thus FCIA is supposed to offer the exporter a full range of export credit protection.

FCIA appears to be poorly organized as too much of the decision making authority remains centralized at the main office rather than being decentralized at the branch level. The FCIA needs to be more responsive to its customers in a timely manner and the ITC offers the following recommendations:

1. The main office should undertake greater decentralization of decision making authority. Sub-committees should be created to relieve the senior committee of decisions on all but the largest transactions.

2. Branch office underwriting authority should be increased for short term as well as medium term credit decisions.

3. Where credit decisions exceed branch authority, case write-ups from the branch should be submitted directly for a timely decision.

4. A review of premiums collected and losses paid out by FCIA should be made to determine if it should offer less expensive insurance premiums.

VIII. OCEAN MARINE INSURANCE

Ocean Marine Insurance traditionally has been available to exporters to protect goods in shipment to final destinations abroad. The benefit to an exporter, in brief, is complete satisfaction that insurance coverages are tailored to shipper needs and offer financial protection in case of loss. Many developing nations now have adopted restrictive measures which require local, national currency insurance for all imports (with the exception of AID shipments), with an associated loss in premium income to the U.S.

To date more than 32 countries have enacted such legislation and it is probable that more countries will follow. Importers of U.S. goods are penalized if local, national currency insurance coverage is not obtained. However, the United States does not place a similar requirement on insurance coverage for imports into the U.S. Consequently, the U.S. is losing insurance premium dollars (estimated at several billions of dollars) which could help reduce the current account deficit.

The U.S. Department of Commerce should investigate this loss of premium insurance dollars and either propose legislation to Congress or through negotiations with individual countries seek remedies to redress the present inequity on insurance coverages.

IX. ENVIRONMENTAL ASSESSMENT FOR EXPORTERS

The White House Council on Environmental Quality (CEQ) has submitted draft regulations to governmental agencies which, if adopted, would require agency assessment of the environmental effects of "major federal actions" within foreign countries. If implemented, these provisions would extend the reach of the National Environment Policy Act (NEPA) beyond the U.S. and its Trust Territories by requiring environmental impact statements in association with Department of Defense activities abroad and Foreign Military sales, as well as export financing by the Export Import Bank and export licensing by the Departments of Commerce and State and the Nuclear Regulatory Commission.

Requiring environmental assessments for federally-supported activities *abroad* is an unsound and unjustifiable imposition of the United State's particular ecological policies and objectives: Such a policy stance could have severe adverse consequences for U.S. export sales and diplomatic relations. Preparation and review of impact statements would increase costs significantly and prolong the already lengthy licensing process, further deter small and medium size exporters, and decrease U.S. firms' ability to compete with their foreign counterparts. Moreover, since such a policy in all likelihood would simply induce customers abroad to switch from U.S. to foreign suppliers, the net result would not be increased protection of the environment in foreign countries, but rather lost U.S. export sales.

In view of the differences inside and outside the government concerning the intent of Congress in enacting the NEPA and the potential adverse effect on exports, ITC recommends that Congress be asked to amend the Act to make clear that it does *not* require assessment of environmental impacts in foreign countries.

X. PROTECTIONISM

Increasing protectionism is a threat to living standards around the world. Unless checked, higher tariffs, import quotas, and other restrictive measures could frustrate greater international economic cooperation and trigger a destructive spiral of retaliation and counter-retaliation.

Clearly, we can raise our standard of living by producing more, and we can do this best by exporting more of the products and services we do best while importing those products which others can produce more efficiently. Such a free and fair trade system, based on comparative advantage, has been the engine of global growth and development, bringing major benefits to industrialized and emerging nations as well.

Protectionism will inevitably tend to push prices up in industrial countries and thwart economic progress in developing nations. The International Trade Club believes that the ultimate interest of the United States is in a progressive, fair, and equitable trade policy, that assures this nation's access to foreign markets on the same terms as these countries have to ours.

The ITC urges the U.S. government to pursue an outward looking and fair trade policy during the Multinational Trade Negotiations now taking place in Geneva. If the United States, as the world's largest economy, does not press for reduced tariff and nontariff barriers and freer international trade, there is no other nation to assume this leadership.●

AFGHANISTAN

● Mr. HATCH. Mr. President, in this morning's Washington Post I read a story which reports the administration is now ready to make "deep cuts in aid to Afghanistan." According to the story the United States will cut by one-half the total of $14.8 million we gave Afghanistan last year. Prior to the unfortunate death of Ambassador Dubs it seems the administration was planning to ask for "about $2 million" more.

Mr. President, last year during the debate over foreign aid I let it be known that I intended to offer an amendment to strike the $550,000 for military education and training. I planned to do this to show the Afghanis that the United States would not tolerate the type of action taking place within Afghanistan. I speak of course of the coup that overthrew Mr. Daoud, many think because he planned to ask the nonalined nations conference to expel Cuba. The new government quickly established close ties between Kubul and Moscow. They in reality became a Soviet client state.

At this time members of the State Department approached myself and members of my staff to ask us not to offer the amendment. One of the gentlemen, I cannot remember his name, had just returned from Kabul and assured me that we had equal access to Afghanistan officials. We needed to continue our aid to assure this access. Well we now know of the access we really have. The Soviet advisers positioned those troops storming the hotel Ambassador Dubs was in and Soviet advisers gave the signal to fire. Last year I deferred to the administration in order to let them work their policy. I now know what type of policy they pursue. I think it is time that the United States take a stand. We have lost an Ambassador and had an Embassy in Tehran involved by leftist rioters. Even there the arm of the Soviet Union was evident. We can no longer afford to stand by and be the world's patsies. When the foreign aid bill comes up this year, I will move to strike all funds for Afghanistan.●

NATURAL RESOURCES REORGANIZATION

● Mr. HOLLINGS. Mr. President, I would like to bring to the attention of the Senate an editorial which appeared in the Los Angeles Times yesterday concerning the natural resources reorganization. As I understand it, the President is presently considering whether or not to send up to Congress a proposal which would transfer the National Oceanic and Atmospheric Administration from the Department of Commerce to the Department of Interior. This proposal is being based on what is surely some of the weakest substantive work I have seen recently.

The editorial points this out, and I would hope that the President could be made aware of this. I have tried to tell him this myself; at the request of the Director of the Office of Management and Budget, I reviewed the proposal and wrote a letter in response stating this same fact.

What this natural resources reorganization proposal does is move boxes around based on one of the most spurious fallacies found in the field of good public administration—combing functions and programs merely because they all fall into the same loose category. In this case, the category is entitled "natural resources."

Based on this kind of thinking carried to its logical extreme, we could have a Department of Planet Earth, just because some of these elements have some kind of direct or indirect effect on one another. The acronym for this entity would be DOPE, which is a pretty accurate term for the whole idea.

The document upon which this proposal is based, which was reviewed by the Los Angeles Times writer, is one of the worst analytical jobs I have seen. The case is not made for such wholesale transfers and costly disruptions that would occur. And worse yet, some of the most important and fundamental principles of public administration which have produced agencies in the past have been ignored.

Why, for example, was the former Atomic Energy Commission dismantled to form the Energy Research and Development Administration and the Nuclear Regulatory Commission? Why was the Civil Aeronautics Board created? And why was it necessary to create the Environmental Protection Agency? If the framers of this reorganization proposal understood the answer to these questions, the proposal to transfer NOAA to the Department of Interior, land-based agency with missions which conflict with those of NOAA, would not have surfaced.

This point is well made in the editorial by the reference to the need for a dynamic tension between agencies with conflicting missions. Otherwise, this can produce centralized decisionmaking of the kind that submerges decisions from the public view and from proper public participation, the fundamental principle upon which our democratic process turns.

Another point which concerns me deeply about this proposal is that not only does it contain factual errors in suggesting the policy areas which would be streamlined by the transfer, it does not even consider the other agencies where the continuing development and implementation of ocean policy could benefit from some recombinations. For example, where was their consideration given to the various responsibilities of the Department of Transportation, Corps of Engineers, Environmental Protection Agency, or the Department of State, to cite four. This proposal is so shortsighted that it does no favors for the field of ocean policy.

This is not to say that two or three programmatic changes could not benefit both the Department of the Interior and NOAA—specifically I am thinking of the split responsibilities in marine mammal protection, endangered species, and anadromous fish. But these can be resolved without encountering the overkill of transferring an entire agency to remedy a minor problem. The cure being proposed is the kind that kills the patient along with the disease.

Some time ago, a man from Georgia who occupied the position of Director of the Office of Management and Budget for a time made a famous statement—at least it is attributed to him. It turns out to be a rather profound statement of public administration—"If it ain't broke, don't fix it." Bert Lance really hit on something when he said that. This seems to be, as I understand it, the reasoning behind the omission of any of the other agencies with ocean authorities. However, when it came to NOAA, a double standard was applied. NOAA has been working just fine where it is.

That is not to say that it is everything that I or Senator MAGNUSON have envisioned for it as the lead civilian ocean agency, or even what the Stratton Commission recommended, but it works. And if there are some problems, they can be solved in several ways more relevant than the proposal being kicked around downtown at the present moment. If some meaningful consultation could occur with the Congress on this point, instead of having to deal with preconceived notions, perhaps we could all make some progress together.

The last point that disturbs me about all this is also referenced in the editorial. We are faced with some truly serious economic, budgetary, energy, and foreign relations problems right now. It is going to require the cooperation of both the executive branch and the Congress to deal with these in a positive way. These are

the present crises and they will be continuing in the near future. On the other hand, there are no major crises in the world of natural resources that suggest the wrong-headed transfers being proposed. It appears to be reorganization for the sake of appearances, instead of for solid substantive and policy reasons.

President Carter has accomplished more through reorganization than any other recent President. Through his efforts with the civil service system, in energy, in emergency preparedness, and other areas, some truly important and necessary changes have been brought about that are in the best interests of this Nation. Now it is time to grapple with the serious economic problems which beset the country. A natural resources reorganization that is not well conceived, that will only do damage to the area of ocean policy which it claims to enhance, can only cause confusion, bad feelings, wasted motion, and distraction from the real issues we must face together.

I ask that the Los Angeles Times editorial be printed in the RECORD.

Thank you, Mr. President.

The editorial follows:

[From the Los Angeles Times, Feb. 8, 1979]

MOVING DAY: WHERE TO—AND WHY?

One promise that President Carter emphasized during his 1976 campaign was to reorganize the federal government to make it work better.

Since taking office, he has remodeled the civil-service system, a good job long overdue, and created the Department of Energy, which still may work better someday than its many predecessors.

Now a staff of management analysts, a sort of mergerers' row that has been surveying the rest of the government since mid-1977, is about to make public its plans for further improvement.

The staff has identified four general areas of federal activity in which it should be possible to, as the litany goes, streamline the delivery of services, avoid duplication, eliminate fragmentation and banish confusion, just by moving some people and furniture around. The areas are commerce and trade, revenue sharing, food and nutrition and—the one that is closest to Carter's desk—natural resources.

We have looked over a recent draft of the natural-resources proposal, and we hope that the President will analyze the document more carefully than the staff seems to have analyzed the problems that is intended to solve.

The philosophical base of the plan is a discovery that the earth, air, rivers and lakes and the sea are as one on our planet and must therefore be treated by an all-encompassing federal agency of a size equal to these natural resources.

Even on paper, the magnitude of managing resources on that scale seems to have given the analysts pause, suggesting a consolidation of programs ranging from the merchant marine to air-quality protection to grazing rights and harbor dredging. Rather than walk away from their 18-month study empty-handed, the analysts have settled for a merger of the Department of the Interior and the National Oceanic and Atmospheric Administration (NOAA).

Nothing in the staff papers supports a need for such a merger. The problems that the staff says must be solved generally are problems involving fresh-water resources and other activities that could be handled by shaking up Interior itself. The most serious jurisdictional dispute that the staff found involves ocean mining, a conflict that could be settled with an executive order telling one agency or the other to lay off.

While the gains in management efficiency that would occur with such a merger seem illusory, the risk of a loss of a very effective mechanism for protecting the ocean environment seems quite real.

At present, NOAA provides funds and sets minimum standards for coastal-zone management plans administered by states. It also performs research and coordination for regional fishery programs designed to stop the kind of overfishing that threatens to wipe out some fishing grounds altogether. The Interior Department coordinates oil exploration and production on the outer continental shelf, leasing offshore lands and enforcing safety regulations.

Fishing, coastal conservation and oil production are not always compatible, and there is, and should be, a healthy tension between NOAA and Interior over where oil can and cannot be produced, and under what conditions.

Combining the two agencies would mean repeating a mistake made many times in the past by the federal government when it has placed the responsibility for both promoting and regulating an activity under the same roof. In the past, that structure generally has resulted in promotion and production at whatever cost. Given the relatively small ocean program and the large offshore-oil program, that almost surely would happen in this case; at least it is a chance that Carter does not have to take.

The President has enough issues pending before Congress—a tight budget, SALT and energy, to name a few—without adding a proposal that appears to have less to do with necessity than with carrying out a promise to reorganize.●

RULES OF THE SELECT COMMITTEE ON ETHICS

● Mr. STEVENSON. Mr. President, the Select Committee on Ethics, at a meeting held on February 8, 1979, adopted the procedural rules for the committee. In accordance with the requirement to publish the rules of each Senate committee in the CONGRESSIONAL RECORD not later than March 1 of each year, I ask that the rules be printed in the RECORD.

The rules are as follows:

RULES OF THE SELECT COMMITTEE ON ETHICS

RULE 1. GENERAL PROCEDURES

(a) *Officers:* The Committee shall select a Chairman and a Vice Chairman from among its members. In the absence of the Chairman, the duties of the Chair shall be filled by the Vice Chairman or, in the Vice Chairman's absence, a Committee member designated by the Chairman.

(b) *Procedural Rules:* The basic procedural rules of the Committee are stated as a part of the Standing Orders of the Senate in Senate Resolution 338, as amended, as well as other resolutions and laws set forth in Part I. Supplementary procedural rules are stated herein. These rules shall be published in the CONGRESSIONAL RECORD not later than thirty days after adoption, and copies shall be made available by the Committee office upon request.

(c) *Meetings:*

(1) The regular meeting of the Committee shall be the first Thursday of each month while the Congress is in session.

(2) Special meetings may be held at the call of the Chairman or Vice Chairman, provided at least 48 hours notice is furnished to all members; if all members agree, a special meeting may be held on less than 48 hours notice.

(3) If any member of the Committee desires that a special meeting of the Committee be called, he may file in the office of the Committee his written request to the Chairman or Vice Chairman for that special meeting.

Immediately upon the filing of the request the Clerk of the Committee shall notify the Chairman and Vice Chairman of the filing of the request. If, within three calendar days after the filing of the request, the Chairman or the Vice Chairman does not call the requested special meeting, to be held within seven calendar days after the filing of the request, any three of the members of the Committee may file their written notice in the office of the Committee that a special meeting of the Committee will be held at a specified date and hour; such special meeting may not occur until 48 hours after the notice is filed. The Clerk shall immediately notify all members of the Committee of the date and hour of the special meeting. The Committee shall meet at the specified date and hour.

(d) *Quorum:*

(1) A majority of the members of the Committee shall constitute a quorum thereof for the transaction of business; however no investigation of conduct of a Member or officer of the Senate and no report, resolution, or recommendation relating thereto may be made unless approved by the affirmative recorded vote of not less than four members of the Committee.

(2) Notwithstanding the provisions of section (1) above, one member of the Committee may constitute a quorum for receiving sworn testimony, and the Committee may authorize the receiving of such testimony by a hearing examiner in accordance with its regulations and procedural rules.

(e) *Order of Business:* Questions as to the order of business and the procedure of the Committee shall in the first instance be decided by the Chairman and Vice Chairman, subject always to reversal by a vote by majority of the Committee.

(f) *Hearings Announcements:* The Committee shall make public announcement of the date, place and subject matter of any hearing to be conducted by it at least one week before the commencement of that hearing, and shall publish such announcement in the Congressional Record; however, if the Committee determines that there is good cause to commence a hearing at an earlier date, such notice will be given at the earliest possible time.

(g) *Open and Closed Committee Meetings:* Meetings of the Committee shall be open to the public or closed to the public (executive session), as determined under the provisions of paragraphs 7(b) to (d) of Rule XXV of the Standing Rules of the Senate (see Appendix A to these Rules). Executive session meetings of the Committee shall be closed except to the members and the staff of the Committee. On the motion of any member, and with the approval of a majority of the Committee members present, other individuals may be admitted to an executive session meeting for a specified period or purpose.

(h) *Record of Testimony and Committee Action:* An accurate stenographic or transcribed electronic record shall be kept of all Committee proceedings, whether in executive or public session. Such record shall include Senators' votes on any question on which a recorded vote is held. The record of a witness' testimony, whether in public or executive session, shall be made available for inspection to the witness or his counsel under Committee supervision; a copy of any testimony given by that witness in public session, or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session, shall be made available to any witness if he so requests. (*See* Rule 6 below on Procedures for Conducting Hearings.)

(i) *Secrecy of Executive Testimony and Action and of Complaint Proceedings:*

(1) All testimony and action taken in executive session shall be kept secret and shall not be released outside the Committee to any individual or group, whether governmental or private, without the approval of a majority of the Committee.

(2) All testimony and action relating to a sworn complaint shall be kept secret and shall not be released by the Committee to any individual or group, whether governmental or private, except the respondent, without the approval of a majority of the Committee, until such time as a report to the Senate is required under S. Res. 338, as amended, or unless otherwise permitted under these Rules. (See Rule 9 on Procedures for Handling Committee Sensitive and Classified Materials.)

(j) *Release of Reports to Public:* No information pertaining to or copies of any Committee report, study, or other document which purports to express the views, findings, conclusions or recommendations of the Committee in connection with any of its activities or proceedings may be released to any individual or group, whether governmental or private, without the authorization of the Committee; however, whenever the Chairman or Vice Chairman is authorized to make any determination, then it may be released at his or her discretion. Each member of the Committee shall be given a reasonable opportunity to have separate views included as part of any Committee report. (*See* Rule 9 on Procedures for Handling Committee Sensitive and Classified Materials.)

(k) *Ineligibility or Disqualification of Members and Staff:*

(1) A member of the Committee shall be ineligible to participate in any Committee proceeding that relates specifically to any of the following:

(A) The member's own conduct;

(B) The conduct of any employee or officer that the member supervises, as defined in paragraph 12 of Rule XLV of the Standing Rules of the Senate (see Appendix B to these Rules);

(C) The conduct of any employee of any officer that the member supervises; or

(D) A complaint, sworn or unsworn, that was filed by a member, or by any employee or officer that the member supervises.

(2) If any Committee proceeding appears to relate to a member of the Committee in a manner described in subsection (1) of this Rule, the staff shall prepare a report to the Chairman and Vice Chairman. If either the Chairman or the Vice Chairman conclude from this report that it appears that the member may be ineligible, the member shall be notified in writing of the nature of the particular proceeding and the reason that it appears that the member may be ineligible to participate in it. If the member agrees that he or she is ineligible, the member shall so notify the Chairman or Vice Chairman. If the member believes that he or she is not ineligible, he or she may explain the reasons to the Chairman and Vice Chairman; if they both agree that the member is not ineligible, the member shall continue to serve. But if either the Chairman or Vice Chairman continue to believe that the member is ineligible, while the member believes that he or she is not ineligible, the matter shall be promptly referred to the Committee. The member shall present his or her arguments to the Committee in executive session; any contested questions concerning a member's eligibility shall be decided by majority vote of the Committee, meeting in executive session, with the member in question not participating.

(3) A member may also disqualify himself in his discretion from participating in a Committee proceeding in other circumstances not listed in (1) above.

(4) The President of the Senate shall be given written notice of the ineligibility or disqualification of any member from any initial review, investigation, or other proceeding requiring the appointment of another Member in accordance with section (5), below.

(5) Whenever a member of the Committee is ineligible to participate in or disqualifies himself from participating in any initial review, investigation, or other substatnial Committee proceeding, another Member of the Senate who is of the same party and in the same category in terms of years of service in the Senate (see Section 2, S. Res. 338, as amended) shall be appointed by the Senate in accordance with the provisions of paragraph 1 of Rule XXIV of the Standing Rules of the Senate, to serve as a member of the Committee solely for the purposes of that proceeding.

(6) A member of the Committee staff shall be ineligible to participate in any Committee proceeding that, in the judgment of the staff director or outside counsel, relates specifically to any of the following:

(A) the staff member's own conduct;

(B) the conduct of any employee that the staff member supervises;

(C) the conduct of any Member, officer or employee for whom the staff member has worked for any substantial period; or

(D) a complaint, sworn or unsworn, that was filed by the staff member.

At the direction or with the consent of the staff director or outside counsel, a staff member may also be disqualified from participating in a Committee proceeding in other circumstances not listed above.

(l) *Recorded Votes:* Any member may require a recorded vote on any matter.

(m) *Proxies; Recording Votes of Absent Members:*

(1) Proxy voting shall not be allowed when the question before the Committee is the initiation or continuation of an initial review or an investigation, or the issuance of a report or recommendation related thereto concerning a Member or officer of the Senate. In such cases an absent member's vote may be announced solely for the purpose of recording the member's position and such announced votes shall not be counted for or against the motion.

(2) On matters other than those listed in (1) above, the Committee may order that the record be held open for the vote of absentees or record proxy votes if the absent Committee member has been informed of the matter on which the vote occurs and has affirmatively requested of the Chairman or Vice Chairman in writing that he be so recorded.

(3) All proxies shall be in writing, and shall be delivered to the Chairman or Vice Chairman to be recorded.

(4) Proxies shall not be considered for the purpose of establishing a quorum.

(n) *Approval of Blind Trust and Foreign Travel Requests Between Sessions and During Extended Recesses:*

"During any period in which the Senate stands in adjournment between sessions of the Congress or stands in a recess scheduled to extend beyond 14 days, the Chairman and Vice Chairman, or their designees, acting jointly, are authorized to approve or disapprove blind trusts under the provision of Rule 42, and to approve or disapprove foreign travel requests which require immediate resolution." (Congressional Record, October 17, 1977, p. 33877.)

(o) *Committee Use of Services or Employees of Other Agencies and Departments:*

With the prior consent of the department or agency involved, the Committee may (a) utilize the services, information, or facilities of any such department or agency of the Government, and (b) employ on a reimbursable basis or otherwise the services of such personnel of any such department or agency as it deems advisable. With the consent of any other committee of the Senate, or any subcommittee, the Committee may utilize the facilities and the services of the staff of such other committee or subcommittee whenever the Chairman and Vice Chairman of the Committee, acting jointly, determine that such action is necessary and appropriate.

RULE 2: PROCEDURES FOR SWORN COMPLAINTS

(a) *Sworn Complaints:* Any person may file a sworn complaint with the Committee, alleging that any Senator, or officer, or employee of the Senate has violated a law, the Senate Code of Official Conduct, or any rule or regulation of the Senate relating to the conduct of individuals in the performance of their duties as Members, officers, or employees of the Senate, or has engaged in improper conduct which may reflect upon the Senate.

(b) *Form and Content of Complaints:* A complaint filed under Rule 2(a) shall be in writing and under oath, and shall set forth in simple, concise and direct statements:

(1) The name and legal address of the party filing the complaint (hereinafter, the complainant);

(2) The name and positions or title of the Member(s), officer(s), or employee(s) of the Senate who is (are) specifically alleged to have engaged in the improper conduct or committed the violation (hereinafter, the respondent);

(3) The nature of the alleged improper conduct or violation, including if possible, the specific provision of the Senate Code of Official Conduct or other law, rule or regulation alleged to have been violated;

(4) A statement of the facts within the personal knowledge of the complainant that are alleged to constitute the improper conduct or violation.

(A) The term "personal knowledge" is not intended to and does not limit the complainant's statement to situations that he or she personally witnessed or to activities in which the complainant was a participant.

(B) Where allegations in the sworn complaint are made upon the information and belief of the complainant, the complaint shall so state, and shall set forth the basis for such information and belief.

(5) The complainant must swear that all of the information contained in the complaint either (a) is true, or (b) was obtained under circumstances such that the complainant has sufficient personal knowledge of the source of the information reasonably to believe that it is true. The complainant may so swear either by oath or by solemn affirmation before a notary public or other authorized official.

(6) All documents in the possession of the complainant relevant to or in support of his or her allegations may be appended to the complaint.

(c) *Processing of Sworn Complaints:*

(1) When the Committee receives a sworn complaint against a Member, officer or employee of the Senate, it shall determine by majority vote whether the complaint is in substantial compliance with subsection (b) above.

(2) If it is determined by the Committee that a sworn complaint does not substantially comply with these requirements, the complaint shall be returned promptly to the complainant, with a statement explaining how the complaint fails to comply and a copy of the rules for filing sworn complaints. The complainant may re-submit the complaint in the proper form. If the complaint is not revised so that it substantially complies with the stated requirements, the Committee may in its discretion process the complaint in accordance with Rule 3 below.

(3) Sworn complaints against Members, officers, or employees of the Senate that are

determined by the Committee to be in substantial compliance shall be transmitted to the respondent within 5 days of that determination. The transmittal notice shall include the date upon which the complaint was received, a statement that the complaint conforms to the applicable rules, a statement that the Committee will immediately begin an initial review of the complaint, and a statement inviting the respondent to provide any information relevant to the complaint to the Committee. A copy of the rules of the Committee shall be supplied with the notice.

RULE 3: PROCEDURES ON RECEIPT OF ALLEGATIONS OTHER THAN A SWORN COMPLAINT; PRELIMINARY INQUIRY

(a) *Unsworn Allegation or Information:* Any member or staff member of the Committee shall report to the Committee, and any other person may report to the Committee, any credible information available to him or her that indicates that any named or unnamed Member, officer or employee of the Senate may have:

(1) Violated the Senate Code of Official Conduct,

(2) Violated a law,

(3) Violated any rule or regulation of the Senate relating to the conduct of individuals in the performance of their duties as Members, officers, or employees of the Senate, or

(4) Engaged in improper conduct which may reflect upon the Senate.

Such allegations or information may be reported to the Chairman, the Vice Chairman, a Committee member, or a Committee staff member.

(b) *Sources of Unsworn Allegations or Information:* The information to be reported to the Committee under Rule 3(a). above, may be obtained from a variety of sources, including but not limited to the following:

(1) Sworn complaints that do not satisfy all of the requirements of Rule 2, above.

(2) Anonymous or informal complaints, whether or not satisfying the requirements of Rule 2 above.

(3) Information developed during a study or inquiry by the Committee or other committees or subcommittees of the Senate, including information obtained in connection with legislative or general oversight hearings.

(4) Information reported by the news media.

(5) Information obtained from any individual, agency or department of the executive branch of the Federal Government.

(c) *Preliminary Inquiry:* When information is presented to the Committee pursuant to Rule 3(a) above, it shall immediately be transmitted to the Chairman and the Vice-Chairman, for one of the following actions.

(i) The Chairman and Vice Chairman, acting jointly, may conduct, or may direct the Committee staff to conduct, a preliminary inquiry;

(ii) The Chairman and Vice Chairman, acting jointly, may present the allegations or information received directly to the Committee for it to determine whether an initial review should be undertaken. (*See* Rule 3(d), below.)

(1) A preliminary inquiry may include any inquiries or interviews that the Chairman and the Vice Chairman deem necessary or appropriate. In particular, the preliminary inquiry may, in the discretion of the Chairman and Vice-Chairman, seek independent credible evidence that tends to corroborate the information received; it may also, in the discretion of the Chairman and Vice Chairman, include discussions or correspondence with the complainant, if any, and the respondent, if any.

(2) At the conclusion of a preliminary inquiry, the Chairman and Vice Chairman shall receive a full report of its findings. The Chairman and Vice Chairman, acting jointly, shall then determine what further action, if any, is appropriate in the particular case, including any of the following:

(A) No further action is appropriate, because the alleged improper conduct or violation is clearly not within the jurisdiction of the Committee;

(B) No further action is appropriate, because there is no reason to believe that the alleged improper conduct or violation may have occurred; or

(C) The unsworn allegations or information, and a report on the preliminary inquiry, should be referred to the Committee, to determine whether an initial review should be undertaken. (*See* section (d), below.)

(3) If the Chairman and the Vice Chairman are unable to agree on a determination at the conclusion of a preliminary inquiry, then they shall refer the allegations or information to the Committee, with a report on the preliminary inquiry, for the Committee to determine whether an initial review should be undertaken. (*See* section (d), below.)

(4) A preliminary inquiry shall be completed within sixty days after the unsworn allegations or information were received by the Chairman and Vice Chairman; however, this time may be extended for a specified period by the Chairman and Vice Chairman, acting jointly. A preliminary inquiry is completed when the Chairman and the Vice Chairman, have made the determination required by Rule 3(c)(2), (3), above.

(d) *Determination Whether to Conduct an Initial Review:* When information or allegations are presented to the Committee by the Chairman and the Vice Chairman, the Committee shall determine whether an initial review should be undertaken.

(1) An initial review shall be undertaken when:

(A) There is reason to believe on the basis of the information before the Committee that the possible improper conduct or violation may be within the jurisdiction of the Committee; and

(B) There is reason to believe on the basis of the information before the Committee that the improper conduct or violation may have occurred.

(2) The determination whether to undertake an initial review shall be made by recorded vote within 30 days following the Committee's receipt of the unsworn allegations or information from the Chairman or Vice Chairman, or at the first meeting of the Committee thereafter if none occurs within 30 days, unless this time is extended for a specified period by the Committee.

(3) The Committee may determine that an initial review is not warranted, either (i) because there is no reason to believe on the basis of the information before the Committee that the improper conduct or violation may have occurred, or (ii) because the improper conduct or violation, even if proven, is not within the jurisdiction of the Committee.

(A) If the Committee determines that an initial review is not warranted, it shall promptly notify the complainant, if any, and any known respondent.

(B) If there is a complainant, he or she may also be invited to submit additional information, and notified of the procedures for filing a sworn complaint. If the complainant later provides additional information, not in the form of a sworn complaint, it shall be handled as a new allegation in accordance with the procedures of Rule 3; if he or she submits a sworn complaint, it shall be handled in accordance with Rule 2.

(4) The Committee may determine that there is reason to believe on the basis of the information before it that the improper conduct or violation may have occurred and may be within the jurisdiction of the Committee, and that an initial review must therefore be conducted.

(A) If the Committee determines that an initial review will be conducted, it shall promptly notify the complainant, if any, and the respondent, if any.

(B) This notice shall include a general statement of the information or allegations before the Committee, and a statement that the Committee will immediately begin an initial review of the complaint. A copy of the rules of the Committee shall be supplied with the notice.

(5) If a member of the Committee believes that the preliminary inquiry has provided sufficient information for the Committee to determine whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred, he may move that the Committee dispense with the initial review and move directly to the determinations described in Rule 4(f) below. The Committee may adopt such a motion by majority vote of the full Committee.

RULE 4: PROCEDURES FOR CONDUCTING AN INITIAL REVIEW

(a) *Basis for Initial Review:* The Committee shall promptly commence an initial review whenever it has received either (1) a sworn complaint that the Committee has determined is in substantial compliance with the requirements of Rule 2, above, or (2) unsworn allegations or information that have caused the Committee to determine in accordance with Rule 3 that an initial review must be conducted.

(b) *Scope of Initial Review:*

(1) The initial review shall be of such duration and scope as may be necessary to determine whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred.

(2) The initial review may include any inquiries or interviews that the Committee deems appropriate to obtain the evidence upon which to make this determination, including the taking of sworn statements and the use of subpoenas.

(c) *Opportunity for Response:* An initial review may, in the discretion of the Committee, include an opportunity for any known respondent or his designated representative, to present either a written or oral statement, or to respond orally to questions from the Committee, provided that such an oral statement or answers shall be transcribed and signed by the person providing the statement or answers.

(d) *Status Reports:* The Committee staff or outside counsel shall periodically report to the Committee in the form and according to the schedule prescribed by the Committee; the reports shall be confidential.

(e) *Final Report:* When the initial review is completed, the staff or outside counsel shall make a confidential report to the Committee of findings and recommendations.

(f) *Committee Action:* As soon as practicable following submission of the report on the initial review, the Committee shall determine by a recorded vote whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred.The Committee may make any of the following determinations:

(1) The Committee may determine that there is not such substantial credible evidence. In this case, the Committee shall report its determination to the complainant, if any, and to the respondent, together with an explanation of the basis for the determination. This explanation may be as detailed as the Committee desires, but it is not required

to include a complete discussion of the evidence collected in the initial review.

(2) The Committee may determine that there is such substantial credible evidence, but that the alleged violation is inadvertent, technical or otherwise of a *de minimis* nature. In this case, the Committee may attempt to correct or to prevent such violation by informal methods. The Committee's final determination in this matter shall be reported to the complainant, if any, and to the respondent, if any.

(3) The Committee may determine that there is such substantial credible evidence, but that the alleged violation, if proven, although not of a *de minimis* nature, would not be sufficiently serious to justify the severe disciplinary actions specified in Senate Resolution 338, as amended (i.e., for a Member, censure, expulsion, or recommendation to the appropriate party conference regarding the Member's seniority or positions of responsibility; or for an officer or employee, suspension or dismissal). In this case, the Committee, by the recorded affirmative vote of at least four members, may propose a remedy that it deems appropriate. If the respondent agrees to the proposed remedy, a summary of the Committee's conclusions and the remedy proposed and agreed to shall be filed as a public record with the Secretary of the Senate and a notice of the filing shall be printed in the Congressional Record.

(4) The Committee may determine, by recorded affirmative vote of at least four members, that there is such substantial credible evidence, and also either:

(A) That the violation, if proved, would be sufficiently serious to warrant imposition of one of the above-listed severe disciplinary actions; or

(B) That the violation, if proven, is less serious, but was not resolved pursuant to the procedure in subsection (3) above.

In either case, the Committee shall order that an investigation promptly be conducted in accordance with Rule 5, below.

RULE 5: PROCEDURES FOR CONDUCTING AN INVESTIGATION

(a) *Definition of Investigation*: An "investigation" is a proceeding undertaken by the Committee, by recorded affirmative vote of at least four Members, after a finding on the basis of an initial review that there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within its jurisdiction has occurred.

(b) *Scope of Investigation*: When the Committee decides to conduct an investigation, it shall be of such duration and scope as is necessary for the Committee to determine whether a violation within its jurisdiction has occurred. In the course of the investigation, designated outside counsel, or if the Committee determines not to use outside counsel, the Committee or its staff, may conduct inquiries or interviews, take sworn statements, use compulsory process as described in Rule 7 below, or take any other actions that the Committee deems appropriate to secure the evidence necessary to make this determination.

(c) *Notice to Respondent:* The Committee shall give written notice to any known respondent who is the subject of an investigation; the notice shall be sent to the respondent no later than five working days after the Committee has voted to conduct an investigation. This notice shall include a statement of the nature of the possible violation, and a description of the evidence indicating that a possible violation occurred. The Committee shall offer the respondent an opportunity to present a statement or to respond to questions from members of the Committee, the Committee staff, or outside counsel.

(d) *Right to a Hearing:* The Committee shall accord a respondent an opportunity for a hearing before it recommends disciplinary action against that respondent to the Senate. (See Rule 6 below.)

(e) *Progress Reports to Committee:* The Committee staff or outside counsel shall periodically report to the Committee concerning the progress of the investigation. Such reports shall be delivered to the Committee in the form and according to the schedule prescribed by the Committee, and shall be confidential.

(f) *Report of Investigation:*

(1) Upon completion of an investigation, including any hearings held pursuant to Rule 6 below, the outside counsel or the staff shall submit a confidential written report to the Committee, which shall detail the factual findings of the investigation and which may recommend disciplinary action, if appropriate. Findings of fact of the investigation shall be detailed in this report whether or not disciplinary action is recommended.

(2) The Committee shall consider the report of the staff or outside counsel promptly following its submission. The Committee shall prepare and submit a report to the Senate, including a recommendation to the Senate concerning disciplinary action, if appropriate. A report shall be issued, stating in detail the Committee's findings of fact, whether or not disciplinary action is recommended. It shall also explain fully the reasons underlying the Committee's recommendation concerning disciplinary action, if any. However, no recommendation or resolution of the Committee concerning the investigation of a Member, officer or employee of the Senate may be approved except by the affirmative recorded vote of not less than four members of the Committee.

(3) Promptly after the conclusion of the investigation, the Committee's report and recommendation shall be forwarded to the Secretary of the Senate, and a copy shall be provided to the complainant and the respondent. The full report and recommendation shall be printed and made public, unless the Committee determines by majority vote that it should remain confidential.

RULE 6: PROCEDURES FOR HEARINGS

(a) *Right to a Hearing:* The Committee may hold a public or executive hearing in any inquiry, initial review, investigation, or other proceeding. The Committee shall accord a respondent an opportunity for a hearing before it recommends disciplinary action against that respondent to the Senate. (See Rule 5(e) above.)

(b) *Non-public Hearings:* The Committee may at any time during a public hearing determine in accordance with paragraph 7(b) of Rule XXV of the Standing Rules of the Senate whether to receive the testimony of specific witnesses in executive session. (*See* Appendix A to these Rules.) If a witness desires to express a preference for testifying in public or in executive session, he or she shall so notify the Committee at least five days before he or she is scheduled to testify.

(c) *Adjudicatory Hearings:* The Committee may, by majority vote, designate any public or executive hearing as an adjudicatory hearing; and any hearing which is concerned with possible disciplinary action against a respondent or respondents designated by the Committee shall be an adjudicatory hearing. In any adjudicatory hearing, the procedures described in Rule 6(j) below shall apply.

(d) *Subpoena Power:* The Committee may require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such correspondence, books, papers, documents or other articles as it deems advisable. (See Rule 7 below.)

(e) *Notice of Hearings:* The Committee shall make public an announcement of the date, place, and subject matter of any hearing to be conducted by it, in accordance with Rule 1(f) above.

(f) *Presiding Officer:* The Chairman shall preside over the hearings, or in his absence the Vice Chairman. If the Vice Chairman is also absent, a Committee member designated by the Chairman shall preside. If an oath or affirmation is required, it shall be administered to a witness by the Presiding Officer, or in his absence, by any Committee member.

(g) *Witnesses:*

(1) A subpoena or other request to testify shall be served on a witness sufficiently in advance of his or her scheduled appearance to allow the witness a reasonable period of time, as determined by the Committee, to prepare for the hearing and to employ counsel if desired.

(2) The Committee may by majority vote rule that no Member of the Committee or staff or outside counsel shall make public the name of any witness subpoenaed by the Committee before the date of that witness' scheduled appearance, except as specifically authorized by the Chairman and Vice Chairman, acting jointly.

(3) Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the Committee at least 2 working days in advance of the hearing at which the statement is to be presented. The Chairman and Vice Chairman shall determine whether such statements may be read or placed in the record of the hearing.

(4) Insofar as practicable, each witness shall be permitted to present a brief oral opening statement, if he or she desires to do so.

(h) *Right To Testify:* Any person whose name is mentioned or who is specifically identified or otherwise referred to in testimony or in statements made by a Committee member, staff member or outside counsel, or any witness, and who reasonably believes that the statement tends to adversely affect his or her reputation may:

(1) Request to appear personally before the Committee to testify in his or her own behalf; or,

(2) File a sworn statement of facts relevant to the testimony or other evidence or statement of which he or she complained.

Such request and such statement shall be submitted to the Committee for its consideration and action.

(i) *Conduct of Witnesses and Other Attendees:* The presiding officer may punish any breaches of order and decorum by censure and exclusion from the hearings, and the Committee, by majority vote, may recommend to the Senate that the offender be cited for contempt of Congress.

(j) *Adjudicatory Hearing Procedures:*

(1) Notice of Hearings: A copy of the public announcement of an adjudicatory hearing, required by Rule 6(e) above, shall be furnished to all witnesses at the time that they are subpoenaed or otherwise summoned to testify, together with a copy of these rules.

(2) Preparation for Adjudicatory Hearings:

(A) At least five working days prior to the commencement of an adjudicatory hearing, the Committee shall provide the following information and documents to the respondent, if any. At the discretion of the Committee, the information and documents to be exchanged under subsections (A) and (B) shall be subject to an appropriate agreement limiting access and disclosure.

(i) A list of proposed witnesses to be called at the hearing.

(ii) Copies of all documents expected to be introduced as exhibits at the hearing.

(iii) A brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(B) At least two working days prior to the commencement of an adjudicatory hearing, the respondent, if any, shall provide the information and documents described in sub-

sections (i), (ii) and (iii) above to the Committee.

(C) If a respondent refuses to provide the information and documents described above to the Committee (see Rule 6(j)(2)(A)(B) above), or if a respondent or other individual violates an agreement limiting access and disclosure (see Rule 6(j)(2)(A) above), the Committee, by majority vote, may recommend to the Senate that the offender be cited for contempt of Congress.

(3) Swearing of Witnesses: All witnesses who testify at adjudicatory hearings shall be sworn unless the Presiding Officer, for good cause, decides that a witness does not have to be sworn.

(4) Right to Counsel: Any witness at an adjudicatory hearing may be accompanied by counsel of his or her own choosing, who shall be permitted to advise the witness of his or her legal rights during the testimony.

(5) Right to Cross-Examine and Call Witnesses:

(A) In adjudicatory hearings, any respondent who is the subject of an investigation, and any other person who obtains the permission of the Committee, may personally or through counsel cross-examine witnesses called by the Committee and may call witnesses in his or her own behalf.

(B) A respondent may apply to the Committee for the issuance of subpoenas for the appearance of witnesses or the production of documents on his or her own behalf. Such application shall be approved upon a concise showing by the respondent that the proposed testimony or evidence is relevant and appropriate, as determined by the Chairman and Vice Chairman.

(C) With respect to witnesses called by a respondent, or other individual given permission by the Committee, each such witness shall first be examined by the party who called the witness or by that party's counsel.

(D) At least 1 working day before a witness' scheduled appearance, a witness or a witness' counsel may submit to the Committee written questions proposed to be propounded to that witness. Such questions may be asked by any member of the Committee, or by any Committee staff member if directed by a Committee member. The witness or witness' counsel may also submit additional sworn testimony for the record within 24 hours after the last day that the witness has testified. The insertion of such testimony in that day's record is subject to the approval of the Chairman and Vice Chairman acting jointly within five days after the testimony is received.

(6) Admissibility of Evidence:

(A) The object of the hearing shall be to ascertain the truth. Any evidence that may be relevant and probative shall be admissible, unless privileged under the Federal Rules of Evidence. Rules of Evidence shall not be applied strictly, but the presiding officer shall exclude irrelevant or unduly repetitious testimony. Objections going only to the weight that should be given evidence will not justify its exclusion.

(B) The Presiding Officer shall rule upon any question of the admissibility of testimony or other evidence presented to the Committee. Such rulings shall be final unless reversed or modified by a majority vote of the Committee before the recess of that day's hearings.

(7) Supplementary Hearing Procedures: The Committee may adopt any additional special hearing procedures that it deems necessary or appropriate to a particular adjudicatory hearing. Copies of such supplementary procedures shall be furnished to witnesses and respondents, and shall be made available upon request to any member of the public. (For rules relating to broadcasting and news coverage of committee proceedings, see Rule 10, below.)

(k) *Transcripts*:

(1) An accurate stenographic or recorded transcript shall be made of all public and executive hearings. A member of the Committee, a Committee staff member, or outside counsel, or a witness may examine a copy of the transcript of his or her own remarks and may suggest to the official reporter any typographical or transcription errors. If the reporter declines to make the requested corrections, the member, staff member, outside counsel or witness may request a ruling by the Chairman and Vice Chairman, acting jointly. Any member or witness shall return the transcript with suggested corrections to the Committee offices within five (5) working days after receipt of the transcript, or as soon thereafter as is practicable. If the testimony was given in executive session, the member or witness may only inspect the transcript at a location determined by the Chairman and Vice Chairman, acting jointly. Any questions arising with respect to the processing and correction of transcripts shall be decided by the Chairman and Vice Chairman, acting jointly.

(2) Except for the record of a hearing which is closed to the public, transcripts shall be printed as soon as is practicable after receipt of the corrected versions. The Chairman and Vice Chairman, acting jointly, may order the transcript of a hearing to be printed without the corrections of a member or witness if they determine that such member or witness has been afforded a reasonable time to correct such transcript and such transcript has not been returned within such time.

(3) The Committee shall furnish each witness, at no cost, one transcript copy of that witness' testimony given at a public hearing. If the testimony was given in executive session, then a transcript copy shall be provided upon request, subject to appropriate conditions and restrictions prescribed by the Chairman and Vice Chairman. If any individual violates such conditions and restrictions, the Committee may recommend by majority vote that he or she be cited for contempt of Congress.

RULE 7: SUBPOENAS

(a) *Procedure*: Subpoenas may be issued either:

(1) By majority vote of the Committee, or

(2) By the Chairman and Vice Chairman, acting jointly. All subpoenas shall be signed by the Chairman or the Vice Chairman and may be served by any person eighteen years of age or older, who is designated by the Chairman or Vice Chairman. Each subpoena shall be served with a copy of these Rules of the Committee and a brief statement of the purpose of the initial review, investigation, or other proceeding.

(b) *Subpoena Power:* Pursuant to federal law, 2 U.S.C. 190(b), the Committee is authorized to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate as it deems advisable. The Committee is similarly authorized to require by subpoena or otherwise the attendance of such witnesses or the production of such correspondence, books, papers, documents, or other articles as it deems advisable.

(c) *Withdrawal of Subpoena:* The Committee may, by majority vote, withdraw any subpoena issued by it or issued by the Chairman and Vice Chairman, acting jointly. The Chairman and Vice Chairman, acting jointly, may withdraw any subpoenas issued by them.

RULE 8: VIOLATIONS OF LAW; PERJURY; LEGISLATIVE RECOMMENDATIONS; AND APPLICABLE RULES AND STANDARDS

(a) *Violations of Law:* When the Committee reasonably believes that a violation of law may have occurred, it shall by majority vote of the full Committee, report such violation to the proper state and federal authorities.

(b) *Perjury:* Any person who knowingly and willfully swears falsely to a sworn complaint or any other sworn statement to the Committee does so under penalty of perjury. The Committee may refer any such case to the Attorney General for prosecution.

(c) *Legislative Recommendations:* The Committee shall recommend to the Senate by report or resolution such additional rules, regulations, or other legislative measures as it determines to be necessary or desirable to ensure proper standards of conduct by Members, officers or employees of the Senate. The Committee may conduct such inquiries as it deems necessary to prepare such a report or resolution, including, but not limited to the holding of hearings in public or executive session and the use of subpoenas to compel the attendance of witnesses or the production of materials. The Committee may in its discretion make legislative recommendations as a result of its findings in an initial review, an investigation, or other proceeding.

(d) *Applicable Rules and Standards of Conduct:*

(1) No initial review or investigation shall be made of an alleged violation of any law, rule, regulation, or provision of the Senate Code of Official Conduct which was not in effect at the time the alleged violation occurred. No provision of the Senate Code of Official Conduct shall apply to or require disclosure of any act, relationship or transaction which occurred prior to the effective date of the applicable provision of the Code.

(2) The Committee may conduct an initial review or investigation of an alleged violation of a rule or law which was in effect prior to the enactment of the Senate Code of Official Conduct if the alleged violation occurred while such rule or law was in effect and the violation was not a matter resolved on the merits by the predecessor Committee.

RULE 9: PROCEDURES FOR HANDLING COMMITTEE SENSITIVE AND CLASSIFIED MATERIALS

(a) *Procedures for Handling Committee Sensitive Materials:*

(1) Committee Sensitive information or material is that information or material in the possession of the Select Committee on Ethics which pertains to illegal or improper conduct by a present or former Member, officer, or employee of the Senate; to allegations or accusation of such conduct; to any resulting preliminary inquiry, initial review, or investigation by the Select Committee on Ethics into such allegations or conduct; to the investigative techniques and procedures of the Select Committee on Ethics; or to other information or material designated by the staff director, or outside counsel designated by the Chairman and Vice Chairman.

(2) The Chairman and Vice Chairman of the Committee, shall establish such procedures as in their judgment may be necessary to prevent the unauthorized disclosure of Committee Sensitive information in the possession of the Committee or its staff. Procedures for protecting Committee Sensitive materials shall be set down in writing and shall be given to each Committee staff member.

(b) *Procedures for Handling Classified Materials:*

(1) Classified information or material is that information or material which is specifically designated as such under the authority of Executive Order 11652 requiring protection of such information or material from unauthorized disclosure in order to prevent damage to the United States.

(2) The Chairman and Vice Chairman of the Committee, shall establish such procedures as in their judgment may be necessary to prevent the unauthorized disclosure of classified information in the possession of

the Committee or its staff. Procedures for handling such information shall be set down in writing and a copy of the procedures shall be given to each staff member cleared for access to classified information.

(3) Each member of the Committee shall have access to classified material in the Committee's possession. Only those Committee staff members with appropriate security clearances and a need-to-know, as approved by the Chairman and Vice Chairman acting jointly, shall have access to classified information in the Committee's possession.

(c) *Procedures for Handling Committee Sensitive and Classified Documents:*

(1) Committee Sensitive and classified documents and materials shall be segregated in secure filing safes. Removal from the Committee offices of such documents or materials is prohibited except as necessary for use in, or preparation for, interviews or Committee meetings, including the taking of testimony, or as otherwise specifically approved by the staff director or by outside counsel designated by the Chairman and Vice Chairman.

(2) Each member of the Committee shall have access to all materials in the Committee's possession; however, the staffs of members shall not have access to Committee Sensitive or classified documents and materials without the specific approval in each instance of the Chairman and Vice Chairman, acting jointly. Members may examine such materials in the Committee's offices. If necessary, requested materials may be taken by a member of the Committee staff to the office of a member for his or her examination, but the Committee staff member shall remain with the Committee Sensitive or classified documents or materials at all times except as specifically authorized by the Chairman or Vice Chairman.

(3) Any Member of the Senate who is not a member of the Committee and who seeks access to any Committee Sensitive or classified documents or materials, other than those which are matter of public record, shall request access in writing. The Committee shall decide by majority vote whether to make the documents or materials available. If access is granted, the Member shall not disclose the information except as authorized by the Committee.

(4) Whenever the Committee makes Committee Sensitive or classified documents or materials available to any Member of the Senate who is not a member of the Committee, or to a staff person of a Committee member in response to a specific request to the Chairman and Vice Chairman, a written record shall be made identifying the Member of the Senate requesting such documents or materials and describing what was made available and to whom.

(d) *Non-disclosure policy and agreement:*

(1) No member of the Select Committee on Ethics, its staff, or any person engaged by contract or otherwise to perform services for the Select Committee on Ethics shall release, divulge, publish, reveal by writing, word, conduct, or disclose in any way, in whole, or in part or by way of summary, during tenure with the Select Committee on Ethics or anytime thereafter, any testimony given before the Select Committee on Ethics in executive session (including the name of any witness who appeared or was called to appear in executive session), any classified or Committee Sensitive information, document or material, received or generated by the Select Committee on Ethics or any classified or Committee Sensitive information which may come into the possession of such person during tenure with the Select Committee on Ethics, to any person not a member of the Select Committee on Ethics or its staff, except an official of the executive branch properly cleared for access with a need-to-know, for any purpose or in connection with any proceeding, judicial or otherwise, except as auhorized by the Select Committee on Ethics, or in the event of termination of the Select Committee on Ethics, in such a manner as may be determined by its successor or by the Senate.

(2) No member of the Select Committee on Ethics staff or any person engaged by contract or otherwise to perform services for the Select Committee on Ethics, shall be granted access to classified or Committee Sensitive information or material in the possession of the Select Committee on Ethics unless and until such person agrees in writing, as a condition of employment, to the non-disclosure policy. The agreement shall become effective when signed by the Chairman and Vice Chairman on behalf of the Committee.

RULE 10: BROADCASTING AND NEWS COVERAGE OF COMMITTEE PROCEEDINGS

(a) Whenever any hearing or meeting of the Committee is open to the public, the Committee shall permit that hearing or meeting to be covered, in whole or in part, by television broadcast, radio broadcast, still photography, or by any other methods of coverage, unless the Committee decides by majority vote that such coverage is not appropriate at a particular hearing or meeting.

(b) Any witness served with a subpena by the Committee may request not to be photographed at any hearing or to give evidence or testimony while the broadcasting, reproduction, or coverage of that hearing, by radio, television, still photography or other methods is occurring. At the request of any such witness who does not wish to be subjected to radio, television, still protography, or other methods of coverage, and subject to the approval of the Committee, all lenses shall be covered and all microphones used for coverage turned off.

(c) If coverage is permitted, it shall be in accordance with the following requirements: (1) Photographers and reporters using mechanical recording, filming, or broadcasting apparatus shall position their equipment so as not to interfere with the seating, vision, and hearing of the Committee members and staff, or with the orderly process of the meeting or hearing.

(d) If the television or radio coverage of the hearing or meeting is to be presented to the public as live coverage, that coverage shall be conducted and presented without commercial sponsorship.

(e) Personnel providing coverage by the television and radio media shall be currently accredited to the Radio and Television Correspondents' Galleries.

(f) Personnel providing coverage by still photography shall be currently accredited to the Press Photographers' Gallery Committee of Press Photographers.

(g) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and the coverage activities in an orderly and unobtrusive manner.

RULE 11: PROCEDURES FOR ADVISORY OPINIONS

(a) *When Advisory Opinions are Rendered:*

(1) The Committee shall render an advisory opinion, in writing within a reasonable time, in response to a written request by a Member or officer of the Senate or a candidate for nomination for election, or election to the Senate, concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within the Committee's jurisdiction, to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(2) The Committee may in its discretion render an advisory opinion in writing within a reasonable time in response to a written request by any employee of the Senate concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within the Committee's jurisdiction, to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(b) *Form of Request:* A request for an advisory opinion shall be directed in writing to the Chairman of the Committee and shall include a complete and accurate statement of the specific factual situation with respect to which the request is made as well as the specific question or questions which the requestor wishes the Committee to address.

(c) *Opportunity for Comment:*

(1) The Committee will provide an opportunity for any interested party to comment on a request for an advisory opinion:

(A) Which requires an interpretation on a significant question of first impression that will impact more than a few individuals; or

(B) When the Committee, in its discretion, determines that comments from interested parties would be of assistance.

(2) Notice of any such request for an advisory opinion shall be published in the Congressional Record, with appropriate deletions to insure confidentiality, and interested parties will be asked to submit their comments in writing to the Committee within 10 days.

(3) All relevant comments received on a timely basis will be considered.

(d) *Issuance of an Advisory Opinion:*

(1) The Committee staff shall prepare a proposed advisory opinion in draft form which will first be reviewed and approved by the Chairman and Vice Chairman, acting jointly, and will be presented to the Committee for final action. However, if (a) the Chairman and Vice Chairman cannot agree, or (b) either the Chairman or Vice Chairman requests that it be taken directly to the Committee, then the proposed advisory opinion shall be referred to the Committee for its decision.

(2) An advisory opinion shall be issued only by the affirmative recorded vote of a majority of the members voting.

(3) Each advisory opinion issued by the Committee shall be promptly transmitted for publication in the Congressional Record after appropriate deletions are made to insure confidentiality. The Committee may at any time revise, withdraw or elaborate on any advisory opinion.

(e) *Reliance on Advisory Opinions:*

(1) Any advisory opinion rendered by the Committee under S. Res. 338, as amended, and these Rules may be relied upon by:

(A) Any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered: *Provided however,* That the request for such advisory opinion included a complete and accurate statement of the specific factual situation; and

(B) Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(2) Any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of S. Res. 338, as amended, and of these Rules, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction by the Senate.

RULE 12: PROCEDURES FOR INTERPRETATIVE RULINGS

(a) *Basis for Interpretative Rulings:* S. Res. 338, as amended, authorizes the Committee in its discretion to issue interpretative rulings explaining and clarifying the application of any law, the Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction. The Commit-

tee also may issue such rulings clarifying or explaining any rule or regulation of the Select Committee on Ethics.

(b) *Request for Ruling:* A request for such a ruling must be directed in writing to the Chairman or the Vice Chairman of the Committee.

(c) *Adoption of Ruling:*

(1) The Chairman and Vice Chairman, acting jointly, shall issue a written interpretative ruling in response to any such request, unless:

(A) They cannot agree, or

(B) It requires an interpretation of a significant question of first impression, or

(C) Either requests that it be taken to the Committee, in which event the request shall be directed to the Committee for a ruling.

(2) A ruling on any request taken to the Committee under subparagraph (1) above shall be adopted by a majority of the members voting and the ruling shall then be issued by the Chairman and Vice Chairman.

(d) *Publication of Rulings:* The Committee will publish in the Congressional Record, after making appropriate deletions to ensure confidentiality, any interpretative rulings issued under this Rule which, in the Committee's discretion, may be of assistance or guidance to other Members, officers or employees. The Committee may at any time revise, withdraw or elaborate on interpretative rulings.

(e) *Reliance on Rulings:* Where an individual can demonstrate to the Committee's satisfaction that his or her conduct was in good faith reliance on an interpretative ruling issued in accordance with this Rule, the Committee will not recommend sanctions to the Senate as a result of such conduct.

(f) *Rulings by Committee Staff:* The Committee staff is not authorized to make rulings or give advice, orally or in writing, which binds the Committee in any way.

RULE 13: PROCEDURES FOR COMPLAINTS INVOLVING IMPROPER USE OF THE MAILING FRANK

(a) *Authority to Receive Complaints:* The Committee is directed by Section 6(b) of Public Law 93–191 to receive and dispose of complaints that a violation of the use of the mailing frank has occurred or is about to occur by a Member or officer of the Senate or by a surviving spouse of a Member. All such complaints will be processed in accordance with the provisions of these Rules, except as provided in Rule 13(b) below.

(b) *Disposition of Complaints:*

(1) The Committee may in its discretion dispose of any such complaint by requiring restitution of the cost of the mailing if it finds that the franking violation was the result of a mistake.

(2) Any complaint disposed of by restitution that is made after the Committee has formally commenced an initial review or investigation, must be summarized, together with the disposition, in a notice promptly transmitted for publication in the Congressional Record.

(3) If a complaint is disposed of by restitution the complainant, if any, shall be notified of the disposition in writing.

(c) *Advisory Opinions and Interpretative Rulings:* Requests for advisory opinions or interpretative rulings involving franking questions shall be processed in accordance with Rules 11 and 12.

RULE 14: PROCEDURES FOR WAIVERS

(a) *Authority for Waivers:* The Committee is authorized to grant a waiver under the following provisions of the Standing Rules of the Senate:

(1) Paragraph 2(c) of Rule XLII relating to annual reporting of gifts received aggregating $100 or more;

(2) Paragraph 1 of Rule XLIII relating to acceptance of gifts; or

(3) Paragraph 5 of Rule XLIX relating to applicability of any of the provisions of the Code of Official Conduct to an employee of the Senate hired on a per diem basis.

(b) *Requests for Waivers:* A request for a waiver under paragraph (a) above must be directed to the Chairman or Vice Chairman in writing and must specify the nature of the waiver being sought and explain in detail the facts alleged to justify a waiver. In the case of a request submitted by an employee, the views of his or her supervisor (as determined under paragraph 12 of Rule 45 of the Standing Rules of the Senate) should be included with the waiver request.

(c) *Ruling:* The Committee shall rule on a waiver request by recorded vote, with a majority of those voting affirming the decision.

(d) *Availability of Waiver Determinations:* A brief description of any waiver granted by the Committee, with appropriate deletions to ensure confidentiality, shall be made available for review upon request in the Committee office.

RULE 15: DEFINITION OF "OFFICER OR EMPLOYEE"

(a) As used in the applicable resolutions and in these rules and procedures, the term "officer or employee of the Senate" means:

(1) An elected officer of the Senate who is not a Member of the Senate;

(2) An employee of the Senate, any committee or subcommittee of the Senate, or any Member of the Senate;

(3) The Legislative Counsel of the Senate or any employee of his office;

(4) An Official Reporter of Debates of the Senate and any person employed by the Official Reporters of Debates of the Senate in connection with the performance of their official duties;

(5) A member of the Capitol Police force whose compensation is disbursed by the Secretary of the Senate;

(6) An employee of the Vice President if such employee's compensation is disbursed by the Secretary of the Senate;

(7) An employee of a joint committee of the Congress whose compensation is disbursed by the Secretary of the Senate;

(8) An officer or employee of any department or agency of the Federal Government whose services are being utilized on a full-time and continuing basis by a Member, officer, employee, or committee of the Senate in accordance with Rule XLIX(3) of the Standing Rules of the Senate; and

(9) Any other individual whose full-time services are utilized for more than ninety days in a calendar year by a Member, officer, employee, or committee of the Senate in the conduct of official duties in accordance with Rule XLIX(4) of the Standing Rules of the Senate.

RULE 16: COMMITTEE STAFF

(a) *Committee Policy:*

(1) The staff is to be assembled and retained as a permanent, professional, nonpartisan staff.

(1) Each member of the staff shall be professional and demonstrably qualified for the position for which he or she is hired.

(3) The staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner.

(4) No member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election.

(5) No member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties with the Committee without specific advance permission from the Chairman and Vice Chairman.

(6) No member of the staff may make public without Committee approval any Committee Sensitive or Classified information, documents or other material obtained during the course of his or her employment with the Committee.

(b) *Appointment of Staff:*

(1) The appointment of all staff members shall be approved by the Chairman and Vice Chairman, acting jointly.

(2) The Committee may determine by majority vote that it is necessary to retain staff members, including a staff recommended by a special counsel, for the purpose of a particular initial review, investigation or other proceeding; such staff shall be retained only for the duration of that particular undertaking.

(3) The Committee is authorized to retain and compensate counsel not employed by the Senate (or by any department or agency of the executive branch of the Government) whenever the Committee determines that the retention of outside counsel is necessary or appropriate for any action regarding any complaint or allegation, initial review, investigation or other proceeding which, in the determination of the Committee, is more appropriately conducted by counsel not employed by the Government of the United States as a regular employee. The Committee shall retain and compensate outside counsel to conduct any investigation undertaken after an initial review of a sworn complaint, unless the Committee determines that the use of outside counsel is not appropriate in the particular case.

(c) *Dismissal of Staff:* A staff member may not be removed for partisan, political reasons, or merely as a consequence of the rotation of the Committee membership. The Chairman and Vice Chairman, acting jointly, shall approve the dismissal of any staff member.

(d) *Staff Works for Committee as a Whole:* All staff employed by the Committee or housed in Committee offices shall work for the Committee as a whole, under the general direction of the Chairman and Vice Chairman, and the immediate direction of the staff director or outside counsel.

(e) *Notice of Summons to Testify:* Each member of the Committee staff shall immediately notify the Committee in the event that he or she is called upon by a properly constituted authority to testify or provide confidential information obtained as a result of and during his or her employment with the Committee.

RULE 17: CHANGES IN SUPPLEMENTARY PROCEDURAL RULES

(a) *Adoption of Changes in Supplementary Rules:* The Rules of the Committee, other than those established by statute, or by the Standing Rules and Standing Orders of the Senate, may be modified, amended or suspended at any time; *Provided, however,* that not less than a majority of the entire membership so determine at a meeting called with due notice, and that prior written notice of the proposed change has been provided each member of the Committee.

(b) *Publication:* Any amendments adopted to the Rules of the Committee shall be published in the Congressional Record not later than thirty days after adoption.●

APPOINTMENT OF SPECIAL PROSECUTORS

● Mr. RIBICOFF. Mr. President, title VI of the Ethics in Government Act of 1978, Public Law 95–521, establishes a standby mechanism for the court appointment of a temporary special prosecutor in cases involving specified high-ranking officials of the executive branch and the political party of the incumbent President. In practically every recent administration, controversy has erupted over the handling of such cases. These controversies

arose because cases requiring the investigation or prosecution of a person close to the President present an unavoidable, constitutional conflict of interest for the Department of Justice. In recognition of this reality, with the full support of the Attorney General and the Department of Justice, the legislation establishes a procedure for considering the need for a special prosecutor and the timely appointment of a special prosecutor in appropriate cases involving a narrow range of high-ranking officials.

I believe this legislation will help us avoid future crises in the administration of justice and increase public confidence in the ability of our system of justice to handle these most difficult cases.

Gary Katzmann, a student at the Yale Law School, has written a thoughtful analysis of significant issues pertaining to the special prosecutor legislation. The note states clearly the urgent constitutional justification for court appointment of special prosecutors empowered to investigate and bring indictments against executive officials while functioning independently of the Executive.

I commend Mr. Katzmann for his lucid analysis of this important subject, and I ask that the following summary of his article be printed in the RECORD.

THE PROPOSED COURT-APPOINTED SPECIAL PROSECUTOR: IN QUEST OF A CONSTITUTIONAL JUSTIFICATION

The Note defends the constitutionality of court-appointed special prosecutors, and establishes that the validity of an indictment is not dependent on the concurrence of the executive branch.

The Note begins by setting out the urgent constitutional principle which requires that the executive should not escape the reach of the law. It then provides a compelling constitutional justification for court-appointment of special prosecutors empowered to investigate and bring indictments against executive officials while functioning independently of the executive.

Because the prosecutor has traditionally been considered a part of the executive branch, the constitutionality of court appointment of a special prosecutor who would be independent of the executive is a separation-of-powers question. The Note derives a constitutional justification for court appointment by focusing on the grand jury's function as an independent body that can respond to executive wrongdoing and by recognizing the prosecutor's duties in aid of the grand jury's investigative function. In bare outline, the Note demonstrates that since the grand jury is an arm of the court, court appointment of the special prosecutor is merely in keeping with the judiciary's manifold powers to protect the integrity of the grand jury. The Note also indicates that history and state practice support court appointment.

The Note observes that the grand jury indictment is crucial because it exposes alleged corruption to public pressure and subjects misconduct to the reach of legal process. The special prosecutor legislation, by providing that the special prosecutor may frame and sign indictments, recognizes that the effectiveness of the grand jury can be promoted only if it is free to bring indictments without the consent of the executive.

A major challenge to the special prosecutor scheme is the contention that an indictment is valid only if signed by an executive official. Since the special prosecutor is neither appointed by nor answerable to the executive, it is argued, an indictment signed by the special prosecutor cannot be valid. The crucial decision supporting this argument is the 1965 case of *United States* v. *Cox*, which effectively holds that an indictment can be valid only if signed by an executive official. The Note establishes that *Cox* should no longer be followed because it is inconsistent with precedent, legislative history, and sound public policy.●

SPECIAL ORDERS AND ORDER FOR EXECUTIVE SESSION ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday after the recognition of the two leaders under the standing order, the Senator from Virginia (Mr. WARNER) be recognized for not to exceed 15 minutes, and that at the conclusion of that 15 minutes I be recognized for not to exceed 15 minutes, just so that I may yield my time to Senators if so needed; and that upon the conclusion of that 15 minutes I be recognized to move that the Senate go into executive session.

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

AUTHORITY TO SIGN DULY ENROLLED BILLS AND JOINT RESOLUTIONS DURING THE ADJOURNMENT OF THE SENATE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Vice President of the United States, the President pro tempore of the Senate, and the Acting President pro tempore may be authorized to sign all duly enrolled bills and joint resolutions during the recess of the Senate over until Monday at noon.

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

AUTHORITY TO RECEIVE MESSAGES DURING THE RECESS OF THE SENATE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that messages from the House of Representatives and/or the President of the United States during the recess over until Monday at noon may be received and appropriately referred.

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

PRICE AND INCOME PROTECTION FOR AGRICULTURAL PRODUCERS

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Arkansas (Mr. PRYOR) I ask unanimous consent that the text of S. 369, a bill introduced on February 7 by Senators BUMPERS and PRYOR, be printed in the RECORD.

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

S. 369

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer and Agricultural Protection Act of 1979".

FINDINGS

SEC. 2. Congress finds that—

(1) agricultural production in the United States is the foundation of many industries and generates extensive domestic and foreign commerce;

(2) a strong, vigorous agriculture is essential to the welfare of the United States;

(3) the agricultural producers of the United States are the most efficient and productive farmers in the world and that status must be continued;

(4) at the present time the agricultural producers of the United States are faced with major economic problems; they are deeply in debt, receive prices for their commodities which do not recover the cost of producing such commodities, and are without any means of escaping agricultural cycles of overproduction which drive the level of return on their agricultural investment below subsistence levels;

(5) direct and immediate economic relief is required to prevent irreversible changes in the character of the agricultural producers in this Nation because many farm operations are being forced into bankruptcy and the owners of many other such operations are abandoning agricultural production for other means of earning a livelihood;

(6) current agricultural policies will not provide the infusion of money and market stability necessary to reverse the disastrous economic plight of agricultural producers;

(7) producers of certain agricultural commodities have been seriously injured by extensive imports of such commodities;

(8) strong and consistent export policies which have benefited agricultural producers of the United States in the past by providing markets for the Nation should be instituted; and

(9) agricultural producers should and must have a voice in the policies of the United States which directly impact on their livelihood.

PURPOSES

SEC. 3. The purposes of this Act are—

(1) to provide to agricultural producers an equitable price for their agricultural commodities calculated on the basis of the comprehensive cost of producing such commodities, without regard to whether such commodities are sold for consumption in the United States or for export;

(2) to provide for a national reserve of certain agricultural commodities;

(3) to provide effective representation of agricultural producers in the formulation of the policies of the United States which affect agriculture;

(4) to regulate the import and export policies of the United States to insure that domestic agricultural producers receive a price for their commodities based upon their comprehensive costs of producing such commodities;

(5) to curtail or eliminate from the domestic agricultural economy the transfer of unfavorable economic conditions from one agricultural commodity to another; and

(6) to provide price stability in domestic and foreign markets for agricultural commodities which will result in equitable prices to producers for such commodities and at the same time reflect the comprehensive cost of producing such commodities.

DEFINITIONS

SEC. 4. For the purposes of this Act—

(1) the term "Secretary" means the Secretary of Agriculture.

(2) the term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the territories and possessions of the United States.

(3) the term "specified commodity" means wheat, corn, grain sorghum, barley, oats, rice, soybeans, cotton, and sugar.

(4) the term "producer" means the original producer of any specific commodity, whether produced for himself or produced under contract or agreement for another, and includes any individual partnership, firm, joint-stock company, corporation, association, trust, or estate engaged in the pro-

duction of one or more agricultural commodities.

(5) the term "Department" means the United States Department of Agriculture.

NATIONAL BOARD OF AGRICULTURE GOVERNORS

SEC. 5. (a) There is hereby established a board to be known as the National Board of Agricultural Governors (hereinafter in this Act referred to as the "Board").

(b) The Board shall be composed of twenty-one members appointed by the President as provided in subsection (c). The terms of the members first taking office shall expire (as designated by the President at the time of appointment) seven at the end of one year, seven at the end of two years, and seven at the end of three years. Thereafter the term of office for all members shall be three years, except that the term of any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of his predecessor.

(c)(1) One member shall be appointed by the President from each of the twelve Farm Credit Districts of the United States to represent the interests of producers of agricultural commodities. The appointment in the case of each such district shall be made from among nominees submitted to the President from such district as provided in subsection (d).

(2) Three members shall be appointed by the President from among nominees submitted by the Secretary as provided in subsection (e).

(3) Two members shall be appointed from among persons nominated by consumer organizations.

(4) Two members shall be appointed from among persons nominated by organized labor.

(5) Two members shall be appointed from among persons nominated by business organizations.

(d) Nominees for appointment to the Board from the Farm Credit Districts of the United States shall be selected as follows:

(1) Each county committee (established under section 8(b) of the Soil Conservation and Domestic Allotment Act) of each State within each Farm Credit District shall select three nominees from among its members and designated alternate members. The members and designated alternate members shall have equal voting right for such purpose.

(2) The producers of specified commodities in each county shall elect one of the nominees referred to in paragraph (1) to represent such county in a State Convention called for the purpose of selecting a nominee from the State concerned for appointment to the Board.

(3) Each such State convention shall select a nominee for appointment to the Board from the Farm Credit District in which the State concerned is located. One of the nominees from each of the Farm Credit Districts shall be appointed to the Board by the President. Each such State convention shall establish its own procedures for selecting its nominee.

(e) The Secretary shall nominate for appointment to the Board by the President six persons to represent the interests of specified commodities not adequately represented by persons appointed under subsection (c)(1). In selecting nominees for appointment to the Board, the Secretary shall not favor any particular geographic area or region of the United States.

(f) In designating the terms of office of the first members appointed to the Board, the President shall insure that the terms of not more than one-third of the members appointed under subsection (c)(1) will expire in any one year and that the terms of the two members appointed under each of the paragraphs (3), (4), and (5) of subsection (c) will expire in different years.

(g) Appointments made from nominations submitted under paragraphs (3), (4), and (5) shall bt made on a bipartisan basis.

(h) No person shall be eligible for appointment to the Board from any Farm Credit District or by action of the Secretary under subsection (e) of this section unless such person is actively participating in farming or ranch operations and derives at least two-thirds of his income from such operations.

(i) The President shall designate one of the members appointed under subsection (c)(1) as Chairman of the Board.

(j) A member of the Board may be removed by the President only for neglect of duty or malfeasance in office.

(k) A member of the Board may continue to serve on the Board after the expiration of his term of office until such time as his successor has been appointed.

(l) No person may be appointed to the Board for more than one three-year term.

(m) A quorum for the transaction of the business of the Board shall be fifteen members and all actions of the Board shall be determined by a majority vote of the members present.

(n) Any vacancy on the Board shall not affect its powers to function but shall be filed in the same manner as the original appointment was made.

(o) The Board shall have an official seal which shall be judicially noticed.

DUTIES OF THE BOARD

SEC. 6(a) The duties of the Board shall be—

(1) to establish and revise on an annual basis a comprehensive cost of production price for each specified commodity;

(2) to establish cost of production price levels for specified commodity loans made or guaranteed under this Act;

(3) to advise the President, the Secretary, and the Special Representative for Trade Negotiations on international trade agreement negotiations which pertain to agricultural commodities and on matters and policies affecting the importation of agricultural commodities;

(4) to seek and develop export markets for agricultural commodities produced in the United States;

(5) to allocate among producers on a fair and equitable basis production or marketing adjustments established for any specified commodity; and

(6) to perform such other functions as may be necessary to carry out the policies and purposes of this Act.

(b) The Board shall hold public hearings prior to establishing a cost of production price for any specified commodity and prior to allocating production or marketing adjustments among producers whenever such adjustments are established for any specified commodity.

(c) The Board shall consult with and advise the Secretary regarding the improvement and implementation of the agricultural policies and programs of the United States. The Board shall, from time to time, submit to the Secretary such recommendations as the Board deems appropriate regarding the long-range production and marketing of each specified commodity.

DUTIES OF THE CHAIRMAN; ACTING CHAIRMAN

SEC. 7. (a) The Chairman of the Board shall be responsible on behalf of the Board for the executive and administrative operation of the Board, including the functions of the Board with respect to—

(1) the organization and supervision of personnel employed by the Board, except that each member of the Board may select and supervise personnel for his personal staff;

(2) the distribution of work and responsibilities among personnel and among administrative units of the Board;

(3) the expenditure of and accounting for funds appropriated for Board functions, and

(4) the recruitment and hire of such employees, experts, advisors, clerical assistants, and other categories of personnel as the Board, in its sole discretion, deems necessary to carry out effectively and efficiently its duties and functions under this Act.

(b) The Chairman of the Board may from time to time designate any other member of the Board as Acting Chairman to act in the place and stead of the Chairman in the absence of the Chairman. The Chairman (or the Acting Chairman) shall preside at all sessions of the Board.

INDEPENDENCE OF BOARD MEMBERS AND PERSONNEL

SEC. 8. In the performance of their functions under this Act, the members and other personnel of the Board shall not be responsible or subject to the supervision or control of any officer, employee, or agent of the Department.

AUTHORITY OF THE BOARD TO ESTABLISH RULES

SEC. 9. The Board is authorized to establish such procedural and administrative rules as are necessary to carry out its duties and functions under this Act.

BUDGET FOR BOARD ACTIVITIES

SEC. 10. The Board shall prepare and submit an annual budget to the President for transmission to the Congress and such budget shall be separate from the annual budget of the Department. The Board shall not be dependent in any way upon funds of the Department to carry out its duties and functions under this Act.

SPECIAL POWERS OF THE BOARD

SEC. 11. In carrying out its duties and functions under this Act, the Board shall have power to hold hearings, administer oaths, examine witnesses, and receive evidence at any place in the United States.

COST OF PRODUCTION PRICES

SEC. 12. (a) The Board shall establish and announce a comprehensive cost of production price for each specified commodity prior to the beginning of each marketing year for such commodity. Such cost of production prices as established shall reflect cost principles and accounting procedures utilized by business management in industry and trade. In determining the cost of production for any such commodity the Board shall include as components of such price—

(1) variable costs; including a cost for hired labor at equivalent industry wage levels;

(2) machinery ownership costs, including current replacement costs of farm machinery and equipment;

(3) general farm overhead costs attributable to the production of such commodity;

(4) a value for the management services contributed by the producer of such commodity;

(5) a value for land utilized in the production of such commodity, such value to reflect the value of farmland as valued for estate tax valuation purposes under section 2032A of the Internal Revenue Code of 1954 rather than reflecting values based on the current market value of real property used for agricultural purposes; and

(6) such other factors as, in the Board's discretion, should be included to accurately reflect the cost of producing such commodity.

(b) The Board shall conduct public hearings prior to the beginning of each marketing year for each specified commodity to give producers and other interested parties an opportunity to be heard on matters relating to the cost of production price to be established for such commodities for such marketing year.

(c) The cost of production price for any

specified commodity shall be established at a level which will provide incentive toward maximum efficiency in the production of such commodity and not at a level which will encompass those producers who are inefficient in the production of such commodity.

(d) The Board shall promptly notify the Secretary in writing whenever it establishes or revises a cost of production price for any specified commodity for any marketing year and shall provide for the publication of such information in the Federal Register. The Board shall also provide for such public announcements of such information as it deems necessary to make such information generally known to the producers concerned.

(e) The Secretary shall designate by regulation a marketing year for each specified commodity.

GUARANTEE OF LOANS: AMOUNT OF LOANS: TERMS

SEC. 13. (a) The Secretary shall guarantee in any year the full amount of commodity loans made by commercial lending institutions to producers of nonperishable specified commodities (as determined by the Board). The amount of any such loan (loan level) in the case of any producer shall be an amount not in excess of an amount determined by multiplying the quantity of such commodity on which such producer is eligible for a loan under this Act by the cost of production price established by the Board for such commodity for the year concerned.

(b) The term of such loan shall be for such period as may be agreed upon by the lender and the producer-borrower but in no case for a period longer than thirty-six months.

(c) No loan may be guaranteed under this Act unless the rate of interest thereon is no greater than the rate of interest on comparable loans made by commercial lending institutions in the same area for the same purpose without the benefit of federal guarantees.

DIRECT LOAN AUTHORITY

SEC. 14. (a) The Secretary is also authorized to make loans to producers of nonperishable specified commodities (as determined by the Board) on their crops through the facilities of the Commodity Credit Corporation Loans made under authority of this section shall be made at a level not less than that prescribed in section 13(a). Loans made by the Secretary under authority of this subsection on any specified commodity shall be made at the same rate of interest at which loans guaranteed under this Act are made on the same commodity. The Secretary shall use the guarantee loan program whenever practicable in providing an initial loan to any producer on any specified commodity.

(b) Producers shall be entitled, upon application to the Secretary, to obtain a loan from the Secretary as provided in subsection (a) on the commodities owned by such producers in an amount not less than that described in section 13. Loans made under this subsection shall be for an unspecified period of time. Notwithstanding the foregoing, no loan may be made by the Secretary on any specified commodity of such producer unless such producer has satisfied any prior loan made on such commodities which was guaranteed by the Secretary or unless the proceeds of the loan made by the Secretary are to be used to satisfy such prior loan.

NONRECOURSE NATURE OF LOANS; ADJUSTMENTS FOR GRADE AND OTHER FACTORS; COMPLIANCE REQUIREMENTS

SEC. 15. (a) Loans guaranteed by the Secretary under section 13 and loans made under section 14 shall be guaranteed and made without recourse against the producer-borrowers and no security other than the commodity on which such loans are made shall be required.

(b) The Board may adjust the loan level for any specified commodity on the basis of the grade, type, staple, or quality of such commodity.

(c) No producer shall be eligible for a loan or guarantee under this Act on any specified commodity unless such producer complies with the other requirements of this Act.

MANDATORY RELEASE PRICE

SEC. 16. (a) The Board shall establish for each specified commodity mandatory release prices at which a percentage (specified by the Board) of the quantity of that commodity under loan (made or guaranteed under this Act) must be released for sale in domestic or export markets. Mandatory release prices shall be a condition of any loan made or guaranteed under this Act.

(b) Mandatory release prices shall be established for each specified commodity prior to the start of the marketing year for such commodity and shall remain in effect for that marketing year.

(c) Mandatory release prices in the case of any specified commodity shall be established by the Board as a percentage above one hundred per centum of the cost of production price for that commodity plus storage charges and interest charges applicable to prevailing loans for that commodity.

AUTHORITY TO CALL LOANS

SEC. 17. The Secretary is authorized to call any loan made under this Act and secured by commodities comprising part of the National Commodity Reserve, if the Secretary determines that the domestic or foreign market for the commodity for which such loan was made is unstable because insufficient quantities of that commodity are being offered for sale, except that the Secretary may only call loans on such commodity at any time that the market price for such commodity is at or above the mandatory release price established by the Board for such commodity. The Secretary shall call the oldest outstanding loans first and proceed chronologically to the newest loan outstanding; except that at no time shall the Secretary call any loans on any specified commodity if the calling of such loans will cause the price of such commodity to drop below the cost of production price currently in effect under this Act for such commodity.

PROHIBITION AGAINST RENEWAL OR EXTENSION OF CERTAIN LOANS

SEC. 18. No new loan may be made or guaranteed under this Act with respect to any quantity of any specified commodity owned by any producer and no existing loan may be renewed or extended on any quantity of such commodity owned by any producer if such quantity of such commodity has been ordered released from loan pursuant to section 17 or the loan on such quantity of such commodity has been called pursuant to section 18.

NATIONAL COMMODITY RESERVE

SEC. 19. (a) The Secretary, in consultation with the Board shall establish and maintain each year a national reserve for each of the following commodities: wheat, corn, grain sorghum, barley, oats, rye, rice, soybeans, cotton, sugar, and any commodity which may be stored from marketing year to marketing year made subject to the provisions of this Act by producer referendum conducted under section 23(a). The total quantity of all such commodities placed in reserve under this section shall be known as the "National Commodity Reserve".

(b) The purpose of the National Commodity Reserve shall be—

(1) to provide quantities of certain commodities sufficient to maintain adequate supplies of such commodities in time of war and national emergency during periods of shortages occurring as the result of natural disaster, and to meet foreign demand for such commodities; and

(2) to provide a mechanism by which the producers of such commodities may be protected from depressed prices caused by periodic overproduction and excessive marketing of such commodities.

(c) The Secretary, in consultation with the Board, shall designate the national reserve for each commodity set forth in subsection (a) prior to the marketing year for such commodity.

(d) Loans secured by any quantity of commodities designated as part of the National Commodity Reserve may only be made through the facilities and services of the Commodity Credit Corporation.

(e) The Secretary shall accept applications from producers to designate quantities of commodities as part of the National Commodity Reserve, and shall designate such quantities to enter the National Commodity Reserve based on the date of application, with quantities contained in applications arriving first entering the National Commodity Reserve until the quantity designated as the reserve for each commodity shall be met. Application shall be for a term of thirty-six months.

(f) Any quantity of commodities designated as part of the National Commodity Reserve may only be removed from reserve by action of the Secretary as provided in section 17. Commodities may be removed from the National Commodity Reserve by the owner of such commodities if the owner makes application to the Secretary to remove such commodities. The Secretary is authorized to establish conditions upon the release of commodities from reserve by such applications as may be necessary to maintain a National Commodity Reserve sufficient for the purposes of this Act.

STORAGE; PAYMENT OF STORAGE COSTS; INTEREST PAYMENTS

SEC. 20. (a) Producers may, if they so elect, store on the farm any quantity of a specified commodity produced by them which has been designated as a part of the National Commodity Reserve.

(b) The Secretary shall pay the storage costs for commodities stored as a part of the National Commodity Reserve, whether stored on the farm or in commercial facilities, but only to the extent that such costs do not exceed prevailing commerical rates.

(c) Whenever a portion of the total quantity of any commodity of any producer is placed in the National Commodity Reserve, the interest on that amount of the loan (made or guaranteed) attributable to such portion shall be paid by the Secretary.

RESPONSIBILITY FOR LOSS OR DESTRUCTION RESERVE COMMODITY STOCKS; ROTATION

SEC. 21. (a) The owner of any specified commodity, a quantity of which has been designated by the Secretary for the National Commodity Reserve, shall be responsible for the proper storage and care of such commodity. In the event that any such quantity of a specified commodity for which any producer is responsible is lost or destroyed by reason of the negligence or misconduct of such producer, such producer shall pay to the Secretary an amount equal to the amount of the loan (made or guaranteed under this Act) secured by the quantity of such commodity lost or destroyed, plus any storage and interest charges which may have been paid by the Secretary in connection with such quantity of such commodity lost or destroyed.

(b) Under such regulations as the Secretary shall prescribe, stocks of specified commodities designated as a part of the National Commodity Reserve may be rotated by producers to prevent spoilage and deterioration

of such commodities and may be moved from one place of storage to another.

PRODUCTION MANAGEMENT

SEC. 22. (a) Each producer of a specified commodity shall report in writing to the Secretary, through the appropriate office of the Agricultural Stabilization and Conservation Service, the quantity of such commodity such producer plans to produce in the next production year. Such report shall be filed at such time in advance of the production year for such commodity as the Secretary determines will provide adequate time for allocating individual production adjustments for such commodity in the event production adjustments with respect to such commodity are determined necessary. Copies of production reports filed under this section shall be furnished to the Board by the Secretary in such manner as the Board may request.

(b) The Secretary shall evaluate the domestic stocks of specified commodities prior to the start of the marketing year for that commodity. If the Secretary, in consultation with the Board, determines on the basis of the information obtained under subsection (a) that the domestic stocks of any specified commodity, including quantities designated for the National Commodity Reserve, will exceed domestic and foreign demand for such commodity in the next marketing year, the Secretary shall determine and announce a production adjustment for the next production year for such commodity. The production adjustment for any commodity shall be apportioned among the producers of such commodity by the Board and the reduction in production shall be equally applied to all producers.

(c) Each producer required to reduce production of any specified commodity as the result of a production adjustment shall remove from production of such commodity average production quality land (in the case of a soil produced commodity) and such land shall be contiguous or in fieldsized pieces.

(d) No crop may be harvested from land removed from production under this section and such land may not be used for grazing purposes. In the event that any producer subject to a production adjustment produces a crop or grazes livestock on land removed from production by such adjustment, such producer shall be subject to a civil penalty as follows:

(1) If the crop produced on land removed from production adjustment is a crop of a specified commodity, the producer shall be liable to the United States for an amount equal to the cost of production price for the commodity produced on such land multiplied by the normal yield for such land, and the entire crop of the specified commodity produced by such producer, including the crop of such commodity produced by such producer on land removed from production under a production adjustment, shall be subject to a lien in favor of the United States.

(2) If the crop produced on land removed from production under a production adjustment is a crop of an agricultural commodity not subject to this Act, the producer shall be liable to the United States for an amount equal to the cost of production price for the specified commodity which constitutes the producer's largest crop in the crop year concerned multiplied by the normal yield of such specified commodity for the land on which the commodity (not subject to this Act) was produced, and the entire crop of such specified commodity produced by such producer shall be subject to a lien in favor of the United States.

(3) If the land removed from production in any marketing year by a production adjustment is used by a producer for grazing purposes, then such producer shall be ineligible for the loans and loan guarantees established by this Act for that marketing year.

(e) The Secretary shall authorize by regulation the use of marketing cards and any other procedure which, in his discretion, may be necessary to enforce produce compliance with the production adjustments established by this section.

(f) Production adjustments established in any year for any specified commodity shall apply to all producers of such commodity whether or not such producers apply for and received loans or guarantees under this Act.

(g) Any quantity of a specified commodity produced for human consumption on the farm on which produced shall be exempt from the provisions of this Act. Acreage used for research purposes and seed stock shall also be exempt from the provisions of this title, subject to regulations issued by the Secretary.

(h) No payments shall be made by the Secretary for any land removed from the production of any specified commodity as the result of a production adjustment made under this section.

(i) The Secretary is hereby authorized to issue such regulations as may be necessary to require that acreage removed from production under this Act shall be devoted to soil conserving uses.

REFERENDUMS

SEC. 23. (a) If 15 per centum or more of the producers of any agricultural commodity, other than a specified commodity, petition the Board in writing for a referendum of the producers of such commodity on the question of whether or not such commodity should be a specified commodity for the purposes of this Act, the Board shall, within sixty days after validating the petition, conduct a referendum by secret ballot of such producers. If a majority of the producers of such commodity voting in such referendum vote in favor of making the provisions of this Act applicable to such commodity, then, on and after the date on which the results of such referendum are determined, such commodity shall, for the purposes of this Act, be considered a specified commodity.

(b) If 15 per centum or more of the producers of any specified commodity petition the Board in writing for a referendum to determine whether the producers of such commodity wish to terminate the program provided for under this Act with respect to such commodity, the Board shall, within sixty days after validating the petition, conduct a referendum by secret ballot of the producers of such commodity. If a majority of the producers of such commodity voting in such referendum vote to terminate the program provided for in this Act with respect to such commodity, then, within a period of ninety days after the results of such referendum are determined, such commodity shall no longer be considered as specified commodity for purposes of this Act; but nothing in this paragraph shall be construed to prevent the subsequent application of the provisions of this Act to such commodity pursuant to the procedures provided for in paragraph (a).

NOTICE TO CONGRESS OF PROPOSED ACTION

SEC. 24. (a) The Board shall notify the Congress in writing of any cost of production price proposed to be established by the Board under this Act. No such proposed section shall become effective unless (1) thirty days of continuous session of the Congress have expired following the date on which notice of such proposed action is received by the Congress, and (2) neither House of Congress had adopted, within such thirty-day period, a resolution disapproving such proposed action.

(b) For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such thirty-day period.

PARTICIPATION BY SECRETARY IN PUBLIC HEARINGS CONDUCTED BY THE BOARD

SEC. 25. The Secretary may participate in any public hearings held by the Board but shall comply with the rules of procedure established by the Board for the conduct of such hearings. The participation of the Secretary in any hearing conducted by the Board shall not affect the obligation of the Board to assure procedural fairness to all interested parties.

IMPORT AND EXPORT OF AGRICULTURAL COMMODITIES

SEC. 26. No quantity of any specified commodity may be imported into the United States in any year at a price less than the domestic cost of production for such commodity as established by the cost of production price for such commodity for such year, adjusted by appropriate transportation and handling costs.

AUTHORITY TO IMPOSE CUSTOM DUTIES

SEC. 27. The Board is authorized to impose upon specified commodities imported into the United States such custom duties as may be necessary to maintain the price of such imported commodities at levels established under this Act for the same kinds of commodities produced in the United States. Moneys collected on imported commodities as the result of action under this section shall be utilized by the Secretary in his discretion to make specified commodities produced in the United States competitive in foreign markets.

MINIMUM PURCHASE PRICE FOR COMMODITIES PURCHASED BY GOVERNMENT FOR EXPORT

SEC. 28. No specified commodity produced in the United States may be purchased in any year by the Secretary or any department or agency of the government for use in carrying out any food assistance program in any foreign country at any price less than a price equal to the cost of production of such commodity as established by the cost of production price for such commodity for such year.

INSPECTION STANDARDS

SEC. 29. All quality inspection requirements applicable by law, Executive order, or regulation to domestically produced agricultural commodities shall be applicable to imported agricultural commodities of the same type as a condition of the entry of such imported commodities in the United States.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 30. There are hereby authorized to be appropriated such funds as are necessary to carry out the provisions of this Act.

JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES

SEC. 31. Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all cases or controversy arising under this Act, or under rules, regulations, or orders issued exclusively thereunder.

APPLICABILITY OF OTHER LAWS

SEC. 32. Any provision of law in effect on the day before the date of enactment of this Act which is applicable to any agricultural commodity to which this Act is also applicable, to the extent inconsistent with the provisions of this Act, as determined by the Secretary in consultation with the Board, shall be null and void on and after the date of enactment of this Act.

AMENDMENT TO TITLE 5, UNITED STATES CODE

SEC. 33. Section 5315 of title 5, United States Code, is amended by adding at the end thereof a new paragraph as follows:

"(122) Members, National Board of Agricultural Governors.".

RULES AND REGULATIONS

SEC. 34. The Secretary is authorized to promulgate such rules and regulations as may be necessary to carry out the requirements and policies of this Act.

SEPARABILITY CLAUSE

SEC. 35. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

Mr. ROBERT C. BYRD. Mr. President, does any other Senator seek recognition at this time?

The PRESIDING OFFICER. Does any Senator seek recognition? Evidently not.

ORDER FOR RECESS UNTIL MONDAY, FEBRUARY 26, 1979

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 12

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, for the information of Senators, on Monday, the Senate will take up the nomination of Leonard Woodcock. It being in order to move to go into executive session and that motion not being debatable, and Mr. Woodcock being the first nominee, as a matter of fact as of now is the only nominee on the calendar, once in executive session the Senate will automatically be on the nomination of Mr. Woodcock so the motion to proceed is not debatable and the nomination itself is debatable. I think all Senators are entitled to know that the Senate will be on that nomination on Monday.

Several Senators addressed the Chair.

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

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

Mr. President, I thank the majority leader for giving us this advanced notice.

As he knows, I believe we have a hold on this nomination on the Executive Calendar. I have made an effort at this point to reach the Senator on behalf of whom this hold has been noted. He is out of town at the moment. I will reach him in the course of the next few hours, I trust, but in any event I join in the majority leader's appraisal of the situation. Under these circumstances and with the Executive Calendar and for that matter the General Orders Calendar being free of any other item, the rules themselves would provide in the ordinary course of events for the procedure that the majority leader outlines.

I, therefore, put all of my colleagues on this side of the aisle on notice that it is the leadership's understanding that there is nothing that can be done to further enhance the quality of the hold that has been entered on the Executive Calendar and they should be on notice that this nomination then, it would appear, would be before the Senate on Monday.

Mr. ROBERT C. BYRD. Mr. President, it was my intention to move today to proceed to executive session so that the Senate would be on the nomination of Mr. Woodcock and then go out and go over until Monday. But out of consideration of the minority leader and, in turn, out of consideration for the Senator who has a hold on that nomination and for whom I have very high regard, I at the minority leader's request decided not to make that motion today. I will make it on Monday so that if a rollcall vote is desired on the motion to go into executive session, that Senator will be present to vote and can ask for the yeas and nays if he wishes.

Does the distinguished minority leader wish me to yield further?

Mr. BAKER. No.

Mr. President, I thank the distinguished majority leader. That is the point I wish to clarify.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

RECESS UNTIL 12 NOON MONDAY

Mr. ROBERT C. BYRD. Mr. President,

The roses red upon my neighbor's vine
Are owned by him, but they are also mine.
His was the cost, and his the labor, too,
But mine as well as his the joy, their loveliness to view.

They bloom for me and are for me as fair
As for the man who gives them all his care.
Thus I am rich, because a good man grew
A rose-clad vine for all his neighbors view.

I know from this that others plant for me,
And what they own, my joy may also be,
So why be selfish, when so much that's fine
Is grown for me, upon my neighbor's vine.

My Virginia neighbor's vine, Mr. HARRY FLOOD BYRD, JR., and my Idaho neighbor's vine, Mr. JAMES L. MCCLURE. (Applause.)

The PRESIDING OFFICER. The Senate will be in order.

Mr. HARRY F. BYRD, JR. Mr. President, how I wish I had the eloquence of the Senator from West Virginia, so that I might adequately reply to him.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 12 o'clock meridian on Monday next.

The motion was agreed to, and at 7:49 p.m. the Senate recessed until Monday, February 26, 1979, at 12 o'clock meridian.

EXTENSIONS OF REMARKS

HAMILTON FISH, SR., ON ISRAEL'S NEED FOR SECURITY

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 22, 1979

● Mr. GILMAN. Mr. Speaker, in all of the debate about the Middle East in the House and elsewhere, there are fewer voices more experienced than that of the Honorable Hamilton Fish, Sr., a very distinguished former Member of the House.

Mr. Fish, who now resides in my congressional district and who served for nearly 25 years on the House Foreign Affairs Committee, was the author of the "American Balfour Declaration," and was a leading advocate for the establishment of a Jewish homeland in Israel.

Two items authored by Mr. Fish have recently come to my attention—a letter to the editor of the New York Times and a poem entitled "Anthem to Israel's Freedom Fighters."

In his letter, Mr. Fish makes the point that no country can fully appreciate the security concerns of another, and that, consequently, no country should try to dictate the terms of an agreement between two other countries.

I would like to share Mr. Fish's letter and poem with my colleagues, who I am sure will find it to be of interest, and therefore ask that it be inserted in the RECORD at this point:

HAMILTON FISH

Letter to the Editor of the New York Times:

The heading of a recent editorial in the N.Y. Times, entitled "A Tortured View of Israel's Conduct" was both timely and constructive.

Why should the Carter Administration, in the midst of trying to arrange for the renewal of negotiations between Israel and Egypt go out of its way to openly denounce Israel's mistreatment of Palestinians whom they suspected of treason to the State of Israel? The Times apparently believes that this tragic mismanagement of our foreign relations was merely the result of clumsy public relations. That certainly is a charitable way of looking at it.

The previous and obviously slanted attitude of the Carter Administration towards Egypt, respecting the surrender of the West Bank to the PLO and its Arab adherents, can only embitter and antagonize Prime Minister Begin and those in authority in Israel. The Carter Administration had wisely arranged for the previous joint meeting between Begin and Sadat and it was very effective.

The United States has no right to try in advance, to dictate the conditions and terms of the proposed final treaty. That is a matter of consideration and concessions by both Egypt and Israel. Beyond acting as a go-between and friendly counselors, the United States should refrain from insisting

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