SENATE—*Thursday, March 22, 1979*

(Legislative day of Thursday, February 22, 1979)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by Hon. PAUL E. TSONGAS, a Senator from the State of Massachusetts.

PRAYER

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

Let us pray:

Lord of all life, that we may better serve Thy kingdom, help us to learn the lessons life is trying to teach us—to work as though everything depends upon us and to trust as though everything depends upon Thee.

Save us from making the same mistakes over and over again, from yielding to the same temptations time after time, from doing things we should not do until a habit is fixed we cannot break.

May we grow in spiritual grace and the virtues which make for righteous living. Enable us to put character and duty above convenience and pleasure.

Help us daily to grow stronger, purer, kinder, to shed old faults and gain new virtues, until by Thy grace we become new persons.

Be present with us every hour so that, at the evening time, we may know the deep contentment of work completed and duty done.

We pray in the Master's name. 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., March 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 PAUL E. TSONGAS, a Senator from the State of Massachusetts, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

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.

THE SO-CALLED "SENATE STEERING COMMITTEE"

Mr. ROBERT C. BYRD. Mr. President, from time to time, I have received reports from my colleagues on this side of the aisle that they and their staffs have been receiving calls from a so-called quote "Senate Steering Committee" unquote, inquiring as to their attendance, whether or not they will be here on such and such a day, whether or not they will be here on such and such a rollcall vote, and what the position of the Senator will be on a particular rollcall vote or issue. Some Members have approached me, curious about these requests that were coming to their offices. I assured them in writing last year that the only Steering Committee that I know anything about is the Democratic Steering Committee and that the sole function of that Democratic Steering Committee is to assign Members to committees—no other function. The Senate Democratic Steering Committee does not call any Senator to ask whether or not he is going to be present on such and such a date, or call any staff member of any Senator to ask what his position is going to be on such and such a vote. No Democratic Steering Committee has that function or that role or that responsibility or that authority.

So I notified my Democratic colleagues to that effect. The only person that I authorize to call Senators on my side of the aisle to inquire as to what their position will be on a given matter is the secretary for the majority, and the only people on my side of the aisle who are authorized to inquire as to attendance on the part of the leadership is the secretary for the majority or the people in the Democratic cloakroom or the people on the Democratic whip's staff.

So, as to a "Senate Steering Committee," let it be known by my colleagues on this side of the aisle, let it be known by my colleagues on the other side of the aisle, let it be known by the press and the public, by all Senate offices, staffs, and staffs of committees, that so far as I am concerned that there is no "Senate Steering Committee." None.

There is a Democratic Steering Committee. There may be a Republican Steering Committee, and that is entirely a horse of another color. If the Republican Senators have a steering committee, that is fine, but it should be the Republican Steering Committee. We have a steering committee on this side of the aisle; it is not the Senate Steering Committee, it is the Democratic Steering Committee.

I hold in my hand a calling card, a beautifully embossed calling card. Here is the way it reads. I suppose that this is the Senate seal. My vision is not quite as good as it used to be, but I guess that this is the Senate seal on it. Then appears the name, "Margo Carlisle."

My middle name is Carlyle, but I use what I am told is the Scottish spelling, C-a-r-l-y-l-e. The name on the card, however, is spelled C-a-r-l-i-s-l-e. Margo Carlisle.

Who is Margo Carlisle? Would somebody tell me, who is Margo Carlisle?

The card says:

Senate Steering Committee Executive Director.

Telephone number, 202—that is the Washington, D.C., area code—224-5597.

Who pays the cost of this beautiful calling card? Is that paid for by the Senate? Is it paid for by the so-called Senate Steering Committee? Who pays Margo Carlisle? On whose payroll is Margo Carlisle—on the payroll of the "Senate Steering Committee?" If so, where does the "Senate Steering Committee" get its funds? Does it go before the Rules Committee for funds?

I think this a matter we ought to find out a little more about: who is Margo Carlisle? Who pays Margo Carlisle; who provides Margo Carlisle with these beautiful cards; who pays the cost of the cards; who pays the cost of the staff of the so-called Senate Steering Committee? Where does it have its space? Where is its office?

I am waiting. I shall yield my time to any Senator who will tell me about this so-called Senate Steering Committee, where it gets its funds, who Margo Carlisle is, who pays Margo Carlisle, who pays the cost of this beautiful card, and what authority that person or group has to call Members on this side of the aisle and pretend to be a "Senate Steering Committee," asking Democratic Senators when they are going to be here, whether they are going to be here, how they are going to vote, and all that business.

I await the answer.

Mr. BAKER. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. BAKER. I thank the distinguished majority leader for yielding to me.

Mr. President, I advise the majority leader that there is not a Republican Steering Committee as such, but there is a group of Senators who meet from time to time to discuss matters of mutual importance, that I believe is not made up entirely of Republican Senators, but predominantly Republican members, who refer to themselves as the Republican Steering Committee. What I believe we have is a matter of semantics rather than a real, serious concern. I am convinced, for instance, that the members who meet and refer to themselves as the Steering Committee are conscientious in their allocation of resources and their expenditure of Senate funds; that they are in no way in violation of the rules

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

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of the Senate in respect thereto; and that Margo Carlisle, who usually sits in the back of the room, back there on the Senate floor, is a capable and competent staff person and an employee of the Senate of the United States.

It may be that she may rue the day that she had that card printed or put the Senate seal on it, but that does not affect the fact that they, as far as I am concerned, violate no principle, no precedent, and no rule or regulation of the Senate and, in fact, are an unofficial aggregation, not even a committee but an unofficial aggregation of Senators, who meet from time to time to talk about matters of mutual interest.

I understand the majority leader's concern. I understand the nature of his inquiry. I rise to assure him that I too, have inquired from time to time about the status of the Steering Committee, or the Senate Steering Committee. I came away convinced that it is totally appropriate and proper for like-minded Senators to gather together and to call themselves whatever they wish, whether it is the China lobby, or the oil State producers, or whatever.

The Steering Committee takes on, maybe, a separate significance, because it has a generic meaning. But I would urge my friend the majority leader to understand or to agree with me that on this basis the Steering Committee is not a sinister group, but, in fact, an aggregation of individual Senators who share many similar thoughts and who wish to discuss issues from time to time and to assess the legislative situation in respect thereto.

Mr. President, I see that the distinguished Senator from Idaho (Mr. McCLURE) is on the floor. I sent for him after our conversation this morning, because I believe he probably has more direct information on that subject than I have. I would hope the majority leader might yield to him, or I will be happy to yield to him on my time.

Mr. ROBERT C. BYRD. I wait with great interest to hear further from Senator McCLURE's lips in stentorian tones the explanation of this mysterious "Senate Steering Committee," where it got its name, what the purpose of it is, and why it calls itself the Senate Steering Committee.

So I am listening.

Mr. BAKER. I yield to the Senator from Idaho such part of my leader's time as he wishes.

Mr. McCLURE. Mr. President, first of all, this matter comes as somewhat of a surprise to me because the Senate Steering Committee has been in operation for a number of years, as the Senator from West Virginia knows, and as the——

Mr. ROBERT C. BYRD. Oh, no, no, no, no. Please do not drag the Senate majority's leader's name into this.

Mr. McCLURE. Well, Mr. President, the Senator from West Virginia is well aware of the fact that the Senate Steering Committee has operated and that the Senator from Idaho is now the chairman of that Senate Steering Committee.

Mr. ROBERT C. BYRD addressed the Chair.

Mr. McCLURE. I do not yield at this time.

Mr. ROBERT C. BYRD. The Senate majority leader——

Mr. McCLURE. I do not yield at this time.

Mr. ROBERT C. BYRD. About the Senate Steering Committee——

Mr. McCLURE. I do not yield at this time. I hope the Senator——

Mr. ROBERT C. BYRD. The Senator is getting his time from me.

Mr. McCLURE. I have the time from the Senator from Tennessee and not from the Senator from West Virginia. I think that is correct.

The ACTING PRESIDENT pro tempore. The Senate will be in order.

The Chair recognized the minority leader.

Mr. ROBERT C. BYRD. The Senator used my name and he said that the Senate majority leader knows——

Mr. McCLURE addressed the Chair.

Mr. ROBERT C. BYRD (continuing). And that is not a fact.

Mr. McCLURE. A preliminary inquiry, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. McCLURE. Who has been recognized, Mr. President?

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. McCLURE. And who has the Senator from Tennessee yielded to?

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. McCLURE. Mr. President, I shall be happy to yield to the Senator from West Virginia for whatever comments he may wish to make.

But the fact of the matter remains that we have upon a number of occasions discussed what it was we were doing and what position the Steering Committee would take on specific legislation.

As a matter of fact, the Senator from West Virginia well knows that the Senator from Idaho has served as the chairman of that Steering Committee for some time because we have talked about the position the Senate Steering Committee might take.

As a matter of fact, we have upon a number of times tried to work out mutual problems, because while we are not an official body we do seek to aggregate our information and to work together and to come to some conclusion upon matters of mutual interest, as the Senator from Tennessee has indicated.

In spite of the fact that that has been well-known, I am called in a committee meeting a few minutes ago to hear that the Senate Steering Committee is being castigated on the floor of the Senate, without any notice to the Senator from Idaho that this was going to occur.

I appreciate the phone call of the Senator from Utah that advised me this was happening, or I would not have known it was happening, even.

Mr. President, I do not know that the rules of the Senate apply to what a group of Senators on their own may decide they wish to do. There have been a number of informal organizations of one kind or another, in this body and the other, from time to time in the past, and at the present time the Wednesday club here, the Republican study group, the Democratic study group over in the other body; they operate and have operated. They are not secret.

I think the Wednesday Club on this side of the aisle meets weekly and has for a longer period than has the Steering Committee.

If anyone is confused as to what the Senate Steering Committee really is, well, it is an open book. We made no secret about what we are or who we claim to be.

Mr. PERCY. If the Senator will yield for a brief comment of explanation, the Wednesday——

Mr. BAKER. I have the floor. I would be happy, with the agreement of the Senator from Idaho, to yield briefly to the Senator.

Mr. McCLURE. I am happy to.

Mr. PERCY. The Wednesday lunch bunch has been here. We do not imply we are the only bunch in this, or the only ones who eat lunch on Wednesday.

Mr. HATCH. Or Thursday?

Mr. PERCY. I did not interpret the Steering Committee that it is steering the Senate of the United States. That has been the name we have known it by.

We meet jointly with them. We exchange ideas, much time involving legislation.

But I do not think it detracts from the prerogatives of the leadership. I have never interpreted it as an invasion of the leadership's prerogatives which are clear by Senate rules.

I hope we can get back with the business at hand. My job was to come down and support something the distinguished majority leader said yesterday which I thought was in the essence of nonpartisanship in the position he took.

Mr. ROBERT C. BYRD. I hope I will not be misinterpreted in that regard.

Mr. McCLURE. If the Senator from Tennessee will yield, I thank the Senator from Illinois for his comment.

I will be happy to read the RECORD to see what the Senator from West Virginia has said and to try——

Mr. ROBERT C. BYRD. I am going to restate it in just a minute.

Mr. McCLURE. All right. I will be happy to have the Senator say it again.

I will also be glad to consult with the Senator from West Virginia concerning any perceptions or misperceptions he or other Members of the Senate may have.

But, Mr. President, I do not think, as I said earlier, there is any secret about the fact that some of us have tried to work together on items of common interest, and for that reason meet together.

I do not know what card he is referring to, and I would be glad to talk to him about that, too.

I would be better prepared to discuss this if the Senator from West Virginia had discussed it with the Senator from

Idaho before coming to the floor today, which he has not done.

I thank the Senator from Tennessee for yielding.

I am certain, Mr. President, that this matter, if there is something of a serious nature, which I am not certain that there is, can be resolved, I assure the Senator from West Virginia that the Senator from Idaho will do all he can to resolve it in an amicable way.

Several Senators addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair informs the Senate that the time of the minority leader has expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may utilize half of my special order at this time.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Now, Mr. President, the distinguished Senator from Idaho said:

> If the majority leader would have consulted me before he came.

How did I know to consult him? How do I know that he is the chairman of this rump group that calls itself the "Senate Steering Committee?"

I have no problem with their purpose or their activities. That can be perfectly laudable, and they can call themselves the Wednesday group, the Republican Policy Committee, the Republican Steering Committee, or anything else they choose to call themselves.

But the problem I have is with this card, and with the calls that go to my Democratic colleagues here using the name—which appears to give this group some official status—of "Senate Steering Committee."

Now, the Senator says that I have known that there is a "Senate Steering Committee."

I have known no such thing. I heard about it last year, that this so-called Senate Steering Committee was calling my Democratic colleagues, asking when they were going to be here, how they were going to vote, et cetera.

What business does any group on the Republican side of the aisle have in calling my colleagues, pretending to be a "Senate Steering Committee?"

Let them call and say that it is the Republican Steering Committee. That is all right. I have no objection to that. If they want to do that, fine. They can call and say to me, "This is the Republican Steering Committee."

I will answer:

> Well, bless your heart, yes, I will be here, this is the way I am going to vote, and I would like you to vote with me.

But for them to call and say, "This is the Senate Steering Committee. We would like to know how your Senator is going to vote on such-and-such a thing," and my colleagues want to know why in the dickens our Steering Committee is asking them whether or not they are going to be here and how they are going to vote.

No, I do not know of any such committee. I do not know that there is any such committee authorized. I do not know why there is a committee parading under the name "Senate Steering Committee." Let them call themselves the Republican Steering Committee—that is what they are.

The telephone number on this card says call 224-5597. Here is the telephone directory of the U.S. Senate:

> 45597; Carlisle, Margo, Executive Director, Republican Steering, Senator McClure, IMM-A605, Republican Steering Senate Committee.

That is legitimate. Fine. I have no problem with that. The Senator from Idaho has every right, the distinguished minority leader has every right, that great party on the other side of the aisle has every right to name itself a Republican Steering Committee, and let Mr. McCLURE be the chairman of it. Let Margo Carlisle have a card saying "Republican Steering Committee, Executive Director," as the telephone directory properly says.

But this business of calling itself the "Senate Steering Committee," however, its laudible purposes and motives may be goes too far; let it not appear to give itself an official status which it does not have, by calling itself "Senate Steering Committee." That is all the complaint I have.

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

Mr. ROBERT C. BYRD. Yes, I yield to my friend.

Mr. McCLURE. I thank the Senator for yielding.

Maybe I begin to understand what it is that has him so exercised. Perhaps, as I said earlier, we can arrive at an understanding. But certainly the record should not go on the basis that the Senator from West Virginia did not know that such a group existed, because I talked to him in regard to what our group was going to do, what position we were going to take on legislation.

Mr. ROBERT C. BYRD. Mr. President, I do not yield.

I have never heard the Senator from Idaho say that a "Senate Steering Committee" is taking this position or that position. He may say, "We have a little group," or "our group," or "our Republicans," or whatever, are taking such and such position. But never has he said, "Senator BYRD, the Senate Steering Committee is taking this position," because if he had, I would have nailed him right there. I would have said, "What do you mean by a Senate Steering Committee? Where did you get that name? Where did you get the authority for that name?"

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

Mr. ROBERT C. BYRD. I yield.

Mr. McCLURE. I am not certain that the name "Senate" is copyrighted and that nobody——

Mr. ROBERT C. BYRD. That is what this is all about.

Mr. McCLURE. I understand that that is apparently what the Senator thinks this is all about.

Mr. ROBERT C. BYRD. That is what I know it is all about. That is why people are calling me and saying, "Why are we getting calls from the Senate Steering Committee?"

Change the name. Make it the Republican Steering Committee.

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

Mr. ROBERT C. BYRD. I yield.

Mr. McCLURE. As a matter of fact, it is not exclusively Republican. It is not intended to be.

Mr. ROBERT C. BYRD. Print the names in the RECORD. I want to see what Democrats are members of the so-called "Senate Steering Committee."

Mr. McCLURE. I suspect that the Senator would like to know which Democrats are members of the Senate Steering Committee. That is a matter for each individual to decide for himself.

Mr. ROBERT C. BYRD. How do I know there are Democrats on the committee, if the Senator does not want to print them? We print the names of the Democratic Steering Committee.

Mr. McCLURE. Is there a Democratic Steering Committee?

Mr. ROBERT C. BYRD. Of course.

Mr. McCLURE. I did not know there was a Democratic Steering Committee.

Mr. ROBERT C. BYRD. The functions and role of the Democratic Steering Committee are to assign Members on the Democratic side of the aisle to committees. That is the sole function and responsibility of the Steering Committee.

"Senate Steering Committee" is a phony name. Let it be called the Republican Steering Committee, and everything will be all right. Then, when my colleagues are called by the Republican Steering Committee, they will know who is calling.

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

Mr. ROBERT C. BYRD. I yield.

Mr. McCLURE. Because it is not a Republican Steering Committee. The Senator from Tennessee would have the same right to object to that name that as the Senator from West Virginia has.

Mr. ROBERT C. BYRD. I would hope the minority leader would not object to that. I would hope that he would object to this phony name. It is not a phony group. The members are illustrious members. If they are Members of the Senate, they are illustrious; and if they are Republicans, they are illustrious Republicans.

That is a phony name. I hope that every Senator who reads this RECORD knows, from here on, that if he gets a call from the "Senate Steering Committee," to beware.

Mr. McCLURE. It is not a partisan group; it is a bipartisan group.

Mr. ROBERT C. BYRD. Well, call it the bipartisan group of Democrats and Republicans, or something like that. But do not call it the "Senate Steering Committee."

Mr. McCLURE. I only make that statement because it is not—I do not know how the telephone directory may have it—it is not the Republican Steering Committee.

Mr. ROBERT C. BYRD. I just read it in the Senate telephone directory. Let me hand the Senator the telephone directory.

Mr. McCLURE. I do not doubt the Senator can read, whatever else I may doubt about the position that is taken today.

Mr. ROBERT C. BYRD. If we are speaking about doubts, we may not have time to explain all our doubts. I am simply saying, with all respect to the distinguished Senator, that there is no reason and no justification and no authority for his group to call itself the Senate Steering Committee. That is misleading.

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

Mr. ROBERT C. BYRD. I am not questioning the motives of the group. I am not questioning the purposes of the group. I only question the name. It is misleading. It has misled Senate Democrats. It can mislead people outside the Senate.

Mr. McCLURE. I am grateful for the Senator having taken the opportunity not to come directly to me and discuss this matter with us directly——

Mr. ROBERT C. BYRD. If I knew whom to come to. You are in the murky shadows, calling yourselves the Senate Steering Committee. I do not know where to find you. I do not know what that is. I have looked all through the Congressional Directory, and I do not find any such reference in there. There is no such committee listed. There is a Republican Steering Committee listed under the same number as is shown on the calling card.

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

Mr. ROBERT C. BYRD. I yield.

Mr. McCLURE. Apparently, the Senator knew where to find us. He was able to hand me the phone book with my phone number in it.

Mr. ROBERT C. BYRD. The phone book was handed to me only about 5 minutes ago. And it said, "Republican Steering Committee."

Let us not confuse the issue. The sole issue here is the unauthorized name of some group around here that calls itself the "Senate Steering Committee."

Mr. McCLURE. Some of those Senators——

Mr. ROBERT C. BYRD. I do not yield. The Senator did not yield to me when he had the opportunity to yield. I have yielded a number of times, and I have quit.

Mr. President, the Senate is larger than its 100 Members. The Senate is made up of Democrats and Republicans. The Senate is an institution, and the name "the Senate" should not be plagiarized by a group, however well-intentioned its motives, pretending to represent the Senate in its calling card or in its telephone calls or in its correspondence. Let it represent its own side of the aisle; that is a laudible purpose. It is easily recognizable. There is then no pretense about it. There is no misleading anybody about it.

I respectfully suggest to the distinguished Senator that he take into consideration what I have said and, in the interest of the Senate, take that misleadtitle off the calling card.

The ACTING PRESIDENT pro tempore. The Chair advises the majority leader that the time for special orders has been consumed.

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

Enough has been said, so I hope that the Senator from Idaho will take this under consideration. I think I have made a worthwhile suggestion. I do not think he really wants his group to appear to be something it is not. I would hope he would take action accordingly.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Tennessee is recognized for not to exceed 15 minutes.

Mr. BAKER. Mr. President, I would like to conclude for about 2 minutes on this subject and then move on to the matter for which I had sought special order time this morning.

I thank the distinguished Senator from Idaho for coming to the floor on short notice to discuss this matter, and I thank the majority leader for expressing his concern. I understand both points of view.

I have no concern about the steering committee. I deal with them daily. I understand the nature of the majority leader's concern in terms of nomenclature; but I reiterate, in closing, that I do not believe any sinister motive is involved. On the contrary, I think the steering committee has been a very useful aggregation of useful Members who present a unified point of view on many important issues.

So I hope that this conversation today will result in the amelioration of any misunderstandings or concerns that may occur in this respect.

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

Mr. BAKER. I yield.

Mr. McCLURE. As the Senator from Tennessee and the Senator from West Virginia indicated, perhaps we could get on to something else. I assure them that, if that is the case, we will also return to this at some point after I have had an opportunity to read the RECORD. But I did want to reiterate what I have said, that I am not the first chairman of the Senate Steering Committee. Senator Carl Curtis served in that capacity before me, and the group has been in operation for some time. And again I say that it is not intended to be an official body. It has never held itself out to be an official body of either the Republicans or the Democrats and, therefore, has not sought to have such a partisan designation. With respect to whether or not it is misleading, I suspect that may be misunderstood in the minds of some. But I just remark that there is a Senate Dodge, a Senate Inn, a Senate Motors, Inc., a Senate Motors Leasing Division, a Senate Parking Co., Inc., a Senate TV, et cetera.

These are listings in the telephone book, and I do not think people who pick up that telephone book are misled that they are somehow official bodies.

With respect to our right to call someone or have a member of our staff call some Member of this Senate, I hope that there are no rules that somehow proscribe that.

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

Mr. McCLURE. In just a moment. The Senator from Tennessee has the floor.

Mr. ROBERT C. BYRD. I know, but I yielded to the Senator, and I have the time.

Mr. BAKER. Mr. President, I am happy to yield.

Mr. ROBERT C. BYRD. Do those organizations have Senate telephone numbers?

Mr. McCLURE. Mr. President——

Mr. ROBERT C. BYRD. Do they have Senate telephone numbers?

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

Mr. BAKER. I yield.

Mr. McCLURE. I assume they do not have Senate telephone numbers.

Mr. ROBERT C. BYRD. The Senator knows that they do not have Senate telephone numbers.

Mr. McCLURE. Mr. President, if the Senator will yield just briefly again, I will not prolong this discussion at this time, but I am grateful to the Senator from West Virginia, because one of the things that we have tried to do very hard was to let people know that we exist, and the Senator from West Virginia has done a much greater service to me and to my group than we could have done for ourselves in a very long time, struggling under the cloak of anonymity, and we are not under that cloak any longer. I am grateful to the Senator from West Virginia.

Mr. BAKER. Mr. President, I thank the Senator from Idaho and the Senator from West Virginia for their remarks.

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

The ACTING PRESIDENT pro tempore. The Senator has 11 minutes remaining.

ORDER TO AGGREGATE AND CONTROL SPECIAL ORDER TIME

Mr. BAKER. Mr. President, I advise the Chair, and while my distinguished friend, the majority leader is in the Chamber, it is my purpose this morning in gaining four special orders to aggregate that time and portion it out among Senators other than only the four who were listed in the special order requirements this morning. If the majority leader has no objection to that, I ask unanimous consent to aggregate and control that time.

Mr. ROBERT C. BYRD. I am very agreeable to that.

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

The ACTING PRESIDENT pro tempore. Will the minority leader specify which special order he is referring to?

Mr. BAKER. Yes. I am referring to the

special orders on behalf of Senators BAKER, WEICKER, STEVENS, and PERCY. I will not include in the aggregation the time of the distinguished majority leader which was also provided for in the order.

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

RECOGNITION OF MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Tennessee is recognized.

Mr. BAKER. I thank the Chair.

Mr. President, in deference to the fact that the distinguished assistant Republican leader has a schedule to keep this morning that would be discommoded otherwise, I yield first to him to make his statement in this respect. It is my purpose then to make a short statement and to yield to the Senator from Connecticut for his statement and then to proceed with the distinguished Senator from Illinois, and I hope, when he arrives in the Chamber, the Senator from South Carolina, the distinguished ranking minority member of the Judiciary Committee.

APPOINTMENT OF SPECIAL PROSECUTOR URGED IN WAREHOUSE INQUIRY

Mr. BAKER. Mr. President, several of my colleagues and I have asked for this time to express our deep and growing concern over the failure of the Carter administration to deal forthrightly with the allegations of financial improprieties at the Carter peanut warehouse in Georgia.

Last week, Senator DOLE and I, among others, called on the President to appoint an independent special prosecutor to investigate these various allegations in the genuine hope that such an independent investigation would force rumor to yield to fact, innuendo to evidence, and suspicion to restored confidence.

We have been disappointed, as have the American people, by the announcement earlier this week that the Department of Justice has decided not to appoint an independent special prosecutor for this case, but rather to appoint a "special counsel" completely beholden to an Assistant Attorney General, with no power of indictment, no power to immunize witnesses, no independent staff, and no requirement to report to the Congress on the course of his investigation.

The arguments used to support this decision are terribly weak, if not totally misleading. The Ethics in Government Act established a clear and precise mechanism for appointing a special prosecutor in exactly this kind of case and delineated the authority of that special prosecutor with considerable precision.

To suggestion that this act forbids the appointment of a special prosecutor in cases already under investigation by a grand jury is to strenuously misconstrue both the letter and the spirit of the law.

Mr. President, I do not want to suggest a close parallel between this case and the Watergate investigation which traumatized the country 5 years ago.

But neither will I willingly permit a double standard of justice and ethics to be established in American politics, with Republicans held to one standard and Democrats held to one much less exacting.

Consider, Mr. President, the record of 1973, following the so-called "Saturday Night Massacre" when Watergate Special Prosecutor Archibald Cox was dismissed and demands for a new and fully independent special prosecutor were heard throughout the Nation's Capital.

The Nixon administration countered with much the same strategy the Carter administration has now employed. It moved to establish a special investigative unit within the Justice Department, but no one in this town was satisfied with that arrangement.

Senator WALTER MONDALE, now Vice President MONDALE, was quoted in the Washington Post during that period as saying it would be "incredible" to have the Justice Department appoint its own prosecutor.

The distinguished gentleman from Illinois, Mr. STEVENSON, said that as long as President Nixon insists on retaining control of the investigation of the Nixon administration, "the public cannot be confident that justice will be done and neither can I."

The gentleman from Massachusetts, Mr. KENNEDY, was quoted on October 27, 1973, as saying a prosecutor must be constitutionally appointed and "totally, completely and unquestionably free from White House influence."

My friend from Indiana, Mr. BAYH, said on October 25, "Just saying we're going to appoint a new Special Prosecutor is not going to do the job. It has to be one that cannot be fired."

The distinguished majority leader, Mr. BYRD, who was majority whip during the Watergate investigation, said quite correctly on October 27 that it was improper for "the executive branch to be investigating itself."

And our former colleague from Montana, who served with such great distinction as majority leader during those troubled days, made his own succinct judgment of the Nixon administration conducting its own investigation. Said Mike Mansfield, "No soap."

Mr. President, the days of Watergate were painful days for me, as they were for my political party and for the country. I found myself, as vice chairman of the Senate Watergate Committee, suffering the slings and arrows of Presidential loyalists who did not wish to believe that their President could be in any way associated with the crimes of Watergate.

It was my unpleasant duty to uncover evidence that left me profoundly disappointed in the man who had been my friend and a great political leader in this country for more than a quarter century.

Having gone through all that, Mr. President, I simply will not stand for any less exact standard of justice, nor any less thorough and independent investigation of a Democratic administration, and neither will the American people.

Five years, Mr. President, 5 years since we were faced with the last dilemma of this sort, and some would say, "How soon we forget."

Mr. President, the distinguished Senator from Connecticut and I served day after long, tedious, dreary, dreadful day on the Watergate Committee as Republicans watching the destruction of an administration that we had helped elect. We watched its disintegration before our very eyes as a result of the most remarkable, unlikely, and devastating political embarrassment in the history of the Republic.

Mr. President, I am proud beyond description of the diligence and the dedication of Republicans as they pursued relentlessly the facts and the circumstances of Watergate to their inevitable ending. I am proud that they never shirked from that responsibility.

I have no apology to make, nor do I believe any Republican in this country should have any apology to make, for the diligence of the inquiry and the investigation that was conducted in a Republican administration.

But, how soon we forget.

How obvious and startling the parallelism between this situation today and that situation 5 or 6 years ago. How striking the similarities to the situation after the Saturday Night Massacre when the Nixon administration proposed that instead of a Special Prosecutor there should be a special investigative unit within the Justice Department.

The words of Senator STEVENSON, now chairman of the Ethics Committee echo down to the present day. If President Nixon is not guilty, he has nothing to fear from an independent Special Prosecutor.

Mr. President, if President Carter has nothing to fear, he should under his constitutional authority as chief magistrate of this country instruct the Attorney General, as the chief law enforcement officer of this country, to appoint a Special Prosecutor notwithstanding any technicality or any narrow provision of statute.

As he made his inaugural address on the east front steps of this building, the President promised to bring to the Government the goodness that characterizes the people of the United States.

If the President has nothing to hide, let him redeem that promise now.

This is not the last word I will say on this subject. I did not suffer the humiliation and the embarrassment of Watergate to see the establishment of a double standard in the treatment of allegations of political misconduct. I will stand in this place again and call on the President to do what Republicans did, to call on my colleagues on the Democratic side of the aisle to face their challenge as diligently as Republicans faced theirs, to let the chips fall where they may.

What is there to hide, Mr. President?

A cloak of technicalities about the difference and distinction between a Special Prosecutor and a Special Counsel,

Mr. President, does not appeal to me. I think that challenge is so grave and the implications so great that the President of the United States owes us a duty to help remove these clouds of doubt and suspicion.

I pray to God and I represent to this body that I hope we are not subjected to another period of political humiliation and embarrassment. But I will not tolerate a double standard in this country in the investigation of political allegations and charges.

If my friends in this Chamber on the Democratic side of the aisle will not hold their own party's administration to the same standard of investigative diligence that we on the Republican side did 5 or 6 years ago, then it is up to the Senate as an institution to do that.

God forbid that there is anything wrong, but it is unbecoming the President who ran on a platform of morality in government, of restoring the goodness of our government, who remarked in a "Meet the Press" appearance on January 11, 1976, that we ought to remove the Attorney General from the Cabinet and put him above politics, now to say to his Attorney General that because of a technicality in the law, friends, we are not going to have a special independent prosecutor. It is unbecoming, and it is insufficient, to say we are going to have somebody who is going to be under the direct supervision, not of the Attorney General or the President, but the Assistant Attorney General.

He has no authority to grant immunity. He has no independence. He has no tenure. He has no charter.

What is there to hide, Mr. President?

Mr. President, the United States is a great nation. It has, I believe, a great future. But it will have no future if it does not reiterate its belief in itself and the goodness of its citizens and its structure of government.

We cannot suffer two political firestorms in a row—the one, the disintegration and dismantling of an administration and the resignation of a President; the other, the coverup of similar allegations.

Mr. President, I call on the President of the United States to take matters in his own hands and say, "We will have no more of technicalities. We will have even-handed justice. We will treat it the same for everyone. We will not tolerate a double standard." I call upon the President to appoint a Special Prosecutor, and the sooner the better.

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

Mr. BAKER. Mr. President, I now yield to the distinguished Senator from Connecticut.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I thank the distinguished Senator from Tennessee.

Mr. President, Watergate challenged the very underpinnings of American politics and the American political condition. The issue of Watergate was not Richard Nixon but our political institutions, our Constitution, and our ideals.

This Nation, some 5 years later, is still plagued by a perception of unequal justice. That stigma will continue so long as the Nation's chief law enforcement officer is chosen from among a President's pals or politicos, and as long as the powerful are treated in a manner different from any other citizen when suspect of breaking the law.

How much longer must the American people be affronted with the double standard of brothers, campaign managers, law partners, and old friends sprinting the inside track to the Justice Department?

The Attorney General, above any other appointed official, must be an individual who not only is impervious to the political and personal demands of a President, but also appears impervious as well. Unfortunately, more often than not, blindfolded justice, the statue of blindfolded justice, has not been holding scales, but rather the President's hands.

What we have today is an unlearned lesson from Watergate. What we see today is the result of ignoring my post-Watergate call for making the office of the Attorney General of the United States an elective office. That recommendation was made after our hearings, and I withdrew it in deference to the provisions worked out in the Ethics in Government Act. I withdrew it only when I thought we had some sort of foolproof system by which to install a Special Prosecutor in such instances as the Watergate affair and in such instances as we are confronted with today.

The situation only reaffirms my own personal belief that more often than not, integrity is hardly served by compromises on the Senate floor. I am now totally convinced that the only way we are going to get the nonpolitical, unpolitical justice we all seek is to make that office elective, to make it a constitutional office and remove it from the influence of every President of the United States, and have the Attorney General accountable, as to his stewardship of justice in this country, solely to the American people. Is there any other solution, or have we dismissed the history of Watergate or relegated it to the trivia trash pile?

If it is trivia questions you want, try this: How many Attorneys General or Assistant Attorneys General either bowed to White House pressure or were forced to resign when they stood their ground during Watergate?

How many? Well, there were three Attorneys General and three Assistant Attorneys General. And for almost a decade, with the exception of Edward Levi, a brilliant lawyer, educator, and free spirit, the Justice Department, at its policymaking level, has been peopled with political cronies.

And now we come to Griffin Bell and his belated appointment of a "special counsel" who will not have all the powers and protections of a special prosecutor. I take no fault with Paul Curran. I find fault instead with Mr. Bell, the political crony of President Carter, who has danced and dodged around the Bert Lance case.

If Griffin Bell and Bert Lance were not intimates of Mr. Carter do you honestly believe that the banking manipulations of Lance and the ties between his bank and the Carter family enterprises would not have been fully and thoroughly probed at a much earlier date?

How quickly the President's mouthpieces noted that neither Mr. Carter nor anyone representing him has talked to or advised Bell on his appointment of an impotent special counsel. Come now. A prosecutor without the authority to grant immunity, unless he begs for it from the head of the criminal division?

A prosecutor whose "boss" says he would overrule Mr. Curran only if the Special Counsel's recommendation were "so grossly inconsistent with well-established prosecutorial standards as to render the decision unconscionable."

Would it be "unconscionable" to ask for a grant of immunity for Billy Carter? For Gerald Rafshoon? Or even Bert Lance?

Would it be "unconscionable" to seek indictments if today's allegations uncover a coverup as raw as Watergate?

Or is the reluctance to appoint a fully armed Special Prosecutor based on the fact that the cases of Watergate were built on a foundation of immunity?

The born-again, "Mr. Clean" image of this administration is tarnished—so tarnished—by unresolved allegations of impropriety, financial manipulation, illegal campaign funds, politically motivated delays on investigations, inaction on grand jury testimony. And like Watergate, the tactic has been to delay, delay, delay; deny, deny, deny. Still, the reek of corruption, in the administration of a President who promised the American people "We will not lie, cheat, or steal, nor tolerate among us those who do" will not fade away.

Yet all we get is rhetoric about appointing a shackled Special Counsel in order to reassure the American public this long-overdue Federal inquiry will be carried out "fairly and impartially without even the possibility of deference to high office."

In reality, what we are asked to swallow is an appointee who cannot make final decisions on who should be indicted, who should be prosecuted, or who should get immunity.

I will not bore you at this time with a litany of forgotten phrases by the man who promised not to lie, cheat, or steal, but I would like to submit some of them for the record.

Try this for starters: On December 12, 1974, Jimmy Carter announced his candidacy for the 1976 Democratic Party nomination for President. In a National Press Club speech, he declared:

> . . . Our U.S. Attorney General has replaced the Postmaster General as the chief political appointee; and we have recently witnessed the prostitution of this most important law enforcement office. Special prosecutors had to be appointed simply to insure enforcement of the law. The Attorney General should be removed from politics.

Who did he appoint as his Attorney General?—an old political friend.

Throughout his campaign, Mr. Carter repeatedly called for a nonpolitical At-

torney General, passage of an all-inclusive sunshine law, the breakup of "sweetheart" arrangements between regulatory agencies and regulated industries, and demanded that "all requests for special Government consideration by private or corporate interests should be made public, and decisions should be made only on the basis of merit."

But the record is one of insider deals that made banking easier between friends. This was part of the pattern of financial improprieties that brought Bert Lance down as White House Budget Director in September 1977. And Lance's problems could only be the tip of the iceberg.

Yes, insider deals. Remember those ringing phrases coming out of Madison Square Garden on July 15, 1976? That was the night Carter told delegates to the Democratic National Convention, and millions of Americans watching on TV, that American works best free of the bonds of political patronage:

All of us must be careful not to cheat each other. Too often, unholy, self-perpetuating alliances have been formed between money and politics, and the average citizen has been held at arm's length.

Each time our nation has made a serious mistake the American people have been excluded from the process. The tragedy of Vietnam and Cambodia, the disgrace of Watergate, and the embarrassment of the CIA revelations could have been avoided if our government had simply reflected the sound judgment and good common sense and the high moral character of the American people.

(Mr. MORGAN assumed the chair as Presiding Officer.)

Mr. WEICKER. I have to ask, is there a better argument on the need for a nonpolitical Attorney General or an independent special prosecutor? Obviously, Mr. Carter did not retain what his speechwriters wrote for him.

There are those who are going to say the Senator from Connecticut is speaking in an excessively political way. Mr. President, the Senator from Connecticut is speaking today exactly as he spoke 5 years ago. The matters which we are discussing here go to the essence of the perception of justice in this country. And there is no way that that perception is going to reach a level commensurate with the high ideals expressed in our Constitution, a document dear to every one of us, unless those at the highest levels of Government perform in a way against their own self-interests but in the interests of the Nation as a whole.

I find it appalling that we have forgotten so soon what it was that brought us the agonies of a few years ago. I find it especially appalling that the amnesia sits at the highest level of Government.

Mr. President, I suggest, and indeed later today will introduce a resolution in the Senate to provide, that in the absence of a Special Prosecutor, the Senate establish a select committee, with full subpena and immunity powers, to offset this administration's justice by public relations.

Watergate was conceived in an ignorant apathy of the electorate and was executed in semiconscious apathy.

But today, in the year 1979, the greatest danger of Watergate is that it will be forgotten in an apathy of total knowledge. Of total knowledge.

There was a time when we could have excused our shortcomings as a matter of ignorance. But what goes on under our noses today, if not acted upon, then, de facto, becomes the law of this Nation, because we cannot plead ignorance. Inaction by this body will only mean that congressional leadership has officially joined the Nixon and Carter administrations on the dark side of the governmental manhole.

Mr. PERCY. Mr. President, I first wish to commend the minority leader for the position he has taken on this, and also the majority leader, Senator ROBERT C. BYRD, for the speech that he gave on this very subject yesterday on the floor of the Senate.

When Congress enacted the Ethics in Government Act of 1978, it recognized that inherent institutional conflicts of interest can, in some situations, compromise the ability of the Department of Justice to vigorously and objectively investigate charges against high officials of the Government. To remedy this problem, Congress created a mechanism for the appointment of temporary special prosecutors who would operate independently of the Department of Justice and make their own investigative and prosecutorial decisions secure in the knowledge that they could be removed from office only for serious cause. While this proposal was prompted in large part by the Watergate experience, the Senate Committee on Governmental Affairs studied cases dating back almost a quarter of a century in determining the need for independence in reviewing highly sensitive allegations. The issue was not the integrity of individual officials or Attorneys General, but the fact that investigations of top Government officials cannot fairly be carried out under the supervision of those under investigation or their close associates. The issue, very simply, was conflict of interest.

While none of us is in a position to state any opinion on the allegations raised so far in the investigation of the Carter family peanut warehouse, it is clear that serious questions have been raised. We must make absolutely certain that our system of justice remains free from any double standard stemming from close ties between potential defendants and high Government officials. I am confident that Attorney General Bell and President Carter will heartily agree with this principle which goes to the heart of the credibility of our system of justice.

It is, therefore, disappointing now that Congress has established standards for independent review in such situations, that Mr. Bell has chosen to bypass those standards and appoint an investigative officer with far less independence than experience has shown us to be proper and necessary.

While Mr. Curran, the special counsel selected to head this investigation, is known to be a competent individual of high integrity, it is troublesome that he could be fired by the Attorney General without cause and with no legal recourse, that his ultimate prosecutorial decisions will be subject to veto by Justice Department officials, and that his mandate can be limited or revoked at any time. Certainly, these factors do little to instill public confidence in the independence of this investigation.

I urge the Attorney General, in light of the many concerns that have been voiced, to reconsider his decision. Rather than limiting Mr. Curran's authority to conduct this most sensitive investigation, he should develop a charter commensurate with standards adopted by Congress, and signed into law by President Carter last year.

Mr. President, the distinguished Senator from Connecticut served on the Governmental Affairs Committee and was very active throughout the course of the debate and throughout the course of the lengthy hearings that we held. He was the prime factor in helping to shape this legislation.

I do not think that any of us who know Mr. Curran are really fearful that in this case there could be any possibility that his recommendation could not carry forward.

But when the Congress of the United States establishes a principle, that principle ought to be carried out. Just because of a technicality added late in the legislation, it would not apply that 1978 law to this particular situation. But the principle is so inherent, no wonder the majority leader of the Senate, the minority leader of the Senate, the entire minority of the Judiciary Committee, and every single Republican say this is the time, if we are to have the confidence of the public in this investigation and to implement the will of the Congress, that we need the appointment of a Special Prosecutor.

I very much hope the President will see fit to—although the President, as I understand it, was not directly involved in the Attorney General's decision—I hope Attorney General Bell will realize now that it would save a lot of time and effort and be far better to employ the procedure that is in law which, though through a technicality does not necessarily apply to this particular situation but which would satisfy the public, and certainly satisfy the Congress much better than it would otherwise.

Mr. WALLOP. Mr. President, the Justice Department has finally come to the inescapable conclusion that the Bert Lance and Carter warehouse inquiries involve a "combination of extraordinary and special circumstances." It is a judgment long overdue.

But Attorney General Bell's appointment of a "Special Counsel" rather than a "Special Prosecutor" to investigate spinoffs of the Lance grand jury investigation which touch upon the Carter warehouse and loan transactions by the National Bank of Georgia is both disappointing and troubling to me because it ignores the lessons of recent history. One need not go back more than a few years to recall the public uproar and instantaneous, sweeping loss of confidence in the President and all notions of equal justice which ensued when then

President Nixon fired Archibald Cox, sparking the infamous "Saturday night massacre." Mr. Cox had been represented to the American people as an independent, impartial investigator whose charge was to carry out the investigation arising out of the Watergate break-in, which eventually touched upon the President himself. Yet, this independence proved to be mere sham when his offices were terminated at the President's request.

We must avoid a replay of this bleak chapter in our history. I am afraid, however, that Attorney General Bell's decision to appoint a Special Counsel instead of a completely independent prosecutor to look into the Carter warehouse and related cases may lead us into a similar confrontation which we can ill afford as a nation.

The Attorney General's choice for the newly created Special Counsel's position, Paul Curran, is not at issue here. As a former U.S. attorney for the southern district of New York, he developed a reputation for honesty and integrity and is known for his successful prosecution record in difficult cases. The limitations strapped upon this office, however, are objectionable. As Special Counsel, Mr. Curran must have the approval of Assistant Attorney General Philip Heymann before he can take any final prosecutorial actions. This is unacceptable. It does not insure the public that an investigation will be fully independent, impartial, and outside the influence of those closest to the inquiry.

Mr. Curran's authority is more closely analogous to that of an assistant U.S. attorney than that of an independent Special Prosecutor who could be appointed by the Attorney General under his existing statutory authority or under the new Ethics in Government Act of 1978.

If Mr. Curran had been appointed under that act, he would have full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice. Among his enumerated powers, he would be able to initiate and conduct prosecutions in any court of competent jurisdiction, frame and sign indictments, file informations and handle all aspects of any case in the name of the United States. Furthermore, and significantly under that act, once a Special Prosecutor has been designated, the Department of Justice, the Attorney General, and all other officers and employees of the Department would be required to suspend all investigations and proceedings regarding the matter, except to the extent that the Special Prosecutor requested their continued assistance.

As it is, as "Special Counsel," Mr. Curran's prosecutive decisions are subject to review and may be overruled by Assistant Attorney General of the Criminal Division, Mr. Philip Heymann. Under this scheme of things, Mr. Curran clearly is not operating outside of the influence of the Department of Justice, which will inevitably breed a sense of mistrust for his investigation.

Mr. President, the Attorney General has argued that the Ethics in Government Act is inapplicable to the Carter warehouse inquiry and the questionable loan transactions, because of the sections of the bill which exempt certain ongoing cases from the purview of the statute. However, upon careful review of the legislation, I find nothing which prohibits the Attorney General from requesting the appointment of a Special Prosecutor in the cases at hand.

In fact, the legislative history behind this new public law would support the appointment of a special prosecutor in any spinoff investigations from the Lance inquiry. After the Senate passed S. 555, the Public Officials Integrity Act, the Judiciary Committee added the special prosecutor section to the Department of Justice authorization bill. This was done in the context of a discussion of the need for a special prosecutor in the Lance case and related investigations. The special prosecutor provision remained in the bill as passed by the Senate and was dropped in conference only after assurances were given that the House was going to act the same day on the companion measure to S. 555.

Attorney General Bell should surely find strong basis in this legislative history for a decision to request the appointment of a special prosecutor under the new act to fully and fairly investigate the Carter warehouse case and related matters.

Such action would comport with the President's own testimony in support of the special prosecutor legislation:

> This approach will eliminate all appearance of high-level interference in sensitive investigations and prosecutions. The American people must be assured that no one, regardless of position is above the law.

If the Attorney General does not see fit to appoint a special prosecutor under the act, at a minimum he should import the full panoply of powers contained in the new law into the charter enumerating Mr. Curran's authorities.

Unless and until Mr. Curran (or another Special Prosecutor) is given the breadth of powers delineated in the new act, neither justice, nor the appearance of justice will be fully served.

Mr. STEVENS. Mr. President, I wish to read portions of an address that the former Governor of Georgia, Jimmy Carter, gave before an American Bar Association gathering on August 11, 1976, and until I indicate otherwise, this is a complete quote from the address of former Governor Carter, now President Carter.

Starting that quote:

> We will not lie, cheat, or steal, nor tolerate among us those who do.
>
> These words comprise the ancient code of honor which was adopted and still is used by the Air Force and military academies, and which has recently been questioned as being too strict and rigid for the future leaders of our Nation's Armed Forces.
>
> Is this too strict a code for cadets? I think not. Is this too strict a code for senior military officers who defend our country? I think not. Is this too strict a code for any public official who serves our Nation? I think not.
>
> All too often in recent years, laxity and the abandonment of rigid high standards among our leaders has caused our Nation to suffer and to grieve. It has been the law, and our national commitment to the law, that has kept the fabric of our society from being ripped apart. Even with a total commitment to the law we are not perfect, but we have a framework within which we can work toward a more just and perfect society.
>
> During this post-Watergate Era, our Nation has been struggling anew with the question of how to establish and maintain standards of morality and justice. So far we have failed.
>
> Unfortunately, there has been little progress toward enacting reforms that we needed to get our Government's house in order. There has been strong political opposition to legislation designed to secure more openness, accountability and increased integrity in Government. . . .
>
> Our Nation has seen crimes discovered, publicized, and then condoned. This almost inevitably produces a subtle lowering of standards, and a pervasive acceptance in Government of the right to break the law.
>
> Almost 50 years ago Justice Brandeis wrote in a legal dissent: "Our Government is the potent, the omnipotent teacher. For good or for ill it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy." . . .
>
> Recently, the U.S. Senate overwhelmingly passed a bill establishing a permanent Special Prosecutor, to be appointed by the President. If a Special Prosecutor is needed, we should strengthen the Senate bill and let the courts and not the President make the appointment. My own preference is that the Special Prosecutor be appointed only as needed, and not compromise another permanent Government agency.

Mr. President, that ends the quote, but let me repeat the last quote:

> Recently, the U.S. Senate overwhelmingly passed a bill establishing a permanent Special Prosecutor, to be appointed by the President. If a Special Prosecutor is needed, we should strengthen the Senate bill and let the courts and not the President make the appointment. My own preference is that the Special Prosecutor be appointed only as needed, and not compromise another permanent Government Agency.

That ends President Carter's quote.

Mr. President, Congress just last year passed the Ethics in Government Act of 1978. A major portion of that law contains provisions for the appointment of a Special Prosecutor to investigate wrongdoing that could well touch the White House. Within that law there was contained a narrow provision that would exempt certain ongoing investigations from the purview of a Special Prosecutor. The intent of the provision was to accommodate a brief transitional period where a prosecution was pending against that individual.

We have Members in the Chamber now who are members of that committee and know well what the scope of that narrow provision was. It was narrow.

The President does not have a prosecution pending against him now. In fact, neither does his brother. Our concern is whether or not there has been any illegal activities that touch upon the President or his former business or the relationship of his family and the family business to the National Bank of Georgia. The Justice Department's opinion that the Special Prosecutor provisions were inappli-

cable because of the ongoing prosecution exemption is clearly erroneous. Mr. President, as the former Governor of Georgia referred in his aforementioned speech for the need to insure independence of a Special Prosecutor when one is appointed, I ask now why he has not followed through on his promise. Why did he not overrule the Justice Department and get in motion the procedures to establish a truly independent prosecutor.

For a President who campaigned on a platform of openness and honesty, I clearly see some flagrant contradictions in this action.

Mr. DOLE. I thank my distinguished colleagues for yielding. I will only take a couple of minutes. I think there might be a tendency for some to feel we are being partisan. It is hard for me to understand that because Republicans learned the hard way about the need for independence in a Special Prosecutor. So if they, as the distinguished Senator from Connecticut has just done, review the history they would understand that we do have a great deal of interest in what happens, not from the standpoint of sheer partisanship, but if we learned anything from Watergate it was that it was not handled properly. All during the time it was being mishandled the Nixon administration was going deeper and deeper into quicksand.

As I review the lessons of Watergate, and I assume there are many, depending upon one's point of view, it seems to me that it would be in the President's interest to make certain that there is no doubt about his independence, and no restraints on Mr. Curran.

I believe the first step taken by the administration may have been in the wrong direction. It may have been a step backwards.

I share the views previously expressed by others on this floor including the view expressed of the distinguished majority leader.

Having been active in the 1976 campaign, and having felt the hot breath of the then Special Prosecutor in the height of that campaign, a man by the name of Charles Ruff, and having witnessed the investigation of President Ford by the Special Prosecutor, after everyone felt that President Ford had been more than adequately investigated when he assumed the Vice-Presidency, and having seen the investigations come as they did, particularly with reference to President Ford, in the last weeks of the campaign, there is no doubt there should be the same standard applied when the Democrats are in control as were applied when the Republicans occupied the White House and the investigation was carried on by Mr. Ruff, a Democrat.

That investigation was started without even a verified complaint. Someone literally walked in off the street and accused the President of the United States. This was followed by a full-scale investigation that continued for weeks. They went far back into President Ford's records when he ran for the Congress of the United States.

In the hearing on Ford's nomination for Vice President he was subjected to total and unceasing scrutiny, as he should have been, and he was found by critics and admirers alike to be a model of personal and political integrity.

But after all that, in the midst of a campaign which was seesawing back and forth, it was determined there should be another investigation.

I do not fault or suggest in any way that it was caused by anyone in the present administration. I have never been able to fully determine who initiated it.

I remember throughout the campaign the many Watergate references made by my good friend and now Vice President Mondale and by then candidate Carter. It was President Carter himself who in his platform proposal submitted on June 16, 1976 said:

> The Attorney General of this Nation must be removed from politics——

The very thing being suggested by the distinguished Senator from Connecticut.

> and given full prerogatives, independence, and authority of his or her own office, plus those allotted temporarily to the special prosecutor during the Watergate scandals.

It is difficult for this Republican to suggest that now that the Democrats may be in a box we should put the pressure on, but I had the distinct feeling in 1976, and before, and now that the American people want us to be forthright. They were promised in 1976, "If you vote for the Carter-Mondale ticket, there will be an open administration. No secrets, no coverups, no delays," though it has now been 18 months since this investigation started.

I say on behalf of the American people, Democrats, Republicans, and Independents, that one way to put this issue at rest is to make certain that person charged with investigating is totally independent.

Mr. Cox had a budget of about $3 million and a staff of about 90. I do not know where the Special Counsel, Mr. Curran, will find a staff or find the resources he needs.

I do not cast any aspersions on anyone in the Justice Department or on the Attorney General himself. I just suggest, as one Republican, that the best way to avoid possible cynicism or possible criticism, or other questions, is to make certain, beyond any shadow of a doubt, that they are complying with present law. I would respectfully request that that be done. It is not too late. The man named as Special Counsel, Mr. Curran, as I understand, and I have talked to friends in New York, is outstanding.

Mr. JAVITS. Will the Senator yield at that point?

Mr. DOLE. Yes.

Mr. JAVITS. I stand for that reason. I have heard all speakers, Senator BAKER, Senator WEICKER, and now Senator DOLE.

What the Senator says is likely to get lost in the crush. I am one of the drafters of this bill, and I pledge myself, as my colleagues do, to see that it is honestly observed. I know Paul Curran. I think that in our views, which are quite proper, we should not fail to make it clear that this is no reflection on him. He is a Republican and a very highly and honorably regarded man in New York. He had a remarkable record as U.S. attorney. I am sure that he would not have taken this job unless he felt he could sincerely and honestly carry on his duties.

That does not in any way transgress anything any of us have said. That is understandable when one deals in the pattern in which one is cast. But I hope it will be made clear to our people that the man's reputation, his integrity, his sincerity, and his determination to do an honorable, straight, decent, independent job, as we all wish, are not called into question here.

I would like to personally say that I would vouch for Paul Curran in every professional and ethical respect. So long as those things are kept clear, I think in all fairness, and I know we wish to be fair, however we feel about the organization panel, I believe that should be expressed. I hope very much all of us would agree.

Mr. DOLE. Mr. President, I share the view expressed by the distinguished Senator from New York. He is the right man but operating under the wrong structure. If that can be improved, the President will be well served and so will the American people.

I thank my distinguished colleagues for yielding.

Mr. BAKER. Mr. President, I yield now to the distinguished Senator from South Carolina.

THE APPOINTMENT OF A SPECIAL PROSECUTOR

Mr. THURMOND. Mr. President, on Tuesday, March 20, during a meeting of the Republican Conference, I offered a motion requesting the Attorney General of the United States to apply for the appointment of a Special Prosecutor in the National Bank of Georgia/Carter family warehouse case.

The conference adopted that motion unanimously. Subsequently, my Republican colleagues on the Senate Judiciary Committee and I, pursuant to the Ethics in Government Act of 1978, wrote a letter to the Attorney General asking that he make application for the appointment of a Special Prosecutor.

Mr. President, the action taken by me and my fellow Republican members of the Judiciary Committee was not done hastily, or without regard to the implications. On March 8, 1979, my Republican colleagues on the committee and I met with Judge Bell, Deputy Attorney General Civiletti, and Assistant Attorney General Heymann to discuss the status of the ongoing investigation in Georgia and the steps being taken by the Department to insure a full and fair investigation of this matter.

At that meeting, Judge Bell outlined several alternatives he was considering for the handling of this case. Among the alternatives was the appointment of a Special Prosecutor under existing law and departmental regulations. Unfortunately, Judge Bell dismissed that alternative and, instead, chose to appoint a so-called Special Counsel.

It was that announcement, Mr. President, that spurred me to offer the motion in the Republican Conference and was also the driving force behind the decision of the Republicans on the Senate Judiciary Committee to request the appointment of a Special Prosecutor under the Ethics in Government Act.

Mr. President, the facts and circumstances surrounding the alleged conduct of members of the Carter family and the National Bank of Georgia are precisely the kind of situations which led to the inclusion of the Special Prosecutor provisions in the Ethics in Government Act in 1978. Judge Bell, himself, in announcing the appointment of the Special Counsel on March 20 said:

> The investigation touches on the conduct of a business in which the President of the United States, the President's brother, and the President's mother, each hold a partnership interest.

That is an explicit admission by the Attorney General that this case involves the President of the United States. Regardless of how distant or how tangential the apparent relationship of the President is to this case, the simple fact remains that he has a direct, financial interest in the Carter family warehouse. Blind trust or not, control or management by others aside, the President has a financial stake in a business that is the subject of a Federal investigation.

Mr. President, the Ethics in Government Act of 1978, which contains the Special Prosecutor provisions, is directed specifically at high Federal officials, including the President of the United States. There is ample authority in other Federal laws for the investigation and prosecution of U.S. citizens. But the lessons of Watergate taught us that these laws are not always followed. Thus, the special provisions for high Federal officials were enacted.

We are asking nothing more, and nothing less, than the treatment given to the investigations of past public officials, including a former President of the United States.

We are simply asking for equal justice for all. Laws in America are not founded on a double standard.

The law cries out to be applied equally in all circumstances, and leaves to the courts whether justice has been applied fairly and equally.

Mr. President, the appointment of a Special Counsel by the Attorney General, instead of a Special Prosecutor, is a clear application of a double standard. The President is involved. The Attorney General has admitted it himself. Yet, a Special Prosecutor, similar to the one appointed in the Watergate case, has not been appointed in this case.

It is not my contention that this investigation, on its merits, will necessarily reach the magnitude, scope, and number of individuals as was true in the Watergate case. The appointment of a Special Prosecutor should not rise or fall on the scope or magnitude of an investigation. It should rest, and the Ethics in Government Act so provides, on who is involved. That is the principal parallel of Watergate—the possible involvement, no matter how distant at the start, of high public officials, including the President.

Mr. President, there are other reasons why the naming of a Special Counsel instead of a Special Prosecutor constitutes a double standard.

The independence of the Special Counsel is based solely on public assurances, which were the same kind of assurances that led to the "Saturday Night Massacre" of October 23, 1973.

The Special Counsel is still under the authority of the Attorney General and the Department of Justice. He has no designated tenure or the powers of a Federal prosecutor. He will have only a limited staff, and a dependence on existing investigatory resources.

This does not mean that I do not have confidence in the career personnel of the Justice Department and the Federal Bureau of Investigation, because I do. I and others in the Congress had faith in these people in 1973, and we still have it today. But that did not stand in the way of the appointment of a Special Prosecutor in 1973 and should not today.

The Special Prosecutor in 1973 had a specific charter setting forth his mandate, his degree of independence, and his powers in pursuing the facts of the Watergate case. Although a charter from the Department has been promised, I shall reserve judgment, since it will probably apply only to a Special Counsel, and not a Special Prosecutor.

Mr. President, it is important that the distinction between a Special Counsel, appointed by the Attorney General, and a Special Prosecutor designated under the Ethics in Government Act of 1978, be made absolutely clear. It is this distinction which goes to the heart of the matter.

First, the Attorney General, if he is agreeable to the appointment of a Special Prosecutor under the Ethics in Government Act, after 90 days, is required to make an application to a division of the court described in title 49 of 28 United States Code. That court, composed of Federal Court of Appeals judges of the Circuit Court of the District of Columbia assigned by the Chief Justice of the United States, then appoints independently a Special Prosecutor. The court makes the appointment, not the Attorney General.

Second, the court will define the Special Prosecutor's prosecutorial jurisdiction. Again, the Attorney General does not make that decision.

Finally, the tenure of the Special Prosecutor is completely under the control of the special court. If his removal is warranted, and so exercised by the court, that removal will be subject to immediate judicial review.

Mr. President, all of these safeguards to the complete independence of the Special Prosecutor are set forth in the 1978 law. No such safeguards are guaranteed by the Attorney General except under a charter that may be written by the Attorney General and made public.

The Attorney General has already taken himself out of this case, but has set in motion the machinery to allow his Deputy and Assistant Attorney General of the criminal division to act in his place. They, too, are part of the Carter administration. Could not any honest person say this is no way to handle this matter? Especially when the provisions and assurances for complete independence are provided by the new Special Prosecutor law. The trust and confidence of the American people is at stake here. We should not permit the application of a double standard in this case. A Special Prosecutor should be appointed under the provisions of the Ethics in Government Act of 1978.

Mr. President, I ask unanimous consent that the following materials be printed at this point in the RECORD:

First. Letter of minority members of Senate Judiciary Committee to Attorney General Bell.

Second. Copy of Special Prosecutor provisions of Ethics in Government Act of 1978.

Third. Copy of charter for Special Prosecutor appointed in 1973.

Fourth. Opinion of District Court Judge Gesell at 366 Fed. Supp. 104 (1972), ruling that the firing of the Special Prosecutor Archibald Cox was illegal.

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

COMMITTEE ON THE JUDICIARY,
Washington, D.C., March 20, 1979.

Hon. GRIFFIN B. BELL,
Attorney General of the United States, U.S. Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: At a meeting of the Republican Conference of the Senate today, a motion was offered by Senator Thurmond and was adopted unanimously, to request the appointment of a special prosecutor to investigate the loans, transactions and other matters between the National Bank of Georgia and the Carter family. This decision is consistent with the thinking of the Republican Members of the Judiciary Committee that we have discussed with you previously.

This action was taken in response to your announcement earlier today of the appointment of a special counsel to oversee the investigation now underway in Georgia. We feel that the appointment of a special counsel is inadequate in this case for the following reasons:

1. There is no element of independence. The special counsel is still subject to the Deputy Attorney General and the Assistant Attorney General of the Criminal Division.

2. There are no tenure provisions. The special counsel may be removed at any time, for any reason.

3. In 1973–74, a charter for the special prosecutor of Watergate was printed in the Federal Register and was later upheld by the courts. No such charter accompanied the appointment of a special counsel here.

4. In 1973–74, special procedures under the U.S. Attorney Manual were suspended with regard to the special prosecutor. It had an independent budget, staff, offices and mandate. No such provisions were made for this special counsel.

The newspaper coverage during the past three months has outlined in detail the various investigations that have been initiated into the Carter warehouse transactions. The Department of Justice, the Federal Election Commission, the Internal Revenue Service, the Comptroller of the Currency, and the Securities and Exchange Commission have all, at one time or the other, conducted investigations into the practices of the National Bank of Georgia and its dealings with the

Carter family. Under the circumstances, it is extremely difficult, if not impossible, to expect the Executive Branch to conduct an investigation of its own Chief Executive to an impartial and just conclusion. This is the precise reason that the special provisions were enacted in the first place.

The Department has argued recently that the special prosecutor provisions of P.L. 95-521 are not applicable to this case because of Section 604. That section is said to limit the appointment of a special prosecutor to such specific information that is received by the Attorney General within one hundred and eighty days of the date of enactment of the Ethics in Government Act of 1978 (P.L. 95-521, October 26, 1978).

We respectfully submit that Section 604 is only a technical limitation that can be waived by you at any time. Moreover, this provision was added to the legislation late in the legislative process at the request of the Justice Department. Therefore, pursuant to the provisions of Section 595(e) of Public Law 95-521, we request that you apply for the appointment of a special prosecutor.

Sincerely,

STROM THURMOND,
CHARLES McC. MATHIAS, Jr.,
PAUL LAXALT,
ORRIN G. HATCH,
ROBERT DOLE,
THAD COCHRAN,
ALAN K. SIMPSON.

TITLE VI—AMENDMENTS TO TITLE 28, UNITED STATES CODE

SPECIAL PROSECUTOR

SEC. 601. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 37 the following new chapter:

"Chapter 39.—SPECIAL PROSECUTOR

"SEC.
"591. Applicability of provisions of this chapter.
"592. Application for appointment of a special prosecutor.
"593. Duties of the division of the court.
"594. Authority and duties of a special prosecutor.
"595. Reporting and congressional oversight.
"596. Removal of a special prosecutor; termination of office.
"597. Relationship with Department of Justice.
"598. Termination of effect of chapter.

"§ 591. Applicability of provisions of this chapter

"(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives specific information that any of the persons described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense.

"(b) The persons referred to in subsection (a) of this section are—

"(1) the President and Vice President;

"(2) any individual serving in a position listed in section 5312 of title 5;

"(3) any individual working in the Executive Office of the President and compensated at a rate not less than the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5;

"(4) any individual working in the Department of Justice and compensated at a rate not less than the annual rate of basic pay provided for level III of the Executive Schedule under section 5314 of title 5, any Assistant Attorney General, the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

"(5) any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President; and

"(6) any officer of the principal national campaign committee seeking the election of the President.

"§ 592. Application for appointment of a special prosecutor

"(a) The Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title has engaged in conduct described in section 591 (a) of this title, shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate.

"(b)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court specified in section 593(a) of this title, and the division of the court shall have no power to appoint a special prosecutor.

"(2) Such notification shall be by memorandum containing a summary of the information received and a summary of the results of any preliminary investigation.

"(3) Such memorandum shall not be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

"(c)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter warrants further investigation or prosecution, or if ninety days elapse from the receipt of the information without a determination by the Attorney General that the matter is so unsubstantiated as not to warrant further investigation from the receipt of the information without a determination by the Attorney General that the matter is so unsubstantiated as not to warrant further investigation or prosecution, then the Attorney General shall apply to the division of the court for the appointment of a special prosecutor.

"(2) If—

"(A) after the filing of a memorandum under subsection (b) of this section, the Attorney General receives additional specific information about the matter to which such memorandum related, and

"(B) the Attorney General deems appropriate, that such information warrants further investigation or prosecution, then the Attorney General shall, not later than ninety days after receiving such additional information, apply to the division of the court for the appointment of a special prosecutor.

"(d)(1) Any application under this chapter shall contain sufficient information to assist the division of the court to select a special prosecutor and to define that special prosecutor's prosecutorial jurisdiction.

"(2) No application or any other documents, materials, or memorandums supplied to the division of the court under this chapter shall be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

"(e) The Attorney General may ask a special prosecutor to accept referral of a matter that relates to a matter within that special prosecutor's prosecutorial jurisdiction.

"(f) The Attorney General's determination under subsection (c) of this section to apply to the division of the court for the appointment of a special prosecutor shall not be reviewable in any court.

"§ 593. Duties of the division of the court

"(a) The division of the court to which this chapter refers is the division established under section 49 of this title.

"(b) Upon receipt of an application under section 592(c) of this title, the division of the court shall appoint an appropriate special prosecutor and shall define that special prosecutor's prosecutorial jurisdiction. A special prosecutor's identity and prosecutorial jurisdiction shall be made public upon request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such special prosecutor would be in the best interests of justice. In any event the identity and prosecutorial jurisdiction of such prosecutor shall be made public when any indictment is returned or any criminal information is filed.

"(c) The division of the court, upon request of the Attorney General which may be incorporated in an application under this chapter, may expand the prosecutorial jurisdiction of an existing special prosecutor, and such expansion may be in lieu of the appointment of an additional special prosecutor.

"(d) The division of the court may not appoint as a special prosecutor any person who holds or recently held any office of profit or trust under the United States.

"(e) If a vacancy in office arises by reason of the resignation or death of a special prosecutor, the division of the court may appoint a special prosecutor to complete the work of the special prosecutor whose resignation or death caused the vacancy. If a vacancy in office arises by reason of the removal of a special prosecutor, the division of the court may appoint an acting special prosecutor to serve until any judicial review of such removal is completed. Upon the completion of such judicial review, the division of the court shall take appropriate action.

"§ 594. Authority and duties of a special prosecutor

"(a) Notwithstanding any other provision of law, a special prosecutor appointed under this chapter shall have, with respect to all matters in such special prosecutor's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

"(1) conducting proceedings before grand juries and other investigations;

"(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such special prosecutor deems necessary;

"(3) appealing any decision of a court in any case or proceeding in which such special prosecutor participates in an official capacity;

"(4) reviewing all documentary evidence available from any source;

"(5) determining whether to contest the assertion of any testimonial privilege;

"(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

"(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1954, and

the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General; and

"(9) initiating and conducting prosecutions in any courts of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case in the name of the United States.

"(b) A special prosecutor appointed under this chapter shall receive compensation at a per diem rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5.

"(c) For the purposes of carrying out the duties of the office of special prosecutor, a special prosecutor shall have power to appoint, fix the compensation, and assign the duties, of such employees as such special prosecutor deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS-18 of the General Schedule under section 5332 of title 5.

"(d) A special prosecutor may request assistance from the Department of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such special prosecutor's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such special prosecutor's duties.

"(e) A special prosecutor may ask the Attorney General or the division of the court to refer matters related to the special prosecutor's prosecutorial jurisdiction. A special prosecutor may accept referral of a matter by the Attorney General, if the matter relates to a matter within such special prosecutor's prosecutorial jurisdiction as established by the division of the court. If such a referral is accepted, the special prosecutor shall notify the division of the court.

"(f) A special prosecutor shall, to the extent that such special prosecutor deems appropriate, comply with the written policies of the Department of Justice respecting enforcement of the criminal laws.

"§ 595. Reporting and congressional oversight

"(a) A special prosecutor appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of such special prosecutor. These statements and reports shall contain such information as such special prosecutor deems appropriate.

"(b)(1) In addition to any reports made under subsection (a) of this section, and before the termination of a special prosecutor's office under section 596(b) of this title, such special prosecutor shall submit to the division of the court a report under this subsection.

"(2) A report under this subsection shall set forth completely a description of the work of the special prosecutor, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such special prosecutor which was not prosecuted.

"(3) The division of the court may release to the Congress, the public, or to any appropriate person, such portions of a report made under this subsection as the division deems appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a report under this section available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such coments and factual information, in whole or in part, may in the discretion of such division be included as an appendix to such report.

"(c) A special prosecutor shall advise the House of Representatives of any substantial and credible information which such special prosecutor receives that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

"(d) The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any special prosecutor appointed under this chapter, and such special prosecutor shall have the duty to cooperate with the exercise of such oversight jurisdiction.

"(e) A majority of majority party members or a majority of all nonmajority party members of the Committee on the Judiciary of either House of the Congress may request in writing that the Attorney General apply for the appointment of a special prosecutor. Not later than thirty days after the receipt of such a request, or not later than fifteen days after the completion of a preliminary investigation of the matter with respect to which the request is made, whichever is later, the Attorney General shall provide written notification of any action the Attorney General has taken in response to such request and, if no application has been made to the division of the court, why such application was not made. Such written notification shall be provided to the committee on which the persons making the request serve, and shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such notification as will not in the committee's judgment prejudice the rights of any individual.

"§ 596. Removal of a special prosecutor; termination of office

"(a)(1) A special prosecutor appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for extraordinary impropriety, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such special prosecutor's duties.

"(2) If a special prosecutor is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, delete or postpone publishing any or all of the report. The division of the court may release any or all of such report in the same manner as a report released under section 595(b)(3) of this title and under the same limitations as apply to the release of a report under that section.

"(3) A special prosecutor so removed may obtain judicial review of the removal in a civil action commenced before the division of the court and, if such removal was based on error of law or fact, may obtain reinstatement or other appropriate relief. The division of the court shall cause such an action to be in every way expedited.

"(b)(1) An office of special prosecutor shall terminate when (A) the special prosecutor notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such special prosecutor or accepted by such special prosecutor under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions and (B) the special prosecutor files a report in full compliance with section 595 (b) of this title.

"(2) The division of the court, either on its own motion or upon suggestion of the Attorney General, may terminate an office of special prosecutor at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of the special prosecutor or accepted by such special prosecutor under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of termination, the special prosecutor shall file the report required by section 595(b) of this title.

"§ 597. Relationship with Department of Justice

"(a) Whenever a matter is in the prosecutorial jurisdiction of a special prosecutor or has been accepted by a special prosecutor under section 594(e) of this title, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d) of this title, and except insofar as such special prosecutor agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

"(b) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which a special prosecutor participates in an official capacity or any appeal of such a case or proceeding.

"§ 598. Termination of effect of chapter

"This chapter shall cease to have effect five years after the date of the enactment of this chapter, except that this chapter shall continue in effect with respect to then pending matters before a special prosecutor that in the judgment of such special prosecutor require such continuation until that special prosecutor determines such matters have been completed.".

(b) The tables of chapters for title 28 of the United States Code and for part II of such title 28 are each amended by inserting immediately after the item relating to chapter 37 the following new item:

"38 Special prosecutor.".

(c) There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any special prosecutors appointed under chapter 38 (relating to special prosecutor) of title 28 of the United States Code in the carrying out of functions under such chapter.

ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT SPECIAL PROSECUTORS

SEC. 602. (a) Chapter 3 of title 28 of the United States Code is amended by adding at the end the following:

§ 49. Assignment of judges to division to appoint special prosecutors

"(a) Beginning with the two-year period commencing on the date of the enactment of this section, three judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the division of the court for the purpose of appointing special prosecutors.

"(b) Except as provided under subsection (f) of this section, assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.

"(c) In assigning judges or justices to sit on such division of the court, priority shall be given to senior circuit judges and retired justices.

"(d) The Chief Justice of the United States shall designate and assign three circuit court judges or justices, one of whom shall be a judge of the United States Court of Appeals for the District of Columbia, to such division of the court. Not more than one judge or justice or senior or retired judge or justice may be named to such division from a particular court.

"(e) Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to such division were made.

"(f) Except as otherwise provided in chapter 39 of this title, no member of such division of the court who participated in a function conferred on the division under chapter 39 of this title involving a special prosecutor shall be eligible to participate in any judicial proceeding concerning a matter which involves such special prosecutor while such special prosecutor is serving in that office or which involves the exercise of such special prosecutor is still serving in that office.".

(b) The table of sections for chapter 3 of title 28 of the United States Code is amended by adding at the end the following item:

"49. Assignment of judges to division to appoint special prosecutors.".

DISQUALIFICATION OF OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF JUSTICE AND ANNUAL REPORT OF ATTORNEY GENERAL

SEC. 603. (a) Chapter 31 of title 28 of the United States Code is amended by adding at the end the following:

"§ 528. Disqualification of officers and employees of the Department of Justice

"The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

"§ 529. Annual report of Attorney General

"Beginning on June 1, 1979, and at the beginning of each regular session of Congress thereafter, the Attorney General shall report to Congress on the activities and operations of the Public Integrity Section or any other unit of the Department of Justice designated to supervise the investigation and prosecution of—

"(1) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a Federal Government officer, employee, or special employee, if such violation relates directly or indirectly to such individual's Federal Government position, employment, or compensation;

"(2) any violation of any Federal criminal law relating to lobbying, conflict of interest, campaigns, and election to public office committed by any person, except insofar as such violation relates to a matter involving discrimination or intimidation on grounds of race, color, religion, or national origin;

"(3) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a State or local government officer or employee, if such violation relates directly or indirectly to such individual's State or local government position, employment, or compensation; and

"(4) such other matters as the Attorney General may deem appropriate.

Such report shall include the number, type, and disposition of all investigations and prosecutions supervised by such Section or such unit, except that such report shall not disclose information which would interfere with any pending investigation or prosecution or which would improperly infringe upon the privacy rights of any individuals.".

(b) The table of sections for chapter 31 of title 28 of the United States Code is amended by adding at the end of the following:

"528. Disqualification of officers and employees of the Department of Justice.

"529. Annual report of Attorney General.".

EFFECTIVE DATE

SEC. 604. Except as provided in this section, the amendments made by this title shall take effect on the date of the enactment of this Act. The provisions of chapter 39 of title 28 of the United States Code, as added by section 601 of this Act, shall not apply to specific information received by the Attorney General pursuant to section 591 of such title 28, if the Attorney General determines that—

(1) such specific information is directly related to a prosecution pending at the time such specific information is received by the Attorney General;

(2) such specific information is related to a matter which has been presented to a grand jury and is received by the Attorney General within one hundred and eighty days of the date of the enactment of this Act; or

(3) such specific information is related to an investigation that is pending at the time such specific information is received by the Attorney General, and such specific information is received by the Attorney General within ninety days of the date of the enactment of this Act.

CREATION OF THE WATERGATE SPECIAL PROSECUTION FORCE

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

Part 0—Organization of the Department of Justice

[Order No. 517-73]

Establishing the Office of Watergate Special Prosecution Force

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, there is hereby established in the Department of Justice, the Office of Watergate Special Prosecution Force, to be headed by a Director. Accordingly, Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.1 of Subpart A, which lists the organizational units of the Department, is amended by adding "Office of Watergate Special Prosecution Force" immediately after "Office of the Pardon Attorney."

2. A new Subpart G-1 is added immediately after Subpart G, to read as follows:

"Subpart G-1—Office of Watergate Special Prosecution Force

§ 0.37 *General Functions*

The Office of Watergate Special Prosecution Force shall be under the direction of a Director who shall be the Special Prosecutor appointed by the Attorney General. The duties and responsibilities of the Special Prosecutor are set forth in the attached appendix which is incorporated and made a part hereof."

(S) ELLIOT RICHARDSON,
Attorney General.

Date: May 31, 1973.

Appendix on Duties and Responsibilities of the Special Prosecutor

The Special Prosecutor. There is appointed by the Attorney General, within the Department of Justice, a Special Prosecutor to whom the Attorney General shall delegate the authorities and provide the staff and other resources described below.

The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic National Committee Headquarters at the Watergate, all offenses arising out of the Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees and any other matters which he consents to have assigned to him by the Attorney General.

In particular, the Special Prosecutor shall have full authority with respect to the above matters for:

Conducting proceedings before grand juries and any other investigations he deems necessary;

Reviewing all documentary evidence available from any source, as to which he shall have full access;

Determining whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;

Determining whether or not application should be made to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders;

Deciding whether or not to prosecute any individual, firm, corporation or group of individuals;

Initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction (whether initiated before or after his assumption of duties), including any appeals;

Coordinating and directing the activities of all Department of Justice personnel, including United States Attorneys;

Dealing with and appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to such committees.

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. The Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part.

Staff and Resource Support

1. *Selection of Staff.* The Special Prosecutor shall have full authority to organize, select, and hire his own staff of attorneys, investigators, and supporting personnel, on a full or part-time basis, in such numbers and with such qualifications as he may reasonably require. He may request the Assistant Attorneys General and other officers of the Department of Justice to assign such personnel and to provide such other assistance as he may reasonably require. All personnel in the Department of Justice, including United States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

2. *Budget.* The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require. He shall have the right to submit budget requests for funds, positions, and other assistance, and such requests shall receive the highest priority.

3. *Designation and Responsibility.* The personnel acting as the staff and assistants of the Special Prosecutor shall be known as the

Watergate Special Prosecution Force and shall be responsible only to the Special Prosecutor.

Continued Responsibilities of Assistant Attorney General, Criminal Division. Except for the specific investigative and prosecutorial duties assigned to the Special Prosecutor, the Assistant Attorney General in charge of the Criminal Division will continue to exercise all of the duties currently assigned to him.

Applicable Departmental Policies. Except as otherwise herein specified or as mutually agreed between the Special Prosecutor and the Attorney General, the Watergate Special Prosecution Force will be subject to the administrative regulations and policies of the Department of Justice.

Public Reports. The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress.

Duration of Assignment. The Special Prosecutor will carry out these responsibilities, with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself.

SPECIAL PROSECUTOR'S DESIGNATION OF ATTORNEYS

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

Part 0—Organization of the Department of Justice

Subpart G-1—Office of Watergate Special Prosecution Force

[Order No. 525-73]

Delegation of authority to designate attorneys to conduct legal proceedings

The Office of Watergate Special Prosecution Force was established effective May 25, 1973 (38 F.R. 14688). The purpose of this order is to make clear that the Special Prosecutor has full authority to exercise the Attorney General's authority under 28 U.S.C. 515(a) to designate attorneys to conduct legal proceedings, including grand jury proceedings.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Subpart G-1 of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended by adding the following new section 0.38 at the end thereof:

"§ 0.38 *Designation of attorneys.* The Special Prosecutor is authorized to designate attorneys to conduct legal proceedings, including grand jury proceedings."

Date: 7/8/73.

(S) ELLIOT RICHARDSON,
Attorney General.

CLARIFICATION OF SPECIAL PROSECUTOR'S AUTHORITY

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

Part 0—Organization of the Department of Justice

Subpart G-1—Office of Watergate Special Prosecution Force

[Order No. 531-73]

Clarification of Authority of Special Prosecutor

The purpose of this order is to clarify the Special Prosecutor's authority with respect to matters generally assigned to his responsibility. See Department of Justice Order Nos. 517-73, 518-73, 525-73.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301 Section 0.38 of Subpart G-1 of Part 0 of Chapter I of Title 28, Code of Federal Regulations is amended to read as follows:

§ 0.38 *Specific functions.* The Special Prosecutor is assigned and delegated the following specific functions with respect to matters specified in this Subpart:

(a) Pursuant to 28 U.S.C. 515(a), to conduct any kind of legal proceeding, civil or criminal including grand jury proceedings, which United States attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings.

(b) To approve or disapprove the production or disclosure of information or files relating to matters within his cognizance in response to a subpoena, order, or other demand of a court or other authority. (See Part 16(B) of this Chapter.)

(c) To apply for and to exercise the authority vested in the Attorney General under 18 U.S.C. 6005 relating to immunity of witnesses in Congressional proceedings.

The listing of these specific functions is for the purpose of illustrating the authority entrusted to the Special Prosecutor and is not intended to limit in any manner his authority to carry out his functions and responsibilities.

Date: 7/31/73.

(S) ELLIOT RICHARDSON,
Attorney General.

ABOLITION OF WSPF IN OCTOBER 1973

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

Part 0—Organization of the Department of Justice

[Order No. 546-73]

Abolishment of Office of Watergate Special Prosecution Force

This order abolishes the Office of Watergate Special Prosection Force. The functions of that Office revert to the Criminal Division.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, the Office of Watergate Special Prosecution Force is abolished. Accordingly, Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.1 of Subpart A, which lists the organizational units of the Department, is amended by deleting "Office of Watergate Special Prosecution Force."

2. Subpart G-1 is revoked.

Order No. 517-73 of May 31, 1973, Order No. 518-73 of May 31, 1973, Order No. 525-73 of July 8, 1973, and Order No. 531-73 of July 31, 1973, are revoked.

This order is effective as of October 21, 1973.

/S/ ROBERT H. BORK,
Acting Attorney General.

Date: Oct. 23, 1973.

REESTABLISHMENT OF WSPF IN NOVEMBER 1973

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

Part 0—Organization of the Department of Justice

[Order No. 551-73]

Establishing the Office of Watergate Special Prosecution Force

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, there is hereby established in the Department of Justice, the Office of Watergate Special Prosecution Force, to be headed by a Director. Accordingly, Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.1(a) which lists the organization units of the Department, is amended by adding "Office of Watergate Special Prosecution Force" immediately after "Office of Criminal Justice."

2. A new Subpart G-1 is added immediately after Subpart G, to read as follows:

"Subpart G-1—Office of Watergate Special Prosecution Force

§ 0.37 *General Functions.*

The Office of Watergate Special Prosecution Force shall be under the direction of a Director who shall be the Special Prosecutor appointed by the Attorney General. The duties and responsibilities of the Special Prosecutor are set forth in the attached appendix which is incorporated and made a part hereof.

§ 0.38 *Specific Functions.*

The Special Prosecutor is assigned and delegated the following specific functions with respect to matters specified in this Subpart:

(a) Pursuant to 28 U.S.C. 515(a), to conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings, which United States attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings.

(b) To approve or disapprove the production or disclosure of information or files relating to matters within his cognizance in response to a subpoena, order, or other demand of a court or other authority. (See Part 16(B) of this chapter.)

(c) To apply for and to exercise the authority vested in the Attorney General under 18 U.S.C. 6005 relating to immunity of witnesses in Congressional proceedings.

The listing of these specific functions is for the purpose of illustrating the authority entrusted to the Special Prosecutor and is not intended to limit in any manner his authority to carry out his functions and responsibilities."

Date: 2 Nov 1973.

(S) ROBERT H. BORK,
Acting Attorney General.

Appendix on duties and responsibilities of the Special Prosecutor

The Special Prosecutor. There is appointed by the Attorney General, within the Department of Justice, a Special Prosecutor to whom the Attorney General shall delegate the authorities and provide the staff and other resources described below.

The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic Committee Headquarters at the Watergate, all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees, and any other matters which he consents to have assigned to him by the Attorney General.

In particular, the Special Prosecutor shall have full authority with respect to the above matters for:

Conducting proceedings before grand juries and any other investigations he deems necessary;

Reviewing all documentary evidence available from any source, as to which he shall have full access;

Determining whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;

Determining whether or not application should be made to any Federal court for a grant of immunity to any witness, consistently with applicable statutory requirements, or for warrants, subpoenas, or other court orders;

Deciding whether or not to prosecute any individual, firm, corporation or group of individuals;

Initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction (whether initiated before or after his assumption of duties), including any appeals;

Coordinating and directing the activities of all Department of Justice personnel, including United States Attorneys;

Dealing with and appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to such committees.

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. In accordance with assurances given by the President to the Attorney General that the President will not exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the Majority and the Minority Leaders and Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their concensus is in accord with his proposed action.

Staff and Resources Support

1. *Selection of Staff.* The Special Prosecutor shall have full authority to organize, select, and hire his own staff of attorneys, investigators, and supporting personnel, on a full or part-time basis, in such numbers and with such qualifications as he may reasonably require. He may request the Assistant Attorneys General and other officers of the Department of Justice to assign such personnel and to provide such other assistance as he may reasonably require. All personnel in the Department of Justice, including United States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

2. *Budget.* The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require. He shall have the right to submit budget requests for funds, positions, and other assistance and such requests shall receive the highest priority.

3. *Designation and Responsibility.* The personnel acting as the staff and assistants of the Special Prosecutor shall be known as the Watergate Special Prosecution Force and shall be responsible only to the Special Prosecutor.

Continued Responsibilities of Assistant Attorney General, Criminal Division. Except for the specific investigative and prosecutorial duties assigned to the Special Prosecutor, the Assistant Attorney General in charge of the Criminal Division will continue to exercise all of the duties currently assigned to him.

Applicable Departmental Policies. Except as otherwise herein specified or as mutually agreed between the Special Prosecutor and the Attorney General, the Watergate Special Prosecution Force will be subject to the administrative regulations and policies of the Department of Justice.

Public Reports. The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress.

Duration of Assignments. The Special Prosecutor will carry out these responsibilities, with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself.

CLARIFICATION OF SPECIAL PROSECUTOR'S INDEPENDENCE

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

Part 0—Organization of the Department of Justice

Subpart G-1—Office of Watergate Special Prosecution Force

[Order No. 554-73]

Amending the Regulations Establishing the Office of Watergate Special Prosecution Force

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, the last sentence of the fourth paragraph of the Appendix to Subpart G-1 is amended to read as follows:

"In accordance with assurances given by the President to the Attorney General that the President will not exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, (1) the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the Majority and the Minority Leaders and Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action, and (2) the jurisdiction of the Special Prosecutor will not be limited without the President's first consulting with such Members of Congress and ascertaining that their consensus is in accord with his proposed action."

(S) ROBERT H. BORK,
Acting Attorney General.

Date: Nov. 19, 1973.

CLARIFICATION OF CLARIFICATION

NOVEMBER 21, 1973.

LEON JAWORSKI, Esq.,
Special Prosecutor,
Watergate Special Prosecution Force,
Washington, D.C.

DEAR MR. JAWORSKI: You have informed me that the amendment to your charter of November 19, 1973 has been questioned by some members of the press. This letter is to confirm what I told you in our telephone conversation. The amendment of November 19, 1973 was intended to be, and is, a safeguard of your independence.

The President has given his assurance that he would not exercise his constitutional powers either to discharge the Special Prosecutor or to limit the independence of the Special Prosecutor without first consulting the Majority and Minority leaders and chairmen and ranking members of the Judiciary Committees of the Senate and the House, and ascertaining that their consensus is in accord with his proposed action.

When that assurance was worked into the charter, the draftsman inadvertently used a form of words that might have been construed as applying the President's assurance only to the subject of discharge. This was subsequently pointed out to me by an assistant and I had the amendment of November 19 drafted in order to put beyond question that the assurance given applied to your independence under the charter and not merely to the subject of discharge.

There is, in my judgment, no possibility whatever that the topics of discharge or limitation of independence will ever be of more than hypothetical interest. I write this letter only to repeat what you already know: the recent amendment to your charter was to correct an ambiguous phrasing and thus to make clear that the assurances concerning congressional consultation and consensus apply to all aspects of your independence.

Sincerely,

(S) ROBERT H. BORK,
Acting Attorney General.

[Civ. A. No. 1954-73]

RALPH NADER ET AL., PLAINTIFFS, V. ROBERT H. BORK, ACTING ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANT

(United States District Court, District of Columbia, Nov. 14, 1973)

Action was brought for declaratory judgment and injunction with respect to discharge of Watergate Special Prosecutor. Following hearing, the District Court, Gesell, J., held that all injunctive relief would be denied where discharged Special Prosecutor did not enter the litigation or otherwise seek reinstatement; that members of Congress had standing to seek declaration of illegality of the discharge; that action had not been mooted; that discharge was in violation of Justice Department regulation precluding removal except for "extraordinary improprieties"; and that discharge could not be retroactively validated by subsequent arbitrary and unreasonable revocation of the regulation.

Ordered accordingly.

1. Injunction—22, 114(1):

All injunctive relief to reinstate Watergate Special Prosecutor and to halt investigation until he resumed control would be denied where discharged Special Prosecutor had not entered litigation challenging legality of his ouster or otherwise sought to be reinstated, and where a new Special Prosecutor had been sworn in. Fed. Rules Civ. Proc. rules 19(a), 65(a), 28 U.S.C.A.

2. Declaratory Judgment—300:

Citizen lacked standing to seek declaration of illegality of discharge of Watergate Special Prosecutor.

3. Declaratory Judgment—304:

Members of Congress had standing to seek declaration of illegality of discharge of Watergate Special Prosecutor, where such declaration would bear on the duties of such members with respect to legislation concerning the investigation.

4. Action—6:

Importance of question presented cannot alone save a case from mootness.

5. Declaratory Judgment—203:

Action seeking declaration of illegality of discharge of Watergate Special Prosecutor was not mooted by subsequent developments, including failure of discharged Prosecutor to seek reinstatement and appointment of new Prosecutor, where the congressional plaintiffs had substantial continuing interest in the litigation by reason of pending legislation which might be affected by the outcome and by reason of fact that challenged conduct of defendant could be repeated with regard to new Special Prosecutor.

6. Attorney General—2:

As an appointee of the Attorney General, Watergate Special Prosecutor served subject to congressional rather than presidential control, and Congress had power directly to limit the circumstances under which he could be discharged. 5 U.S.C.A. § 301; 28 U.S.C.A. § § 509, 510.

7. Attorney General—2:

Though, in absence of limitations issued by Congress, Attorney General would have authority to fire at any time and for any reason Special Prosecutor appointed by him, Department of Justice regulation issued by the Attorney General and limiting his own authority with respect to discharge had the force and effect of law, and was binding on him. 5 U.S.C.A. § 301.

8. Attorney General—2:

In light of Justice Department regulation providing that Watergate Special Prosecutor

would not be removed except for extraordinary improprieties, discharge on ground Special Prosecutor was insisting on compliance with a court order which was no longer subject to further judicial review was illegal. 5 U.S.C.A. § 301; 28 U.S.C.A. § 508(b).

9. Attorney General—2:

Order revoking Justice Department regulation providing that Watergate Special Prosecutor could not be discharged except for "extraordinary improprieties" was arbitrary and unreasonable and could not retroactively validate the prior discharge of Special Prosecutor for reasons not specified in the regulation.

10. Administrative Law and Procedure—421:

Action of administrative agency in revoking its regulations must be neither arbitrary nor unreasonable.

11. Attorney General—2:

Commitments given to the Senate at the time of Attorney General's confirmation with respect to independence of Watergate Special Prosecutor had no legal effect.

12. Constitutional Law—72:

It would be inappropriate for federal district court to appoint and supervise a special prosecutor.

Alan B. Morrison, W. Thomas Jacks, Raymond T. Bonner, Washington, D.C., for plaintiffs.

Irwin Goldbloom, Ray Battocchi, Dept. of Justice, Washington, D.C., for defendant.

MEMORANDUM

Gesell, District Judge.

This is a declaratory judgment and injunction action arising out of the discharge of Archibald Cox from the office of Watergate Special Prosecutor. Defendant Robert H. Bork was the Acting Attorney General who discharged Mr. Cox. Plaintiffs named in the Amended Complaint are as listed above.

Some issues have already been decided. The matter first came before the Court on plaintiff's motion for preliminary injunction and a request that the trial of the action on the merits be consolidated with the preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure. Defendant filed opposition papers, and a hearing was held on the detailed affidavits and briefs filed by the parties. The Court determined that the case was in proper posture for a determination on the merits at that time.

[1] All injunctive relief requested in the proposed preliminary injunction tendered at the hearing and in the Amended Complaint was denied from the bench. The effect of the injunctions sought would have been to reinstate Mr. Cox as Watergate Special Prosecutor and to halt the Watergate investigation until he had reassumed control. It appeared to the Court that Mr. Cox's participation in this case was required before such relief could be granted. *See* Rule 19(a) of the Federal Rules of Civil Procedure. Yet Mr. Cox has not entered into this litigation, nor has he otherwise sought to be reinstated as Special Prosecutor. On the contrary, his return to prior duties at Harvard has been publicly announced. Moreover, a new Watergate Special Prosecutor was sworn in on November 5, 1973, and the Court felt that the public interest would not be served by placing any restrictions upon his on-going investigation of Watergate-related matters.

Plaintiffs continue to press for a declaratory judgment on the only remaining issue to be resolved: the legality of the discharge of Mr. Cox and of the temporary abolition of the Office of Watergate Special Prosecutor. To this end, it must initially be determined whether plaintiffs have standing and whether a justiciable controversy still exists.

[2, 3] Defendant Bork contends that the congressional plaintiffs lack standing[1] and that the controversy is moot. This position is without merit. The discharge of Mr. Cox precipitated a wide-spread concern, if not lack of confidence, in the administration of justice. Numerous bills are pending in the Senate and House of Representatives which attempt to insulate the Watergate inquiries and prosecutions from Executive interference, and impeachment of the President because of his alleged role in the Watergate matter—including the firing of Mr. Cox—is under active consideration.[2] Given these unusual circumstances, the standing of the three congressional plaintiffs to pursue their effort to obtain a judicial determination as to the legality of the Cox discharge falls squarely within the recent holding of the United States Court of Appeals for the District of Columbia Circuit in Mitchell v. Laird, No. 71-1510 (D.C. Cir. March 20, 1973). Faced with a challenge by a group of congressmen to the legality of the Indo-China War, the Court recognized standing in the following forceful terms:

"If we, for the moment, assume that defendants' actions in continuing the hostilities in Indo-China were or are beyond the authority conferred upon them by the Constitution, a declaration to that effect would bear upon the duties of plaintiffs to consider whether to impeach defendants, and upon plaintiffs' quite distinct and different duties to make appropriations to support the hostilities, such as raising an army or enacting other civil or criminal legislation. In our view, these considerations are sufficient to give plaintiffs a standing to make their complaint." *Id.* at 4.

[4, 5] Unable to distinguish this holding, defendant Bork suggests that the instant case has been mooted by subsequent events and that the Court as a discretionary matter should refuse to rule on the legality of the Cox discharge. This view of the matter is more academic than realistic, and fails to recognize the insistent demand for some degree of certainty with regard to these distressing events which have engendered considerable public distrust of government. There is a pressing need to declare a rule of law that will give guidance for future conduct with regard to the Watergate inquiry.

While it is perfectly true that the importance of the question presented cannot alone save a case from mootness, Marchand v. Director, United States Probation Office, 421 F. 2d 331, 333 (1st Cir. 1970), the congressional plaintiffs before the Court have a substantial and continuing interest in this litigation. It is an undisputed fact that pending legislation may be affected by the outcome of this dispute and that the challenged conduct of the defendant could be repeated with regard to the new Watergate Special Prosecutor if he presses too hard,[3] an event which would undoubtedly prompt further congressional action. This situation not only saves the case from mootness, *see* United States v. Concentrated Phosphate Export Assoc., 393 U.S. 199, 203-204, 89 S. Ct. 361, 21 L. Ed. 2d 344 (1968); Friend v. United States, 128 U.S. App. D.C. 323, 388 F. 2d 579 (1967), but forces decision. The Court has before it an issue that is far from speculative and a strong showing has been made that judicial determination of that issue is required by the public interest. Under these circumstances, it would be an abuse of discretion not to act.

Turning then to the merits, the facts are not in dispute and must be briefly stated to place the legal discussion in the proper context.

The duties and responsibilities of the Office of Watergate Special Prosecutor were set forth in a formal Department of Justice regulation,[4] as authorized by statute.[5] This regulation gave the Watergate Special Prosecutor very broad power to investigate and prosecute offenses arising out of the Watergate break-in, the 1972 Presidential election, and allegations involving the President, members of the White House staff or presidential appointees. Specifically, he was charged with responsibility to conduct court proceedings and to determine whether or not to contest assertions of Executive privilege. He was to remain in office until a date mutually agreed upon between the Attorney General and himself, and it was provided that "The Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part."

On the same day that this regulation was promulgated, Archibald Cox was designated as Watergate Special Prosecutor.[6] Less than four months later, Mr. Cox was fired by defendant Bork. It is freely admitted that he was not discharged for an extraordinary impropriety.[7] Instead, Mr. Cox was discharged on the order of the President because he was insisting upon White House compliance with a Court Order which was no longer subject to further judicial review. After the Attorney General had resigned rather than fire Mr. Cox on this ground and the Deputy Attorney General had been discharged for refusing to do so, defendant Bork formally dismissed Mr. Cox on October 20, 1973, sending him the following letter:[8]

DEAR MR. COX: As provided by Title 28, Section 508(b) of the United States Code and Title 28, Section 0.132(a) of the Code of Federal Regulations, I have today assumed the duties of Acting Attorney General. In that capacity I am, as instructed by the President, discharging you, effective at once, from your position as Special Prosecutor, Watergate Special Prosecution Force.

Very truly yours,

ROBERT H. BORK,
Acting Attorney General.

Thereafter, on October 23, Mr. Bork rescinded the underlying Watergate Special Prosecutor regulation, retroactively, effective as of October 21.[9]

The issues presented for declaratory judgment are whether Mr. Cox was lawfully discharged by defendant on October 20, while the regulation was still in existence, and, if not, whether the subsequent cancellation of the regulation lawfully accomplished his discharge. Both suppositions will be considered.

[6, 7] It should first be noted that Mr. Cox was not nominated by the President and did not serve at the President's pleasure. As an appointee of the Attorney General,[10] Mr. Cox served subject to congressional rather than Presidential control. See Myers v. United States, 272 U.S. 52, 47 S.Ct. 21, 71 L.Ed. 160 (1926). The Attorney General derived his authority to hire Mr. Cox and to fix his term of service from various Acts of Congress.[11] Congress therefore had the power directly to limit the circumstances under which Mr. Cox could be discharged, *see* United States v. Perkins, 116 U.S. 483, 6 S.Ct. 449, 29 L.Ed. 700 (1886), and to delegate that power to the Attorney General, *see* Service v. Dulles, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957). Had no such limitations been issued, the Attorney General would have had the authority to fire Mr. Cox at any time and for any reason. However, he chose to limit his own authority in this regard by promulgating the Watergate Special Prosecutor regulation previously described. It is settled beyond dispute that under such circumstances an agency regulation has the force and effect of law, and is binding upon the body that issues it. Accardi v. Shaughnessy, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954) ("*Accardi I*"); Bonita v. Wirtz, 125 U.S. App. D.C. 163, 369 F.2d 208 (1966); American Broadcasting Co. v. F.C.C., 85 U.S. App.D.C. 343. 179 F.2d 437 (1949); United States v. Chapman, 179 F.Supp. 447 (E.D.N.Y.1959). As the Ninth Circuit observed in United States v. Short, 240 F.2d 292, 298 (9th Cir. 1956):

"An administrative regulation promul-

Footnotes at end of article.

gated within the authority granted by statute has the force of law and will be given full effect by the courts."

[8] Even more directly on point, the Supreme Court has twice held that an Executive department may not discharge one of its officers in a manner inconsistent with its own regulations concerning such discharge. *See* Vitarelli v. Seaton, 359 U.S. 535, 79 S. Ct. 968, 3 L.Ed.2d. 1012 (1959); Service v. Dulles, *supra*. The firing of Archibald Cox in the absence of a finding of extraordinary impropriety was in clear violation of an existing Justice Department regulation having the force of law and was therefore illegal.

[9] Defendant suggests that, even if Mr. Cox's discharge had been inlawful on October 20, the subsequent abolition of the Office of Watergate Special Prosecutor was legal and effectively discharged Mr. Cox at that time. This contention is also without merit. It is true that an agency has wide discretion in amending or revoking its regulations. United States v. O'Brien, 391 U.S. 367, 380, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968). However, we are once again confronted with a situation in which the Attorney General voluntarily limited his otherwise broad authority. The instant regulation contains within its own terms a provision that the Watergate Special Prosecutor (as opposed to any particular occupant of that office) will continue to carry out his responsibilities until he consents to the termination of that assignment.[12] This clause can only be read as a bar to the total abolition of the Office of Watergate Special Prosecutor without the Special Prosecutor's consent, and the Court sees no reason why the Attorney General cannot by regulation impose such a limitation upon himself and his successors.

[10] Even if the Court were to hold otherwise, however, it could not conclude that the defendant's Order of October 23 revoking the regulation was legal. An agency's power to revoke its regulations is not unlimited—such action must be neither arbitrary nor unreasonable. Kelly v. United States Dept. of Interior, 339 F.Supp. 1095, 1100 (E.D. Cal. 1972). *Cf.* Grain Elevator, Flour and Feed Mill Workers v. N.L.R.B., 126 U.S. App. D.C. 219, 376 F.2d 774, cert. denied, 389 U.S. 932, 88 S. Ct. 296, 19 L.Ed.2d 285 (1967); Morrison Mill Co. v. Freeman, 124 U.S. App. D.C. 334, 365 F.2d 525 (1966), cert. denied, 385 U.S. 1024, 87 S. Ct. 741, 17 L.Ed.2d 672 (1967). In the instant case, the defendant abolished the Office of Watergate Special Prosecutor on October 23, and reinstated it less than three weeks later under a virtually identical regulation.[13] It is clear that this turnabout was simply a ruse to permit the discharge of Mr. Cox without otherwise affecting the Office of the Special Prosecutor—a result which could not legally have been accomplished while the regulation was in effect under the circumstances presented in this case. Defendant's Order revoking the original regulation was therefore arbitrary and unreasonable, and must be held to have been without force or effect.

These conclusions do not necessarily indicate that defendant's recent actions in appointing a new Watergate Special Prosecutor are themselves illegal, since Mr. Cox's evident decision not to seek reinstatement necessitated the prompt appointment of a successor to carry on the important work in which Mr. Cox had been engaged. But that fact does not cure past illegalities, for nothing in Mr. Cox's behavior as of October 23 amounted to an extraordinary impropriety, constituted consent to the abolition of his office or provided defendant with a reasonable basis for such abolition.

[11] Plaintiffs have emphasized that over and beyond these authorities the Acting Attorney General was prevented from firing Mr. Cox by the explicit and detailed commitments given to the Senate, at the time of Mr. Richardson's confirmation, when the precise terms of the regulation designed to assure Mr. Cox's independence were hammered out. Whatever may be the moral or political implications of the President's decision to disregard those commitments, they do not alter the fact that the commitments had no legal effect. Mr. Cox's position was not made subject to Senate confirmation, nor did Congress legislate to prevent illegal or arbitrary action affecting the independence of the Watergate Special Prosecutor.

[12] The Court recognizes that this case emanates in part from congressional concern as to how best to prevent future Executive interference with the Watergate investigation. Although these are times of stress, they call for caution as well as decisive action. The suggestion that the Judiciary be given responsibility for the appointment and supervision of a new Watergate Special Prosecutor, for example, is most unfortunate. Congress has it within its own power to enact appropriate and legally enforceable protections against any effort to thwart the Watergate inquiry. The Courts must remain neutral. Their duties are not prosecutorial. If Congress feels that laws should be enacted to prevent Executive interference with the Watergate Special Prosecutor, the solution lies in legislation enhancing and protecting that office as it is now established and not by following a course that places incompatible duties upon this particular Court. As Judge Learned Hand warned in United States v. Marzano, 149 F.2d 923, 926 (2 Cir. 1945):

Prosecution and judgment are two quite separate functions in the administration of justice; they must not merge.

This Memorandum contains the Court's findings of fact and conclusions of law. The rulings made are set out in the attached Final Order and Declaratory Judgment.

FINAL ORDER AND DECLARATORY JUDGMENT

On the basis of findings of fact and conclusions of law set forth in an accompanying Memorandum filed this day, it is hereby.

Ordered and Decreed that:

(1) Plaintiff's motion for leave to file an Amended Complaint and add additional plaintiffs is granted.

(2) Plaintiff's motion for preliminary injunction is denied, and the trial of the action on the merits is advanced and consolidated with the hearing on said motion.

(3) Mr. Ralph Nader is dismissed as plaintiff for lack of standing.

(4) All injunctions prayed for in the Amended Complaint are denied.

(5) The Court declares that Archibald Cox, appointed Watergate Special Prosecutor pursuant to 28 C.F.R. § 0.37 (1973), was illegally discharged from that office.

FOOTNOTES

[1] At the injunction hearing, the Court dismissed Mr. Nader as a plaintiff from the bench, it being abundantly clear that he had no legal right to pursue these claims. Flast v. Cohen, 392 U.S. 83, 102, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968).

[2] Referring to various bills pending in the Senate, Senator Moss stated, "I am severely hampered in my ability to discharge my duties because of uncertainty which exists with respect to the legality of Special Prosecutor Cox's dismissal and the abolition of his office." Affidavit of Senator Frank E. Moss, dated October 29, 1973. Congressman Waldie is a member of the House Judiciary Committee and both he and Congresswoman Abzug have introduced resolutions calling for the impeachment of the President because of the Cox dismissal and other matters.

[3] The regulation from which the present Watergate Special Prosecutor, Mr. Leon Jaworski, derives his authority and his independence from the Executive branch is virtually identical to the original regulation at issue in that case. *See* note 13 *infra*. It is therefore particularly desirable to enunciate the rule of law applicable if attempts are made to discharge him.

[4] 38 F.R. 14688 (June 4, 1973). The terms of this regulation were developed after negotiations with the Senate Judiciary Committee and were submitted to the Committee during its hearings on the nomination of Elliot Richardson for Attorney General. Hearings Before the Senate Comm. on the Judiciary, 93rd Cong., 1st Sess. 144–46 (1973).

[5] *See* 5 U.S.C. § 301.

[6] Justice Department Internal Order 518–73 (May 31, 1973).

[7] *See* Defendant's Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction, at 13.

[8] Exhibit 12 to the Affidavit of W. Thomas Jacks.

[9] 38 F.R. 29466 (Oct. 23, 1973).

[10] *See* 38 F.R. 14688 (June 4, 1973).

[11] 5 U.S.C. § 301; 28 U.S.C. §§ 509–510.

[12] *See* 38 F.R 14688 (June 4, 1973): "The Special Prosecutor will carry out these responsibilities with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself."

[13] The two regulations are identical, except for a single addition to the new regulation which provides that the Special Prosecutor may not even be discharged for extraordinary improprieties unless the President determines that it is the "consensus" of certain specified congressional leaders that discharge is appropriate. *Compare* 38 F.R. 30738 (Nov. 9, 1973) *with* 38 F.R. 14688 (June 4, 1973).

Mr. WARNER subsequently said: Mr. President, I likewise wish to join in this colloquy of the matter concerning the appointment by Attorney General Griffin Bell in which case he appointed a Special Counsel to complete the Justice Department investigation of National Bank of Georgia loans to the Carter warehouse.

Attorney General Bell, in announcing the appointment of Paul J. Curran, stated that it is—

> Important to the American Public's confidence in the administration of justice that they be assured that the ultimate resolution of the investigation . . . was reached fairly and impartially without even the possibility of deference to high office.

Mr. President, I applaud the noble goal outlined in this statement, that there will be equal treatment under the law of all parties irrespective of their status in life.

Judge Bell's statement strongly implies that there must not be a double standard in the judicial process.

And yet, Mr. President, when one examines Judge Bell's actions and applies his own statement as a yardstick, one finds that his actions do not measure up.

Judge Bell stated that Mr. Curran's appointment will be a "special guarantee that the investigation will be full, vigorous and impartial."

But when one analyzes Mr. Curran's grant of authority, questions quickly spring to mind concerning Mr. Curran's ability to carry out his duty in a full and independent manner.

Mr. President, I am very concerned that the concept of partisanship has entered into this issue. There is no place for partisanship in the administration of justice.

Those of us who are troubled by the powers accorded the special prosecutor have been accused of partisanship. And yet, if partisanship has entered into this matter, it appears that it has been put there by Judge Bell.

Mr. Curran's political affiliation is

mentioned predominantly in articles on this subject, as if a Republican would prosecute more diligently than a Democrat.

Assistant Attorney General Philip B. Heymann, who will approve prosecutive decisions by Mr. Curran and who selected him, was quoted in yesterday's Washington Star as saying that Curran's GOP credentials were an "advantage" though not a determining factor.

It is the Justice Department which, by its actions and words, has muddied the waters by injecting partisanship into an issue where partisanship has no place.

The only real issue here, Mr. President, is the question of a double standard in the judicial process.

The Justice Department investigation which brought about Mr. Curran's appointment concerns possible irregularities which may touch a sitting President of the United States or some of his family.

Only once before in recent history has the Justice Department faced a similar situation. That was the Watergate investigation.

It is instructive to compare the powers accorded the Special Prosecutor appointed during the Watergate investigation with powers granted the Special Counsel in the current investigation.

The Watergate Special Prosecutor was granted complete independence, among other things, to: conduct proceedings before grand juries; decide whether or not to prosecute any individual, firm, corporation or group of individuals; initiate and conduct prosecutions; coordinate and direct the activities of all Department of Justice personnel; deal with congressional committees; and decide on grants of witness immunity.

Thus the powers of the Watergate Special Prosecutor were large and all encompassing. In short—he was his own man, answerable to no one. And the people applauded, because, since the investigation touched a sitting President of the United States, a grant of any less authority would have cast doubt and suspicion on the investigation.

The current investigation also touches a sitting President. Yet, in this instance, the powers of the Special Counsel have been strangely circumscribed.

Mr. Curran is answerable to Mr. Heymann, the Justice Department official who chose him to be Special Counsel. Mr. Curran must recommend to the Justice Department any prosecutive decisions he feels are necessary in this investigation. Any indictments of suspects or immunity for witnesses must be approved by Mr. Heymann. In short, the Special Counsel will not be his own man.

I am not implying, Mr. President, that Mr. Curran, Mr. Heymann or the Justice Department will not carry out their duties in a full and fair manner.

What does concern me, however, is the appearance that these arrangements present to the public: the suspicion which may be aroused that the Special Counsel, by his inability to function independently, may be compromised in some manner in the carrying out of his duties.

Mr. President, there's no place either for partisanship or for a double standard anywhere in the judicial process.

Particularly in a matter of this gravity, the integrity, impartiality, and independence of our proceedings must be above suspicion and beyond reproach.

Mr. President, I ask unanimous consent that an editorial appearing in the New York Times Times of today's date, March 22, written by William Safire, be printed in the RECORD.

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

[From the New York Times, Mar. 22, 1979]

PATSY PROSECUTOR

(By William Safire)

WASHINGTON—As predicted, Charles Kirbo's appointees at the Carter Department of Political Justice have found an amiable Republican to be Special Nonprosecutor in the Carter warehouse scandal.

Paul Curran—Bert Lance's lookalike—was the perfect cover-up choice because he is (a) a card-carrying Republican, son of Tom Curran, the late Manhattan Republican leader; (b) a former prosecutor hailed for his "courage not to indict" and (c) so eager for the job that he grabbed the offer on terms of subservience to Carter officials that any respectable special prosecutor would have scorned.

At his press debut, he proved himself unqualified as a serious prosecutor when he adopted the Carter "containment theory," calling the case "a fairly narrow area involving a reasonably narrow set of facts." That is exactly what the Carter men want: a Republican face wearing blinders.

The cosmetic counsel will have as his staff the same crew from Carter Justice that spent five months (from August until February) failing to "follow the tangent" into the Carter warehouse dishonesty. He will have no power to indict anyone without the approval of the Carter Administration, and no power to immunize a witness who wants to save himself by incriminating a higher-up.

Working in his "narrow area," Nonprosecutor Curran will not be able to investigate why I.R.S. auditors in Atlanta okayed a phony tax return; he will not run Federal Election Commission staffers before a Washington grand jury to discover the real reasons for the year-long delay in its Carter report; he will not ask how much the Libyans offered Billy to lift the embargo on their C-130's; most important, if Bert Lance or Billy Carter wants to make a deal to avert jail by turning state's evidence against the owner of a money laundry, the special nonprosecutor is powerless to follow the trail of corruption on high.

Instead, the "narrow" case, confined to "technical" violations, will be under the complete control of Criminal Division chief Philip Heymann, the man who dawdled for five months after Billy Carter took the Fifth before authorizing a "preliminary" F.B.I. probe, which itself neglected to interview key witnesses.

Mr. Heymann forfeited all claim to impartiality at the conference that paraded the captive Republican front man. Asked why the Attorney General had not obeyed the law set down in the Ethics in Government Act—putting the power of appointment of a special prosecutor in the courts—Professor Heymann asserted there was "no legal power of the Attorney General to go to court . . . no legal power of the court to appoint a special prosecutor . . . it is forbidden, not legally possible."

It may be that a legal argument could be advanced to help the Attorney General avoid the requirement of obeying the special-prosecutor law. But for Mr. Heymann to posit that obeying the act would be illegal—"forbidden"—shows the degree to which political loyalty has warped his legal judgment; and this is the man who will have the special nonprosecutor under his thumb. One hopes that an aroused Senate will challenge this affront to the system in court; if not, the precedent set by President Carter will mock the Watergate reforms.

The cover-up is in full swing on an other front: You will recall how, only last month, Billy Carter was a loose cannon, spilling information to reporters, scheduled to appear on "Face the Nation" on Feb. 11. Suddenly, for some unknown reason, everything changed. Using an unlisted phone number known to the White House, Billy's lawyer called CBS producer Mary Yates at home and canceled; Billy was checked into a hospital, and when his doctor refused to attest to the seriousness of his illness, the man over whom the President claims "no control" was sent to the naval alcoholic facility supposedly just for Government employees and their dependents. Under naval guard, he has become as incommunicative as Dita Beard. .

We now learn from The Washington Post that on March 1, Charles Kirbo, as trustee for Jimmy Carter, paid Billy Carter $2,000 an acre for 157 acres of land that Billy had bought three years before for $610 an acre. Inflation under Carter has been rough, but not that rough: Billy Carter came out $218,770 ahead, and soon became quite docile. Diehard cover-uppers will explain that the deal was long in the making, well worth the price, and all that: I call it hush money.

Will the special nonprosecutor get testimony under oath from Mr. Kirbo that the payoff to Billy was made without the knowledge of President Carter, as the blind trust demands? How was it financed? Will Billy and his brother-partner and White House counsel Robert Lipshutz and media adviser Gerald Rafshoon be interrogated under oath about this deal, which has placed the embarrassing witness-suspect out of reach of press and law?

Not by the "narrow case" special nonprosecutor. The Senate Judiciary minority must go to court to force the Carter men to obey the Ethics in Government Act. That's the only way we will get to the bottom of the dishonesty in one candidate's business that might have mushroomed into the perversion of the 1976 electoral process.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia (Mr. ROBERT C. BYRD) is recognized for the remainder of the time allocated.

APPOINTMENT OF SPECIAL PROSECUTOR IN WAREHOUSE INQUIRY

Mr. ROBERT C. BYRD. Mr. President, despite my view that the legislation providing for a Special Prosecutor could have been used in the current situation involving the investigation of the Carter warehouse problem, I—unlike others who have spoken—fully believe that Mr. Curran could have the necessary independence and can have the necessary independence to carry out the thorough investigation that justice requires.

Since the Attorney General has appointed a special counsel instead of taking the statutory route, it is incumbent on him, I think, to assure that Mr.

Curran will have the requisite independence. A written charter spelling out Mr. Curran's mandate is expected shortly, and it will receive careful attention. If the charter gives Mr. Curran the latitude to follow the investigation wherever it leads; if it safeguards him from the possibility of improper removal; if it permits his prosecutive decisions to be overruled only in egregious cases; and if it requires that all attempts by the Justice Department to overrule decisions of Mr. Curran be made known to Congress and the public immediately—if the charter measures up on all these counts, then Mr. Curran's investigation should leave no doubt in the public's mind that justice has been served.

Also, we should not underestimate the force of public opinion, the press, and Congress in assuring that Mr. Curran's independence will not be impaired. I do not believe that the public will tolerate any attempt to restrict Mr. Curran's independence, and for that reason it seems to me that no such interference should be expected to occur.

The Attorney General's action has been criticized by some who liken the appointment of Mr. Curran to Richard Nixon's attempt to contain Watergate by commencing an in-house investigation. Mr. President, this is not a time for partisanship. I take no pleasure in recalling the tragic events of Watergate. But I think it would be unfair to let the analogy stand unanswered.

In attempting to block a full and honest investigation of Watergate, Mr. Nixon asked John Dean, his counsel, who was fully involved in the Watergate coverup, to write a report about what had happened. Conversely in attempting to carry forward a full and honest investigation, Attorney General Bell has appointed Paul Curran Special Counsel to handle the investigation. Mr. Curran is not a member of the administration. He is a former U.S. attorney, with an impeccable reputation. He is a Republican who was appointed U.S. Attorney by Richard Nixon. He has been charged with the full authority to carry the investigation forward.

The public and the press will not tolerate any interference with Mr. Curran's independence.

Where public confidence in the administration of justice is concerned, there is no place for partisan politics. In that spirit, I would note the comments of Representative ROBERT MCCLORY, ranking Republican on the House Judiciary Committee. Mr. MCCLORY said, that while he was not completely satisfied, he was "confident that the appointment of Mr. Curran as special counsel will provide substantial confidence in the Carter warehouse investigation which did not exist before."

There are those who have criticized this appointment because Mr. Curran has not been given the same complete independence that Archibald Cox received when he was appointed Special Prosecutor by Elliot Richardson in May of 1973. As I have indicated, Attorney General Bell's action deserves careful scrutiny; and we—the public, the press, Congress—must be certain that Mr. Curran is given the requisite independence. But Mr. Bell's actions should be judged on their merits and not by false analogy to the traumatic events of Watergate.

At that time, we were deeply embroiled in a constitutional crisis of unprecedented magnitude. The country was reeling from an almost endless series of revelations.

The disclosures of the Washington Post, written by Carl Bernstein and Bob Woodward, had all come out. James McCord, one of the Watergate burglars, had told Judge Sirica that high-ranking White House officials had been implicated in the events leading up to the break-in. Mr. Nixon had been forced to fire H. R. Haldeman, John Ehrlichman, and John Dean because of their involvement in the coverup. He had been forced to replace Attorney General Richard Kleindienst with Elliot Richardson. Against this extraordinary backdrop, and because of the multiple, complex threads of wrongdoing now generically described as "Watergate," Archibald Cox was given extraordinary independence. His task demanded no less; the public would have tolerated no less.

In this case, we have a sensitive political investigation. Because the case is sensitive, the Attorney General has concluded that the best interests of justice would be served by appointment of an outside special counsel to handle the investigation.

The Special Prosecutor legislation did not compel him to do so, there was no overwhelming public pressure to do so. Mr. Bell concluded it was the best way to assure the country that the investigation was thorough and impartial. I think he could have accomplished his goal more effectively by using the statute, but he did not use it.

Let us not engage in partisanship at this time on this matter. Let us hope—and expect—that Mr. Curran will be permitted to proceed with the investigation in a fair and impartial manner, so that justice will be best served.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business, for not to exceed 15 minutes, with statements therein limited to 3 minutes each.

THE ELECTION IN RHODESIA

Mr. TSONGAS. Mr. President, the Senate will soon consider Senate Concurrent Resolution 8 sponsored by Senators MCGOVERN and HAYAKAWA. The resolution would establish a 25 to 50 person team of observers who would go to Rhodesia and observe the election to take place there next month. The intent of the resolution is to provide the President with data needed to judge the election as to its fairness and openness. The President will then determine whether the United States should lift economic sanctions against Rhodesia, as provided in the Case-Javits amendment to the International Security Assistance Act of 1978.

Although well intended by its sponsors, this resolution presents grave risks and problems which the Senate cannot ignore. Opposition to this resolution is not confined to the Senate. There are many prominent groups and individuals who feel strongly that the sending of observers to Rhodesia is both unnecessary and harmful to our foreign policy objectives in Africa.

A large group of concerned citizens wrote President Carter earlier this week and expressed their objections to the sending of observers. The letter and its long list of signatures are an important statement on this issue.

I ask unanimous consent that the letter be printed in the RECORD.

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

MARCH 19, 1979.

Hon. JIMMY CARTER,
President of the United States,
Washington, D.C.

DEAR MR. PRESIDENT: In the next few months you will face a crucial test of American commitment to the principle of majority rule in Southern Africa.

The Case-Javits amendment to the International Security Assistance Act of 1978 prohibits the enforcement of United Nations sanctions against Rhodesia if you determine that:

(1) Rhodesia has demonstrated its willingness to negotiate in good faith at an all parties conference held under international auspices on all relevant issues; and

(2) A government has been installed chosen by free elections in which all political and population groups have been allowed to participate freely with observation by impartial internationally recognized observers.

Clearly the Rhodesian government has satisfied neither condition.

Rhodesia has not demonstrated a commitment to negotiate in good faith at or before an all parties conference. Mr. Cledwyn Hughes has recently reported to Prime Minister Callaghan that Rhodesia has "given little if any attention to the updated Anglo-American proposals we gave them on 20 October in Washington." Instead he reports that Rhodesia intends to set its own course by holding elections on April 20 to form a "government of national unity" that they hope will lead to international recognition. "The Salisbury parties would attend [a conference] believing that they would lose nothing by again offering a place to the Patriotic Front within the internal settlement." The Salisbury government has demonstrated only that it will attend a conference, not that it will negotiate in good faith.

Secondly, "free elections" imply an electoral process based on a democratic constitution and conducted under objective conditions that insure genuine choice. The Rhodesian elections planned for April cannot meet this test. No election setting aside twenty-eight percent of parliamentary seats for four percent of the population solely on the basis of race can be characterized as free elections. They are inherently unfree.

No elections can be free unless the constitution on which they are based has itself been agreed to freely by all the people of Zimbabwe. The constitution under which the April elections are held has been approved by only one percent of the population.

Free elections require freedom for all political prisoners. They require freedom for all political parties to campaign. Yet the Patriotic Front parties are banned in Rhodesia and 2000 of its leading members are in jail less than one month before the elections.

The people of Zimbabwe cannot vote freely with a gun at their heads. Eighty-five percent of the country is under martial law. According to reports in the New York Times private armies loyal to the internal settlement are roaming the rural areas intimidating Africans in order to "teach them to vote."

The government has lost control of large areas which are now firmly held by the Patriotic Front. More than 150,000 Zimbabweans who are refugees in neighboring countries will not be able to vote. Under these conditions no free expression of national will can be obtained.

Free elections under these circumstances would require not simply observation but control and supervision by large, impartial independent forces. The Rhodesian regime, whose legitimacy is recognized nowhere in the world, cannot conduct partial and partisan elections under its own supervision and control and have them accepted as free. To send official observers to the elections would dignify a process that is fundamentally flawed.

No doubt you will wish to wait until the election process is held in April before making a decision on all of the evidence that unofficial sources can supply. However, we argue that no additional evidence and certainly no observation is required to reach the conclusion that the requirements of the Case-Javits amendment will not be met. The United States should not legitimate a fraud.

We urge you to continue to enforce sanctions while offering the parties our good offices if and when negotiations once more become possible. To do otherwise would destroy the little credibility our nation has recently enjoyed in Africa.

Respectfully yours,

Sister Jeanne Adams, S.H.C.J., Social Concerns Committee, Sisters of the Holy Child Jesus.

Mia Adjali, Executive Secretary, United Nations/International Affairs, Women's Division, Board of Global Ministries, The United Methodist Church.

Eqbal Ahmad, Fellow, Institute for Policy Studies.

Paul Albert, Northern California Democratic Council.

Robert Z. Alpern, Director, Washington Office, Unitarian Universalist Association.

George W. Baker, Assistant Professor, Howard University.

Richard Barnet, Fellow, Institute for Policy Studies.

Harry Belafonte, Entertainer.

B. Tartt Bell, Director, Washington Public Affairs Program, American Friends Service Committee.

Gerald Bender, Department of Political Science, University of California, Los Angeles.

Isaac Bivens, Board of Global Ministries, The United Methodist Church.

Sister Carole Bisson, Sisters of Notre Dame de NaMur, New Haven.

Robert Boehm, Member of Board of Directors, the Africa Fund.

The Honorable James Bond, Atlanta City Council.

The Honorable Julian Bond, Georgia State Senate.

William H. Booth, President, American Committee on Africa.

Robert Borosage, Director, Institute for Policy Studies.

Bishop Hartford Brookins, African Methodist Episcopal Church.

Robert Browne, President, Black Economic Research Center.

Violet H. Bryan, President, Barrister's Wives of New Orleans.

Trevor G. Bryan, President, Martinette Society.

Walter Carrington, Executive Vice President, African American Institute.

Dr. W. Sterling Cary, Conference Minister, United Church of Christ, Illinois Conference, and Former President, National Council of the Churches of Christ in the U.S.A.

Mrs. Alzada Clark, Second Vice President, Coalition of Black Trade Unionists.

Ramsey Clark, Attorney.

The Honorable William Clay, U.S. House of Representatives.

Dr. Charles E. Cobb, Commission for Racial Justice, United Church of Christ.

The Honorable Cardiss Collins, U.S. House of Representatives.

Sister Carol Coston, O.P., Executive Director, NETWORK.

Courtland Cox, Co-Director, Emergency Fund for Southern Africa.

Theresa Cropper, President, Black American Law Students Association.

Dr. Robert Cummings, Director, African Studies and Research Program, Howard University.

The Honorable David Cunningham, Los Angeles City Council.

Rev. Charles Dahm, Illinois Committee for Responsible Investment.

The Honorable Julius C. Daugherty, Georgia House of Representatives.

R. Hunt Davis, Jr., Associate Professor of History, University of Florida.

The Honorable Ronald Dellums, U.S. House of Representatives.

The Honorable Charles C. Diggs, Jr., U.S. House of Representatives.

The Honorable Julian Dixon, U.S. House of Representatives.

Sister Mary Dooley, C.S.J., President, Leadership Conference of Women Religious.

Jean Dorsett, Vice President, Women's Division, Board of Global Ministries, The United Methodist Church.

Dr. Robert Edgar, Assistant Professor, African Studies and Research Program, Howard University.

The Honorable Melvin Evans, U.S. House of Representatives.

Prof. Richard Falk, Center for International Studies, Princeton University.

The Honorable Robert Farrell, Los Angeles City Council.

The Honorable Walter Fauntroy, U.S. House of Representatives.

Rev. Carl Feil, O.S.M., Administrative Assistant, U.S. Catholic Mission Council.

Rev. Robert K. Finnegan, Secretary Treasurer, Premonstratension Fathers, Wisconsin.

William J. Foltz, Professor of Political Science, Yale University.

Henry Foner, President, Joint Board of the Fur, Leather and Machineworkers Union.

Moe Foner, Executive Secretary, District 1199, National Union of Hospital and Healthcare Employees.

The Honorable Harold Ford, U.S. House of Representatives.

Bishop Joseph Francis, S.V.D., Auxiliary Bishop of Newark, N.J.

Douglas Fraser, President, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

Elizabeth Steel Genne, President, National Board of the Young Women's Christian Association of the U.S.A.

Victor Goode, Executive Director, National Conference of Black Lawyers.

Carlton B. Goodlett, M.D., President, National Black United Fund.

The Honorable William Gray III, U.S. House of Representatives.

Gale Green, Atlanta Branch, National Association for the Advancement of Colored People.

Karl D. Gregory, Professor of Economics and Management, Oakland University.

Jane F. Guise, Coordinator, North East Human Rights Network.

Ruth M. Harris, Executive Secretary for Urban/Rural Ministries World Division, Board of Global Ministries, The United Methodist Church.

The Honorable Richard Hatcher, Mayor, Gary, Indiana.

The Honorable Augustus Hawkins, U.S. House of Representatives.

Edward A. Hawley, Executive Editor, Africa Today.

Father Bryan Hehir, Associate Secretary of International Justice and Peace, United States Catholic Conference.

Dorothy Height, National President, National Council of Negro Women.

Sister Valerie Heinonen, Dominican Sisters of the Sick Poor, Ursuline Sisters of Thildonck.

M. Carl Holman, President, National Urban Coalition.

The Honorable Benjamin Hooks, Executive Director, National Association for the Advancement of Colored People.

George M. Houser, Executive Director, American Committee on Africa.

The Rev. M. William Howard, President, National Council of the Churches of Christ in the U.S.A.

Eugene Jackson, President, National Black Network.

Rev. Jesse L. Jackson, National President, Operation PUSH, Inc.

The Honorable Maynard Jackson, Mayor, Atlanta, Georgia.

Alfred Johnson, Public Affairs Officer, The Episcopal Church.

Willard R. Johnson, Professor of Political Science, Massachusetts Institute of Technology.

William Johnston, President, Episcopal Churchman for South Africa.

Rev. Thomas Joyce, C.M.F., Eighth Day Center for Justice.

Edward R. Killackey, M.M., Maryknoll Washington Office Justice and Peace.

Charles Kindle, Foreign Affairs Chairman, Pittsburgh Branch, National Association for the Advancement of Colored People.

Saul Landau, Director, Transnational Institute.

The Honorable Mickey Leland, U.S. House of Representatives.

René Lemarchand, Professor, African Studies Center, University of Florida.

Professor Richard B. Lillich, President, International Human Rights Law Group.

Edgar Lockwood, Executive Director, Washington Office on Africa.

Dr. C. Payne Lucas, Executive Director, AFRICARE.

William Lucy, President, Coalition of Black Trade Unionists.

Barbara Lupo, Co-Director, Clergy and Laity Concerned.

Clinton M. Marsh, Associate Synod Executive, Synod of the South, United Presbyterian Church.

Earnest C. Marshall, Voter League, Woodbury, Georgia.

Robert Marshall, Director, Office of Mission Service and Development, Lutheran World Ministries.

The Honorable Hilda Mason, District of Columbia City Council.

Edward May, Director, Office of World Community, Lutheran World Ministries.

Lloyd McBride, President, United Steelworkers of America.

Melvin A. McCaw, Director, Washington Office, African American Institute.

Paul McCleary, Associate Secretary, Division on Overseas Ministries, National Council of the Churches of Christ in the U.S.A.

Sister Mary Ann McGivern, S.L., Midwest Coalition for Responsible Investment.

Sister Janice McLaughlin, M.M., former Press Secretary, Catholic Commission for Justice and Peace, Salisbury, Rhodesia.

Kathleen McTigue, South Africa Catalyst Project—West.

Patsy T. Mink, President, Americans for Democratic Actions.

Charlene Mitchell, Executive Secretary,

National Alliance against Racist and Political Repression.

The Honorable Parren Mitchell, U.S. House of Representatives.

Michael Moffitt, Letelier-Moffitt Memorial Human Rights Fund.

Jerome Mooman, Administrative Assistant to the Mayor, City of New Orleans, Louisiana.

L. Calvin Moore, Legislative Director, Oil, Chemical and Atomic Workers Union.

The Honorable Ernest N. Morial, Mayor, New Orleans, Louisiana.

Sister Annette Mulry, M.M., Social Concerns Desk, Maryknoll Sisters.

Sister Regina Murphy, Social Concern Coordinator, Sisters of Charity, New York.

Sister Marie Augusta Neal, Justice and Peace Committee Chairperson, Boston Province of the Sisters of Notre Dame de NaMur.

Robert Nee, S.S.C.C., New England Coalition for Responsible Investment.

Jan Neffke, Public Policy Director, Greater Pittsburgh National Association for the Advancement of Colored People.

Rozell William Prexy Nesbitt, Visiting Fellow, Institute for Policy Studies.

Rev. George C. Newmeyer, Director, Office for Justice and Peace, Diocese of Pittsburgh.

Paul Newpower, Coordinator, Twin Cities Human Rights Working Group.

Sister Merle Nolde, Co-Director, National Assembly of Women Religious.

Rev. Randolph Nugent, Associate General Secretary, National Division, Board of Global Ministries, The United Methodist Church.

Sister Mary O'Keefe, Co-Director, National Assembly of Women Religious.

S. Garry Oniki, Executive Director, Office for Church in Society, United Church of Christ.

Robert L. Pitts, Executive Director, Black Catholic Ministries and Laymen's Council, Pittsburgh.

Avery Post, President, United Church of Christ.

Alvin F. Poussaint, M.D., Associate Professor of Psychiatry, Harvard Medical School.

Father Robert C. S. Powell, Director, Africa Office, National Council of the Churches of Christ in the U.S.A.

William F. Pruitt, Director, African Studies Program, Kalamazoo College.

Julia Brogdon Purnell, National President, Links, Incorporated.

Sister Mary Catherine Rabbitt, Sisters of Loreto, Catholic Coalition, Region 6, Denver, Colorado.

The Honorable Charles Rangel, U.S. House of Representatives.

Ruby Rhoades, Washington Representative, Church of the Brethren.

Lawrence M. Rich, Coalition for Responsible Investment.

Sister Kathleen Rimar, O.S.F., Western New York Coalition for Responsible Investment.

The Honorable Bill Robinson, Pittsburgh City Council.

Cleveland Robinson, Secretary-Treasurer, District 65, Distributive Workers of America.

David Robinson, Chairperson, Current Issues Committee, African Studies Association.

Randall Robinson, Executive Director, TransAfrica.

Susan G. Rogers, Assistant Professor of African History, University of Minnesota.

Joyce Rothermel, Chairperson, Peace and Justice Committee of the Pittsburgh Sisters Council.

Brother Cyprian Lamar Rowe, F.M.S., Executive Director, The National Office for Black Catholics.

Molly Rush, Director, The Thomas Merton Center, Pittsburgh.

Joel Samoff, Department of Political Science and Center for Afroamerican and African Studies, University of Michigan.

Frank Savage, Vice President, Equity Life Assurance Company, Inc.

Louis W. Schneider, Executive Secretary, American Friends Service Committee.

Sister Agnes Ann Schum, S.L., Social Advocate Office of the Sisters of Loretto.

Harry M. Scoble, Human Rights Internet.

The Honorable Al Scott, Georgia House of Representatives.

Professor Ann Seidman, Co-Chairperson, Research, Association of Concerned African Scholars.

Karl Seidman, South Africa Catalyst Project—East.

Hall Shapiro, President, Furriers Joint Council of New York.

Horace L. Sheffield, President, Detroit Chapter, Coalition of Black Trade Unionists.

Stanley K. Sheinbaum, Regent, University of California.

George W. Shepherd, Jr., Professor of International and African Studies, University of Denver.

Sister Rose Sheridan, Social Justice Office, Sisters of St. Joseph.

William H. Simons, President, Washington Teachers' Union, Local 6, AFT.

Richard L. Sklar, Department of Political Science, University of California, Los Angeles.

Timothy Smith, Director, Interfaith Center on Corporate Responsibility.

Edward F. Snyder, Executive Secretary, Friends Committee on National Legislation.

Alonza R. Speight, Executive Director, Boston Community Media Council, Inc.

Edward I. Steinhart, Department of History, University of Texas.

Marc Stepp, Vice President, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

The Honorable Bennett Stewart, U.S. House of Representatives.

John Stockwell, Author, *In Search of Enemies, A CIA Story*.

Jerry Stookey, O.P., Director, Catholic Justice and Peace Office, Archdiocese of Denver.

Leo Suslow, Director of International Affairs, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

The Honorable Percy E. Sutton, Chairman of the Board, WLIB–AM, WBLS–FM, Inner City Broadcasting Corporation.

Stephen Talbot, Africa Editor, *Internews*.

Ethel Taylor, National Coordinator, Women Strike for Peace.

Patrick F. Tobin, Washington Representative, International Longshoreman's and Warehousemen's Union.

Dr. James Turner, Director, Africana Studies and Research Center, Cornell University.

Sister Marilyn Uline, O.P., Eighth Day Center for Justice.

Robert van Lierop, Filmmaker.

Sister Christine Venker, C.S.J., Sisters of St. Joseph of Carondolete, St. Louis.

Immanuel Wallerstein, Distinguished Professor of Sociology, State University of New York at Binghamton.

Dr. Ronald Walters, Professor of Political Science, Howard University.

Glenn Watts, President, Communications Workers of America.

The Honorable Lottie H. Watkins, George House of Representatives.

Paul Wee, General Secretary, Lutheran World Ministries.

Peter Weiss, Vice President, Center for Constitutional Rights.

Monsignor Aloysius J. Welsh, S.T.D., Executive Director, National Catholic Conference for Interracial Justice.

The Honorable Charles W. Whalen, Jr., President, New Directions.

The Honorable John White, Georgia House of Representatives.

David Wiley, Director, African Studies Center, Michigan State University.

Eddie N. Williams, President, Joint Center for Political Studies.

Margaret Bush Wilson, Chairperson of the Board, National Association for the Advancement of Colored People.

William Wipfler, Director, Human Rights Office, Division on Overseas Ministries, National Council of the Churches of Christ in the U.S.A.

Robert L. White, National President, National Alliance of Postal and Federal Employees.

Herman Will, Associate General Secretary, Board of Church and Society, The United Methodist Church.

Junius W. Williams, President, National Bar Association.

Laurie S. Wiseberg, Human Rights Internet.

J. Philip Wagaman, Dean and Professor of Christian Social Ethics, Wesley Theological Seminary.

Marcia Wright, Professor of History, Columbia University.

Sara-Alyce P. Wright, Executive Director, National Board of the Young Women's Christian Association of the U.S.A.

Alma H. Young, Special Assistant to the Mayor, New Orleans, Louisiana.

Amy Young-Anawaty, Executive Director International Human Rights Law Group.

(Organizational affiliations' lists for identification purpcses only).

DAVID ROCKEFELLER EULOGIZES HIS OLDER BROTHER

Mr. PERCY. Mr. President, I believe that there can never be too much said, or written, about the contributions former Vice President Nelson Rockefeller made to this Nation as well as the world.

His youngest brother, David, so aptly expressed the personal attributes and characteristics of Nelson Rockefeller at the memorial service that I thought it would be appropriate to insert them into the RECORD for all to read.

Mr. President, I ask unanimous consent that the full text of David Rockefeller's eulogy at the memorial service for former Vice President Rockefeller be printed in the RECORD at this point.

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

We are gathered together here in this beautiful sanctuary of the Riverside Church from many parts of the country and the world, from many sectors of our society, to pay tribute to the memory of Nelson Aldrich Rockefeller. Your being with us means so much to Happy, Laurance and all of us in the family. We have been through a difficult period—with John's recent death and the deaths of Winthrop and Babs only a few years before.

I speak to you today as Nelson's youngest brother and as a member of a large family which he loved and from which he drew strength—to a family to which he gave devoted and constructive leadership.

Nelson was a man of action, with a deep belief in the worth and dignity of the individual, in the democratic process, in the American enterprise system, and in the responsibility of the citizen to revere God and help his fellow man. In addition, he loved beauty in nature and in the arts—he loved the companionship of people—he loved life.

These traits represented a synthesis of the qualities of his grandfathers and his parents, all of whom he greatly admired.

Grandfather Aldrich served for 31 years as United States Senator from Rhode Island—he was majority leader for the last 17 years of his term. He played an active role in the formulation of economic policies of our country at a critical period before and after

the turn of the century. Even though Senator Aldrich died when Nelson was a small boy, Nelson's fascination for politics undoubtedly stemmed from the legacy of the man for whom he was named and about whom he heard much from Mother.

Grandfather Rockefeller, a founder of one of America's great industries, lived until Nelson had reached full maturity. They were devoted to one another and saw one another frequently. Nelson's respect for rugged individualism, for creative capitalism, for surrounding himself with able associates clearly came from this intimate association with his Grandfather Rockefeller.

From Father, whose upbringing as a devout Baptist, and whose lifetime devotion to philanthropy led him to pioneer in fields such as education, conservation, race relations and medical research, Nelson learned that opportunity and responsibility go hand in hand. His strong adherance to Judeo-Christian principles and his respect for all religions were deeply imbedded in him by Father and guided his actions throughout his life. For this and a commitment to discipline and hard work, Father provided prime inspiration.

No one had a stronger impact on Nelson's life than Mother. When Nelson was fifteen years old, Mother wrote to him:

"I am eager that you shall be much above the ordinary in character and achievement, the world needs fine men, there is great work waiting to be done. I want you to train yourself to meet any opportunity the future may hold in store for you."

It was she who gave him a love of the visual arts which was a critical element in his creativity and also provided him with joy and relaxation. It was she who imparted to him a concern for people—their qualities, their problems, their aspirations—and who imbued him with a capacity to find people—all kinds of people—a source of unending exhilaration and satisfaction. It was her uncanny intuition and wisdom which gave to Nelson and, indeed, to all of us, subtle guidance and inspiration.

The impact on Nelson of these four powerful and very different personalities gave him a sense of purpose, perhaps even of mission. It made him the strong, magnetic leader he was.

After graduating from Dartmouth College, where these qualities of leadership were already manifest, Nelson joined the family office to work with Father on family affairs. A year or two before, Father had started the construction of Rockefeller Center. Work had hardly begun before the great depression hit the country and the bottom dropped out of the real estate market. With no prior experience, Nelson immersed himself in the building and leasing of Rockefeller Center, and, along with Mother, in selecting works of art to adorn it. He, more than any other person, was responsible for making Rockefeller Center, described by pundits at the time as a white elephant, a financial success.

At that time, Nelson became deeply engrossed with the Museum of Modern Art, which Mother and two other women had started a short time before. Once again his qualities of leadership, coupled with his interest in the arts and in efficient management, contributed enormously to its becoming the world's preeminent museum of contemporary art.

Nelson was always a champion of family solidarity—something in which Mother also fervently believed. It was Nelson's far sightedness and leadership which brought us together as a family unit—out of which grew many joint initiatives, including the Rockefeller Brothers Fund. Close at his side, and with unswerving devotion and loyalty, in good times and in bad, was my brother Laurance, with whom Nelson always had a very special relationship.

Nelson's career in public service began in 1939, when President Roosevelt asked him to take on a special assignment in relation to Latin America as Co-ordinator of Inter-American Relations. In this position, he demonstrated his unusual capacity to relate with sensitivity and feeling to peoples of diverse culture and background to make them feel equal "Partners in Progress." Our relations with our Latin American neighbors were never better than during the period when he was Co-Ordinator.

While he cherished the appointive positions he held in government, Nelson felt that only through elective office would he truly represent the people in a democratic society. His four terms as Governor of the State of New York brought him the challenge he was looking for more than any other task he undertook during his life. He relished the matching of wits, the rough and tumble which is inherent in political life.

In reviewing Nelson's accomplishments as Governor, one sees the fulfillment of his heritage—the establishment of the New York State Arts Council, the creation of the Adirondack State Park, and the dramatic expansion of the State University of New York.

His role as Governor was often controversial and provocative, but he showed great vision as a planner, great courage as a doer and he gave of himself without stint.

The climax of Nelson's career as a public servant was the two years he served with President Ford as Vice President of the United States. I am sure that Nelson would have been very touched and honored to think that President Ford, as well as President Carter, were attending this service today.

For us in the family, this is a day of mourning, but also a day of thanks. Our family owes Nelson a great deal for his vision, for his radiant strength, for his initiative in setting goals and for the strong leadership he gave in whatever area he touched. His departure leaves a gap which never will be filled, but his spirit, his patriotism, his determination and his optimism will remain a vibrant force in our lives. We are proud of him as a member of the family. We are proud of his manifold achievements. We are proud of his ability to deal gracefully with disappointment, as well as success. Our love for him will never end.

AUTO REPAIRS: THE $20 BILLION RIP-OFF

Mr. PERCY. Mr. President, public attention is often drawn to the involvement of organized crime in car thefts. But a less organized kind of crime burdens the American car owner as well. Every year, we throw away $20 billion on shoddy, excessive or unnecessary auto repairs and maintenance, according to the National Highway Traffic Safety Administration.

That figure is even more shocking in light of America's annual $50 billion auto repair bill. And we cannot simply blame inept or crooked garage mechanics. Administrator Joan Claybrook of the National Highway Traffic Administration attributes much of the $20 billion waste to unwary owners and to auto manufacturers who are not sufficiently sensitive to the needs of consumers. She notes that manufacturers often design cars that are easy to make, rather than easy to maintain.

Small wonder, then, that Americans consistently complain the most about the auto sales and repair industry. Travel is vital in this Nation, and consumers cry out for reliability, lower repair costs, and safety.

Mr. President, I ask unanimous consent that an excellent article from the January/February edition of Journal of Insurance, entitled "Auto Repairs: The $20 Billion Rip-Off," be inserted in the RECORD.

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

AUTO REPAIRS: THE $20 BILLION RIP-OFF

Americans are throwing approximately $20 billion annually down the drain on improper or unnecessary auto repairs and maintenance, according to the National Highway Traffic Safety Administration.

This painful bite comes out of a total annual repair and maintenance bill of about $50 billion.

In testimony before recent hearings of the Subcommittee on Consumer Protection and Finance of the House Committee on Interstate and Foreign Commerce, NHTSA Administrator Joan B. Claybrook said:

"This economic waste is not attributable just to the repair industry. Our figures show that about half of the $20 billion loss results from fraudulent, incompetent, or unnecessary repairs. The remaining losses result from automobile designs that place a priority on ease of manufacture over ease of repair and diagnosis, and from owners' misunderstanding or ignoring their car's maintenance and repair needs."

Ms. Claybrook broke down the rip-off this way:

Faulty repairs for which owners are charged . . . $3 billion.

"Package" deals including parts or repairs that are not needed . . . $3 billion.

Unneeded repairs sold with possible fraudulent intent . . . $2 billion.

Vehicle design requiring use of overly modularized parts, highly non-standard parts or excessively laborious repair techniques . . . $2 billion.

Wasteful, overfrequent preventive maintenance . . . $2 billion.

Accidents resulting from vehicle defects arising from undermaintenance or improper repair . . . $2 billion.

Excessive emissions and wasted fuel resulting from improper maintenance . . . $2 billion.

Car prematurely retired due to inadequate maintenance . . . $2 billion.

Inadequate or incorrect diagnosis of problems leading to unneeded repair . . . $1.5 billion.

Total . . . $19.5 billion.

That is hardly peanuts. As the late Senator Everett Dirksen once remarked, "A billion here and a billion there adds up."

In a statement a week later (September 21, 1978) to the same subcommittee, Albert H. Kramer, director of the Bureau of Consumer Protection of the Federal Trade Commission, declared, "The automobile is not only a major source of consumer expenses, but it is also a major—if not the number one—source of consumer complaints."

Quoting a Harris poll commissioned by the Sentry Insurance Company, he said that "Not surprisingly . . . people rank the following four industries as the worst in terms of serving consumers: garages and auto mechanics, car manufacturers, the oil industry, and used car dealers."

From the NHTSA testimony it would appear that responsibility for the wasted auto repair billions is divided three ways: among

owners, garages and mechanics, and auto manufacturers.

The owners' share of blame is easily explained: most people are as ignorant of what is under the sheet metal and chrome of their cars as they are of the science of medicine. It is the rare motorist who takes a course in auto maintenance, and auto repair manuals are not famed as best sellers. It undoubtedly is true, as one auto manufacturer's spokesman testified, that Detroit "is the world's largest publisher of unread literature."

This ignorance, of course, makes the average consumer an easy mark for fraudulent practices and for automobile advertising and salesmanship which stress appearance and emotional appeal over functional design.

As former Secretary of Transportation Alan S. Boyd stated, "With rare exceptions, the individual owner is not able to diagnose the safety conditions of his car, evaluate the proficiency of repairs and quality of replacement parts, or otherwise exercise meaningful judgment concerning automotive repairs."

In a 1971 book, *The Great American Auto Repair Robbery*, (the situation hasn't changed), authors Donald Randall, former counsel to the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, and Arthur Glickman, a *Wall Street Journal* reporter, said:

"Just as the automobile has become an integral part of American life, with 86 percent of the population dependent upon it to travel, so is the near impossibility of getting a car fixed correctly, honestly, quickly and at reasonable prices.

"In fact, auto repair is a major domestic problem, much like education, housing, health, crime, welfare, and mass transit. Yet, it is rarely thought of as such, despite its effect on all segments of the population . . .

"Even though auto repair problems affect such a wide range of people, little has been done to reform or regulate the industry. Why? Largely because too many people simply take for granted that being cheated on auto repairs is as much a part of the American way of life as fireworks on the Fourth of July. This apathy and feeling of helplessness have combined to make auto repairs the single largest consumer problem in the United States today."

Granted that car owners could help protect themselves to some degree by educating themselves about cars, does their failure to do so justify their victimization when it comes to repairs? It would hardly seem so, in view the fact that the purchaser of any other product—say, a watch—is not expected to be an expert in its construction, and is in fact forced to rely on the seller's expertise because of the physical impossibility of making himself an authority on every product he buys. Thus, the car owner must be judged not guilty—though he may be considered excessively innocent.

This leaves the major portion of the blame to be shared by the mechanics and the manufacturers.

What about those garagemen? Is "Honest George," your neighborhood repairman, really doing "fraudulent, incompetent, or unnecessary repairs" to all—or nearly all—the vehicles that come his way?

One should not jump too quickly to such a conclusion: after all, 60 per cent of the billions spent by automobilists go for valid repair costs, according to NPTSA figures. Actually, Honest George, once you find him, can be your best friend in the auto repair business since he depends on your coming back to him year after year.

However, experience indicates that not all mechanics are named Honest George, by a long shot.

A ploy sometimes used to expose dishonest repairmen in the purposely "disabled" vehicle. *The New York Times*, for instance, had a reporter take a car to 24 repair shops in Manhattan and in Suffolk County (Long Island). The car was in perfect working order, except that a clip holding the throttle-valve linkage to the transmission had been removed.

The repair shops were told only that "something seems to be wrong with the transmission," and that "the car just doesn't seem to be shifting right."

Thirteen garages, a *Times* article later reported, either misdiagnosed the problem completely or recommended expensive and unnecessary work.

Seven of the shops offered estimates ranging from $199.95 to $345. Another seven did the necessary repair work for under $20, and one did it at no charge.

This survey is typical of many similar ones conducted by newspapers.

REPAIR SURVEYS

A somewhat more scientific approach was reported by the FTC's Kramer in his Congressional testimony. He said:

"A comprehensive consumer survey found that 34 per cent of those questioned who had their cars repaired within the year were dissatisfied with the service they received. The survey covered twenty-six product and eight service categories ranging from household appliances to dental care. Auto repair generated more complaints than any other product or service included in the survey.

"Unsatisfactory repair, however, is only the tip of the iceberg. Although most consumers complain about the problems they have getting their cars fixed correctly, there is more evidence that unnecessary repairs cost car owners billions of dollars annually. These losses are documented by data collected at a diagnostic center operated . . . by the Department of Transportation in Huntsville, Alabama, where 5,000 cars were diagnosed both before and after they were repaired. The Alabama data reveal that 25 per cent of all the repairs to the cars inspected were unnecessary, and that 29 cents of every dollar was spent on unneeded work."

While part of the loss is surely attributable to deliberate fraud, a good deal of it results from sheer incompetence. In a chapter entitled "Anyone Can Call Himself a Mechanic," Randall and Glickman also point out that dollar loss is not the worst consequence of faulty repair work—the result often can be injury or death. Here's how they put it:

"If you are an unusual and exceedingly fortunate motorist, the mechanic to whom you entrust your car will properly repair it.

"If you are just plain lucky, the mechanic will likely perform unnecessary repairs or misrepair your car so that it has to be fixed again.

"If you are unlucky, the mechanic to whom you entrust your car could help you to an early grave. Not all mechanics are dishonest but all too many do not have the required skills to correctly perform the repairs they attempt. Those that finally do fix the car do so through a costly trial-and-error process which may be good for the auto parts makers but is bad for the hundreds of millions of American motorists."

They cite the case of a young motorist who was killed because of a defective brake job, and point out that any of us could meet the same fate "because anyone . . . can hang a 'mechanic on duty' sign or put on a mechanic's uniform and offer to perform life-and-death-related repairs on your car even if he doesn't know a spark plug from an ear plug."

REGULATIONS INADEQUATE

Randall and Glickman add:

"States require all sorts of tradesmen from barbers and beauticians to plumbers and real estate agents to pass rigid examinations and be licensed before they are allowed to practice their index—but not auto mechanics."

Although some states have laws imposing regulation on repair shops, only two, and the District of Columbia, have enacted legislation requiring licensing of mechanics, according to the National Institute for Automotive Service Excellence.

The District of Columbia program is a good one—on paper—but there are insufficient funds to enforce it, says the Institute, while in Michigan "virtually anyone can pass the test for certification as an auto mechanic." In Hawaii, anyone who was operating as a mechanic before the licensing law was passed was automatically licensed, without regard to his competency.

Training programs for skilled mechanics do not begin to meet the enormous need, although there are some excellent ones. The National Automobile Dealers Association, for instance, has a nationwide four-year apprentice training program, and the Automotive Service Councils of America has a similar one. But other programs vary in effectiveness.

Malcolm Lovell, manpower administrator for the Department of Labor, told a Senate committee: "It is our view that industry has the primary obligation for meeting its own manpower requirements. It would appear that the automotive industry's training efforts have not kept pace with the rate of growth of the automobile vehicle population."

Lovell admitted that the Labor Department's own auto mechanic training programs were not even geared to meeting the real skill shortage, as they were instead directly mainly to providing training for "disadvantaged people"—training which was ineffective because many of those enrolled lacked the education to follow complicated diagrams and understand the physical principles involved.

There are some good public-school and industry training programs, but in sum they clearly are inadequate. One organization that does seem to be making headway in raising standards is the National Institute for Automobile Service Excellence, founded in 1972 as a non-profit corporation to improve the quality of automotive repair services.

NIASE gives examinations in eight fields of auto repair and maintenance, and certifies those mechanics which meet its standards. As of the end of the year 1978, more than 190,000 mechanics had taken its tests, and more than 144,000 of these had earned some 550,000 certifications. (Certified mechanics may, of course, qualify in more than one field. In addition, NIASE tests and certifies the competency of automobile technicians in body repair, painting and refinishing.)

The Institute, headquartered in Washington, D.C., gives tests twice a year at about 275 locations throughout the 50 states. Each shop with a mechanic (or perhaps several) that it has certified is given a NIASE orange and blue sign stating that it employs mechanics certified by the Institute and asking customers to "let us show you their credentials."

NIASE also prepares and updates national and state directories of shops employing certified mechanics. The state directories are free.

Another effort to help the public with auto repair programs—particularly on warranties—is the Automotive Consumer Action Panels (AUTOCAPS) program developed by the National Automobile Dealers Association in 1973. More than 40 such local panels are now in operation. When a dispute arises, the local dealers' association first tries to resolve it. If it cannot be resolved, either a single person (in some localities) or a panel of consumers and dealers suggest solutions.

A step in the right direction by a major oil company is the program set up by Shell in 1973, designating qualifying service stations as Shell Auto Care stations. These now number more than 1,150 serving 23 major mar-

kets in 16 states. By the end of 1979 Shell expects to have more than 2,000 such stations operating in 42 markets. Stress is placed on the motto "Car Repairs You Can Trust" with the dealer agreeing to give written estimates to back repairs in writing, employ a certified mechanic, return old parts, render fair treatment and provide neighborhood convenience.

For some years Shell has carried on a public relations-advertising program termed one of the most effective of the '70's by public relations professionals. The company has prepared a series of eight-page illustrated, easily read booklets aimed at helping the average driver. Subjects of the booklets range from an early warning book for spotting car problems before they cost big money to a car fix-up book, one on emergency repairs that the *driver* can make on the road, and even one on shopping for a car repair place.

The booklets are used as inserts in major magazines such as Reader's Digest, and are distributed through Shell stations. More than 507 million copies have been published.

STATE LAWS

In recent years, the number of states with laws regulating auto repair practices has substantially increased, even though they are still a minority. Prior to 1973, only three states had any protection for consumers in their auto-repair dealings. As of late fall, 1978, 21 states, the District of Columbia and at least three localities—Dallas, Texas, and Prince Georges and Montgomery Counties, Maryland—had auto-repair laws.

As a result of Michigan's Motor Vehice Service and Repair Act, one repair shop paid a fine of $7,000 and refunded to a driver the cost of unnecessary repairs. Between November, 1976, and the end of 1977, the Michigan agency recovered more than $100,000 for the state's consumers. California, under its law for registering repair shops, secured $800,000 in consumer adjustments during the year ended June 30, 1978.

New York also requires motor vehicle repair shops to register and to post their labor rates. As of September 1, 1978, almost 24,000 repair places were registered (the law took effect in late 1975). More than 22,000 complaints concerning repair shops had been made, and more than 4,700 of these concerned incompetent repair work.

Thus, while the problem of obtaining an adequate supply of honest and competent auto repairmen remains a huge one, the few steps which have been taken indicate that the problem is not insurmountable given the requisite will by legislators, consumer groups, and auto trade leaders.

MANUFACTURERS' ROLE

Now, what of the auto makers?

Randall and Glickman make this sweeping statement:

"The major blame for practically everything wrong with the auto repair industry must fall on the auto manufacturers—the shortage of repair facilities and mechanics, the flat-rate manuals, service writers who sell unneeded repairs, lack of mechanic licensing and training, damage-prone cars, worthless warranties, cars delivered to customers poorly assembled, cars not designed for easy repairability, and lack of parts standardization. But it is not easy to get car company executives to admit that they are responsible for the whole auto repair mess."

Even so sympathetically-oriented a trade publication as *Motor Age* admitted, in its September, 1978, issue, that ease and economy of repair have received low priority from car manufacturers, and that things will have to change in the coming decade—by increasing government pressure, if not voluntarily.

Consumer adviser Betty Furness called service "an unwanted stepchild" of the auto manufacturers, who measure success largely by the number of cars they can sell—and who have been accused of being more interested in the replacement parts aftermarket than in the convenience or pocketbook of the customer after he has bought their car.

An organization close to the insurance industry which has looked closely at the auto repair problem is the National Association of Insurance Commissioners.

The NAIC has organized a sub-group called the "Task Force on Containing Overall Automobile Insurance Costs." One of the areas of potential cost containment this body reported on to the NAIC at its June, 1978, annual meeting was "Vehicle Design for Damageability, Repairability and Occupant Safety."

While the NAIC is an insurance-related group, being made up of the insurance commissioners of the several states, it certainly could not by any stretch of imagination be called a captive group of the insurance industry. Therefore, one could hardly be more objective than to quote the findings of the NAIC Task Force.

The report first focused on auto bumpers. On that point:

"Vehicle design deficiencies have exacted substantial needless human and property damage penalties from consumers, insurers and society. Over the past several years the Insurance Institute for Highway Safety (IIHS) has engaged in considerable research and monitoring of the "designed-in delicacy" of new cars and the degree to which their bumpers and other component parts protect against low speed impacts. Testimony before various Congressional committees revealed new car design characterized by prominent use of sheet metal parts in the front, rear and side exterior areas likely to be impacted upon in a walking speed collision such as those which occur in a parking lot and driveways. Bumper systems were shown to fail to provide adequate protection in even very low speed crashes. Such deficiencies were shown to result in hundreds of dollars in damage per vehicle, needlessly increasing the cost of repair and replacement parts. . . .

RELIABILITY

"The high cost of automobile repair stems from at least two fundamental causes. First, automobiles are designed with a view toward ease of assembly, not ease of repairability. This is not surprising, since there appears to be little direct profit to the auto manufacturers to do otherwise . . ."

"A second fundamental cause in increased repair costs is the alarming escalation in the cost of crash repair parts. . . . this may, at least in part, be attributable to the absence of viable competition . . ."

That the way a car is made makes a difference in repair costs is borne out by data compiled by the Highway Loss Data Institute, an insurance industry-supported statistical organization.

Said the Task Force:

"The data collected has led to the major conclusion that within given classes of insureds, there is substantial variation of property loss by car make, model and year. Furthermore, essentially the same models are good or bad from year to year. Proceedings from these results, Allstate (Insurance Company) has developed a rating plan which increases premiums for those models whose experience is worse than average and decreases premiums (up to 30 percent) for those models whose experience is better than average. When data pertaining to personal injuries, as well as property damage, becomes available and is worked into the rating plan, the impact promises to be even more dramatic. . . .

"The implementation of a rating plan which accurately reflects the property damage and/or personal injury loss experience by car make, model and year serves two basic insurance public policy objectives.

"First, such pricing reflects the basic notion that an insured should bear his proportionate share of expected losses. Those insured selecting less injury or damage prone automobiles should pay lower premiums . . .

"Second, if . . . insurers implement such rating plans, the automobile manufacturers will be under pressure to better design safer automobiles or risk the loss of car buyers to those companies that do so design their vehicles. This, in turn, should not only serve to contain automobile insurance rates but also, and more importantly, reduce the loss of life, injuries and economic loss."

Whether the insurance industry, the federal government, state and local government, or the auto industry itself brings it about, cars of the '80's will have to be different, as *Motor Age* predicts—and the difference will have to be more than a "face lifting." For today's repair costs are a burden that motorists no longer can bear.

SOME THOUGHTS ON THE OIL CRISIS IN NEW ENGLAND

Mr. CHAFEE. Mr. President, New England needs in-region storage of oil as part of the strategic petroleum reserve program.

The strategic petroleum reserve program, established in 1975 is authorized in the Energy Policy and Conservation Act. EPCA provides for four district reserves, which together make up the entire reserve program. What I am concerned about today is the part of the reserve program called the Regional Product Reserve, or the "RPR."

The RPR plan calls for a product reserve in or readily accessible to any region in which imports make up more than 20 percent of the region's oil usage during the preceding 24 months. New England qualifies for a RPR because we import 77 percent of our distillate (home heating oil demand—17 percent as refined oil, and 60 percent as crude oil which is domestically refined.

The purpose of in-region reserve is to insure that homes and businesses in the region will have guaranteed access to oil in the event of an emergency, such as another embargo or supply interruption. I think we can all agree on the logic of taking adequate steps to insure that vulnerable regions are protected from supply problems, before we are faced with another emergency.

It has been nearly 6 years since the Arab oil embargo of 1973. What has happened since then? Some of the largest oil fields in the world have cut back on production. The major oil-consuming nations in the world have agreed to cut consumption by 5 percent. Yet our supplies are still vulnerable. Not a single barrel of No. 2 or No. 4 oil is stored in the ground in New England.

If we accept the President's fiscal year 1980 budget recommendation which provides no funds for the RPR—we will be even further from having the security from supply interruption that is mandated under EPCA and vitally needed in New England.

As you may recall, the Senate rejecte a proposal last year that said regional reserves should be stored at a cost no higher than that for salt domes in the

gulf coast. At that time the Senate agreed that cost alone should not determine the location and size of the RPR. Using a price ceiling of the least expensive storage site available to define where the RPR can be located is incongruous with the intent of the program—which is to protect our national security from oil supply interruptions.

Studies have been conducted on site alternatives for the reserves. The latest one, sponsored by the Department of Energy and prepared by the Evaluation Research Corp. of Virginia, concludes that a combination of sites inside and outside of New England could be made available at roughly similar costs. Those sites include combinations of Melville, R.I., (1.38 MMB); Otisfield, Maine (20 MMB); Chatham Annex, Va. (1.15 MMB); and Strait of Canso, Canada (10–20 MMB). A combination of sites in New England and on the east coast could provide storage for up to 20 million barrels of product reserve at similar costs to storage in the gulf salt caverns. In fact, the latest ERC analysis names Melville, R.I., as the best value of all the sites they analyzed.

Cost considerations aside, there are excellent reasons to locate the RPR in-region, rather than in only the gulf, as presently planned. First, there is the proximity factor. The New England and east coast storage sites are considerably more accessible to the population needing the oil in a time of emergency. Commonsense tells us that the response time between ordering oil from the reserve and delivering the oil to those who need it in New England is shorter when the oil is stored in Melville, R.I., rather than in Louisiana.

How can we be assured, in a time of national emergency, that sufficient tankers would be available to bring the oil up from the gulf to Providence or Boston? The Jones Act, which requires that all oil transported between U.S. ports be carried in U.S.-flag carriers, would have to be waived in order to get the oil to us as it is needed. Even then, the reliability of that response would be uncertain at best.

We must be conscious of the cost of all Government programs. But at any cost, we would be irresponsible to agree to a reserve plan that could not guarantee that we would receive the emergency oil when it is needed most. I am all for saving money, but I would not want the famous adage "You get what you pay for" to ring true when we desperately need home heating oil to keep our citizens warm.

Second, there is the psychological security factor. I have spoken with my constituents and others about the location of the oil reserve. The utilities, heating oil dealers, small businessmen and homeowners uniformly believe we need in-region storage. They all cite the strong psychological feeling of security in knowing that the oil, vital to their everyday needs, is close at hand in a time of emergency.

In-region storage will build confidence in Government among New Englanders. It will demonstrate that the Government is aware of their region's vulnerability to an oil supply disruption and has taken the necessary steps to protect them. To me, this is extremely important.

I urge the committee do whatever is necessary to insure that the RPR plan is completed. Let us start by putting the money back into the budget for it. Keep on top of the Energy Department to follow through on in-region storage. Most of all, we have got to move forward with the whole reserve program—we need the protection before it is too late.

I think it is important, in talking about any facet of the energy crisis, to avoid becoming too abstract. This is a human crisis, not an abstract puzzle.

I am terribly concerned, for instance, about what I see happening to low-income Americans because of the energy crisis. Homeowners in New England have seen the price of heating oil rise from 50 cents to 62 cents a gallon—an increase of over 20 percent—in only 6 months. This increase is double the size increase we used to experience in a full year. And the future looks even bleaker. The New England Fuel Institute estimates that home heating oil will cost 70 cents a gallon by the time the heating season begins next winter.

Let me relate the stories of just two Rhode Islanders trying to cope with the energy crisis:

Miss G. is an elderly woman who owns her own cottage in Cranston. In 1974 her income was $120 a month. Now, it is $160 a month.

In 1974 her home heating oil cost 35 cents a gallon, so a fill-up of her 200-gallon tank for an average winter month cost $69. Of her total income, that left her $51 a month for all her other expenses.

This year, Miss G. is paying 54 cents a gallon. Since 1974, her income rose by 33 percent, while the cost of oil rose by 54 percent. She now pays $108 to fill her tank each month and has $52 left over—a $1 increase in disposable income since 1974.

Mrs. K. lives with her one young child in an apartment in Rhode Island. She is on welfare. In 1974 she received $184 a month in welfare benefits. Her rent costs $125, while her oil costs $66 a month.

Today, she receives $274 in welfare benefits. But her rent has risen to $175, and oil now costs $110.

In 1974, Mrs. K. was behind $7 every month on rent and fuel alone. Today, she is behind by $11 every month. She has gone nowhere but down, thanks to 5 years of inflation and a deepening energy crisis.

We have a situation here where the heavy burden of paying for higher priced oil falls disproportionately on low-income persons. A recent study entitled, "Analyzing Impacts of Energy Costs on Residents of New England," done by the Energy Systems Research Group in Boston, puts into writing what low-income New Englanders have known all along—that energy costs are taking up more and more of the low income family's budget.

The study found that,

> Energy costs are higher in New England than they are in the nation as a whole, and that energy costs are regressive; they fall proportionately more heavily on low income households than on typical households.

The Energy Research Group study shows that at the present time, the average low-income family in New England (with $3,318 annual income) spends 27.5 percent of its household budget on energy costs. The typical middle-income New England family (with $16,582 annual income) spends only 9.6 percent of their household budget on energy.

As energy prices increase, so does the proportion of household expenditures a low income family must make for energy needs. A 25 percent increase in energy costs—close to what we have experienced this winter—will require a low income family to spend over a third of its budget on energy. Under similar conditions, a middle-income family would contribute just over a tenth of its budget. Clearly, it is the low-income family that bears the brunt of increased energy prices.

Some people say that poorer families and those on fixed incomes should conserve more, in order to lessen their costs. But traditionally it is not the family with a low or fixed income who uses great amounts of energy for "luxury" purposes. While all can conserve by lowering thermostats and using public transportation, the low-income family usually has fewer opportunities to significantly cut back on consumption. They don't have extra rooms to close off; they can't afford insulation or storm windows. And, as supplies dwindle, they see more and more of their household budgets being used to simply keep warm.

In addition to conservation measures, which are essential, we need to increase domestic production of oil. I recognize that in the short run, energy prices will rise as we provide greater incentives for domestic exploration by our companies. But, if we can help soften the impact of rising prices on those who can least afford it and help produce more domestic petroleum, it will be well worth our efforts in the long run.

I would like to put forth a proposal to help these families cope with the rising cost of energy, as well as to spur on our oil companies to produce more domestic oil.

First, let us put into effect a phased decontrol of oil prices. The tangled mess of pricing regulations has inhibited domestic production of oil and helped to increase our reliance on imported oil. For example, let "new oil" rise gradually to the world price by 1981 and let "old oil" reach that mark by 1983.

By decontrolling oil prices, the oil companies will receive more per-barrel than under current price regulations, although their costs for producing that oil will only rise at the rate of inflation. Therefore, the amount that the companies receive in excess of the present controlled price should be taxed at the rate of 75 percent. These newly acquired funds should then be returned to the States with high energy costs. The States would distribute the funds to low-income persons, thus helping them cope with rising energy prices.

The oil companies would be permitted to retain 25 percent of the difference between the current controlled price and the new deregulated price to invest in increased energy production. The tax would also phase out when oil prices are entirely decontrolled.

In my view, it is the Federal Government's responsibility to insure that the burden of higher energy costs is distributed in as equitable a way as possible. But this does not mean that we need to create a whole new Federal program and bureaucracy to meet every crying need. Let the Federal Government do what it does best—collect taxes. Then, let us give the revenues to the States, who can best determine who is in need of extra assistance in meeting energy costs.

The revenues generated from my suggestion of an "excess revenues" tax will help low-income families adjust to the increasing energy prices which reflect the realities of today's market. At the same time, we will encourage additional domestic energy production, which in the long run, is our only key to energy security.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

REPORT ON THE ACTIVITIES OF THE GOVERNMENT DEPARTMENTS AND AGENCIES TO PREVENT NUCLEAR PROLIFERATION—MESSAGE FROM THE PRESIDENT—PM 43

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

I am pleased to submit the first report, as called for by Sections 601 and 602 of the Nuclear Non-Proliferation Act of 1978 (Public Law 95-242), on the activities of the Government Departments and Agencies to prevent proliferation.

The report, consisting of four volumes, is enclosed. The first volume contains a summary and chapter detailing the progress made in the following areas:

—The International Nuclear Fuel Cycle Evaluation (INFCE)
—An international nuclear fuel regime
—Development of common export and domestic policies
—Encouraging adherences to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)
—Strengthening IAEA safeguards
—Negotiating agreements for cooperation
—Cooperation in energy with developing countries
—Cooperation in protection of the environment
—Procedures for processing export-related matters

In discussing the Government's activities in these areas, the report notes that considerable progress has been made in increasing international appreciation of the importance of minimizing risks of proliferation inherent in future fuel cycle developments. It points out that, through INFCE, the United States has stimulated a general reexamination of long-held technical assumptions concerning fuel cycle activities and awareness of the need to consider proliferation concerns. Progress is also reported in obtaining wider adherence to the NPT, in strengthening IAEA safeguards, and in continued consultations among nuclear suppliers.

The report notes that a number of problems have been encountered, particularly the perception by other countries that the United States is attempting to impose its own standards unilaterally on peaceful nuclear cooperation and that those standards are unnecessarily strict or impracticable. Doubts about the reliability of the United States as a nuclear supplier persist, as well as differences of views between ourselves and others concerning the proliferation risks and economic benefits of reprocessing and the recycling of plutonium in light water reactors. These problems and others noted in the report will continue to be addressed in our efforts to achieve international support for and consensus on our nonproliferation objectives.

Chapter XI of the report contains the analyses of the agreements for cooperation. It consists of two unclassified volumes, which are enclosed, and a classified volume which is being submitted to the Senate Foreign Relations Committee and the House International Affairs Committee, in accordance with Section 602(d) of Public Law 95-242.

JIMMY CARTER.

THE WHITE HOUSE, *March 22, 1979.*

MESSAGES FROM THE HOUSE

At 11:03 a.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2283. An act to amend the Council on Wage and Price Stability Act to extend the authority granted by such Act to September 30, 1980, and for other purposes.

The message also announced that, pursuant to the provisions of 22 U.S.C. 276a-1, as amended by Public Law 95-45, the Speaker has appointed Mr. HAMILTON, chairman, and Mr. DERWINSKI, vice president, of the delegation to attend the Conference of the Interparliamentary Union, held in Prague, Czechoslovakia, on April 16-24, on the part of the House.

At 11:56 a.m., a message from the House of Representatives delivered by Mr. Gregory, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2301. An act to amend the Federal District Court Organization Act of 1978 with respect to certain administrative matters arising from the redrawing of the Federal judicial districts in the State of Illinois.

HOUSE BILLS PLACED ON THE CALENDAR

The following bills were read twice by their titles and placed on the calendar:

H.R. 2283. An act to amend the Council on Wage and Price Stability Act to extend the authority granted by such Act to September 30, 1980, and for other purposes.

H.R. 2301. An act to amend the Federal District Court Organization Act of 1978 with respect to certain administrative matters arising from the redrawing of the Federal judicial districts in the State of Illinois.

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC-907. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, on behalf of the President, revised budget estimates for 1979 and 1980 as required by Section 601 of the Congressional Budget Act of 1974; to the Committee on Appropriations and the Committee on the Budget, jointly, by unanimous consent.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a communication from the Director of the Office of Management and Budget, transmitting revised budget estimates for 1979 and 1980, as required by section 601 of the Congresisonal Budget Act of 1974, be referred jointly to the Committee on Appropriations and the Committee on the Budget.

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

EC-908. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Transatlantic Cooperation in Developing Weapon Systems For NATO—A European Perspective," March 21, 1979; to the Committee on Armed Services.

EC-909 A communication from the Secretary of Housing and Urban Development, transmitting a draft of proposed legislation to amend and extend certain Federal laws relating to housing, community, and neighborhood development and preservation and related programs, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

EC-910. A communication from the Secretary of the Interstate Commerce Commission, reporting, pursuant to law, that the Commission has been unable to render a decision in Docket No. 9199, Unit Train Rates on Coal—Burlington Northern, Inc.; and Docket No. 37021, Annual Volume Rates on Coal—Rawhide Junction, Wyoming to Sergeant Bluffs, Iowa, within the specified period, and requesting an extension of time in which to render decisions; to the Committee on Commerce, Science, and Transportation.

EC-911. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to authorize appropriations for the Federal Fire Prevention and Control Act of 1974; to the Committee on Commerce, Science, and Transportation.

EC-912. A communication from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report regarding the administration of the Fair Packaging and Labeling Act by the Department during fiscal year 1978; to the Committee on Commerce, Science, and Transportation.

EC-913. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, reports on (1) Petroleum Market Shares: Report on Sales of Refined Petroleum Products; and (2) Petroleum Market Shares: Report on Sales of Retail Gasoline; to the Committee on Energy and Natural Resources.

EC-914. A communication from the Deputy Administrator of the General Services Administration, transmitting, pursuant to law, reports on the activities of the following agencies in issuing, revising, amending, or repealing standards for design for the handicapped: General Services Administration, the Department of Defense, the United States Postal Service, and the Department of Housing and Urban Development.

EC-915. A communication from the Secretary of the Army, transmitting a draft of proposed legislation to amend section 211 of the Flood Control Act of 1950, pertaining to attendance by the United States Army Corps of Engineers personnel at international and scientific conferences; to the Committee on Environment and Public Works.

EC-916. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "U.S. Administration of the Antidumping Act of 1921"; to the Committee on Finance.

EC-917. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report certifying that in order to maintain in the first quarter of fiscal year 1979, the budgeted level of operation for Radio Free Europe/Radio Liberty, Inc. is $1,572,747; to the Committee on Foreign Relations.

EC-918. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report listing the reports issued or released by the General Accounting Office in February 1979; to the Committee on Governmental Affairs.

EC-919. A communication from the Chairman of the U.S. Consumer Product Safety Commission, transmitting, pursuant to law, a copy of the Commission's letter to the Director, Office of Management and Budget concerning the revised draft "Regulatory Improvement Act of 1979"; to the Committee on Governmental Affairs.

EC-920. A communication from the Deputy Assistant Secretary for Indian Affairs of the Department of the Interior, transmitting, pursuant to law, a proposed plan for the use and distribution of Pyramid Lake Paiute judgement funds in Docket 87-B before the Indian Claims Commission; to the Select Committee on Indian Affairs.

EC-921. A communication from the Commissioner of the Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, visa petitions accorded third and sixth preference classification under the Immigration and Nationality Act; to the Committee on the Judiciary.

EC-922. A communication from the General Counsel of the Civil Aeronautics Board, transmitting, pursuant to law, the report of the Civil Aeronautics Board on the administration of the Freedom of Information Act for calendar year 1978; to the Committee on the Judiciary.

EC-923. A communication from the Assistant Secretary of State for Congressional Relations, transmitting, pursuant to law, the report of the Department of State on the adminisration of the Freedom of Information Act for calendar year 1978; to the Committee on the Judiciary.

EC-924. A communication from the Secretary of the Commission of Fine Arts, transmitting, pursuant to law, the report of the Commission on the administration of the Freedom of Information Act during calendar year 1978; to the Committee on the Judiciary.

EC-925. A communication from the Chairman of the Tennessee Valley Authority, transmitting, pursuant to law, the report of the Tennessee Valley Authority on the administration of the Freedom of Information Act during calendar year 1978; to the Committee on the Judiciary.

EC-926. A communication from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report presenting commentary and date in (1) costs and financing of health care (2) distribution of health care resources (3) utilization of health resources, and (4) the health of the Nation's people; to the Committee on Labor and Human Resources.

EC-927. A communication from the Executive Secretary to the Department of Health, Education, and Welfare, transmitting, pursuant to law, final regulations amending the Family Contribution Schedules for use during the 1979-80 award period, under the Basic Educational Opportunity Grant Program (20 U.S.C. 1070a, Subpart I of Part A of Title IV of the Higher Education Act of 1965, as amended, P.L. 92-318, amended by P.L. 92-482, Education Amendments of 1976, and P.L. 95-566, the Middle Income Student Assistance Act; to the Committee on Labor and Human Resources.

EC-928. A communication from the Chairman of the National Commission for Manpower Policy, transmitting an advance copy of a report of the Commission entitled "Monitoring the Public Service Employment Program: the Second Round"; to the Committee on Labor and Human Resources.

EC-929. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Grain Dust Explosions—An Unsolved Problem"; to the Committee on Labor and Human Resources.

EC-930. A communication from the Administrator of Veterans' Affairs, Veterans' Administration, transmitting a draft of proposed legislation to amend title 38 of the United States Code to provide for the right of the United States to recover the costs of hospital, nursing home or outpatient medical care furnished by the Veterans Administration to veterans for nonservice-connected disabilities to the extent that they have health insurance or similar contracts or rights with respect to such care, or have entitlement to private medical care under workers' compensation or automobile accident reparation statutes of any State, and for other purposes; to the Committee on Veterans' Affairs.

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM-96. A resolution adopted by the Legislature of the State of Michigan; to the Committee on Appropriations:

"HOUSE RESOLUTION NO. 49

"Whereas, Because of a projected deficit of funding of $220,000 in the federal portion of the cooperative meat inspection program which operates on a matched funds system, the high quality of meats that the people of Michigan have come to take pride in is in serious jeopardy. Due to this underfunding, the United States Department of Agriculture (USDA) has made it apparent that federal inspection of meat may have to replace Michigan's excellent inspection program; and

"Whereas, Without adequate finances, Michigan's inspection program of the meat industry would terminate and the USDA would have to assume this responsibility at additional costs to the federal government that have been estimated to range to $2,500,000. Obviously, the cost effectiveness of this is inconsistent; and

"Whereas, Most importantly, however, the quality of meat products in the Great Lake State would undoubtedly deteriorate, as sausage, hot dogs, and other meat products could be subjected to the appreciably lower federal standards by as early as April of this year; and

"Whereas, Still another reason for the state program of inspection to be continued is the pressing need for local control in this regard, particularly in light of the PBB situation. The spectre of disease and contamination from all sources would again loom should the lower federal standards be implemented; and

"Whereas, It is perplexing to think that the federal government would spend $2,500,000 to save $220,000, all to achieve the results of a significant and real reduction in the quality of meat; now, therefore, be it

"Resolved by the House of Representatives, That the Congress of the United States be hereby memorialized to appropriate sufficient funds to maintain Michigan's state/federal cooperative meat inspection program; and be it further

"Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the Michigan Congressional Delegation, and the United States Deparment of Agriculture."

POM-97. A concurrent resolution adopted by the Legislature of the State of Oklahoma; to the Committee on Agriculture, Nutrition, and Forestry:

"CONCURRENT RESOLUTION NO. 1017

"Whereas, Section 2-13 of Title 2 of the Oklahoma Statutes requires sellers of red meat or red meat products in this state to indicate by meat display signs and item labels whether their produce is of domestic or foreign origin; and

"Whereas, in the case of Borthwick and Sons (U.S.A.) Ltd. and Meat Importers' Council of America, Inc. v. State of Oklahoma, the Oklahoma State Board of Agriculture and the Oklahoma Department Board of Health, Civil No. 75-0818-D (W.D. Okl., September 20, 1976), the federal district court held that Section 2-13 was unconstitutional because it placed an impermissible burden on interstate commerce; and

"Whereas, the state has a legitimate state interest in ascertaining the origin of red meat and red meat products purchased by its residents; and

"Whereas, Congress has the authority to enact appropriate legislation which would be uniform and nondiscriminatory with regard to sellers of red meat and red meat products engaged in interstate commerce.

"Now, therefore, be it resolved by the House of Representatives of the 1st Session of the 37th Oklahoma Legislature, the Senate concurring therein:

"Section 1. The Congress of the United States is hereby memorialized to enact legislation which would require sellers of red meat or red meat products to indicate by meat display signs and item labels whether their produce is of domestic or foreign origin.

"Section 2. A copy of this Resolution shall be transmitted to the presiding officers of the United States Congress and to each member of the Oklahoma Congressional delegation."

POM-98. A concurrent resolution adopted by the Legislature of the State of North Dakota; to the Committee on Finance:

"SENATE CONCURRENT RESOLUTION NO. 4032

"Whereas, the state of North Dakota has consistently demonstrated its concern for the health, well-being, and dignity of its citizens by maintaining a reasonable public assistance level of payment standard compatible with the national average; and

"Whereas, the state of North Dakota has consistently encouraged employment as a viable alternative to public assistance resulting in a proportion of welfare recipients to its total population that is among the lowest in the nation; and

"Whereas, the state of North Dakota has consistently maintained one of the lowest error rates in the administration of the aid to families with dependent children program, the medical assistance program, and the food stamp program; and

"Whereas, the ever-escalating costs of the aid to families with dependent children program have imposed a severe financial hardship on the state; and

"Whereas, the federally mandated thirty and one-third earned income exemption has:

"1. Been difficult to administer because payroll deductions and other employment-related costs must each be dealt with individually, leading to many budgeting errors; and

"2. Had a dramatically different impact among states due to their wide range of payment levels, with states which recognize a reasonable standard of need finding it extremely difficult to close cases because of earnings; and

"3. Created a class of employed public assistance recipients whose assistance grant, partially exempt earnings, and related program benefits exceed the income of many independently functioning families in the community; and

"4. Unnecessarily increased the costs of the aid to families with dependent children program; and

"5. Eroded the public's confidence in the program;

"Now, therefore, be it resolved by the Senate of the State of North Dakota, the House of Representatives concurring therein:

"That the Congress of the United States be urged to review and amend its statute relating to the earned income exemption in a manner as to:

"1. Simplify its administration by adoption of an 'off the top' exemption of earnings which would incorporate all employment expenses with the exception of child care; and

"2. Provide states with latitude to select, from within a range established in federal law, earnings to be exempt, thereby permitting a more reasonable integration with a state's level of assistance; and

"3. Either mandate the level of payment as well as earning exemptions, or grant the states the option of determining the earning exemptions as well as the level of payment, as the two are interrelated.

"Be it further resolved, that the Congress is respectfully requested to notify the North Dakota Legislative Council and the Executive Director of the Social Service Board of North Dakota when hearings are to be held on legislation, if any, introduced in response to this resolution; and

"Be it further resolved, that the Secretary of State send copies of this resolution to the Secretary of the United States Department of Health, Education, and Welfare, the President of the Senate, the Speaker of the House of Representatives, and to the North Dakota Congressional Delegation."

POM-99. A concurrent resolution adopted by the Legislature of the State of West Virginia; to the Committee on Finance:

"HOUSE CONCURRENT RESOLUTION NO. 35

"Whereas, The selling of foreign steel products in the United States at prices substantially below their fair market value in this country is creating severe hardship upon the steel industry in West Virginia due to decreased demand for its products; and

"Whereas, Weirton Steel Company provides employment for 14,500 West Virginia citizens and Connors Steel Company employs 900 West Virginians, and decreased demand for steel products manufactured in West Virginia will necessitate layoffs of many of these employees and other steel workers, causing severe economic and personal hardship; and

"Whereas, There is ample federal statutory and administrative regulatory authority which, if strictly enforced, would prevent the practice by foreign enterprises known as "dumping"; and it is in the best interests of the citizens of West Virginia that such laws and regulations be expeditiously implemented and strictly enforced; therefore, be it

"Resolved by the Legislature of West Virginia:

"That the Congress of the United States is hereby requested to mandate that the United States Customs Service, the United States Department of the Treasury and the International Trade Commission take immediate action to implement and strictly enforce existing federal statutes and regulations to prevent the dumping of foreign steel products in the United States; and, be it

"Further Resolved, That copies of this request be sent to the Clerk of the United States House of Representatives, the Secretary of the United States Senate and to each member of the West Virginia Congressional Delegation."

POM-100. A resolution adopted by the Legislature of the State of Massachusetts; to the Committee on Foreign Relations:

"RESOLUTION

"Whereas, The citizens of Massachusetts are rightly disturbed over the proposed United States-Canadian Fisheries Agreement; and

"Whereas, The proposed agreement calls for treaties dividing fish stocks in the Northwest Atlantic between the two nations and many other questionable issues; and

"Whereas, The proposed agreement will impose a severe hardship on the Massachusetts fishing industry; therefore be it

"Resolved, That the Massachusetts House of Representatives respectfully urges the Congress of the United States to take such action as may be necessary to block the signing of any treaties as proposed by the United States-Canadian Fisheries Agreement and in addition to refuse to enact any enabling legislation relating to said Agreement; and be it further

"Resolved, That copies of these resolutions be sent by the Clerk of the House of Representatives, to the President of the United States, the presiding officer of each branch of Congress and to the members thereof from this Commonwealth."

POM-101. A resolution adopted by the Legislature of the State of Alaska; to the Committee on Foreign Relations:

"SENATE RESOLUTION NO. 3

"Whereas the people of the Republic of China have built a successful, prosperous, free economy out of the ashes of a half century of revolution, invasion and civil war and now serve as an important trading partner of the American people; and

"Whereas the people of the Republic of China have been among the most trusted friends and allies of the people of the United States since the founding of the Chinese Republic in 1912; and

"Whereas the Republic of China is of strategic importance in the defense of East Asia and the Pacific, has always utilized its military power in the interests of the free world, and has, since 1954, been a party with the United States to a Mutual Defense Treaty; and

"Whereas, as recently as September, 1978, the United States Congress, without a dissenting vote, endorsed section 26 of the International Security Assistance Act of 1978, incorporating a statement of the sense of the United States Congress that there be consultation between the President and Congress on proposed policy changes affecting the rights, obligations, and relationships of the parties to the Mutual Defense Treaty of 1954; and

"Whereas, in December, 1978, the President, without prior consultation with Congress, announced termination of the Mutual Defense Treaty of 1954 with the Republic of China in connection with the federal government's recognition of the People's Republic of China, effective January 1, 1979; and

"Whereas unilateral executive renunciation of the provisions of the Mutual Defense Treaty constitutes a challenge by the federal executive to the rights and prerogatives of the Congress of the United States under the Constitution and the International Security Assistance Act;

"Be it resolved by the Alaska State Senate that the United States Congress explore all opportunities toward maintaining in full force and effect existing treaties and agreements between the United States and the Republic of China, and that every effort be made by Congress to encourage strengthening of economic and trade relationships between the two nations; and be it

"Further resolved that the United States continue to recognize the Republic of China by extending diplomatic and commercial relations usually accorded other independent nations; and be it

"Further resolved that the United States government use its best efforts to assure that relations between the Republic of China and the People's Republic of China occur without threat of force or aggression and that the future of the people of the Republic of China on Taiwan is peaceful and prosperous; and be it

"Further resolved that Congress conduct a thorough inquiry of the precipitous action taken by the President of the United States in unilaterally terminating obligations with the Republic of China under the 1954 Mutual Defense Treaty to assure that similar acts of the federal executive in contravention of the authority of Congress and the rights of the American people under the Constitution do not occur in the future.

"Copies of this resolution shall be sent to the Honorable Warren G. Magnuson, President Pro Tempore of the U.S. Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; the Honorable Frank Church, Chairman of the Senate Foreign Relations Committee; and to the Honorable Ted Stevens and the Honorable Mike Gravel, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress."

POM-102. A resolution adopted by the Legislature of the Commonwealth of Puerto Rico; to the Committee on Foreign Relations:

"RESOLUTION

"For the Senate of Puerto Rico to reaffirm its repudiation and to condemn communism, particularly, the Dictatorial Communist Regime of Fidel Castro in Cuba, and to reaffirm its unbreakable faith in the principles and meaning of liberty, democracy and the rights of man; to declare itself in favor of the immediate release of all the political prisoners in Cuba and to exhort the unity of the Cuban exiles in Puerto Rico, New York, New Jersey.

Chicago, California and other places throughout the United States and the world.

"STATEMENT OF MOTIVES

"This year, 1979, marks the twentieth anniversary of Fidel Castro's regime in Cuba. They have been twenty years of oppression and tyranny against the People of Cuba, and of mourning for those People who believe in the principles of liberty and democracy.

"The aggressive anticommunist activity of the citizenry and the shared efforts to free our fellows in Cuba have a high priority in the defense of liberty and democracy, which mark a strengthening of the decision to continue the struggle against that regime until liberty is again restored in Cuba.

"Today, the totalitarian regime which has subjugated the Cuban people is freeing those who survived the firing squad, and were imprisoned simply because they fought against the communist dictatorship. This is a calculated action by the Castro regime to try to improve its image in search of commercial recognition, and at the same time undermine the growing effectiveness of the Cuban Exile Movement's strife for the liberation of Cuba.

"There is no communication possible between the tyrant, Fidel Castro, and the Cuban Exile Movement to free political prisoners. Such an attempt at communication is an opportunistic, calculated movement of the Castro regime. He imprisoned Cuban citizens for political reasons, without their having committed any crime or offense against their people, and without having been convicted of violating a law by a Court of competent jurisdiction after a fair and impartial trial. Their imprisonment is illegal and inhuman and their immediate release is just and proper. Their freedom is not negotiable; neither was their oppressive imprisonment nor the death of others by the firing squad. Therefore, there is no explanation or justification for the so-called "dialogue," especially when Fidel Castro is the jailer, who establishes the conditions and chooses the groups of prisoners who will eventually be freed. Fidel Castro's call to the alleged dialogue with the Cuban Exile Movement is a strategic farce before the United States and other nations of the world, with the intention of giving the impression, in an opportunistic manner, that justice is being done and that he is defending the human rights he has trampled upon.

"World-wide public opinion has also condemned Fidel Castro for sending Cuban citizens, armed with Soviet weapons and commanded by communist leaders, against African People. This armed intervention and participation by Fidel Castro is an aggression to the African People, which has anguished Cuban families.

"The Cuban Exile Movement should not and cannot allow their historical mission to fight for the liberty of Cuba to be dimmed as a result of internal divisions or conflicts between its leaders. These divisions in the Exile Movement tend to strengthen the tyranny of the Castro regime and to perpetuate the enslavement of a People who have the right to recover their freedom. This Resolution also has the purpose of exhorting the unity of the Cuban Exile Movement.

"Therefore, we give course to this renewed expression on the occasion of the twentieth anniversary of Fidel Castro's Communist Regime in Cuba.

"Be it resolved by the Senate of Puerto Rico:

"Section 1. To reaffirm the repudiation and the condemnation of communism, particularly, the dictatorial Communist Regime of Fidel Castro in Cuba, and to reaffirm its unbreakable faith in the principles and significance of liberty, democracy and the rights of man.

"Section 2. To reiterate, affirm and emphasize its call for the immediate release of all the political prisoners in Cuba who have been confined for so many years in the communist prisons of that land without having committed any crime, solely for believing in human freedom and democracy and being faithful to their convictions without yielding or backing down.

"Section 3. To reaffirm its support of the struggle for the freedom of Cuba on this Twentieth Anniversary of the Dictatorial Communist Regime of Fidel Castro.

"Section 4. To likewise, condemn the Cuban imperialism that outfits its army with Russian weapons to assassinate and subjugate African People, depriving them of their free will and their liberty.

"Section 5. To vigorously reject and repudiate any type of communication, agreement or transaction with Fidel Castro's Communist Regime.

"Section 6. To exhort the Cuban Exile Movement to stay united in its struggle for the liberation of Cuba and to avoid all internal division or conflict between its leaders and members.

"Section 7. To send a copy of this Resolution, translated into English, to the President and the Secretary of State of the United States of America; the Speaker of the House of Representatives and the President of the Senate of the United States of America; the Secretary General of the United Nations Organization of American States, and the Press on the United States Mainland.

"Section 8. To send a copy of this Resolution to the organizations that represent the Cuban Exile Movement in Puerto Rico and on the United States Mainland, and to the local Press.

"Section 9. This Resolution shall take effect immediately after its approval."

POM-103. A resolution adopted by the Legislature of the State of Massachusetts; to the Committee on Governmental Affairs:

"RESOLUTION

"Whereas, The powers delegated to the federal government by the Constitution of the United States are limited, and those powers not delegated to the federal government are reserved to the states; and

"Whereas, It is becoming increasingly the practice of the federal government to require states to enact state laws to implement federal policies by threatening to withhold or withdraw federal funds for failure to do so; and

"Whereas, The federal government has imposed upon the states many programs and obligations which require funding in excess of state means, thereby making the states subservient to and dependent upon the federal government for financial assistance; and

"Whereas, Through the coercive force of withdrawing or withholding federal funds, or the threat of withdrawing or withholding federal funds, the federal government is indirectly imposing its will upon the states and requiring implementation of federal policies which neither Congress nor the President nor any administrative agency is empowered to impose or implement directly; and

"Whereas, This coercive power of the purse is being used to extend the power of the federal government over the states far beyond the powers delegated to the federal government by the Constitution of the United States; and

"Whereas, The power of the federal government should be exercised directly by the enactment, implementation and enforcement of federal laws governing only those areas in which the federal government is empowered to act by the Constitution of the United States, and the federal government should be prohibited from usurping the authority of the states and imposing its will indirectly in those areas in which it has no power to act directly; and

"Whereas, The federal government has imposed upon the states many programs and obligations which require state administration and such programs or other programs may lose federal financing if certain conditions attached to the program are not met; therefore be it

"Resolved, That the General Court of Massachusetts respectfully urges the Congress of the United States to enact legislation requiring the federal government to refrain from withholding, withdrawing or threatening to withhold or withdraw federal funds from a state as a means of requiring such state to implement federal policies or practices; and be it further

"Resolved, That copies of these resolutions be transmitted forthwith by the Clerk of the House of Representatives to the President of the United States, the presiding officer of each branch of Congress and to the members thereof from this Commonwealth."

POM-104. A joint memorial adopted by the Legislature of the State of Oregon; to the Committee on the Judiciary:

"SENATE JOINT MEMORIAL 2

"Whereas the level of federal expenditures demonstrates an unwillingness or inability of both the legislative and executive branches of the Federal Government to curtail spending to conform to available revenues; and

"Whereas inflation is being fought almost exclusively by monetary policy while fiscal policy could and should be employed; and

"Whereas the State of Oregon by its Constitution and its laws in adopting a budget must show a balance relation between the total proposed spending and the total anticipated revenues or provide for paying the deficiency; and

"Whereas it is just and proper that the United States of America in its obligation to provide leadership for all of the states of the union should pursue the same policy; and

"Whereas a balanced budget would lessen the economic burdens on its citizens; and

"Whereas a balanced budget would lessen the need for increased state and local taxes; now, therefore,

"Be It Resolved by the Legislative Assembly of the State of Oregon:

"(1) That this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive 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.

"(2) That this application by this body constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this Joint Memorial before January 1, 1979, this petition for a constitutional convention shall no longer be of any force or effect.

"(3) That this body propose that the legislative body of each of the several states comprising the United States apply to the Congress of the United States requiring the Congress to call a constitutional convention for proposing an appropriate amendment to the Federal Constitution or requesting the enactment of such an amendment to be submitted to the states for ratification.

"(4) That a copy of this memorial shall be transmitted to the President of the United States; to each member of the Oregon Congressional Delegation; to the presiding officers of the Senate and House of Representatives of the United States of America; to each Governor of each state in the United States of America; and to the presiding officer of each legislative body in the United States of America."

POM-105. A resolution adopted by the legislature of the State of Massachusetts; to the Committee on the Judiciary:

"RESOLUTION

"Whereas, In 1945, Title 15, United States Code, Sections 1011-1015, popularly known as the McCarran-Ferguson Act was enacted into law; and

"Whereas, In said Act Congress declared 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, the several States have encouraged and required continued improvements in insurance coverages and the provision of insurance at reasonable rates; and

"Whereas, The several States have continually reviewed, experimented with, and altered various approaches to such regulation in an effort to assure the availability of insurance to the public at the lowest practicable cost; and

"Whereas, The business of insurance has developed a competitive structure; and

"Whereas, The public has benefitted from the competitive structure of the insurance industry, including at the retail level a variety of organizations, often small businesses, intensely competing, and from regulation of the industry by the several States; and

"Whereas, Federal regulation has repeatedly been shown not to be a panacea; and

"Whereas, It is becoming increasingly clear that the establishment of federal regulation increases the cost of government, resulting often in an increase of the cost of products and services to the consumer without providing offsetting benefits to the public; and

"Whereas, Federal regulation often creates confusion and delay; and

"Whereas, There has been no evidence that the several States cannot continue to regulate the insurance industry; and

"Whereas, There has been no evidence that federal regulation of the insurance industry by limiting State regulation and permitting the application of the federal antitrust laws will have a salutory effect upon the industry or otherwise benefit the public; and

"Whereas, It is often necessary, subject to state regulation, to pool the resources of several insurance companies in order to provide for coordinated actions in providing effective insurance coverage of certain risks at 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 said McCarran-Fergusion Act so as to limit State regulation of the business of insurance; therefore be it

"Resolved, That the Massachusetts General Court respectfully memorializes the Congress of the United States to reject any legislation amending Title 15 U.S.C., Sections 1001-1015, 59 Stat. 33 (1945) popularly known as the McCarran-Ferguson Act; and be it further

"Resolved, That copies of this resolution be sent by the Clerk of the House of Representatives, to the President of the United States, the presiding officer of each branch of Congress and to the members thereof from this Commonwealth."

POM-106. A resolution adopted by the Town Board of the Town of Islip, Suffolk County, N.Y., endorsing January 15 as a National and State holiday; to the Committee on the Judiciary.

POM-107. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on Finance:

"ASSEMBLY JOINT RESOLUTION No. 5

"Whereas, Each Congress considers measures to regulate public retirement systems operated by the states and other governments; and

"Whereas, There have been a number of attempts in the Congress to require that public employees, who are now not required to participate in Social Security, be placed involuntarily under the plan; and

"Whereas, Several states are providing for retired employees at low cost and with credible efficiency, and are established on a firm foundation of good management and sound investment practices; and

"Whereas, The immense unfunded liability of the Social Security program, the bureaucratic waste and inefficiency, and the high cost to the participant which characterize the Social Security Administration and its programs make them an unattractive alternative for Nevada's public employees; and

"Whereas, The Public Employees' Retirement System of Nevada is one of the finest in the nation—its unfunded liability has been reduced by over $100 million during the past 4 years and its investment income has increased from $9 million in 1974 to more than $39 million in 1978; and

"Whereas, Social Security has historically undertaken to provide greater benefits than its revenues can practically afford; and

"Whereas, Any proposal to require Social Security coverage for Nevada's public employees is an attempt to force them to pay for the previously unfunded benefits placed upon Social Security by Congress; and

"Whereas, It is inherently unfair, and perhaps even unconstitutional, to require Nevada's solvent retirement system—a system which has zealously guarded against abuses in benefits and struggled to discourage outlandish and expensive proposals—to contribute or participate in any way with the insolvent federal Social Security system which is fraught with mismanagement and abuse; and

"Whereas, The Federal Government must recognize that it has no mandate from the people to regulate where regulation is not needed, or to force parts of the population who are providing security for themselves to undertake the burden of supporting an expensive, cumbersome and insecure system such as Social Security; now, therefore, be it

"Resolved by the Assembly and Senate of the State of Nevada, jointly, That the legislature is very strongly opposed to any federal legislation which would establish federal jurisdiction over or supervision of any public retirement system in Nevada; and be it further

"Resolved, That the legislature is very strongly opposed to any federal legislation which would require enrollment of public employees under Social Security or place any investment restrictions on public retirement systems in Nevada; and be it further

"Resolved, That copies of this resolution be transmitted forthwith by the legislative counsel to the President of the United States, the Vice President as presiding officer of the Senate, to every member of the United States Senate and House of Representatives and to the chairman of the Universal Social Security Study Committee of the Department of Health, Education and Welfare; and be it further

"Resolved, That this resolution shall become effective upon passage and approval."

POM-108. A memorial adopted by the Legislature of the State of Arizona; to the Committee on the Judiciary:

"HOUSE MEMORIAL 2002

"Whereas, in 1945 the McCarran-Ferguson Act (Title 15, United States Code, Sections 1011 through 1015) was enacted into law and 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, the several States have encouraged and required continued improvements in insurance coverages and the provision of insurance at reasonable rates; and

"Whereas, the several States have continually reviewed, experimented with and altered various approaches to regulation in an effort to assure the public of the availability of insurance at the lowest practicable cost; and

"Whereas, the business of insurance has developed a competitive structure; and

"Whereas, the public has benefited from the competitive structure of the insurance industry including at the retail level a wide variety of organizations, often small businesses, intensely competing, and from regulation of the industry by the several States; and

"Whereas, federal regulation has repeatedly been shown not to be a panacea; and

"Whereas, it is becoming increasingly clear that the establishment of federal regulation increases the cost of government, often increases the cost of products and services to the consumer, and often without providing offsetting benefits to the public; and

"Whereas, federal regulation often adds confusion and delay; and

"Whereas, there has been no showing that the several States cannot continue to regulate the insurance industry; and

"Whereas, there has been no showing that federal regulation of the insurance industry by limiting State regulation and permitting the application of the federal antitrust 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 to limit state regulation of the business of insurance.

Wherefore your memorialist, the House of Representatives of the State of

"Arizona, prays:

"1. That the Congress of the United States reject all legislation proposing any amendment to the McCarran-Ferguson Act.

"2. That the Secretary of the State of Arizona transmit copies of this Memorial to the President of the United States Senate, the Speaker of the House of Representatives of the United States and to each Member of the Arizona Congressional Delegation."

POM-109. A joint memorial adopted by the Legislature of the State of Idaho; to the Committee on Veterans' Affairs:

"SENATE JOINT MEMORIAL No. 101

"Whereas, sixty years ago the First World War ended in Germany; and

"Whereas, approximately twenty-five percent of those veterans of World War I, still live in our country; and

"Whereas, thousands of these veterans have poor health and live far below the level of poverty established by our great country; and

"Whereas, some 3,000 of these veterans are residents of Idaho and their average age is eighty-four years; and

"Whereas, the cost of helping and caring for these men and women falls increasingly on the State of Idaho; and

"Whereas, these men and women veterans are the only veterans of any war engaged in by the United States, who have never been pensioned; and

"Whereas, since World War II, all honorably discharged veterans have received pensions and benefits too numerous to mention; and

"Whereas, World War I veterans are now in failing health and becoming feeble; and

"Whereas, hundreds of bills have been introduced in the Congress of the United States calling for a pension for all honorably discharged veterans of World War I, but have remained buried in committee and have not been brought to a vote; and

"Whereas, the Legislature of the State of Idaho is in favor of a pension for these deserving men and women.

"Now, therefore, be it resolved by the members of the First Regular Session of the Forty-fifth Idaho Legislature, the Senate and the House of Representatives concurring therein and speaking on behalf of the citizens of the State of Idaho, that we ask the Congress of the United States to pass legislation, and the President of the United States to sign such legislation, immediately, authorizing the payment of $150.00 monthly to every honorable discharged veteran of World War I, whose service exceeded sixty days; which veterans now live impoverished in an affluent society.

"Be it further resolved that the Secretary of the Senate, be and she is hereby authorized and directed to forward copies of this memorial to the Honorable Jimmy Carter, President of the United States, the President of the Senate and Speaker of the House of Representatives of the Congress of the United States, and to the Senators and Representatives representing the State of Idaho in the Congress of the United States."

POM-110. A concurrent resolution adopted by the Legislature of the State of Arkansas; to the Committee on Foreign Relations:

"HOUSE CONCURRENT RESOLUTION 40

"Whereas, Taiwan is a long-time friend, ally and trade partner of the United States; and

"Whereas, Taiwan holds a pivotal, strategic position in Asia and the West Pacific which is vitally important to the defense of the United States; and

"Whereas, the people of Taiwan enjoy democratic freedom, a high standard of living and fundamental human rights which should not be jeopardized by the establishment of diplomatic relations between the United States and the Peoples Republic of China; and

"Whereas, continued trade with Taiwan is vitally important to Arkansas and the United States; and

"Whereas, Taiwan purchased Arkansas grain worth $30,000,000 in 1978; and

"Whereas, Taiwan purchased a total of $5.6 billion worth of goods from the United States in 1978,

"Now therefore, be it resolved by the House of Representatives of the Seventy-Second General Assembly of the State of Arkansas, the Senate concurring therein:

"That the United States Congress explore all avenues toward maintaining and developing our economic and trade relations with Taiwan and recognize Taiwan as a separate nation with all diplomatic and trade relations usually accorded to an independent nation.

"Be it further resolved that the United States use its influence and best efforts to secure the peaceful future of the people of Taiwan.

"Be it further resolved that diplomatic privileges be granted to representatives of Taiwan in the United States.

"Be it further resolved that a copy of this Resolution be immediately transmitted upon its adoption, by the Chief Clerk of the House of Representatives, to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives of the United States, and each member of the Arkansas Congressional Delegation."

POM-111. A concurrent resolution adopted by the Legislature of the State of West Virginia; to the Committee on Commerce, Science, and Transportation:

"SENATE CONCURRENT RESOLUTION No. 32

"Whereas, On January 31, 1979, the United States Department of Transportation reported its final recommendation for a restructured intercity rail passenger system to be operated by the National Railroad Passenger Corporation; and

"Whereas, Such recommendations of the United States Department of Transportation will become law on or about May 15, 1979, unless the United States Senate or House of Representatives acts affirmatively to cancel the proposed recommendations; and

"Whereas, The proposed rail passenger system would provide a minimal level of national interconnected service plus an additional group of services connecting major regions of the country and providing service to major population centers; and

"Whereas, This proposal would eliminate twelve thousand miles of the present twenty-seven thousand mile system, reducing the system by forty-three percent, while reducing the funding of the system by only eight percent; and

"Whereas, The recommendation, if implemented, would result in the loss of employment for approximately five thousand Amtrak employees; and

"Whereas, Under the recommended system, the passenger train Shenandoah, which runs from Washington, D.C. to Cincinnati would be rerouted through Pittsburgh, the passenger train Cardinal, which runs from Washington, D.C. to Chicago would be discontinued, and the passenger train Hilltopper, which runs from Washington, D.C. through Petersburg, Virginia to the Tri-State Station in Kentucky would be discontinued, all of which would eliminate passenger rail service entirely from the State of West Virginia except for the weekend operation of the passenger train Blue Ridge, which would carry tourists from Washington, D.C. to Harper's Ferry, West Virginia; therefore, be it

"Resolved by the Legislature of West Virginia:

"That the Legislature of the State of West Virginia expresses its most serious reservations regarding the wisdom of the recommendations and strongly opposed implementation of the proposed restructured intercity rail passenger system; and, be it

"Resolved further, That the Legislature of West Virginia advises the United States Department of Transportation that the citizens of this great State are likewise citizens of these United States, and as such are entitled to the beneficial services of the Federal Government and its Department of Transportation, as are other citizens of this Union; and, be it

"Resolved further, That the Legislature of West Virginia requests and urges the Governor of the State of West Virginia, members of the United States Congress representing the State of West Virginia, the National Railroad Passenger Corporation and all other interested parties to exercise due diligence and their good offices to cause the United States Department of Transportation to cease implementation of its improvident decision, eliminating passenger rail service in the State of West Virginia; and, be it

"Resolved further, That copies of this request be sent to the Governor of the State of West Virginia, the Clerk of the United States House of Representatives, the Secretary of the United States Senate, each member of the West Virginia Congressional Delegation and to the President of Amtrak."

POM-112. A resolution adopted by the Legislature of the Territory of Guam; to the Committee on Labor and Human Resources:

"RESOLUTION No. 27

"Whereas, Section 504 of the Rehabilitation Act of 1973 provides that any program or activity receiving Federal funds may not discriminate against a person by reason of his handicap; and

"Whereas, the regulations promulgated pursuant to the provisions of Section 405 require a free appropriate public education to be made available for all handicapped children by September 1, 1978; and

"Whereas, the Education of the Handicapped Act of 1975 (P.L. 94-142) provides grants to states and territories to supplement special education expenditures; and

"Whereas, Guam enacted Public Law 13-207 to provide educational and training facilities and opportunities for the handicapped; and

"Whereas, in Public Law 13-207 a public policy for the territory's school system was established to offer free and appropriate educational services to all children whether they are normal, gifted or handicapped; and

"Whereas, the funding provided under Public Law 94-142 to the territory of Guam is not sufficient to meet the funding requirements for education of the handicapped but provides some assistance to the territory in meeting the educational needs of the territory; and

"Whereas, President Carter is recommending substantial reduction of the Federal assistance to be available under P.L. 94-142 and alteration of the timetable for Federal assistance outlined in regulations pursuant to this law; and

"Whereas, the funding available to the government of Guam would be reduced by approximately twenty percent (20%) if the recommendations of the President are enacted into law; now, therefore, be it

"Resolved, that the Fifteenth Guam Legislature, on behalf of the people of the territory of Guam, respectfully requests the United States Congress not to adopt the President's proposed reductions in spending for education especially those funds necessary for the education of the handicapped; and be it further

"Resolved, that the Speaker certify to and the Legislative Secretary attest to the adoption hereof and that copies of the same be thereafter transmitted to the Speaker of the House of Representatives of the United States Congress; to the President Pro Tempore of the Senate of the United States; to the Secretary of the Department of Health, Education and Welfare; to Congressman Philip Burton; to Congressman Antonio B. Won Pat; to the Director of the Department of Education; to Local 1581 of the American Federation of Teachers and to the Governor of Guam."

POM-113. A joint resolution adopted by the Legislature of the Federated States of Micronesia; to the Committee on Appropriations:

"HOUSE JOINT RESOLUTION No. IC-39, H. D. 1

"Whereas, the Congress of Micronesia, by Public Law No. 7-68 (1977), established a Study Group on Indefinite Land Use Agreements; and

"Whereas, members of the Study Group included appointees of the Office of Territorial Affairs of the Interior Department and of the Trust Territory High Commissioner, as

well as members of the Congress of Micronesia; and

"Whereas, the Study Group was directed to inquire into the circumstances surrounding the execution of agreements in the 1950's and 1960's whereby Micronesians gave up the use of their land to the Trust Territory Government for an indefinite duration; and

"Whereas, the Study Group was also directed to recommend whether or not renegotiation of the leases should be undertaken, and to establish the basis upon which any such negotiation should occur; and

"Whereas, the Study Group issued a detailed report after painstaking research and investigation; and

"Whereas, the Study Group Report was adopted unanimously by members of the Study Group and endorsed by the Secretary of the Interior, the High Commissioner, the Congress of Micronesia, and the Interim Congress of the Federated States of Micronesia; and

"Whereas, the Study Group Report recommended either return of the land, renegotiation of the leases, or purchase of the land on a basis it determined to be fair and equitable; and

"Whereas, a professional appraisal of the land in question has now been completed by the realty firm of Cowell and Associates and submitted to the High Commissioner; now therefore,

"Be it resolved by the House of Representatives, Interim Congress of the Federated States of Micronesia, 1979 Session, the Senate concurring, that the United States Congress is hereby requested to appropriate funds as part of the Trust Territory Fiscal Year 1980 Budget so that the Micronesian landowners can receive the sums determined by the Study Group Report and the professional appraisers to be fair and equitable for the past, present and future use of their land; and

"Be it further resolved that certified copies of this House Joint Resolution be transmitted to the Honorable Walter F. Mondale, President of the United States Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the United States House of Representatives; Senator Warren G. Magnuson, Chairman, Senate Appropriations Committee; Representative George Mahon, Chairman, House Appropriations Committee; Senator Robert C. Byrd, Chairman, Subcommittee on Interior of the Senate Committee on Appropriations; Representative Morris K. Udall, Chairman of the Interior and Insular Affairs Committee; Representative Phillip Burton, Chairman, Subcommittee on National Parks and Insular Affairs of the House Committee on Interior and Insular Affairs; Representative Antonio B. Won Pat, Chairman, Subcommittee on Pacific Affairs of the House Interior and Insular Affairs Committee; Secretary of Interior Cecil D. Andrus; Director of the Office of Territorial Affairs Ruth G. Van Cleve; High Commissioner Adrian P. Winkel; the Chairman of the Joint Committee on Program and Budget Planning of the Interim Congress of the Federated States of Micronesia; and the Chairman of the Study Group on Indefinite Land Use Agreements."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Energy and Natural Resources:

Special report entitled "History, Jurisdiction, and a Summary of Legislative Activities During the 95th Congress of the Committee on Energy and Natural Resources" (Rept. No. 96-43).

By Mr. BENTSEN, from the Joint Economic Committee:

Report entitled "1979 Joint Economic Report" (Rept. No. 96-44).

● Mr. BENTSEN. Mr. President, on behalf of the members of the Joint Economic Committee, I am today filing with the Senate the Committee's 1979 Joint Economic Report.

For the first time in 20 years, the annual report of the Joint Economic Committee is a unified report endorsed by both the majority and minority members of the committee. Policy disagreements among committee members naturally remain and those departures from the report are spelled out in supplementary and additional views. But this report illustrates an emerging consensus in the country that the Federal Government needs to put its financial house in order and that the major challenges today and for the foreseeable future are on the supply side of the economy.

The report focuses on the underlying issue of the capacity of the economy over the long term to increase the standard of living for the average American, to create a job for every American who wants to work and to help hold down the cost of living by increasing the goods on the shelves of the Nation's businesses.

The report reaffirms the traditional Joint Economic Committee concern about unemployment. The key to our success as a Nation has been freedom, not just political and religious freedom, not just freedom of the press, but the freedom to succeed, the freedom of opportunity. Throughout our history, a job has been the passport to success in America.

To post-World War II economists, the basic economic problem was to insure an adequate level of demand. Insufficient demand was the main economic problem of the Depression era. Excessive demand was the main economic culprit during World War II. So it was not surprising that economists were preoccupied for almost 30 years with the problem of maintaining an adequate level of demand in the economy. The Arab oil embargo and the subsequent behavior of the OPEC cartel suddenly and dramatically began to force the attention of the country and its economic experts on the supply side of the economy.

The report emphasizes the need to stimulate job creating new investment. It recommends consideration of incentives to promote industrial research and development. It calls for a more rational and effective Federal regulatory system. It recommends reducing our reliance on OPEC energy by accelerating research efforts to reduce the cost of coal pollution abatement facilities and to develop secure nuclear waste storage systems. It emphasizes the need to substitute Mexican and Canadian energy supplies for overseas sources. All of these recommendations are designed to advance the theory that expanding the capacity of the economy to produce goods and services efficiently is the most effective policy to combat the major economic ill of our time—stagflation.

The 1979 annual report addresses the problem of unemployment, particularly structural unemployment, in detail. The committee recommends expansion of current Federal manpower training programs. It calls for beefing up the CETA program by improving the link between that program and the private sector. It also recommends significant strengthening of economic development programs to reduce the Nation's unemployment rate, particularly among disadvantaged Americans. The committee calls upon the administration to publicize the new jobs tax credit proposal so that it can be an effective employment device. It recommends new incentives for private sectors employment and it calls upon the administration to prepare a standby program for employment in the event that the unemployment rate rises significantly. In addition, the committee is quite critical of the administration's assessment of the magnitude of the economic policy changes required by the targets established under the Employment Act as amended last year.

This committee recognizes that the term structural unemployment is a cold, clinical term which really does not capture the human dimension of the problem. Too many blacks, too many Hispanics, too many young people remain jobless and often without much hope of participating in the economic life of our Nation. The recommendations in this report would not solve the problem completely. But they are sound, solid recommendations that underline the obligation—the economic, moral, and humanitarian obligation—we as a Nation have to foster opportunities for employment.

The report stresses the growing interdependence of the United States and the world economy. It recommends greater international coordination of macroeconomic policies to achieve a better U.S. trade balance. It urges greater emphasis on export assistance for small and medium sized firms and scrutiny of the law and regulations currently inhibiting U.S. exports. It indicates that unilateral measures to encourage surplus countries to meet their international obligations may be necessary. Finally, it endorses the initiative taken by the U.S. Treasury to study a plan to accommodate the changing role of the dollar.

Bipartisanship during critical periods in our history has served this Nation well. This is the right time for a great deal more bipartisanship in economic policy as we try to pursue remedies to fight simultaneously high inflation and high unemployment. I would welcome that bipartisanship and I hope this report contributes to it. The severe economic problems we face require the kind of national unity which has so often been the hallmark of the American people when confronted with difficult challenges.

I would like to thank all the members of the committee for the splendid cooperation they have given me during my brief tenure as chairman. I would like to thank in a special way Congressman DICK BOLLING and Congressman BUD BROWN for their council and assistance. Our annual report was the work of 20 dedicated public servants who are deeply concerned about the future of our country and were willing to put aside partisan politics to search for the solutions to

our Nation's difficult economic problems.●

By Mr. LONG, from the Committee on Finance, without amendment:

H.R. 1147. An act to extend temporarily the authority of the Secretary of the Treasury to waive the imposition of the countervailing duties (Rept. No. 96-45).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WILLIAMS, from the Committee on Labor and Human Resources:

The following-named persons to be Members of the Board of Directors of the Legal Services Corporation:

Michael Kantor, of California; Robert J. Kutak, of Nebraska; F. William McCalpin, of Missouri; Revius O. Ortique, Jr., of Louisiana; Howard R. Sacks, of Connecticut; and Ramona Toledo Shump, of Kansas.

(The above nominations from the Committee on Labor and Human Resources were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

ORDER FOR STAR PRINT—S. 515

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a star print version of S. 515 be provided to correct the printing errors to show the first $250,000 of disaster loans to businesses repaid at 5-percent interest rather than on the first $25,000, as the printed version now indicates.

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

ORDER DISCHARGING VETERANS' AFFAIRS COMMITTEE FROM CONSIDERATION OF S. 576 AND REFERRAL OF S. 576 TO JUDICIARY COMMITTEE

Mr. HAYAKAWA. Mr. President, I ask unanimous consent that the Veterans' Affairs Committee be discharged from the consideration of S. 576 and that it be referred to the Judiciary Committee. This request has been cleared with both the Veterans' Affairs and the Judiciary Committee chairmen.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, this request has been cleared with the majority leader. It is my understanding it was originally referred by mistake to the wrong committee.

Am I correct?

Mr. HAYAKAWA. That is correct.

Mr. ROBERT C. BYRD. Very well.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. TSONGAS:

S. 726. A bill to authorize the appointment of Col. Mary Agnes Hallaren, U.S. Army, retired, to the grade of brigadier general on the Retired List of the U.S. Army; to the Committee on Armed Services.

By Mr. MORGAN:

S. 727. A bill for the relief of Evelyn Khoury; to the Committee on the Judiciary.

By Mr. CULVER (for himself and Mr. McGOVERN):

S. 728. A bill to amend the Water Supply Act of 1958, and for other purposes; to the Committee on Environment and Public Works.

By Mr. SCHMITT (for himself and Mr. DOMENICI):

S. 729. A bill to revise the basis of assistance for communities under the Atomic Energy Community Act of 1955; to the Committee on Energy and Natural Resources.

By Mr. JACKSON (for himself, Mr. MOYNIHAN, Mr. JAVITS, Mr. KENNEDY, Mr. WILLIAMS, Mr. PELL, Mr. CHAFEE, Mr. STAFFORD, Mr. SCHWEIKER, and Mr. HEINZ):

S. 730. A bill to create the Energy Corporation of the Northeast and to authorize the Secretary of the Treasury to provide guarantees for the obligations of such corporation and other financial assistance to such corporation; to the Committee on Energy and Natural Resources.

By Mr. SCHWEIKER:

S. 731. A bill to amend titles XVIII and XIX of the Social Security Act to strengthen the capabilities of States and the Federal Government to detect medicaid fraud and abuse; to the Committee on Finance.

By Mr. JACKSON (by request):

S. 732. A bill to amend the Land and Water Conservation Fund Act of 1965, as amended, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. STENNIS (for himself, Mr. COCHRAN, Mr. BAKER, Mr. SASSER, Mr. HEFLIN, and Mr. STEWART):

S. 733. A bill to provide for the completion of the Natchez Trace Parkway from Natchez, Mississippi, to Nashville, Tennessee; to the Committee on Energy and Natural Resources.

By Mr. JACKSON (by request):

S. 734. A bill to enable the Secretary of Energy to utilize revenues from power marketing, to carry out his responsibilities related to Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. McCLURE:

S. 735. A bill to supplement the Acreage limitation and residency requirements of Federal reclamation laws; to the Committee on Energy and Natural Resources.

By Mr. DOLE:

S. 736. A bill to amend the Internal Revenue Code of 1954 to clarify the standards used for determining whether individuals are not employees for purposes of the employment taxes; to the Committee on Finance.

By Mr. STEVENSON (for himself and Mr. HEINZ):

S. 737. A bill to provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the right to engage in commerce; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MELCHER (for himself, Mr. BAUCUS, Mr. BURDICK, Mr. DOLE, Mr. EXON, Mr. McGOVERN, Mr. PRESSLER, Mr. TOWER, Mr. WALLOP, Mr. YOUNG, and Mr. ZORINSKY):

S. 738. A bill to amend section 16(b) of the Soil Conservation and Domestic Allotment Act, as amended, providing for a Great Plains Conservation Program; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. LAXALT:

S. 739. A bill to amend certain provisions of title 28, United States Code, relating to venue in the district courts and the courts of appeals; to the Committee on the Judiciary.

By Mr. WILLIAMS (for himself, Mr. PROXMIRE, Mr. GARN, Mr. MORGAN, Mr. STEWART, and Mr. TOWER):

S. 740. A bill to amend section 245 of the National Housing Act to exclude graduated payment mortgages from certain restrictions regarding maximum amount of loan; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CRANSTON (by request):

S. 741. A bill to amend title 38, United States Code, to revise and clarify eligibility for certain health care benefits; to revise and clarify the Department of Medicine and Surgery personnel system; to revise medical resources utilization; and for other purposes; to the Committee on Veterans' Affairs.

By Mr. PERCY (for himself and Mr. GLENN):

S. 742. A bill to effect certain reorganization of the Federal Government to strengthen Federal programs and policies with respect to nuclear waste management; ordered held at the desk, by unanimous consent.

By Mr. WILLIAMS:

S. 743. A bill to amend the Immigration and Nationality Act to authorize certain courts which have naturalization jurisdiction to retain up to $20,000 of the fees collected in naturalization proceedings held in such courts in any fiscal year; to the Committee on the Judiciary.

By Mr. MATSUNAGA:

S. 744. A bill to amend section 37 of the Internal Revenue Code of 1954 to increase the amount of the credit for the elderly; to the Committee on Finance.

By Mr. PROXMIRE (for himself, Mr. WILLIAMS, and Mr. GARN) (by request):

S. 745 A bill to amend and extend certain Federal laws relating to housing, community and neighborhood development and preservation and related programs, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MATSUNAGA:

S. 746. A bill for the relief of Raymond W. Milling; to the Committee on Governmental Affairs.

S. 747. A bill for the relief of Yee Leong Ching; to the Committee on the Judiciary.

By Mr. CANNON (for himself, Mr. THURMOND, Mr. GOLDWATER, Mr. HARRY F. BYRD, JR., and Mr. TALMADGE):

S.J. Res. 51. A joint resolution proposing an amendment to the Constitution to provide that electoral votes shall be proportionally divided in each State, based on the direct popular vote in that State; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MORGAN:

S. 727. A bill for the relief of Evelyn Khoury; to the Committee on the Judiciary.

EVELYN KHOURY

● Mr. MORGAN. Mr. President, today I am introducing a private bill for the relief of Miss Evelyn Khoury, a citizen of Lebanon.

Miss Khoury left her troubled homeland to stay with a family in North Carolina. After saving her money for some time, she departed her native country to reside with her aunt and uncle who reside in my State. Miss Khoury comes from a large and poverty-stricken Lebanese family. She is 30 years of age and

is currently learning to speak English. She is being supported by her relatives here and at this point, she has been in the United States a little over 1 year.

Mr. President, this private bill will admit Miss Khoury to the United States for permanent residence. I believe that we in the Senate would be hard pressed to turn this young woman away from our doors and return her to the still-embattled land of Lebanon. While I would hope that she could return, she has given up all hope and the situation in Lebanon supports her view that civil violence and warfare will be ways of life in that country for some time to come.

At present, Miss Khoury is with a family which will care for her and is being trained to speak our language. It is my belief that she will be an asset to our country if given the opportunity to remain.

I urge favorable consideration of this legislation by the Senate.●

By Mr. CULVER (for himself and Mr. McGOVERN):

S. 728. A bill to amend the Water Supply Act of 1958, and for other purposes; to the Committee on Environment and Public Works.

THE SMALL TOWN AND RURAL COMMUNITY WATER SUPPLY ASSISTANCE ACT OF 1979

● Mr. CULVER. Mr. President, today I am introducing legislation to help small towns and rural communities meet one of their most pressing needs, the development of adequate water supplies for municipal and domestic use.

A vigorous community cannot exist without a sufficient supply of good water available at reasonable cost. Both its health and economic well being are threatened if water is limited in quantity and or poor quality. Many small and rural communities, however, are increasingly hard-pressed to develop new water supplies, and water in rural areas is generally scarcer, costlier, and of poorer quality than that of urban America.

In my own State of Iowa, for example, more than 30 percent of our population still uses individual wells or other noncentralized systems. Testimony at a Senate Water Resources Subcommittee hearing I held at Leon, Iowa, in 1976 revealed that the future demand for water in southern and western Iowa will run 20 percent greater than current usage, and that new supplies of both surface and ground water must be developed to meet these requirements.

Shallow wells may also be more easily contaminated by surface runoff or contain unacceptably high concentration of nitrate and other chemicals. At a hearing of the Water Resources Subcommittee I chaired in rural Polk City, Iowa, last December on water supply issues, one elderly resident testified that the nitrate content of his neighbor's well water was so high that it killed some of his livestock. The neighbor drilled another well to provide better water for his animals, but his family continued to use the water from the older well. Mr. President, it is shocking to think that in the most powerful and richest Nation on Earth, some of our citizens continue to drink water that kills livestock because they cannot afford the cost of hauling in water for their own use.

Adequate water resources are a critical component of the quality of small town and rural life, and it is obvious that appropriate measures should be taken to develop additional water supplies and more efficient and economical centralized rural water systems. Mr. President, the legislation I am introducing today, the Small Town and Rural Community Water Supply Assistance Act of 1979, entails a three-part strategy to assist these communities in meeting their critical water supply needs.

First, the bill initiates a technical assistance program to provide small and rural communities with "front end" planning for developing or expanding central water systems. Many water-short communities have organized water associations to establish a reliable source of acceptable water for their members. Iowa, for example, currently has 26 water associations serving small and rural communities, and the Water Resources Institute at Iowa State University estimates that as many as 66 associations may be formed in the State by the end of the century.

While the Farmers Home Administration provides loans and grants to construct water systems, little Federal assistance is available to help rural water associations formulate feasibility studies to design the best systems to meet the needs of small communities. Studies by the national demonstration water project conclude that many of these systems are either "underdesigned" and fail to accommodate the need for growth, or are "overdesigned" and result in excessive expenditures for operation and maintenance. To rectify this problem, this legislation authorizes the U.S. Army Corps of Engineers to assist rural water associations in conducting feasibility studies, including assessments of the most appropriate surface and ground water sources, to design the most efficient and economical water systems.

Second, it amends the 1958 Water Supply Act to authorize a Federal cost-sharing program for water supply features of multipurpose projects of the U.S. Army Corps of Engineers and the Bureau of Reclamation. Under existing law, water supply has been an incidental "add-on" to the flood protection, hydroelectric power or navigation benefits of construction projects undertaken by these agencies.

The costs associated for water supply are borne completely by local users. I believe that providing water supply for community use should receive equal priority with other benefits of these programs. The bill permits the Corps of Engineers to construct projects whose primary purpose is water supply. It also increases from 30 to 50 percent the amount of total project costs that may be allocated to municipal water supply uses, and authorizes the Federal Government to provide 50 percent of the costs of water supply features of these projects.

Finally, the bill authorizes increased emphasis on water supply features of small watershed projects built under the authority of Public Law 83-566, the Small Watershed and Flood Prevention Act of 1954. While the main thrust of the "566" program is flood protection and erosion control, the Soil Conservation Service estimates that 148 of the 1,210 small watershed projects nationwide incorporate municipal water supply features, including the Little River, Three Mile Creek, Twelve Mile Creek, and Walter's Creek projects in Iowa.

The total cost of water supply elements of these projects nationwide is $54.4 million. While not a significant amount when compared with other national programs, these costs can be a major financial burden on the small and rural communities that must bear them completely.

Currently, 30 percent of the total cost of a small watershed project can be allocated for water supply features. Discretional authority for Federal cost-sharing has existed since 1972, but it has never been implemented.

This bill increases from 30 to 50 percent the percentage of project costs that may be allocated to water supply, and requires the Soil Conservation Service to initiate a 50-percent cost-share for water supply features of both future small watershed projects and those currently under construction.

Mr. President, the hearings I have held on the problems of water supply graphically illustrate the problems many small and rural communities face in developing sufficient supplies of water at affordable costs. The Small Town and Rural Community Water Supply Assistance Act of 1979 signals the beginning of a firm Federal commitment to help assure the continued availability of adequate water supplies which are essential to the well-being of all smalltown and rural Americans.

Thank you, Mr. President.●

By Mr. SCHMITT (for himself and Mr. DOMENICI):

S. 729. A bill to revise the basis of assistance for communities under the Atomic Energy Community Act of 1955; to the Committee on Energy and Natural Resources.

ATOMIC ENERGY COMMUNITY ACT AMENDMENTS OF 1979

● Mr. SCHMITT. Mr. President, the Los Alamos Scientific Laboratories in Los Alamos, N. Mex., have made great contributions to the advancement of science in the United States. In addition to its role in meeting the vital defense requirements of our Nation, the Los Alamos labs have also been active in a number of other areas of research and have significantly contributed to the solution of problems associated with almost all aspects of energy research, development, and demonstration.

Since 1943, health research has also been an integral part of the Los Alamos programs when the dangers of exposure to nuclear materials was recognized and addressed with the rapid development of methods and standards for protection of laboratory workers.

The list of achievements of the Los Alamos labs is too long and varied to discuss in detail at this time, but it can accurately be said that they are of the primary scientific assets of our Nation.

For many years, the county government and schools of Los Alamos, N. Mex., have received community assistance funds from the Federal Government. The existence of the community of Los Alamos is, in fact, a result of the U.S. Government's creation of the Los Alamos Scientific Laboratories during the development of the Manhattan project in World War II. The vast majority of property in the county is owned by the Federal Government, a fact which greatly inhibits the ability of Los Alamos to raise local revenues to finance the activities of local government.

Los Alamos is one of three communities where federally operated nuclear research facilities are located. Oak Ridge in Tennessee receives funding under a formula approach based on the application of criteria in the Atomic Energy Community Act. This formula-based approach was adopted for Oak Ridge in 1964. Richland, Wash., stopped receiving community assistance funds in 1969 because the development of private industry there and the accompanying growth of the community has created a tax base and gradually reduced the need for Federal assistance. Los Alamos, because of its isolated location in a mountainous area of the State, surrounded by public lands, remains unsuitable for comparable commerical development. The need for community assistance funding is very real—and a long-term requirement, yet the Government has failed to develop a formula to provide for funds and each year the problem of how much the county will receive is addressed again. The solution to this yearly exercise is to apply a formula similar to that which is used for funding in Oak Ridge which will give both the county of Los Alamos and the Federal Government a dependable estimate of future assistance.

Over the years, the amount of community assistance to Los Alamos has varied considerably. For fiscal year 1980, the Department of Energy has proposed to reduce assistance to the county by some $358,000 or 28 percent below last year's payment of $1,268,000. The assistance to the schools is scheduled to decrease from $3,293 million to $3 million, a decrease of 9.1 percent. This is a matter of vital concern to the people of Los Alamos, for the county government and the schools need community assistance funds to be able to provide basic public services.

These reductions are entirely unwarranted and would pose a severe strain on the county. Furthermore, it underscores the necessity for developing a formula approach to the provision of funds which will allow the people of Los Alamos to have an idea of what sort of payment will be made in future years. At present, the funding level appears to be based on whatever budgetary whims of priorities prevail for the moment at the Department of Energy rather than on the need to provide a stable level of assistance so that the county can plan for the future. I know of no organization that can function effectively on the funding pattern which has occurred under DOE. It has resulted in a lack of confidence and some degree of confusion in Los Alamos with regard to DOE intentions. The current DOE approach requires that the county await congressional action on the Federal budget before there is any certainty as to the final level of funding.

For these reasons, I am introducing legislation today, cosponsored by my senior colleague Senator DOMENICI, requiring that DOE community assistance funding to the county and schools of Los Alamos be based on a formula approach. The formula would be based on the current assistance payment adjusted for inflation, any increases or decreases in employment or school enrollment, the average assistance payment received by Los Alamos over the past 3 years, and the ratio of projected revenues from local sources to average local sources over the preceding 3 years.

The formula would provide a reasonable and fair approach to community assistance funding in Los Alamos. It would increase funding for inflation but would also hold the possibility for reducing funding should employment or school enrollment decline.

It is fair to both the taxpayer who must provide the revenues and to the county of Los Alamos which supplies vital services to Department of Energy personnel working at the Los Alamos Scientific Laboratory. This formula approach to community assistance payments will eliminate the uncertainty which has prevailed up to the present time and will end the county's dependence on shifting attitudes at the Department of Energy. No local unit of government should be held hostage to the Federal budgetary process to the extent that the county of Los Alamos has been for 25 years. I hope the Congress will act swiftly to correct this unbalanced and unfair situation. It is a pleasure to have the distinguished senior Senator from New Mexico, Senator DOMENICI, join me as a cosponsor of this legislation.

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. 729

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 "Atomic Energy Community Act Amendments of 1979".

SEC. 2. (a) Chapter 9, of the Atomic Energy Community Act of 1955 (42 U.S.C. 2391) is amended by adding at the end thereof the following new section;

"SEC. 95. Basis of Assistance to Los Alamos, New Mexico for Fiscal Years Beginning After September 30, 1979.—

"a. IN GENERAL.—For any fiscal year beginning after September 30, 1979, the Secretary shall make payments under this chapter to Los Alamos, New Mexico according to a formula where the assistance payment for any fiscal year shall be based on the assistance payment for the preceding year adjusted to consider the following:

"(1) the estimated inflation adjustment;

"(2) the estimated employment impact or related school enrollment;

"(3) the average assistance payment received by such entity over the past 3 years; and

"(4) the ratio of projected revenues from local sources to average local source revenues over the preceding 3 years.

"b. ASSISTANCE TO SCHOOL DISTRICTS.—For any fiscal year beginning after September 30, 1979, the Secretary shall make payments under this chapter to affected school districts at or near Los Alamos, New Mexico based on the formula established under subsection a.

"d. MAINTENANCE OF EFFORT.—Funds shall be made available under subsection b. only to the extent that the Secretary determines that such funds are in addition to, and shall not supplant, local funds. In making a determination under the preceding sentence the Secretary shall consider the effects of inflation, school enrollment changes and such other matters as may be deemed necessary.

"e. AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated for the purposes of subsection a. $1,391,800 for the fiscal year ending September 30, 1980, and such sums as may be necessary for each succeeding fiscal year.

"(2) There are authorized to be appropriated to carry out the purposes of subsection b. $3,482,590 for the fiscal year ending September 30, 1980 and such sums as may be necessary for each succeeding fiscal year.".●

By Mr. JACKSON (for himself, Mr. MOYNIHAN, Mr. JAVITS, Mr. KENNEDY, Mr. WILLIAMS, Mr. PELL, Mr. CHAFEE, Mr. STAFFORD, Mr. SCHWEIKER, and Mr. HEINZ):

S. 730. A bill to create the Energy Corporation of the Northeast and to authorize the Secretary of the Treasury to provide guarantees for the obligations of such corporation and other financial assistance to such corporations; to the Committee on Energy and Natural Resources.

REGIONAL ENERGY DEVELOPMENT ACT OF 1979

○ Mr. JACKSON. Mr. President, on behalf of myself and Senators MOYNIHAN, JAVITS, KENNEDY, WILLIAMS, PELL, CHAFEE, STAFFORD, SCHWEIKER, and HEINZ, I am introducing today legislation to establish the Energy Corporation of the Northeast.

Mr. President, the concept of a regional energy corporation has been developed by the Coalition of Northeastern Governors. I was happy to serve as sponsor of this legislation during the 95th Congress and I welcome this opportunity to introduce this bill anew in the 96th Congress.

The purpose of such a corporation is very simple. It is designed to bring together the States, the Federal Government, and private industry in a creative effort to deal with the energy problems of the Northeast.

Mr. President, the energy problems of the Northeast are a national concern. The increasing dependence of the Northeast on imported oil and petroleum products is a problem of critical importance. The security implications of this dependence are national in scope. The economic consequences of the largest trade deficits in our history—caused mainly by oil imports—run nationwide. The recent events in Iran graphically illustrate the need to decrease this dependence upon foreign

petroleum imports. In particular, the national interest dictates that the Northeast region—the region of the country most dependent upon these imports—make a concerted effort to reduce its need for energy imports as soon as possible.

The Energy Corporation of the Northeast is intended to be a regional self-help mechanism which would assist the region in its efforts to reduce these imports. The corporation would provide technical and financial assistance to projects designed to increase the supply of energy and to promote the more efficient use of energy within the Northeast. Using State and private funds, backed by Federal guarantees of its obligations, the corporation could help facilities for the production of energy, energy transportation, or distribution projects, the renovation and rehabilitation of existing energy facilities, and facilities for the manufacturing of equipment or materials necessary for energy production and conservation.

Mr. President, the proposed new corporation is not a revolutionary concept. It builds upon our experience with the Bonneville Power Administration and the Tennessee Valley Authority. It borrows from the approach of the Reconstruction Finance Corporation.

It is increasingly clear that we will not solve our economic or energy problems solely through conventional, marketplace solutions. We need to be creative in devising new mechanisms that will foster energy investment. The Energy Corporation of the Northeast could enlist the public and private sectors to achieve energy development which will not otherwise occur.

Mr. President, I ask unanimous consent that a brief summary of the bill be included in the RECORD, together with an article supporting the concept of such a corporation by Felix G. Rohatyn and John C. Sawhill.

There being on objection, the summary and article were ordered to be printed in the RECORD, as follows:

REGIONAL ENERGY DEVELOPMENT ACT

SUMMARY

I. Purposes (Sections 1–3):

Congress authorizes the creation of a regional energy development corporation to provide technical and financial assistance to projects designed to increase the supply or promote more efficient use of energy in the Northeast and to promote regional cooperation on energy problems. The corporation is conceived as an entity capable of joining the federal government with the states and private sector in meeting the energy problems affecting the region.

The Corporation is to be known as the Energy Corporation of the Northeast.

II. Organization, Management, Powers (Sections 4–14):

The Corporation will be established by incorporators appointed by the President, who will also appoint five directors. CONEG states may join by enacting state legislation for that purpose, and contributing initial capital in the amount of $1 per capita. The Governor of each member state will appoint one director. Private investors will jointly select two additional directors. All directors serve part-time.

The Corporation becomes operational if at least three states become members before December 31, 1978. States may withdraw as members by subsequent legislation. States contiguous to member states are also eligible to join the Corporation in the same manner.

The Board selects its chairman, and appoints a President who shall serve at its pleasure as Chief Executive of the Corporation. A quorum consists of at least two Federal Directors and ⅔ of the State Directors.

The Corporation is authorized to participate in joint ventures with public or private groups and to operate through subsidiaries. Its own activities, as opposed to projects it finances, are tax-exempt. It does not have powers of eminent domain, but must request that the State consider the exercise of its powers of condemnation.

The Corporation is required to submit annual reports and audits to the President, Congress, Governors and Legislatures of member states. In addition, the Governors, on a rotating basis, shall designate independent persons to evaluate the performance of the Corporation every two years.

III. Projects (Sections 15–22):

The Corporation may participate in financing any project related to solving the energy needs of the region including projects relating to coal development or transportation, enery conservation or storage; power production or transmission; manufacturing new energy-related products or equipment necessary to energy production or conservation.

The Corporation may assist projects by loans, guarantees or equity investments. Before any financial assistance is provided, the Board must find that the project is expected to have a beneficial impact on the energy problems of the region; the investment together with other Corporation activities will not materially impair the credit of the Corporation; private capital is unavailable or insufficient; and, unless this limitation is specially waived, the Corporation will not operate the project on a continuing basis or invest more than 50 percent of the total cost.

Each project may also be rejected by the Governor of the Member State in which it is to be located. The Board is charged with reviewing periodically the allocation of Corporation resources among the Member States to assure a measure of equity in the distribution of benefits. To further this end the Corporation may not concentrate its total assets—its investment in any one project is limited to the greater of 10 percent of its borrowing authority or $200 million.

IV. Financing (Sections 23–32):

Capital subscriptions from the States ($1 per capita initial contribution) and private investors determine the borrowing authority of the Corporation according to a formula of $15 borrowing backed by federal guarantees for each $1 capital contribution. After the initial subscription, additional state capital is authorized but not mandatory. Thus, the Corporation's capacity will expand the extent its performance justifies additional subscriptions from any source.

Capital securities may be issued both to States and private investors in a form determined by the Board.

The Corporation may issue its own obligations which shall be general obligations payable out of any revenues. In general the specific terms of Corporation borrowing are left to the Board. Similarly, the security and priority for Corporation loans and other financing will be determined by the process of market negotiation. The Corporation's obligations are limited in term to a maximum of 40 years.

Neither the credit of the United States nor the credit of Member States can be pledged by the Corporation.

V. Federal Guarantees (Sections 33–38):

The Secretary of Treasury is authorized to guarantee obligations of the Corporation. The Secretary may review and approve terms of any financing before providing the guarantee. In the event of default, a holder of Corporation obligations may seek payment from the Secretary after 30 days and the Secretary must pay within 60 days after such demand. This is the standard procedure for federal bond guarantees. Income on guaranteed obligations are taxable to the holder.

VI. Other Provisions:

Upon joining the Corporation, the Member State is required to pass legislation assuring expedited (90 days) decisions on permits required for Corporation projects (Section 42). The Governor may exempt specific types of permits from this schedule (Section 42). In all respects, the Corporation-assisted projects will be subject to federal, state, and local laws and regulatory procedures, including environmental standards, zoning and planning laws, and rate-making procedures.

The bill authorizes a regional corporation for the Northeast. The findings, however, make clear the Congressional intent to authorize similar regional entities for other regions.

URGENTLY NEEDED—A NORTHEAST ENERGY DEVELOPMENT CORPORATION

Each day the states in the Northeast corner of the U.S. burn up more than 3 million barrels of oil and gasoline on an annual basis. Most of it is purchased in the Middle East. It costs more than $17 billion and equals two-thirds of America's mounting trade deficit.

These are the key figures that make us believe that Congress should act now on a proposal to establish a special public corporation that would work as a catalyst to cut the energy knot that is particularly damaging to the economy of the Northeast and threatening the economy of the country.

The proposal, which originated with Governor Carey of New York, has become a cornerstone of the program of the Coalition of Northeastern Governors which includes, in addition to New York, the governors of Connecticut, Massachusetts, New Jersey, Pennsylvania, Rhode Island, and Vermont. The proposed authority, the governors would call it the Energy Corporation of the Northeast (ENCONO), would be a partnership among the states, private industry, and the federal government.

The major focus of ENCONO would be financial: It would provide federally guaranteed start-up loans to energy development and conservation projects that for, one reason or another, are not being tackled.

The governors—witnesses to four years of economic erosion since the start of the energy crisis and the rise of OPEC oil—say that it will take enormous investments of capital to do the kind of things that will have to be done to find and use alternatives to oil and gas. They know that investors' dollars—like water—do not run uphill.

The governors are right. At present there are very few investors willing to put up the sums that will be necessary to meet the country's objective for conversion of plants to coal or to build the required nuclear power plants, even if we assume all technological and environmental questions can be resolved quickly.

We are talking about at least $70 billion just to convert utilities to coal between now and 1985, a target date in President Carter's National Energy Plan. The Edison Electric Institute recently estimated that conversion costs would push up capital requirements of utilities to $416 billion from $346 billion. (That figure assumes a seven percent annual inflation rate over the nine-year period.) Virtually all of the additional capital for conversion would have to be raised outside the normal funding areas of the utilities if present rate and regulatory practices are maintained.

We do not believe that the financial marketplace, given the confusion of conflicting voices heard on any issue involving both energy and the environment, can be expected to come up with such sums without governmental prodding or guarantees.

The governors understand this. They know that their states cannot by themselves or even together bring in the necessary infusions of capital.

Beyond this, there is the race against time. The date 1985 is significant. Several recent world oil supply and demand analyses have concluded disturbingly that there will be major shortages and sharp, unmanageable oil price increases, unless all governments act quickly to reverse existing production and consumption trends. Specifically, a recently published report from the Workshop on Alternative Energy Strategies noted that the supply of oil will fail to meet increasing demands, most probably between 1985 and 1995, even if energy prices rise 50 percent above current levels in real terms. The long lead times on energy projects require that work on these projects begin now to meet that 1985 deadline.

We can understand the skepticism with which the Northeast governors' proposal might be met in other parts of the country. Why should the federal government be a party to a scheme that on the surface appears to benefit only one region, albeit one that includes a quarter of the nation's people? If even sound bankers will not step in, why should the government?

There is a good reason. The Northeast's dependence on foreign oil—while it lasts—is costing the entire nation a fortune. Not in taxes. In the inflated costs of everything. Inflation is the silent partner of the nation's foreign trade deficits. And, inflation hurts the people of Los Angeles, Seattle, Chicago, and Atlanta, as well as the people of New York, Boston, Philadelphia, and Baltimore.

President Carter recently noted that the U.S. would have a positive trade balance of $20 billion this year, were it not for oil imports. Instead, the country will import an estimated $45 billion worth of oil and the trade deficit will hit an unprecedented $25 billion. That deficit holds alarming inflationary potential.

What the governors of the Northeast want—and need—is a mechanism that will help them end what one can only call a Catch-22 situation. High energy costs in the region drive away industry and jobs which erode the Northeast's tax base. That makes the investment community less and less willing to commit the capital to convert the Northeast to lower cost energy. And, all the while, the nation's trade deficits keep mounting and everyone's cost of living goes up.

A recent Brookhaven National Laboratory study predicted that the Northeast—which gets 70 percent of its energy from petroleum-based fuels, two-thirds of which are imported—will use twice as much oil by the year 2000, if present consumption trends continue.

The financial woes these oil deficits impose on the region are compounded by the complexities of substituting coal and nuclear power for oil; conflicting procedures of state, local, and federal regulatory agencies with firm, but narrow mandates; and, of course, the public's blind faith—or hope—that, as in the past, American technologicial ingenuity will come up with some new and miraculous substitute for oil.

Nothing we have seen to date allows us to share the public's optimism. There are only tough and costly choices ahead, and the American lifestyle is going to have to adjust itself dramatically and quickly.

The question of the Northeast governors raise is this: if and when all the disputes over energy and the environment are settled, who will pay for weaning the nation away from foreign oil? It is a basic question. And, it is there that the governors see a role for the federal government as a guarantor of ENCONO loans. ENCONO, which could serve as a model for similar corporations elsewhere in the country, would be the middleman to bring together all the interested parties and prod them into action.

ENCONO's top draw would be its ability to go into the money markets to get the loans that are essential to retooling the Northeast for oil substitutes. A federal guarantee of such loans would make for better prospects and lower costs.

While no one really can predict the amounts of money that must be found to realize this massive conversion away from Arab oil, money must be obtained to begin. The leaders of the seven states feel that they might be able to raise as much as $1 billion themselves from the taxpayers and industries in their region. To get more—they estimate a potential of as much as $15 billion—they will need federal guarantees. That start-up money, they believe, would be the lever to induce the private sector to invest the rest.

The governors are not asking for blank checks or even handouts. The guarantees would cost the federal government nothing and the governors will even forfeit exclusive local control. We can imagine an EN CONO-style public corporation working through a board of directors representing all interested parties—the federal government, state governments, and the private sector.

The financial carrot, however, should not be ENCONO's only lure. It is also important, we feel, that ENCONO have the power to screen prospects for funding. While this would be a protection for investors and the public, it also would accelerate and coordinate the efforts to come to grips with energy problems.

ENCONO financial clout will give it the leverage needed to end the paralyzing din of disputes between all the interested agencies, the varying organizing groups, the money market, the public and private power producers, and the states themselves. For instance, licensing nuclear power plants and other energy facilities today may require the okay of up to 50 different regulatory bodies. Getting all these approvals takes inordinate amounts of time; time that ultimately costs consumers vast sums of money and that drives investors to alternative opportunities. ENCONO—if it could speed things up—would reduce construction costs. Its tripartite board must have the financial clout to encourage regulators to cooperate more effectively than they have in the past and get energy projects moving.

But, ENCONO should not be a "lender of last resort" to promoters of projects with little or no chance of becoming profitable. Safeguards are necessary. For instance, the corporation's participation in any one energy project should be limited to no more that 50 percent. The U.S. Secretary of the Treasury, who would issue the federal guarantees, would review financial operations to insure corporate integrity. The governors are mindful of this: They are proposing that the Treasury Secretary and the chief executive of each member state have veto power over every project to be funded.

ENCONO would provide obvious benefits to the Northeast by attracting the massive capital investment to create reliable energy sources that would in turn attract industry and provide jobs. By doing so, it would obviate the need for more expensive—and we believe less effective—public employment programs, and thereby save the nation's taxpayers several million dollars. And, the nation would gain in other important ways as well. There are three strong national arguments for special federal involvement in an energy corporation for the Northeast:

It would decrease the national trade deficit and inflationary pressures in the U.S. by reducing the Northeast's reliance on imported oil.

It would make the country less vulnerable to sudden price hikes and supply disruptions of foreign oil.

It would enable the nation to pursue a more independent foreign policy, not one dominated by concern for OPEC oil.

Furthermore, if major projects are directed through ENCONO, we just might create a unique investment vehicle to recapture petrodollars from OPEC countries, which to date have refused to make long-term investment in projects unrelated to the energy sphere. Some of these nations now say they want to invest in the development of alternative energy sources to prolong the life of their own petroleum reserves. ENCONO would give them a way to do it.

Without an ENCONO-like mechanism to stimulate investment, we regard the goal of energy self-sufficiency as an impossible dream. Consider the costs of meeting just one of the National Energy Plan's objections: increasing the nation's use of coal by more than 400 million tons per year by 1985. Just who will spend the untold billions to reactivate and expand the nation's coal mines? Who will rehabilitate the rail and barge transporation systems to move that coal? Who will build new coalfired utility and industrial boilers and convert existing ones to use that coal? Who will take the risks of putting new technologies such as coal gasification and desulphurization processes into commercial use so that the switch to coal does not do irreparable damage to the nation's environment? These are the types of projects we envision ENCONO tackling in the Northeast.

Europe and Canada have recognized already the quasi-public entities are necessary to supplement private capital in developing energy sources. The European Coal and Steel Community, for instance, has been successful in financing and coordinating energy projects there. It also has given member governments expertise in the energy business as well as a means for making government priorities part of the private sector decision-making process.

There are precedents here, too, for federal participation in regional development. Most notably, the Tennessee Valley Authority in the South and the Bonneville Power Authority in the Northwest, are both federally-backed regional energy projects. The federal government also has lent a hand to other regions such as Appalachia by establishing regional commissions to solve the economic problems of those areas. The Marshall Plan even provides an example of such federal involvement on an international level.

Those precedents must be applied to the Northeast. Other regions in the country will benefit from the current and proposed energy investments of government and the private sector, but not the Northeast. Most of the funds that will be spent on coal development are targeted for development of Western reserves. The Western part of the country also gains from massive investments that will be made in oil shale and synthetic fuel technologies, and in large solar thermal and geothermal sites. The West Coast reaps the benefits of the Alaskan oil and gas fields.

The Northeast clearly needs the innovative approaches that ENCONO offers. It does not spend so much for fuel because it is profligate. On the contrary, the high energy cost in the region makes it one of the most energy efficient areas in the country. But the area lacks indigenous lower cost fuels and the capital to convert to those fuels even if they were available.

The Northeast cannot control the cost of

foreign oil, but it can control its dependence on it through conservation measures, the development of coal reserves within its own states and the conversion of plants and utilities to coal. To do so, it needs capital. ENCONO, at no cost to the federal government, may be the link to provide capital for implementing the National Energy Plan at the regional level.

Washington must provide incentives at once. Not to do so will lead to even greater costs a few years down the line. The nation's oil deficits create trade deficits which keep the inflationary pot boiling. On a global scale that chain reaction is even more frightening for, coupled with the concentration of the world's money supply in the hands of a few OPEC nations, it threatens to bring down the international financial system like a gigantic house of cards.

We hope that President Carter and the leadership of Congress will give Governor Carey and his fellow Northeastern governors serious and thoughtful consideration of this vitally needed proposal. The predicament of the Northeastern states, as the governors by their joint action recognize, is not political. Their energy needs are real, and the price of inaction on the governors' proposal—or something very much like it—will be paid not just by the people of these states. It will be borne by the entire nation.

● Mr. JAVITS. Mr. President, I am pleased to join as a cosponsor of the Regional Energy Development Act of 1978. This is a bill that addresses the energy needs of the Northeast region in the context of the Nation's energy program. It is a bill that must be enacted if the Northeast region is to be able to utilize the enormous amounts of capital needed to supply our future energy needs.

The Northeast region imports almost all its energy from other regions of the country and from sources abroad, which now worry us because of the accidents of geography and geology that make us poor in these native resources. If the region is to become more energy independent, it must develop the facilities to produce the energy it does have available, the physical infrastructure to transport and utilize its energy efficiently.

It is the purpose of this act to ease the transition of the region from an oil and gas economy, to an economy fueled by domestic and renewable energy resources. It is also its purpose to aid in financing the enormous conservation and retrofit costs that are associated with that energy transition. The transition from wood to coal and from coal to oil took about 60 years. We do not have those 60 years to move from oil to alternative sources. Our experience with this winter's crude oil shortfall is more than enough indication of our vulnerability to the OPEC cartel. This insecurity can no longer be tolerated. The Regional Energy Development Corporation, created by this act, will hasten the development of a secure energy base.

The Corporation would work in the interests of all the member States; hopefully all of the States of the Northeast region. Once a State joined, by enacting legislation and making its initial capital contribution per capita of population, it would be eligible to participate in and benefit from all Corporation activities. Such activities could include: First, project financing for coal conversions, and development of new industry related to coal; second, financing of industrial cogeneration projects for the combined production of electricity and process steam; third, stimulation of waste energy recovery projects; fourth, commercialization of new environmental technology for coal, coal transportation, handling and storage investments as well as aggregation of coal demand to secure large long-term contracts that generate new mine openings; fifth, financing of residential insulation programs and development of an integrated retrofit industry, capable of supplying all of the regions retrofit materials and services; sixth, stimulating the construction of resource recovery facilities; and seventh, developing the infrastructure for a growing regional solar energy industry.

Of all of these areas, the Corporation would provide considerably more financing. It could supply data, technical and marketing assistance, and reduce State and Federal regulatory requirements.

The Corporation would function for the benefit of the member States. All significant projects would be subject to a veto of the Governors of the affected State. Moreover, the Corporation's projects are required to be allocated proportionately among all of the member States, atlhough many projects could be multi-State in nature.

The question arises as to why the Federal Government should be involved in this undertaking? There are two reasons: first, the establishment of this Corporation amounts to an interstate compact, which must be approved by Congress; and second, the Corporation needs the support and backing of the Federal Government. The sole Federal commitment in this bill is a guarantee of the Corporation's obligations. There is no Federal equity money requested or envisioned; all equity will come from the member States. But this relatively modest effort could provide the spur needed to provide regional needs which are somewhat different than national priorities.

While the bill as drafted is for the Northeast, I believe it will serve as a model for similar efforts by other regions of the country. This idea is a cost effective way to supplement national efforts with regional planning, cooperation and development. It complements our national energy program both qualitatively and quantitatively, and has already been warmly received by the administration. I commend it to the Senate and hope my colleagues will act favorably upon it.●

ENERGY CORPORATION OF THE NORTHEAST

● Mr. KENNEDY. Mr. President, I am joining today in cosponsoring this legislation which would establish an Energy Corporation of the Northeast. I have decided to cosponsor because I am committed to regional efforts to address problems common to the Northeast. I also have certain questions about what type of activities ENCONO should engage in and how it should operate. I ask unanimous consent that a letter I have sent to Governor Byrne of New Jersey which outlines my views on this legislation be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, D.C., March 9, 1979.

Hon. BRENDAN T. BYRNE,
Governor, State of New Jersey,
Trenton, N.J.

DEAR GOVERNOR BYRNE: Thank you for your recent letter asking my support for Federal legislation establishing an Energy Corporation of the Northeast (ENCONO). Because of my deep concern about energy issues in the Northeast, and my commitment to regional initiatives, I have decided to support this legislation. I expect it to be introduced in the next few days.

Although I support the ECONO concept, I have doubts about specific parts of the legislation. I question whether public funds should be used to finance large capital projects such as electric generating facilities. Such established technologies should be able to obtain funding in the private market. If the private bond market decides that they are poor investments, I doubt that public money should be used to support them.

Specific elements of the legislation must also be improved if the bill is to be viable. The sections dealing with conflict of interest, public participation, and the relationship of ENCONO to state consumer and environmental laws will have to be changed.

I have asked my staff to work with your Washington office on this issue. I am sure these problems will be successfully resolved.

Sincerely,

EDWARD M. KENNEDY.●

By Mr. SCHWEIKER:

S. 731. A bill to amend titles XVIII and XIX of the Social Security Act to strengthen the capabilities of States and the Federal Government to detect medicaid fraud and abuse; to the Committee on Finance.

MEDICAID FRAUD AND ABUSE

● Mr. SCHWEIKER. Mr. President, I am introducing a bill today to strengthen the capability of the States and the Federal Government to detect medicaid fraud and abuse, and help States to decrease the inefficiencies of their medicaid administration. Congress, with my strong support, has made repeated efforts in the past to provide incentives for States to effectively administer their medicaid programs. Increased Federal matching funds for administrative costs are available to States that install mechanized claims processing and information retrieval systems. The capability of such computerized management systems both to increase the efficiency of medicaid administration and to increase the State's ability to detect cases of possible fraud and abuse has been proven time and again. Yet many States, including Pennsylvania, continue to run their medicaid programs using backward and inefficient administrative techniques.

At a time when the American people and Congress are justly concerned with poor use of tax dollars, it is difficult to explain why some States are slow to install a medicaid management system with the demonstrated capability to save many millions of dollars. States that have installed such Medicaid Management Information Systems (MMIS), have reported savings of 4 to 5 percent of program costs. New York City, where an MMIS was recently installed, esti-

mates that the first year the system is fully operational the city's medicaid costs will decrease by $100 million. States not yet having an approved MMIS accounted for an estimated $8.47 billion in medicaid expenses last year. If MMIS installation saves 5 percent of program costs in each of these States, an estimated $423 million could be saved nationally the first year the system is operational in all of these States. The increased fraud and abuse detecting capability of an MMIS helps to insure that dishonest providers and recipients cannot rip-off the system, and the better record keeping methods of the MMIS assure that deserving providers receive payment quickly and accurately.

Despite the tremendous cost-saving capabilities of an MMIS, half the States have not yet installed the system. In addition, according to a recent General Accounting Office report, some of the States that have installed the system are not using its full potential. State administrators have had some difficulty with the technical aspects of this sophisticated system, and HEW has not properly monitored State systems or offered enough technical assistance to the States.

My bill, in addition to establishing certain fiscal penalties for States that fail to install computerized systems by certain deadlines, directs HEW to become more active in helping States by providing technical guidelines and more closely monitoring State systems in operation. States (unless waived) that do not install effective systems or fail to operate an approved system effectively will be subject to some loss of Federal matching funds for administrative costs. In addition, my bill requires HEW to aid States to more effectively coordinate medicaid and medicare information so that suspended providers can be prevented from practicing under either system.

I believe that my bill, by encouraging States to use proven medicaid management techniques, represents the kind of responsible improvement of existing Government programs that is greatly needed in these times of increased taxpayer aversion to Government programs and spending.

Mr. President, I ask unanimous consent that the text of my bill, a section-by-section analysis, and some other relevant information be printed at this point in the RECORD.

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

S. 731

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

MECHANIZED CLAIMS PROCESSING AND INFORMATION RETRIEVAL SYSTEMS

SECTION 1. Section 1903 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(r)(1) The amount otherwise payable for any quarter under paragraphs (2), (4), and (7) of subsection (a) (without regard to this subsection) shall be reduced by an amount equal to—

"(A) 25 percent of such amount otherwise payable, for any quarter beginning on or after January 1, 1980, and ending before January 1, 1981,

"(B) 50 percent of such amount otherwise payable, for any quarter beginning on or after January 1, 1981, and ending before January 1, 1982,

"(C) 75 percent of such amount otherwise payable, for any quarter beginning on or after January 1, 1982, and ending before January 1, 1983, and

"(D) 100 percent of such amount otherwise payable, for any quarter beginning on or after January 1, 1983,

with respect to any State which fails to meet the requirements of paragraph (2).

"(2)(A) In order to receive payments under section 1903(a) without being subject to reduction under paragraph (1) of this subsection, a State must provide that mechanized claims processing and information retrieval systems of the type described in section 1903(a)(3)(A)(i) which are approved by the Secretary (whether such systems are operated directly by the State or by another person under a contract with the State) be operational with respect to the entire State, and that such systems meet the requirements of paragraph (3) of this subsection.

"(B) With respect to quarters ending before January 1, 1981, payments to a State shall not be subject to reduction under paragraph (1) of this subsection if such State has submitted, and the Secretary has approved, an advanced planning document which specifically describes the State's plans for installing mechanized claims processing and information retrieval systems described in subparagraph (A).

"(3) (A) In order to be approved by the Secretary, or to be recertified by the Secretary in the case of a system which is initially approved but is subsequently decertified, mechanized claims processing and information retrieval systems must meet the following requirements:

"(i) The systems must include provider, physician, and patient profiles which are sufficient to provide charting of drug and service overuse.

"(ii) The State must provide that information on possible fraud or abuse which is obtained from the systems is made available to the State's medicaid fraud control unit (if any) certified under subsection (q) of this section.

"(iii) The systems must meet the standards developed by the Secretary under paragraph (4).

"(B) Any mechanized claims processing and information retrieval system which does not meet the requirements of subparagraph (A) shall not be approved by the Secretary (in the case of a State which is seeking initial approval of its systems) or shall be decertified by the Secretary (in the case of a State which has systems which were initially approved). The Secretary shall periodically (but not less often than annually) reassess the systems in operation in each State to determine whether the systems should be decertified.

"(4) The Secretary, with respect to State systems, shall—

"(A) develop written approval procedures for use in approving State systems, including specific criteria for testing systems in operation to insure that all requirements are met;

"(B) periodically update the general systems design and the program regulation guide with emphasis on greater uniformity of State systems and the use of proven processing techniques;

"(C) assist States in developing medically acceptable definitions relating to medical practice for the purpose of correlating such factors as diagnosis, medical procedure, age, and sex, in order that the State systems can provide a check on consistency of billings based on these factors;

"(D) give priority to aiding States in the development and improvement of surveillance and utilization review subsystems to enable the State systems to effectively detect cases of fraud or abuse;

"(E) for the purpose of ensuring compatibility between the State systems and the systems utilized in the administration of title XVIII—

"(i) develop a uniform identification numbering system for providers, other persons receiving payments under the State plans or under title XVIII, and recipients of medical services under the State plans or under title XVIII, and develop standard coding systems for medical procedures, diagnoses, drugs, and medical supplies to be utilized in the administration of the State plans and title XVIII;

"(ii) provide liaison between States and carriers having agreements under title XVIII to resolve conflicts relating to the exchange of payment data; and

"(iii) improve the exchange of data between the States and the Secretary with respect to providers and other persons who have been terminated, suspended, or otherwise sanctioned under a State plan or under title XVIII;

"(F) develop definitions of costs relating to the State systems which will be reimbursed under the provisions of subsection (a)(3) of this section; and

"(G) report annually to the Congress on the efforts made to aid States in developing and operating effective mechanized claims processing and information retrieval systems.

"(5)(A) In any case in which a State's mechanized claims processing and information retrieval system is decertified by the Secretary pursuant to paragraph (3)(B) of this subsection, the State (with the assistance of the Secretary) must develop a corrective action plan for bringing the system back into compliance with the requirements of paragraph (3)(A) of this subsection, and submit such plan to the Secretary within six months after the decertification.

"(B) If the State's system has not been recertified by the Secretary as being in compliance with the requirements of paragraph (3)(A) within one year after decertification, payments to such State under this section shall be made without regard to the provisions of subsection (a)(3).

"(C) If the State's system has not been so recertified within one year after the date on which payments to the State were reduced under subparagraph (B), the payments with respect to administrative costs made to such State under paragraphs (2), (3), (4), and (7) of subsection (a) shall be made at a reimbursement rate of 25 percent rather than the percentage specified in such paragraphs.

"(D) If the State's system has not been so recertified within two years after the date on which payments to the State were reduced under subparagraph (B), no payments with respect to administrative costs shall be made to such State under paragraphs (2), (3), (4), and (7) of subsection (a).

"(E) If a State's system is recertified, payments under this section shall be made without regard to this paragraph beginning with the first quarter that begins after the date of such recertification.

"(6)(A) The Secretary may waive the provisions of this subsection for any State if he determines that the use of such systems would not significantly increase the efficiency of the administration of that State's plan on account of the low population or low density of population of such State.

"(B) The Secretary shall submit to the Congress a report on each waiver granted under subparagraph (A) substantiating that the criteria for such waiver have been met.

"(C) A waiver granted under subparagraph (A) shall be withdrawn if the State ceases to meet the criteria for such waiver, but no reduction in payments to the State shall be made under paragraph (1) of this subsec-

tion during the one-year period following the date of the withdrawal of such waiver. After the expiration of such one-year period, the State shall be subject to reductions in Federal payments in the same manner as under the provisions of paragraphs (1) and (2), with—

"(i) quarters beginning in the second one-year period following the date of such waiver withdrawal being deemed to be quarters described in paragraphs (1)(A) and (2)(B);

"(ii) quarters beginning in the third one-year period following the date of such waiver withdrawal being deemed to be quarters described in paragraph (1)(B);

"(iii) quarters beginning in the fourth one-year period following the date of such waiver withdrawal being deemed to be quarters described in paragraph (1)(C); and

"(iv) quarters beginning thereafter being deemed to be quarters described in paragraph (1)(D).".

EXCHANGE OF INFORMATION ON TERMINATED OR SUSPENDED PROVIDERS

SEC. 2. (a) Section 1862(d) of the Social Security Act is amended by adding at the end thereof the following paragraph:

"(5) The Secretary shall promptly notify each State agency which administers or supervises the administration of a State plan approved under title XIX of any determination made under the provisions of this subsection.".

(b) Section 1866(c) of such Act is amended by adding at the end thereof the following new paragraph:

"(3) Where an agreement filed under this title by a provider of services has been terminated by the Secretary, the Secretary shall promptly notify each State agency which administers or supervises the administration of a State plan approved under title XIX of such termination.".

(c) Section 1902(a) of such act is amended—

(1) by striking out "and" and at the end of paragraph (39);

(2) by striking out the period at the end of paragraph (40) and inserting in lieu thereof "; and"; and

(3) by adding the following new paragraph:

"(41) provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the State plan, the State agency shall promptly notify the Secretary of such action.".

SECTION-BY-SECTION ANALYSIS

Section 1:

Paragraphs 1–2:

The first two paragraphs of the bill establish penalties for states that fail to institute and have approved by HEW a computerized claims processing and information system (also known as a Medicaid Management Information System, MMIS). The penalties are in the form of reduced federal matching funds for the administration of the State Medicaid program.

Paragraph 3A:

Stipulates that in order for a state's computerized system to be approved, making the state eligible for increased matching funds, certain requirements must be met.

(1) The system must include provider, physician, and patient profiles which are sufficient to provide charting of drug and service overuse.

(2) The state must agree that all information on possible fraud or abuse obtained from the system be turned over to the state Medicaid Fraud Control Unit so that further action may be taken.

(3) The system must meet certain standards developed by HEW under the direction of Section 1, Paragraph 4 of this bill.

Paragraph 3B:

Requires HEW to review periodically state systems in operation to see if they continue to meet established standards. If they do not, they will be de-certified and subject to the penalties established in Section 1, Paragraph 5.

Paragraph 4:

Requires the Secretary of HEW to develop specific criteria for checking states' systems in operation, and forces HEW to take a more active role in advocating computerized systems and aiding states with technical problems. HEW is directed to give priority to developing the part of the computerized system that is designed to detect cases of possible fraud or abuse, to develop guidelines for states to follow so that their Medicaid and Medicare systems become compatable, and to define the precise kinds of costs that the federal govt. will re-imburse as part of the mechanized management system. HEW must report to Congress annually on the progress of the states in developing effective systems.

Paragraph 5:

Outlines penalties to be assessed to states that fail to meet established standards upon yearly inspection. States are given one year to bring their system into compliance with HEW standards before they lose federal funds. HEW is to aid the noncomplying state to make necessary improvements. If states fail to meet standards after one year has elapsed from the finding of noncompliance, they become subject to severe penalties in the form of reduced matching funds for Medicaid administrative costs.

If a state system is recertified by HEW, full federal funds are restored.

Note that the penalties in this paragraph are different from those established in paragraphs 1–2. Paragraph 1–2 penalties apply to states that fail to install mechanized systems; these penalties apply to states that have installed an initially approved system but have failed to maintain it properly. These penalties will apply, for example, to any of the states that already have initially approved systems if inspection shows that their system does not meet established standards.

Paragraph 6:

A waiver provision—allows the Secretary of HEW to waive the requirement that a state install a mechanized system if he determines, and demonstrates in a report to Congress, that the efficiency of administration of the state's Medicaid program would not improve with the installation of such a system because the state has a low population. This section also gives the Secretary the authority to lift the waiver if he determines the situation has changed enough in the state that a mechanized system would be beneficial.

Section 2:

Provides that information on the status of providers (e.g. "terminated," "suspended", or "On probation") must be exchanged between the federally administered Medicare system and each state's Medicaid system, and vice-versa.

STATUS OF MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS)

1. States approved for 75% Federal Financial Participation (FFP) for operations of a mechanized claims processing and information retrieval system: (24)

Alabama, Arkansas, California, Georgia, Hawaii, Idaho, Indiana, Kansas, Louisiana.

Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, New York (N.Y. City only), North Carolina, Ohio.

Oklahoma, Texas, Utah, Virginia, Washington, Wisconsin.

2. States that do not have fully operational mechanized claims processing and information retrieval systems. Some states listed have partially operational systems, but have not yet met the standards for 75% FFP.

Alaska, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri.

Nevada, New Jersey, New York (Balance of State), North Dakota, Northern Mariana Islands, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virgin Islands, West Virginia, Wyoming.

3. States with no Medicaid Program.

American Samoa, Arizona.●

By Mr. JACKSON (by request):

S. 732. A bill to amend the Land and Water Conservation Fund Act of 1965, as amended, and for other purposes; to the Committee on Energy and Natural Resources.

● Mr. JACKSON. Mr. President, by request, I send to the desk for appropriate reference a bill to amend the Land and Water Conservation Fund Act of 1965, as amended, and for other purposes.

Mr. President, this draft legislation was submitted and recommended by the Department of the Interior, and I ask unanimous consent that the bill and the executive communication which accompanied the proposal from the Assistant Secretary of the Interior be printed in the RECORD.

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

S. 732

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) as amended (16 U.S.C. 4601–10a) is hereby repealed and subsequent sections are renumbered accordingly.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., March 8, 1979.

Hon. WALTER F. MONDALE,
President of the U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft bill "To amend the Land and Water Conservation Fund Act of 1965, as amended, and for other purposes."

We recommend that the bill be referred to the appropriate Committee for consideration and that it be enacted.

The enclosed draft bill would repeal section 9 of the Land and Water Conservation Fund Act which authorizes the Federal agencies utilizing the Fund to enter into land purchase contracts in advance of appropriations to the extent of $30 million during each fiscal year. The President's Budget for FY 1980 proposes the deletion of this $30 million in contract authority.

The contract authority provision was first included in the Fund Act more than 10 years ago at a time when the Fund was at an authorized annual level of only $200 million (see P.L. 90–401 of July 15, 1968). At that time some $80 to $100 million was available each year for land acquisition by the Federal agencies, and the advance contract authority came to about one-third of the amount available to them. The use of this advance contract authority at that time helped the Federal agencies cope with the problem of escalation in land prices of new parks and recreation areas between the time that a bill to create such an area became law and the time appropriations became available to find land acquisition for the area.

However, in recent years the substantial increase in the level of the Fund has resulted in no use of the advance contract authority by the Federal agencies since FY 1970 and has been annually deferred. We believe that current authorization and appropriation levels for the Fund make unnecessary the continu-

ation of the advance contract authority in section 9 of the Fund Act, and find that programming actions are sufficient to meet most emergency land acquisition needs.

The Office of Management and Budget has advised that submission of this proposed legislation is consistent with the President's program.

Sincerely,

ROBERT HERBST,
Assistant Secretary.●

By Mr. STENNIS (for himself, Mr. COCHRAN, Mr. BAKER, Mr. SASSER, Mr. HEFLIN, and Mr. STEWART):

S. 733. A bill to provide for the completion of the Natchez Trace Parkway from Natchez, Miss., to Nashville, Tenn.; to the Committee on Energy and Natural Resources.

NATCHEZ TRACE PARKWAY

● Mr. STENNIS. Mr. President, I am introducing today a bill which will authorize and require the Secretary of the Interior to complete the construction of the Natchez Trace Parkway in 5 years.

I am very pleased to announce that cosponsoring the bill with me are Senators COCHRAN, BAKER, SASSER, HEFLIN, and STEWART, and I thank them for joining in this legislative endeavor to correct a situation which has resisted solution through administrative means.

Construction by the Federal Government of this national parkway began in 1937. The parkway extends from Nashville to Natchez, passing through portions of Tennessee, Alabama, and Mississippi. Now, 42 years later, there are still 89 miles to complete, and the parkway is usable only in intermittent stretches over its length.

Early progress on the project was excellent. Of the total length of 444 miles, 120 miles were placed under contract in the first 5 years of construction. Progress since then, however, has been extremely slow. Although the States of Mississippi, Alabama, and Tennessee have cooperated fully, successive administrations have declined to budget funds to maintain a consistent rate of construction, and a fifth of the project remains to be completed. Inflation continues to escalate the projected costs of construction.

In the early days of our Nation the Natchez Trace was the historic road between the East and what was then the Southwest. It had its origin as an Indian trail. Beginning about 1785 it was used as a return trail by the flatboatmen, returning from New Orleans after selling their products. In 1800 Congress extended mail service from Nashville to Natchez, using the trace. Congress appropriated money in 1806 from the Postmaster General to improve the trace, and what had been an Indian trail became a frontier road that played a key part in the expansion of our country, the growth of its trade, and the defense of its territory. Andrew Jackson earned the name "Old Hickory" by his stamina in leading the Tennessee militia over the trace in the War of 1812, and used the road to bring his army north after the Battle of New Orleans.

The historic sites, the Indian mounds, and the artifacts have been carefully protected and are there to see. The problem is that the parkway itself has not been completed. There are 89 miles of the Natchez Trace yet to be built, and 355 miles are now in use. It is not sensible to prolong this project year after year, leaving it as an incomplete facility. The citizens who attempt to use this parkway for the intended purposes must inevitably receive a very unsatisfactory impression of the consistency of Federal policies.

As a matter of fact, from 1969 to 1977 the project was literally abandoned by the Department of the Interior, which persistently declined to request construction funds. This amounted to unilateral voiding of a contract or at last a firm commitment.

A long time ago the Federal Government and the three States concerned made an agreement about the Natchez Trace Parkway. The States would provide the project lands and rights of way; the parkway would be dedicated to recreational use with restricted driving speeds, and forbidden to trucks; and the Federal Government would build the parkway. The States have lived up to their share. The Federal Government has been intolerably slow in its part. This bill will authorize the expenditure of $180 million over a 5-year period, a figure which allows for the current annual rate of inflation of construction costs.

Mr. President, the Natchez Trace Parkway has reached a stage where it would be a sound investment for the Government to complete it in a timely way. I believe that it is not sensible to prolong this project year after year, leaving it usable only in intermittent stretches, a condition that greatly inhibits its use for its intended purposes. It is inefficient and uneconomical to further delay the project, while construction costs rise on the remainder of the work. The parkway should be completed and start to realize the benefits to the citizens of the three-State area and to the many other citizens who as tourists visit that area in increasing numbers each year.

I strongly urge the early consideration and passage of this bill to complete the Natchez Trace in 5 years.●

COMPLETE THE NATCHEZ TRACE PARKWAY

● Mr. COCHRAN. Mr. President, I am pleased today to join with my distinguished colleague from Mississippi, Senator STENNIS, in cosponsoring a bill to authorize and direct the Secretary of the Interior to complete construction on the Natchez Trace Parkway within 5 years.

The Natchez Trace Parkway, which is administered by the National Park Service, is a national highway which when completed will stretch all the way from Nashville, Tenn., to Natchez, Miss.—a distance of some 447 miles. This scenic roadway is four-fifths completed at the present time, with only 88.3 miles remaining to be constructed.

Mr. President, this project has been under development and intermittent construction for more than 40 years. Today the parkway consists of several unconnected segments which greatly deter its use by the traveling public. This in turn has resulted in the economic benefits which would normally accompany such a scenic attraction to go unrealized by the communities in my State and the other two States wherein portions of the parkway are located.

The costs associated with construction on this project admittedly have risen with inflation in the past few years. Everything has. Unless we move to set a definite schedule for completing this project, however, costs for completion of the remaining portions will become prohibitive and the previous investment will provide very little of the return that a completed parkway would produce.

I believe that the 5-year plan that this legislation proposes can be accomplished and should be undertaken. Forty-two years is too long a period of time for such a worthy project to be under development. It is time to complete the task.●

● Mr. SASSER. Mr. President, I am very pleased to offer my support to the senior Senator from Mississippi, Senator STENNIS, and to cosponsor the bill which will bring about the completion of the Natchez Trace Parkway within 5 years.

The Natchez Trace Parkway was begun in 1939 to commemorate the historic importance of the old Natchez Trace, first used by our Indian forefathers, and today connecting the cities of Nashville, Tenn., and Natchez, Miss. When completed, the parkway will be a major benefit to the citizens of the area and provide a focus for the increasing numbers of visitors to our region.

When our predecessors in the 76th Congress first authorized the Natchez Trace Parkway, they envisioned a route which extended 444 miles through the States of Tennessee, Alabama, and Mississippi. Today, the 96th Congress is considering the progress which has been made in the past 40 years. The parkway is still only 74 percent complete with 114 miles in intermittent segments still to be constructed. As Senator STENNIS and I have pointed out in previous years, this presents a disappointing image of the consistency of Federal policies in which projects are initiated then lose the momentum to carry them to completion for the full benefit of the people.

I share the view of Senator STENNIS that the time has come to call for the completion of the Natchez Trace Parkway within a reasonable and limited time. It represents a sound investment for the Federal Government to complete the parkway within the next 5 years, minimizing the added costs to the project of inflation. It is not economical to prolong completion of the parkway's construction.

Mr. President, I believe we should move now to commit ourselves to the goal of completing the Natchez Trace Parkway within the next 5 years in order that the citizens of the area and visitors to the region can begin to realize the full benefits which the planners of the project envisioned some 40 years ago.●

By Mr. JACKSON (by request):

S. 734. A bill to enable the Secretary of Energy to utilize revenues from power marketing, to carry out his responsibilities related to Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration, and for other purposes; to the Committee on Energy and Natural Resources.

FEDERAL POWER MARKETING REVOLVING FUND ACT OF 1979

● Mr. JACKSON. Mr. President, by request, I send to the desk for appropriate reference a bill to enable the Secretary of Energy to utilize revenues from power marketing, to carry out his responsibilities related to Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration, and for other purposes.

Mr. President, this draft legislation was submitted and recommended by the Department of Energy, and I ask unanimous consent that the bill, the executive communication, and a section-by-section analysis which accompanied the proposal from the Secretary of Energy be printed in the RECORD.

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

S. 734

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 "Federal Power Marketing Revolving Fund Act of 1979."

SEC. 2. (a) Congress finds that it is desirable and appropriate that the respective revenues, borrowings from Treasury, or appropriations to the Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration and Western Area Power Administration be used for operation, maintenance, construction and other program purposes for each such power administration: *Provided, however,* That revenues may be used for financing construction only if the power administration payments due to the Department of the Treasury are current.

(b) Other than as specifically provided herein, the present authority and duties of the Secretary of Energy relating to the Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration shall not be affected by this Act. The authority and duties of the Secretary referred to herein shall be exercised by the Secretary, acting by and through the Administrators.

SEC. 3. As used in this Act—

(a) "Secretary" means the Secretary of Energy.

(b) "Alaska" means the Federal Alaska Power Administration.

(c) "Southeastern" means Southeastern Power Administration.

(d) "Southwestern" means Southwestern Power Administration.

(e) "Western" means Western Area Power Administration.

(f) "Power administration" means the Alaska, Southeastern, Southwestern or Western.

(g) "Electric power" means electric capacity or electric energy, or both.

(h) "Construct" or "construction" means the construction, improvement, betterment, additions to, and replacements of transmission facilities, including participating jointly with others in such activities.

(i) "Major transmission facilities" means new transmission facilities:

(1) to be used to provide services which were not previously provided by the power administration including facilities which are to be used for interconnecting electrical systems which have not been previously connected by Federally owned facilities, or

(2) for which the total estimated construction or acquisition cost represents an increase of more than 5 percent of the total fixed assets of the power administration;

Provided, however, That facilities which are not major transmission facilities under (1) above shall include but not be limited to (A) a transmission line used in whole or in part to serve a customer which, at the time of commencement of construction of the new transmission line, had theretofore been served by the power administration over Federal facilities; or (B) a transmission facility which uses as a major portion of its route a preexisting and utilized right-of-way or which is adjacent to a preexisting Federal transmission line used by the power administration for transmission of power; or (C) the rental or lease of existing transmission facilities.

SEC. 4. The Secretary shall construct, rent, lease, or otherwise acquire transmission facilities he determines are appropriate to:

(a) Integrate and transmit the electric power from existing or additional Federal or non-Federal generating units;

(b) provide service to customers;

(c) provide interregional transmission facilities; or

(d) maintain electrical stability and electrical reliability.

Provided, however, That the Secretary shall not construct, rent or lease any major transmission facilities unless the expenditure of the funds for the initiation of such construction, lease or rental is specifically approved by Act of Congress: *Provided, further,* That as used in this Act, transmission facilities shall include Federally owned hydroelectric generating facilities operated by Alaska: *Provided, further,* That such rental or lease of new facilities shall be limited to no more than five years: *Provided, further,* That nothing in this Act shall authorize the crossing or other use of Federal lands under the jurisdiction of another agency except with the consent of such agency in accordance with the applicable laws and procedures of such agency or the construction of any facilities on such lands without the consent of the agency having jurisdiction of such lands, pursuant to laws applicable to those lands.

SEC. 5. Subject only to the provisions of this Act, the Secretary is authorized to become a member of and to pay such dues and membership fees in such electric cooperatives and in such professional, utility, industry and other societies, associations and institutes, together with expenses related to such memberships, as the Secretary determines to be necessary or appropriate to carry out the purposes of this Act.

SEC. 6. (a) There is hereby authorized to be established in the Treasury of the United States a separate fund for each of the herein named power administrations. These funds will be called "Alaska Power Administration Fund," "Southeastern Power Administration Fund," "Southwestern Power Administration Fund," and "Western Area Power Administration Fund" (hereinafter referred to collectively as the "Funds" and individually as the "Funds"). *Provided, however,* That a Fund may not be established until a power administration's revenue levels are sufficient to provide for the repayment of reclamation project costs, as otherwise required by statute. Each Fund shall consist of (1) all receipts, collections, and recoveries of that power administration in cash from all sources related to power marketing activities, including funds received in trust, (2) all monies loaned to the Secretary pursuant to section 8 hereof respecting such power administration, (3) any appropriations made by the Congress for the Fund, and (4) the unexpended balances of funds appropriated or otherwise made available for the use of Alaska, Southeastern, Southwestern or Western, which balances are hereby authorized to be transferred to the appropriate Fund. All funds transferred hereunder shall be available for expenditure by the Secretary, as authorized in this Act or any other Act relating to Alaska, Southeastern, Southwestern or Western, subject to such limitations as may be prescribed by any applicable appropriation Act effective during such period as may elapse between their transfer and the approval by the Congress of the first subsequent annual budget.

(b) The Secretary may make expenditures from each Fund, notwithstanding any existing statute requiring the deposit of such revenues or receipts in other funds, which shall have been included in the annual budget submitted to Congress, without further appropriation and without fiscal year limitation, but within such specific directives or limitations as may be included in appropriation Acts, for any purpose necessary or appropriate to carry out the duties imposed upon the Secretary pursuant to law relating to the program of that power administration, including but not limited to—

(1) making such payments to the Bureau of Reclamation for the credit of the Reclamation Fund, other funds or accounts, as are required by or pursuant to law to be made into such funds or accounts in connection with reclamation projects;

(2) operation, maintenance, repair, and relocation, to the extent such relocation is not provided for under paragraph (10) below, of transmission facilities;

(3) conducting electrical research, development, investigations, experimentation, tests, and other such studies;

(4) marketing of electric power;

(5) transmission over facilities of others and rental or lease of facilities;

(6) purchase of electric power (including the entitlement of electric plant capability) (A) to meet temporary deficiencies in electric power which the power administration is obligated by contract to supply, (B) which has been heretofore undertaken with funds appropriated for such purchase, or (C) if to be paid for with funds provided by other entities for such purpose under a trust or agency arrangement; *Provided, however,* That any such purchases made after the enactment of this Act shall be limited to short-term purchases;

(7) defraying emergency expenses or insuring continuous operation;

(8) (A) acquiring such goods, lands, or interests in real or personal property, and (B) paying dues and membership fees in electrical cooperatives and in such professional, utility, industry, and other societies, associations, and institutes, together with expenses related to such memberships, including but not limited to the acquisitions and payments set forth in the general provisions of the annual appropriations Act for the Department of Energy, as the Secretary determines to be necessary or appropriate in carrying out the purpose of this Act;

(9) developing and implementing programs and methods by which the customers and ultimate customers of the power administrations may conserve and efficiently use power;

(10) construction, acquisition and disposal of transmission facilities; *Provided, however,* That such construction or acquisition by Western may be financed with rev-

enues from reclamation projects only to the extent that such construction or acquisition is in accord with law covering the individual projects for which the Bureau of Reclamation was formerly the power marketing agency;

(11) paying the principal, interest, premiums, discounts, and expenses, if any, in connection with the repayment of funds borrowed pursuant to section 8 of this Act, including provision for and maintenance of reserve and other funds established in connection therewith; and

(12) making payments to the credit of miscellaneous receipts of the Treasury for all unpaid costs required by or pursuant to law to be charged to and returned to the general fund of the Treasury in connection with the projects from which the power administration markets the power.

(c) Expenditures for the purposes provided in section 6(b)(10) may be made from the remainder of gross receipts of that power administration from all sources (excluding borrowings pursuant to section 8) after first deducting funds held in trust and the costs listed in section 6 (b)(1) through (b)(9), (b)(11), and (b)(12).

(d) Monies heretofore or hereafter appropriated shall be used only for the purposes for which appropriated, and monies received by the Secretary in trust shall be used only for carrying out such trust. The provisions of the Government Corporation Control Act shall be applicable to the Secretary in the same manner as they are applied to the wholly owned Government corporations named in section 101 of such Act, but nothing in the proviso of section 105 of such Act shall be construed as affecting the powers and authorities granted to the Secretary elsewhere in this Act.

(e)(1) The Secretary shall keep the official record of each power administration's operations, expenditures, receipts, repayments of debts to the Secretary of the Treasury and payments to funds, including reclamation project funds, and shall obtain annually an independent commercial-type audit of such accounts, in accordance with generally accepted auditing standards.

(2) Notwithstanding the provisions of Sections 105 and 106 of the Government Corporation Control Act, the financial transactions of each of the power administrations shall be audited by the Comptroller General at such times and to such extent as the Comptroller General deems necessary, and reports of the results of each audit shall be made to the Congress within 6½ months following the end of the fiscal year covered by the audit.

(f)(1) The Secretary shall maintain separate accounting for the individual projects of Western for which the Bureau of Reclamation was formerly the power marketing agency (Pick-Sloan Missouri Basin Program, Central Valley Project, Colorado River Storage Project (and participating projects), Provo River Project, Collbran Project, Rio Grande Project, Boulder Canyon Project, Fryingpan-Arkansas Project, Parker-Davis Project, Falcon and Amistad Projects, and the Central Arizona Project): *Provided*, That the Secretary shall make payments to the Bureau of Reclamation for the Colorado River Dam Fund, the Upper Colorado River Basin Fund, the Lower Colorado River Basin Development Fund, and the Reclamation Fund on a timely basis for repayment of reimbursable project expenses and other obligations required by statute to be made from power revenues.

(2) Amounts to be retained in the Western Fund for expenses covered in section 6(b)(3), (b)8(A), (b)8(b), and (b)(9) from revenues collected from power marketing activities from reclamation projects shall not in any one year exceed one percent, unless otherwise jointly determined by the Secretary and the Secretary of the Interior, of the total obligation contained in that fiscal year budget as submitted to the Congress for Western.

(3) Determination of amounts to be retained in the Western Fund for Western's operations and the amounts to be transferred to the Bureau of Reclamation under section 6(b)(1) shall be developed jointly by Western and the Bureau of Reclamation at the beginning of each fiscal year for the fiscal year in progress and shall include corrections to transactions of the previous fiscal year based on final data. Reserves and other receipts remaining in the Western Fund attributable to a reclamation project shall be credited to such project and the project obligation as provided in reclamation law.

SEC. 7. For cash management purposes, the Secretary may request the investment of such monies as he deems advisable by the Secretary of the Treasury in nonmarketable obligations of the United States with maturities not to exceed one year, at rates determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the maturities of such nonmarketable obligations. So long as the power administration has outstanding obligations to repay (a) costs referred to in section 6(b)(12) or (b) funds borrowed pursuant to section 8 of this Act, the interest rate on any such investment shall not exceed the lowest interest rate applicable to such repayment costs or borrowed funds associated with the projects from which the power administration markets power.

SEC. 8. (a) The Secretary is authorized to borrow to such extent or in such amounts as are contained in appropriation Acts from the Secretary of the Treasury from time to time in the name and for and on behalf of a power administration to assist in financing the construction or acquisition of transmission facilities to be used by such power administration. The repayment of such loans shall be upon such terms and conditions as may be prescribed by the Secretary of the Treasury taking into account the manner prevailing in the open market in which utility indebtedness is repaid, the distinction between short-term borrowing during the period of construction and longer term borrowing to refund short-term obligations during the post-construction period, and the useful life of the facilities for which funds are to be borrowed. Such loans shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, plus an amount sufficient in the judgment of the Secretary of the Treasury to provide for an interest rate comparable to rates prevailing in the market for triple-A rated nongovernment utility bonds. Based on information provided by the Secretary to the Secretary of the Treasury, the interest rate determined pursuant to the immediately preceding sentence will be increased by 2½ percent thereof for each immediately preceding consecutive fiscal year, beginning with the fiscal year in which this Act becomes effective, that the applicable financial reports, including current repayment studies of the Secretary, show repayment criteria not being met. For the purpose of providing the funds to be loaned pursuant to this section, the Secretary of the Treasury is authorized to use the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include the loans to the Secretary under this Act. The loaned funds shall be made available to the Secretary forthwith following acceptance by the Secretary of the terms and conditions of the loan prescribed by the Secretary of the Treasury. The amount of any such loans shall not exceed $3,000,000 for Alaska, $100,000 for Southeastern, $20,000,000 for Southwestern and $300,000,000 for Western.

(b) The principal and interest on such obligations shall be payable solely from the Secretary's net proceeds as hereinafter defined of the power administration for which the loan was obtained. For the purposes of this section "net proceeds" shall mean the remainder of the gross receipts of that power administration from all sources after first deducting funds held in trust and the costs listed in section 6(b)(1) through 6(b)(9), and shall include reserve or other funds created from such receipts.

DEPARTMENT OF ENERGY,
Washington, D.C., February 27, 1979.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a bill "to enable the Secretary of Energy to utilize revenues to carry out his responsibilities related to Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration and Western Area Power Administration, and for other purposes." Also enclosed is a section-by-section analysis of the bill. We recommend that this proposed legislation be enacted.

The purpose of this bill is to authorize the shift of the financing of the Department of Energy's electric power marketing program for the affected power marketing administrations from the present arrangement of funding through annual Federal appropriations to a self-financed basis. The bill also consolidates and clarifies the Secretary's authorities for construction of transmission lines. It is quite similar to the legislation (Public Law 93-454) which provided authority for Bonneville Power Administration, the other Department of Energy power marketing administration, to operate on a revolving fund basis. We will not implement individual revolving funds until the successful completion of current key rate increase efforts. Significant rate increases are necessary for Western and Southwestern to assure self-sufficient revolving funds. We intend that Alaska Power Administration will continue to receive appropriations for its general investigations activities.

Other than the specific changes required to accommodate this new financing method, the bill preserves the existing provisions of law related to these power marketing administrations. This bill will not, for example, affect the treatment of repayment criteria for existing appropriated debt. During the process of developing this proposal, however, it became apparent that existing repayment policies and procedures need to be revised. Within 18 months of enactment of this proposed legislation, the Administration will complete its review and seek to improve the consistency of existing repayment policies and procedures with sound accounting and financial principles. Until we are assured that repayment policies and procedures are sufficiently consistent with sound accounting and financial principles, the Administration believes it prudent not to apply power sales revenues to finance current construction. We anticipate that power marketing revenues will be sufficient to meet all required repayments to Treasury as prescribed by congressionally established repayment policies and thereby satisfy requirements of the various Reclamation funds and accounts.

Although specific conforming amendments to various Reclamation laws have not been included in the bill, the proposal provides that the financial relationship between the WAPA revolving fund and the various Bureau of Reclamation funds and accounts will follow the pattern of the financial relationship between Bonneville Power Administration's

revolving fund (established in 1974) and the Reclamation Fund in the Pacific Northwest. This means WAPA will credit revenues directly to its revolving fund and then make payments as authorized by Section 6 including payments to the Reclamation funds as required by law in connection with Reclamation projects. The power marketing administrations' budgets will continue to be presented to the Congress as part of the President's annual budget transmission.

The bill recognizes that existing power marketing arrangements tend to be on a regional or "project" basis and assures that these arrangements remain unchanged. The bill anticipates that on-going contractual relationships for such things as wheeling over other entities' facilities will continue. There is no effect on environmental laws or changes to applicable right-of-way procedures or regulations.

Each of the four power marketing administrations has its own special characteristics. Alaska Power Administration owns its own transmission facilities in addition to operating the hydro-generation plants which produce the power for which Alaska has the marketing responsibility. The two separate projects that Alaska is responsible to serve two entirely separate parts of Alaska and have their own separate authorizations.

Southeastern Power Administration is responsible for marketing nearly 2,700 megawatts of installed capacity in four distinct marketing areas, and utilizes entirely the facilities of others for transmitting that power. This bill would continue the option of the Secretary to build transmission facilities at some time in the future if it were appropriate to do so, but contemplates continuation of the existing policies and practices regarding the marketing of power over existing facilities owned by others.

Southwestern Power Administration currently operates 1,600 miles of transmission lines and is responsible for marketing almost 2,000 megawatts of installed capacity from Corps of Engineers' power-producing hydro projects. Southwestern markets power to some 50 preference customers with many receiving only a minor part of their total requirements from Southwestern while others receive a majority of their power requirements from Southwestern.

Western Area Power Administration markets power to some 426 preference customers located in 15 different Western States over approximately 16,000 miles of high-voltage transmission lines. This power is marketed in seven different distinct project areas, each having its own special authorizing provisions from Congress. The proposed legislation was carefully designed to maintain the provisions of these separate authorizations.

The fact that this single bill can uniformly apply to four power marketing administrations with such diverse authorities and responsibilities tends to emphasize the singleness of purpose of this proposal. The enclosed bill addresses the financing of the operation, maintenance and construction of these Federal operations by authorizing the Secretary of Energy to finance the operation, maintenance and future construction through revolving funds using revenues and proceeds from borrowings from the Treasury. This is intended to place the power marketing administrations on more of a businesslike footing. All capital and operations and maintenance costs will be fully recovered from the power users of the separate regions or project areas served, and at the same time, will alleviate the demand on appropriated Federal funds which are now characteristic of these systems' requirements.

These power marketing entities are very comparable to those of a business that markets a product. The revenues from sale and transmission of electric power must by existing law be adequate to cover annual operating costs, repay with interest the Federal investment in generation and transmission facilities as required by law, and amortize the investment in the transmission facilities financed from the proceeds from borrowings from Treasury. We expect the revolving fund "no year" financing to offer improved flexibility.

It would put the power marketing administrations on a "pay as you go" basis for future investments utilizing borrowings from Treasury, with repayments on a businesslike basis, and at the same time, providing flexibility in obtaining financing that is considered appropriate in carrying out these functions. Restrictions are included, however, which would prevent encroachment upon the opportunity for non-Federal utilities to construct facilities which are equally adequate to serve regional needs.

The respective budgets for the four affected power marketing administrations would be subject to the provisions of the Government Corporation Control Act, and these budgets would be submitted through the Office of Management and Budget to Congress for review by the appropriations committees and would be subject to limitations and directives placed in the appropriations Acts. A separate borrowing limit is provided for each of the four power marketing administrations. These limits are estimated to be sufficient to meet the borrowing needs for 5 years. The minimal borrowing limit for Southeastern Power Administration reflects its utilization of the transmission facilities of others entirely for its marketing program. The interest rate for such borrowings will be determined by the Secretary of Treasury to be comparable to rates prevailing in the market for triple-A rated nongovernment utility bonds.

The Office of Management and Budget has advised that enactment of the proposed bill would be consistent with the Administration's objectives.

Sincerely,

JAMES R. SCHLESINGER,
Secretary.

SECTION-BY-SECTION ANALYSIS FOR FEDERAL POWER MARKETING REVOLVING FUND ACT OF 1979

Section 1 (short title) states the Act may be cited as the "Federal Power Marketing Revolving Fund Act of 1979."

Section 2 is comprised of two parts, the first of which is the finding by Congress that revenues, borrowings from Treasury, or appropriations of each of the four affected power marketing administrations (PMA's); i.e., Alaska, Southeastern, Southwestern, and Western should be available for carrying out their respective programs.

The statutory provision that revenues be used to finance construction only if the power administration payments due to the Department of the Treasury are current is consistent with existing policies and practices regarding the application of revenues to the various financial obligations of the power marketing administrations.

The second part provides that this legislation shall not affect the present authorities or duties of the Secretary of Energy (Secretary) except as provided in this legislation and that the authorities and duties referred to in the Act shall be exercised by the Secretary, acting by and through the Administrators. This is in accordance with section 302(a)(2) ond (3) of the Department of Energy Organization Act, Public Law 95-91, August 4, 1977.

Section 3 contains definitions to be used in conjunction with this Act.

Section 4 consolidates and clarifies the basic authorities for construction or acquisition of facilities, including those for the transmission of non-Federal electric generation. It contains the proviso that major transmission facilities (generally, new facilities intended to provide services not previously connected by Federally-owned facilities and major additions to existing facilities), must be specifically approved by Act of Congress. Exceptions to the specific approval requirement arise by virtue of the definition of major transmission facilities in section 3(i) of the Act. A proviso limits rental or lease of new transmission facilities to less than five years which will assure that PMA lease or rental arrangements will not constitute Federal backing for non-Federal transmission facilities.

Section 5 authorizes the payment of dues and membership fees related to memberships in electric cooperatives and in societies, associations and institutes to which entities such as the PMA's would normally be expected to belong.

Section 6(a) authorizes to be established in the Treasury a separate Fund for each PMA and enumerates the sources from which monies may accrue to the Fund. Said funds will not be established until a power administration's revenue levels are sufficient to provide for the repayment of reclamation project costs. Each Fund is similar to the fund established for the Bonneville Power Administration by the Federal Columbia River Transmission System Act, Public Law 93-454, 88 Stat. 1376. It is intended that Alaska Power Administration continue to receive appropriations for its general investigations activities. The costs of such activities are not generally attributable to the self-financing nature of the power marketing activities.

The budget for the operation of each PMA is submitted to the Congress each year. Section 6(b) provides that expenditures may be made from that PMA's Fund in accordance with the budget, without fiscal year limitation and without further appropriation, but within such specific directives or limitations as may be included in appropriation Acts. The appropriation Acts also would include the approval for major transmission facilities that is required by section 4.

Section 6(b) also gives examples of the purposes for which expenditures may be made with respect to the four affected PMA's. Notable among these are:

1. Purchasing of power on a short-term basis—this is expected to eliminate the present practice of obtaining supplemental appropriations for emergency power purchases because of low water or other unanticipated events.

2. Developing and implementing programs by which power may be conserved or more efficiently used by PMA customers.

3. Providing for payments to the Reclamation Fund or other such funds. This is intended in conjunction with section 6(e)—to clarify the role of the Secretary in collecting power revenues, and disbursing them to various Project funds according to provisions of existing laws.

Section 6(c) provides that all the various financial obligations of a power administration during a particular fiscal year, must be met before its revenues may be used for construction purposes.

Section 6(d) provides that the provisions of the Government Corporation Control Act shall generally be applicable. The effect is to require an annual business-type budget for each PMA, to be part of the President's annual budget submission to Congress, and the funds for each PMA to be treated as those of a Government corporation instead of a Government agency.

Section 6(e) provides in paragraph (1) that the Secretary shall keep the official accounting and budget records of the various Funds and in paragraph (2) requires both commercial-type and Comptroller General audits of each PMA's activities.

Section 6(f) provides additional requirements with respect to Western. Section 6(f)(1) entrusts the Secretary with the responsi-

bility for maintaining separate records and accounts for the various project or basin accounts and assuring that revenues are at the levels otherwise prescribed by law. It is intended that the Secretary would, in addition to collecting all power marketing revenues, retain revenues for purposes relating directly to Western Area Power Administration activities (including construction) and would transfer funds making appropriate credits to the Bureau of Reclamation at least quarterly but as necessary for the Bureau of Reclamation to operate various project or basin accounts for its purposes.

Section 6(f)(2) places a limit on amounts to be retained in the Western Fund for research, procurement, memberships, and conservation activities unless otherwise agreed to by the Secretary of the Interior.

Section 6(f)(3) requires Western and the Bureau of Reclamation to develop jointly an annual determination of amounts to be retained in the Western Fund for Western's operations and amounts to be transferred to the Bureau for the credit of the Reclamation Fund and other funds as required by law. Provision is also made for crediting certain Western Funds to reclamation projects.

Section 7 provides that for cash management purposes the Secretary may, as he deems advisable, request the Secretary of the Treasury to invest monies contained in a Fund which are in excess of current needs and defines the invesment which may be made. Interest on the investment is limited to the lowest interest rate applicable to certain outstanding obligations of the PMA. This procedure would replace the present practice of "interest credit" which is applied to the funds contained in a PMA's revenue account at Treasury.

Section 8(a) is intended:

1. To authorize the Secretary to borrow from the Secretary of the Treasury for financing of construction or acquisition of transmission facilities.

2. To authorize the Secretary of the Treasury to prescribe the terms, conditions, and interest rate of the borrowings for short-term and long-term, taking into account conditions on the open market for similar obligations.

3. To limit the amounts of any such loans outstanding.

The establishment of borrowing authority assumes that normal operations of a power marketing agency, including the costs and service of indebtedness for construction, would be borne by revenues.

Section 8(a) provides that the loan funds made available to assist in financing the construction or acquisition of transmission facilities be provided forthwith following acceptance by he Secretary of the terms and conditions of the loan prescribed by the Secretary of the Treasury. The interest rate on such borrowings will be determined by the Secretary of Treasury to be comparable to those prevailing in the open market for triple-A utility bonds. A formula is provided for an additional increment if revenues (by the borrowing entity) are not sufficient to meet repayment requirements. In providing the loan funds, the Secretary of the Treasury may use the proceeds from sale of securities issued under the Second Liberty Bond Act.

Section 8(b) sets a relative priority between two categories of financial obligations which the various PMA's would incur. The intent of section 8(b) is to make sure that the revenues and receipts of a PMA would first be applied to those functions which are essential to keeping its power marketing program intact. Costs associated with operations, maintenance, payments to others for use of their facilities, emergencies, conservation, and payments to trust funds would be paid first from the Fund. This is consistent with the allocation of funds as is now being done by the power marketing agencies.●

By Mr. McCLURE:

S. 735. A bill to supplement the Acreage limitation and residency requirements of Federal reclamation laws; to the Committee on Energy and Natural Resources.

RECLAMATION ACT OF 1979

● Mr. McCLURE. Mr. President, I am introducing a bill today that I had drafted last session but for a number of reasons decided not to introduce until now. I am a sponsor of the Farm Water Act, a bill which reflects my thinking on most of the areas in question under reclamation law. I am also a cosponsor of S. 14 as I helped in the original drafting of that measure so we could begin with a reasonable, even though limited, vehicle for revising reclamation law.

This bill, however, is one that introduces yet another approach on how we can solve some of the problems the administration's regulations have caused. I throw it out knowing we will eventually pass a bill which incorporates ideas from several bills already introduced.

As I have said many times, I am a strong supporter of the reclamation program as it is one of the best investments this Government has made. It has worked wonders for the people of Idaho and throughout the West by providing hundreds of families the opportunity to farm. It has served its purpose well by helping establish a strong agricultural economy that benefits our entire country. There is absolutely no reason for the administration to have issued such stringent regulations for reclamation law that would paralyze our farming communities. I am hoping in the next few months we can pass responsible legislation that will help dissolve the fear that is in every farm kitchen in the West because of the administration's actions on this issue.

The basic concepts of this bill are as follows:

1. ACREAGE LIMITATION

The bill establishes 1,600 acres as a limitation of a farm unit. This applies to any form or combination of ownership or leasing. It also provides that 4,800 acres is an upper limitation with an increased payment contract of the project costs.

2. ELIGIBILITY

To receive reclamation water, an individual, which includes his wife and dependents, who has farmed the land less than 5 years must meet one of three tests:

Reside within 50 miles of the lands.

Provide more than one-half of the capital and labor to operate the land.

Derive his primary income from the land.

Family corporations and small business are eligible if their beneficial owners meet the three test requirements.

3. EQUIVALENCY

This provision is on a project-by-project basis. It allows larger acreages, equivalent to 1,600 acres of class I land, to receive project water where the land does not have the same productivity because of soil conditions, length of growing season, cost of production, crop adaptability, and so forth. Hearings will be held on equivalency determination.

4. COMMINGLING

The bill clarifies that project water is only the water delivered to a farmer, pursuant to his contract, from the project. Any other water is always considered nonproject water and not subject to acreage limitations. Thus, commingled water, groundwater and water due to seepage are not affected.

5. PAYOUT PROVISION

Existing projects that have payout provisions in their contracts are listed and the contracts are to be honored by the Secretary. Over 50 projects in Idaho have paid out or have payout provisions in contracts.

Early payout—projects can pay out early and be exempt from acreage limitation, or projects can pay interest on the cost of project irrigation benefits but will be limited to three times the basic acreage limitation.

6. EXEMPTIONS

Charitable, religious, tax-exempt organizations are exempt from acreage limitations. (Agriculture research stations have been exempt for over 6 years as a result of an amendment proposed by Senator McCLURE.) In cases of isolated minor land tracts, the Secretary has the discretion to allow owner or lessee to receive water on those tracts.

7. SALE OF EXCESS LANDS

Excess lands would be sold at fair market value. Landowners can designate which land is excess. Seller can retain interest in mineral rights, surface rights, and security rights.

8. DATE OF EFFECT

Two years after the law is passed, all farmers must meet requirements under this bill. All existing contracts can be amended to fit the new provisions of the bill.

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

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

S. 735

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

SHORT TITLE

SECTION 1. A. This Act may be cited as the "Reclamation Act of 1979."

B. This Act shall supplement the Act of June 17, 1902 as amended and supplemented (43 U.S.C. 371 et seq.).

DEFINITIONS

SEC. 2. As used in this Act—

A. The term "Secretary" means the Secretary of the Interior.

B. The term "qualified recipient" means—

1. An individual person who is a citizen of the United States, and any member of his family as defined herein, provided that if such individual has not engaged in farming for at least five years prior to enactment of this Act, he must meet at least one of the following tests:

a. derive his primary income from the operation of land receiving water from, through or by means of a Federal reclamation project; or

b. reside on or within fifty miles of such land; or

c. provide more than one-half of the labor and capital involved in the operation of such land; or

2. the heirs of a qualified recipient, as defined in paragraph (1), who themselves do not qualify under paragraph (1), but only for a period ending upon the death of such heirs; or

3. any partnership, limited partnership or corporation organized under the laws of the United States or of any State, the beneficial ownership of which is composed entirely of members of a family as defined herein; or

4. a small business corporation as defined herein.

C. The term "Federal reclamation laws" means the Act of June 17, 1902 (32 Stat. 388), as amended and supplemented.

D. The term "project" means a project constructed or operated for the production, storage, release or delivery of irrigation water under the authority of or pursuant to the Federal reclamation laws, as amended and supplemented.

E. The term "project water" means water delivered from, through, or by means of a Federal reclamation project pursuant to a contract between the Secretary and a water using entity which is in excess of that water supply that would be available to the water using entity if the Federal reclamation project has not been constructed pursuant to state law. All other water available to the water using entity from any other source to which the contracting entity has an appropriative right under State law shall be considered non-project water.

F. The term "landholding" means one or more tracts of land owned or leased by any person which are served with project water pursuant to a contract with the Secretary.

G. The term "institutional lender" means any bank, savings and loan association, mutual savings bank, credit union, insurance company, production credit association or other cooperative association, and any affiliate thereof controlling, controlled by, or under common control of, such institutional lender.

H. The term "contracting entity" means any irrigation district, water using entity, or other entity, that contracts with the United States concerning a project constructed or operated pursuant to Federal reclamation laws, whether or not repayment to the United States is involved.

I. The term "family means an individual and his brothers and sisters (whether by the whole or half blood), spouse, ancestors and lineal descendants. A legally adopted child of an individual shall be considered to be a lineal descendant of such individual.

J. The term "small business corporation" means a domestic corporation which meets the requirements of section 1371 (a) of the Internal Revenue Code of 1954.

ACREAGE LIMITATION

SEC. 3. Notwithstanding any provision of the Federal reclamation laws which establishes a limitation on acreage to be served with project water to the contrary, a landholding of any qualified recipient which consists of 1,600 acres or less shall be considered to be within the acreage limitation of the Federal reclamation laws.

EXEMPTIONS

SEC. 4. A. Notwithstanding the provisions of section 3—

1. lands owned by States and political subdivisions and agencies thereof shall be exempt from the acreage limitation provisions of the Federal reclamation laws so long as such lands are farmed primarily to further a non-revenue producing public function; and

2. lands owned by an organization which is exempt from taxation under section 501 (a) of the Internal Revenue Code of 1954 which is described in section 503 (c) of such Code shall be exempt from the acreage limitation provisions of the Federal reclamation laws so long as such lands are farmed for the purpose of furnishing produce or revenue for charitable or religious objectives.

B. Notwithstanding the provisions of section 3, the Secretary may deliver project water to minor tracts of land though the delivery of such tracts may cause a qualified recipient to become an excess land owner, if the Secretary determines that there is no economically viable alternative means of operating such minor tracts.

C. Nothing in this Act shall repeal or amend other statutory exemptions from any acreage limitations of the Federal reclamation laws.

EQUIVALENCY

SEC. 5. A. Wherever an acreage limitation is imposed by the Federal reclamation laws, the Secretary shall designate by rule the acreage of a landholding which may receive project water at 1,600 acres of class 1 land or the equivalent thereof in other lands of lesser productive potential (as determined by the Secretary). In determining such equivalent and in classifying the productive potential of such lands, the Secretary shall take into account all factors which significantly affect productivity, including topography, soil characteristics, adequacy of water supply, crop adaptability, costs of crop production, and length of growing season.

B. The Secretary shall establish an acreage equivalency formula for each project service area, including areas in which pre-project land classification surveys already exist. The Secretary shall hold public hearings in the affected project service area prior to establishing an acreage equivalency formula and making an equivalency determination. The Secretary shall not enforce the acreage limitation in a particular project or unit thereof, by way of withholding project water deliveries or otherwise, until an equivalency classification is made for the affected project service area.

REPAYMENT OF CONSTRUCTION CHARGES

SEC. 6. A. In the case of any project, or any unit or division thereof, for which there is an executed repayment contract between the Secretary and a contracting entity on the date of the enactment of this Act, and thereafter, acreage limitation provisions of the Federal reclamation laws shall not apply to lands of a contracting entity which has made full payment or will make an immediate lump-sum payment of the balance remaining on the construction repayment obligation for said lands.

B. In the case of any project, or any unit or division thereof, for which there is an executed repayment contract between the Secretary and a contracting entity on the date of the enactment of this Act, and thereafter limitation of 4,800 acres shall apply to landholdings which consist of lands of a contracting entity which has entered into a contract amending such executed repayment contract whereby such contracting entity has agreed to pay the United States an amount equal to the remaining unpaid share of construction costs for such project, or unit or division thereof, in equal annual installments during a period beginning on the effective date of such amendatory contract and ending not later than the termination date of the existing repayment contract, together with interest compounded annually on such construction cost as well as on the nonreimbursable portion of irrigation benefits received by the contracting entity.

C. The Secretary of the Treasury shall determine the interest rate to be charged under paragraph (2) as of the beginning of the fiscal year in which such amendatory contract is entered into, on the basis of the computed average interest rate payable by the Treasury of the United States upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issue, and by adjusting such average rate to the nearest one-eighth of 1 per centum.

VALIDATION

SEC. 7. A. Except to the extent that they are inconsistent with the provisions of this Act, all provisions of contracts relating to the acreage limitation provisions of Federal Reclamation law are hereby verified, ratified, and confirmed as of the date of execution of the contract of the making of said representation.

B. The Secretary shall provide, upon request by any owner of a landholding which is free of the acreage limitation or residency requirements of the Federal reclamation laws, a certificate acknowledging the fact that such landholding is free of such limitation or requirements. Such certificate shall be in a form suitable for entry in the land records of the jurisdiction in which such landholding is located.

EXCESS LAND CONTRACTS

SEC. 8. A. An owner of excess land may designate which land shall receive project water as non-excess land.

B. No recordable contracts need be signed until project water is delivered to the landowner.

C. If excess land is sold by a landowner or pursuant to a recordable contract, the price of such land may reflect the fair market value of the land at the time of the sale. Any contract or agreement to the contrary to which the United States is a party shall be modified by the Secretary to conform to this section upon the request of the landowner.

D. Excess land subject to a recordable contract, which is not sold within a five-year period shall continue to be eligible to receive project water until sold by the owner or otherwise disposed of under the terms of the excess land contract.

E. Upon sale or other disposition of excess land under recordable contract or otherwise pursuant to the Federal reclamation laws, in addition to such sale or other disposition being subject to then existing easements and rights-of-way, the seller shall not retain any interest in the land other than (1) the right to explore for and produce minerals therefrom, including geothermal water, coal, oil, gas, associated hydrocarbons, and other fossil fuels; (2) the right to use the surface for purposes other than agricultural crop production; and (3) a purchase money mortgage or other purchase money security interest.

F. Excess and non-excess land acquired by a landowner which is an institutional lender in the normal course of business through foreclosure or other process of law, or by conveyance or satisfaction of a mortgage or deed of trust held by such institutional lender in full or partial satisfaction of a debt previously contracted, shall be eligible to receive project water, notwithstanding the acreage limitations of section 3, if such institutional lender disposes of such excess land within a five-year period, or within such other time period for the disposition of real property acquired in full or partial satisfaction of a debt previously contracted imposed by other Federal or State law applicable to such institutional lender, whichever is less.

TIME LIMITATIONS

SEC. 9. Effective two years after the date of the enactment of this Act, no lands may receive project water pursuant to a contract with the Secretary, except as otherwise provided in this Act, unless such lands comprise a landholding which is within the acreage limitation of the Federal reclamation laws.

EXCESS ACREAGE DETERMINATIONS

SEC. 10. For the purpose of determining whether a landowner holds excess acreage,

the number of irrigable acres of each tract supplied with project water shall be multiplied by a percentage which equals the percentage that project water would constitute of the total irrigation water supply to the tract in a year of average precipitation.

AMENDMENT OF INCONSISTENT CONTRACTS

SEC. 11. The Secretary is hereby authorized and directed to amend any provision of any contract between the Secretary and any other party existing upon the date of enactment of this Act which is inconsistent with the provisions of this Act, upon the request of such other party.

APPLICABILITY OF ADMINISTRATIVE PROCEDURE

SEC. 12. Determination made by the Secretary pursuant to the authority granted in this Act shall be in accordance with the provisions of chapter 5 of title 5 of the United States Code.

SEC. 13. Except to the extent they are inconsistent with the provisions of this Act, Federal Reclamation laws, including those provisions relating to the implementation of the acreage limitation, shall remain in full force and effect.●

By Mr. DOLE:

S. 736. A bill to amend the Internal Revenue Code of 1954 to clarify the standards used for determining whether individuals are not employees for purposes of the employment taxes; to the Committee on Finance.

EMPLOYMENT TAX ACT OF 1979

● Mr. DOLE. Mr. President, I send to the desk a bill to clarify the standards used for determining whether an individual is an independent contractor or an employee.

DOLE AMENDMENT

Mr. President, the recently signed Revenue Act contains a provision which I sponsored to allow employers to continue to treat individuals as independent contractors if there was a "reasonable basis" for treating them as independent contractors in the past. The employment tax controversy up until the passage of section 530 of the Revenue Act of 1978, was an issue that had been nagging Congress for several years.

IRS AUDIT CAMPAIGN

Since the early 1970's, the Internal Revenue Service has undertaken an aggressive audit campaign of employment taxes. The problem of increased audits and retroactive tax assessments issued by the IRS was recognized in the Tax Reform Act of 1976 conference report. Congress made it clear in the 1976 legislation that the IRS "not apply any changed position or newly stated position in this general subject area to past as opposed to future taxable year." However, the Internal Revenue Service ignored the warnings of Congress.

The distinction between an independent contractor and an employee is important because employers do not have to withhold on wages of independent contractors, nor pay social security or unemployment taxes. If the IRS prevails on a reclassification of employment tax status from an independent contractor to employee, the employer becomes liable for employment taxes which have not been withheld or paid to the treasury.

COMMON LAW

Independent contractors are distinguished from employees for tax purposes by common law. The adoption of the common law rules and the application of these rules by the court have produced decisions that are widely understood and accepted. However, several years ago, many taxpayers, including direct sellers, insurance salesmen, and realtors, complained that the IRS was distorting the common law test used in making its employment classification.

According to testimony before the Senate Finance Committee on my proposal last year, the IRS's change of position was having a serious adverse impact on the number of small businesses.

Mr. President, the Revenue Act of 1978 has temporarily solved the controversy. However, I have found that the IRS is dragging its feet on implementing the provisions of the tax bill. The Senator from Kansas would hope that the IRS would recognize the intent of Congress and proceed to comply with the law.

Mr. President, I am introducing legislation today which is designed to bring some certainty into the employment tax area. I believe it is a good approach and welcome comments from Treasury, business, and labor.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 736

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Employment Tax Act of 1979."

SEC. 2. STANDARDS.

(a) IN GENERAL.—Chapter 25 of the Internal Revenue Code of 1954 (relating to general provisions relating to the employment taxes) is amended by adding at the end thereof the following new section:

"SEC. 3508. ALTERNATIVE STANDARDS FOR DETERMINING WHETHER INDIVIDUALS ARE NOT EMPLOYEES.

"(a) GENERAL RULE.—For purposes of this subtitle other than chapter 22 and for purposes of chapter 2, and notwithstanding any other provision of chapters 21, 23, and 24 of this subtitle, if all of the requirements of subsection (b) are met with respect to service performed by any individual—

"(1) such service shall be treated as being performed by an individual who is not an employee, and

"(2) the person for whom such service is performed shall not be treated as an employer with respect to such service.

"(b) REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are met with respect to service performed by any individual if—

"(1) CONTROL OF HOURS WORKED.—The individual controls the aggregate number of hours actually worked and substantially all of the scheduling of the hours worked.

"(2) PLACE OF BUSINESS.—The individual does not maintain a principal place of business, or, if he does so, his principal place of business is not provided by the person for whom such service is performed, or, if it is so provided, the individual pays such person rent therefor. For purposes of this paragraph, the individual shall be deemed not to have a principal place of business if he does not perform substantially all the service at a single fixed location.

"(3) INVESTMENT OR INCOME FLUCTUATION.

"(A) The individual has a substantial investment in assets used in connection with the performance of the service, or

"(B) The individual risks income fluctuations because his remuneration with respect to such service is directly related to sales or other output rather than to the number of hours actually worked.

"(4) WRITTEN CONTRACT AND NOTICE OF TAX RESPONSIBILITIES.—

"(A) The individual performs the service pursuant to a written contract between the individual and the person for whom such service is performed—

"(i) which was entered into before the performance of the service, and

"(ii) which provides that the individual will not be treated as an employee with respect to such service for purpose of the Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act, and income tax withholding at source; and

"(B) The individual is provided written notice, in such contract or at the time such contract is executed, of his responsibility with respect to the payment of self-employment and Federal income taxes.

"(5) FILING OF REQUIRED RETURNS.—The person for whom such service is performed files any information returns required in respect of such service under section 6041(a).

"(c) SPECIAL RULES.—

"(1) SECTION NOT TO APPLY TO CERTAIN INDIVIDUALS FOR PURPOSES OF SOCIAL SECURITY TAXES.—For purposes of chapters 2 and 21, this section shall not apply to an individual described in section 3121(d)(3) (relating to certain agent-drivers, commission-drivers, full-time insurance salemen, home workers, and traveling or city salesmen).

"(2) SPECIAL RULE FOR CONTRACTS ENTERED INTO BEFORE 1981.—With respect to contracts entered into before January 1, 1981, subparagraph (b)(4) of this section shall be deemed to be satisfied if such contract clearly indicates that the individual is not an employee (either by specifying that the individual is an independent contractor or otherwise), provided that the notice required by subparagraph (b)(4)(B) is given before January 1, 1981."

(b) CLERICAL AMENDMENT.—The table of sections for such chapter 25 is amended by adding at the end thereof the following new item:

"Sec. 3508. Alternative standards for determining whether individuals are not employees."

* * * * *

SEC. 3. SOCIAL SECURITY COVERAGE.

Section 210(a) of the Social Security Act is amended by striking out "or" at the end of paragraph (19), by striking out the period at the end of paragraph (20) and by inserting in lieu thereof "; or", and by adding after paragraph (20) the following new paragraph:

"(21) Service which, under section 3508 of the Internal Revenue Code of 1954, is treated as being performed by an individual who is not an employee."

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply to service performed after December 31, 1979.●

By Mr. STEVENSON (for himself and Mr. HEINZ):

S. 737. A bill to provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the right to engage in commerce; to the Committee on Banking, Housing, and Urban Affairs.

EXPORT ADMINISTRATION ACT OF 1979

● Mr. STEVENSON. Mr. President, U.S. citizens have a right to engage in international as well as domestic commerce

unfettered by Government restriction unless the Nation's vital interests are affected. Present controls on U.S. exports are more stringent than is consistent with the rights of citizens, the national interest, or commonsense.

Despite the growing trade deficit, new export controls have been adopted with insufficient consideration of their cost and effect. The United States is in danger of acquiring a reputation as an unreliable supplier, a reputation it can ill-afford in an increasingly competitive world. There are few products or technologies for which the United States is any longer a unique source of supply.

Mr. President, the United States is the only nation—in this century at least—which regards its exports as a privilege to be bestowed only upon the worthiest of foreigners. Other nations see clearly the increased production and jobs exports yield. We too frequently succumb instead to seductive notions of "leverage" or theological calls to purification through self-denial.

We must have more to offer a needy world than our own moral superiority. Ill-conceived efforts to pressure other nations through refusals to export deprive the United States of influence as well as sales.

Mr. President, the bill I am introducing today on behalf of Senator HEINZ and myself would establish an export control policy which protects vital security and foreign policy interests without unnecessarily restricting U.S. exports. It would reduce the number of controlled items and focus national security controls on technologies and related products critical to military systems. It would set criteria which the President must consider before imposing export controls for foreign policy purposes. It would reduce paperwork by establishing licenses under which multiple shipments could be made to a specified purchaser for a stated end-use. It would expedite interagency review by requiring agreement in writing on types and categories of applications requiring interagency referral and setting a 30-day deadline for returning comments to the Commerce Department. It would insure final decisions on all applications within a maximum of 180 days, by requiring that applications either be decided within a specified period or referred to a higher level, if necessary, to the President.

This legislation assigns clear responsibility for assessing the foreign availability of goods and technology subject to U.S. export controls. A recent report by the General Accounting Office notes that no one in the executive branch is given responsibility to determine whether products or technology are freely available to controlled countries from our foreign competitors. Each agency makes its own assessment, leading to needless duplication of effort and delays in license reviews.

The GAO recommended that foreign availability be assessed by a single office drawing as necessary on expertise and information from other Federal agencies. Our bill requires establishment of an Office of Foreign Product and Technology Assessment in the Department of Commerce. This office could call upon any Federal agency for assistance in assessing foreign availability, and would also receive information from the business sector. Centralizing responsibility for foreign availability assessments should yield substantial savings in administrative expense and license processing time.

Reform of the administration of export controls, as provided in this bill, will increase U.S. exports by reducing licensing delays, but the fundamental issue is: what should be controlled for what purposes? Controls have been proliferating while exports stagnated.

Our bill mandates annual review of export controls and requires consideration of foreign availability—which applies at present only to national security controls. Before imposing new controls for foreign policy reasons the President would also have to consider such factors as the effectiveness of the controls, the economic costs, the reaction of other countries, and alternative ways to further U.S. foreign policy. The President would be required to report his conclusions to the Congress and the public. These requirements may not curb the tendency toward capricious, reflexive use of controls, but they would afford a chance, at least, to stop and think before limiting U.S. exports.

Controls on exports for national security purposes also need streamlining. The Department of Defense has underway an effort to define technologies and products critical to military systems. The "critical technology approach"—once fully implemented—should yield more effective control over the transfer of truly critical technologies while reducing controls on many products and noncritical technologies presently subject to validated license requirements. As the Bucy report suggested in 1976, controls focused on critical technology can serve both national security and exports more effectively. Our bill requires implementation of the critical technology approach.

This legislation constitutes the most extensive revision of U.S. export control policy since 1969. Accordingly, we have designated the bill the Export Administration Act of 1979.

Mr. President. I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD.

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

SECTION-BY-SECTION-ANALYSIS

SHORT TITLE

Section 1 provides that the Act may be cited as the "Export Administration Act of 1979" (replaces Export Administration Act of 1969, as amended).

FINDINGS

Section 2 contains all "findings" from section 2 of present Act and adds findings emphasizing the right of U.S. citizens to engage in trade and the contribution of exports to the U.S. trade balance, employment and production.

DECLARATION OF POLICY

Section 3(1) declares U.S. policy to be to minimize uncertainties in export policy and encourage trade as a right not a privilege except with countries with which the President has determined trade to be against the national interest (revises section 3(1) of the present Act).

Section 3(2) declares U.S. policy to be to restrict the right to export only after full consideration of the economic impact in the U.S. and only to the extent necessary to protect the domestic economy in short supply situations, to further significantly U.S. foreign policy, and to prevent exports which could hurt U.S. national security by making a significant contribution to the military potential of certain nations (revises section 3(2) of the present Act).

Section 3(3), concerning multilateral export control policy is identical to section 3(3) of the present Act.

Section 3(4) contains a general policy statement identical to section 3(4) of the present Act.

Section 3(5), concerning antiboycott policy, is identical to section 3(5) of the present Act.

Section 3(6), concerning business-government consultations on export policy, is similar to section 3(6) of the present Act.

Section 3(7), concerning the use of export controls in response to foreign restrictions on U.S. access to supplies, is identical to section 3(7) of the present Act.

Section 3(8), concerning the use of export controls to counter international terrorism, is identical to section 3(8) of the present Act.

AUTHORITY

Section 4(a)(1) authorizes the President to control exports as necessary to carry out the policies stated in section 3 and, when applying controls for short supply reasons, to allocate export licenses on the basis of factors other than prior export history. This provision is essentially the same as section 4(b)(2)(A) of the present Act.

Section 4(a)(2)(A) requires that export control policy toward individual countries take into account certain factors in addition to the existence of Communist rule, and requires the President to review such policy at least annually and to include the results in reports to Congress required by the Act. This provision is essentially the same as section 4(b)(2)(A) of the present Act.

Section 4(a)(2)(B) authorizes controls on exports which would make a significant contribution to the military potential of any nation which threatens U.S national security, as determined by the President, and requires controls to be focused on preventing the effective transfer to controlled countries of goods and technology critical to the design, development, or production of military systems. The Secretary of Commerce, in consultation with the Secretary of Defense, is required to review such controls at least annually in order to limit controls as much as possible consistent with the purposes of the Act, to such militarily critical goods and technologies. Actions taken pursuant to this paragraph are to be reported to the Congress annually. This paragraph revises substantially section 4(b)(2)(B) of the present Act.

Section 4(a)(2)(C) and (D) lists factors which the President must consider prior to increasing controls on exports for foreign policy purposes, and requires the President to report his conclusions to Congress and the public when imposing such controls and to indicate how U.S. foreign policy will be furthered significantly or declared international obligations fulfilled. The present Act contains no corresponding provision.

Section 4(a)(2)(E) prevents the President from imposing export controls for national security or foreign policy purposes when foreign availability exists, unless he determines there is sufficient evidence to demonstrate that the absence or such controls would be detrimental to U.S. national security of foreign policy. In the latter case the President

is directed to negotiate with foreign governments to eleminate such availability. This provision is the same as section 4(b)(2)(C) of the present Act, except that consideration of foreign availability is required for controls imposed for foreign policy reasons as well as those imposed for national security purposes.

Section 4(b) requires the Secretary of Commerce to reorganize the Department of Commerce as necessary to carry out the policy set forth in the Act, to maintain export control lists, to review such lists at least annually and include in each review an assessment of foreign availability of controlled items. The Secretary is directed to establish an Office of Product and Technology Assessment to monitor foreign availability. The Secretary is further directed to keep the public fully apprised of changes in export control policy and procedures and to consult the business sector on such policy and on foreign availability. This section substantially revises section 4(a) of the present Act.

Section 4(c)(1) and (2) establishes three types of export licenses: validated qualified general and general—and provides that validated licenses are to be used principally for exports of goods and technology under multilateral (COCOM) control qualified general licenses for multiple shipments of exports subject to unilateral U.S. control, and general licenses for other exports. There are no comparable provisions in the present Act.

Section 4(c)(3) requires the Secretary of Commerce to establish conditions and procedures for the use of qualified general licenses within 60 days from enactment. There is no comparable provision in the present Act.

Section 4(c)(3) states the intent of Congress that all license applications be decided within 90 days, unless the Secretary of Commerce determines additional time is needed and so notifies the applicant. Such applications must be referred to the Export Administration Board. No comparable provisions exist in the present Act.

Section 4(c)(5) requires that the applicant be informed of specific objections to approval of the application and given an opportunity to respond, and that a similar procedure be followed before referring an application to another agency for review. This provision is essentially the same as section 4(g)(2)(A) of the present Act.

Section 4(c)(6) requires that the applicant be informed of the specific statutory basis for any export license denial, and that the Secretary of Commerce establish an appeals process. This provision revises section 4(g)(3) of the present Act.

Section 4(c)(7) establishes an Export Administration Board composed of voting representatives from the Departments of Commerce, State and Defense. Applications not decided within 30 days or appealed by any voting member of the Board shall be reviewed by an Export Administration Review Council composed of the Secretaries of Commerce, State and Defense. Applications shall go to the President for review if not decided within 30 days or if the Council's decision is appealed by one of the Secretaries. The President also has 30 days to decide, and if no decision is made within 180 days of the initial filing of the application the license shall be issued, unless the applicant permits the Government more time to review the application. No comparable provisions appear in the present Act.

Section 4(d) provides for review by the Secretary of Defense of such types and categories of exports controlled for national security purposes as he and the Secretary of Commerce agree in writing should be so reviewed, and requires the Secretary of Defense to review each such application carefully and recommended to the Secretary of Commerce within 30 days that such application be denied, approved or approved with conditions. If the Secretary of Commerce does not accept the recommendation, the Secretary of Defense may insist that the case be referred to the Export Administration Review Board. This provision revises section 4(h) of the present Act.

Section 4(e) provides for review by the Secretary of State of such types and categories of exports controlled for foreign policy purposes as he and the Secretary of Commerce agree in writing should be so reviewed, and requires the Secretary of State to review each such application carefully and recommend to the Secretary of Commerce within 30 days that such application be denied, approved, or approved with conditions. If the Secretary of Commerce does not accept the recommendation, the Secretary of State may insist that the case be referred to the Export Administration Review Board. There is no corresponding provision in the present Act.

Section 4(f) requires any agency, department, or official authorized to review export license applications required by this Act to confirm in writing with the Secretary of Commerce the types and categories of applications to be reviewed, and to submit views on each application with 30 days of receipt. The present Act contains no comparable provision.

Section 4(g) requires the Secretary of Commerce to monitor exports for short supply reasons when such exports contribute, or may contribute, to increased domestic prices or shortages and have serious adverse impact on the economy or any sector thereof. Weekly or monthly reports on such monitoring are also required. These provisions are identical to section 4(c) of the present Act.

Section 4(h) concerning license fees is identical to section 4(i) of the present Act.

Section 4(i), containing restrictions on exports or swaps of U.S.-produced crude oil, is identical to section 4(l) of the present Act, except that the President's decision to export such crude may be overturned by a concurrent resolution adopted within 30 days rather than by the action of one house acting within 60 days.

Section 4(j) excludes certain refined petroleum products from short supply restrictions except as limited by regulation issued by the Secretary of Commerce. This provision is identical to section 4(j) of the present Act.

Section 4(k) requires that the approval of the Secretary of Agriculture be obtained before controls may be imposed on the export of agricultural commodities and provides for consideration by the Secretary of domestic requirements for such commodities and of the use of the Commodity Credit Corporation as a foreign sales agent for such commodities before approving export controls. The section also provides for commodities temporarily stored in the United States to be exempted from export controls. This section revises section 4(f) of the present Act.

Section 4(l) provides that authority to export is not required by this Act, or rules or regulations issued pursuant to the Act, except where the President has so required in order to effect the policies of the Act. This provision is identical to section 4(d) of the present Act.

Section 4(m) authorizes the President to delegate authority under the Act to such departments, agencies, or officials as he chooses, unless the head of the department or agency in question has not been appointed by and with the advice and consent of the Senate. This section is the same as section 4(e) of the present Act, except for the provision concerning Senate confirmation of the heads of agencies or departments whose officials exercise authority under the Act.

FOREIGN BOYCOTTS

Section 5 contains provisions concerning foreign boycotts and is identical to section 4A of the present Act.

PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

Section 6, concerning hardship relief from export controls for short supply purposes, is identical to section 4B of the present Act.

CONSULTATION AND STANDARDS

Section 7(a), concerning interagency consultations on export control policy, is identical to section 5(a) of the present Act, except that the requirement that the Secretary of Commerce consult with the Secretary of Energy on monitoring of certain energy equipment exports is limited to short supply situations.

Section 7(b) concerning private competition and exports is identical to section 5(b) of the present Act.

Section 7(c) concerning formation and duties of technical advisory committees is identical to section 5(c) of the present Act, except for an additional paragraph, section 7(c)(6), which requires the Secretary of Commerce to verify foreign availability whenever advised of such availability by a technical advisory committee, and to take appropriate action concerning export controls on such items.

VIOLATIONS

Section 8, concerning penalties for violation of the Act is identical to section 6 of the present Act.

ENFORCEMENT

Section 9 concerning enforcement of the Act is identical to section 7 of the present Act, except that subsection 9(c) contains an express exemption of confidential information from the Freedom of Information Act and provides that information shall be available to Congressional committees with appropriate jurisdiction no matter when such information was obtained.

EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Section 10 provides that exemption applies only where the Secretary of Commerce has issued regulations prescribing cases where applicability of administrative procedure and judicial review would be inconsistent with the purposes of this Act. This provision revises section 8 of the present Act.

ANNUAL REPORT

Section 11 is identical to section 10 of the present Act except that the report is to be annual rather than semi-annual.

DEFINITIONS

Section 12 contains the definitions of "person" and "United States person" included in section 11 of the present Act, and adds definitions of "goods" and "technology".

EFFECTS ON OTHER ACTS

Section 13 is identical to section 12 of the present Act.

AUTHORIZATION OF APPROPRIATIONS

Section 14(a) requires annual authorization of appropriations to the Commerce Department to cover the expenses of administering the Act. The provision corresponds to section 13(a) of the present Act.

Section 14(b) authorizes appropriation of $8 million to the Commerce Department for fiscal year 1980, of which $1,250,000 is to be used solely to support the Office of Foreign Product and Technology Assessment.

EFFECTIVE DATE

Section 15 provides that this Act will take effect upon expiration of the present Act, and preserves all actions taken under predecessor Acts.

TERMINATION DATE

Section 16 provides for termination of authority granted under this Act on September 30, 1983, or an earlier date if designated by the President.●

● Mr. HEINZ. Mr. President, today I am proud to join with my esteemed colleague, the chairman of the Subcommittee on International Finance, ADLAI STEVENSON, to introduce the Export Administration Act of 1979, the purpose of which is to streamline and make more responsive the Nation's export control policy.

At the hearings which have been held on export controls during this Congress and the previous one, I heard almost unanimous condemnation by exporters and expert witnesses of our Nation's export control process. An overwhelming body of evidence was adduced to demonstrate that current export control policy is inconsistent, plagued by uncertainty and vagueness, indeed threatening to undermine our reputation as a reliable supplier in the world marketplace. The administration's response to those accusations was weak and unconvincing.

Mr. President, the current condition of our export control policy is intolerable. It seriously undermines the President's announced goal of strengthening our Nation's trade and foreign exchange position in the world arena. We simply have to recognize that we are no longer the preeminent trading nation in a sellers' market. We can be justly proud of our Nation's effort since World War II to build up the economies of our former enemies and our major trading partners. But the result has been to place us in a highly competitive international trading arena, where markets that we forgo or lose through inadvertence may never be regained.

Our Nation's Governors have recognized this fact, perhaps more vividly than the administration. Whereas the executive branch has yet to come forward with any plan to overhaul the Export Administration Act, the Governors have presented a very comprehensive set of suggestions, many of which have been incorporated into this bill. The National Governors' Association has recognized a fact which the administration seems yet to fully comprehend: that our Nation's edge in high technology (as well as agriculutre and other industrial goods) is a precious resource for jobs and capital growth which we must aggressively promote in foreign markets. Each time a license is denied for insufficient cause, or delayed to the point where customers are discouraged and begin to look elsewhere, that precious resource is squandered. Worse still, there is a multiplier effect, in which potential exporters lose their enthusiasm for the process and potential importers of U.S. goods decide that they had better turn to other, more reliable sources for their needs, in some cases despite the U.S. edge in quality or technology.

Mr. President, we are ill-served by the current system which causes seemingly endless delays and uncertainty on licenses before granting them. The bill which I am sponsoring today would go a long way toward remedying that situation.

It creates a three-tiered appeals process and a new class of export license which together should work to weed out and expedite routine cases early in the process, while at the same time insuring that major issues of national importance get attention they deserve at the Secretarial or Presidential level.

It certainly would not be in our interest to replace the current system with a process which permits only cursory consideration of the export of technology which might eventually undermine our world market position or national security. This bill has safeguards against that danger. The 6-month deadline for the resolution of licensing disputes does not put on premium on haste, but it does insure that no bureaucrat will be able to kill a project by merely pigeonholing it.

Mr. President, the promotion of human rights is a goal I strongly support. This bill provides the President with sufficient latitude to impose export controls for foreign policy purposes, but it does require a greater rigor in the argumentation used to justify those controls and a more extensive reporting procedure after those controls have been instituted. As the General Accounting Office noted in its recent report, there has been a proliferation of the use of export controls for foreign policy purposes, but little or no discussion of that use in reports to Congress. Hopefully, the new rigor required will cause the administration to pause and seriously consider whether export controls are really the best way to achieve the desired end. How much leverage do we have? In an age of technological diffusion, how much success are we likely to have in convincing our industrialized allies—whose cooperation is critical—that the promotion of human rights is a goal worthy of financial sacrifice? It would seem that these important questions have not always been given sufficient weight in past deliberations.

The message I have received from exporters is that they are not asking for a removal of restraint. Rather, what they want—and what this bill provides—is a streamlined and predictable export control policy, which can be used as a reliable guide to marketing and long-term commitments. I urge all of my colleagues to give the bill careful consideration and support.●

By Mr. MELCHER (for himself, Mr. BAUCUS, Mr. BURDICK, Mr. DOLE, Mr. EXON, Mr. MCGOVERN, Mr. PRESSLER, Mr. TOWER, Mr. WALLOP, Mr. YOUNG, and Mr. ZORINSKY):

S. 738. A bill to amend section 16(b) of the Soil Conservation and Domestic Allotment Act, as amended, providing for a Great Plains conservation program; to the Committee on Agriculture, Nutrition, and Forestry.

REAUTHORIZATION OF THE GREAT PLAINS CONSERVATION PROGRAM

● Mr. MELCHER. Mr. President, today I am introducing S. 738, a bill to reauthorize the Great Plains conservation program.

The Great Plains conservation program funds Soil Conservation Service activities authorized under section 16(b) of the Soil Conservation and Domestic Act (Public Law 74–46) as amended by Public Law 84–1021. Public Law 91–118 amends Public Law 81–1021 to extend the Great Plains cost share contracting authority to December 31, 1981. The purpose of the bill I am introducing today, with 10 other Senators, is to reauthorize the program until 1986, and to increase the authorization from $25 to $50 million.

It is important to note that it is the intent of the administration to abolish the Great Plains conservation program. One of the purposes of this bill is to serve notice that the Congress will not go along with such a decision.

In 1972, the Congress enacted the Rural Development Act, which provided for the Great Plains conservation program to be operated in every county in the Nation. Unfortunately, no administration has been willing to put the law into action. But that is a permanent authority that is on the books, and I suppose that if someone wanted to go to court with the matter, it would not be necessary for me to be introducing this bill today.

During the last Congress, the Senate again reaffirmed its faith in this program by passing a bill by my distinguished colleague from California (Mr. HAYAKAWA) to extend the program to all counties west of the Mississippi River. That bill was passed, because of the recognition of the value the program could be in counties stricken by drought.

Again during the last session of Congress, the Senate passed a bill by my distinguished colleague from South Dakota, (Mr. MCGOVERN) to make the program permanent.

Clearly, the Congress has shown that it believes this program is a major contributor to the protection and enhancement of our Nation's soil and water resources.

The Great Plains conservation program is designed to assist farmers and ranchers in planning and applying resource management systems on their farms and ranches to prevent or reduce the effects of climatic hazards. Benefits to be achieved are protection or improvement of soil, water, plant, and wildlife resources, through reduction of erosion and sedimentation, abatement of agriculture-related pollution, and thereby keep stable local economies dependent on the productivity of land and water resources.

Activities under the program include:

COST SHARING ASSISTANCE

Payments are made to program participants for a share of the cost of installing eligible conservation practices scheduled in contracts.

COST-SHARE PROGRAMING AND CONTRACT ADMINISTRATION

The Soil Conservation Service provides assistance in developing contracts which include schedules of conservation measures to be applied, and administers

long-term contracts with landowners of from 3 to 10 years.

TECHNICAL ASSISTANCE

The Soil Conservation Service provides assistance to help farmers and ranchers plan and install scheduled conservation measures according to technical and scientific specifications and standards.

The program is an addition to other Department of Agriculture soil and water conservation programs in the counties designated for participation, and it is coordinated with programs and objectives of locally managed and controlled conservation districts, State agencies, and community groups.

At present, in the 469 designated counties that come under the program, there are 104.5 million acres under long-term conservation contracts. That is nearly as much land being protected as there are woodlands in the national forest system. That means that private landowners are paying and cooperating with their Government to protect America's invaluable soil and water assets.

But there are 5,000 landowners standing in line. These are people who want to get into the act. They want to join with their neighbors in protecting our soil and water and wildlife, but thus far their Government has not shown the will to let them in. There are 75.4 million acres out there which we could be protecting, which we are not protecting.

This is a big country, but surely we have learned by now that our soil resources are not to be wasted.

Now I must say that I do not look upon this bill as inviolable or unamendable. There remain those who would like to see the principles of this program extended throughout the Nation. There are others who believe it should apply in every Western or water short county. Still others would like to give the Secretary of Agriculture the authority to extend the program as he sees fit. In this regard, I am willing to bow to the wishes of the Congress, but it is imperative that the program be extended.

In the 1977 Water Pollution Control Act amendments, Congress adopted a rural clean water program, designed to help rural landowners comply with the nonpoint source pollution regulations in the act.

I think it is important to point out that the Great Plains conservation program is a rural clean water program that can and is being used to keep silt and pollutants out of our waters. I think it is important to point out that other authorities in the Rural Development Act of 1972 provided additional authorities to provide assistance to landowners to help clean up our air and water.

But what do we do? We try to kill the Great Plains conservation program, and we ignore the authorities in the Rural Development Act. Instead of going with proven programs that quietly get the job done, we chase after fads. In 1980, the administration intends to spend $75 million on the untried and unproven rural clean water program, while ignoring the authorities it already has at hand. I grant that these existing authorities do not have the glamor of direct association with the Water Pollution Control Act, but they are flexible enough so that any conservation practice we need to employ can be put to work.

Finally, Mr. President, I would like to say a word about the provision in S. 738 to end the program in 1986.

At the present time, the Department of Agriculture is working on the appraisal of the condition of our land and water resources as called for in the Soil and Water Resources Conservation Act. At the end of this year, the Department will present the Congress with the results of that appraisal and a program of work for all of the agencies in USDA that do soil and water conservation work.

Frankly, it is generally acknowledged that this first effort will not be of the high quality we might wish, because of the vastness of the job. As I said, this is a big country. But it will be the first time ever that we have tried to understand the size of the conservation job to be done, and then tried to appraise the quality of the work we are doing to get that job done. It is important to point out that we have our distinguished colleague from Kentucky (Mr. HUDDLESTON) to thank for initiating this law.

In 1985, the Congress will be presented with a second appraisal and program, and by that time we should also have solid evaluative information on which of the programs for soil and water conservation are most effective, and which ones are not. I have extended the provisions of this bill to 1986, so that based on the information we receive from USDA, we can kill the program if something is found that works better, or we can extend it and expand it if it is found to be the quality operation we now believe it to be.

Mr. President, I ask unanimous consent that S. 738 be printed in the RECORD.

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

S. 738

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 16(b) of the Soil Conservation and Domestic Allotment Act (70 Stat. 1115, as amended; 16 U.S.C. 590p(b)) is amended by—

(1) in the third complete sentence of paragraph (1), striking out "December 31, 1981" and insert in lieu thereof "September 30, 1986";

(2) after paragraph 6, insert a new paragraph (7), "(7) The Secretary shall, where practicable, enter into agreements with soil conservation districts and State soil and water conservation agencies to administer all or part of the program established in this subsection under regulations developed by the Secretary. Such agreements shall provide for the submission of such reports as the Secretary deems necessary, and for payment by the United States of such portion of the costs incurred in the administration of the program as the Secretary may deem appropriate;

(3) renumber paragraph (7) to paragraph (8);

(4) in paragraph (8), strike the words "cost of the program (excluding administrative costs) shall not exceed $300,000,000, and";

(5) in paragraph (8) strike "$25,000,000" and insert in lieu thereof "$50,000,000".●

● Mr. DOLE. Mr. President, I am today joining Senator MELCHER from Montana and other Senators in sponsoring the Great Plains Program Extension Act. This act would extend the Great Plains conservation program until 1986.

It would also provide the Department of Agriculture with more flexibility in carrying out the program. And it would increase the authority from $25 to $50 million.

The unique and nagging resource problems of the Great Plains are still not solved. While much has been accomplished, at least 50 percent of the conservation needs still remain. Greater demands on the resources in the 10-State region continue to cause new concerns, such as the critical water conservation and supply problems now prevalent in much of this region. A national program designed to cure all problems cannot and does not effectively deal with certain regional resource problems.

PROGRAM IS EFFECTIVE

A program carried out by one agency is more effective and efficient in converting both dollars and technical assistance to problem-solving activities intended by law. For example, in Kansas the administrative cost to carry out the Great Plains conservation program was only 13 percent of the State's allocation in fiscal year 1978.

LESS PAPERWORK

Farmers and ranchers can also work directly with the decisionmaking agency and person responsible. This is especially important for both the producer and the agency when planning and making resource committing decisions. It involves less paperwork, less confusion for the producer, and a better understanding of what is expected from all concerned.

Any warranted changes needed as the contract is carried out can be made efficiently. Contract violation or failure to carry out an obligation is handled much more effectively when only one agency is working with the producer. There is no "middleman" as the Soil Conservation Service now is, in the case of long-term agreements (LTA's).

PROGRAM MANAGEMENT SIMPLER

Program management and responsibility is simpler with direct accountability. The Great Plains conservation program is given local leadership and direction by the recognized responsible conservation organization; that is, the conservation district. Soil and water conservation is both the primary objective of the Great Plains conservation program and the responsibility of the Soil Conservation Service on private land. We have both the technical and management expertise. It follows then that conservation programs should be administered by the conservation agency.

GREAT PLAINS WORK NEEDED

Even with the Great Plains conservation program, there is still not enough being done in terms of resource conservation in the Great Plains. There has been very little conflict or duplication between programs. In fact, the Great Plains conservation program is as di-

rected by law "in addition to" existing conservation programs.

USDA STUDY

At the present time, the Department of Agriculture, under the authority of the Soil and Water Resource Conservation Act (RCA), is examining all of its soil and water conservation programs to determine whether any redirection is needed in present program activities. Until this work is completed, and some definitive answers are available to the Congress, I believe that we should maintain existing program operations.

I believe the Great Plains conservation program has made substantial imputs to the conservation program in Kansas and the other Great Plains States. The program has worked and worked well. It should be continued. I am pleased to join Senator MELCHER in sponsoring the Great Plains Program Extension Act.

By Mr. LAXALT:

S. 739. A bill to amend certain provisions of title 28, United States Code, relating to venue in the district courts and the courts of appeals; to the Committee on the Judiciary.

● Mr. LAXALT. Mr. President, I am today again introducing legislation, similar to that which I introduced in the last session of the 95th Congress, which will have the effect of amending the Federal Venue Statutes to require that cases with the Federal Government as the defendant be tried in the district court where the impact or injury is most substantial.

Since introducing S. 3539 in the last Congress I have become convinced more than ever before that this legislation is of utmost importance, not only to the Western United States, but to the rest of the country as well, and I am committed to doing my utmost to make it become part of the United States Code. I have corresponded with members of the Nevada Bar about it, who almost without exception endorse the concept thoroughly.

Presently most cases filed against the Federal Government, particularly those involving environmental issues, are tried in Washington, D.C. Often these cases will have major impact on one of the States, but nevertheless, the only connection to Washington is the fact that the Federal Government and perhaps a public interest law firm plaintiff, are located here. Accordingly, such a case will be tried to a Washington, D.C., judge with a Washington, D.C., Government lawyer on one side and a Washington, D.C. public interest lawyer on the other. The subject matter, on the other hand, may be a dam in Oregon, a water project in Montana, or a Federal wildlife refuge in Nevada.

It would make more sense, in my opinion, to have such cases tried in the district court where the major impact or injury is situated. In that way the judge might have some familiarity with the subject of the case, and might feel somewhat more accountable for his decision. The Government lawyer in such situations would either be the U.S. attorney from the district where the subject matter of the case is located or from the regional office of the agency involved. The public interest plaintiff's lawyer, or whoever the plaintiff's lawyer might be, would at least have to travel to the districts where his case arose, perhaps making him somewhat more cognizant of local problems. Additionally, of course, witnesses and interested parties from the State where the subject matter of the case is located, who are primarily affected by the decisions in such cases, would only have to travel to the Federal courthouse in their district instead of to Washington, D.C., to observe or participate in the case.

The bill also uses the same standard for appeals from agency proceedings, many of which are now also filed in the District of Columbia. Requiring that such cases be heard in the circuit where the injury is situated should also result in decisions taking into account the public sentiment to some degree, and using the established case of law of the circuit rather than that of Washington, D.C. Usually the precedent in one of the other circuits will more nearly reflect local customs and local law, whereas the precedent in the District of Columbia circuit more precisely reflects the attitudes of the Federal Government.

It is my strong feeling that this bill, if passed, would be most beneficial to local interests in the States.

The unfairness of the situation most recently came to my attention when a permanent injunction was issued by the district court for the District of Columbia, enjoining the Department of Interior from issuing regulations affecting Ruby Marsh in Nevada. In that case, the defenders of wildlife sued Secretary Andrus in the district court of the District of Columbia to enjoin any boating on the Ruby Marsh Wildlife Refuge. Ruby Marsh is a Federal wildlife refuge, but has been used for years as a recreational lake by Nevadans. Nevada was not made a party to that action until the State got wind of the case and intervened as a defendant on the day of the hearing before the District of Columbia court.

The case was commenced in the District of Columbia by a District of Columbia plaintiff, although the subject matter of the case had nothing whatever to do with anything in the District of Columbia except for the fact that the Department of the Interior's headquarters is located here. Although Ruby Marsh had been used for years as a recreational lake by Nevadans, and apparently without any harm to the wildlife located there, the court decided the case without benefit of any firsthand knowledge of the facts.

It seems obvious to me that this case should have been tried in Nevada, by a Nevada judge, giving the State of Nevada the option of participating fully and permitting Nevada residents, who are the primary users of the lake, at least an opportunity to sit in on the hearing. Under the bill introduced today, that case, and apparently hundreds of other similar cases, would be tried in the district court where the controversy exists, and cases appealed from agency proceedings would similarly be heard in the circuit court where the controversy exists. The result, I am sure, will be very favorable to the States and to the people affected by such cases, and will help to return a degree of confidence in the Federal court system by the American people.

Recently I had occasion to conduct a television interview with Attorney General Griffin Bell, in which I asked him his opinion of this legislation. He responded:

> I am in favor of having the trials locally, and that includes tax cases, criminal cases, whatever kind of cases. I am against the government hailing people all the way to Washington to litigate.

I am, of course, pleased to have the endorsement of the Attorney General of the United States, and I am sure it will facilitate the passage of this bill.

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

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

S. 739

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1391(e) of title 28, United States Code, is amended to read as follows:

"(e)(1) Except as provided in paragraph (2), a civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides or has his principal place of business, or (B) the cause of action arose, or (C) any real property involved in the action is situated, or (D) if no real property is involved in the action, the plaintiff resides or has his principal place of business.

"(2) In any such action in which it is determined that a substantial portion of the impact or injury is in one or more judicial districts, such action shall be brought in one of such judicial districts.

"(3) Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

"(4) The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules be made by certified mail beyond the territorial limits of the district in which the action is brought.".

SEC. 2. Section 2343 of title 28, United States Code, is amended to read as follows:

"§ 2343. Venue

"(a) Except as provided in subsection (b), venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia.

"(b) In any such proceeding in which it is determined that a substantial portion of the impact or injury is in one or more judicial circuits, venue of such proceeding shall be in one of such judicial circuits.".

SEC. 3. Section 2112(a) of title 28, United States Code, is amended—

(1) by inserting immediately after the third sentence the following new sentence: "In any case in which it is determined that a substantial portion of the impact or injury is in one or more judicial circuits, venue

of such proceeding shall be in one of such judicial circuits"; and

(2) by inserting in the fourth sentence immediately after "same order" the following: "and the parties are unable to agree upon venue of such proceeding in one of such courts of appeals".●

By Mr. WILLIAMS (for himself, Mr. PROXMIRE, Mr. GARN, Mr. MORGAN, Mr. STEWART, and Mr. TOWER):

S. 740. A bill to amend section 245 of the National Housing Act to exclude graduated payment mortgages from certain restrictions regarding maximum amount of loan; to the Committee on Banking, Housing, and Urban Affairs.

HOMEOWNERSHIP OPPORTUNITY ACT OF 1979

● Mr. WILLIAMS. Mr. President, today I am introducing the Homeownership Opportunity Act of 1979, a bill designed to improve the ability of moderate income persons to purchase homes through expanding the availability of graduated payment mortgages (GPM's).

I am introducing this legislation, with cosponsorship by several members of the Subcommittee on Housing and Urban Affairs, because we believe it deserves consideration as a potentially useful new tool to make homeownership more affordable, and serves to focus attention on the question of what additional mechanisms, if any, we should be using to expand homeownership opportunities in today's housing market.

Mr. President, this country remains in the midst of a housing cost spiral which may soon make it impossible for millions of moderate-income Americans to ever own a home. In November of 1978, the median price of a new home was $58,700—compared to the 1968 median cost of $24,700. The cost of existing homes has also skyrocketed from a median of $20,100 in 1968, to $50,700 in November of 1978. Housing cost increases have outstripped the rate of increase in incomes over this period by almost a 2-to-1 ratio.

This widening gap is rendering millions of families unable to afford the important first purchase of a home. It has been estimated that for every $1,000 increase in the cost of a house an average of 700,000 families are priced out of the home buying market. Only about 28 percent of American families can afford to buy a home priced at the current median level, using standard affordability criteria.

This situation has serious implications for families, the housing industry, and the economy as a whole. The housing industry is a key element of our national economy, and, equally important, homeownership is a strong force to strengthen local economies. While we should make concerted efforts to hold down the growth in housing costs, we should also insure fair access to the housing market, particularly for young or first-time homebuyers.

This bill represents one of the steps that Government could take to promote housing affordability, and it can be taken without any additional Federal subsidy. It would modify the existing FHA program for graduated payment mortgages by reducing the required downpayment, extending the graduation period, and recognizing the apreciation in value of the home. It is estimated that this simple step could bring homeownership within the financial reach of an additional 8.5 million families.

The existing graduated payment mortgage program, section 245, was designed to accomplish the goal of expanding homeownership opportunities. By providing for lower monthly payments in the early years of mortgage, families and individuals with moderate incomes and prospects for higher incomes are able to purchase homes they otherwise might not afford. For example, to purchase a $55,000 home under a traditional level-payment FHA-insured mortgage at current rates (9½ percent) would require a downpayment of $2,250 and monthly payments of $459 per month. Under FHA guidelines, this payment level would require an income of $24,900 per year in order to qualify.

Under the existing section 245 program, the same $55,000 house could be purchased with an initial monthly payment of $323.70 per month, along with an 8-percent downpayment ($4,200). The higher downpayment is required in order to assure that the total outstanding balance of the loan, which increases in the early years of the mortgage because the monthly payment is less than accrued interest, does not exceed 97 percent of the purchase price of the house. This 97 percent loan-to-value ratio is required by section 245. The monthly payment under the most popular option of the section 245 program increases at a rate of 7.5 percent per year so that by the fifth year the mortgage on a $55,0000 home will reach its maximum payment of $465 per month.

While the current GPM program does make it possible for many additional families to purchase homes, its appeal and usefulness suffer from the built-in limitations of the program. The higher downpayment requirement—$4,200 for a $55,000 home, compared to $2,250 under a straight FHA mortgage—puts these mortgages beyond the reach of a great many families. The relatively steep annual increase in monthly payments (7½ percent) under the most popular option also limits the usefulness of the GPM program by focusing it on primarily young professionals and others with particularly bright economic prospects. The moderate income wage earner may not qualify since he or she may not be able to meet 7½ percent annual increases with equal certainty.

The legislation is intended to create within the section 245 program a type of GPM which would be more affordable by the moderate income person. It would provide for the same downpayment as required by the traditional FHA 203(b) program, and it would provide for a lower annual rate of increase in monthly payments—as low as 4 percent per year—than in the most popular existing GPM program. This legislation offers an option for mortgage financing, but imposes no requirements for its use.

This bill's flexibility is provided by removing, for the purposes of this program, the existing limitation that the amount of the mortgage plus accrued interest not exceed 97 percent of the appraised value of the property at time of purchase. Under this new proposal, the maximum loan limits would be only those contained in section 203(b)(2), that is, that the initial amount of the loan may not exceed 97 percent of the first $25,000 of appraised value, and 95 percent of the value over $25,000.

The effect of this change is to create a larger "negative amortization," that is, a larger total loan obligation, that will exceed the original appraised value of the house. Ultimately, this would require a larger monthly payment than would be required under either the existing GPM program or the straight FHA program. However, under most approaches, the monthly payment would not reach straight-line levels for 9 to 11 years. Payments in later years are necessarily higher in order to compensate for the lower payments in the early years.

This new program can be effective and secure so long as there is even a minimal rise in home values. With an annual increase of as little as 4 percent per year, the loan balance will remain below the appreciated value of the home, and the homeowner will have positive equity in the home based on its appreciated value.

There is, however, some risk inherent in this proposal in the event that housing values do not continue to appreciate. In addition, there are considerable inflationary pressures bearing on the present housing market which we must be careful not to exacerbate. In the hearings that the Senate Subcommittee on Housing and Urban Affairs will be holding on housing legislation later this spring, we will be taking a careful look at the potential benefits and risks that this proposed legislation may entail, as well as a more general look at the state of the homeownership market and the impact that mortgage finance options such as this may have on that market.

Mr. President, I introduce this bill not only to allow consideration of a promising new approach to making homeownership more affordable, but also to spur necessary discussion on the significant issues facing housing in this country. I believe the goal of affordable homeownership for moderate-income persons continues to be of vital importance. I also believe that we must assure that programs to promote homeownership are structured and carried out in a manner consistent with the economic exigencies of the housing market.

Mr. President, I ask unanimous consent that the text of my 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. 740

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 "Homeownership Opportunity Act of 1979".

SEC. 2. Congress finds that recent sharp increases in the cost of housing have excluded many middle income families and individuals from homeownership. These cost increases have rendered existing Federal

housing programs, such as the graduated payment mortgage program under section 245 of the National Housing Act, less than fully able to make homeownership available to those affected by the housing cost spiral. The Congress further finds that lifting restrictions on the maximum loan-to-value ratio on graduated payment mortgages can help make homeownership available to a broader segment of the population, particularly the first time homebuyer, and will also help stimulate and stabilize the production of housing.

SEC. 3. Section 245 of the National Housing Act is amended—

(1) by inserting "(a)" after "Sec. 245";

(2) by inserting after the word "title" in the second sentence the following: ", except as provided in subsection (b) of this section,"; and

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

"(b) Notwithstanding the provisions of subsection (a) providing for the addition of deferred interest to principal for the purpose of determining the loan-to-value ratio, the Secretary may insure under any provision of this title a mortgage or loan with provisions for varying rates of amortization if the initial principal obligation of the mortgage or loan does not exceed the percentage of the appraised value of the property specified in section 203(b)(2) of this title as of the date the mortgage or loan is accepted for insurance."●

Mr. PROXMIRE. Mr. President, I am pleased to join Senator WILLIAMS in introducing the Homeownership Opportunity Act of 1979. This bill would loosen the loan to value ratio limitations contained in HUDs graduated payment mortgage (GPM) program. The effect of this would be to allow for a lowering of the downpayment required, and potentially, for further lowering of the required initial monthly payment on a graduated payment mortgage.

One of the cruel effects of the inflation and accompanying high interest rates we have been suffering through in recent years is that the high interest costs have priced many families out of the capacity to afford mortgage loans. These high interest rates have occurred at the same time when housing prices generally have been rising at a rapid rate.

Under the standard mortgage, one of the main effects of today's high interest rates is that the monthly payment may need to be quite high in order to cover the high interest cost. The graduated payment mortgage is designed to directly address this problem by providing for a lower initial monthly payment, with a scheduled increase in the monthly payment over time. The effect of this is that in the early years of the loan, the monthly payment is not sufficient to cover the interest owed on the loan, and the loan balance therefore actually rises in the early years of the plan.

In recognition of the potential risks involved with an increasing loan balance, the Congress, in authorizing the program, provided that the loan balance could never exceed 97 percent of the appraised value of the property as of the date of the loan. However, in order to conform to this limitation, it is necessary to require a higher down payment than would otherwise be required, or a smaller reduction of the initial monthly payment, or a combination of both. Although it appears that the GPM program has generally been a successful one, it is also true that the loan to value ratio restriction does limit to some extent the utility of the program, particularly as interest rates continue to rise.

The Homeownership Opportunity Act of 1979 would remove the loan to value restriction. While the downpayment would have to be at least 3 percent, the amended law would allow the loan balance to initially increase over time to a level exceeding the original appraised value of the property. This may not be as risky as it may seem to be at first glance, since the value of the property can be expected to appreciate at a rate probably exceeding the increase in loan balance, thus actually increasing the equity cushion.

Mr. President, the bill being introduced today comes from a proposal of the National Association of Home Builders. I am joining in introducing the bill because I believe that the overall objective of the bill, to increase homeownership opportunities, is highly desirable, and that this specific approach deserves a thorough and fair hearing. However, I believe that there are some definite risks which will have to be carefully studied in the course of our deliberations.

The risks of the program generally seem quite manageable as long as the value of the property increases at a rate equal to or greater than the increase in loan balance in the early years of the loan. Given the current economic environment, this would seem to be feasible for the foreseeable future. The problem, however, would occur if at some point in the future, we have a sharp and unexpected decrease in the rate of inflation. If this happens, there could be a large number of GPM loans in existence at that time which would have their loan balance increasing at a rate more rapid than the property is appreciating. In such a situation, a significant number of borrowers could, over time, find themselves in a situation where they actually have negative equity in their property. In other words, their then existing loan balance could exceed the actual value of the property. In such a situation, a huge default rate is a possibility. This could not only be disastrous for the borrowers involved, but could also conceivably threaten the soundness of the FHA insurance fund.

Mr. President, although the dangers I have described may seem like only an outside risk at this point in time, they need to be taken seriously. Thus in considering the Homeownership Opportunity Act of 1979, it will be necessary to evaluate the risks and determine whether there are appropriate limitations, restrictions, or modifications in the approach so as to reasonably assure that the dangers cited will not develop, and that the objective of the bill, to maximize homeownership opportunity, can be safely realized.

● Mr. GARN. Mr. President, I am pleased to join with Senator WILLIAMS as a cosponsor of this important and timely legislation, the Housing Opportunity Act of 1979.

This legislation is designed to reach a growing segment of our population that has been priced out of the homeownership market. It is estimated that 74 percent of American families cannot qualify for a median priced home. I am talking about the families with incomes in the range of $15,000 to $24,000 annually who are experiencing in greater numbers the frustration and anguish of not being able to qualify for a median priced home ($60,300—January, 1979).

Mr. President, the Housing Opportunity Act amends section 245 of the National Housing Act giving the Federal Housing Administration (FHA) additional authority to administer a graduated payments program (GPM). This new program would be similar to an existing FHA program which currently accounts for about 75 percent of all single-family insured activity. It will expand the current GPM program from 5 to 10 years, will lower the downpayment requirements, increase the maximum mortgage limits, and lower the annual rate of increase in monthly payments to as low as 4 percent.

The best part of this new program is that it does not require any Federal expenditures. The Federal Government insures the mortgage as in the traditional single-family mortgage program. There is very little risk in this program so long as there is even a minimal increase in home values.

Even with an annual increase of only 4-percent per year, the loan balance will always be well below the appreciated value of the home, and the homeowner will always have a substantial amount of positive equity in the home based on its appreciated value. I do not know of many homeowners who have only experienced a 4-percent appreciation rate over the past few years. This indeed is a very conservative rate which only points out that we would have to experience a severe depression in the housing market before a risk would develop.

Mr. President, the new GPM program will offer a 10-year graduated payment mortgage, with initial monthly payments low enough to qualify those families in the $15,000 to $24,000 income brackets. This will allow prospective buyers an option of having their payments increase at a rate of 4- to 6-percent per year. This assures that any family, regardless of its income expectations, would be able to qualify for the program and meet their future monthly mortgage payments.

This program will be particularly important to the families in my home State of Utah, where housing starts have reached a plateau and have actually started to decline because fewer families are able to qualify for home mortgages in the median range.

Here are some Bureau of Census figures to make my point. Overall housing starts in Utah are down by 15.4 percent in 1979 from the same period in 1978. The largest decrease during this same period was for single-family housing starts which were down 21.8 percent. And the picture gets worse as we look at building permits which project building trends for the months ahead. Overall permits are down 49.3 percent from 1,548

issued in January 1978 to only 785 permits issued during January of 1979. Again, single-family permits are down with over 450 fewer permits issued in January of this year compared to January of 1978. This situation has not come about because of careless building but simply because it is getting harder and harder for families to qualify for home mortgages.

This legislation is not going to solve all of the housing ills. But, it is a step in the right direction aimed at the segment of our population that is unnecessarily burdened by the high cost of homeownership today. I commend the chairman of the Housing Subcommittee for promptly scheduling hearings on this legislation.●

● Mr. MORGAN. Mr. President, as a member of the Subcommittee on Housing and Urban Affairs, I am pleased to join with our distinguished chairman, Senator WILLIAMS, in sponsorship of the Homeownership Opportunity Act of 1979, a bill increasing the availability of graduated payment mortgages, and thus improving opportunities for moderate income Americans to purchase their own home.

Mr. President, it is becoming a sad and alarming fact that the average American wage earner is increasingly unable to afford the average priced American home. During the last decade the cost of both new and existing housing has more than doubled, and housing costs have outstripped increase in incomes by almost 2 to 1. I am advised that only slightly more than a quarter of American families can presently afford to buy a median-priced home, using standard affordability criteria. Unfortunately, there is little reason to expect housing costs will not continue to escalate. Unless effective action is taken, more and more Americans will be priced out of the chance to own their own home. It is as simple as that.

I believe that such a development would carry serious consequences for our country. Homeownership is far more than an economic factor. Homeownership carries with it benefits for our country and our communities that go far beyond mere numbers. We benefit in terms of increased stability and pride in one's neighborhood. We benefit in terms of an increased sense of place and community identification, both of which are seriously eroding in our increasingly mobile and rootless urban society.

But there are also very tangible social benefits to homeownership. AFL-CIO economists have quantified the degree to which housing costs are substantially less for their retired members who have achieved homeownership, than for those who remain renters throughout their lives. In the early part of the next century our society will have an unusually large percentage of people approaching retirement. These are the same people who are now in the midst of young adulthood, beginning careers and families, and attempting to buy their first home. I believe it is in our national interest to take action now to insure that homeownership remains a realizable goal for the vast majority of our people.

I believe that the Homeownership Opportunities Act of 1979 is one of the steps we can take at the Federal level to help in that process. Importantly, it is a step we can take without putting additional burden on the American taxpayer. The bill modifies an existing FHA graduated payment mortgage program by reducing the required downpayment, extending the graduation period, and importantly, allowing for the appreciation in value of a home. Estimates are that these changes, which involve no additional Federal subsidy, could make homeownership viable for an additional 8.5 million families. I believe that is an important step.

Obviously, however, there is much more that will have to be done. I look forward to working with Senator WILLIAMS and others on the Housing Subcommittee as we examine this bill and other aspects of our Nation's housing picture.●

● Mr. TOWER. Mr. President, I am pleased to cosponsor the Housing Opportunity Act of 1979. This legislation would increase the opportunity for homeownership for 8 million families without any increase in Federal spending.

This legislation is needed because many young families have been priced out of the market for a home by the rapidly rising cost of housing. This legislation would make it easier for families with incomes between $15,000 and $24,000 to afford a home by authorizing FHA mortgages with a 10-year graduated payment schedule. This would allow FHA mortgages to be designed to meet the particular needs of homebuyers, particularly young families who are buying their first home.

Many young families today are finding it difficult to buy their first home. Housing costs have risen enormously in recent years. In the process, the gap between the incomes of young families and the costs of housing has widened. The result has been that many young families have had to delay their purchase of a home until a later date, and they have lost the opportunity to invest in a home as a protection against inflation.

There are two major problems facing young families who want to buy their first home: The downpayment for a home and the monthly expenses associated with homeownership. They do not have the equity from a previously owned home to use as a downpayment, while their lower incomes make it difficult to meet the monthly expenses of a home.

One means of solving this problem has been the use of graduated-payment mortgages. They reduce the monthly expense of housing by allowing a young family to buy a home with small monthly payments in the early years of the mortgage and larger monthly payments later on when the family's income can be expected to increase.

Graduated payment mortgages already have a proven track record in increasing homeownership opportunities. Graduated payment mortgages have been available under the FHA housing program since November 1976 and have proven to be extremely popular. More than 60,000 families have obtained FHA mortgages under the graduated payment program. About one-fourth of all FHA mortgages are now graduated payment mortgages and about three-fourths of them have been for first-time buyers.

But, the existing FHA graduated payment program has certain limitations. Graduated payments are scheduled only for 5 years under the most widely used option of the FHA program, and under even this option the payments graduate at a rate of 7½ percent a year. Under the Housing Opportunities Act of 1979, however, the graduated payment schedule would be extended to 10 years and the homebuyer would be given the option of choosing a mortgage with a fixed level payment for the first 2 years of the mortgage or the first 5 years of the mortgage. The homebuyer would also have the option of choosing a mortgage with payments that increase 6 percent a year or 4 percent a year.

I have supported the concept of graduated payment mortgages in the past as a means of increasing homeownership opportunities. It is one of the most attractive forms of alternative mortgage instruments that can be designed to fit the individual needs of homebuyers. Last year, the Senate Banking Committee approved a resolution which Senator CRANSTON and I sponsored, calling on the Federal Home Loan Bank Board to authorize Federal savings and loan associations to offer alternative mortgage instruments, including graduated payment mortgages. The Board has now done so, and homebuyers now have a greater opportunity than ever before to obtain conventional mortgages designed to meet their particular needs. The Housing Opportunities Act of 1979 would improve the FHA graduated payment program by making it even more accessible to potential homebuyers.

In the process, the opportunity for homeownership would be brought within the grasp of millions more American families.●

By Mr. CRANSTON (by request):

S. 741. A bill to amend title 38, United States Code, to revise and clarify eligibility for certain health care benefits; to revise and clarify the Department of Medicine and Surgery personnel system; to revise medical resources utilization; and for other purposes; to the Committee on Veterans' Affairs.

VETERANS MEDICAL AMENDMENTS ACT OF 1979

● Mr. CRANSTON. Mr. President, I am introducing today, at the request of the administration, S. 741, the proposed Veterans Medical Amendments Act of 1979.

The Administrator of Veterans' Affairs, by letter dated March 12, 1979, to the President of the Senate, transmitted to the Senate this administration-proposed legislation. Prior to the introduction of this legislation, however, the Chief Counsel of the Senate Committee on Veterans' Affairs received a March 20, 1979, letter from the General Counsel of the Veterans' Administration, in which the General Counsel explained that the VA had discovered that it "had inadvert-

ently included certain preliminary draft language, and omitted other language that it had intended to include" in both the draft bill and the accompanying section-by-section analysis. Thus, the VA's General Counsel enclosed with his March 20 letter copies of the corrected pages of the draft bill, and accompanying materials, including corrections in the Administration's cost estimate.

The bill that I am introducing today and the accompanying materials consists of the March 12 submission with corrected pages from the enclosures to the March 20 letter.

Mr. President, I ask unanimous consent that the March 12 letter of transmittal, the corrected section-by-section analysis, the changes in existing law, and text of the bill be printed in the RECORD.

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

S. 741

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Veterans Medical Amendments 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 title 38, United States Code.

TITLE I—VETERANS HEALTH CARE AND RELATED BENEFITS AMENDMENTS

SEC. 101. (a) Section 111(e)(2)(A) is amended to read as follows:

"(A) for or in connection with medical treatment (except with respect to a veteran receiving benefits for or in connection with a service-connected disability under this title) unless (i) special vehicular modes of transportation are required for medical reasons; and (ii) such travel has been authorized by the Administrator prior to such travel;".

(b) Section 614 is amended by inserting in subsection (a) "pursuant to the provisions of section 111 of this title" after "expenses".

(c) Section 628 is amended by inserting in subsection (a) "pursuant to the provisions of section 111 of this title" after "travel".

SEC. 102. (a) Paragraph (4) of section 601 is amended by inserting "or of a veteran described in section 612(g) of this title if the Administrator has determined, based on an examination by a physician employed by the Veterans' Administration (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in facilities described in clauses (A) and (B) of this paragraph" before the semicolon at the end of subclause (ii) of clause (C).

(b) Section 612 is amended by—

(1) striking out clause (2) of subsection (b) in its entirety and redesignating clauses (3) through (6), respectively, as clauses (2) through (5);

(2) adding to clause (1) of subsection (f) after the parenthesis following "treated" a comma and the following:

"but any such veteran being furnished care for a nonservice-connected disability shall not be furnished drugs, medicine, or medical supplies which may be purchased without a physician's prescription, unless such veteran is (i) in receipt of pension under chapter 15 of this title, or (ii) 65 years of age or older, or (iii) permanently housebound, or (iv) in need of regular aid and attendance, or (v) receiving home health services under this section";

(3) inserting "(1)" in subsection (g) immediately preceding "Where";

(4) adding at the end of subsection (g) the following:

"(2) Any veteran receiving medical services under this subsection shall also be eligible to receive home health services as described in subsections (a) and (f) of this section, subject to the limitations set forth therein, based on the nature of the disability of such veteran."; and

(5) redesignating in subsection (i) paragraphs (3) and (4), respectively, as paragraphs (4) and (5) and inserting a new paragraph (3) as follows:

"(3) To any person for compensation or pension examination purposes.".

SEC. 103. Section 613 is amended by —

(1) adding at the end of clause (2) of subsection (a) the following:

"or (C) the surviving spouse or child of a person who dies in the active military, naval, or air service in the line of duty and not due to misconduct,";

(2) inserting at the end of subsection (a) the following sentence:

"For the purposes of this section a person who died in the active military, naval, or air service in the line of duty and not due to misconduct, shall be considered a veteran", and

(3) adding at the end of subsection (b) the following new subsection:

"(c) For purposes of this section, a child between the ages of 18 and 23 who is a dependent or survivor under subsection (a) of this section and is pursuing a full-time course of instruction at an approved educational institution, and who suffers a disabling illness or injury resulting in inability to resume attendance at any approved educational institution, (whether the disabling illness or injury occurred during the school year, between semesters, or during vacation or holiday periods) shall remain eligible for benefits under this section until six months after the disability is removed, or until two years after the date of onset of the illness or injury, or until the student's twenty-third birthday, whichever occurs first.".

SEC. 104. Section 617 is amended by—

(1) inserting "(a)" before "The";

(2) inserting "(or reimburse the cost of)" immediately following "furnish";

(3) inserting "or modification of such lift or device," immediately preceding "as" the first place it appears; and

(4) adding at the end thereof a new subsection (b) as follows:

"(b) Any modification of such lift or device for a veteran entitled under clause (2) of subsection (a) of this section shall not exceed the maximum allowable cost of home improvements and structural alterations authorized by section 612(f) of this title.".

TITLE II—VETERANS MEDICAL PERSONNEL AMENDMENTS

SEC. 201. (a) Section 4104 is amended by inserting "psychologists," immediately before "physical" in clause (2).

(b) Section 4105 is amended by—

(1) adding at the end of subsection (a) a new clause (10) as follows:

"(10) Psychologist—hold a doctoral degree in psychology from a college or university approved by the Administrator, have completed such study in a specialty area of psychology and an internship which are satisfactory to the Administrator, and be licensed or certified as a psychologist in a State. The requirement of licensure or certification may be waived under such conditions as the Administrator may prescribe."; and

(2) inserting in subsection (b) immediately before "dentist", the following: "podiatrist, optometrist,".

(c) The provisions of this section do not apply to any person employed as a psychologist by the Veterans' Administration on or before the effective date of this act.

SEC. 202. Subsection (b) of section 4106 is amended to read as follows:

"(b) Appointments under section 4104(1) of this title shall be for a probationary period of two years, and the record of each person serving under any such appointment shall be reviewed from time to time by a board appointed in accordance with such regulations as the Administrator shall prescribe. If such board recommends that any probationary employee be found not fully qualified and satisfactory for reasons relating to professional competence, work performance or suitability, on decision by the Chief Medical Director, such employee's probationary appointment may be terminated, such employee may be reassigned, or subject to other nondisciplinary action consistent with continuing the employment of such employee in a capacity in which such employee can effectively function.".

SEC. 203. Section 4110 is amended by inserting after "title" in subsection (a) the following:

"who has satisfactorily completed the probationary period".

TITLE III—MEDICAL RESOURCES UTILIZATION AMENDMENTS

SEC. 301. Section 5053(a) is amended by inserting "organ banks, blood banks and similar institutions," immediately before "other hospitals" in the material preceding clause (1).

VETERANS ADMINISTRATION,
Washington, D.C., March 12, 1979.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a draft bill entitled, "The Veterans Medical Amendments Act of 1979", with the request that it be introduced in order that it may be considered for enactment.

The draft bill would make a number of important changes in title 38, United States Code, which are detailed in the enclosed section-by-section analysis.

Briefly, title I of the draft bill would revise and clarify eligibility requirements for fee basis contract and hospital based home care to nonservice-connected veterans in need of aid or attendance or who are housebound. It would also revise priority for medical care, align CHAMPUS and CHAMPVA benefits for certain veterans' children attending school and align the cost of providing certain invalid lifts and rehabilitation devices to nonservice-connected veterans with the cost of home health improvements for certain nonservice-connected veterans.

Additionally, title I of the draft bill would accomplish four legislative proposals included in the President's fiscal year 1980 budget.

First, title I of the draft bill would amend section 111(e)(2)(a) of title 38, United States Code, to limit the circumstances under which the travel expenses of nonservice-connected veterans incurred going to and from VA health care facilities incident to receiving health care will be reimbursed. This proposal would authorize reimbursement only when the veteran requires special vehicular modes of transportation such as ambulance, air ambulance, hired car, or any form of transportation where it is medically necessary for the beneficiary to be accompanied by an attendant. Also, the special form of transportation must be authorized in advance.

Under current law, such travel expense reimbursement is authorized whenever a nonservice-connected veteran certifies that he is unable to defray the cost of such transportation. This proposal will not affect current

authority to reimburse travel expenses under other circumstances, such as in connection with—(1) examination or treatment for service-connected conditions; (2) treatment necessary to permit a veteran to continue a VA program of vocational rehabilitation; or (3) examinations authorized or ordered by the VA in connection with claims for compensation, pension or other benefits. However, the proposal would make conforming amendments to sections 614(a) and 628(a) of title 38, United States Code, to provide for travel reimbursement only as specified in section 111, as amended, in cases where—(1) a veteran entitled to a prosthetic appliance travels to and from VA health care facilities, or training institutions, for fitting of or training in the use of such prosthetic appliance; or (2) a veteran reecives hospital care or medical services from sources other than the VA.

We believe that this proposal will result in significant cost savings to the Government so that limited VA resources may be more effectively utilized to provide even better medical care to veterans without a significant impact on individual nonservice-connected veterans who may have to pay their own travel costs to obtain treatment.

Second, title I of the draft bill would provide CHAMPVA benefits for certain surviving spouses of persons dying on active duty. Such eligibility does not exist under current law because the definition of veteran in title 38, United States Code, except for purposes of service-connected death compensation and death indemnity compensation, does not include persons dying on active duty. Such surviving spouses are entitled to CHAMPUS benefits under current law but lose that eligibility if they remarry. Under title 38, the benefits generally available to surviving spouses which are lost upon remarriage are restored if that remarriage terminates. That is not the case for surviving spouses whose CHAMPUS eligibility was lost upon remarriage. Thus, there is a gap in coverage of surviving spouses of persons dying in service when the remarriage of such a surviving spouse terminates. That surviving spouse is entitled to neither CHAMPUS nor CHAMPVA benefits under current law. This section of the draft bill would provide CHAMPVA coverage for such surviving spouses by including death on active duty in the definition of veteran for purposes of CHAMPVA.

The third accomplishment, consistent with the President's fiscal year 1980 budget, which title I of the draft bill seeks to implement is the elimination of the provision of over-the-counter outpatient drugs, medicines, and medical supplies to certain nonservice-connected veterans. Such over-the-counter material, which is generally recognized as safe and effective and can be legally purchased without a physician's prescription is now provided to all non-service-connected veterans who are eligible for outpatient treatment. This proposal would limit such provision to those in greatest need—those 65 years of age or older; those in receipt of Pension; those permanently housebound or in need of regular aid and attendance; and those receiving hospital based home care. It would not affect current entitlement of any service-connected veteran or any veteran while hospitalized as an inpatient.

We believe, in view of rising costs of these nonprescription materials, that this is a logical area to reallocate scarce VA resources in order to devote them to areas where the need is more actue. A by-product of the proposal would be faster pharmacy service to the veterans remaining entitled to nonprescription and other medicines and supplies.

The fourth object of title I of the draft bill consistent with the President's fiscal year 1980 budget is the elimination of the provision of outpatient dental treatment for service-connected noncompensable dental conditions which are unrelated to service trauma or prisoner-of-war status. These are generally veterans whose dental conditions existed during their active military duty but who either did not seek or receive any treatment during service or who began but did not complete treatment during service. Under current law, such veterans are eligible for outpatient dental treatment by the VA if application is made within one year of discharge or correction of a disqualifying discharge.

We believe it is inappropriate for the VA to provide these generally minor dental services which were the responsibility of the dental services of the Department of Defense. Elimination of this eligibility will allow us to refocus our resources to provide more extended and faster outpatient dental care for veterans with more serious service-connected dental conditions such as those resulting from direct service trauma or prisoner-of-war status; those whose dental conditions are associated with and are aggravating a disease or injury incurred or aggravated by military service; those whose dental care was initiated but not completed during a period of hospitalization and those elderly veterans of the Spanish-American and Indian Wars.

Briefly, title II of the draft bill would revise and clarify certain aspects of the title 38 personnel system, such as the length of the probationary period, licensure requirements for psychologists and citizenship requirements for podiatrists and optometrists.

Finally, title III of the draft bill would expand the ability of the VA to enter into agreements for the mutual use or exchange of use of certain specialized medical resources with the community.

It is estimated that enactment of the draft bill would result in a net savings in the first fiscal year of more than $96.8 million and more than $489.8 million over the first five fiscal years. The yearly cost breakdown is detailed in the enclosed chart and section-by-section analysis.

Advice has been received from the Office of Management and Budget that the enactment of the draft legislation would be in accord with the program of the President.

Sincerely,

MAX CLELAND, *Administrator*.

SECTION-BY-SECTION ANALYSIS OF DRAFT BILL

TITLE I—VETERANS HEALTH CARE AND RELATED BENEFITS AMENDMENTS

Section 101 of the draft bill would amend section 111(e)(2)(A) of title 38, United States Code, to provide that the travel expenses of nonservice-connected veterans incurred going to and from VA health care facilities incident to receiving health care will be reimbursed only when such veterans require special vehicular modes of transportation for medical reasons and such transportation is authorized in advance. Special vehicular modes of transportation would include ambulance service, air ambulance service, hired car or any form of transportation where it is medically necessary for the beneficiary to be accompaned by an attendant.

Under current law, such travel expenses for nonservice-connected veterans are authorized when the veteran certifies that he or she is unable to defray the cost of such transportation. This section of the draft bill will not affect current authority to reimburse travel expenses under other circumstances, such as in connection with—(1) examination or treatment for service-connected conditions; (2) treatment necessary to permit a veteran to continue a VA program of vocational rehabilitation; or (3) examinations authorized or ordered by the VA in connection with claims for compensation, pension, or other benefits.

This section of the draft bill would also make conforming amendments to sections 614(a) and 628(a) of title 38, United States Code, to provide that nonservice-connected veterans shall not be entitled to travel reimbursement, except as provided in section 111(e)(2)(A), as amended by the draft bill, in cases where—(1) a veteran entitled to a prosthetic appliance travels to and from VA health care facilities, or training institutions, for fitting of or training in the use of such prosthetic appliance; or (2) a veteran receives hospital care or medical services from sources other than the VA.

It is our firm conviction that the medical care resources now utilized to pay reimbursement for travel expenses in connection with treatment for nonservice-connected conditions, as well as administrative costs in making these payments, could be more effectively utilized to improve the services provided veterans in need of medical care, particularly to top priority veterans seeking treatment for service-connected disabilities.

Enactment of this proposal would significantly reduce VA beneficiary travel costs. The total expenditures from the medical care appropriation for reimbursement of travel expenses during fiscal year 1979 are estimated to be $65,224,000. Based on a current study of beneficiary travel expenses, we estimate that this amount could be reduced by $39,134,000 for each of the succeeding years through enactment of this proposal. We believe this would be entirely consistent with the President's objectives of improving health services available to the nation's veterans and adjusting domestic programs to promote effectiveness and economy in Government.

Section 102 of the draft bill would amend section 601(4)(C)(ii) of title 38, United States Code, to provide that non-service-connected veterans, who are in receipt of additional benefits (or would be but for receipt of retired pay) because of a need for regular aid and attendance, or who are housebound, pursuant to section 612(g), shall be eligible for outpatient fee basis care but only after examination by a physician indicates that the veterans' medical condition is such that care cannot be provided in a VA health care facility or other Government health facility for which the VA contracts. The examination by a physician to determine the eligibility of section 612(g) veterans for such outpatient fee basis care will be done by a VA physician unless one is not available in which case it will be done by a private physician for a fee under contract.

This section is meant to modify the effect of Public Law 94-581 which added the phrase "within the limits of Veterans' Administration facilities" to section 612(g) thereby foreclosing all fee basis outpatient care for a group of veterans who, because they are in need of regular aid and attendance, or are housebound, are most in need of such care.

However, by requiring a medical examination to determine whether the veterans' medical condition is such that care cannot be provided in a VA health care facility or other Government facility for which the VA contracts, the costs of providing fee basis contract care to those veterans will be controlled.

Enactment of this proposal is not expected to result in any increased costs to the VA.

Section 102 of the draft bill would also amend section 612(b)(2) of title 38, United States Code, to eliminate the provision by the VA of outpatient dental care for service-connected non-compensable dental conditions which are unrelated to service trauma or prisoner-of-war status.

We estimate that under current eligibility standards more than 66,000 veterans will present themselves during fiscal year 1979 for outpatient treatment of dental conditions which existed during service but which did not result from trauma in service or as a result of prisoner-of-war status. These are generally veterans whose dental conditions existed during their active military duty but who either did not seek or receive any treatment during service or who began but did not complete treatment during service. Under current law such veterans are eligible for outpatient dental treatment by the VA for these conditions if application is made within one year of discharge or correction of a disqualifying discharge.

We believe that it is properly the responsibility of the dental services of the Department of Defense to correct these generally minor dental conditions which, for example, include, but are not limited to, treatable carious teeth and replaceable missing teeth. We do not believe that it is appropriate for the VA to provide this dental care which was not provided or completed by the Department of Defense. Elimination of such eligibility will allow us to refocus our resources to provide more extended and faster outpatient dental care for veterans with more serious service-connected dental conditions, those resulting from direct service trauma or prisoner-of-war status, those whose dental conditions are associated with and are aggravating disease or injury incurred or aggravated by military service, those whose dental care was initiated but not completed during a period of hospitalization and those elderly veterans of the Spanish-American and Indian Wars.

We estimate that the cost savings to the VA through enactment of this proposal will be $43,918,000 in fiscal year 1979 and $39,527,000, $37,550,000, $35,673,000, and $33,889,000, respectively, in each of the succeeding four fiscal years. Total five year savings would amount to approximately $190,000,000.

Section 102 of the draft bill would also amend section 612(f)(1)(B) of title 38, United States Code, to eliminate the provision of over-the-counter outpatient drugs, medicines, and medical supplies to certain nonservice-connected veterans.

Over-the-counter drugs, medicines and medical supplies, those which are generally recognized as safe and effective and which can be legally purchased without a physician's prescription, are provided under current law to, inter alia, all nonservice-connected veterans who are eligible for outpatient treatment. This proposal would limit the provision of outpatient over-the-counter drugs, medicines and medical supplies to those nonservice-connected veterans who we believe have the greatest need. This category would include those in receipt of pension, those 65 years of age or over, those permanently housebound or in need of regular aid and attendance, and those receiving hospital based home care. This proposal would not affect the provision of such nonprescription drugs, medicines and supplies to service-connected veterans or to any veteran while hospitalized as an inpatient.

The cost of providing such drugs, medicines and supplies is constantly increasing. We believe that the savings resulting from enactment of this proposal would allow us to redirect these funds to other areas of medical care were the need is more acute. We believe that eliminating entitlement to over-the-counter drugs, medicines and supplies for some nonservice-connected veterans is the most logical step in redirecting the limited resources of the VA to provide the most effective health care.

Enactment of this proposal will also result in providing faster service to those who remain entitled since the total number of drugs, medicine and medical supplies transactions provided by the same number of VA pharmacy personnel will be reduced.

Those whose entitlement will be withdrawn by this proposal will generally be those nonservice-connected veterans with less severe disabilities or whose income levels or net worth disqualify them for pension benefits. We, therefore, believe that enactment will not cause hardships. We estimate that the average cost of drugs or medicines and supplies to these veterans to be $3.46 and $6.69, respectively, per prescription. We also believe that if eligibility for such over-the-counter drugs, medicines and supplies is eliminated, such veterans will become more self-reliant and less dependent on the VA. We believe this will tend to be therapeutic. If enacted, we estimate that savings of $15,545,764 will be effected in fiscal year 1980, and savings of $18,344,001, $21,645,921, $25,542,186, and $30,139,779 will be realized in each of the four succeeding fiscal years. Total five year savings would amount to over $111,000,000.

Section 102 of the draft bill would also amend section 612(g) of title 38, United States Code, to clarify the eligibility of veterans in need of regular aid and attendance, or who are housebound, for hospital based home health care services. Public Law 94–581 removed home health care services language from the definition of medical services contained in section 601(6) of title 38, United States Code. This was done to provide eligibility for higher cost home improvements and structural alterations for service-connected veterans under section 612(a) than for nonservice-connected veterans under section 612(f). The effect of this change was to cloud the authority of the VA to provide home health care services to veterans in receipt of benefits based on the need for regular aid and attendance or because they are housebound since section 612(g) only authorizes the provision of "medical services" to such veterans.

The medical eligibility criteria for such home health care services are that the patient requires followup professional care and return on a recurring basis to a VA health care facility is not feasible. Normally such care is reserved for patients who are not ambulatory. Thus, veterans requiring aid and attendance or who are housebound are among those most in need of such hospital based home health care services.

This section of the draft bill would give specific authority to the Administrator to furnish such veterans such home health services as the Adminisrator determines to be necessary or appropriate for the effective and economical treatment of a disability of such a veteran. While this section of the draft bill would create eligibility for home health care services for veterans in receipt of increased pension or additional compensation or allowance based on the need for regular aid and attendance or by reason of being permanently housebound, or who, but for the receipt of retired pay, would be in receipt of such pension, compensation, or allowance, the dollar value of any home improvements or structural alterations furnished such veterans incident to the provision of home health care services would be determined by reference to the monetary limitations specified in sections 612(a) and (f), respectively, of title 38, United States Code. Thus, home improvements or structural alterations furnished a veteran in receipt of additional aid and attendance benefits or additional benefits on account of being housebound would be limited in amount to $2,500 in the case of a service-connected veteran and to $600 in the case of a nonservice-connected veteran.

It is not expected that enactment of this proposal will result in any increased costs to the VA.

Section 102 of the draft bill would also amend setcion 612(i) of title 38, United States Code, by providing that any person receiving an examination to determine whether compensation or pension benefits should be started, increased, reduced or discontinued will be afforded a priority of the third order for receiving such medical services.

Prior to enactment of Public Law 94–581, which added subsection (i) to section 612, the VA administratively established a priority for such examinations subordinate only to the treatment of service-connected conditions. This high priority was accorded in recognition of the fact that delay caused financial hardship and mental anguish to those entitled to benefits, or a continuation of benefits to those no longer entitled or only entitled to reduced benefits because of improvement in the status of their disabilities.

This section of the draft bill would provide persons undergoing such examinations with the third highest priority for medical services; subordinate to veterans being treated for a service-connected disability and to those having service-connected disabilities rated at 50 percent or more disabling but ahead of veterans having service-connected disabilities, not requiring treatment, rated at less than 50 percent disabling, and veterans entitled to benefits because of a need for regular aid and attendance or who are housebound. This new priority for persons undergoing compensation or pension examinations would not affect the provision under current law that the priority order may be disregarded when required by compelling medical reasons.

This proposal would not involve any increased cost to the VA.

Section 103 of the draft bill would amend section 613 of title 38, United States Code, to remove inconsistencies between benefits and eligibility under the Civilian Health and Medical Program of the Veterans' Administration (CHAMPVA) and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

Both programs now contain provisions for extending coverage for eligible children past the basic age limitation (age 18 for CHAMPVA and age 21 for CHAMPUS) when the child is pursuing a full-time course of instruction at an approved school.

Under CHAMPVA, a child between the ages of 18 and 23 who becomes disabled while pursuing such education and is unable to continue or resume attendance loses his or her CHAMPVA eligibility. However, under CHAMPUS, a child 21 or 22 years of age pursuing such education remains eligible for CHAMPUS benefits after suffering a disabling illness or injury (whether it occurs during the school year, between semesters, or on vacation or holiday periods) for six months after the disability is removed or until the student passes his or her twenty-third birthday, whichever occurs first. If such person resumes such approved education, CHAMPUS benefits can be continued to age 23.

This section would add a new subsection (c) to section 613 to provide that a CHAMPVA eligible child between the ages of 18 and 23 who suffers a disabling illness or injury while in full-time attendance at an approved educational institution (whether during the school year, between semesters, or during vacation or holiday periods) which prevents them from resuming such school attendance at any approved educational institution shall remain eligible for CHAMPVA benefits until six months after the disability is removed, or until two years after the date of onset of the injury or illness, or until the student's twenty-third birthday, whichever occurs first. The two-year continuation provision is in recognition of the earlier basic eligibility limitation for CHAMPVA, age 18, as opposed to CHAMPUS, which occurs at age 21. It is estimated that the cost of aligning the eligibility of children under CHAMPVA with that of CHAMPUS would

cost $285,948 per year over the next five fiscal years.

This section of the draft bill would also amend section 613(a) of title 38, United States Code, to remove another inconsistency between eligibility for benefits under CHAMPUS and CHAMPVA. The widow or widower of an individual who dies while on active duty is eligible for CHAMPUS benefits. However, if he or she remarries the benefits are terminated and cannot be reinstated if that remarriage terminates. Under title 38, the widow or widower of a veteran whose remarriage terminates becomes eligible for benefits again. The problem sought to be rectified by this section of the draft bill is that a person who dies in active service is not a "veteran" for purposes of CHAMPVA under chapter 17 of title 38. "Veteran" is defined, for purposes of chapter 17, by section 101(2) as "a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable."

While persons dying on active duty are defined as "veterans" for purposes of service-connected death compensation benefits and death indemnity compensation under chapters 11 and 13 of title 38, the absence of such a definition in section 613 leaves widows and widowers eligible for benefits under CHAMPUS which are not coextensive with those under CHAMPVA.

We estimate that this proposal will cost $1,509,166 the first year after enactment, and $1,358,250, $1,222,425, $1,180,183 and $990,165, respectively, in each of the four succeeding years.

Section 104 of the draft bill would amend section 617 of title 38, United States Code, to align the maximum allowable cost of furnishing invalid lifts and therapeutic or rehabilitative devices for eligible nonservice-connected veterans with the maximum allowable cost of home health improvements furnished certain nonservice-connected veterans pursuant to section 612(f). It would also clarify that the furnishing of such lifts and devices includes reimbursement for the cost of such lifts and devices and also includes paying for or providing reimbursement for modifications of such lifts and devices.

Existing law provides for the furnishing of invalid lifts and therapeutic or rehabilitative devices to certain severely disabled service-connected veterans and to nonservice-connected veterans who receive additional pension benefits based on a need for regular aid and attendance. By regulation, the furnishing of such lifts and devices has been interpreted to include reimbursement for the cost of such devices and furnishing or reimbursing the costs of modifications thereof. Requests for major modifications of van-type vehicles are being submitted and medically approved for eligible nonservice-connected veterans (who are not otherwise eligible for automobile adaptive equipment under chapter 39 of title 38). The cost of these modifications generally range from $1,000 to $5,000.

However, as a result of Public Law 64-581, these same nonservice-connected veterans are only entitled to home health improvements and structural alterations which do not exceed $600 in cost. Further, in order to receive such home health services, pensioners in receipt of additional benefits because of a need for regular aid and attendance must also meet these other eligibility requirements—(1) treatment must be needed to complete hospital care or (2) the veteran must have a service-connected disability rated at 50 percent or more (in which case eligibility would arise for home health services for their nonservice-connected disabilities).

We believe that this has resulted in a clearly anomalous situation. On one hand, we are limited to furnishing home health improvement and structural alterations to some nonservice-connected veterans (but not those whose eligibility is based on aid and attendance benefits alone) in an amount not exceeding $600; on the other hand, there is no dollar limitation for modifying vans in connection with furnishing invalid lifts and other devices to nonservice-connected veterans whose eligibility is based primarily (after medical need is determined) on their status as pensioners in receipt of aid and attendance benefits.

This section of the draft bill would align the dollar limitation on the provision of modification of invalid lifts and other device to nonservice-connected veterans in receipt of aid and attendance pension benefits with the provision of home health care structural improvements or alterations to nonservice-connected veterans, some of whom are pensioners in receipt of aid and attendance benefits. It would also more specifically authorize our current practice of including modifications of, as well as the initial provision of, invalid lifts and other devices and providing reimbursement for the cost of, as well as third party payment for, the provision or modification of such lifts and devices.

If enacted, we estimate that this proposal will reduce the cost to the VA of modifying such invalid lifts and other therapeutic or rehabilitative devices. The amount of such reduction cannot be estimated at this time.

TITLE II—VETERANS MEDICAL PERSONNEL AMENDMENTS

Section 201 of the draft bill would amend section 4105(b) of title 38, United States Code, to include a United States citizenship requirement for appointment of podiatrists and optometrists.

Podiatrists and optometrists were brought under the title 38 personnel system by Public Law 94-381 in order to enhance recruitment and retention to such positions and to provide for greater utilization of such specialists. However, they were not added to section 4105(b) of title 38, United Code, which requires, with certain exceptions, that direct patient care providers such as a physicians, dentists, nurses, physician assistants and expanded-function dental auxiliaries must be United States citizens in order to be appointed to positions in the Department of Medicine and Surgery. This section of the draft bill would cure that inconsistency by including podiatrists and optometrists in section 4105(b).

Enactment of this provision would not result in any cost to the VA.

Section 201 also amends section 4104 and 4105(a) in order, respectively, to specify that psychologists are among those who may be appointed to positions in the Department of Medicine and Surgery and to set qualification standards for psychologists eligible for such appointment.

Every State and the District of Columbia now have licensing or certification requirements for psychologists who provide direct services to patients at the full professional level.

These laws are designed to assure that practicing psychologists are fully qualified and meet ethical standards of the profession. This section of the draft bill would assure that psychologists employed by the VA to treat veterans would likewise be subject to these standards. It is important that persons employed to care for veterans meet ethical and qualification standards at least as high as those for psychologists treating the general population.

In addition, the VA is the largest trainer of psychologists in this country. Many State laws require that psychologists seeking licensure or certification be trained under licensed psychologists. Similarly, recognition of training programs by the American Psychological Association requires that training be conducted by licensed or certified psychologists. If these high standards, applicable in the private sector, are not applied to VA employed psychologists, a number of adverse consequences are expected to result. Among these are an erosion of training relationships with major universities and lack of acceptance by the States of VA internship training. Also, the VA's reputation for providing high quality health care services and, indeed, its ability to provide such services if it cannot recruit and retail well qualified psychologists will be adversely affected by the failure to set high standards for VA employed psychologists.

This section of the draft bill also provides that waiver of the licensure or certification requirement can be administratively provided by the Administrator. It is anticipated that such waiver authority will be used to allow new graduates in psychology two years to obtain licensure or certification.

Enactment of this proposal is expected to have little or no cost to the VA.

Section 202 of the draft bill would amend section 4106(b) of title 38, United States Code, to shorten the probationary period of title 38 professional employees from three years to two years and to provide options other than termination for dealing with probationary employees who are not found to be fully satisfactory by a professional standards review board.

Under current law, there is no flexibility in dealing with a probationary employee who is not found to be fully qualified and satisfactory by the professional standards review board—such an employee must be separated. Thus, an employee who has personality conflicts with members of the professional staff may be found to be unsatisfactory by a review board in recognition of the importance of professional interaction, consultation and shared responsibility for the health care of patients. This section of the draft bill would provide authority to reassign rather than separate the employee. Such reassignment would not be a disciplinary measure but would be a personnel tool to place the employee in an environment where the employee can function effectively. This section of the draft bill would authorize, as alternatives to separation, nondisciplinary reassignment or other nondisciplinary action consistent with continuing employment in a capacity in which the employee can function effectively.

This section of the draft bill would also shorten the probationary period of title 38 professional employees from three years to two years.

It is widely accepted that some period of probation is needed to allow the employer and employee to evaluate the employment relationship. On-the-job preformance of the probationary employee may be observed allowing an evaluation of the employee's skills, attitude and other personal traits which cannot be matched by preemployment testing or interviews. While there does not appear to be any precise method of determining the appropriate length of a probationary period, there is a basis for recognizing the need for a longer period of probation for health care professionals than the one year of probation required for title 5 employees. Physicians, dentists and nurses must be able to work closely with other members of a health care team. Often, they are called upon to make decisions quickly under extreme pressure with the patients well being or very life hinging on the appropriateness and dispatch of a particular course of treatment. On the other hand, employees with less onerous responsibilities may be able to get the job done even though they are not fully compatible. Yet, in reaching a determination as to the appropriate length of probation, a balance must be struck between the need for the employer to evaluate fully and properly the performance of an employee and the employee's need to achieve the lack of apprehension and uncertainty which is best achieved when employment is no longer

conditional. This section of the draft bill suggests a two-year probationary period as a reasonable compromise between these competing interests.

This section of the draft bill will also clarify the authority of the Chief Medical Director to make the final decision to terminate, reassign or otherwise deal with, a probationary employee who is found to be unsatisfactory by the board reviewing the employee's qualifications and performance. This would codify current administrative procedure.

It is estimated that enactment of this proposal will not result in any significant increase in costs to the VA.

Section 203 of the draft bill would amend section 4110 of title 38, United States Code, to clarify that probationary employees are not entitled to a disciplinary board hearing and its attendant due process rights in connection with charges of inaptitude, inefficiency or misconduct.

One of the functions of a probationary period is to allow summary dismissal of an employee who is not performing or who is engaged in misconduct without having to undergo lengthy hearings and appeals. VA administrative instructions concerning the separation of probationers do not provide for formal disciplinary boards for probationers. These instructions follow the long-held belief that section 4110 was not intended to afford probationary employees the same protection as tenured employees. However, the language of section 4110 does not make this clear and leaves the impression that all employees subject to disciplinary action are entitled to an adversarial hearing even though such employees are probationary. Consequently, the issue as to whether section 4110 affords a right to an adversarial hearing for probationary employees has resulted in litigation. While in both *Kenneth* v. *Schmoll*, 482 F.2d 90 (10 Cir. 1973), (probationary nurse) and *Suess* v. *Pugh*, 245 F. Supp. 661 (N.D.H.V. 1965) (probationary physician) the Courts sustained the long-held agency view that probationary employees are not entitled to the protections of section 4110, we believe that clarification of this issue in the statute will foreclose further litigation on the issue.

Enactment of this proposal will not result in any cost to the VA.

TITLE III—MEDICAL RESOURCES UTILIZATION AMENDMENTS

Section 301 of the draft bill would authorize the Administrator to enter into sharing agreements with blood banks, organ banks and similar institutions. Currently, sharing authority is limited to entering into sharing agreements with hospitals, medical installations having hospital facilities, medical schools or clinics in the medical community. The expansion of sharing authority to include blood and organ banks and similar institutions would contribute to more cost effective and better health care. For example, if a VA Medical Center joined with several other institutions in a cooperative blood bank it could be better assured of cost control and of availability of blood, including rare types.

Enactment of this section will not result in any increased costs to the VA.

Changes in existing law made by this bill are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter in italic, existing law in which no change is proposed is shown in roman)

TITLE 38—UNITED STATES CODE

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PART I. GENERAL PROVISIONS

* * * * *

Chapter 1—GENERAL

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§ 111. Travel expenses

* * * * *

(e) (2) In no event shall payment be provided under this section—

[(A) unless the person claiming reimbursement has been determined, based on an annual declaration and certification by such person, to be unable to defray the expenses of such travel (except with respect to a veteran receiving benefits for or in connection with a service-connected disability under this title) :]

(A) for or in connection with medical treatment (except with respect to a veteran receiving benefits for or in connection with a service-connected disability under this title) unless (i) special vehicular modes of transportation are required for medical reasons; and (ii) such travel has been authorized by the Administrator prior to such travel;

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PART II. GENERAL BENEFITS

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Chapter 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

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Subchapter I—GENERAL

§ 601. Definitions

For the purposes of this chapter—

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(4) The term "Veterans' Administration facilities" means—

(A) facilities over which the Administrator has direct jurisdiction;

(B) Government facilities for which the Administrator contracts; and

(C) private facilities for which the Administrator contracts when facilities described in clause (A) or (B) of this paragraph are not capable of furnishing economical care because of geographical inaccessibility or of furnishing the care or services required in order to provide (i) hospital care or medical services to a veteran for the treatment of a service-connected disability or a disability for which a veteran was discharged or released from the active military, naval, or air service; (ii) medical services for the treatment of any disability of a veteran described in clause (1)(B) or (2) of section 612(f) of this title *or of a veteran described in section 612(g) of this title if the Administrator has determined, based on an examination by a physician employed by the Veterans' Administration (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in facilities described in clauses (A) and (B) of this paragraph;*

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Subchapter II—HOSPITAL, NURSING HOME OR DOMICILIARY CARE AND MEDICAL TREATMENT

* * * * *

§ 672 Eligibility for medical treatment

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(b) Outpatient dental services and treatment, and related dental appliances, shall be furnished under this section only for a dental condition or disability—

(1) which is service-connected and compensable in degree;

[(2) which is service-connected, but not compensable in degree, but only (A) if it is shown to have been in existence at time of discharge or release from active military, naval, or air service and (B) if application for treatment is made within one year after such discharge or release, except that if a disqualifying discharge or release has been corrected by competent authority, application may be made within one year after the date of correction or the date of enactment of this exception, whichever is later;]

(2) [(3)] which is a service-connected dental condition or disability due to combat wounds or other service trauma, or of a former prisoner of war;

(3) [(4)] which is associated with and is aggravating a disability resulting from some other disease or injury which was incurred in or aggravated by active military, naval, or air service;

(4) [(5)] which is a non-service-connected condition or disability of a veteran for which treatment was begun while such veteran was receiving hospital care under this chapter and such services and treatment are reasonably necessary to complete such treatment; or

(5) [(6)] from which a veteran of the Spanish-American War or Indian Wars is suffering.

* * * * *

(f) The Administrator, within the limits of Veterans' Administration facilities, may furnish medical services for any disability on an outpatient or ambulatory basis—

(1) to any veteran eligible for hospital care under section 610 of this title (A) where such services are reasonably necessary in preparation for, or (to the extent that facilities are available) to obviate the need of, hospital admission, or (B) where such a veteran has been furnished hospital care and such medical services are reasonably necessary to complete treatment incident to such hospital care (for a period not in excess of twelve months after discharge from in-hospital treatment, except where the Administrator finds that a longer period is required by virtue of the disability being treated) *but any such veteran being furnished care for a nonservice-connected disability shall not be furnished drugs, medicine, or medical supplies which may be purchased without physician's prescription, unless such veteran is (i) in receipt of pension under chapter 15 of this title, or (ii) 65 years of age or older, or (iii) permanently housebound, or (iv) in need of regular aid and attendance, or (v) receiving home health services under this section; and*

* * * * *

(g)*(1)* Where any veteran is in receipt of increased pension or additional compensation or allowance based on the need of regular aid and attendance or by reason of being permanently housebound, or who, but for the receipt of retired pay, would be in receipt of such pension, compensation, or allowance, the Administrator, within the limits of Veterans' Administration facilities, may furnish the veteran such medical services as the Administrator finds to be reasonably necessary.

(2) Any veteran receiving medical services under this subsection shall also be eligible to receive home health services as described in subsections (a) and (f) of this section, subject to the limitations set forth therein, based on the nature of the disability of such veteran.

* * * * *

(i) Not later than ninety days after the effective date of this subsection, the Administrator shall prescribe regulations to assure that special priority in furnishing medical services under this section and any other outpatient care with funds appropriated for the medical care of veterans shall be accorded in the following order, unless compelling medical reasons require that such care be provided more expeditiously;

(1) To any veteran for a service-connected disability.

(2) To any veteran described in subsection (f)(2) of this section.

(3) To any person for compensation or pension examination purposes.

(4) [3] To any veteran with a disability rated as service connected.

(5) [4] To any veteran being furnished medical services under subsection (g) of this section.

* * * * *

§ 612. Medical care for survivors and dependents of certain veterans

(a) The Administrator is authorized to provide medical care, in accordance with the

provisions of subsection (b) of this section, for—

(1) the wife or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability, and

(2) the widow or child of a veteran who (A) died as a result of a service-connected disability, or (B) at the time of death had a total disability permanent in nature, resulting from a service-connected disability, *or (C) the surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to misconduct,* who are not otherwise eligible for medical care under chapter 55 of title 10 (CHAMPUS). *For purposes of this section a person who died in the active military, naval, or air service in the line of duty and not due to misconduct shall be considered a veteran.*

* * * * *

(c) For purpose of this section, a child between the ages of 18 and 23 who is a dependent or survivor under subsection (a) of this section and is pursuing a full-time course of instruction at an approved educational institution, and who suffers a disabling illness or injury resulting in inability to resume attendance at any approved educational institution, (whether the disabling illness or injury occurred during the school year, between semesters, or during vacation or holiday periods) shall remain eligible for benefits under this section until six months after the disability is removed, or until two years after the date of onset of the illness or injury, or until the student's twenty-third birthday, whichever occurs first.

* * * * *

§ 614. Fitting and training in use of prosthetic appliances; seeing-eye dogs

(a) Any veteran who is entitled to a prosthetic appliance shall be furnished such fitting and training, including institutional training, on the use of such appliance as may be necessary, whether in a Veterans' Administration facility or other training institution, or by outpatient treatment, including such service under contract, and including necessary travel expenses *pursuant to the provisions of section 111 of this title* to and from such veteran's home to such hospital or training institution.

* * * * *

§ 617. Invalid lifts and other devices

(a) The Administrator may furnish *(or reimburse the cost of)* an invalid lift, or any type of therapeutic or rehabilitative device, *or modification of such lift or device,* as well as other medical equipment and supplies (excluding medicines), if medically indicated, to any veteran who is receiving (1) compensation under subsections 814(1)-(p) (or the comparable rates provided pursuant to section 834) of this title, or (2) pension under chapter 15 of this title by reason of being in need of regular aid and attendance.

(b) Any modification of such lift or device for a veteran entitled under subsection (a)(2) of this section shall not exceed the maximum allowable cost of home improvements and structural alterations authorized by section 612(f) of this title.

* * * * *

Subchapter III—Miscellaneous Provisions Relating to Hospital and Nursing Home Care and Medical Treatment of Veterans

* * * * *

§ 628. Reimbursement of certain medical expenses

(a) The Administrator may, under such regulations as the Administrator shall prescribe, reimburse veterans entitled to hospital care or medical services under this chapter for the reasonable value of such care or services (including the necessary travel *pursuant to the provisions of section 111 of this title*), for which such veterans have made payment, from sources other than the Veterans' Administration, where—

(1) such care or services were rendered in a medical emergency of such nature that delay would have been hazardous to life or health;

(2) such care or services were rendered to a veteran in need thereof (A) for an adjudicated service-connected disability, (B) for a non-service-connected disability associated with and held to be aggravating a service-connected disability, (C) for any disability of a veteran who has a total disability permanent in nature from a service-connected disability, or (D) for any illness, injury, or dental condition in the case of a veteran who is found to be (i) in need of vocational rehabilitation under chapter 31 of this title and for whom an objective had been selected or (ii) pursuing a course of vocational rehabilitation training and is medically determined to have been in need of care or treatment to make possible such veteran's entrance into a course of training, or prevent interruption of a course of training, or hasten the return to a course of training which was interrupted because of such illness, injury, or dental condition; and

(3) Veterans' Administration or other Federal facilities were not feasibly available, and an attempt to use them beforehand would not have been reasonable, sound, wise, or practical.

* * * * *

Part V—Boards and Departments

* * * * *

Chapter 73—DEPARTMENT OF MEDICINE AND SURGERY

* * * * *

Subchapter I—Organization; General

* * * * *

§ 4104. Additional appointments

There shall be appointed by the Administrator additional personnel as the Administrator may find necessary for the medical care of veterans, as follows:

(1) Physicians, dentists, podiatrists, nurses, physician assistants, and expanded-function dental auxiliaries;

(2) Pharmacists, psychologists, physical therapists, occupational therapists, dietitians, and other scientific and professional personnel, such as bacteriologists, chemists, biostatisticians, and medical and dental technologists.

§ 4105. Qualifications of appointees

(a) Any person to be eligible for appointment to the following positions in the Department of Medicine and Surgery must have the applicable qualifications:

* * * * *

(10) Psychologist—

hold a doctoral degree in psychology from a college or university approved by the Administrator, have completed such study in a specialty area of psychology and an internship which are satisfactory to the Administrator, and be licensed or certified as a psychologist in a State. The requirement of licensure or certification may be waived under such conditions as the Administrator may prescribe.

(b) Except as provided in section 4114 of this title, no person may be appointed in the Department of Medicine and Surgery as physician, podiatrist, optometrist, dentist, nurse, physician assistant, or expanded-function dental auxiliary unless such person is a citizen of the United States.

* * * * *

§ 4106. Period of appointments; promotions

(a) Appointments of physicians, dentists, podiatrists, optometrists, and nurses shall be made only after qualifications have been satisfactorily established in accordance with regulations prescribed by the Administrator, without regard to civil-service requirements.

(b) [Such appointments as described in subsection (a) of this section shall be for a probationary period of three years and the record of each person serving under such appointment in the Medical, Dental, and Nursing Services shall be reviewed from time to time by a board, appointed in accordance with regulations of the Administrator, and if said board shall find him not fully qualified and satisfactory he shall be separated from the service.

Appointments under section 4104(l) of this title shall be for a probationary period of two years, and the record of each person serving under any such appointment shall be reviewed from time to time by a board appointed in accordance with such regulations as the Administrator shall prescribe. If such board recommends that any probationary employee be found not fully qualified and satisfactory for reasons relating to professional competence, work performance or suitability, on decision by the Chief Medical Director, such employee's probationary appointment may be terminated, such employee may be reassigned, or subject to other nondisciplinary action consistent with continuing the employment of such employee in a capacity in which such employee can effectively function.

* * * * *

§ 4110. Disciplinary boards

(a) The Chief Medical Director, under regulations prescribed by the Administrator shall from time to time appoint boards to be known as disciplinary boards each such board to consist of not less than three nor more than five employees, senior in grade, of the Department of Medicine and Surgery to determine, upon notice and fair hearing, charges of inaptitude, inefficiency, or misconduct of any person employed in a position provided in paragraph (1) of section 4104 of this title *who has satisfactorily completed the probationary period.* When such charges concern a dentist the majority of employees on the disciplinary board shall be dentists.

* * * * *

Part VI—Acquisition and Disposition of Property

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Subchapter IV—Sharing of Medical Facilities, Equipment, and Information

* * * * *

§ 5053. Specialized medical resources

(a) To secure certain specialized medical resources which otherwise might not be feasibly available, or to effectively utilize certain other medical resources, the Administrator may, when the Administrator determines it to be in the best interest of the prevailing standards of the Veterans' Administration medical care programs, make arrangements, by contract or other form of agreement, as set forth in clauses (1) and (2) below, between Veterans Administration hospitals and *organ banks, blood banks and similar institutions,* other hospitals (or other installations having hospital facilities) or medical schools or clinics in the medical community:

(1) for the mutual use, or exchange of use, of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Veterans' Administration health care facility; or

(2) for the mutual use, or exchange of use, of specialized medical resources in a Veterans' Administration health care facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity. The Administrator may determine the geographical limitations of a medical community as used in this section.

5-YR COST ANALYSIS OF A DRAFT BILL ENTITLED "VETERANS MEDICAL AMENDMENTS ACT OF 1979"

Section	Fiscal year— 1st	2d	3d	4th	5th	5-yr total
101	(39,134)	(39,134)	(39,134)	(39,134)	(39,134)	(195,670)
102(b)(1)	(43,918)	(39,527)	(37,550)	(35,673)	(33,889)	(190,557)
102(b)(2)	(15,546)	(18,344)	(21,646)	(25,542)	(30,140)	(111,218)
103(1 and 2)	1,509	1,358	1,222	1,180	990	6,259
103(3)	286	286	286	286	286	1,430
Total net savings	(96,803)	(95,361)	(96,822)	(98,883)	(101,887)	(489,756)

Note: Amounts shown are ($000). Cost savings appear in parentheses.

By Mr. PERCY (for himself and Mr. GLENN):

S. 742. A bill to effect certain reorganization of the Federal Government to strengthen Federal programs and policies with respect to nuclear waste management; ordered held at the desk, by unanimous consent.

NUCLEAR WASTE MANAGEMENT REORGANIZATION ACT OF 1979

Mr. PERCY. Mr. President, today I am introducing the Nuclear Waste Management Reorganization Act of 1979. I am privileged to have as the coauthor of this bill my distinguished colleague from Ohio, Senator GLENN.

We are introducing this bill at a crucial time in the national debate on nuclear waste management. In recent months that debate has become focused on the efforts of the Interagency Review Group (IRG) on Nuclear Waste Management. The IRG has spent a year reviewing the issue and formulating recommendations for administration policy. It has summarized its conclusions in a report issued last week.

The IRG effort has encouraged a broad discussion of the issues which must be addressed as we formulate nuclear waste management policy. It is now up to the Congress to address those issues and, where appropriate, to pass legislation to insure that they are resolved.

The issues facing us today are of two kinds: Technical and institutional. The technical issues include doubts as to the geologic formations and waste packaging best suited to permanent nuclear waste disposal. While Congress itself cannot "resolve" all of the technical issues being raised today, it can, and I believe should, express confidence that those issues can be resolved given the proper research.

It is in the institutional area where direct congressional action is most clearly needed. If there is a nuclear waste management crisis today, it exists not because the technical issues are so intractable, but because the Federal programs designed to address them have been so inadequate. Those programs have in the past been poorly planned, poorly managed, and poorly coordinated, and have lacked coherent principles to guide their development.

The result has been a dramatic loss in public confidence in the Federal Government's ability to do the job. This drop in public confidence has been accompanied by a blurring of public perceptions of the issues. The technical issues have grown in stature and have become inseparably linked to the Federal Government's inability to deal with them, so that the public now perceives nuclear waste as an ominous problem to which there may be no solution.

Some members of the Federal Government have finally come to recognize the significance of this situation. In testimony before Senator GLENN's Energy, Nuclear Proliferation and Federal Services Subcommittee, Gus Speth of the Council on Environmental Quality noted that:

> . . . we all inherited a seriously flawed federal program that has provided a poor basis for getting to the right answer quickly and little basis for public confidence. The history of waste management in the U.S. provides warning of the risks of having policy formulation colored by past programs and promotional concerns. It is a history of failure to produce an acceptable method of waste disposal. Devising a program for the future must take into account the loss of credibility that has ensued; it will not be enough to devise a program that could be credible under other circumstances.

I agree wholeheartedly with these comments. Reestablishing public confidence in Federal nuclear waste management programs will not be easy, but it is essential if those programs are to be successful.

In order to win back the public's confidence, we must identify and correct the weaknesses in current Federal nuclear waste programs. We must anticipate the challenges which those programs will face in the future, and insure that they are equipped to handle them. Lastly, we must base those programs on sound principles which can guide their development in the future and gain public acceptance for the results they produce.

I see two areas where improvements must be made, and which are addressed in this legislation. The first involves policy formation and program planning at the national level, and the second involves the siting and development of nuclear waste disposal facilities.

On the issue of policy formation and program planning, I believe there are three main deficiencies in the way that these activities are being undertaken today. First, the efforts of the various Federal agencies and departments with responsibilities for nuclear waste management are poorly coordinated. Efforts undertaken by some agencies are unnecessarily duplicated by others, and as program objectives shift there is a danger that the regulations needed to license those programs will not be in place in time.

Second, there is no policy planning process which involves all of the relevant Federal agencies and departments in the formation of a comprehensive, governmentwide policy toward nuclear waste. Indeed, even within these various agencies and departments there seems to be little in the way of rigorous policy planning.

Lastly, State and local government officials and the public have no way to provide meaningful input into Federal nuclear waste policy. Decisions which will ultimately affect some States and localities very directly are made in the depths of the bureaucracy and buried within budget legislation. It should hardly be surprising, given the current mood of distrust of the Federal Government, that States, localities, and the public are likely to oppose such decisions when they are implemented.

I do not believe that the answer to these problems lies in creating a new Federal agency for nuclear waste management. The legislation which Senator GLENN and I are introducing contains several provisions which will correct these deficiencies while leaving primary responsibility for nuclear waste management where it is now, in the Department of Energy.

First, our bill proposes the establishment of a Nuclear Waste Coordinating Committee. The coordinating committee would consist of representatives of the various Federal agencies which have responsibilities relating to nuclear waste management, including DOE, DOI, CEQ, EPA, and the NRC. It would also have a member representing the Nuclear Waste Management Planning Council, which I will discuss shortly. The committee would be chaired by the representative of the Department of Energy.

The coordinating committee would have several functions. First it would work to improve coordination of the efforts of its member agencies, and to resolve jurisdictional dispute and scheduling conflicts. If necessary, it would make recommendations to the President on these issues.

Second, in each of the first 5 years of its existence, the committee would be required to prepare a comprehensive nuclear waste management plan. The plan would describe all current and planned Federal nuclear waste management programs, set forth milestones and goals for those programs, and provide target dates for reaching those goals. In order to insure that those programs are structured on a tight but reasonable schedule, the first plan would be required to set a target date of 1989 for the operation of an intermediate scale nuclear waste repository. If circumstances warrant, that date could be revised in subsequent plans.

In preparing the plan, the members of the committee would work to integrate and reconcile the views of their respec-

tive organizations. If agreement could not be reached among committee members on key provisions of the plan, the different views would be brought to the attention of the President and resolved by him. The resulting final document, which would represent governmentwide nuclear waste policy, would then be submitted to Congress.

A key feature of the bill is the creation of a Nuclear Waste Management Planning Council. The members of the Council would be appointed by the President, and would include eleven officials of State or local government, and four private citizens. The Council would be the mechanism through which these groups could participate in the formation of Federal nuclear waste policy. A representative of the Council would participate fully in the activities of the Coordinating Committee, including the preparation of the annual nuclear waste management plan. The Council would also advise the various Federal agencies on nuclear waste management issues.

I believe that these measures would correct the deficiencies I discussed above. While they require the creation of two new Government entities, I believe that is an acceptable price to pay. Wherever possible, Senator GLENN and I have tried to minimize that price. We have for example "sunsetted" the preparation of the annual plan, in the expectation that after 5 years a stable and comprehensive Federal nuclear waste policy will have emerged.

One of the best arguments for the measures we are advocating has been the IRG effort itself. Whatever its failings, the IRG has produced some highly valuable self-criticism of the Federal Government's nuclear waste management efforts. It has forced the agencies to come together, to ask themselves tough questions about what each of them was doing and why, and finally to try to put the pieces together in a defensible and coherent whole. The value of such a process was noted by Worth Bateman of the Department of Energy, in testimony before the Energy and Environment Subcommittee of the House Interior and Insular Affairs Committee:

> The administration also recognizes that a successful waste management policy is not just a DOE policy. It must be developed in conjunction with the many executives agencies which already have a statutory role or other interests bearing directly on waste management. Moreover, a successful policy also requires broad public understanding participation and support.

I agree with Mr. Bateman's assessment, and believe that the measures we have suggested will insure that a rigorous policy formation process will be employed in the future.

The second main area we have addressed in the legislation is the process by which nuclear waste repositories are sited and developed. As their mistrust of Federal nuclear waste management programs has grown, State governments have increasingly demanded the right to stop the construction of Federal nuclear waste repositories within their borders. Although the Federal Government seems clearly to have preempted the States' right to control the siting of such facilities, a dozen States have nevertheless enacted laws which purport to give them some control over repository siting. Whether such laws are valid or not, it is clear that States have numerous other legal and political tools at their disposal with which they can effectively stop construction of Federal nuclear waste repositories.

The dangers of this situation cannot be overemphasized. Given the current atmosphere, the Federal Government will be lucky to find States willing to accept these repositories. Even if it finds such States, we have no assurances that they will contain the best sites for repositories.

Clearly, a major revision in Federal policy is needed. If such a revision is not made, repository siting could well prove to be the Achilles' heel of the entire nuclear waste management effort.

In revising the current process, we must recognize several key facts. First, it is clear that States do have legitimate concerns about nuclear waste repositories, or more precisely, about the Federal Government's ability to construct and operate them safely. This mistrust is the sad legacy of the past performance of the Federal Government. In order to overcome it, we must establish a process which allows States to raise their legitimate concerns about these facilities and insures that those concerns will be addressed.

On the other hand, we must realize that ultimate control over the siting of nuclear waste repositories should remain in the hands of the Federal Government. If State governments are given unlimited veto power over such repositories, I believe they will utilize that power whether or not their fears about them are legitimate. Public anxiety about the problem is so great that most, if not all, State governments would be forced to exercise the veto.

In short, both the State veto and Federal preemption approaches to repository siting contain elements which are absolutely essential to a successful repository siting process. Neither approach alone is likely to produce desirable results, given the current atmosphere of public mistrust. Clearly then we must seek a "middle ground" between the two approaches, one which incorporates their essential elements while excluding their principle flaws.

The legislation Senator GLENN and I are proposing attempts to set forth such an approach. Under the bill, the Federal Government would be required to provide early notification to the Governor of a State of its intention to construct a repository for high level nuclear waste, spent nuclear fuel or TRU-wastes in that State. Upon receiving such notification, the Governor could convene a repository review panel to participate in the planning of the repository. The review panel would consist of the Governor, who would serve as chairman, together with other State and local government officials and concerned private citizens from the State, and representatives of concerned adjacent States.

The Nuclear Waste Coordinating Committee which I described earlier would be required to prepare a detailed repository review report for the proposed repository. The report would contain descriptions of the design of the facility and proposed operating procedures for it, safety and environmental analyses, and plans for transporting wastes and providing economic assistance to affected States and localities. The representative of the Department of Energy would take the lead in the preparation of the report, and would have the authority to resolve disputes among committee members over its contents. In preparing the report, the committee would be required to consult closely with the review panel and incorporate its views into the report to the maximum extent feasible.

When the committee finished the report, it would submit it to the review panel for final review. If the Governor who convened the panel believed that the report did not adequately protect State and local interests, he could, after consulting with other panel members, raise formal objections to the report. If he did not raise formal objections, licensing and construction of the facility could proceed.

If the Governor did raise formal objections, the repository could not be built unless the Congress passed a concurrent resolution stating that the report adequately balanced State, local and national interests. Congress would have 60 days in which to consider such a resolution, with such consideration taking place under highly expedited procedures. If Congress did not pass a resolution in the 60-day period, the repository could not be built unless a revised repository development report was prepared. The revised report would have to be prepared under the same procedures, and would be subject to the same review, as was the original report.

I believe that this approach reconciles the conflicting needs of giving the States a significant role in repository siting while maintaining ultimate Federal control. Under this proposal, States would have the right to demand that Congress review the Federal Government's plans for a repository to insure that they adequately protect the interests of affected States and localities. The debate over those plans would be highly visible, and the decision on their adequacy would be made by elected Members of Congress responsible to their constituents. Congress would have the right, if it was satisfied that the plans adequately responded to legitimate State and local concerns, to direct that the repository be built.

This process has several inherent advantages. First, it would force the Federal Government to thoroughly plan these facilities and establish their safety prior to constructing them. The review panels would provide forums through which the States could participate in the preparation of those plans from the outset, and thereby develop confidence in them and in the Federal Government itself. Both the States and the Federal Government would have clear incentives to participate in this process in a responsible manner, since both would know that their cases might be scrutinized by the Congress.

Several additional comments should be made about the process we are proposing. First, I would like to address the question of whether Congress is up to the role which this bill would give to it. To begin with, the bill does not ask Congress to make final, definitive judgments on the complex technical issues which will undoubtedly be raised about these facilities. Instead, it asks Congress to make a general finding about whether the Federal Government has done a defensible job of addressing those issues and other issues which are of concern to the States. In short, it asks Congress to play a vigorous oversight and review role. Such congressional review would not replace or prejudge either the NEPA process or NRC licensing of these facilities, and it would be through those processes that final judgments would be passed on the complex technical issues.

It could be argued that Congress will not be able to address an issue such as this on the merits alone, that the vote in the Senate will be 98–2 against the State in which a repository is to be located. I do not accept these arguments. Congress has repeatedly shown that it can act responsibly on an issue such as this and can strike a fair balance between national and local interests. Good examples can be found in some of the environmental and parks bills which Congress has considered recently.

The nuclear industry may worry that the process we are proposing will be time consuming and will carry with it an element of uncertainty. However, I believe that it has less potential for delay and uncertainty than either the current situation or any of the alternatives I have heard proposed. To begin with, it should be emphasized that, if current expectations hold, the process I have outlined would be employed only a handful of times before the turn of the century. Furthermore, under our proposal, the role of the States, the Federal Government and Congress are clearly defined and circumscribed. If and when objections come up to the Congress, they will be considered under highly expedited procedures which will prevent the use of dilatory parliamentary tactics and insure that Congress will be able to act if it so wishes.

To be sure, we have no assurance that Congress will overrule a State's objections and direct a repository to be built. However, I believe that if a majority of the Members of either House of Congress cannot be convinced that the plans for such a repository are adequate, then those plans should be improved before the repository is built.

In sum, I believe that the process that Senator GLENN and I are proposing will enable us to select the best possible sites for repositories in the shortest time possible, and gain public acceptance of those facilities. Our proposal recognizes that the primary obstacle to siting and developing these facilities is public mistrust of the Federal Government. If we are to succeed in getting them built, the Federal Government has no alternative but to work hard to regain the public's confidence. The measures we have suggested will insure that the Federal Government will indeed work hard to produce the high level of results which the public deserves.

Before closing, Mr. President, I would like to emphasize again that there are a number of other nuclear waste issues which must be addressed by this Congress. In particular, I believe that Congress must establish a funding mechanism which will insure that the producers of commercial nuclear wastes pay all of the costs of disposing of those wastes. I introduced legislation in the last session of Congress which would have established such a mechanism, and may reintroduce such legislation again during this session.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section summary of it be printed in the RECORD at this point.

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

S. 742

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "Nuclear Waste Management Reorganization Act of 1979".

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TITLE I—FINDINGS, PURPOSES, AND DEFINITIONS

DECLARATIONS OF FINDINGS

SEC. 101. (a) The Congress finds that—

(1) nuclear wastes generated in the national defense program have been accumulating for more than 30 years, and spent nuclear fuel and nuclear wastes from the commercial industry are increasing rapidly;

(2) nuclear waste has become a major issue of public concern;

(3) stringent precautions must be taken to ensure that nuclear wastes do not adversely affect the public health and safety of this or future generations;

(4) confidence in the ability of the Federal Government to manage a program providing for the safe and permanent disposal of nuclear wastes must be substantially increased if nuclear power is to contribute significantly to meeting the energy needs of the United States in the future;

(5) Federal nuclear waste disposal programs have been ineffective due to—

(A) inadequate coordination among the various Federal agencies and departments which have responsibilities relating to nuclear waste management;

(B) the lack of a policymaking process which integrates the views of all Federal agencies and departments into a comprehensive government wide policy;

(C) the lack of an organizational mechanism which affords States, localities and the public the opportunity to participate fully in the formulation of Federal nuclear waste management policy; and

(D) the lack of organizational mechanism which allows States and localities to review Federal plans for the development of nuclear waste disposal facilities, and to ensure thereby that such plans adequately protect State and local interests;

(6) a Nuclear Waste Management Planning Council must be established to afford States, localities, and the public the opportunity to participate fully in the formulation of Federal nuclear waste management policy;

(7) a Nuclear Waste Coordinating Committee must be established in order to—

(A) improve the coordination of the activities of Federal departments and agencies with respect to nuclear waste management;

(B) annually prepare a Nuclear Waste Management Plan which reflects the views of all Federal agencies and departments with responsibilities pertaining to nuclear waste management and the views of the Nuclear Waste Management Planning Council; and

(C) prepare Repository Development Reports and Repository Loading Reports with respect to proposed nuclear waste disposal facilities;

(8) Nuclear Waste Repository Review Panels must be established to ensure that States and localities have adequate opportunities to review plans for the development of Federal nuclear waste disposal facilities.

DECLARATION OF PURPOSES

SEC. 102. The Congress declares that there is a compelling need to improve coordination among Federal agencies and departments with respect to nuclear waste management activities, to establish a policymaking process which integrates the views of all such agencies and departments, together with the views of States, localities, and the public, and to provide for State and local review of Federal plans for the development of nuclear waste disposal facilities. It is the purpose of this Act to—

(1) establish a Nuclear Waste Management Planning Council to provide State, local and public views in the Federal nuclear waste management policy development process;

(2) establish a Nuclear Waste Coordinating Committee, to improve coordination of Federal nuclear waste management programs, to prepare annually a Nuclear Waste Management Plan which reflects the views of all interested parties, and to prepare Repository Development Reports and Repository Loading Reports with respect to proposed nuclear waste disposal facilities; and

(3) establish Nuclear Waste Repository Review Panels, to ensure that States and localities have adequate opportunity to review Federal plans for the development of nuclear waste disposal facilities.

DEFINITIONS

SEC. 103. For the purposes of this Act the term—

(1) "Committee" means the Nuclear Waste Coordinating Committee;

(2) "Council" means the Nuclear Waste Management Planning Council;

(3) "Secretary" means the Secretary of Energy;

(4) "Department" means the Department of Energy;

(5) "Review Panel" means a Nuclear Waste Repository Review Panel;

(6) "Chairman" means the Chairman of a Review Panel;

(7) "Plan" means the annual Nuclear Waste Management Plan;

(8) "Governor" means the Governor of a State, or successors to the Governor, during their respective terms of office, or their designees;

(9) "nuclear waste" means high-level waste, transuranic contaminated waste and low-level waste;

(10) "high-level waste" means the highly radioactive wastes resulting from the reprocessing of spent nuclear fuel, and includes both the liquid waste which is produced directly in reprocessing and any solid material into which such liquid waste is made;

(11) "transuranic contaminated waste" mean material contaminated with elements having an atomic number greater than 92, including neptunium, plutonium, americium, and curium, in concentrations of greater than 10 nanocuries per gram;

(12) "low-level waste" means material contaminated with radioactive elements emitting beta or gamma particles or with traces of transuranic elements in concentrations less than 10 nanocuries per gram;

(13) "spent nuclear fuel" means fuel which has been discharged from a nuclear reactor following irradiation, whose constituent elements have not been separated by reprocessing;

(14) "repository" means a facility for the permanent disposal of high-level waste, transuranic contaminated waste, or spent nuclear fuel, whether or not such facility is designed to permit the subsequent recovery of such material, except for facilities to be used exclusively for research and development purposes containing an insignificant amount of such material;

(15) "intermediate scale repository" means a repository designed to contain less than 1,000 spent nuclear fuel assemblies or an equivalent amount of high-level waste or transuranic contaminated waste in terms of risk to the public health and safety;

(16) "full-scale repository" means a repository designed to contain more than 1,000 spent nuclear fuel assemblies or an equivalent amount of high-level waste or transuranic waste in terms of risk to the public health and safety;

(17) "storage" means retention of nuclear waste or spent nuclear fuel with the intent to recover such material for subsequent use, processing, or disposal;

(18) "disposal" means the emplacement of nuclear waste or spent nuclear fuel with no intent of recovery, whether or not such emplacement permits the recovery of such materials;

(19) "local government" means any political subdivision of a State including any town, city, township, borough, parish, village, county, or other general purpose political subdivision of a State;

(20) "Indian tribe" means an Indian tribe, as defined in the Indian Self-Determination and Education Assistance Act (Public Law 93-638);

(21) "public health and safety" means the public health and safety of current and future generations;

(22) "nuclear waste and spent nuclear fuel management" means the transport, storage, and disposal of nuclear waste and spent nuclear fuel; and

(23) "main shaft" means the primary vertical access shaft of a nuclear waste repository.

TITLE II—ESTABLISHMENT, MEMBERSHIP, AND FUNCTIONS OF NUCLEAR WASTE MANAGEMENT PLANNING COUNCIL

ESTABLISHMENT OF NUCLEAR WASTE MANAGEMENT PLANNING COUNCIL

SEC. 201. There is established a Nuclear Waste Management Planning Council as an independent instrumentality of the United States in the executive branch.

MEMBERSHIP OF THE COUNCIL

SEC. 202. (a) The Council shall consist of 15 members appointed by the President. Eleven members of the Council shall be elected officials of State or local government or Indian tribes, except that not less than 3 such members shall be elected officials of local government or of Indian tribes. The remaining 4 members of the Council shall be selected from interested members of the public. Members of the Council shall be appointed for a term of 2 years and may be reappointed for additional terms. No member appointed as one of the 11 elected officials may continue to serve on the Council if such member ceases to be an elected official of State or local government or of an Indian tribe.

(b) In appointing members of the Council, the President shall endeavor to ensure representation of a broad range of views with respect to nuclear waste and spent nuclear fuel management and to ensure representation of areas which are users of nuclear power and of areas which are serving or may be likely to serve as locations for nuclear waste and spent nuclear fuel storage or disposal or which may be directly or substantially affected by such activities.

(c) The Chairman of the Council shall be a member of the Council designated by the President and shall be the Governor of a State.

FUNCTIONS OF THE COUNCIL

SEC. 203. (a) The Council shall—

(1) pursuant to section 301, appoint a representative to the Nuclear Waste Coordinating Committee;

(2) pursuant to the procedures set forth in section 303, provide views on the annual Nuclear Waste Management Plan to the President;

(3) advise the Federal agencies and departments having membership on the Committee on nuclear waste and spent nuclear fuel management policy, with special reference to issues pertaining to the siting and development of nuclear waste and spent nuclear fuel storage and disposal facilities; and

(4) comment on proposed Federal regulations, standards, and criteria pertaining to nuclear waste and spent nuclear fuel management and spent fuel storage, including radiation exposure standards.

(b) The Council shall have the authority to—

(1) obtain (in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the number of days or the period of such service) the services of experts or consultants who have scientific or other pertinent professional qualifications;

(2) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

(3) accept voluntary and uncompensated services;

(4) accept unconditional gifts, or donations of services, money, or property, real, personal, or mixed, tangible or intangible; and

(5) enter into such contracts, leases, cooperative agreements, or other transactions, without regard to sections 3648 and 3709 of the Revised Statutes of the United States (31 U.S.C. 529, 41 U.S.C. 5), as may be necessary in the conduct of its functions, with any public agency, or with any person, firm, association, corporation, or educational institution.

(c) There are authorized to be appropriated to carry out the provisions of this title such sums as may be necessary.

TITLE III—ESTABLISHMENT, MEMBERSHIP, AND FUNCTIONS OF NUCLEAR WASTE COORDINATING COMMITTEE

ESTABLISHMENT OF NUCLEAR WASTE COORDINATING COMMITTEE

SEC. 301. There is established a Nuclear Waste Coordinating Committee as an independent instrumentality of the United States in the executive branch.

MEMBERSHIP OF THE COMMITTEE

SEC. 302. (a) The Secretary, the Council, the Nuclear Regulatory Commission, the Council on Environmental Quality, the Director of the Office of Science and Technology Policy, the Administrator of the Environmental Protection Agency, the Secretaries of Interior, Transportation, and State, and the head of any other Federal agency or department designated by the President shall each appoint one representative to serve as members of the Committee.

(b) The representative of the Department shall serve as the Chairman of the Committee.

(c) The Nuclear Regulatory Commission shall participate in the activities of the Committee to the extent it determines such participation to be consistent with the independent regulatory responsibilities of the Commission.

FUNCTIONS OF THE COMMITTEE

SEC. 303. (a) The Committee shall facilitate the coordination of activities of the Federal agencies and departments represented on the Committee with respect to nuclear waste and spent nuclear fuel management so as to—

(1) insure that related research, development and demonstration activities are designed to meet the needs of all interested Federal agencies and departments;

(2) insure that plans for the construction and operation of nuclear waste and spent nuclear fuel storage and disposal facilities are consistent with developing regulatory standards and programs; and

(3) minimize duplication of effort and unnecessary delay in Federal nuclear waste and spent nuclear fuel management programs.

(b) The Committee shall make recommendations to the President to resolve jurisdictional disputes and schedule conflicts regarding the activities of the Federal agencies and departments represented on the Committee.

(c) The Committee shall prepare an annual Nuclear Waste Management Plan for the fiscal years 1981, 1982, 1983, 1984 and 1985, as follows:

(1) The Plan shall include:

(A) a description of the location, amount, and disposition of all high-level and transuranic contaminated nuclear waste and spent nuclear fuel currently in existence in the United States, including estimates of the amounts of such nuclear wastes and spent nuclear fuel expected to be produced or received in the United States in the next 5, 10, 15, 20 and 30 years;

(B) a program (including schedules and estimated costs) for research, development, and demonstration needed to determine appropriate methods for disposal of high-level nuclear waste, transuranic contaminated waste and spent nuclear fuel, and shall specifically identify any technological uncertainties which it is necessary to resolve prior to the construction and operation of facilities for the permanent disposal of such wastes and spent nuclear fuel, and shall set forth how the proposed program will resolve such uncertainties;

(C) a program (including schedules and estimated costs) for siting, construction, and operation of intermediate-scale repositories;

(D) a program (including schedules and

estimated costs) for siting, construction, and operation of full-scale repositories;

(E) an estimate of existing and projected spent fuel storage capacity at existing and projected privately owned facilities and the potential for the expansion of such capacity to meet expected demand over the next 5, 10, 15, 20, and 30 years;

(F) a program (including schedules and estimated costs) for the siting, construction and operation of interim storage facilities for spent nuclear fuel, if the Secretary finds that such facilities are needed; such programs shall include plans for introduction of interim storage technology not requiring liquid immersion of spent nuclear fuel if technically, environmentally and economically feasible;

(G) an identification of all generic and site-specific Environmental Impact Statements required by the National Environmental Policy Act to be issued by the Secretary with regard to the activities described in the Plan, and schedules for their issuance;

(H) an identification of the States in which the Department plans to conduct activities during the next fiscal year relating to the programs described in the Plan, and a description of such anticipated activities.

(2) The Plan for fiscal year 1981 shall provide for the construction and operation of an intermediate-scale nuclear waste repository no later than January 1, 1989. If the Committee finds that the construction and operation of such repository by such date is not consistent with the development of a sound nuclear waste disposal program or cannot be realized due to events outside of the Committee's control, it may in Plans for subsequent years revise the dates for the construction and operation of such repository.

(3) The Plans all include a section that—

(A) identifies all sites in the United States at which low-level waste has been discarded or buried, the present status of such sites, and the quantities of wastes at each site;

(B) defines the need for additional low-level waste disposal sites (with designation of specific sites to be developed, if any), and any need for remedial action at existing low-level facilities or at sites identified pursuant to paragraph (A);

(C) provides for performance of additional research and development work, as needed; and

(D) estimates the costs of the activities identified in paragraphs (B) and (C) of this subsection.

(4) The Plan shall include a section describing and providing target dates for actions to be undertaken by the Environmental Protection Agency, the Nuclear Regulatory Commission, and the Departments of Interior and Transportation with regard to nuclear waste and spent nuclear fuel management, including the issuance of Environmental Impact Statements required by the National Environmental Policy Act by such agencies and departments with regard to nuclear waste and spent nuclear fuel management, the issuance of standards, criteria, and procedural regulations by such agencies and departments with regard to nuclear waste and spent nuclear fuel management, and projected licensing actions with respect to nuclear waste disposal and storage facilities. Such section shall include a discussion of how such proposed actions will integrate and be coordinated with the proposed actions of the Department so as to avoid unnecessary delay and duplication of effort.

(5) The Plan shall reflect the results of existing Environmental Impact Statements prepared pursuant to the National Environmental Policy Act, and shall not be construed as prejudging decisions under pending National Environmental Policy Act Environmental Impact Statement review.

(6) Plans submitted for fiscal year 1982 and the following years shall update the information given in preceding Plans. Such subsequent Plans shall—

(A) identify and explain changes from the Plan of the preceding fiscal year; and

(B) review the activities undertaken by the Federal departments and agencies having membership on the Committee with regard to nuclear waste and spent nuclear fuel management during the previous fiscal year.

(7) If, during the course of the fiscal year, any Federal department or agency deviates significantly from the actions specified in the Plan for that fiscal year, the Committee shall immediately notify the Congress.

(8) To the maximum extent feasible, the Plan shall incorporate the views of all members of the Committee. If significant divergence of opinion exists among Committee members on major issues, the draft Plan shall indicate where such divergencies of opinion exist and shall include the relevant options for consideration by the President following the submission of public comment pursuant to paragraph (9).

(9) The Committee shall make the draft Plan available for public comment for at least 30 days, and shall thereafter submit the draft Plan to the President; concurrent with the submission of the draft Plan to the President, the Federal departments and agencies represented on the Committee and the Council shall submit their views on the draft Plan to the President.

(10)(A) The President shall review the draft Plan and the comments he receives thereon and shall resolve any divergent views presented pursuant to paragraph (8), and may further modify the draft Plan as he deems appropriate. The section of the final Plan required by paragraph (4) shall recognize the independent regulatory responsibilities of the Nuclear Regulatory Commission.

(B) Protection of the public health and safety shall be foremost among the factors to be weighed by the President in reviewing the draft Plan.

(11) Not later than March 1, 1980, and March 1 of each succeeding year thereafter through March 1, 1984, the Committee shall submit the final version of the Plan for the next fiscal year to the Congress.

(12) Any committee of either House of Congress reporting a bill authorizing funds for activities described in the Plan shall consider the Plan and may specify in any report accompanying such bill the extent to which such proposed authorization is consistent with the Plan.

(d)(1) At such time as any Federal agency or department represented on the Committee shall decide to undertake the study of any area within a State for the purpose of determining its suitability for a nuclear waste or spent nuclear fuel repository or storage facility, the Committee shall notify in writing the Governor of the State in which the area is located of such determination and shall furnish such Governor all relevant information on a current basis concerning the program of the relevant Federal agency or department for such study.

(2) The Committee shall seek the views of appropriate agencies of any State containing an area under study for the purposes described in subsection (d)(1) and, at the discretion of the Chairman of the Committee, the appropriate agencies of any concerned adjacent State. Technical representatives designated by the Governor of each such State may participate in the technical analyses performed by the relevant Federal agency or department.

(e)(1) The Committee shall—

(A) at the earliest feasible time prior to the intended submission by any Federal agency or department to the Nuclear Regulatory Commission of an application for a license to construct the main shaft of a nuclear waste repository, or

(B) in the event that such agency or department is not required by law to obtain a license from the Nuclear Regulatory Commission for the construction of the main shaft of such repository, at the earliest feasible time prior to undertaking site preparation work leading to construction of the main shaft of such repository,

prepare a nuclear waste Repository Development Report. The Chairman of the Committee shall have the authority to resolve differences of view among Committee members with respect to such Report. The Committee shall immediately notify the Governor of the State in which such proposed repository would be located of its decision to prepare the Repository Development Report.

(2) The Repository Development Report shall contain—

(A) a detailed description of—

(i) the design of the repository and plans for its construction;

(ii) proposed operating procedures for the emplacement of high-level or transuranic contaminated wastes or spent nuclear fuel, including amounts and types of waste or spent nuclear fuel to be emplaced, loading factors, waste form, and packaging;

(iii) procedures for maintaining the retrievability of emplaced nuclear waste or spent nuclear fuel and for subsequent shaft and tunnel sealing; and

(iv) plans for perpetual care and monitoring of the facility;

(B) an analysis of the anticipated environmental, health, and safety impacts of the proposed facility, including a discussion of any remaining areas of scientific and technological uncertainty and plans for resolving such uncertainties, with specific reference to information to be collected during the course of the proposed facility's construction and operation;

(C) a plan for the transport of high-level or transuranic contaminated waste or spent nuclear fuel to the repository, including an assessment of anticipated environmental, health, and safety impacts and a description of emergency planning procdures; and

(D) any plan to provide financial assistance to State or local governments or Indian tribes with respect to impacts arising from the proposed repository.

(3) The Committee shall coordinate the preparation of a Repository Development Report for a proposed facility with the preparation of any pertinent Environmental Impact Statements mandated by the National Environmental Policy Act so as to avoid unnecessary delay and duplication of effort. Nothing in this title shall be construed to relieve any Federal agency or department of any duty imposed by that Act.

(4) If a Nuclear Waste Repository Review Panel has been convened with respect to a proposed repository pursuant to section 401—

(A) the Committee shall prepare the Repository Development Report with respect to such proposed repository in close cooperation with the appropriate Review Panel and shall incorporate the views of such Panel into such Repository Development Report to the maximum extent feasible;

(B) upon completing the Repository Development Report, the Committee shall submit the Repository Development Report to the Review Panel for final review.

(5) The Committee shall submit the Repository Development Report for a proposed repository to the Congress, together with the comments of the appropriate Review Panel, if one has been convened with respect to the proposed repository, and any formal objections raised by the Chairman of such Review Panel with respect to such Report. Until a Repository Development Re-

port for a proposed repository has been submitted by the Committee to the Congress—

(A) the Nuclear Regulatory Commission may not accept an application for a license to construct the main shaft of a nuclear waste repository, or

(B) in the event that a license issued by the Commission is not required by law for the construction of the main shaft of such repository, no Federal agency or department may undertake site preparation work leading to the construction of the main shaft of such repository,

except that where the Chairman of the Review Panel convened with respect to such repository formally objects to such Repository Development Report pursuant to the provisions of section 403 (b), the actions prohibited in subparagraph (A) and (B) of this paragraph may not be taken unless and until Congress shall have passed a concurrent resolution pursuant to section 304 stating in substance that the Repository Development Report equitably balances State, local, and national interests.

(6) In the event that Congress fails to pass a concurrent resolution as specified in paragraph (5) with respect to a Repository Development Report to which the Chairman of the relevant Panel has formally objected, the prohibitions set forth in section 303 (e) (5) (A) and 303 (e) (5) (B) shall remain in effect until such time as—

(A) the Committee shall have submitted to the Congress a revised Repository Development Report to which the Chairman of the relevant Review Panel has not formally objected, or

(B) Congress shall have passed a concurrent resolution as specified in paragraph (5) with respect to a revised Repository Development Report to which the Chairman of the relevant Panel shall have formally objected.

Each revised Repository Development Report shall be prepared pursuant to the procedures set forth in this section and in section 403 pertaining to the preparation of Repository Development Reports.

(f) (1) The Committee shall—

(A) at the earliest feasible time prior to the intended submission by any Federal agency or department to the Nuclear Regulatory Commission of an application for a license to emplace significant quantities of high level or transuranic contaminated nuclear waste or spent nuclear fuel into a repository; or

(B) in the event that such agency or department is not required by law to obtain a license from the Nuclear Regulatory Commission in order to emplace significant quantities of high level or transuranic contaminated nuclear waste or spent nuclear fuel into such repository, at the earliest feasible time prior to beginning the emplacement of such waste or spent nuclear fuel into such repository;

prepare a Repository Loading Report with respect to such repository. The Chairman of the Committee shall have authority to resolve differences of view among Committee members with respect to such Report. The Committee shall immediately notify the Governor of the State in which such repository is located of its decision to prepare the Repository Loading Report.

(2) The Repository Loading Report prepared with respect to such repository shall contain the information required in the Repository Development Report prepared with respect to such repository pursuant to section 303(e)(1), appropriately updated. The Repository Loading Report for such repository shall identify any significant differences between the plans, descriptions, and analyses contained therein and those presented in the Repository Development Report prepared with respect to such repository. Special emphasis shall be given to assessing the significance of information collected during the course of the construction of the repository to the analyses of the anticipated environmental, health, and safety impacts of such repository.

(3) If a Nuclear Waste Repository Review Panel has been convened with respect to a proposed repository pursuant to section 401, the Committee shall—

(A) prepare the Repository Loading Report with respect to such repository in close cooperation with the Review Panel and shall incorporate the views of such Panel into such Report to the maximum extent feasible;

(B) upon completing such Repository Loading Report, the Committee shall submit the Report to the Review Panel for final review.

(4) The Nuclear Regulatory Commission may not accept an application for a license to emplace significant quantities of high level or transuranic contaminated nuclear waste or spent nuclear fuel into a repository, or in the event that a license issued by the Nuclear Regulatory Commission is not required by law in order to emplace significant quantities of high level or transuranic contaminated nuclear waste or spent nuclear fuel in a repository, no Federal agency or department may emplace significant quantities of such nuclear wastes or spent nuclear fuel into such repository, unless and until the Committee shall have submitted to the Congress a Repository Loading Report prepared with respect to such repository, together with the comments of the appropriate Nuclear Waste Repository Review Panel, and a period of 30 days of continuous session of Congress (as defined in section 304) shall have elapsed.

CONGRESSIONAL REVIEW PROCEDURES

SEC. 304. (a) Not later than 45 days of continuous session after the date of transmittal to the Congress of a Repository Development Report with respect to which the Chairman of the appropriate Review Panel has raised formal objections, the Committees of the House of Representatives and of the Senate to which such Repository Development Report is referred shall submit a report to their respective House on their views and recomomendations respecting such Repository Development Report is referred shall submit a report to their respective House on their views and recommendations respecting such Repository Development Report together with a concurrent resolution, as defined in subsection (g), stating in substance that the Congress believes that the Report equitably balances State, local, and national interests. If any such Committee has not reported such a resolution at the end of such 45-day period, such Committee shall be deemed to be discharged from further consideration of such Repository Development Report. If no such resolution has been reported at the end of such period, the first resolution as defined in subsection (g) which is introduced within 5 days thereafter within such House shall be placed on the appropriate calendar of such House.

(b) The Chairman of the Coordinating Committee may amend a Report to address any objection raised to it by the Chairman of the appropriate Review Panel during the first 30 days of continuous session after it is submitted to the Congress.

(c) When the relevant committee or committees have reported such a resolution (or have been discharged from further consideration of such a resolution pursuant to subsection (a)), or when a resolution has been introduced and placed on the appropriate calendar pursuant to subsection (a), as the case may be, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to, or disagreed to, shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(d) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to a motion to postpone, or a motion to recommit the resolution, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the resolution is agreed to, or disagreed to, shall not be in order. No amendment to any concurrent resolution pursuant to the procedures of this section is in order except as provided in subsection (e).

(e) Immediately following (1) the conclusion of the debate on such concurrent resolution, (2) a single quorum call at the conclusion of debate if requested in accordance with the rules of the appropriate House, and (3) the consideration of an amendment introduced by the Majority Leader or his designee to insert the phrase "does not" in lieu of the word "does" if the resolution under consideration is a concurrent resolution of approval, the vote on final approval of the resolution shall occur.

(f) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to such a resolution shall be decided without debate.

(g) For the purposes of this section, "concurrent resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the Congress believes that the Repository Development Report numbered relating to the proposed development of a nuclear waste or spent nuclear fuel repository at within the State of transmitted to Congress by the Nuclear Waste Coordinating Committee on , 19 (as amended by the Chairman of the Nuclear Waste Coordinating Committee on , 19), equitably balances State, local, and national interests.", the blank spaces therein being appropriately filled and the text in parenthesis being included if the Chairman of the Coordinating Committee has amended the Report pursuant to subsection (b).

(h) If the Congress has not passed a concurrent resolution in accordance with the procedures described in this section within 60 days of continuous session after the transmittal of the Repository Development Report, such report shall be considered rejected.

(i) For the purposes of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(j) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described

by subsection (g) of this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(k) In considering any Repository Development Report submitted to the Congress pursuant to this title, the Congress may obtain the views and comments of the Nuclear Regulatory Commission on such Report. The provision of views by the Commission shall not be construed as binding the Commission with respect to any subsequent licensing action pertaining to the repository which is the subject of such Repository Development Report.

(l) The passage of a resolution by the Congress pursuant to this title shall in no way be considered as binding with respect to any subsequent licensing action of the Nuclear Regulatory Commission pertaining to the repository which is the subject of such resolution.

(m) For the purposes of this section a revised Repository Development Report as set forth in section 303(e)(6) shall be deemed to be a Repository Development Report.

EFFECT ON OTHER LAWS

SEC. 305. (a) Nothing in this Act shall affect the authority of the Nuclear Regulatory Commission to license and regulate high-level or transuranic contaminated waste or spent nuclear fuel storage and disposal pursuant to section 202 of the Energy Reorganization Act of 1974 or of byproduct, source, or special nuclear material pursuant to section 201(f) of such Act.

(b) Nothing in this Act shall exempt any Federal department or agency from the requirements of the National Environmental Policy Act.

(c) Nothing in this Act shall affect the authority of States to inspect nuclear facilities as designated pursuant to State law pursuant to section 274 of the Atomic Energy Act.

TITLE IV—ESTABLISHMENT, MEMBERSHIP, AND FUNCTIONS OF NUCLEAR WASTE REPOSITORY REVIEW PANELS

ESTABLISHMENT OF NUCLEAR WASTE REPOSITORY REVIEW PANELS

SEC. 401. (a) At any time within 120 days after receiving notification of the intention of the Committee to prepare a Repository Development Report pursuant to section 303 (e)(1) with respect to a proposed repository to be located within a State, the Governor of such State receiving such notification may establish a Nuclear Waste Repository Review Panel to facilitate State and local participation in the planning and development of such repository.

(b) The procedures provided by sections 303(e), 304, and 403(b) for State and local review and for submission to the Congress of objections to the Repository Development Report prepared with respect to a proposed repository, and the procedures provided by sections 303(f) and 403(c) for State and local review and for submission to the Congress of comments on the Repository Loading Report prepared with respect to such repository, shall not apply with respect to such repository unless there shall have been convened a Nuclear Waste Repository Review Panel with respect to such repository pursuant to subsection (a).

(c) A Review Panel convened pursuant to section 401(a) with respect to a proposed repository shall continue to function until—

(1) the Committee formally notifies the Panel that that Federal government no longer intends to construct and operate such repository, or

(2) the Committee formally notifies the Panel that a Repository Loading Report prepared with respect to such repository has been submitted to the Congress pursuant to section 303(f), and the Chairman of the Panel thereafter declares the Panel to be adjourned.

MEMBERSHIP OF REVIEW PANELS

SEC. 402. A Review Panel convened by a Governor pursuant to section 401(a) shall consist of—

(1) the Governor convening the Panel who shall serve as the Chairman of the Panel;

(2) seven additional individuals from the State of the convening Governor to be appointed by the Governor and to serve at the pleasure of the Governor. The convening Governor shall include on the Panel individuals who are local government or Indian tribe officials of the area under study by the Department as a possible site for the proposed nuclear waste and spent nuclear fuel repository and may include—

(A) other officials of the State's government including members of the State legislature, and

(B) interested residents of the State, except that such residents shall be selected so as to ensure representation of a broad range of views on nuclear waste repository development issues; and

(3)(A) the Governors of any adjacent State or States, to be appointed by the Council, upon a finding that such State or States may be directly and substantially affected by the operation of a nuclear waste repository situated in the State of the convening Governor;

(B) Each Governor so appointed by the Council may appoint up to three additional individuals from his State to serve on the Review Panel at the pleasure of the Governor. Such Governor shall include among such appointees at least one local government or Indian official of the areas which would be directly and substantially affected by the development of the proposed repository, and may include—

(i) other officials of the State government including members of the State legislature, and

(ii) interested residents of the State, except that such residents shall be selected so as to ensure representation of a broad range of views on nuclear waste or spent nuclear fuel repository development issues.

FUNCTIONS OF REVIEW PANELS

SEC. 403. (a) A Review Panel established pursuant to section 401 (a) shall meet regularly to review current and planned actions of the Federal agencies and departments having membership on the Committee with respect to the siting, construction, and operation of the relevant proposed nuclear waste repository. Representatives of such agencies and departments shall meet regularly with the Review Panel to explain their activities and obtain the views of the Panel thereon.

(b)(1) A Review Panel shall cooperate closely with the Committee in the preparation of a Repository Development Report prepared pursuant to section 303 (e) (4) (A).

(2) A Review Panel shall, within 90 days after receipt of a Repository Development Report pursuant to section 303 (e) (4), ascertain whether the Report adequately provides for the protection of State and local interests and may hold public hearings on the Repository Development Report in support of this review.

(3) Within 90 days after the Review Panel receives the Repository Development Report, the Chairman of the Panel, after consultation with other Panel members may submit to the Committee formal objections that the Repository Development Report does not adequately provide for the protection of State and local interests. A formal objection shall state the grounds therefor and shall also propose amendments to the Repository Development Report whose implementation would remove the basis for such objections. The Chairman of the Panel and other members of the Panel may provide comments on the Repository Development Report to the Committee regardless of whether the Chairman has submitted formal objections to the Repository Development Report.

(c)(1) A Review Panel shall cooperate closely with the Committee in the preparation of a Repository Loading Report prepared pursuant to section 303 (f) (1).

(2) Such Review Panel shall, within 90 days after receipt of the Repository Loading Report pursuant to section 303 (f) (4), ascertain whether the Report adequately provides for the protection of State and local interests and may hold public hearings on the report in support of this review.

(3) Within 90 days after such Review Panel receives such Repository Loading Report, the members of the Panel shall submit their comments on such report to the Committee.

SECTION BY SECTION SUMMARY—NUCLEAR WASTE MANAGEMENT REORGANIZATION ACT OF 1979

TITLE I: FINDINGS, PURPOSES, AND DEFINITIONS

Sec. 101. Findings.
Sec. 102. Purposes.
Sec. 103. Definitions.

TITLE II: ESTABLISHMENT, MEMBERSHIP, AND FUNCTIONS OF NUCLEAR WASTE MANAGEMENT PLANNING COUNCIL

Sec. 201. Establishes the Council as an independent instrumentality of U.S. in the Executive Branch.

Sec. 202. Membership. The Council is to have 15 members appointed by the President. Eleven are to be elected officials of State or local government, and the remaining four shall be interested private citizens. The Chairman of the Council is to be the Governor of a State.

Sec. 203. Functions. The Council shall appoint a representative to the Nuclear Waste Coordinating Committee pursuant to section 302. The Council shall also advise federal agencies and departments on nuclear waste and spent nuclear fuel management policy.

TITLE III: ESTABLISHMENT, MEMBERSHIP AND FUNCTIONS OF NUCLEAR WASTE COORDINATING COMMITTEE

Sec. 301. Establishes the Committee as an independent instrumentality of the U.S. in the Executive Branch.

Sec. 302. Membership. The Council and all federal agencies with responsibilities relating to nuclear waste and spent nuclear fuel management are to appoint representatives to the Committee. The DOE representative shall serve as Chairman.

Sec. 303.

303(a) The Committee is to facilitate coordination of federal activities with respect to nuclear waste and spent nuclear fuel management.

303(b) The Committee is to attempt to resolve jurisdictional and scheduling disputes and to make recommendations on such matters to the President where necessary.

303(c) The Committee is to prepare an annual Nuclear Waste Management Plan for each fiscal year through 1985. The Plan is to include descriptions of the status of nuclear wastes and spent fuel in the U.S.; programs for research and development and for siting, construction, and operation of repositories; a review of existing and projected spent nuclear fuel storage capacity; schedules for issuance of all necessary environmental impact statements by DOE; and a list of the States in which DOE plans to conduct waste management activities during the coming fiscal year.

The Plan for fiscal year 1981 is to provide for the construction and operation of an intermediate scale nuclear waste repository no later than 1989. This date can be revised in subsequent Plans if necessary. The Plan is also to contain a section providing target dates and plans for coordinating actions by EPA, NRC, DOI, and DOT with regard to nuclear waste and spent fuel management.

To the maximum extent feasible the Plan is to incorporate the views of all members of the Committee. If members disagree over the major provisions of the Plan, the draft Plan shall so indicate and shall include relevant options for Presidential consideration.

The draft Plan shall be made available for public comment and shall then be submitted to the President, together with the views of the members of the Committee.

The President may modify the draft Plan as necessary. In so doing, protection of the public health and safety is to be foremost among the factors weighed.

The Committee shall submit final version of the Plan to the Congress by March 1, 1980, and by March 1 of each succeeding year thereafter, through March 1, 1984. Congressional authorizing committees would then consider the Plan.

303(d) The Committee is to notify the Governor of a State of federal plans to undertake studies in the State leading to the siting a nuclear waste or spent nuclear fuel repository or storage facility in that state. Thereafter, the Committee shall seek the views of appropriate agencies of any such State, and shall permit technical representatives of such States to participate in any federal technical analyses performed.

303(e) Prior to the submission to the NRC by any federal agency or department of an application for a license to build a repository, or, if no such license is required, prior to the commencement of construction of such a facility, the Committee must prepare a Repository Development Report for that repository. The Report shall contain descriptions of the design and proposed operating procedures of the proposed repository; safety and environmental analyses; plans for transporting nuclear wastes to the repository; and plans for providing federal impact aid or other assistance to States and localities affected by it.

If a Repository Review Panel has been convened with respect to the proposed repository pursuant to section 401, the Committee is to consult closely with the Panel while preparing the Report.

Upon completing the Report, the Committee shall submit it to the Review Panel. After a 90-day review period, the Chairman of the Panel (the Governor of the State containing the facility) may submit formal objections to the Report to the Committee if he believes that the Report does not adequately protect state and local interests. (See Section 403.) The Committee must then submit the Report, together with such objections, if any, to the Congress.

If the Chairman has not raised formal objections, the apropriate federal agency may proceed with construction or licensing of the repository.

If the Chairman has raised objections, the construction or licensing of the repository may not proceed unless Congress passes a concurrent resolution, pursuant to the procedures set forth in section 304, stating that the Report equitably balances State, local, and national interests.

If Congress does not pass the resolution within the 60 day period, construction or licensing of the repository may not proceed unless and until a revised Repository Development Report has been prepared following the same procedures for preparation and review outlined above; and, either (1) the Chairman of the relevant Panel does not formally object to such revised Report or (2) if he does object, Congress passes a concurrent resolution (as above) with respect to the revised report.

303(f) Repository Loading Reports. Prior to the submission to the NRC by any federal agency or department of an application for a license to emplace significant quantities of nuclear waste or spent fuel into a repository, or, if no such license is required, prior to emplacing such materials in a repository, the Committee is to prepare a Repository Loading Report. The Repository Loading Report shall update the information contained in the relevant Repository Development Report. The Committee shall prepare such Loading Report in consultation with the Repository Review Panel formed with respect to that repository, and upon completing such Report shall submit it to the Panel for review. The Committee shall submit the complete Loading Report and the comments of the Review Panel on it to the Congress. The procedures for submitting and resolving formal objections of the Panel shall not apply in the case of Repository Loading Reports.

Sec. 304. Congressional Review Procedures. Congress shall have 60 days of continuous session after receiving a Repository Development Report to which the Chairman of a Panel has objected in which to pass a concurrent resolution stating that the Report equitably balances local, State, and national interests.

Committees to which the Report is referred shall have 45 days of continuous session to report such a resolution, after which they would be discharged from further consideration of it. The Chairman of the Committee would be able to amend the Report for the first 30 days of continuous session after its submission. Consideration of the resolution on the floors of both Houses would be under highly expedited procedures.

Sec. 305. Effect on Other Laws. The provisions of this Act shall in no way affect the authority of the NRC to license waste facilities, nor shall it relieve any Federal department or agency of the requirements of the National Environmental Policy Act.

TITLE IV: ESTABLISHMENT, MEMBERSHIP, AND FUNCTIONS OF NUCLEAR WASTE REPOSITORY REVIEW PANELS

Sec. 401. Establishment of Nuclear Waste Repository Review Panels. Within 120 days after receiving notification of the Committee's intent to prepare a Repository Development Report for a repository in his state, the Governor of the State may form a nuclear waste Repository Review Panel.

The Repository Review Panel would remain convened until such time as the Committee formally notifies the Panel that the federal government no longer intends to construct or operate such proposed repository, or until such time as the Committee notifies the Panel that a Repository Loading Report prepared with respect to such repository has been submitted to the Congress pursuant to section 303.

Sec. 402. Membership. A Repository Review Panel would consist of the Governor convening the Panel, who would be its Chairman; seven additional State and local government officials and private citizens from that State to be appointed by the Governor; the Governors of any adjacent State or States which would be directly affected by the development of the repository in question, to be appointed by the Nuclear Waste Management Planning Council; and three representatives from each such adjacent State to be appointed by the respective Governor of that State.

Sec. 403. Functions. The Repository Review Panel would review current and planned federal actions regarding the siting, construction, and operation of the relevant proposed repository, and would participate in the preparation of the Repository Development Report for the repository and would, within 90 days after receipt of the Repository Development Report, ascertain whether the Report adequately provided for the protection of State and local interests. At the end of that 90 day period, the Chairman of the Panel, after consultation with other Panel members, could submit to the Committee formal objections that the Repository Development Report does not adequately provide for the protection of State and local interests. The Chairman would state the grounds for his decision and propose amendments to the Repository Development Report.

The Repository Review Panel would participate in the preparation of and would comment on any Repository Loading Report prepared for such repository.

● Mr. GLENN. Mr. President, the introduction of the Nuclear Waste Management Reorganization Act of 1979, which I have coauthored with Senator PERCY, is a major new initiative in our Nation's long-term effort to address the problem of disposing of radioactive wastes safely and permanently. For the past 30 years these lethal and long-lived byproducts of our nuclear weapons and civilian nuclear power programs have been accumulating at temporary storage facilities around the countary and, as nuclear power expands in the decades ahead, the amounts of radioactive wastes generated, while not excessive now, will increase in almost geometric proportions.

Serious difficulties have plagued our efforts to develop methods for disposing of these dangerous materials, and numerous technical questions remain to be resolved even today. Only last week for example, the Interagency Review Group on Nuclear Waste convened by President Carter a year ago reported that the "scientific feasibility of the mined repository concept remains to be established." Major research, development, and demonstration efforts will be needed to deal systematically with these outstanding issues.

One reason for our current lack of knowledge is that over the years the Department of Energy's predecessor agencies ERDA and AEC, gave relatively little attention to nuclear waste management and tended to minimize the overall difficulty of this task. Related research and development activities were funded at modest levels and were focused on a narrow range of waste disposal options; fundamental earth sciences questions—geology and hydrology—received little attention. Moreover, little or no account was taken of the research needs of other agencies, in particular the Nuclear Regulatory Commission and the Environmental Protection Agency which are responsible for regulating U.S. nuclear waste disposal activities.

Uncertainty still plagues executive branch nuclear waste program planning today. DOE is proceeding with its Waste Isolation Pilot Plant in Carlsbad, N. Mex., despite the fact that the basic regulatory standards necessary to evaluate the WIPP site have not been issued by the Nuclear Regulatory Commission and the Environmental Protection Agency.

This lack of coordination among concerned Federal agencies has had a coun-

terpart in the area of Federal-State relations. In particular the Federal nuclear waste disposal program has lacked adequate opportunity for State and local and public participation. Crucial siting and design decisions have been taken outside public view and, until recently, early consultation with individual States even on such vital matters as the siting of a major nuclear waste repository within their borders has often been nonexistent. In reaction to this history of Federal highhandedness many States and municipalities have enacted laws restricting the storage or transport of nuclear wastes in areas under their jurisdiction. The result is a pattern of restrictions on Federal waste management efforts which may seriously hinder our attack on this problem.

The Nuclear Waste Management Reorganization Act of 1979, which Senator PERCY and I are introducing today, attempts to remedy these difficulties by—

Creating a Federal interagency Nuclear Waste Coordinating Committee to insure an integrated government-wide approach to nuclear waste management issues based on comprehensive, annual plans;

Creating a Nuclear Waste Management Planning Council consisting of 11 State and local elected officials and 4 members of the public to participate in the development of Federal nuclear waste management policy; and

Establishing a process to give States and localities, through specially created nuclear waste repository review panels, a dramatically increased role in decisions regarding the siting of individual nuclear waste repositories. This process would permit a State to ban further work on a repository until both Houses of Congress passed a resolution overruling the State's objections.

At the Federal level the Coordinating Committee would insure the proper integration of all Federal waste management actions, including R. & D. activities, and its annual plan would provide a clear statement to the Congress and the public of the direction of the Federal program. State, local, and public views would be incorporated from the start via the advice provided by the Nuclear Waste Management Planning Council, one of whose members would sit on the interagency Coordinating Committee, to provide continuous representation of the Planning Council. This would insure substantial State input on such crucial matters as repository site selection and the role of intermediate-scale facilities.

In addition, under the bill, individual States would be immediately notified of any contemplated Federal activities within their borders regarding the siting of a nuclear waste storage or disposal facility and State participation in any Federal evaluations would be encouraged. If, on the basis of such early studies, the Federal Coordinating Committee determined to proceed with development of a repository within a given State the Committee would prepare a repository development report on the facility. At the same time, the Governor of that State would convene a nuclear waste repository review panel to work with the Federal Committee on the report being prepared and to review the final report. If the Governor, who would chair the panel, objected to the report on the ground that it did not adequately protect State and local interests, no application for a license to construct the facility could be submitted to the Nuclear Regulatory Commission—or, if no license were required, no site preparation work could begin—until Congress passed a concurrent resolution stating that the report equitably balanced State, local, and national interests.

This mechanism will insure a full review of the State's concerns, while at the same time allowing the repository to go forward if that is found to be essential to the national interest. Negotiations between the Federal Government and the State could continue after the report and the State objections were submitted to Congress. Amendments to the report reflecting the outcome of such negotiations would be possible for the first 30 days of continuous session after the report was submitted.

I believe this mechanism, by giving the States the clear right to put a freeze on further Federal activity, and giving Congress the right to review the matter and to consider it in the context of the wide range of Federal programs affecting the States involved, will allow an orderly and timely resolution of this area of potentially serious State-Federal conflict.

Mr. President, the organizational structure and procedures created by this bill will insure that decisions on the ultimate disposal of nuclear waste will proceed in a scientifically careful and informed manner, and through political and social consensus. I urge the support of my colleagues for it.●

Mr. PERCY. Mr. President, I ask unanimous consent that the nuclear waste disposal bill introduced by myself and Senator GLENN be held at the desk for further disposition and not be referred to committee until the committee referral has been worked out.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I did not hear the request. May I hear it again, please? I beg the Senator's pardon.

Mr. PERCY. Yes. I am asking unanimous consent that the decision not be made on referral of the nuclear waste disposal bill introduced today by myself and Senator GLENN until an agreement on that referral has been worked out, and that therefore, the bill be held at the desk.

Mr. ROBERT C. BYRD. May I say that when that decision has been reached I want to be sure that it is declared by the majority and minority leaders.

Mr. PERCY. Absolutely. We hope to reach an agreement and then present that agreement to the majority leader and minority leader and discuss it with them.

Mr. ROBERT C. BYRD. With that caveat, Mr. President, I will not object at this point. But the Senate has lately been afflicted by the joint committee, sequential committee referral syndrome, and it is just getting out of hand. I am going to take this matter up with the committee chairmen very soon. At the moment I will not object.

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

Mr. PERCY. The Senator from Illinois is fully aware of the majority leader's concern that joint referrals slow up the legislative process. In this case it is hoped that by working out a satisfactory agreement we can actually expedite disposition of legislation that is urgently needed, realizing that if we do not dispose of such legislation the 50 States are going to be extraordinarily concerned, together with a great many people in this country as well.

By Mr. WILLIAMS:

S. 743. A bill to amend the Immigration and Nationality Act to authorize certain courts which have naturalization jurisdiction to retain up to $20,000 of the fees collected in naturalization proceedings held in such courts in any fiscal year; to the Committee on the Judiciary.

NATURALIZATION PROCESSING COMPENSATION ACT OF 1979

● Mr. WILLIAMS. Mr. President, I am today introducing legislation to allow State courts to retain a greater share of the fees they collect for the processing of naturalization petitions.

Under current law, clerks of the State courts may retain one-half of up to $6,000 annually or $3,000 for this service. This bill would increase that limitation to $40,000, thereby allowing retention of $20,000.

This $6,000 limitation was set many years ago when the filing fee for a naturalization petition was $5. Today that fee has risen to $25, and a State court reaches its $6,000 limit when 240 petitions are filed. Presently, there are 23 State courts which receive substantially more than 240 petitions, and these judicial bodies are ineligible for further compensation for the valuable services they render to the Federal Government and courts. In a June 1977 letter to House Judiciary Chairman PETER RODINO, Assistant Attorney General Patricia M. Wald expressed the administration's support for this updating of immigration law:

> The state courts . . . relieve federal courts of workloads which they can ill afford to absorb, reduce distances of travel for both petitioners and Immigration and Naturalization Service officers, and produce savings in Service Manpower and funds. They have not been adequately compensated for their contribution to the citizenship program.

The bill which I am today submitting would raise the maximum ceiling for compensation to 1,600 petitions. It is identical to legislation introduced in the House by Representative RINALDO, and is similar to a bill which received the support of President Ford and Senator Eastland during the 94th Congress.

I hope that my colleagues will agree that, as a matter of simple equity, State courts should receive more adequate compensation for the national service

they render in the processing of naturalization documents.

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

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

S. 743

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 "Naturalization Processing Compensation Act of 1979".

SEC. 344(c) of the Immigration and Nationality Act (8 U.S.C. 1455(c)) is amended by striking out "$6,000" each place that term appears and inserting in lieu thereof "$40,000".

SEC. 2. The provisions of this act shall take effect on October 1, 1979.●

By Mr. MATSUNAGA:

S. 744. A bill to amend section 37 of the Internal Revenue Code of 1954 to increase the amount of the credit for the elderly; to the Committee on Finance.

○ Mr. MATSUNAGA. Mr. President, today I am introducing a bill to increase the elderly tax credit. The Senate version of the Revenue Act of 1978, included a provision increasing the elderly tax credit. This increase was a culmination of a long effort in the Senate Finance Committee to provide additional tax relief for the elderly.

In February of 1978, the Finance Committee approved my request for budget authority to allow later consideration of an increased credit. After subsequent hearings, the committee acted on the proposal to increase the credit and included the measure as part of the Revenue Act. Despite widespread support in the Senate, however, the Senate conferees on the Revenue Act had to recede on this measure and the provision was deleted from the final version of the Revenue Act. Failure to enact the Senate provision leaves the credit at an inadequately low amount.

The elderly tax credit is intended to provide nonsocial security retirees with the same tax benefits which social security retirees now enjoy, by virtue of the tax-exemption on social security benefits. The credit when enacted in 1976, matched the average social security benefit payments.

Since 1976, the annual social security benefit has increased to $2,808 for a retired single worker and up to $4,500 for a retired worker and his wife in July of 1977. For this reason, the Treasury in its option papers recommended to the President that the elderly credit be increased to $3,000 for a single person and to $4,500 for a couple filing jointly where both spouses are over age 65. For this same reason, I supported the increase of the elderly tax credit in 1977.

However, since that time, the average social security benefit has increased even more to create a wider disparity between the tax treatment of social security and nonsocial security retirees. In June of 1978, the social security benefits increased to an average of $3,048 for a retired single worker and to $5,196 for a retired worker and spouse. These figures indicate that the elderly tax credit increases proposed in my bill will still fall short of the credit's objective—the equal treatment of social security and nonsocial security retirees. The proposed elderly credit for a nonsocial security retiree and spouse would be $4,500, whereas the average annual social security payment would be $5,196 for a couple under social security.

This disparity must be corrected and the corresponding tax benefits extended to nonsocial security retirees as well as social security retirees. To take an initial step in solving this problem, I urge quick enactment of my bill.●

By Mr. PROXMIRE (for himself, Mr. WILLIAMS, and Mr. GARN) (by request):

S. 745. A bill to amend and extend certain Federal laws relating to housing, community and neighborhood development and preservation and related programs, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

HOUSING AND COMMUNITY DEVELOPMENT AMENDMENTS OF 1979

Mr. PROXMIRE. Mr. President, by request I am today introducing the Housing and Community Development Amendments of 1979.

That measure is cosponsored by the distinguished Senator from New Jersey (Mr. WILLIAMS), who is chairman of the Housing Subcommittee, and the Senator from Utah (Mr. GARN), who is the ranking Republican member of our committee.

This proposed legislation would provide funding authorizations for fiscal years 1980 and 1981 for the housing, community development and related programs of the Department of Housing and Urban Development. The proposal also contains a number of program extensions as well as various amendments to the Department's existing programs.

I might say, Mr. President, that none of us, Senator WILLIAMS, Senator GARN and myself, agree with the figures here. Mr. GARN and I would like to go well below what the administration is requesting. Mr. WILLIAMS might want a higher figure.

At any rate, we are introducing that at the request of the administration.

Mr. President, I ask unanimous consent that the bill, together with a letter from Secretary Harris and a section-by-section analysis be printed in the RECORD.

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

S. 745

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 "Housing and Community Development Amendments of 1979".

TITLE I—COMMUNITY AND NEIGHBORHOOD DEVELOPMENT AND CONSERVATION

REHABILITATION LOANS

SEC. 101. (a) Section 312(d) of the Housing Act of 1964 is amended by striking out "and not to exceed $245,000,000 for the fiscal year beginning on October 1, 1978" and inserting in lieu thereof "not to exceed $245,000,000 for the fiscal year beginning on October 1, 1978, not to exceed $130,000,000 for the fiscal year beginning on October 1, 1979, and such sums as may be necessary for the fiscal year beginning on October 1, 1980".

(b) Section 312(h) of such Act is amended by striking out "1979" each place it appears and inserting in lieu thereof "1981".

COMPREHENSIVE PLANNING

SEC. 102. The second sentence of section 701(e) of the Housing Act of 1954 is amended by striking out "and not to exceed $57,000,000 for the fiscal year 1979" and inserting in lieu thereof "not to exceed $57,000,000 for the fiscal year 1979, not to exceed $40,000,000 for the fiscal year 1980, and such sums as may be necessary for the fiscal year 1981".

NEIGHBORHOOD SELF-HELP DEVELOPMENT

SEC. 103. Section 705 of the Housing and Community Development Amendments of 1978 is amended by adding ", and such sums as may be necessary for the fiscal year 1981" immediately after "1980".

LIVABLE CITIES

SEC. 104. Section 807 of the Housing and Community Development Amendments of 1978 is amended by striking out "and not to exceed $10,000,000 for fiscal year 1980" and inserting in lieu thereof "not to exceed $10,000,000 for fiscal year 1980, and such sums as may be necessary for fiscal year 1981".

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

SEC. 105. (a) Section 103(c) of the Housing and Community Development Act of 1974 is amended by striking out "a sum not in excess of $400,000,000 for supplemental grant assistance under section 119 for each of the fiscal years 1978, 1979, and 1980" and inserting in lieu thereof "for supplemental grant assistance under section 119 a sum not in excess of $400,000,000 for each of the fiscal years 1978 and 1979, and a sum not in excess of $675,000,000 for the fiscal year 1980".

(b) Section 104(b)(3) of the Housing and Community Development Act of 1974 is amended to read as follows:

"(3) The Secretary may waive all or part of the requirements contained in paragraphs (1), (2), and (3) of subsection (a) if (A) the application does not involve a comprehensive community development program, as determined by the Secretary, and (B) the Secretary determines that, having regard to the nature of the activity to be carried out, such waiver is not inconsistent with the purposes of this title.".

(c) Section 106(m) of such Act is amended by striking out "or fiscal year 1979" and inserting in lieu thereof ", fiscal year 1979 or fiscal year 1980".

TITLE II—HOUSING ASSISTANCE PROGRAMS LOW-INCOME HOUSING

SEC. 201. (a) The first sentence of section 5(c) of the United States Housing Act of 1937 is amended—

(1) by striking out "and" immediately after "October 1, 1977,"; and

(2) by inserting immediately after "on October 1, 1978" the following: ", by $1,140,661,275 on October 1, 1979, and by $1,140,661,275 on October 1 1980,".

(b) Section 9(c) of such Act is amended—

(1) by striking out "and" immediately after "on or after October 1 1977,"; and

(2) by inserting immediately before the period at the end thereof the following: ", not to exceed $741,500,000 on or after October 1, 1979, and not to exceed $848,000,000 on or after October 1, 1980".

OPERATING ASSISTANCE FOR TROUBLED MULTIFAMILY HOUSING PROJECTS

SEC. 202. (a) Section 201 of the Housing and Community Development Amendments of 1978 is amended—

(1) by inserting immediately before "assisted" in subsection (c)(1)(A) the follow-

ing: "covered by a mortgage insured under the National Housing Act (or formerly so insured and assigned to the Secretary) and is";

(2) by striking out "except that, in the case of any such project which is not insured under the National Housing Act such assistance may not be provided before October 1, 1979;" in subsection (c)(1)(A);

(3) by striking out ", together with the mortgagee in the case of a project not insured under the National Housing Act," in subsection (d)(3); and

(4) by inserting immediately before the period at the end of the first sentence of subsection (h) the following: ", not to exceed $82,000,000 for the fiscal year 1980, and not to exceed $90,000,000 for the fiscal year 1981".

(b) Section 236(f)(3)(B) of the National Housing Act is amended—

(1) by inserting immediately after "October 1, 1978," in the first sentence the following: "or credited to such fund prior to October 1, 1978 but remaining unobligated on October 31, 1978,"; and

(2) by striking out "September 30, 1979" in the third sentence and inserting in lieu thereof "September 30, 1981".

TITLE III—PROGRAM AMENDMENTS AND EXTENSIONS

EXTENSION OF FEDERAL HOUSING ADMINISTRATION MORTGAGE INSURANCE PROGRAMS

SEC. 301. (a) Section 2(a) of the National Housing Act is amended by striking out "October 1, 1979" in the first sentence and inserting in lieu thereof "October 1, 1981".

(b) Section 217 of such Act is amended by striking out "September 30, 1979" and inserting in lieu thereof "September 30, 1981".

(c) Section 221(f) of such Act is amended by striking out "September 30, 1979" in the fifth sentence and inserting in lieu thereof "September 30, 1981".

(d) Section 235(m) of such Act is amended by striking out "September 30, 1979" and inserting in lieu thereof "September 30, 1981".

(e) Section 236(n) of such Act is amended by striking out "September 30, 1979" and inserting in lieu thereof "September 30, 1981".

(f) Section 244(d) of such Act is amended—

(1) by striking out "September 30, 1979" in the first sentence and inserting in lieu thereof "September 30, 1981"; and

(2) by striking out "October 1, 1979" in the second sentence and inserting in lieu thereof "October 1, 1981".

(g) Section 245 of such Act is amended by striking out "September 30, 1979" where it appears and inserting in lieu thereof "September 30, 1981".

(h) Section 809(f) of such Act is amended by striking out "September 30, 1979" in the second sentence and inserting in lieu thereof "September 30, 1981".

(i) Section 810(k) of such Act is amended by striking out "September 30, 1979" in the second sentence and inserting in lieu thereof "September 30, 1981".

(j) Section 1002(a) of such Act is amended by striking out "September 30, 1979" in the second sentence and inserting in lieu thereof "September 30, 1981".

(k) Section 1101(a) of such Act is amended by striking out "September 30, 1979" in the second sentence and inserting in lieu thereof "September 30, 1981".

EXTENSION OF FLEXIBLE INTEREST RATE AUTHORITY

SEC. 302. Section 3(e) of the Act entitled "An Act to amend chapter 37 of title 38 of the United States Code with respect to the veterans' home loan program, to amend the National Housing Act with respect to interest rates on insured mortgages, and for other purposes", approved May 7, 1968, as amended, is amended by striking out "October 1, 1979" and inserting in lieu thereof "October 1, 1981".

EXTENSION OF EMERGENCY HOME PURCHASE ASSISTANCE ACT OF 1974

SEC. 303. Section 3(b) of the Emergency Home Purchase Assistance Act of 1974 is amended by striking out "October 1, 1979" and inserting in lieu thereof "October 1, 1980".

TEMPORARY MORTGAGE ASSISTANCE PAYMENTS

SEC. 304. (a) Section 230 of the National Housing Act is amended by—

(1) designating "SEC. 230." as "SEC. 230. (a)";

(2) inserting after "by recasting the unpaid balance," in the first sentence of subsection (a) as so designated, the following: "or has previously made monthly payments due under the mortgage pursuant to subsection (b),"; and

(3) adding at the end thereof a new subsection (b) as follows:

"(b)(1) As an alternative to the acquisition of a loan and security therefor under subsection (a), the Secretary may, in the Secretary's discretion, make all or part of the monthly payments due under the mortgage directly to the mortgagee on behalf of the mortgagor in cases involving default caused by circumstances beyond the mortgagor's control which render the mortgagor temporarily unable to correct a mortgage delinquency and to resume full mortgage payments. Payments may be made only in accordance with the provisions of this subsection and shall be subject to any additional requirements the Secretry may prescribe.

"(2) No payments may be provided hereunder unless the Secretary has determined that such payments are necessary to avoid foreclosure and that there is a reasonable prospect that the mortgagor will be able—

"(A) to resume full mortgage payments upon termination of assistance under this subsection;

"(B) to commence repayment of the payments made hereunder at a time designated by the Secretary; and

"(C) to pay the mortgage in full by its maturity date or by a later date for completing the mortgage payments previously approved by the Secretary under section 204(a) of this Act.

"(3) Payments under this subsection may be in an amount determined by the Secretary, in the Secretary's discretion, up to the amount of the principal, interest, taxes, assessments, ground rents, hazard insurance, and mortgage insurance premiums due under the mortgage, and the initial payment may include an amount necessary to make the mortgage current. Payments may not exceed amounts which the Secretary determines to be reasonably necessary to supplement the amounts, if any, which the mortgagor is capable of contributing toward the mortgage payments.

"(4) Payments may be provided for a period of not to exceed eighteen months, inclusive of any period of default for which payments are provided. Such period may be extended, in the Secretary's discretion, for not to exceed eighteen additional months where the Secretary has determined that, because of unforeseen changes in the mortgagor's financial circumstances, such extension will be necessary to avoid foreclosure and that there is a reasonable prospect that the mortgagor will be able to make the payments and repayments specified under subsection (b)(2)(A), (B), and (C). The Secretary shall establish procedures for periodic review of the mortgagor's financial circumstances for the purpose of determining the necessity for continuation, termination, or adjustment in the amount, of the payments. Payments shall be discontinued at any time when the Secretary determines that, because of changes in the mortgagor's financial circumstances, the payments are no longer necessary to avoid foreclosure or that there is no longer a reasonable prospect that the mortgagor will be able to make the payments and repayments specified under subsection (b)(2)(A), (B), and (C).

"(5) All payments shall be secured by such obligation as the Secretary may require, and such obligation shall include a lien on the mortgaged property. Payments shall be repayable upon terms and conditions prescribed by the Secretary, and such terms and conditions may include requirements for repayment of any amount paid by the Secretary toward a mortgagee's expenses in connection with the payments or repayments hereunder. The Secretary may establish appropriate interest charges on payments made under this subsection which shall be payable notwithstanding any provision of State or local law which limits the rate of interest on loans or advances of credit, except that interest shall not be charged at a rate which exceeds the maximum interest rate applicable with respect to mortgages insured pursuant to section 203(b) of this Act.

"(6) Payments under this subsection may be made whether or not the Secretary has previously taken action to avoid mortgage acquisition or foreclosure, except that payments may be provided with respect to a mortgage previously assisted under this subsection only under limited conditions prescribed by the Secretary.

"(7) All expenditures made pursuant to this subsection shall be made from the insurance fund chargeable for insurance benefits on the mortgage covering the property to which the payments made hereunder relate, and any payments received hereunder shall be credited to such fund. For purposes of this subsection, expenditures may include amounts paid by the Secretary toward a mortgagee's expenses in connection with payments or repayments hereunder.

"(8) No payments shall be made under this subsection after September 30, 1984, except that payments which have been commenced on or before such date may be continued beyond such date as provided under paragraph (4) of this subsection.".

(b) The caption of section 230 of such Act is amended to read as follows: "TEMPORARY MORTGAGE ASSISTANCE PAYMENTS AND ACQUISITION OF MORTGAGES TO AVOID FORECLOSURE".

INCREASE IN SECTION 235 MORTGAGE LIMITS IN REVITALIZATION AREAS

SEC. 305. Section 235 of the National Housing Act is amended by adding at the end thereof the following new subsection:

"(o) The Secretary may insure a mortgage under this section involving a principal obligation which exceeds, by not more than 25 per centum, the maximum limits specified under subsection (b)(2) or (i)(3) of this section if the mortgage relates to a dwelling in an area designated by the Secretary as an area undergoing significant revitalization activity and the Secretary determines that such action is necessary to enable eligible families already residing in such area to remain in the area as homeowners.".

RESEARCH AUTHORIZATIONS

SEC. 306. Title V of the Housing and Urban Development Act of 1970 is amended by striking out in the second sentence of section 501 "and not to exceed $62,000,000 for the fiscal year 1979" and inserting in lieu thereof "not to exceed $62,000,000 for the fiscal year 1979, not to exceed $53,000,000 for the fiscal year 1980, and such sums as may be necessary for the fiscal year 1981".

FEDERAL HOUSING ADMINISTRATION GENERAL INSURANCE FUND

SEC. 307. Section 519(f) of the National Housing Act is amended to read as follows:

"(f) There are authorized to be appro-

priated such sums as may be necessary from time to time to cover losses sustained by the General Insurance Fund.".

HOUSING FOR THE ELDERLY OR HANDICAPPED

SEC. 308. Section 202(a)(4)(B)(i) of the Housing Act of 1959 is amended by striking out "and to $3,300,000,000 on October 1, 1978" and inserting in lieu thereof "to $3,300,000,000 on October 1, 1978, and to $3,800,000,000 on October 1, 1979,".

LEGISLATIVE REVIEW PROCEDURES

SEC. 309. Section 7(o)(3) of the Department of Housing and Urban Development Act as added by section 324 of the Housing and Community Development Amendments of 1978, is amended by striking out the second sentence.

SECTION-BY-SECTION EXPLANATION AND JUSTIFICATION

TITLE I—COMMUNITY AND NEIGHBORHOOD DEVELOPMENT AND CONSERVATION REHABILITATION LOANS

Section 101(a) of the bill would amend section 312(d) of the Housing Act of 1964 to authorize the appropriation of an amount not to exceed $130 million for fiscal year 1980 and such sums as may be necessary for fiscal year 1981. The funding amount sought for fiscal year 1980 would provide a program level for the section 312 program of $185 million for that year, and is necessary to continue this program at levels sufficient to carry out the President's Urban Policy Initiatives.

Section 101(b) would amend section 312(h) of the Act to extend the Secretary's authority to make section 312 loans through fiscal year 1981. Under present law, this authority will expire on Sepetmber 30, 1979. The extension through fiscal year 1981 corresponds to the period for which authorizations for appropriations are being sought for the program.

Comprehensive planning

Section 102 would amend section 701(e) of the Housing Act of 1954 by authorizing the appropriation of not to exceed $40 million for fiscal year 1980 and such sums as may be necessary for fiscal year 1981 for the section 701 comprehensive planning assistance program. This would extend the 701 program into fiscal years 1980 and 1981, and provide financial assistance to prepare State and regional strategies to guide decision of State and local governments to support National policy objectives and to undertake related planning and management activities.

Neighborhood self-help development

Section 103 would amend section 705 of the Housing and Community Development Amendments of 1978 to authorize the appropriation of such sums as may be necessary for fiscal year 1981 for the Neighborhood Self-Help Development Act of 1978. Existing law authorizes the appropriation of up to $15 million for this program for fiscal year 1980.

Livable cities

Section 104 would amend section 807 of the Housing and Community Development Amendments of 1978 to authorize the appropriation of such sums as may be necessary for fiscal year 1981 for the Livable Cities Act of 1978. Existing law authorizes the appropriation of up to $10 million for this program for fiscal year 1980.

Community development block grant program

Section 105(a) would amend section 103(c) of the Housing and Community Development Act of 1974, as amended, to authorize the appropriation of up to an additional $275 million for fiscal year 1980 for the urban development action grant program contained in section 119 of that Act. Existing law authorizes the appropriation of up to $400 million for the program for fiscal year 1980.

The action grant program was enacted by the Housing and Community Development Act of 1977 (P.L. 95-128) as a major new initiative for the Nation's distressed urban areas. Under this program, the Secretary is authorized to make urban development action grants to severely distressed cities and urban counties to help alleviate physical and economic deterioration through reclamation of neighborhoods having excessive housing abandonment or deterioration, and through community revitalization in areas of population outmigration or stagnating or declining tax base. These grants are designed to provide a flexible funding mechanism to take advantage of unique opportunities to attract and leverage private investment into severely distressed communities. The additional $275 million authorization proposed for fiscal year 1980 would significantly enhance the Department's ability to provide action grant assistance to severely distressed localities.

Section 105(b) would amend section 104(b)(3) of the Housing and Community Development Act of 1974 by authorizing the Secretary to waive all or part of the program summary, formulation and description requirements contained in section 104(a)(1), (2), and (3), respectively, where an application does not involve a comprehensive community development program, as determined by the Secretary, and the Secretary determines that, having regard to the nature of the activity to be carried out, such waiver is not inconsistent with the purposes of the block grant program. This would eliminate the additional requirement in existing law which limits such waivers to applications involving communities which are located outside an SMSA, or inside an SMSA but outside an "urbanized area," and which have a population of 25,000 or less. Experience has shown that there is no basis for treating applicants for single-purpose funding under the block grant program differently solely on the basis of their size or geographical location. This amendment would permit all single-purpose activity applicants to be treated alike, would reduce the paper burden on affected communities and would simplify HUD's administration of the block grant program.

Section 105(c) would amend section 106(m) of the Housing and Community Development Act of 1974 by extending through fiscal year 1980 the provision that, if the total amount available for distribution under section 106 is insufficient to meet all entitlement funding requirements, and funds are not otherwise appropriated to meet the shortfall, the deficiency is to be made up through a pro-rata reduction in all section 106 grants. Under present law, this authority is available only through fiscal year 1979. On the basis of projected increased SMSA entitlement funding demand, there is a clear possibility that amounts available in fiscal year 1980 for entitlement grants will be inadequate. The proposed amendment to section 106(m) would assure the availability of an equitable reapportionment mechanism should any entitlement deficiency actually materialize in fiscal year 1980.

TITLE II—HOUSING ASSISTANCE PROGRAMS

Low-income housing

Section 201(a) of the bill would amend section 5(c) of the United States Housing Act of 1937 to provide, subject to approval in an appropriation Act, annual contributions contract authority for the public housing and Section 8 Housing Assistance Payments programs in amounts of $1,140,661,275 on October 1, 1979 and of $1,140,661,275 on October 1, 1980. In fiscal year 1980, this contract authority would allow the Department to make commitments for up to an additional 250,000 units under the Section 8 Housing Assistance Payments program, including up to 105,600 newly-constructed units, 41,800 substantially rehabilitated units, and 102,600 existing units. The existing units would include up to 40,000 units to be repaired and upgraded under the moderate rehabilitation program. This contract authority would also support up to 50,000 additional units of public housing, including up to 4,000 units under the Indian Housing program.

Section 201(b) would amend section 9(c) of the 1937 Act to provide an additional authorization of not to exceed $741,500,000 on or after October 1, 1979 and not to exceed $848,000,000 on or after October 1, 1980 for operating subsidies for public housing projects pursuant to that Act. These funds, to be distributed pursuant to the Performance Funding System formula, should allow approximately 2,000 public housing agencies which manage their projects efficiently to keep pace with rising operating and utility costs. In 1980 more than 1 million public housing units will receive operating assistance under this System.

Operating assistance for troubled multifamily housing projects

Section 202(a)(1) of the bill would amend section 201(c)(1)(A) of the Housing and Community Development Amendments of 1978 by deleting the Secretary's discretionary authority to provide operating subsidies under section 201 to troubled multifamily housing projects which, though HUD-assisted, are not covered by a mortgage which is insured under the National Housing Act.[1] Under existing section 201(c)(1)(A), projects which are assisted under section 236 or the section 221(d)(3) (BMIR) programs of the National Housing Act, or under the rent supplement program of the Housing and Urban Development Act of 1965, would be eligible for assistance on or after October 1, 1979, even if not covered by a mortgage insured under the National Housing Act.

Section 202(a)(2) would delete the existing prohibition under section 201(c)(1)(A) of the 1978 Amendments against providing assistance before October 1, 1978 to non-FHA insured projects, since these projects would, under the proposal, no longer be eligible under section 201(c)(1)(A) in any event.

For the same reason, section 202(a)(3) would delete the requirement under section 201(d) of the 1978 Amendments that, before making section 201 assistance available, the Secretary must determine that the mortgagee, in the case of a project not insured under the National Housing Act, will also provide assistance to that project. The existing requirement for the Secretary's determination that a project owner will provide such assistance would remain unchanged.

The more restrictive eligibility requirements under these proposed amendments are consistent with the original concept of the "troubled projects" proposal as submitted by this Department to the 95th Congress, under which eligibility would have been limited to projects insured under the National Housing Act.

Among the long-range objectives which may be achieved by the management improvements resulting from the troubled projects program are the prevention of additional assignments and foreclosures and the mitigation of otherwise potentially excessive losses from insurance claims, as well as the avoidance of substantial rent increases and physical deterioration in HUD-assisted proj-

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[1] For purpose of this discussion, an "insured" mortgage includes a mortgage formerly insured under the National Housing Act and assigned to the Secretary.

ects for which the Department has a direct responsibility.

In addition, the Department believes that the maximum benefit can be derived from the use of the limited resources under the program by concentrating on HUD-insured projects whose management is directly supervised by HUD so that subsidy dollars will be closely monitored to assure an efficient distribution of the subsidy and greater control over project expenditures. It is essential that these resources be utilized efficiently and effectively to assure that these projects retain their financial and physical soundness and remain accessible to those families which they were designed to benefit. Accordingly, the proposed deletion of authority with respect to non-insured projects would preclude the provision of assistance to projects which, though HUD subsidized, are not in a position to be regulated or monitored to achieve the goals for which the program has been designed.

Section 202(a)(4) would amend section 201 (h) of the Housing and Community Development Amendments of 1978 to provide a funding authorization of not to exceed $82,000,000 for fiscal year 1980 and not to exceed $90,000,000 for fiscal year 1981 for providing operating subsidies to troubled multifamily housing projects under section 201.

In addition, it is anticipated, as discussed below, that an estimated $9,000,000 will be available for such payments in fiscal year 1980 from excess rental charges collected under section 236 of the National Housing Act and deposited in the rental housing assistance fund established under section 236(g) of that Act. This amount, together with the $82,000,000 funding authorization proposed for fiscal year 1980, would be used for assisting an estimated 2,440 projects pursuant to the provisions of section 201 of the 1978 Amendments.

Section 202(b)(1) would amend section 236(f)(3)(B) of the National Housing Act to direct the Secretary to utilize amounts credited to the section 236 rental housing assistance fund prior to October 1, 1978, but remaining unobligated on October 31, 1978 (the date of enactment of the 1978 Amendments), for the sole purpose of carrying out the section 201 troubled projects program. Existing law directs the Secretary to utilize amounts credited to that fund on or after October 1, 1978 solely for such purpose. The Congress had omitted from this requirement monies credited to the rental housing assistance fund before that date so as not to prejudice a pending dispute between the Department and tenants regarding the use of the section 236 tax and utility subsidy program. Settlement or resolution of these matters left unobligated, as of the date of enactment of the 1978 Amendments, $2.766 million of the amounts credited to the rental housing assistance fund prior to October 1, 1978. This proposed amendment to section 236(f)(3)(B) would fulfill the stated expectation of the conference managers on the 1978 Amendments that, in the event that the disposition of the dispute between the Department and tenants left monies unobligated in the rental housing assistance fund, legislative action would be taken to make such funds available for the section 201 troubled projects program.

Section 202(b)(2) would further amend section 236(f)(3)(B) by providing that no amounts may be approved in an appropriation Act for payments from the section 236 rental housing assistance fund for the section 201 troubled projects program for any fiscal year beginning after September 30, 1981. The 1978 Amendments prohibit any amount from being so approved for any fiscal year beginning after September 30, 1979. This proposed amendment is necessary to permit the rental housing assistance fund to be utilized for the troubled project program during fiscal years 1980 and 1981. The Department intends to request approval, in the HUD Appropriation Act for fiscal year 1980, to use the $9 million expected to be received in the rental housing assistance fund during fiscal year 1980.

TITLE II—PROGRAM AMENDMENTS AND EXTENSIONS

Extension of Federal Housing Administration mortgage insurance programs

Section 301 of the bill would extend for two years (through September 30, 1981) the authority of the Secretary of Housing and Urban Development to insure mortgages or loans under certain HUD-FHA mortgage or loan insurance programs contained in the National Housing Act.

Under existing law, the authority of the Secretary of Housing and Urban Development to insure mortgages and loans under these programs will expire on September 30, 1979. After that date, the Secretary may not insure mortgages or loans under any of the major HUD-FHA insuring authorities contained in that Act except, pursuant to a commitment to insure issued before that date.

Insuring authorities which will expire on September 30, 1979 include those for the following HUD-FHA mortgage or loan insurance programs: title I—property improvement and mobile home loan insurance; section 203—basic home mortgage insurance; section 207—rental housing insurance; section 213—cooperative housing insurance; section 220—rehabilitation and neighborhood conservation housing insurance; section 221—housing for moderate-income and displaced families; section 222—mortgage insurance for servicemen; section—223 miscellaneous housing insurance, including insurance in older, declining urban areas and for existing multifamily housing projects; section 231—housing for the elderly; section 232—nursing homes; section 233—experimental housing; section 234—condominiums; section 235—homeownership for lower income families; section 236—rental and cooperative housing for lower income families; section 237—special mortgagors; section 240—homeowner purchases of fee simple title; section 241—supplemental loans for multifamily housing projects; section 242—hospitals; section 243—homeownership for middle-income families; section 244—mortgage insurance on a co-insurance basis; section 245—mortgage insurance on graduated payment mortgages; title VIII—armed forces related housing; title X—land development; and title XI—group practice facilities.

The proposed two-year extension of the above mortgage insuring authorities is designed to guarantee the continued availability of FHA mortgage insurance and thus to maintain and enhance the Department's capacity to contribute to achievement of the national housing goal of "a decent home and a suitable living environment for every American family."

Extension of flexibility interest rate authority

Section 302 would extend, through September 30, 1981, the Secretary's authority administratively to set interest rates for FHA-insured mortgage loans to meet the market at rates above statutory maximum. Under existing law, this authority will expire on September 30, 1979.

Extension of Emergency Home Purchase Assistance Act of 1974

Section 303 of the bill would extend, from October 1, 1979 to October 1, 1980, the authority of the Government National Mortgage Association to enter into new commitments to purchase mortgages under the interim mortgage purchase authority contained in section 313 of the National Housing Act, as added by the Emergency Home Purchase Assistance Act of 1974.

The Emergency Home Purchase Assistance Act of 1974 added section 313 to the National Housing Act authorizing interim or standby authority to purchase mortgages. This authority is subject to a finding by the Secretary that inflationary conditions and related governmental actions or other economic conditions are having a severely disproportionate effect on the housing industry and that a resulting reduction in the volume of home construction or acquisition seriously threatens to affect the economy and to delay the orderly achievement of national goals. The purchase authority also must be released in appropriations Acts.

Mortgage interest rates under the program must not exceed the lesser of 7½ percent or the rate prescribed for mortgages under section 203(b) of the National Housing Act. The Act authorizes the purchase of conventional mortgages, as well as mortgages insured by FHA or guaranteed by the VA.

A total of $7.75 billion was authorized by the Emergency Home Purchase Assistance Act of 1974 and was released by June 24, 1975. The total was fully committed by August 1, 1975. The Emergency Housing Act of 1975 authorized an additional $10 billion, subject to release in an appropriation Act. The 1976 Appropriation Act released $5 billion, of which $3 billion was made available in January 1976. An additional $2 billion was made available in September 1976 and, as of September 2, 1977, all remaining released emergency authority, with the exception of a contingency reserve for amendments to existing contracts, was committed. The 1979 Appropriation Act released $1 billion of recaptured authority. No portion of this amount has been made available and, as noted above, its availability is subject to certain statutory findings.

Temporary mortgage assistance payments

Section 304(a)(1) of the bill would designate existing section 230 of the National Housing Act as section 230(a). Section 230 now authorizes the Secretary, upon receiving a notice of default and for the purpose of avoiding foreclosure, to acquire the loan and security with respect to a mortgage insured under the National Housing Act covering a single family (one-, two-, three-, or four-family) dwelling.

Section 304(a)(2) would amend the first sentence of section 230(a) to provide that the Secretary may exercise the authority to acquire the loan and security, notwithstanding the fact that the Secretary has previously made monthly payments due under the mortgage pursuant to the authority under new subsection 230(b) described below.

Section 304(a)(3) would add a new subsection (b) to section 230. Paragraph (1) of the proposed new subsection would authorize the Secretary, as an alternative to acquisition under section 230(a), to make monthly mortgage payments directly to the mortgagee on behalf of owners of FHA-insured single family dwellings whose monthly mortgage payments are in default. The default would have to have been caused by circumstances beyond the mortgagor's control which render the mortgagor temporarily unable to correct the delinquency and resume full mortgage payments.

As is the case under the existing authority under section 230, the proposed new authority would be exercisable upon the Secretary's receiving notice of default and in the Secretary's discretion. Payments could

be made only in accordance with the provisions of the new subsection and would be subject to any additional requirements prescribed by the Secretary.

This proposed authority would serve as an additional means of assisting homeowners who are experiencing temporary financial distress to maintain ownership and occupancy of their homes.

It is estimated the in fiscal year 1980 the proposed alternative to assignment would result in the prevention of as many as 3,000 assignments, with a $51.4 million reduction in outlays for claims payments offset by an estimated $5.2 million in outlays for payments under the proposed new authority.

Paragraph (2) would provide that no payments could be made unless the Secretary determines that the payments are necessary to avoid foreclosure and that there is a reasonable prospect that the mortgagor will be able to:

Resume full mortgage payments upon termination of assistance under the proposal;

Commence repayment of the payments made by the Secretary at a time designated by the Secretary; and

Pay the mortgage in full by its maturity date, or by a later date for completing the mortgage payments previously approved by the Secretary under section 204(a) of the National Housing Act.

Paragraph (3) would provide that payments could be made in an amount, which would be determined in the Secretary's discretion, up to the amount of the principal, interest, taxes, assessments, ground rents, hazard insurance, and mortgage insurance premiums due under the mortgage. The initial payment could include an amount necessary to make the mortgage current. However, payments could not exceed amounts which the Secretary determines to be reasonably necessary to supplement whatever amounts the mortgagor is capable of contributing toward the mortgage payment.

Paragraph (4) would provide that payments could be made for a period of not to exceed eighteen months, inclusive of any period of default for which payments are provided. It would, however, give the Secretary the discretion to extend the payment period for not to exceed eighteen additional months where the Secretary determines that, because of unforeseen changes in the mortgagor's financial circumstances, an extension will be necessary to avoid foreclosure and that there is a reasonable likelihood that the mortgagor will be able to make the payments and repayments specified under subsection (b)(2).

In addition, the Secretary would be directed to review the mortgagor's income periodically, to determine the necessity for continuation or adjustment of the payments. The Secretary would be directed to discontinue the payments at any time when the Secretary determines that, because of the mortgagor's changed financial circumstances, the payments are no longer necessary to avoid foreclosure or there is no longer a reasonable prospect that the mortgagor will be able to make the payments and repayments specified under subsection (b)(2).

Paragraph (5) would require that all payments made under the proposed new authority would be regarded as a loan, and would be required to be secured by such obligation as the Secretary may require. It would require that obligation to include a lien on the mortgage property. It also would provide that the "loan" made under the proposed new authority is to be repayable under terms and conditions prescribed by the Secretary. It is anticipated that these terms and conditions would provide for repayment over a period that would be within the mortgagor's ability to pay. In those cases where the mortgagor's income is insufficient to permit full payment of the mortgage by its maturity date, and where the mortgagee agrees, the Secretary would have the flexibility to utilize existing authority under section 204(a) of the National Housing Act to approve recasting the unpaid balance of the mortgage over a period longer than the remaining term of the mortgage. In these instances it is anticipated that the loan would be repaid over the same term as that of the recast

It is contemplated that during the period for which payments are provided under the proposed authority, as well as during the repayment period, the responsibility for servicing the mortgage would remain with the private mortgage servicer. In this event, any payments made either by HUD or the mortgagor, including repayment of the loan, would be made directly to the mortgage servicer. Accordingly, paragraph (5) would permit the terms and conditions for repayment to include requirements for repayment of any amounts paid by the Secretary towards the mortgagee's expenses in this regard.

Paragraph (5) also would permit the Secretary to establish appropriate interest charges on the "loan". It would provide that any charges so established would be repayable notwithstanding limitations under any State or local law as to the rate of interest on loans or advances of credit. However, it would not permit interest to be charged at a rate which exceeds the maximum interest rate applicable with respect to mortgages insured pursuant to section 203(b) of the National Housing Act.

Paragraph (6) would permit assistance to be provided under the new authority even though the Secretary previously had taken action to avoid acquisition or foreclosure of the mortgage. If the Secretary previously had provided assistance under the proposed new authority with respect to the same mortgage, such assistance could be provided again at a later date in the event of a subsequent default, but only under limited conditions to be prescribed by the Secretary. It is anticipated that the Secretary will exercise the authority to provide payments with respect to a mortgage previously assisted under the new authority only in unique circumstances.

With respect to the funding of the proposal, paragraph (7) provides that all expenditures made pursuant to the proposed new authority shall be made from the insurance fund chargeable for insurance benefits on the mortgage covering the property to which the payments made under the proposal relate, and that any payments received under the new authority shall be credited to such insurance fund. It provides that, for purposes of the new authority, "expenditures" may include amounts paid by the Secretary toward the mortgagee's expenses in connection with the payments and repayments.

Paragraph (8) would provide the proposed new authority through September 30, 1984. This sunset provision would ensure evaluation of the program prior to its extension. However, it would permit payments which have been commenced on or before September 30, 1984 to be continued beyond such date pursuant to the provisions of paragraph (4), discussed above.

Section 304(b) of the bill would amend the caption of section 230 to read: "TEMPORARY MORTGAGE ASSISTANCE PAYMENTS AND ACQUISITION OF MORTGAGES TO AVOID FORECLOSURE". The existing caption reads: "ACQUISITION OF MORTGAGES TO AVOID FORECLOSURE".

Increase in section 235 mortgage limits in revitalization areas

Section 305 of the bill would add a new subsection (o) to section 235 of the National Housing Act.

The proposed new subsection would permit the Secretary to insure a mortgage under section 235 which involves a principal obligation exceeding, by not more than 25 percent, the maximum limits specified under section 235(b)(2) or (i)(3) if the mortgage relates to a dwelling unit located in an area designated by the Secretary as an area undergoing significant revitalization activity and the Secretary determines that such an action is necessary to enable eligible families already residing in the area to remain in the area as homeowners.

The mortgage limit under the section 235 program for a single family home (including a cooperative or condominium) is currently $32,000. However, where a single family home is either in a high cost area or is for a family of five or more persons, the section 235 mortgage limit is $38,000, and where both these factors exist, the mortgage limit is $44,000. The mortgage limit for a two-family dwelling under the section 235 program is $44,000, and, in high cost areas, $49,000.

The objective of the proposal is to mitigate the effect of the displacement of low- and moderate-income families caused by revitalization activities and to promote housing opportunity and integration. The proposed increases in the section 235 mortgage limits are designed to make available homeownership opportunities to families who otherwise would not be able to remain in these areas by assuring that section 235 subsidies and mortgage insurance will not be precluded because of higher housing costs resulting from significant revitalization activity.

In connection with the proposal, the Department anticipates allocating 7,000 units under the section 235 program in fiscal year 1980 for areas designated by the Secretary as experiencing significant revitalization activity.

Research authorizations

Section 306 would amend title V of the Housing and Urban Development Act of 1970 to authorize appropriations of not to exceed $53,000,000 for fiscal year 1980 and such sums as may be necessary for fiscal year 1981 for HUD programs of research, studies, testing and demonstrations as determined to be necessary and appropriate by the Secretary.

The 1980 research program continues to concentrate the Department's research resources on a smaller number of priority areas that are of major concern in terms of HUD's goals. These areas include: urban economic development; public finance and tax policy; housing for the elderly and handicapped; neighborhood reinvestment and revitalization, and reversing decline in neighborhoods; economic and racial freedom of choice in housing; and financial institution regulation and alternative housing finance mechanisms. HUD will also have underway a series of evaluations on every major operating program in the Department, accompanied with an emphasis on dissemination activities intended to stimulate interest and involvement in housing and community development programs.

Continued support will be provided to major programs initiated in prior years such as housing allowances, lead paint hazards, abandonded housing, mobile home standards

and the development of model land title recordation systems.

Federal Housing Administration general insurance fund

Section 307 of the bill would amend section 519 of the National Housing Act to strike the $1.506 billion overall limitation on appropriations authorized to cover losses of the General Insurance Fund and authorize, instead, the appropriation of such sums as may be necessary for that purpose.

Losses sustained as a result of the sale of acquired property are not a function of the amount authorized for appropriations to restore such losses. The losses represent the difference between the purchase price of units acquired through the Department's insurance activities, expenses incurred through maintenance and repair and the proceeds realized from sale of these properties. The mortgage.

authorization does not limit the loss but merely places a limitation on the amount which may be sought in recompense for losses already sustained. The present authorization limitation requires the Department to seek an increase in the amount authorized for appropriation before an appropriation to restore such losses can be enacted.

Housing for the eldery or handicapped

Section 308 would amend section 202(a)(4)(B)(i) of the Housing Act of 1959 to increase by $500 million on October 1, 1979 the limit on Treasury borrowing authority for the section 202 program of housing for the elderly or handicapped. This increase is necessary to carry out the program at the level provided for in the fiscal year 1980 Budget.

Legislative review procedures

Section 309 would strike out that portion of section 7(o)(3) of the Department of Housing and Urban Development Act, as amended, which provides for a delay of 90 days in the effectiveness of a final rule promulgated by HUD in any instance where the Banking Committee of either House of the Congress has reported out or has been discharged from further consideration of a joint resolution of disapproval of such final rule.

The only effect the proposed amendment would have on the existing legislative review process would be to eliminate the cumbersome and unworkable 90-day waiting period which is triggered by committee action. The Department of Justice has advised that this triggering mechanism is unconstitutional and, therefore, could not impose a binding requirement on HUD in any event.

Legislation to nullify the effectiveness of any rule could, of course, be adopted by the Congress at any time.

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT,
Washington, D.C., March 19, 1979.

Subject: Proposed "Housing and Community Development Amendments of 1979."

HON. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I am enclosing proposed legislation to provide funding authorizations for fiscal years 1980 and 1981 for the housing, community development and related programs of the Department of Housing and Urban Development. The proposed legislation also contains a number of program extensions. Among these are proposed extensions of HUD–FHA mortgage insurance and related authorities, and the rehabilitation loan program under section 312 of the Housing Act of 1964. The proposal would also make a number of amendments to the Department's existing programs. Enclosed for your convenience is a section-by-section justification and explanation of the proposal.

With respect to the funding authorizations proposed for fiscal year 1980, the proposal would provide, subject to approval in an appropriations Act, $1,140,661,275 of additional annual contributions contract authority for the public housing and Section 8 Housing Assistance Payments programs, and would authorize the appropriation of an additional $741.5 million on or after October 1, 1979, for operating subsidies for conventional public housing projects. The proposed additional annual contributions contract authority would allow the Department to assist up to an estimated 300,000 units of housing for lower income families in fiscal year 1980, including up to an additional 250,000 Section 8 units and up to 50,000 additional units of public housing. The $741.5 million authorization proposed for public housing operating subsidies in fiscal year 1980 would be distributed pursuant to the Performance Funding System formula, and should allow approximately 2,000 public housing agencies which manage their projects efficiently to keep pace with rising operating and utility costs.

The proposal would also authorize the appropriation of up to $82 million for fiscal year 1980 for providing operating subsidies to troubled multifamily housing projects under section 201 of the Housing and Community Development Amendments of 1978. In addition, the proposal contains provisions which would authorize the approval in appropriations Acts of payments from the rental housing assistance fund under section 236 of the National Housing Act for the troubled projects program through fiscal year 1981, and would remove the restriction against utilization under the program of sums credited to the section 236 fund prior to October 1, 1978, but unobligated as of October 31, 1978. It is anticipated that the $82 million funding authorization proposed for fiscal year 1980, together with some $9 million expected to accrue to the section 236 rental housing assistance fund during that fiscal year, will be used for assisting an estimated 2,440 projects.

The bill also would authorize the appropriation of up to an additional $275 million for fiscal year 1980 for the urban development action grant program contained in section 119 of the Housing and Community Development Act of 1974. Existing law authorizes the appropriation of up to $400 million for the program for fiscal year 1980. This proposed additional authorization would significantly enhance the Department's ability to provide action grant assistance to severely distressed communities.

The proposal would provide authorizations for fiscal year 1980 of $130 million for rehabilitation loans under section 312 of the Housing Act of 1964, and $40 million for comprehensive planning under section 701 of the Housing Act of 1954. These proposed funding authorizations would assure that the programs may continue to be used effectively to carry out the President's Urban Policy Initiatives, and to prepare State and regional strategies to guide decisions of State and local governments to support national policy objectives and to undertake related planning and management activities.

In addition, the proposal would provide an authorization for fiscal year 1980 of $53 million for research under title V of the Housing and Urban Development Act of 1970. The proposed authorization would enable the Department to continue supporting research begun in prior years in major fields and focusing research efforts in areas of major concern, as well as to carry out evaluations on every major operating program in the Department.

With respect to the funding authorizations for fiscal year 1981, the legislative proposal would provide additional annual contributions contract authority of $1,140,661,275 on October 1, 1980 for the public housing and Section 8 Housing Assistance Payment programs, would authorize the appropriation of not to exceed $848 million on or after October 1, 1980 for public housing operating subsidies, and would authorize the appropriation of not to exceed $90 million for the program of operating subsidies for troubled multifamily housing projects. It would also authorize the appropriation of such sums as may be necessary for the section 312 rehabilitation loan program, the Neighborhood Self-Help Development Act of 1978, the Livable Cities Act of 1978, the section 701 comprehensive planning authority, and research under title V of the Housing and Urban Development Act of 1970. These proposed authorizations for fiscal year 1981 are submitted at this time in accordance with section 607 of the Congressional Budget Act of 1974.

The proposed extensions of the HUD–FHA mortgage insurance programs and the Secretary's authority administratively to establish interest rates for FHA-insured mortgage loans through fiscal year 1981 would assure the availability without interruption of mortgage insurance under important programs contained in the National Housing Act. These programs otherwise would expire on September 30, 1979. The one-year extension, through fiscal year 1980, of the authority of the Government National Mortgage Association to enter into new commitments to purchase mortgages under the interim mortgage purchase authority contained in section 313 of the National Housing Act would assure the availability of this authority in fiscal year 1980, should the statutory criteria for implementation of the program be met.

Among the program amendments included in the bill are a proposed "Temporary Mortgage Assistance Payments" program and proposed authority for the Secretary to permit an increase of not more than 25 percent in the maximum mortgage limits specified under section 235 of the National Housing Act. The proposed "Temporary Mortgage Assistance Payments" program would provide additional authority under section 230 of the National Housing Act, through which the Secretary, as an alternative to acquisition of a single family mortgage to avoid foreclosure, could make monthly mortgage payments due under the mortgage directly to the mortgagee on behalf of a mortgagor faced with foreclosure. This program contains a sunset provision after five years to ensure evaluation of the program prior to its extension. The proposed authority regarding increases in the section 235 maximum mortgage limits could be exercised only in the case of a mortgage relating to a dwelling located in an area designated by the Secretary as an area undergoing significant revitalization activity and only if the Secretary determines that the increase is necessary to enable eligible families already residing in the area to remain in the area as homeowners.

The proposal would also make two amendments to the community development block grant program authorized under title I of the Housing and Community Development

Act of 1974. Specifically, the proposal would extend through fiscal year 1980 the authority to provide for a pro rata reduction in block grants in the event of a deficiency in amounts available to fund entitlement communities, and would provide for the waiver of certain CDBG application requirements for single-purpose grant applicants. These changes would facilitate the administration and operation of the block grant program.

Other amendments would remove the Secretary's discretionary authority to provide assistance under the troubled projects program to non-FHA-insured, but HUD-assisted multifamily projects; would remove the existing dollar limitation under section 519(f) of the National Housing Act on the amount of appropriations that may be authorized to cover losses sustained by the General Insurance Fund; and would authorize an increase in Treasury borrowing authority by $500 million on October 1, 1979 in connection with the program of housing for the elderly or handicapped under section 202 of the Housing Act of 1959.

Finally, we have submitted an amendment to strike out that portion of the Legislative Review provision included in last year's Housing and Community Development Amendments which calls for a 90-day delay in the effectiveness of a final HUD rule in any instance where the Banking Committee of either House has reported out or has been discharged from further consideration of a joint resolution of disapproval of such a final rule. This proposal would not, in our view, interfere with congressional intent, expressed in section 324 of last year's Amendments, to exercise increased oversight over HUD rulemaking. The only effect the proposed amendment would have on the existing legislative review process would be to eliminate the cumbersome and unworkable 90-day waiting period which is triggered by committee action. The Department of Justice has advised that this triggering mechanism is unconstitutional and, therefore, could not impose a binding requirement on HUD in any event. The amendment would, of course, present no obstacle to the adoption of specific legislation designed to nullify the effectiveness of any HUD rule objected to by the Congress.

Timely enactment of the enclosed proposal would provide the Department with the necessary authority to carry out effectively its responsibilities in fiscal years 1980 and 1981. I ask that the measure be referred to the appropriate committee and urge its early enactment.

The Office of Management and Budget has advised that the enactment of this legislation would be in accord with the program of the President.

Sincerely yours,

PATRICIA ROBERTS HARRIS.

By Mr. CANNON (for himself, Mr. THURMOND, Mr. GOLDWATER, Mr. HARRY F. BYRD, JR., and Mr. TALMADGE):

S.J. Res. 51. A joint resolution proposing an amendment to the Constitution to provide that electoral votes shall be proportionally divided in each State, based on the direct popular vote in that State; to the Committee on the Judiciary.

● Mr. CANNON. Mr. President, I send to the desk a resolution which provides for the proportional casting of electoral votes in each State and the District of Columbia in exact ratio to the popular votes cast for each candidate for President and Vice President at the polls.

The purpose of this legislation is to first, abolish the office of Presidential elector; second, preserve the electoral votes of each State pursuant to the Constitution; third, insure that the votes are counted before the Senate and House with electoral votes apportioned down to one-thousandth to each candidate; and fourth, provide that the Senate and House act if no candidate receives 40 percent of the votes. Under such circumstances the Senate and House together, by majority vote of both Houses, would choose the President and, by the same method, the Vice President.

Briefly, after the date of a Presidential election, the official election returns of each State would be forwarded to the President of the Senate. Early in January the votes would be counted and each person for whom votes were cast for President in each State and the District of Columbia would be credited with such proportion of the electoral votes as he received of the total popular vote cast by the voters for President. In computing the electoral vote, fractional numbers less than one-thousandth would be disregarded.

The person having the greatest aggregate number of electoral votes would be President if he had at least 40 percent of the total number of electoral votes.

Otherwise, from the persons having the two greatest numbers of electoral votes, the Senate and the House of Representatives, sitting in joint session, would choose the President immediately by ballot. A majority of the votes of the combined membership of the Senate and the House of Representatives would be necessary for election. The same procedure would be followed for the election of the Vice President.

This is a so-called proportional proposal under which the States and the District of Columbia would retain their electoral votes but the office of Presidential Elector would be abolished. Lists of the popular vote for all candidates in each State and the District of Columbia would be sent to the Congress as at present, and on January 6 the votes would be counted by Congress. Each State's electoral votes would then be divided among the candidates for President in proportion to their shares of the total popular vote within the State and within the District of Columbia. Computations would be carried to not less than one-thousandth. Total electoral votes thus computed would be determined and a candidate who received at least 40 percent of such votes would be elected President.

If no candidate received at least 40 percent of the whole number of electoral votes, or if two persons received an identical number of electoral votes which would be at least 40 percent of the whole number, then from the candidates having the two greatest numbers of electoral votes for President, the Senate and the House, sitting in joint session, would choose immediately by ballot, the President. A majority of the votes of the combined membership of the Senate and House would be necessary for a choice.

The Vice President would be elected in the same manner.

The proportional plan eliminates the unit-rule, the Office of the Elector, and contingent election in the House of Representatives with each State having one vote.

By retaining the electoral vote system, it retains State influence in Presidential elections. Dividing the electoral vote of a State in proportion to the popular vote therein won by each candidate would make the electoral system much closer to a direct, popular vote, and it would more accurately reflect the popular vote than the existing system.

The distortion built into the electoral vote system would remain, however, with the proportional plan, because each State would continue to have two electoral votes for its two U.S. Senators.

The plan would reduce the chances of electing a President with less than a majority of the popular vote, without eliminating entirely the political balances achieved with the electoral vote system.

Let me close by saying that I firmly believe that the proportional plan for distribution of electoral votes down to one-thousandth of a vote meets the aims of the proponents of direct popular election system, while at the same time, preserving the constitutional balance of the States by retention of the electoral votes. I urge the Senate's favorable consideration of my plan.

Mr. President, I ask unanimous consent that an editorial from the Las Vegas Sun, published on March 18, 1979, entitled "Nevada Power Base," be printed in the RECORD.

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

NEVADA POWER BASE

Sen. Howard Cannon has challenged the proposal for direct election of presidents.

Sen. Birch Bayh, D-Ind., has sponsored the constitutional amendment after 12 years of deep study.

We have received a letter from Senator Bayh supporting the elimination of the electoral college. He points out in the letter there is some opposition to the amendment and writes, "It is ironic that a good deal of this opposition has come from senators representing states with small populations. One of the clearest conclusions which has come from the Judiciary Committee's examination of the direct popular election proposal is that it is the smaller states which are most severely disadvantaged under the Electoral College system."

NO AID TO US

We studied all the material accompanying the letter and could find nothing of consequence to back up his contention that Nevada would benefit by elimination of the electoral college.

The mathematics are extremely simple: Nevada has more power under the electoral college system with three votes out of 535

than it does in a direct election where it will have 200,000 votes out of 81 million.

An even better example is available when comparing the last presidential election in California with the results in Nevada. California had more than 7.5 million votes cast and had 45 electoral votes while Nevada cast 0.2 million votes and had three electoral votes. Each Nevada electoral vote was matched by 15 California electoral votes while each actual vote cast in the voting both in Nevada was matched by more than 37 votes cast in California.

SUBSTITUTE DIVIDER

We understand that Senator Cannon will offer a substitute retaining the electoral college but dividing each state's electoral vote proportionally among candidates according to the popular vote each receives. This appears to be a fair approach to the entire matter.

In the meantime it is refreshing to see our senior U.S. senator protecting the small (in population) state he represents. Senator Cannon's action is a clear demonstration why it is so important that our Constitution allows each state to have equal power in the U.S. Senate.

It's obvious that the elimination of the electoral college will be to the advantage of the states with large populations and would destroy our present power base during a presidential campaign.●

ADDITIONAL COSPONSORS

S. 30

At the request of Mr. McCLURE, his name was added as a cosponsor of S. 30, to repeal section 11(b) of the Federal Reserve Act.

S. 43

At the request of Mr. HEINZ, his name was added as a cosponsor of S. 43, a bill to provide for the issuance of a Federal charter to the National Ski Patrol System.

S. 220

At the request of Mr. MATSUNAGA, the Senator from North Dakota (Mr. BURDICK), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Montana (Mr. MELCHER) were added as cosponsors of S. 220, providing for the inclusion of licensed practical nursing services under the medicare and medicaid programs.

S. 246

At the request of Mr. BENTSEN, the Senator from South Dakota (Mr. PRESSLER) was added as a cosponsor of S. 246, to amend the Internal Revenue Code of 1954 to encourage greater individual savings.

S. 262

At the request of Mr. ROBERT C. BYRD, the Senator from North Dakota (Mr. BURDICK) and the Senator from Delaware (Mr. BIDEN) were added as cosponsors of S. 262, the Reform Regulation Act of 1979.

S. 445

At the request of Mr. PERCY, the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Ohio (Mr. METZENBAUM), the Senator from Oregon (Mr. HATFIELD), the Senator from South Dakota (Mr. PRESSLER), the Senator from Kentucky (Mr. FORD), the Senator from Michigan (Mr. RIEGLE), and the Senator from Delaware (Mr. BIDEN) were added as cosponsors of S. 445, the Regulatory Reform Act of 1979.

S. 446

At the request of Mr. WILLIAMS, the Senator from Massachusetts (Mr. KENNEDY), the Senator from Oregon (Mr. HATFIELD), and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of S. 446, the Equal Employment Opportunity for the Handicapped Act of 1979.

S. 522

At the request of Mr. BAYH, the Senator from Nebraska, (Mr. ZORINSKY), was added as a cosponsor of S. 522, the Judicial Council Amendments and Discipline Act of 1979.

S. 532

At the request of Mr. PRYOR, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 532, the Pension Policy Commission Act.

S. 555

At the request of Mr. MORGAN, the Senator from Arizona (Mr. DECONCINI) and the Senator from Oklahoma (Mr. BOREN) were added as cosponsors of S. 555, a bill to amend the tax laws of the United States to encourage the preservation of independent local newspapers.

S. 594

At the request of Mr. MCGOVERN, the Senator from Missouri (Mr. EAGLETON) was added as a cosponsor of S. 594, the Radioactive Waste Management Act of 1979.

S. 623

At the request of Mr. KENNEDY, the Senator from Michigan (Mr. RIEGLE) and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. 623, a bill to provide for the public financing of general elections for the U.S. Senate and for other purposes.

S. 654

At the request of Mr. GOLDWATER, the Senator from Arkansas (Mr. PRYOR) and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. 654, a bill to remove residency requirements and acreage limitations applicable to land subject to reclamation laws.

S. 669

At the request of Mr. BAYH, the Senator from Rhode Island, (Mr. CHAFEE), was added as a cosponsor of S. 669 on Industrially Funded Personnel.

S. 696

At the request of Mr. JAVITS, the Senator from Montana (Mr. MELCHER) was added as a cosponsor of S. 696, the Marihuana Control Act of 1979.

S. 715

At the request of Mr. BELLMON, the Senator from New York (Mr. JAVITS) was added as a cosponsor of S. 715, a bill to allow State and local governments to collect State and local excise taxes on alcoholic beverages and tobacco products sold or consumed on military or other Federal reservations.

SENATE JOINT RESOLUTION 37

At the request of Mr. SASSER, the Senator from North Carolina (Mr. MORGAN) was added as a cosponsor of Senate Joint Resolution 37, to authorize the President to proclaim May 1, 1979, as National Bicycling Day.

SENATE RESOLUTION 71

At the request of Mr. TALMADGE, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of Senate Resolution 71, relating to the importance of a strong and independent Department of Agriculture.

SENATE RESOLUTION 99

At the request of Mr. CRANSTON, the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Michigan (Mr. RIEGLE) were added as cosponsors of Senate Resolution 99, relating to the West German statute of limitations applicable to war crimes.

SENATE CONCURRENT RESOLUTION 10

At the request of Mr. HEINZ, the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of Senate Concurrent Resolution 10, relating to the authorization of the red beret worn by the Army Airborne units.

AMENDMENT NO. 111

At the request of Mr. DOLE, the Senator from Wyoming (Mr. SIMPSON) was added as a cosponsor of Amendment No. 111, proposed to H.R. 2534, an act to provide for a temporary increase in the public debt, and for other purposes.

SENATE RESOLUTION 112—SUBMISSION OF A RESOLUTION TO ESTABLISH A SELECT COMMITTEE ON PRESIDENTIAL FINANCIAL TRANSACTIONS

Mr. WEICKER (for himself, Mr. BAKER, Mr. STEVENS, and Mr. DOLE) submitted the following resolution, which was referred to the Committee on Rules and Administration:

S. RES. 112

Resolved,

SECTION 1. (a) That there is hereby established a select committee of the Senate, which may be called, for convenience of expression, the Select Committee on Presidential Financial Transactions, to conduct an investigation and study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons, acting either individually or in combination with others, in the conduct of the Carter family businesses and financial activities related to them, and to determine whether in its judgment any occurrences which may be revealed by the investigation and study indicate the necessity or desirability of the enactment of new congressional legislation.

(b) The select committee created by this resolution shall consist of seven Members of the Senate, four of whom shall be appointed by the President of the Senate from the majority Members of the Senate upon the recommendation of the majority leader of the Senate, and three of whom shall be appointed by the President of the Senate from the

minority Members of the Senate upon the recommendation of the minority leader of the Senate. For the purposes of paragraph 6 of rule XXV of the Standing Rules of the Senate, service of a Senator as a member, chairman, or vice chairman of the select committee shall not be taken into account.

(c) The select committee shall select a chairman and vice chairman from among its members, and adopt rules of procedure to govern its proceedings. The vice chairman shall preside over meetings of the select committee during the absence of the chairman, and discharge such other responsibilities as may be assigned to him by the select committee or the chairman. Vacancies in the membership of the select committee shall not affect the authority of the remaining members to execute the functions of the select committee and shall be filled in the same manner as original appointments to it are made.

(d) A majority of the members of the select committee shall constitute a quorum for the transaction of business, but the select committee may fix a lesser number as a quorum for the purpose of taking testimony or depositions.

SEC. 2. That the select committee is authorized and directed to do everything necessary or appropriate to make the investigation and study specified in section 1(a). Without abridging or limiting in any way the authority conferred upon the select committee by the preceding sentence, the Senate further expressly authorizes and directs the select committee to make a complete investigation and study of the activities of any and all persons or groups of persons or organizations of any kind which have any tendency to reveal the full facts in respect to the following matters or questions:

1. Bank loans and credit extension to the Carter family businesses and whether such loans and credit extension were in conformity with applicable federal laws and regulations and accepted banking practices.

2. Personal bank loans to the President prior to the 1976 Presidential election and whether such loans were made and used in conformity with applicable federal banking and election campaign laws and regulations.

3. The investigations and audits of any matters set forth in paragraphs 1 and 2 by the Securities and Exchange Commission, the Comptroller of the Currency, the Internal Revenue Service, the Department of Justice, and the Federal Elections Commission and whether such investigations were conducted to the fullest extent under the law.

SEC. 3. (a) To enable the select committee to make the investigation and study authorized and directed by this resolution, the Senate hereby empowers the select committee as an agency of the Senate (1) to employ and fix the compensation of such clerical, investigatory, legal, technical, and other assistants as it deems necessary or appropriate; (2) to sit and act at any time or place during sessions, recesses, and adjournment periods of the Senate; (3) to hold hearings for taking testimony on oath or to receive documentary or physical evidence relating to the matters and questions it is authorized to investigate or study; (4) to require by subpena or otherwise the attendance as witnesses of any persons who the select committee believes have knowledge or information concerning any of the matters or questions it is authorized to investigate and study; (5) to require by subpena or order, any department, agency, officer, or employee of the executive branch of the United States Government, or any private person, firm, or corporation, or any officer or former officer or employee of any political committee or organization to produce for its consideration or for use as evidence in its investigation and study any books, checks, canceled checks, correspondence, communications, document, papers, physical evidence, records, recordings, tapes, or materials relating to any of the matters or questions it is authorized to investigate and study which they or any of them may have in their custody or under their control; (6) to make to the Senate any recommendations it deems appropriate in respect to the willful failure or refusal of any person to appear before it in obedience to a subpena or order, or in respect to the willful failure or refusal of any person to answer questions or give testimony in his character as a witness during his appearance before it; or in respect to the willful failure or refusal of any officer or employee of the executive branch of the United States Government or any person, firm, or corporation, or any officer or former officer or employee of any political committee or organization, to produce before the committee any books, checks, canceled checks, correspondence, communications, document, financial record, papers, physical evidence, records, recordings, tapes, or materials in obedience to any subpenas or order;

(7) to take depositions and other testimony on oath anywhere within the United States or in any other country; (8) to procure the temporary or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946; (9) to use on a reimbursable basis, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, the services of personnel of any such department or agency; (10) to use on a reimbursable basis or otherwise with the prior consent of the chairman of any other of the Senate committees or the chairman of any subcommittee of any committee of the Senate the facilities or services of any members of the staffs of such other Senate committees or any subcommittees of such other Senate committees whenever the select committee or its chairman deems that such action is necessary or appropriate to enable the select committee to make the investigation and study authorized and directed by this resolution; (11) to have access through the agency of any members of the select committee, chief majority counsel, minority counsel, or any of its investigatory assistants jointly designated by the chairman and the ranking minority member to any data, evidence, information, report, analysis or document or papers relating to any of the matters or questions which it is authorized and directed to investigate and study in the custody or under the control of any department, agency, officer, or employee of the executive branch of the United States Government having the power under the laws of the United States to investigate any alleged criminal activities or to prosecute persons charged with crimes against the United States which will aid the select committee to prepare for or conduct the investigation and study authorized and directed by this resolution; and (12) to expend to the extent it determines necessary or appropriate any moneys made available to it by the Senate to perform the duties and exercise the powers conferred upon it by this rsolution and to make the investigation and study it is authorized by this resolution to make.

(b) Subpenas may be issued by the select committee acting through the chairman or any other member designated by him, and may be served by any person designated by such chairman or other member anywhere within the borders of the United States. The chairman of the select committee, or any other member thereof, is hereby authorized to administer oaths to any witnesses appearing before the committee.

(c) In preparing for or conducting the investigation and study authorized and directed by this resolution, the select committee shall be empowered to exercise the powers conferred upon committees of the Senate by section 6002 of title 18 of the United States Code or any other Act of Congress regulating the granting of immunity to witnesses.

SEC. 4. The select committee shall make a final report of the results of the investigation and study conducted by it pursuant to this resolution, together with its findings and its recommendations, to the Senate at the earliest practicable date, but no later than November 30, 1979. The select committee may also submit to the Senate such interim reports as it considers appropriate. After submission of its final report, the select committee shall have one calendar month to close its affairs, and on the expiration of such calendar month shall cease to exist.

SEC. 5. The expenses of the select committee through November 30, 1979, under this resolution shall not exceed $500,000, of which amount not to exceed $25,000 shall be available for the procurement of the services of individual consultants or organizations thereof. Such expenses shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the select committee. The minority members of the select committee shall have one-third of the professional staff of the select committee (including a minority counsel) and such part of the clerical staff as may be adequate.

● Mr. WEICKER. Mr. President, today I am submitting a resolution creating the Senate Select Committee on Presidential Financial Transactions, to investigate the Carter family businesses and related financial matters.

I undertake this effort to reaffirm the principle that in this Nation, we have one standard of justice which is beyond political or partisan approach.

No technicality in the law should stand in the way of a full and complete investigation of this matter to the satisfaction of the Senate and the American people.●

AMENDMENTS SUBMITTED FOR PRINTING

TEMPORARY EXTENSION OF COUNTERVAILING DUTY WAIVER AUTHORITY—H.R. 1147

AMENDMENT NO. 115

(Ordered to be printed and to lie on the table.)

Mr. DOLE (for himself, Mr. HARRY F. BYRD, JR., Mr. ZORINSKY, Mr. ARMSTRONG, Mr. BELLMON, Mr. EXON, Mr. FORD, Mr. HELMS, Mr. JEPSEN, Mr. LUGAR, Mr. MCCLURE, Mr. MELCHER, and Mr. WALLOP) submitted an amendment intended to be proposed by them, jointly, to H.R. 1147, an act to extend temporarily the authority of the Secretary of the Treasury to waive the imposition of the countervailing duties.

TEMPORARY EXTENSION OF THE PUBLIC DEBT LIMIT—H.R. 2534

AMENDMENT NO. 116

(Ordered to be printed.)

Mr. LONG (for himself, Mr. BELLMON, Mr. NUNN, Mr. FORD, Mr. EXON, Mr. PACKWOOD, Mr. MAGNUSON, Mr. MUSKIE, Mr. ROBERT C. BYRD, Mr. CRANSTON, Mr. BUMPERS, Mr. HART, Mr. BENTSEN, Mr. STEWART, Mr. CHILES, and Mr. NELSON) proposed an amendment to H.R. 2534, an act to provide a temporary increase in the public debt, and for other purposes.

AMENDMENT NO. 117

(Ordered to be printed.)

Mr. DOLE proposed an amendment to H.R. 2534, supra.

NOTICES OF HEARINGS

SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT

● Mr. CHILES. Mr. President, I wish to announce that the Subcommittee on Federal Spending Practices and Open Government will be spending 1 day of hearings on S. 5, the Federal Acquisition Reform Act. This legislation is to provide policies, methods and criteria for the acquisition of property and services by executive agencies. The hearing will be on Monday, March 26, 1979, at 10:30 a.m., in room 1114 of the Dirksen Senate Office Building. This hearing replaces the one which was scheduled for Tuesday, March 13, 1979, and was canceled.●

COMMITTEE ON ENERGY AND NATURAL RESOURCES

● Mr. JACKSON. Mr. President, I wish 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 the informal system of worldwide allocation of crude oil supplies which is currently being implemented by international oil companies under the aegis of the International Energy Agency.

The hearing will be held on March 21, 1979, at 10 a.m., in room 3110 of the Dirksen Senate Office Building.

Testimony will be received from the Department of Energy concerning the current free world crude oil supply situation, the meeting of the IEA Board of Governors on March 1–2, 1979, and the data collection and price/supply monitoring system utilized by DOE. Representative U.S. oil companies will be invited to testify regarding the workings of the industry's allocation program that is distributing available crude oil and products among the 20 participating members of the IEA.

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 5 copies by April 6, 1979, to George Dowd, counsel, Committee on Energy and Natural Resources, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510.●

HEARINGS ON SENATE JOINT RESOLUTION 28, DIRECT ELECTION OF THE PRESIDENT AND VICE PRESIDENT

● Mr. BAYH. Mr. President, the Committee on the Judiciary has rescheduled hearings on Senate Joint Resolution 28, proposing a constitutional amendment for the election of the President and Vice President. The hearings are presently scheduled for Tuesday, March 27, 1979, at 2 p.m. in room 235, Russell Senate Office Building; Friday, March 30, 1979, at 9 a.m. in room 457, Russell Senate Office Building; Tuesday, April 3, 1979, at 2 p.m. in room 2228, Dirksen Senate Office Building; and Tuesday, April 9, 1979, at 9:3 a.m., in room 318, Russell Senate Office Building.

Any persons wishing to submit written statements for the hearing record should send them to Marcia Atcheson, Subcommittee on the Constitution, suite 102–B, Russell Senate Office Building, Washington, D.C. 20510.●

COMMITTEE ON ENERGY AND NATURAL RESOURCES

● Mr. JACKSON. Mr. President, the Committee on Energy and Natural Resources will hold a hearing on Tuesday, March 27, 1979, at 2 p.m., room 3110, Dirken Senate Office Building, to take testimony on the Standard Oil Co. of Ohio (Sohio) proposal to build a crude oil pipeline from Long Beach, Calif., to Midland, Tex.

Witnesses will appear by invitation only. The following have been invited to attend:

Hon. Cecil Andrus, Secretary of the Interior; Hon. James R. Schlesinger, Secretary of Energy; Hon. Edmund G. Brown, Governor of California; Mr. Alton Whitehouse, chairman of the board, Standard Oil Co. of Ohio.

Questions concerning the hearing should be addressed to Elizabeth A. Moler, staff counsel, at 224–0611.●

SUBCOMMITTEE ON PARKS, RECREATION, AND RENEWABLE RESOURCES

● Mr. JACKSON. Mr. President, I wish to announce for the information of the Senate and the public, the scheduling of a field hearing before the Subcommittee on Parks, Recreation, and Renewable Resources.

The hearing is scheduled for Monday, April 2, beginning at 9:30 a.m. in the Spalding Conference Room, Lewis and Clark State College, Lewiston, Idaho. Testimony will be heard on S. 95, 96, and 97, the Idaho primitive wilderness proposals. The subcommittee will conduct additional field hearings on these proposals in Idaho later this spring.

For further information regarding the hearing, please contact Mr. Tom Williams at 224–7145.

Those wishing to submit a written statement for the record should write to the Subcommittee on Parks, Recreation, and Renewable Resources, 3106 Dirksen Senate Office Building, Washington, D.C. 20510.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, March 27, 1979, to hold oversight hearings on the Sohio pipeline.

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

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to consider S. 14, a bill relating to Federal reclamation laws.

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

SUBCOMMITTEE ON RURAL DEVELOPMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Rural Development Subcommittee of the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Monday, April 2, 1979, beginning at 1 p.m., to hold a hearing on rural development oversight.

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

ADDITIONAL STATEMENTS

PRESIDENT CARTER IN THE MIDDLE EAST

● Mr. BUMPERS. Mr. President, President Carter, through his personal intervention in Middle East negotiations, has courageously advanced the cause of peace. As many pundits have said in recent days, we demand personal diplomacy, but we are not prepared to accept the risks. President Carter's willingness to accept the risk was the catalyst that made the Middle East Peace Treaty a reality.

An article by Terence Smith in yesterday's New York Times, describes the President's mission, and I ask that this article be printed in the RECORD.

The article follows:

WINNING TRUST WAS CARTER'S PRINCIPAL AIM, AND HE DID IT

(By Terence Smith)

WASHINGTON.—In many ways, it was reminiscent of his campaign for the Presidency. Not just because of the hectic schedule, the crowds, the motorcades and the other trappings. It was more than that.

Jimmy Carter's mission to the Middle East reflected the same kind of "born-again" confidence, the same sense of personal mission that put him in the White House in the first place. He also went about it with the same part-preacher, part-riverboat gambler approach he used in defying the odds in 1976.

The very fact that Mr. Carter pressed ahead with his journey in the face of conventional

wisdom reveals a great deal about his personality. Another President, especially one more experienced in foreign affairs, probably would not have risked the trip in the first place. He would have weighed the strategic consequences of failure, the political cost, the damage to his already shaky reputation as a leader, and decided against it.

No doubt Mr. Carter considered all these things on March 3, the day his aides say he first discussed the idea with them. At that point, the drive towards an Egyptian-Israeli peace was dead in the water. Israeli Prime Minister Menachem Begin was across the street in Blair House holding to his stated positions and Egyptian President Anwar el-Sadat was in Cairo, unwilling to come to Washington for further talks until he saw some sign of Israeli moderation.

Some sort of dramatic move was required to prevent the peace process from unraveling altogether, Mr. Carter argued, a grand gesture that either would succeed in overcoming the last obstacles or, if it failed, demonstrate to the world that the United States had gone the extra mile in its role as matchmaker. The President's top advisers were divided in their reactions to the idea. Vice President Mondale was frankly concerned that Mr. Carter would be going into a "poisoned atmosphere" with little or no prospect of success, and Jody Powell, the press secretary, warned that there was no way to control the leaks and conflicting accounts that would come out of such a situation, as there had been in the seclusion of Camp David last fall. But Zbigniew Brzezinski, the National Security Adviser, and Hamilton Jordan, the President's top political aide, liked the idea. They felt that the drama of a Presidential visit to the area might well jolt the parties out of their entrenched positions. In fact, that turned out to be the case. The greatest single pressure on the Israeli Government to reach the concessions it finally did reach was the presence of the American President sitting in the King David Hotel in Jerusalem waiting for them to move.

Another, important ingredient in Mr. Carter's decision and the outcome was his absolute confidence in his own ability to convince others of his point of view when he is given the opportunity to do it in person. This characteristic is common to successful politicians the world over—to say nothing of fundamentalist preachers and insurance salesmen—but it is especially striking in Jimmy Carter. Regardless of the issue, regardless of the adversary, he seems absolutely certain that if he can just get someone to listen—preferably one-on-one—he can persuade them of the wisdom of his argument.

He wanted to try his hand with both parties in the Middle East, his aides say, but especially with the Israelis. "He knew that a lot of distrust and concern had built up in Israel about himself and his Administration," a top Carter strategist said later. "We felt certain that if he could talk directly to the Israeli Cabinet, the Knesset and to the Israeli people, he could dispel a lot of that in person. In his breakfast meeting with the Cabinet last Monday, his televised address to the Knesset and his luncheon with the members of the key Defense and Foreign Affairs Committee, he clearly persuaded many members of his sincerity and goodwill towards Israel. "We came away feeling this was an honest man who meant what he said," one previously skeptical committee member said after their luncheon. Given the prevailing Israeli attitude toward this Southern Baptist whose first important move in the Middle East was to sell high-performance jet planes to the Arabs, that was no mean accomplishment.

The personal chemistry between Mr. Carter and the Israeli and Egyptian leaders also contributed to the success of his mission. His relationship with each is quite different, but there seem to be elements of mutual trust and confidence with both. And unlike his frequently strained personal relations with European leaders such as West German Chancellor Helmut Schmidt, where he finds himself dealing with relative peers, he occupies the clearly dominant position when talking to the Middle East leaders.

With Anwar Sadat, Jimmy Carter has an obvious rapport. "They really are friends," a Carter confidant observed the other day. "They talk easily and naturally about personal things as well as political." With Mr. Begin, on the other hand, the President has frequently been exasperated by the Prime Minister's rigidity and his lengthy perorations about Jewish history. Aides report that the two men respect each other's political skills, are unfailingly courteous with each other and have often laughed together. But they concede that they have had their difficult moments as well.

Mr. Carter used varied personal diplomatic techniques during the six-day journey, ranging from flattery with Mr. Sadat to the veiled threat to the Israeli Cabinet last Monday that he was prepared to go home emptyhanded if no further compromises were forthcoming. Although Mr. Carter left it unsaid, the Cabinet members were in little doubt who would get the lion's share of the blame for a breakdown.

In the end, however, the crucial factor seemed to be the President's success in getting both sides to trust him. His promises of economic assistance, for example, had to be taken on faith since they will not be included in the terms of the treaty.

"We trust Carter," read some of the hand-lettered banners stretched over the streets of Alexandria. And that was a large part of it.●

UNTIE THE CIA'S HANDS

● Mr. GOLDWATER. Mr. President, with each succeeding international crisis affecting the United States, we see the growing need for a strong and effective intelligence community. In fact, there has never been a time when foreign intelligence was more important to the strategic interests and future well-being of the United States. We are presently paying a bitter price for the incessant and ill-advised sniping at and downgrading of the Central Intelligence Agency. I am not saying that some of our covert activities in the past were not ill advised; what I am saying is that the mistakes of the past are no reason for the virtual destruction of this Nation's intelligence capabilities.

Mr. President, recently the Arizona Republic published an important editorial on this subject entitled "Untie the CIA's Hands." The editorial starts off with a question, "Where is the Central Intelligence Agency now that we need it?" I am moved to ask the same question. Because of its importance, I submit the editorial for printing in the RECORD.

The editorial is as follows:

UNTIE THE CIA'S HANDS

Where is the Central Intelligence Agency now that we need it?

Rarely have we needed it more in both North Yemen and Afghanistan, but the CIA cannot be found. The reason is congressional overkill.

No one can dispute the fact that several of the agency's covert operations were misguided, to say the least.

However, there is such a thing as throwing out the baby with the bath. Granting the validity of many of the criticisms that have been made of the CIA's covert operations, the fact remains that we must, at times, engage in such operations, because the communists do.

Thanks to Congress we can't.

Cuba and East Germany for years have been training South Yemen's army and police, while Soviet Russia has been supplying them with sophisticated weaponry. The CIA should have been doing the same for North Yemen. Thanks to Congress, it didn't.

Now look at what is happening.

After South Yemen invaded North Yemen, President Carter belatedly announced that he was sending North Yemen arms. One might have imagined North Yemen and Saudi Arabia, which will stand in deadly peril if South Yemen overruns North Yemen, to welcome this move. They didn't and for good reason.

On the very same day, the Kuwaiti newspaper *Al Seyassa* reported that 2,700 Cuban troops and 300 Soviet advisers had been flown into South Yemen from Ethiopia to augment the Soviet-bloc forces already there.

To North Yemen and Saudi Arabia, it seemed that Carter's move had merely given Cuba and Soviet Russia an excuse for increasing their forces.

Afghanistan is made-to-order for a CIA covert operation. A Marxist group seized power there last year with Soviet help.

The countryside has risen in revolt against the Marxist rulers. Pakistan is helping the rebels. The United States isn't because the CIA's hands are tied.

Carter has enunciated the policy that we will not meddle in another nation's internal affairs. This is a defensible policy only if Soviet Russia and its satellites keep hands off, too

There are times when we must intervene in a nation's affairs. That means we must untie the CIA's hands.●

WALTER M. MAYER

● Mr. JACKSON. Mr. President, Walter M. Mayer of Santa Fe, N. Mex., who died on February 20, 1979, was an informed public citizen who, for the benefit of the Nation, dedicated himself in his later years to public service. He was a citizen who gave serious thought to the Nation's pending energy problems long before the OPEC embargo in 1973, and in several letters to the Federal Energy Administration, he carefully laid out his thoughts on the importance of energy conservation correctly pointing out that energy conservation would provide a major cost-effective and near-term supply of energy.

More importantly, Walter Mayer diligently sought out numerous energy conservation devices and, at his own expense, traveled from his home in Santa Fe, N. Mex., to Washington, D.C., to discuss with administration officials and Members of Congress the importance of these energy saving devices. He brought to my attention and the administration's attention, the importance of such simple devices as air deflectors for trucks. The air deflector is one of the most successful of an array of devices developed since

the embargo to reduce fuel consumption in the Nation's fleet of trucks which burned 10.1 billion gallons of fuel last year. Prior to his presentation to the Department of Energy, the administration had not realized that this device alone can produce a 10-percent fuel saving, and, as a result of his work, the Deputy Secretary of the Department of Energy phoned Mr. Mayer to personally thank him for drawing his attention to the air deflector and other devices.

During the Congress discussions of the National Energy Act, much attention was focused on not only the energy wasted by the Nation but also the energy wasted by the Federal Government. During that debate, Mr. Mayer in letters to the Committee on Energy and Natural Resources and in personal discussions with me documented the inefficiency of the Federal Government's motor vehicle fleet. He recommended a more energy efficient system for managing the Federal fleet based on smaller, more efficient passenger vehicles, a rapid introduction of energy saving equipment on trucks, carpooling Federal employees, and many other initiatives which are now becoming more standard Government practices. He strongly promoted the idea that the Federal Government must set an example for the rest of the Nation on the efficient use of energy.●

SENATOR LEAHY ON AMTRAK CUTBACKS

● Mr. SCHMITT. Mr. President, the distinguished Senator from Vermont (Mr. LEAHY) recently testified before the Commerce Committee on the proposal by the Department of Transportation to drastically cut Amtrak routes throughout the United States.

His testimony presents such a forceful case for congressional disapproval of the DOT proposal that I thought the other Members of this body should have an opportunity to read his remarks. I ask that Senator LEAHY's statement be printed in full in the RECORD.

The statement follows:

STATEMENT BY SENATOR LEAHY

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before you on what I consider one of the most crucial issues before the Congress today. Congress' deliberations on this year's Amtrak's authorization bill and our decision to accept or reject DOT's proposed basic route structure for Amtrak will determine what role rail passenger service will play in meeting this country's intercity transportation needs not only for next year, but for the next decade and indeed the next generation.

I believe that rail passenger service will prove to be one of the key components of this country's transportation system in the near future. It can be the efficient, economical and dependable service which will attract and retain users. It is the most energy efficient mode of transportation available. The daily changes of our present makes it impossible to adequately predict the future, but from what we do know and what we can assume, rail passenger service can be a winner. It isn't now and it is not my intention to pretend otherwise. Amtrak has not accomplished all that was hoped for when it was created in 1971. But then, a sincere commitment to rail passenger service has also not been supported either in the agencies or in Congress.

I do not want to defend wanton federal spending or unnecessary $100 million programs. However, we cannot abrogate our responsibilities while we examine our expenditures. We cannot be so shortsighted as to fail to realize that the short-term solution of a lower federal subsidy this year, might well be saddling our children's generation with much more serious, and expensive, transportation problems in the future.

The Amtrak subsidy must also be considered against the federal subsidies other transportation modes receive. For example, we do not know how expensive an airplane ticket would be if it included the cost of FAA air comptrollers, the cost of operating the airports themselves, and the other federal largess which is absolutely crucial to the air industry's survival, but is never listed as a budget line subsidy item. I understand that a report on these costs for all transportation modes is being prepared and should be available in about 1 month. I for one, will be most interested in reading that report and urge all my colleagues to do the same.

Last year the Congress instructed DOT to recommend "an optimal intercity railroad passenger system * * *". A procedure was developed for a preliminary report, public hearings and then a final recommendation. Nowhere in these congressional deliberations was DOT told that the Congress wanted the system to meet a specific cost requirement. No dollars were discussed, no minimums, no maximums. The instruction was clear—DOT was to design the optimal system.

Somewhere along the way things got confused.

Instead of responding to this congressional instruction, DOT, in cahoots with the Office of Management and Budget, arbitrarily selected a figure, $552 million in operating subsidy, and designed a national rail passenger system within that figure. This is not only unresponsive to the congressional request, it raised serious political and legal questions as well.

Congress, not the Executive, is responsible for creating national policy. Elected officials, not anonymous bureaucrats or political appointees, were entrusted with this task, because we have a direct responsibility to the people of this nation, our constituents. This is a basic, constitutional requirement. It is not to be ignored, bypassed, or forgotten.

However, this DOT plan represents an Executive power play designed to usurp the constitutional delegation and separation of power. Make no mistake, when DOT and OMB decided how much they would spend on an Amtrak system, they were declaring national policy. In addition, once they decided which trains will run and which will not, not only have they decided how much we the Congress will spend on Amtrak next year, they are attempting to dictate a national transportation policy which will have a direct impact on our lives and the lives of our children well into the next century.

By reducing Amtrak by 43 percent, by allowing over 10,000 miles of usable track to quickly deteriorate to a stage where future use becomes economically prohibitive, by raiding Amtrak's capital account for nearly $100 million to cover labor protection costs, and by making false and empty promises to have new lines ready to replace the existing lines they have decided to terminate, DOT is attempting one of the biggest political fast shuffles I have witnessed in years.

The transportation needs of our country, although not a politically exciting project, is crucial to shaping the future. Although we know it works sort-of-sometimes, rail passenger service has never been truly tested. Every other developed country has made a commitment in time, money, and priority which puts our efforts to shame. It is clear that DOT's proposal, if it is accepted by the Congress, will eliminate rail passenger service as a major component in meeting our present and future transportation needs. That is a big decision. And I believe it is one too big for DOT to make through administrative fiat.

When Congress instructed DOT to recommend the optimal railroad passenger system, we asked that the route structure be based upon current and future market and population requirements. In addition, the Secretary of DOT was told to consider—

First, any unique characteristics and advantages of rail service as compared to other modes of transportation;

Second, the role that Rail passenger service can play in helping meet the nation's transportation needs while furthering national energy conservation efforts;

Third, the relationship of benefits of given services to the costs of providing such services, computing the costs in loss or profit per passenger mile rather than total loss or profit per route;

Fourth, the transportation needs of areas lacking adequate alternative forms of transportation; and

Fifth, frequent alternatives and the impact of such alternatives on ridership, revenues, and expenses of rail passenger service.

I have read the DOT preliminary report. I have read the contradictory final report. I do not believe the agency has fulfilled the congressional mandate.

The Department of Transportation is foisting this proposal on our country at a time when the call for cutting the budget is popular and easy. Cutting the budget is politically expedient, but not always sensible. DOT is taking advantage of this money-conscious mood and using it as a smokescreen to cripple our national passenger rail system.

By now we are also acutely aware of our responsibility to cut the budget, because our constituents demand lower taxes and inflation is fueled by government spending. Passenger rail systems are an easy target, but will we save money in the long run if we show a quick reduction in costs now?

I would like to elaborate on three points of economy with regard to the transportation study of Amtrak.

If 43 percent of the lines are abandoned as proposed by the agency, those tracks will deteriorate rapidly and become irreparable.

The Department of Transportation recommends that a number of new lines be added, and estimates of contract costs paid to private railroads for this run as high as $100 million, and yet DOT has allocated only $10 million.

Labor contracts for existing lines set for nonrenewal contain labor protection clauses which will cost an estimated $69 million out of Amtrak capital expenditures next year alone and may total nearly $100 million within 4 years.

Besides the folly in false economics and poor policy, I have to admit to a personal gripe with the Transportation Department. The DOT proposed Amtrak route structure calls for the termination of the only passenger rail system to northern and central New

England. That train, the Montrealer, is Vermont's only passenger rail line.

While I have obvious parochial interests in keeping my state's only train I believe the story of the Montrealer and how it was treated in the DOT study highlights general problems with the study in addition to less than equitable treatment for those people who rely on the Montrealer.

Secretary Adams has stated publicly that the Montrealer and the Southern Crescent were the last two trains left out of the recommended system. In fact, in the Department's preliminary report last May, the Montrealer was recommended for continuation. Subsequent to that May Report and in conformance with Congressional instructions, the Rail Service Planning Office of the ICC held public hearings on the proposed route system. Again, pursuant to Congressional intent, affected areas were allowed to be heard. There were no public hearings in Vermont. Neither I nor any other federal or state official was notified or consulted. No attempt was made to either mitigate the train's expenses or determine its impact and popularity in the region.

We had no idea that the Montrealer was in jeopardy until a few days before the Secretary announced his plan at a press conference and submitted it to the Congress thus triggering the approval period and freezing the plan from any modifications.

The Montrealer was one of if not the last train left out of the system because it's a darn good train. In fact, based on many of the technical criteria DOT used to rate trains, the Montrealer is superior to many of the trains DOT recommended for continuation.

If the train was such a good performer I began to wonder why DOT wanted to scrap it.

My investigations turned up a startling fact—DOT used a methodology for evaluating the Montrealer which was both inappropriate and inaccurate.

What DOT has proposed in the final plan is the elimination of the Montrealer service north of Springfield, Massachusetts. What they evaluated in their study was the costs and benefits of eliminating the entire route.

Based on this faulty methodology, DOT could not possibly have had any conception of the cost impacts of their proposed action.

Lacking this essential information, my staff conducted extensive research, and their findings produced revealing results which I will only mention briefly here.

The fact is that in FY 78, the incremental direct operating costs of the Montrealer north of Springfield were equal to or less than the incremental revenues. That is, comparing direct out of pocket costs with revenues, the train may have operated at a surplus north of Springfield.

Furthermore, by continuing past Springfield, the loss per passenger mile of the entire route was more than cut in half. If the train had actually stopped in Springfield, as DOT now proposes, the loss per passenger mile for the route would have soared from 15 cents, to an outrageous 34 cents per passenger mile.

I could go on and on with similar statistics. But the point is that DOT made no attempt to break out the costs and revenues north and south of Springfield, and as a result, they proposed the elimination of service along the most profitable Montrealer's route. I would like to submit the Montrealer performance charts for the record.

Revenue alone was up 27% north of Springfield in 1978, and it was up another 21% already in the first two months of FY 79. The fact is that ridership north of Springfield is growing faster than on any route in the entire Amtrak system.

In the face of overwhelming evidence that the Montrealer is thriving north of Springfield, I was and am outraged by DOT's proposal to abandon this service. What is more, the excellent cost performance I briefly summarized was achieved despite the excessive costs of operating the train in Canada, and without accounting for the positive impact of continued ridership and revenue gains.

To add insult to injury, DOT recommended terminating the Montrealer without benefit of public hearings or an opportunity for the trains supporters to present evidence on its need and use. DOT also failed to make any effort to analyze the Montrealer's expenses to determine if the train's performance could be improved. This is especially significant when you consider, for example, the inflated Montreal terminal, Canadian customs and immigration, and Canadian National contracts. All are obviously bad deals which might have been renegotiated.

The analysis and effort I would have expected DOT to give the Montrealer is not out of line with some of the efforts DOT made to justify some of the trains recommended in the system. DOT has kept trains by projecting and assuming improved performance based on line consolidations and improving service with Amfleet and Superliner cars.

In effect, they have weighed assumption and conjecture against the Montrealer's demonstrated performance, and have ruled in favor of conjecture.

This entire situation has disturbed me and my fellow Vermonters. I met with Secretary Adams last week and after that meeting I remained disturbed. My staff met with DOT personnel to go over the Montrealer figures for over three hours last Friday and after that meeting I still remain disturbed. The Montrealer got a bad deal from DOT. New England and Vermont got a bad deal. I remain disturbed.

It is too late, of course for DOT to correct its error. At my meeting with Secretary Adams last week one DOT official suggested that since no hearings or notice was provided for the Montrealer and if DOT's figures turned out to be wrong, the Department might apologize. Well I for one don't want DOT's apology—I want the Montrealer.

Therefore I urge this committee to include specific authorization provisions which will expand the proposed Amtrak route structure to include proven winners such as the Montrealer. I know this committee wishes to avoid the potential "Christmas tree" problem of adding specific trains to the system because of political pleas or pressure. I share your concern, but I believe there is a way to improve on DOT's recommended structure and not open a Pandora's Box. Add trains based on their performance records. Authorize the funds to be available on a priority basis and insure that it is a substantive standard of performance which determines which trains will be added.

Please do not allow DOT's truncated system to close down viable railroad lines this year when all the evidence points to our need for them in the future.

I would also like to share with the committee a letter which was sent to DOT this morning. This letter, signed by 10 of the 12 New England Senators, calls upon DOT to supply the figures and detailed justification which went into their decision to propose terminating the Montrealer.

Vermonters fought hard to get the Montrealer running in 1972. We fought hard in 1975 when an effort was initiated to cut the line. We have shown it has the support and use necessary to justify its expenses.

DOT ignored everything favorable to the Montrealer. They denied our right to a public hearing. They juggled their own criteria to add trains less profitable than the Montrealer and then they presented their "deal" in a manner which they believe locks in their position. Well, I'm only a single Senator, but I intend to fight this one right down to the last bell.●

SECTION 202 LOAN PROGRAM

● Mr. METZENBAUM. Mr. President, even in a time of fiscal restraint such as the one we are now facing, there are certain programs that deserve to be fully authorized and funded, because they serve a demonstrated national need efficiently and effectively. Section 202 is exactly that kind of program.

I recently cosponsored a bill introduced by Senator WILLIAMS, S. 593, to reauthorize the section 202 loan program over the next 3 years at the present level of 22,000 units, because it serves a very special need—to provide low-income housing to the elderly and the handicapped. This program becomes especially significant, because most of the other federally assisted housing programs in fiscal year 1980 are expected to require construction of family units, thus leaving fewer funds to provide elderly and handicapped housing. We must do everything possible to prevent construction of new elderly units under section 202 from dropping as well.

We have seen a steep decline in recent years in the number of units built under this program, not because of a dramatic drop in the dollars allocated, but because the dollars simply do not go as far in a period of double-digit inflation. In fiscal year 1976, we authorized a reservation to build 27,000 units, a figure which dropped to an estimated 22,000 units in the current fiscal year 1979. Now the administration, in its effort to keep a tight budget, is proposing that the same amount of funds—$800 million—that we had in fiscal year 1979 be authorized for fiscal year 1980. Unfortunately, that will allow the construction of only 19,000 units. That is hardly enough to meet the drastic need that we have all across the country for elderly housing. According to an August 1978 study on housing for the elderly in Cuyahoga County, Ohio, sponsored by the Council on Elderly Persons of the Federation for Community Planning, the Cuyahoga Metropolitan Housing Authority showed 2,122 elderly persons on the waiting list for public housing. The figures for privately owned, subsidized housing for the elderly indicated that all but 3 of the 29 complexes on the program had waiting lists ranging from 100 to 900 applicants. It should also be noted that the study found that the turnover rate in the more desirable, suburban units was considerably less than in the central city.

Mr. President, this bill, which I am cosponsoring, serves a number of other objectives, as it meets the housing needs of our senior and handicapped citizens.

First, it is designed to encourage nonprofit organizations, such as church and labor groups, to get involved in their communities to act as sponsors for such worthwhile projects. In fact, section 3 authorizes special funds to assist minorities who are not familiar with the complicated Federal rules in applying for these funds. This program also promotes the objective of stabilizing and upgrading the neighborhoods in which this housing is located by providing housing for citizens who are being displaced and in some cases utilizing cost-effective rehabilitation. Finally, this program has been shown to serve both urban and rural communities.

Elderly and handicapped housing is needed, and the demand is increasing at a steep rate. We cannot turn our backs on such a worthwhile program. This program—and the people it so effectively serves—needs our support.●

GOVERNMENTAL INTERVENTION IN INTERNATIONAL INVESTMENT FLOWS

● Mr. JAVITS. Mr. President, this country is in the waning hours of crucial negotiations aimed at reforming and harmonizing the rules for international trade. Also, we have been, for several years now, actively involved in multilateral efforts to reform the structure and operations of the international monetary system. While neither of these efforts may yield the solutions that we all had hoped for, it is in my estimation time to direct our attention to another crucial area of international cooperation essential to the smooth operation of the world economy.

I am speaking of the problem of Government involvement in international investment flows. The issue has been with us for many years but has recently surfaced as one of the more egregious manifestations of the general trend toward increased Government intervention in the world economy. Indeed, it is anomalous that as the "third leg" of a stable world economy, international investment has not been accorded the treatment at the Government level as have the trade and monetary areas.

The United States has traditionally taken a neutral approach to international investment in the belief that Government should neither promote nor discourage inward or outward investment flows or activities. In particular, the United States has eschewed on the Federal level the use of special incentives to encourage such investment. Unfortunately, recent events have indicated that foreign governments are increasingly resorting to such policies in order to assist specific industries or regions. A number of these practices, such as the recent Canadian offer of $68 million to the Ford Motor Co. to direct an investment project to Canada instead of the United States, have had the effect of simply redistributing existing investment and do no more than export one country's problems to another.

An incisive editorial on this subject entitled "Setting Rules for Investment" appeared in the March 16 edition of the Journal of Commerce. The editors, in my judgment, correctly call for a series of major international agreements to govern the international investment process. The administration has not been unaware of this problem; and the editorial to which I refer highlights remarks by Assistant Secretary of the Treasury C. Fred Bergsten, who has addressed the problem and the multilateral efforts which are, or could be, taken to control this practice. Among these are initiatives within the OECD to limit official Government incentives and disincentives. Also, I believe the IMF and the World Bank are actively involved in such consideration.

Mr. President, I commend this article to the attention of my colleagues and submit for printing in the RECORD.

The article follows:

SETTING RULES FOR INVESTMENT

To lure the Ford Motor Co. to build a new $475 million engine plant in Windsor, Ont., across the river from Detroit, the Canadian government jointly with the Province of Ontario last year offered the company a cash grant of $68 million. The United States, which protested strongly against the arrangement, said it wasn't as concerned about the provincial subsidy—after all, the American states have been doing things like this for years—as the fact that national governments were getting involved in the plant location race. Ottawa picked up 60 percent of the tab, Ontario 40 percent.

At about the same time, Canada negotiated an arrangement with Volkswagen, which had just started to build cars in the United States, whereby it promised to reduce its duties on U.S.-made Volkswagens proportionately to the amount of auto parts Volkswagen worldwide bought from Canada. The arrangement was seen as a pattern for similar agreements with other non-U.S. automobile companies. The Canadian automobile import duty is 15 percent, but U.S. cars enter Canada duty free under the U.S.-Canadian automobile pact

The agreements were seen as examples of special financial incentives which distort international investment flows, something that is giving increasing concern to the Carter administration. Another example is the Mexican automobile decrees which require all automobile assemblers in that country to cover their full foreign exchange cost through exports and provide tax credits for doing so.

Such deals take many forms, but they usually combine several features: incentives to locate in a country in the first place; requirements that the investment produce jobs, exports or added value as a condition of approval; and requirements that a U.S. company, if it wishes to do business, must agree to transfer technology by means say, of licensing or co-production agreements—so-called offset sale requirements.

In each such case, the host country uses its economic leverage as a weapon to channel the activities of multinational investors into paths they otherwise might not take. In the words of C. Fred Bergsten, assistant secretary of the Treasury for international affairs:

"Although inconsistent with the spirit of the General Agreement on Tariffs and Trade and the concept of an open multinational trade and payments system, these requirements are rapidly becoming a pervasive feature of the world economy."

What is needed is a series of major intergovernmental agreements, akin to the GATT, to govern the international investment process. With offshore output by multinational firms now approaching $1 trillion, it is anomalous in Mr. Bergsten's view that such a structure has yet to come into being.

The administration has not been unaware of the need. At the Bonn summit, it emphasized its willingness to increase cooperation in the field of foreign private investment flows among industrialized countries and between industrialized and developing countries, promising to work for further agreements in the Organization for Economic Cooperation and Development and elsewhere. Within the administration, President Carter has asked for consideration of ways to seek reduction of the adverse impact of defense offset sales through internationally agreed guidelines. The Treasury wants guidelines also for non-defense offsets because of their increasing importance.

Why hasn't such international cooperation developed sooner: Again, in Mr. Bergsten's words:

"In part, this is because direct investment and technology transfer are relatively new as major vehicles for international economic exchange, and their impact has not been as visible as the impact of trade flows and exchange rate changes. There are also ambivalent and conflicting views on the jurisdiction of the different sovereign states involved in the broad-guaged activities of the multinational companies."

A primary U.S. aim so far has been to draw international attention to the matter, something we wholeheartedly commend.●

THE GROWING PROBLEM OF ARSON

● Mr. BOREN. Mr. President, there has been much public discussion of the growing problem of arson in many of our large, metropolitan cities over the past several years. Entire neighborhoods have been reduced to virtual ghost towns by those individuals who torch buildings for a variety of reasons.

For these and other reasons, I am today joining my colleague, Senator GLENN, in cosponsoring S. 25, the Anti-arson Act of 1979.

Any act of arson, for whatever reason, is a major crime. But those who burn buildings in order to collect profits on an over-insured structure are those who most shock the conscience.

Patterns of over-insuring old buildings and the mysterious burning of them are beginning to form in many of our large, inner-city neighborhoods. Not only must all forms of arson be stopped, but surely we must take away the incentive and ease with which arson-for-profit has become prevalent in some cities.

The provisions of S. 252 will enable us to make great strides toward stopping this major problem. The coordinated effort of nine Federal agencies, which now work separately, to investigate arsons will provide for development of a national strategy for the fight against this crime.

Last year, when arson was included in

the FBI major crime charts, the problem that our country was experiencing with this crime was brought to everyone's attention. S. 252 will make arson's place on the FBI major crime charts permanent.

The sunset provisions of S. 252 will insure that this interagency committee does not become a part of our Government's growing bureaucracy. Under this provision, the committee will be able to establish its effectiveness over a period of 3 years and if it is successful, the committee can be recreated. Otherwise, the committee will sunset and no longer function. This sunset provision is important in helping make our Government more accountable by insuring that its work benefits those for which it was created.

Oklahoma has not escaped the arson wave which is plaguing our Nation's larger cities and more populous States. In 1977, 2,829 fires in our State were attributed to arson. This resulted in an estimated loss of $6.8 million.

One of the most heinous aspects of arson is the number of lives lost. There are over 1,000 lives nationally per year claimed by this crime. This included 47 firefighters in 1977. S. 252 will work toward arson prediction, prevention, and prosecution, which can go a long way toward helping our Nation stop this ever-increasing tide of arson.

I appreciate this opportunity to join as a cosponsor of S. 252 and wholeheartedly support the efforts that this legislation will effect in fighting one of our Nation's major crimes.●

IYC—AN EXPRESSION OF FAITH

● Mr. MATHIAS. Mr. President, the international year of the child and the programs and activities being developed in response to it provide a happy grace note to the rather somber symphony of our times. They express our faith in tomorrow and make a pleasant contrast to our fears about today.

Since good news always travels more slowly than bad, I was very happy to see that the March issue of Clipper, Pan Am's monthly publication, carries a feature story on the year of the child which highlights a number of the projects being carried out in different countries around the world to mark the year. This article is timely and sensitive. I shall submit the article for the RECORD at the conclusion of my remarks.

Unfortunately, we cannot reprint the delightful pictures that illustrate this article, but I will include the captions which describe the IYC projects pictured.

The article follows:

1979: THE INTERNATIONAL YEAR OF THE CHILD

"A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attended to those things which you think are important. . . . The fate of humanity is in his hands."

Today, more than a century after U.S. president Abraham Lincoln wrote these words, the fate of the world still lies within the small hands of its children. In recognition of this, and of the present needs of millions of the young and helpless, the United Nations has declared 1979, the twentieth anniversary of the UN declaration of the rights of children in Geneva, the International Year of the Child (IYC).

Under the aegis of UNICEF, a special secretariat has been established for IYC, staffed with experts to coordinate the multinational programs planned for 1979. Unlike other, similar commemorative "years," IYC will see no vast, global convocations, few major international meetings. Instead, almost as if in deference to the small forms of the children on whom it focuses, IYC is being recognized nation-by-nation, with overall emphasis on active programs for children's welfare and happiness.

The Geneva Declaration of 1959 outlined the basic human rights of children, including the right to love and affection, the right to adequate nutrition and medical care, to education, to play. Each UN member nation is undertaking programs keyed to these rights in relation to the special needs of its own children.

Because of the great range of economic and social conditions within the UN's global community, these programs will include the most basic of health, educational and nutritional services not only for children in developed countries, but for the 350 million children still beyond the reach of minimal essential resources in the world's developing nations. It will also involve less vital, but no less essential projects: programs such as Singapore's vast Information and Cultural Centre of Southeast Asian Children's Cultures—a library of books, games, toys, dolls and children's history, Japan's planned super-playground outside of Tokyo; Denmark's children's newspaper, IYC News; essay and art competitions in Australia; a television serial focusing on a village for handicapped children near Vienna, Austria; children's book days and theatre performances in Hungary; music and art programs in Israel, and hundreds of other programs geared to children's health, welfare and happiness.

Jean Young, head of the U.S. National Commission for IYC and wife of U.S. Ambassador to the UN Andrew Young, echoes Lincoln's words today, describing children as "our most valuable national resource." On these pages Clipper presents this resource, the world's children, with more information on many national IYC programs.

CAPTIONS TO PICTURES

A serious toddler offers a bouquet at a ceremony in Volgagrad, U.S.S.R. (directly below). The Soviet Union will stress health and the education of both children and parents during IYC. In Peru (bottom) education and legislation for the rights of children will reach out to all the young, including this Indian boy of Pissac.

The two little girls below are dressed for a growing-up ceremony in West Africa's Ivory Coast. Here, and in other West African nations, programs will emphasize health, education and day care, with individual features as diverse as photographic projects, parades and entertainment and first aid and sanitation brigades.

Nomad children of a Tuareg tribe (below) roam the Sahara with their families, their lives scarcely changed from those of children 2,000 years ago. IYC programs for arid regions of Africa such as this include facilitation of health plans and water regulations and sanitation. In Thailand (right), child nutrition and development centers will help ensure a healthy life for children like these young Meo from the Chiang Mai region.

In Singapore (left), a child dressed in her best offers food and flowers at a holiday festival. In addition to creating the Information and Resources Center for Southeast Asian Children's Cultures, Singapore will have a children's film festival and songwriting and art contests during the IYC.

Japanese schoolchildren line up for an outing. Their pleasure and play will be enhanced during IYC and after by several major playground and play-land projects, among them a "Children's Castle" to be built just outside of Tokyo at a cost of more than US$54 million. The complex will include theaters, indoor and outdoor sports and games facilities and science laboratories.

In the United States, the IYC and young sportsmen like the lad at left will benefit from programs aimed at eradicating childhood diseases, improving nutrition and education, and legislation for children's rights. High-visibility programs include the ongoing "Music for UNICEF" concerts; internationally famous singing groups such as ABBA and the BeeGees have donated time and song royalties to UNICEF and IYC.

In Saudi Arabia (right), primary education is stressed as well as a strong, Mid-East-wide program of prevention of blindness. Greek children, including this little boy leading a donkey (far right), will receive special health care during and after IYC. The Greek government also plans to undertake projects for disadvantaged children for 1979.

On a kibbutz in Israel, children do their share of the chores; here they feed and water the farm's chickens. Israeli IYC plans include a series of international meetings aimed at promoting the concept of the Year of the Child with topics ranging from "The Role of the Family" to "Underprivileged Children." All schoolchildren will receive a copy of the Geneva Declaration of the Rights of the Child (1959) printed in Hebrew, and the Post Office will issue a special IYC commemorative stamp.●

RULES OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

● Mr. MELCHER. Mr. President, in compliance with section 133(b) of the Legislative Reorganization Act of 1946, as amended, the Select Committee on Indian Affairs is publishing the committee's rules, which I submit for printing in the RECORD.

The rules are as follows:

RULES OF THE SENATE COMMITTEE ON INDIAN AFFAIRS

COMMITTEE RULES

Rule 1. The Standing Rules of the Senate, Senate Resolutions 4 and 405, and the provisions of the Legislative Reorganization Act of 1946, as amended by the Legislative Reorganization Act of 1970, to the extent the provisions of such Acts are applicable to the Select Committee on Indian Affairs and as supplemented by these rules, are adopted as the rules of the Committee.

MEETING OF THE COMMITTEE

Rule 2. The Committee shall meet on the first Wednesday of each month while the Congress is in session for the purpose of conducting business, unless, for the convenience of Members, the Chairman shall set some other day for a meeting. Additional meetings may be called by the Chairman as he may deem necessary.

OPEN HEARINGS AND MEETINGS

Rule 3. Hearings and business meetings of the Committee shall be open to the public

except when the Committee by majority vote orders a closed hearing or meeting.

HEARING PROCEDURE

Rule 4. (a) Public notice shall be given of the date, place, and subject matter of any hearing to be held by the Committee at least one week in advance of such hearing unless the Chairman of the Committee determines that the hearing is noncontroversial or that special circumstances require expedited procedures and a majority of the Committee involved concurs. In no case shall a hearing be conducted with less than 24 hours notice.

(b) Each witness who is to appear before the Committee shall file with the Committee, at least 24 hours in advance of the hearing, a written statement of his or her testimony in as many copies as the Chairman of the Committee prescribes.

(c) Each Member shall be limited to 5 minutes in the questioning of any witness until such time as all Members who so desire have had an opportunity to question the witness unless the Committee shall decide otherwise.

(d) The Chairman and ranking Minority Member or the ranking Majority and Minority Members present at the hearing may each appoint one Committee staff member to question each witness. Such staff member may question the witness only after all Members present have completed their questioning of the witness or at such other time as the Chairman and the ranking Majority and Minority Members present may agree.

BUSINESS MEETING AGENDA

Rule 5. (a) A legislative measure or subject shall be included on the agenda of the next following business meeting of the Committee if a written request for such inclusion has been filed with the Chairman of the Committee at least 1 week prior to such meeting. Nothing in this rule shall be construed to limit the authority of the Chairman of the Committee to include legislative measures of subjects on the Committee agenda in the absence of such request.

(b) The agenda for any business meeting of the Committee shall be provided to each Member and made available to the public at least 3 days prior to such meeting, and no new items may be added after the agenda is so published except by the approval of a majority of the Members of the Committee. The Clerk shall promptly notify absent Members of any action taken by the Committee on matters not included on the published agenda.

QUORUMS

Rule 6. (a) Except as provided in subsecs. (b) and (c), three Members shall constitute a quorum for the conduct of business of the Committee.

(b) No measure or matter shall be ordered reported from the Committee unless three Members of the Committee are actually present at the time such action is taken.

(c) One Member shall constitute a quorum for the purpose of conducting a hearing or taking testimony on any measure before the Committee.

VOTING

Rule 7. (a) A rollcall of the Members shall be taken upon the request of any Member.

(b) Proxy voting shall be permitted on all matters, except that proxies may not be counted for the purpose of determining the presence of a quorum. Unless further limited, a proxy shall be exercised only upon the date for which it is given and upon the items published in the agenda for that date.

SWORN TESTIMONY AND FINANCIAL STATEMENTS

Rule 8. Witnesses in Committee hearings may be required to give testimony under oath whenever the Chairman or ranking Minority Member of the Committee deems such to be necessary. At any hearing to confirm a Presidential nomination, the testimony of the nominee, and at the request of any member, any other witness shall be under oath. Every nominee shall submit a financial statement, on forms to be perfected by the Committee, which shall be sworn to by the nominee as to its completeness and accuracy. All such statemens shall be made public by the Committee unless the Committee in executive session determines that special circumstances require a full or partial exception to this rule. Members of the Committee are urged to make public complete disclosure of their financial interests on forms to be perfected by the Committee in the manner required in the case of Presidential nominees.

CONFIDENTIAL TESTIMONY

Rule 9. No confidential testimony taken by or confidential material presented to the Committee or any report of the proceedings of a closed Committee hearing or business meeting, shall be made public, in whole or in part or by way of summary, unless authorized by a majority of the Members of the Committee at a business meeting called for the purpose of making such a determination.

DEFAMATORY STATEMENTS

Rule 10. Any person whose name is mentioned or who is specifically identified in, or who believes that testimony or other evidence presented at, an open Committee hearing tends to defame him or otherwise adversely affects his reputation may file with the Committee for its consideration and action a sworn statement of facts relevant to such testimony or evidence.

BROADCASTING OF HEARINGS OR MEETINGS

Rule 11. Any meeting or hearing by the Committee which is open to the public may be covered in whole or in part by television broadcast, radio broadcast, or still photography. Photographers and reporters using mechanical recording, filming, or broadcasting devices shall position their equipment so as not to interfere with the seating, vision, and hearing of Members and staff on the dais or with the orderly process of the meeting or hearing.

AMENDING THE RULES

Rule 12. These rules may be amended only by vote of a majority of all the Members of the Committee in a business meeting of the Committee: *Provided*, That no vote may be taken on any proposed amendment unless such amendment is reproduced in full in the Committee agenda for such meeting at least three days in advance of such meeting. Such proposed amendment shall be mailed to each Member of the Committee at least seven (7) calendar days in advance of the meeting.●

FEDERAL CHARTER TO THE NATIONAL SKI PATROL SYSTEM

● Mr. HEINZ. Mr. President, it is with great pleasure that I rise today to cosponsor a bill introduced by my distinguished colleague, Senator HATCH. S. 43 provides for the issuance of a Federal charter to the National Ski Patrol System.

As a former ski patrol member, I can testify as to the necessary services performed by this organization. Members of the NSPS are expertly trained in first aid, search and rescue techniques, and avalanche control. The NSPS has encountered great difficulty due to the reporting and registration paperwork and fees required in each State in which patrol units operate. The NSPS simply does not have the personnel or financial resources to comply in all of these jurisdictions, and, in fact, may have to severely curtail their work.

For the NSPS to continue its services in each individual State, an enormous amount of paperwork is required. As a nonprofit, volunteer organization, the NSPS does not have either the financial resources or the personnel to meet the filing fees and the registration redtape. The act of placing the NSPS under a Federal charter would not only recognize the exemplary achievements of the NSPS and its dedicated service to people, but would also make the organization directly accountable to the Congress and to the Federal Government for financial reporting, taxes, and other requirements. Such action would significantly reduce the amount of time and money NSPS must raise to stay in operation.

Downhill skiing has become one of the most popular sports in the Nation. Pennsylvania has numerous ski areas offering a variety of interesting terrain. The National Ski Patrol has worked hard at these areas to insure a safe and enjoyable ski experince.

I applaud the efforts of the National Ski Patrol System and believe it should be recognized for its achievements. By providing a national charter, we can insure its continued success.●

TRIBUTE TO DEWEY BARTLETT

● Mr. BUMPERS. Mr. President, Dewey Bartlett was a courageous man. He served the people of Oklahoma and the Nation with distinction. Dewey supported those principles in which he believed with knowledge and tenacity.

Dewey was a gentleman. We were close allies on many issues and friendly adversaries on others, but it was always a pleasure working with him. He even offered to leave his hospital bed and return to the Senate to participate in a debate on which we worked together.

Few who have ever served in this body have had to serve under the same personal adversity. I am not sure that any of us would measure up to the standards which he set. His courage was exemplary—an example few of us are likely to emulate.●

A TRIBUTE TO JEAN MONNET

● Mr. JAVITS. Mr. President, on March 16, 1979, the world lost a true international statesman. Jean Monnet, who died at the age of 90, led a full life not only in the service of the citizens of his native country, France, but also on behalf of the peace-loving people of the world.

I had the good fortune to know Jean Monnet and visited his office often in Paris and delighted in his friendship.

His vision of a unified Europe at a time when Europe stood devastated in the aftermath of World War II stood as as beacon in an otherwise dark night. While never assuming cabinet rank in France, his influence on the direction of world affairs was greater than had he done so.

The tranquility that pervades Western Europe today, its economic strength, and its pivotal role in world affairs are a direct result of the strength provided by the establishment of the European Economic Community, which will stand as the historic legacy of Jean Monnet. I hope that we, his intellectual descendants, can continue his work as he would have wanted us.

Jean Monnet has left us all a great heritage and the richer for having been with us for a time. The New York Times has printed excerpts from the closing chapter of his "Memoirs," which highlight Jean Monnet's conception of the "European idea."

In addition, the New York Times and the Washington Post have captured vividly the great contributions of this eminent international statesman in recent editorials in his memory; and Joseph Kraft, in a column published in the Washington Post on March 20, has stressed the great leadership aspect of Jean Monnet's life. I commend to my colleagues these editorials and submit them for printing in the RECORD.

The editorials follow:

[From the New York Times. Mar. 18, 1979]

AMID THIS CHANGING SCENERY, THE EUROPEA IDEA GOES ON

(By Jean Monnet)

A very wise man whom I knew in the United States, Dwight Morrow, used to say: "There are two kinds of people—those who want to be someone, and those who want to do something." I have seen the truth of that saying verified over and over again. The main concern of many very remarkable people is to cut a figure and play a role. They are useful to society, where images are very important and the affirmation of character is essential to the administration of affairs. But, in general, it is the other kind of people who get things moving—those who spend their time looking for places and opportunities to influence the course of events. The places are not always the most obvious ones, nor do the opportunities occur when many people expect them. Anyone who wants to find them has to foresake the limelight. . . .

I never remember saying to myself: "I'm going to be someone." But nor do I remember thinking: "I'm going to do something." What I have done, or helped to do . . . has always been the product of circumstances as they arose.

The roots of the Community are strong now, and deep in the soil of Europe. They have survived some hard seasons, and can survive more. On the surface, appearances change. In a quarter-century, naturally, new generations arise, with new ambitions; images of the past disappear; the balance of the world is altered. Yet amid this changing scenery, the European idea goes on; and no one seeing it, and seeing how stable the Community institutions are, can doubt that this is a deep and powerful movement on an historic scale.

Can it really be suggested that the wellsprings of that movement are exhaused, or that other rival forces are taking their place? I see no sign of any such rival forces. On the contrary, I see the same necessity acting on our countries—sometimes bringing them together for their mutual benefit, sometimes dividing them to the detriment of all. The moral is clear, and it cannot be gainsaid. It has taken root in our peoples' consciousness, but it is slow to act on their will: it has to overcome the inertia that hinders movement and the habits that resist change. We have to reckon with time.

I have never doubted that one day this process will lead us to the United States of Europe; but I see no point in trying to imagine today what political form it will take. The words about which people argue—federation or confederation—are inadequate and imprecise. What we are preparing, through the work of the Community, is probably without precedent. The Community itself is founded on institutions, and they need strengthening; but the true political authority which the democracies of Europe will one day establish still has to be conceived and built.

Some people refuse to undertake anything if they have no guarantee that things will work out as they planned. Such people condemn themselves to immobility. Today, no one can say what form Europe will assume tomorrow, for the changes born of change are unpredictable. "Tomorrow is another day," my father used to say, with a zest which my mother, in her wisdom, did her best to calm. "Sufficient unto the day is the evil thereof," she would reply. They were both right. Day-to-day effort is needed to make one's way forward; but what matters is to have an objective clear enough always to be kept in sight. . . .

Have I said clearly enough that the Community we have created is not an end in itself? It is a process of change, continuing that same process which in an earlier period of history produced our national forms of life. Like our provinces in the past, our nations today must learn to live together under common rules and institutions freely arrived at. The sovereign nations of the past can no longer solve the problems of the present: they cannot insure their own progress or control their own future. And the Community itself is only a stage on the way to the organized world of tomorrow.

[From the New York Times, Mar. 18, 1979]

JEAN MONNET, 1888–1979

Before he began the most significant quarter-century of his life, at age 61, Jean Monnet had already completed many successful careers—cognac salesman, global financier, reorganizer of Chinese railroads, League of Nations executive, war production coordinator, director of French reconstruction. Then, in 1950, he devoted himself to a single idea: the unification of a fragmented Western Europe.

Many others played important roles in moving from his coal-steel pool to the nine-nation Common Market, a still imperfect economic union. But at every critical point, Jean Monnet's persistence, clarity and dedication saved the day. He maintained from the start that he was developing a method and process for political union, not a mere coalition of nations or economies. He advanced his goal—a "United States of Europe" allied to the United States of America—as the counselor of statesmen and the creator and broker of ideas. He was the ultimate gray eminence.

At the age of 84, in 1973, Jean Monnet embarked upon a typical project. He urged the leaders of Britain, West Germany and France to constitute themselves and their Common Market partners as a "Provisional Government," to decide things, not merely discuss them. He urged them, in effect, to seize supranational power in a peaceful coup. They accepted that plan, if not that name. Jean Monnet will not witness the emergence of his Council of Europe as a veritable government. But he died with undiminished confidence that it would inevitably come, fulfilling the European Dream.

[From the Washington Post, Mar. 18, 1979]

JEAN MONNET

Jean Monnet was more than an enormously talented man. He was also a lucky one. He belonged to that very small group of statesmen who seize a noble but improbable idea and live long enough to see their countrymen not only accept it, but also begin to take it for granted. He thought of it as the United States of Europe. While Western Europe has not turned into a United States, and is unlikely to, it is rapidly evolving into another kind of tight federation. A young Frenchman now goes to Germany as casually as his counterpart of Virginia might go to New York, with hardly a thought to the way things might otherwise have been.

The Monnet vision has succeeded to a point where it is now difficult to remember how shaky and unpromising a venture it seemed set against the wreckage of the early post-World War II years. The question for that generation was whether people could actually learn from catastrophes. After the first World War, Europe had been corrupted and deformed by the politics of accusation and revenge. The victors demanded reparations, and the defeated reneged. There was wild inflation in some countries and depression in the others. National passions rose, and shortly the whole horrifying collision was repeated, this time with more powerful weapons and greater hysteria than before. In the years of exhaustion, after 1945, the message of reconciliation and mutual trust which was Mr. Monnet's single-minded theme, seemed unlikely to find much of a following.

A good many Europeans understood that the old tradition of Franco-German hatreds was a luxury that the continent could no longer afford. But Mr. Monnet saw better than any European of his generation the economic conditions that a stable and pacific political life would require. He was uneasy about the role that the old national cartels in basic industries, like steel, had played before the war and might play again. He knew North America well, and perceived the importance of a huge domestic market for a growing economy. He saw the deep political significance in the free movement of commerce across national boundaries. He knew that internationalism would prove more durable if it were founded on interest rather than on ideals.

The first tentative experiment was the European Coal and Steel Community in 1951. It worked effectively, perhaps to the surprise of some of the participants. They expanded it, at Mr. Monnet's urging, into the Common Market. Trade and living standards rose beyond anyone's expectations. Other nations joined. Now they are moving toward the direction election of a European parliament next June—the first investment of real political power in the institutions of the community.

The two great Frenchmen of the last generation were Charles de Gaulle and Jean Monnet, and they represented opposite convictions on the idea of nationalism. One defended it with genius. The other—never a

dramatic figure, never in high public office, never a man to stir a crowd—pushed implacably toward the supranational principle. The strange thing was that, by the time he died Friday, at his country house near Paris, Mr. Monnet seemed to be winning.

[From the Washington Post, Mar. 20, 1979]

MONNET'S LESSON IN LEADERSHIP

(By Joseph Kraft)

The life of Jean Monnet, the great Frenchman who died at 90 last week, teaches a lesson in leadership that, like everything else he ever did, is immensely in season. Monnet's special distinction was to achieve high goals in national and international affairs without ever holding public office.

His method was to prepare the way among civil servants, corporations, unions, universities and in the media for ideas and institutions that circumstances eventually forced upon political leaders. That is an art of special value now, particularly here in the United States, where conditions hobble leadership from the top.

The list of Monnet's accomplishments reads like the history of the Atlantic nations in this century. He worked in the international shipping effort, which did so much to make possible the victory of France and her allies in World War I. He promoted what little cooperation existed between France and Britain in the early stages of World War II. He made to Britain's successful resistance a vital contribution of "lend-lease" aid from the United States. He endowed France with an economic-planning mechanism that is perhaps the most successful in the world.

He initiated the France-German rapproachement, and the evolving unification of Europe with the establishment of the European Coal and Steel Community. That led directly, as he knew it would, to the birth of the European Economic Community, or Common Market. With the inclusion of Britain, the European Community has developed into one of the world's major political entities.

But how is it possible for a mere citizen to achieve so much? The answer, I believe, lies in the line Monnet chose as the motto of his memoirs.

"*Nous ne coalisons pas des etate,*" he wrote. "*Nous unissons des hommes.*" That is: "We don't coalesce states, we unify men." As Joe Saxe, an American economist now at the World Bank who knew Monnet, once put it: "What he did was organize in many countries networks of people who trusted one another."

Monnet started with the men of business and banking known to him through his work for the family cognac business and as an international financier between the wars. Thanks to them he had access to Roosevelt and to Churchill, and through them flowed the contributions he made in the war years.

Thereafter he moved very quickly to widen his circle of associates. French economists and engineers—Robert Marjolin, Pierre Uri and Etienne Hirsch—were with him at the French planning commission and continued to be close personal friends.

In the 1950s, when his friend Konrad Adenauer was the Christian Democratic chancellor of Germany, Monnet made a special point of reaching out for the socialists and trade-union leaders. As much as anybody, he converted the Social Democratic party away from emphasis on German unification and toward the European ideal. When the Monnet Foundation was set up at his 90th birthday in November, it included former chancellor Willy Brandt and the trade union leader Heinz Oscar Vetter as well as the industrialist Kurt Birrenbach.

But Monnet was no mere technocrat working the interstices of power. He cared about public opinion, and had for it an innate feel that went well beyond connections—which he also maintained—with important people in the press.

He recalls in his memoirs that when he first went out to Canada to sell cognac, his father told him: "Don't take books. . . . Talk to people." His rural home outside Paris, and his daily walk in the woods only drove home a point embodied in the lineage of the man and the very look of his face. At heart Monnet was a peasant, rooted in the soil.

More important still, unlike most mere technocrats, he had a vision—a vision of constructive action for a united Europe. "We must not be overimpressed by material problems," he once said. "They are not very hard to resolve. What counts is to make up our minds to see things in the perspective of building the future, not of preserving the past."

That counts especially for America these days. Recent history has fragmented opinion and inflation fostered a greed that makes presidential leadership extremely difficult—maybe impossible. But that is no reason why the rest of us—in business, labor, the professions and at lower levels of government—should not join hands to work on particular problems, after the fashion of Jean Monnet.

JEAN MONNET, A MODERN MAN FOR THE AGES

To the Editor:

Few are privileged to live 90 years, and no man ever filled that long lifespan with more rich achievement than Jean Monnet. His transcendent purpose was to transform Europe and he quite literally succeeded.

Today most Europeans—and Americans as well—fail to realize how far that transformation has proceeded. The barriers are down and goods, services, even people flow freely across Europe, while one takes for granted practices of cooperation that 20 years ago would have seemed visionary. It taxes the imagination to think of Europe without the European Community; men and women have already forgotten the chaotic, divided continent of quarreling nations that marred the period between the wars and led to ultimate catastrophe.

Jean Monnet, more than anyone else, knew that what has so far been done is only a beginning, and that the Community is a far from completed structure. Yet he never lost his infectious confidence because the carpenters are still busily at work. Today they are building the framework for a monetary union; and in June the peoples—not the nations—of the Community will directly elect their representatives for the European parliament. What Jean Monnet always emphasized was the process, the need to sustain momentum; he died with the heartening knowledge that the structure he designed was still being elaborated.

If I were to try to reduce the essence of Jean Monnet to a single phrase, I would say that he was preeminently a modern man who clearly perceived the major dilemma of our complex times—the disparity between our technology, on the one hand, with its rapid pace of advance and its requirements of scale and scope and, on the other, our institutional arrangements that are so slow to change and so often parochial in character. Events had taught him that history is not static, not constantly a replaying of old themes, but a flow of events which, if mankind is to survive, must be so channeled as to meet the needs of an evolving age. And it was because Jean Monnet so clearly perceived the nature of the great tidal forces now at work that he was sturdily immune to disappointments. I was with him on more than one occasion when progress seemed irrevocably halted by the abrupt intrusion of obsolete—yet fiercely held—ideas that echoed a distant and earlier age. Invariably—and sometimes almost alone—Jean Monnet remained undismayed. "What has happened has happened," he would say with a Gallic shrug. "But it's not fundamental. Let's not be deflected, not lose momentum. We shall find a way to go forward."

It was because of this apparent imperturbability that Monnet was known—to the admiration of his friends and the exasperation of his opponents—as an incorrigible optimist. But to Monnet, optimism was the only serviceable hypothesis for a practical man or woman with a passionate determination to achieve a great objective—and he never wavered in his purpose.

To have worked with Monnet over the years was a privilege beyond price. He was a man one loved as well as admired, a source of sound advice, a warm and constant friend. When the captains, kings, and politicians depart, Jean Monnet's name will outlive many now far more familiar. A man not for the hour but for the ages, he altered the history of his time.

GEORGE W. BALL.

NEW YORK, *March 19, 1979.*●

YEMEN AND ARMS SALES

● Mr. McGOVERN. Mr. President, a ceasefire between North and South Yemen has been arranged by the Arab League, thus diffusing a dangerous confrontation and lessening the prospect of even more explosive tensions in the Persian Gulf region. An Arab League truce team is present on the border between the two countries and reports that both sides have withdrawn their military forces from the battle zones. I strongly welcome this development. I urge that the two Yemens, their neighbors and the United States and the Soviet Union take every constructive diplomatic step to insure that this ceasefire will hold.

While I welcome this ceasefire, I am concerned that President Carter's waiver of section 36(b)(1) of the Arms Export Control Act of 1976 for the shipment of $400 million in military aid to North Yemen sets a dangerous precedent. In light of the new ceasefire, I had hoped that the President would resubmit his aid package to Congress in accordance with the 30-day review procedures mandated by the Arms Export Control Act. However, letters of offer have already been delivered to North Yemen and much of the equipment is already in transit. Since it is too late to ask the President to submit the package, I can only express my concern that his exercise of the waiver provisions not serve as a precedent for future policy decisions.

The Arms Export Control Act, the War Powers Act and similar legislation were enacted because Congress and the American people wanted to avoid the mistakes of the Vietnam era when a President's unilateral commitment to

another country without any review by Congress could lead to the intervention of American military advisers, American military equipment and American political prestige. Once the initial commitment is made by seemingly small and harmless steps—such as a few million dollars in aid or a few advisers—each successive escalation of American involvement becomes a natural consequence of the previous step. The purpose and scope of the original commitment are forgotten as the debate turns to the most effective method of carrying it out.

The passage of the Arms Export Control Act was not a prohibition against all U.S. arms sales or U.S. commitments—it was a prohibition against unexamined major commitments instituted solely by Presidential discretion. It was an effort to prevent another Gulf of Tonkin situation in which a crisis incident becomes the justification for a much larger U.S. commitment involving the deepest interests of the United States. It was an attack on American advisers at Pleiku in South Vietnam in February 1965, which led to the first sustained bombing of North Vietnam. The danger of unexamined, incremental commitments was one of the key lessons we learned—or should have learned—from the Vietnam war.

The President's waiver of the congressional review procedures for the North Yemen arms aid was unwise precisely because it neglected this fundamental lesson. For the real issue involved in the North Yemen aid was not the actual weapons pledged or the actual military situation in Yemen. The arms covered by the waiver—such as the 12 F-5 fighter aircraft, the 100 M-113 armored personnel carriers and the 64 M-60 tanks—could not have been utilized in an effective military role by the North Yemen army for months since it lacked the trained personnel to operate this sophisticated equipment. Mercenary pilots from other countries were being sought, but they could not easily be found and, even still, could not employ the weapons effectively without a coordinated planning and command structure which was beyond the capacity of the irregular North Yemen forces carrying the main combat burden.

The real issue of the arms sales package—and the main motivation for the waiver—is the development of a new American regional security policy for the Middle East and Persian Gulf region in the wake of the collapse of the Nixon doctrine in Iran. It is this new regional security policy which would have been the focus of the arms sales review in Congress.

The North Yemen arms sales are clearly only one element in the more visible American military role in the region which appears to be emerging as the foundation of a new Carter doctrine in the Middle East.

In February, Secretary of Defense Harold Brown made a highly visible tour of the area to show the flag and to negotiate arms deals with North Yemen and the Saudis. On March 5, an American naval task force, including the aircraft carrier *Constellation*, was dispatched to the Arabian Sea. F-15's have been flown to Saudi Arabia several times. Two AWACS radar surveillance planes, developed primarily for a tactical battlefield command and control mission, have been flown to Saudi Arabia. In addition, there have been discussions of bilateral mutual defense treaties with Egypt and Israel. It appears that Egypt is being considered as a replacement for Iran as the policeman of the region, with possible vast new arms shipments to follow. There are also unanswered questions about a possible American military presence at the Sinai air bases and a naval presence in Haifa in the wake of the Israeli-Egyptian Peace Treaty. Finally, a new regional fleet is being considered to beef up the American presence at the Diego Garcia naval base in the Indian Ocean.

All of these steps to increase our military security presence in this region form the context in which the North Yemen arms sales package was conceived and implemented. Therefore, the President's waiver was significant not because some weapons were shipped but because a new security policy, with new American commitments and risks, was being created without any serious congressional review of its scope, character or problems. If this waiver becomes a legal or political precedent, then I fear that the intent of Congress to revise policy procedures after Vietnam will have been wrongfully ignored.

I am not convinced that the waiver was necessary for either military or political reasons in the Yemeni conflict. The military equipment which was the most useful to North Yemen because it could be deployed and used on the battlefield almost immediately—such as TOW antitank missiles, M-79 grenade launchers and ammunition—did not require a waiver because it fell below the $7 million threshold in the 36(b) provisions of the Arms Export Control Act. In fact, American antitank weapons were shipped and used in the fighting. Was not that enough of a demonstration of American interest in the outcome of the fighting to enable Congress to review for only 30 days the more sophisticated weapons? I cannot believe that Saudi Arabia's legal advisers were studying section 36(b) to find out whether the United States was seriously committed enough to waive it. Nor do I believe that a South Yemeni tank commander whose tank was knocked out by an American antitank missile would have regarded the failure to waive 36(b) as a show of weakness by the United States.

Not only did the actual military situation in Yemen not require waiver of the Arms Export Control Act, but the diplomatic situation might also have suggested restraint. On March 6, the Arab League had called for a ceasefire and negotiations within 10 days. On March 7, the President waived the 36(b) provisions. Undoubtedly, his decision was influenced by his personal intervention in the Middle East peace talks and the possible impact on the negotiations of large arms shipments. The wisdom of this step given the subsequent Saudi rejection of the Middle East treaty can be debated, but the point is that the ceasefire now in effect had its origin in diplomatic initiatives prior to the waiver. I believe the President's decision in light of these initiatives was inconsistent with congressional policy on arms sales review. There was time enough to wait. The 30 days would not have jeopardized American security interests.

It may be argued that the President's waiver made the ceasefire possible. I know of no way to objectively evaluate this claim, although it does seem to me unreasonable to believe that the participants would make such fundamental decisions as whether or not to negotiate and disengage based on technicalities of American law. But even if the waiver had some impact, it begs the question whether other steps might not have had a similar benefit without jeopardizing our democratic procedures for congressional involvement in foregin policy decisions. Killing a bee with a sledgehammer may work, but that does not mean it is necessarily a wise policy.

We are now faced with a situation in which more than 90 U.S. military advisers will be accompanying the weapons to North Yemen. What will be their role? How close to the border will they be stationed? What will happen if one of them is injured or killed by either the South Yemenis or by North Yemeni dissidents? These are the kinds of questions which I would seek to have answered in a congressional inquiry—and which should be answered before such advisers are sent.

The problem may become even greater since as many as 300 noncombatant personnel are expected to be sent to North Yemen over the next 2 years, according to press reports.

Mr. President, the waiver of 36(b) comes at a time of flux in American policy after the collapse of the Shah's regime in Iran and on the verge of new uncertainties in the Middle East. On the one hand, there is an explosive mixture of unstable local politics in the two Yemens, regional tensions between Saudi Arabia and its neighbors, and intensifying superpower rivalries. On the other hand, there seems to be a new direction in American security policy based on a more visible American military role and a feeling that the United States must show its will through gunboat diplomacy. This is precisely the environment in which unwise commitments based on inadequate information and hasty judgments get made. The Arms Export Control Act is one of the tools we have to inquire more seriously into the commitments. I believe it should have been used in this case—and that the waiver should not become a precedent for avoiding this inquiry in the future.●

INTERNATIONAL GOVERNMENT PROCUREMENT CODE

● Mr. HEINZ. Mr. President, recently I have been privileged to introduce S. 533

and S. 645, two bills concerning an International Government Procurement Code that is presently being negotiated in Geneva. This code is not new, however, but has, in fact, been the subject of negotiations for several years. The potential effects of such a code have also been debated for several years.

On September 30, 1976, the General Accounting Office completed a study of buy-national practices entitled "Governmental Buy-National Practices of the United States and Other Countries—An Assessment." In this report, the GAO compared the buy-national practices of other countries with the U.S. Buy American Act and found that where other countries tend to completely exclude competition from American suppliers for their Government procurement, the Buy American Act restrictions were not enough to prevent "major purchases of foreign equipment."

In chapter 2 of this report, GAO specifically compared the buy-national practices of other countries with the Buy American Act; and then assessed the need for and elements of an effective International Government Procurement Code. At the end of the chapter they made recommendations to the Congress. They recommended that Congress should assure itself that such a code includes a settlement mechanism for dealing with allegations of buy-national bias; high visibility of procurement practices by all participating nations; and a surveillance mechanism to monitor compliance.

For the same reasons I introduced S. 533 and S. 645, I believe that this GAO report and chapter 2 in particular are necessary to a full evaluation of the International Government Procurement Code that is expected to be presented to Congress shortly. I ask that chapter 2 of the GAO report be printed in the RECORD.

Chapter 2 of the report follows:

CHAPTER 2: COMPARISON OF BUY-NATIONAL PRACTICES AND PROSPECTS FOR REDUCING NONTARIFF BARRIERS

Over the years, much criticism has been directed at the United States for its restrictive Government purchasing policies—the Buy American Act and other buy-national legislation. These restrictions, which are described in chapter 3, have been effective. It is inaccurate to conclude, however, that the United States is more restrictive than Great Britain, France, Germany, and Japan because of present buy-national legislation.

Chapter 5 shows that foreign governments and nationalized industries also exclude most foreign competition when similar items are available domestically. Rather than visible laws and regulations, however, subtle administrative guidance and practices effectively preclude most foreign competition.

United States policies generally limit defense procurement to U.S. sources because of national security considerations; appropriation act limitations on textiles, subsistence items, specialty metals, and shipbuilding; and a 50-percent price differential favoring U.S. suppliers. Foreign companies have an opportunity to underbid U.S. firms for nondefense procurement where the 6- or 12-percent price differentials favoring American suppliers permit some foreign competition. According to a U.S. business representative, the lack of such measurable guidelines overseas limits his firm's ability to appraise its chances of getting foreign government business.

Analysis of fiscal year 1974 procurement data from six Government agencies comprising 90 percent of total government procurement showed that because of national security considerations, other specific legislation and practical constraints, only 3 percent of the procurement was subject to competition from both domestic and foreign sources. For the other 97 percent of the procurement, the sources of competition were either exclusively domestic or foreign. Nevertheless, major purchases of foreign equipment were made. This is evident in the foreign purchases of heavy electrical equipment by the Tennessee Valley Authority and the Department of the Interior. In fiscal year 1974 approximately 20 percent, or $194 million, of TVA's procurement budget was spent on foreign items. Of that amount, $184.4 million was for turbine generators purchased under an invitation to bid where the domestic manufacturer refused to accept the terms and conditions contained in the invitation and the only responsive bidder was the foreign manufacturer. This contrasts with the highly restrictive procurement policies of the Central Electricity Generating Board in Great Britain and l'Electricite de France, a situation which has led to protests by U.S. heavy electrical equipment manufacturers.

Many business and government officials we interviewed felt that efforts to make government procurement systems compatible and open to international competition face the same pressures of political, military, and economic considerations and the natural bias for dealing with familiar domestic suppliers (described in chapter 5) that make a meaningful international agreement very difficult.

Overseas, some hurdles to overcome include the traditionally close government and business relationships in the European countries and Japan, expected pressures from business and labor, lack of reciprocal acccess to national government procurement markets, nationalistic tendencies supporting strategic and other prestige industries, and lack of uniformity in standards and technical specifications.

Altering the close working relationships between business and government in Europe and Japan would be difficult. These relationships have developed over a number of years, and several foreign procurement officials expressed a natural bias in terms of the ease of dealing with familiar domestic suppliers. Purchasing from a nearby source better insures immediate servicing, maintenance, and spare parts.

Domestic industry and labor demands for preferential treatment in government procurement are strong but become even more pronounced during recessionary periods. Interviews disclosed that foreign procurement officials are heavily influenced by such pressure. Aside from government procurement, present economic conditions in one European country prompted a government official in charge of trade matters to publicly urge its citizens to purchase domestically made automobiles. Under these economic circumstances, the prevailing policy of favoring domestic industry in government procurement will be hard to change.

Also working against a comprehensive agreement on government procurement is a nationalistic desire to maintain and develop domestic capabilities for high technology in such fields as computers, electronics, aerospace, communications, and transportation. Other countries feel they are at a competitive disadvantage in high-technology products because of the size of the U.S. market. This sentiment is best expressed by a statement made by a representative of a European country.

"To fail to produce an indigenous industry would expose the country to possibilities that industrial, commercial, strategic or political decisions made in America would heavily influence our ability to manufacture, to trade, to govern or to defend * * *." He went on to point out that it is unrealistic to expect a domestic manufacturer to engage in competition with U.S. manufacturers that compete in an economy which is eight times larger than theirs.

The nationalized industries in Great Britain, France, Germany, and Japan procure high-technology equipment relating to telecommunications, electric power, transportation, etc. Currently, these countries appear to be excluding procurement by nationalized industries from negotiations for an agreement on opening government procurement to international competition. Their rationale for excluding these purchases is that nationalized industries have autonomous purchasing authority and are not part of the central government. We questioned this rationale because discussions with procurement officials showed that the government exert substantial influence over the purchasing policies of the nationalized industries.

Closely related to a nationalistic desire to maintain high-technology industries are the nations' interests in maintaining industries important to their national security. Although the respective industries have not been precisely defined, negotiations for an international agreement for government procurement are not expected to cover weapon systems or items of strictly military hardware. For example, various U.S. industries have attempted to be included under the umbrella of national security to protect themselves from foreign competition (heavy electrical equipment, steel, textiles, etc.). Commodities currently identified by DOD as being restricted for national security reasons include such items as weapons, ammunition and explosives, aircraft and components, engines and accessories, nuclear reactors, communications equipment and instruments, and laboratory equipment.

All the above factors limit foreign competition. Also much Government procurement is not subject to foreign competition because of practical constraints. For example, sole-source and emergency purchases, the need for specific repair parts, maintenance and repair of equipment, transportation services, purchases of perishable subsistence supplies; and the purchase of utility services are some of the practical constraints which may preclude foreign competition. Some of these restraints may become less severe in the future if various countries' standards and technical specifications can be harmonized.

Attempts at negotiating a code on government procurement among Organization for Economic Cooperation and Development countries has thus far had negligible results. The Trade Committee of the OECD has been working periodically since 1966 to negotiate an agreement to open government procurement to all suppliers without regard to the origin of the goods. It is expected that, at some time in the future, the results of these negotiations will be passed on to the Multilateral Trade Negotiations, which includes all the members of the General Agreement on Tariffs and Trade (GATT). Concerned agency officials commenting on our draft report said the countries participating in Multilateral Trade Negotiations have agreed to set up a nontariff barrier subgroup in Geneva which would focus on the negotiation of an international code on government procurement.

If the degree of success reached by the European Community in its negotiations on

the subject of public procurement is any indication of the potential results from OECD negotiations, an effective agreement is doubtful. The European Community agreement on public works contracts has been in effect since 1972 but, according to foreign procurement officials, procurement patterns of the countries involved have changed very little.

A second agreement anticipated among the nations of the European Community is expected to cover supplies and equipment. A high-level task force was commissioned in November 1973 to "review the reasons underlying the low and stagnant level of intracommunity public procurement" and to make policy recommendations. After a 6-month fact-finding mission to all members of the European Community, task force members concluded that the major obstacles to increased openness in public procurement were political and not technical in nature. According to their report, the major difficulties, which in our opinion also apply to present OECD efforts, are:

(1) A deep-rooted feeling, common to politicians, officials, and industry that the taxpayers' money should be used to purchase domestic and not foreign goods.

(2) All governments regard themselves (and are so regarded to varying extents by their electorates) as responsible for their countries' economic well-being, employment, balance of payments, industrial development, etc. Government purchasing is used to fulfill these responsibilities.

(3) The public buyer has responsibility to his government and, in the case of criticism, to the public for his actions. A private buyer can make a private bargain and this is the essence of trade. The public buyer must always be aware that he may have to defend his actions, sometimes against political pressures generated by the rejected bidder.

The report recommended that the emphasis of negotiations not be on sanctions for noncompliance but rather on developing a European public purchasing constitution which would, to a large degree, depend upon the goodwill of all members.

A second recommendation was not to include public utilities, such as telecommunications, electricity, and railways, in any prospective agreement. The report concluded that the relationship between public utilities and national suppliers was so inextricably intertwined that an attempt should not be made to sacrifice this relationship to a more liberal public procurement policy. Present indications are that public utilities will not be included in any European Community agreement on procurement.

We believe that dealing in generalities and depending upon the goodwill of the negotiators fail to address the difficult issue of foregoing national control over government procurement policy, both in the European Community and OECD. Also, dropping public utilities from consideration would eliminate a portion of procurement which could have great potential impact upon the procurement patterns of the countries involved.

To insure that Government procurement decisions are, in fact, based on price, quality, and related considerations, some mechanism will be needed to settle disputes between competing suppliers. This implies that some type of supranational body will have the authority to question national government purchasing decisions and apply sanctions, if necessary. In the view of one U.S. industry official, the question of sanctions depends on whether the instrument will ultimately represent a statement of principles or whether it will, in fact, become an instrument of international contractual obligation. In any case, if such an expert body with a final say in procurement decisions is not established, it will be difficult to resolve allegations of bias in awards by governments to their own domestic firms.

The effectiveness of the settlement mechanism will, to a large extent, depend upon the degree of visibility of procurement policy and decisions of all the trading partners. This will involve disclosing all pertinent government purchasing decisions which could, in turn, be examined by competing suppliers to determine whether or not to appeal a government award.

Finally, because of the dispersion of purchasing responsibility among different agencies, divisions within the same agency, different cities, regions, etc., the operations of the code must be regularly monitored to guarantee compliance. Unless a major effort is made to effectively audit the implementation of such a code, noncompliance is possible due to the tendency of procurement officials to favor national supply sources.

For the portion of governmental procurement that is or may be subject to foreign competition, we believe it is not desirable for the United States to unilaterally make major concessions to eliminate its buy-national practices. Arrangements with our trading partners to work toward freer trade with due regard for national interests and safety should:

Be contingent on reciprocal actions by our trading partners that clearly will result in opportunities for U.S. industry and labor to benefit from increased exports.

Encourage a competitive domestic base by increasing competition from foreign sources on a price and quality basis.

Provide for high visibility of procurement practices and surveillance of settlement mechanisms for implementing agreements.

The concerned agencies had not identified any positive results to meet these criteria.

We conclude that because of the pervasive and extensive buy-national practices which exist, as well as the practical constraints limiting foreign procurement, it will be very difficult for much progress to be made in the near future to open a large portion of government procurement to international competition on terms that are equitable to our industry and labor interests.

RECOMMENDATION TO THE CONGRESS

The Congress, in any deliberations on a proposed agreement on an international procurement code, in addition to considering its potential benefits and impact on U.S. industry and labor, should assure itself that the following elements are present:

A settlement mechanism for dealing with allegations of buy-national bias.

High visibility of procurement practices by all participating nations.

A surveillance mechanism to monitor compliance.●

SAM NUNN'S LEADERSHIP

Mr. TALMADGE. Mr. President, there appeared in today's edition of the Wall Street Journal an excellent article about my distinguished colleague from Georgia, Senator SAM NUNN. This article is incisive in the degree to which it indicates the important role of leadership Senator NUNN has assumed in the Senate in vital matters relating to defense and national security.

It is a perceptive article in that it foretells the significance of Senator NUNN's knowledge and leadership in the Senate in the future.

Earlier this month, I had the honor of appearing with Senator NUNN before a joint session of the Georgia General Assembly. At that time, I stated that Senator NUNN is destined to become one of the giants of the Senate.

He is a credit to his State and Nation. Not only has he followed in the footsteps of his venerable predecessor, the late Senator Richard B. Russell, SAM NUNN is making his own indelible mark upon the U.S. Senate and upon the history of our nation.

I congratulate my distinguished colleague and I commend this article to the attention of the Senate, and ask that it be printed in the RECORD.

The article follows:

[From the Wall Street Journal, Mar. 22, 1979]

IN THE SALT DEBATE, SENATOR SAM NUNN'S ROLE COULD PROVE DECISIVE

(By Albert R. Hunt)

WASHINGTON.—When the long-awaited Strategic Arms Limitation Treaty reaches the Senate, much attention will focus on a short, balding, owlish-looking Senator, who will have much to say about its fate.

This is Sam Nunn, a 40-year-old Georgia Democrat. If not especially imposing physically, he is intellectually.

At the start of his second term, the cautious and conservative Sam Nunn often wields as much power as anyone in the Senate on military issues, and his influence is widening. He recently became chairman of the Permanent Investigations Subcommittee and is increasingly active in broad economic and tax issues.

"Sam is a man who always seems to know what he's talking about," suggests Sen. Abraham Ribicoff of Connecticut. "He talks softly and thinks clearly." A Carter administration lobbyist calls him "the fastest rising star in the Senate."

As such, he is a study in achieving power and influence in that competitive chamber. The normal route is the seniority ladder leading to a powerful committee chairmanship. Sen. Nunn is the fifth-ranking Democrat on the Armed Services Committee—24 years younger than any senior member and thus a good bet to be chairman someday. Meantime, he is making a major mark without a formal power base.

With a prodigious appetite for work, he has mastered complicated political-military issues and shunned headline-grabbing tactics; he once rejected a staff suggestion to subpoena organized-crime kingpin Meyer Lansky to a drug hearing "because he wasn't relevant."

His quiet, thoughtful approach has impressed many Senate watchers who don't always agree with Sen. Nunn's conclusions. "He is a serious legislator, interested in how the institution itself works and is more problem-oriented than ideological," says David Cohen, president of Common Cause, the citizens' lobbying group.

An exception to his deliberate approach was his hard-line defense in 1977 of the then budget director, Bert Lance, who remained popular in Georgia at the time. Mr. Nunn still smarts that some Senators sought to "railroad" Mr. Lance out of office.

FRIENDLY RELATIONS

But he generally enjoys the friendly collegial relations that help with advancement in the Senate. He is a member of the Senate prayer group, a golfer who shoots in the mid-70s, and he is able to legislate with liberals and conservatives alike. He spearheaded major changes in the North Atlantic Treaty Organization, working with such diverse Armed Services committee colleagues as the late conservative Republican Dewey Bartlett and liberal Democrat John Culver. His influence was particularly evident last year when

he was the decisive voice in persuading the Senate not to kill the neutron bomb.

Sen. Nunn is sometimes criticized as being too pro-military. "Nunn certainly grasps defense issues," one defense expert says, "but he's too willing to accept the military line. He lacks the experience to be sufficiently skeptical."

Some of the critics believe he is philosophically committed to opposing the SALT II treaty. Sen. Nunn, for his part, says he is genuinely uncommitted but plans to take an active role in the Senate consideration. "I hope the debate will focus on the much broader context of the American political and military approach in the world," he declares. "We can use the debate to look down the road."

DELIBERATIVE APPROACH

Based on past performance, the Georgian will indeed take a deliberative approach, without being philosophically rigid. He supported the Panama Canal treaties, for instance, and has been known to criticize some military practices. This reputation for open-mindedness, coupled with an astute knowledge of military matters, is what makes Sen. Nunn so important in the coming SALT struggle.

"Sam carries such a solid reputation in military ranks that other Senators will look at him in SALT," Republican Sen. William Cohen of Maine suggests.

This is understood at the White House. Some weeks ago, President Carter invited Mr. Nunn over for two separate private meetings on foreign policy in the same day, an unusual concentration of Oval Office attention. (Feelings between the two Georgians have varied over the years. Mr. Nunn backed Jimmy Carter in both his gubernatorial races, but beat Gov. Carter's hand-picked candidate for the Senate in 1972 and was neutral in the early stages of the 1976 presidential primaries. Associates say the Nunn-Carter relations today are cordial but not close.)

Politically, Sen. Nunn has a lot of leeway on SALT and most other issues. He was reelected last November with an overwhelming 84% of the vote. Unlike many of his peers, who dream of sitting in the White House some day, he likes the idea of an extended Senate career.

"The legislative process has never frustrated me," he says. "I guess it depends on your expectations. I never had executive experience. My background and interests always have been in legislative matters."

With more experience and political security, some colleagues expect the young Democrat to branch out, tackling a wider variety of issues and broadening his philosophical approach.

"Sam has real capacity for growth," suggests Democratic Sen. John Culver of Iowa. "He could be a modern Richard Russell in the fullest sense." (The late Sen. Russell, also a Georgia Democrat, was an immense power in the Senate.)

SOME VOTES WITH LIBERALS

Sen. Nunn has sided with the liberals on occasion. In the last Congress he voted for the constitutional amendment to give Washington, D.C., two Senators and against deregulating natural-gas prices. On some issues—such as abortion, economic sanctions against Rhodesia and legislation to expand the redwoods—he has voted, at different times, with liberals and conservatives.

But overall, he has one of the more conservative voting records of any Senate Democrat. He opposes most major social initiatives, votes against organized labor on major issues and with the business community on most important economic and tax issues. He was the first Senate Democrat to endorse the Republican 35% tax-cut plan last year. Subsequently, he was the author of a revised version, tying more-modest tax cuts to spending restraint, which cleared the Senate but not the House. Currently, he favors a balanced-budget constitutional amendment, although he is unsure exactly how it should be framed.

Even critics of these positions often give him high marks for integrity. "You know Sam Nunn is going to make an intellectually honest judgment," acknowledges Howard Paster, lobbyist for the liberal United Auto Workers. "Unlike some others, he doesn't make crass political moves. I just wish he wasn't so conservative."

MILITARY EXPERTISE

In his chief area of expertise, the military, Sen. Nunn receives almost universal respect. "Many people involved with defense tend to be very ideological," says Robert Pranger, the top foreign-policy and defense expert at the American Enterprise Institute think tank. "But Sen. Nunn is very analytical and always open-minded."

Mr. Nunn's interest in the military comes naturally. He is the grandnephew of Carl Vinson, the longtime former chairman of the House Armed Services Committee. With the influence of Rep. Vinson and Sen. Russell, Georgia is steeped in military installations. After winning a seat on the Armed Services panel, he soon attracted the attention of Chairman John Stennis of Mississippi, who encouraged him to pursue a range of activities.

With this license, the tenacious Georgian has mastered many of the complexities of conventional and strategic warfare, and especially military manpower issues. He travels widely, but not on globe-trotting junkets. He led a five-nation Far Eastern trip late last year, and one of his companions, Sen. Cohen, recalls, "On the plane leaving Washington we were greeted by three large notebooks and didn't stop working until we came home."

Sen. Nunn's most tangible success followed months of scrutiny in 1976 of NATO's conventional-force capabilities in light of the big buildup by the Russians in Eastern Europe. Mr. Nunn and his allies moved to actually trim some costs, while at the same time bolstering the fighting forces. It resulted in modernizing equipment, shifting forces to more strategically located positions and changing 19,000 troops from support positions to combat status. "Sam Nunn's work here was seminal," notes Robert Komer, a top aide to Defense Secretary Harold Brown.

SELECTIVE CRITICISM

He has assailed the taxpayer-subsidized military commissaries and the "top-heavy" concentration of generals and admirals. But he is selective. Despite budget-balancing rhetoric, for example, he avoids criticizing the generous military pensions; Georgia is full of retired military men.

He is opening an inquiry into the volunteer army. There's little doubt how he feels: "I am absolutely convinced it isn't working," he says in an interview. He raises the possibility of a new draft, "with no college deferments this time."

In foreign affairs, he is spending most of his time lately on the Pacific and U.S.-Soviet relations. He opposes U.S. troop withdrawals from South Korea but backs normalization with China as a "long-term stabilizing" move to counter the Soviet threat.

Sen. Nunn thinks that threat is real. A few months ago, he visited Russia with 11 other Senators and frequently became the focal point of discussions with Soviet officials. "Sam was the one person in our delegation who had the knowledge to take on the Soviets on military matters, and it got to them," another participant observes. "They tried to blow him over by getting mad and questioning his facts. But he calmly and cogently discussed, in detail, their buildup in strategic weapons and conventional forces and backed them down. He really won the respect of the other Senators and, I suspect, the Soviets too."

SOVIET SUPREMACY?

The Georgia Democrat views the coming SALT debate as an opportunity to examine these military balance-of-power issues. "We have to decide—and I think the time is now—whether we want to live in a world where the Soviets have a clear military advantage."

That, of course, is a loaded proposition, but Sen. Nunn thinks that's where the recent trend is headed and it must be reversed. Thus, with or without a treaty, he argues for an escalation of U.S. defense spending and an expeditious development of weapons systems such as deployment of the MX intercontinental ballistic missile. "For a long time, we hoped unilateral restraint would work; it hasn't," he asserts.

Moreover, he sees a favorable political climate here. One of the stronger arguments for SALT I (in 1972), he contends, was that in the midst of Vietnam "there was an aversion to all things military. Today, however, that's changed, and there is an opportunity to gain real strategic momentum," he believes.

On SALT II, Sen. Nunn is bothered by some of the specifics, including the vulnerability of U.S. land-based missiles and adequately verifying Soviet compliance. But an even greater concern, he charges, is the process of the negotiations. The U.S., he claims, hasn't any "clearly defined SALT goals" or any overall "arms-control philosophy." By contrast, he thinks the Soviets "plan their long-range strategic forces and then negotiate an agreement." Thus, in the Nunn view, the Soviets' "strategic programs drive their SALT negotiators, while our SALT negotiators drive our strategic programs."

SALT III PREPARATIONS

This is more than an academic debate; Sen. Nunn hopes to use this contention to influence U.S. policy as it enters what he thinks is the far more crucial arms-limitation phase of any SALT III.

From this rhetoric, it's easy to conclude Sen. Nunn will oppose the coming treaty. SALT opponents confidently predict so, and he says he has told President Carter he has "real apprehensions" about the treaty.

But Sen. Nunn isn't that simple to figure. He also praises the goal of long-term arms control and admits, "The consequences of rejecting a SALT treaty (in that vein) aren't to be underestimated." It could, he says, "magnify the existing Soviet tendency towards imperialistic paranoia." Further, any resulting big increase in strategic spending could slight outlays for conventional forces, he acknowledges. And as a proponent of a strong NATO, he worries about the impact on European allies, most of whom support SALT.

PIVOTAL ROLE

Whatever he does, the Georgian's role will be pivotal. This includes seeking separate commitments for defense buildups, even with SALT II, and the delicate possibility of altering parts of the treaty.

Especially critical will be the effect his stance will have on a half-dozen or so Southern Democrats. "If Sam Nunn goes for SALT, it will provide an umbrella for other Southerners," one knowledgeable Senate source predicts. And no matter how partisan the issue, several Republicans are likely to look to the Georgia Democrat for guidance, too. "Sam Nunn probably carries more weight with our guys on this issue than anybody on the other side of the aisle," says a top GOP Senate strategist.

Other important Senators on the issue include Majority Leader Robert Byrd of West Virginia, without whose support a SALT treaty may not even come to a vote; Armed Services Committee Chairman Stennis, whose views and role in the fight are uncertain; Democratic Sen. Henry Jackson of Washington, the leading anti-Soviet arms expert in the Senate and a likely foe, and Sen. Howard Baker of Tennessee, the politically savvy minority leader.

"I can envision winning SALT without Jackson and possibly even without Baker," muses a White House strategist. "But without Nunn, we're dead." ●

JAY SOLOMON RESIGNS

● Mr. HAYAKAWA. Mr. President, yesterday the President accepted Jay Solomon's resignation from his position as Administrator of the General Services Administration. I would like to take this opportunity to commend Mr. Solomon for his efforts in the last few months to unearth and correct the problems within the agency.

Under Mr. Solomon's leadership those people suspected of fraudulent activities in the GSA have been prosecuted, and investigations have been continued to discover the extent of these activities. Employees who were dismissed for attempting to alert their superiors to the widespread abuse have been reinstated by Mr. Solomon. In addition, GSA procurement procedures are being examined and tightened to prevent additional corrupt practices and waste of Federal funds.

It is my hope that Mr. Solomon's successor will follow his example of diligence in seeking out those who have misused the GSA for their own personal gain, and in finding solutions to prevent future fraud within the General Services Administration.●

CONSTITUTIONAL CONVENTION LEGISLATION EXAMINED

● Mr. McGOVERN. Mr. President, a number of bills have been introduced this year which attempt to set guidelines under which a Constitutional Convention might be held.

There are many responsible people who fear a runaway convention. However, a recent study concludes:

> The only group threatening to run away with a convention so far is the Congress itself.

It is, at least, a provocative observation based on a review of convention procedure bills introduced in this and earlier Congresses. It is the author's argument that in the name of limiting the ambit of a convention, there is some risk that the people's right to amend the Constitution could be reduced.

The author of the study, Jim Stasny, is well known to students of the convention issue. His early studies of the problems with the State application process spawned later research by the Library of Congress and led to more accurate reporting of applications in the House portion of the CONGRESSIONAL RECORD. Although this study is critical of the Congress for proposing guidelines that the author views as too restrictive, there is little doubt that if a convention should ever come into being, Congress would have some obligation to establish a framework under which it would conduct its business.

This study injects still another note of caution into the controversy over a possible constitutional convention. I ask that it be printed in the RECORD.

The study follows:

LOCKING THE PUBLIC OUT OF THE AMENDMENT PROCESS

I. INTRODUCTION

Near the end of his life Oliver Wendell Holmes, Jr., one of America's most respected jurists, said "About seventy-five years ago I learned I was not God. And so, when the people of the various States want to do something and I can't find anything in the Constitution expressly forbidding them to do it, I say, whether I like it or not: Damn it, let 'em do it."

In the face of the current dash toward a convention to add a balanced budget amendment to the Constitution there are many who do not share Justice Holmes' casual confidence in the ability of the American people to do it well. Because the convention method of amendment is the great untested element of the Constitution, many fear it almost as an alien force. As a consequence, even while the tide runs high for a convention there is an equally strong push to thwart the convention procedure, either by stopping it altogether or by tightly circumscribing its authority.

People seem to fear a convention because they suspect it might undo many of the constitutional guarantees of liberty in which they have so huge an investment. It may well be that a convention would be a mistake—but not because of the manufactured argument that it might damage the Constitution. Rather it could be a mistake now because there has been only scant involvement in the planning process by people spanning the full range of political opinion. In the last quarter century, it has been only those representing conservative opinion who have had a hand in shaping legislative proposals for convention guidelines. Perhaps as a result of this limited involvement, the convention bills that twice passed the Senate in the early 1970's would have made any convention a weak, second-citizen to the Congressional procedure for amending the Constitution. Under these bills, Congress would have overwhelming control of a convention.

It does not appear that the Founding Fathers intended Congress to dominate both means of amendment. The chronicles of the 1787 Convention suggest that one reason for providing the convention option was to overcome the possible resistance of an obdurate Congress to constitutional change. In fact, the first draft of the Constitution provided for amendment by convention only.

There are those who say all a convention would do is provide a licensed forum for a multitude of one-issue pressure groups. Perhaps. There is, after all, no vehicle of government better fitted to one-issue interests than the amendment process. Once beyond the first ten amendments which were submitted en bloc, all amendments to the Constitution have dealt with a single issue. So it might be expected that assorted factions would raise other possible amendments. It does not follow that a convention would be steam-rolled into adopting them. As Rufus Kind said during the Convention of 1787, "We have power to propose anything, but to conclude nothing." [1]

II. LIMITS

The main issue today is whether a convention could be limited to a single question. That matter already appears to have been settled in a passive fashion. Over the years Congress has received 400 applications from the states requesting a convention. Of those only 29 sought to generally revise the Constitution. Of the 60 applications received in the last five years, all of them have dealt with a single issue. Since Congress has yet to summon a convention, it is evident by this time that a convention will not be called until enough applications have been gathered in a compact enough time frame and on the same subject.

A 1970 National Municipal League study shows there is also precedent for a limited constitutional convention at the state level. Twelve of the 27 conventions held in the period between 1938 and 1968 were limited to a designated subject or subjects.[2] Furthermore, a 1971 Emory University Law School study included a poll of state legislators on their opinions about a limited federal convention. Of those responding, 1,334 legislators (84 percent) supported the idea of a single amendment convention.[3]

There is still another means of limiting a convention and that is by giving the public as much direct voice as possible in the process. The best way to do that is to specify that any amendment submitted by a national convention must be ratified by state conventions. That means of ratification has only been used once before, when the Twenty-first Amendment repealing prohibition was sent to the states. Since the Supreme Court in *Hawke* v. *Smith*.[4] ruled out the prospect of a state-wide referendum on constitutional amendments, ratification by convention would be the best way to circumvent that ruling and allow the public to decide. If convention delegates were elected, the public would have a more direct voice in the amendment process by voting for candidates closest to his or her views on the question of ratification. A procedure of this sort once won a measure of Congressional support. In 1923, the Senate Judiciary Committee reported Senate Joint Resolution 40, popularly known as the "Back to the People Amendment" which would have revised Article V of the Constitution to limit ratification to a referendum procedure.[5]

There is little question that lobbying on the ratification of an amendment submitted by a convention would be fierce. The ferocity, however, would arise from the level of controversy surrounding the subject matter of the amendment rather than the method of its proposal. To fear the lobbying pressure and to suggest, as some commentators already have, that people are not wise enough to handle it is too elite a presumption for anyone other than the people themselves to prove or disprove. As noted in a 1937 article by Malcolm Eiselen for the *North American Review*, "To assume, as many apparently do, that a second convention could alter the Constitution only for the worse is . . . an unwarrantable libel upon the creative statesmanship and political sagacity of the American people." [6]

Nevertheless, if the convention bills approved by the Senate in 1971 and 1973 are any guide, Congress appears to have scant faith in the ability of the public to deal with the Constitution. In the rush to defend the Constitution against predicted convention assault, Congress seems ready to shrink the people's right to deal with their own charter. S. 3, the Federal Constitutional Convention Procedure Act, is a direct, nearly identical descendant of the bills of the early 1970's. To examine those earlier bills is to become aware of just how far Congress is willing to go to restrict the alternate amendment process.

III. VOTE REQUIRED TO PROPOSE AMENDMENTS

When Senator Ervin introduced S. 2307 in August of 1967, it provided at Section 10 that the convention may propose amendments by a majority of the total votes cast on a question. Four years later, when the

Footnotes at end of article.

Senate passed S. 215, a modified version of S. 2307, the voting requirement had been changed to two-thirds of the total number of delegates. The new super-majority was added as an amendment by Senator Bayh and approved by the Senate 45 to 39.[7]

In the life of parliamentary assemblies, the voting requirements are pivotal. There are oceans of difference between permitting approval of a question by a majority of those recorded on a given issue and requiring two-thirds of the total membership to approve. The Bayh amendment represents an exceptionally severe restriction on the ability of a convention to propose an amendment. That, at any rate, was the view of Senator Ervin, author of the bill. In opposing the Bayh amendment, Senator Ervin noted, "It undertakes to say that the people cannot amend their own Constitution. . . . It would handicap the people of the States in procuring amendments by the convention process." [8]

There is other opposition to the Bayh proposal. A 1971 study of the American Law Division of the Library of Congress noted that any procedural requirements for passage and ratification of an amendment in addition to those specified in Article V are formalities and are not strictly binding.[9] In support of that view, a Harvard Law Review study notes Article V does not expressly require a super-majority vote for the proposal of amendments by a convention even though it does require a two-thirds vote for the proposal of amendments by Congress. The study further states that a "two-thirds requirement predetermined by Congress would appear to be unconstitutional." [10] Moreover, the 1974 American Bar Association study of the convention method of amendment states, "We view as unwise and of questionable validity any attempt by Congress to regulate the internal proceedings of a convention. In particular, we believe that Congress should not impose a vote requirement on an Article V convention." [11]

It might be noted further that the first standing rule of procedure adopted by the Constitutional Convention on May 28, 1787 shows the convention decided voting requirements for itself. The rule stated, "A House to do business shall consist of the Deputies of not less than seven States; and all questions shall be decided by the greater number of these which shall be fully represented; but a less number than seven may adjourn from day to day." [12]

Senator Bayh, during the 1971 debate on his two-thirds voting amendment said, "I can say without fear of contradiction that never in the history of this Republic has a constitutional amendment been referred to the States for ratification without concurrence of two-thirds of the Members, not of one body, but of two bodies, the House and Senate." [13]

History does not support Senator Bayh's contention.

On December 6, 1803 during debate in the House of Representatives on approval of the Twelfth Amendment, the two-thirds question was raised a number of times. Both Congressman Griswold and Congressman Dennis noted that when the Senate, four days earlier, approved the amendment, they did *not* do so with the approval of two-thirds of the entire membership. Mr. Griswold noted, "By a certificate, obtained from the Secretary of that body, it appears that the resolution was passed by the votes of twenty-two members in favor of it; twenty-two voting in the affirmative and ten in the negative. It is known to every gentleman that the Senate consists of thirty-four members, and that it consequently requires twenty-three to constitute two-thirds of its members." [14]

During the same House debate on the Twelfth Amendment, there was also discussion of the means by which the Congress had approved the Bill of Rights for submission to the States. Mr. Rodney spoke to the action taken by the Senate, saying, "The Journal expressly says they were adopted by two-thirds of the Senators present concurring . . . We . . . find that in September, 1789, it is declared on the Journal of the Senate that amendments passed, and which are now part of the Constitution, were ratified by two-thirds of the members present." [15]

Both Hinds' precedents and Cannon's Precedents of the House of Representatives specifically state in bold type that the vote required for passage of a joint resolution proposing an amendment to the Constitution is two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership.[16] To support that precedent, illustrations are provided of House action on two separate proposals on the amendment allowing direct election of U.S. Senators. An excerpt from Cannon's Precedents shows how the two-thirds question was resolved:

"On May 13, 1912, the House was considering the Senate amendments to the joint resolution (H.J. Res. 39) proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States.

"A motion by Mr. William W. Rucker, of Missouri, that the House concur in the Senate amendment being put, and the yeas and nays being ordered, the yeas were 238, nay, 39, answering present 5, not voting, 110.

"Mr. Thomas U. Sisson, of Mississippi, submitted that the constitutional requirement had not been complied with and the motion had not been agreed to. He cited Article V of the Constitution providing that two-thirds of the two Houses might submit amendments to the Constitution and took the position that under this provision more than 260 votes would be required for affirmative action, whereas only 238 had voted in the affirmative.

"The Speaker said:

"Two-thirds of the House means two-thirds of a quorum.

"It has been held uniformly, so far as the Chair knows, that two-thirds of the House means two-thirds of those voting, a quorum being present.

"When the phrase or collocation of words, 'the House of Representatives,' is used, it means a quorum of the House. If it can do one thing with a bare quorum (it) can do anything; and what precedents there are, both of the Supreme Court and of the Speaker—because Mr. Speaker Reed rendered an opinion—held that in a situation like this 'two-thirds' meant two-thirds of thoes voting, provided it was quorum." [17]

Further comment is found in the Supreme Court's ruling on the *National Prohibition Cases*. Speaking for the Court, Justice Van Devanter wrote, "Two-thirds vote in each house which is required in proposing an amendment is a vote of two-thirds of the members present—assuming the presence of a quorum—and not a vote of two-thirds of the entire membership . . ." [18]

Justice Van Devanter based this statement on the case of *Missouri Pacific Railway Company* v. *State of Kansas* decided by the Court on January 7, 1919. Chief Justice White gave the opinion of the Court and his argument focused in large part on the action of Congress in proposing the Bill of Rights. After citing passages from the Senate Journal indicating that two-thirds of a quorum rather than two-thirds of the elected membership proposed the amendments, the Chief Justice made this observation:

"When it is considered that the chairman of the committee in charge of the amendments for the House was Mr. Madison, and that both branches of Congress contained many members who had participated in the deliberations of the convention or in the proceedings which led to the ratification of the Constitution, and that the whole subject was necessarily vividly present in the minds of those who dealt with it, the convincing effect of the action cannot be overstated.

"But this is not all, for the Journal of the Senate contains further evidence that the character of the two-thirds vote exacted by the Constitution (that is, two-thirds of a quorum) could not have been overlooked, since that Journal shows that at the very time the amendments just referred to were under consideration there were also pending other proposed amendments, dealing with the treaty and law-making power. Those concerning the treaty-making power provided that a two-thirds vote of all the members (instead of that proportion of a quorum) should be necessary to ratify a treaty dealing with enumerated subjects, and exacted even a larger proportionate vote of all the members in order to ratify a treaty dealing with other mentioned subjects; and those dealing with the law-making power required that a two-thirds (instead of a majority) vote of a quorum should be necessary to pass a law concerning specified subjects.

"The construction which was thus given to the Constitution in dealing with a matter of such vast importance, and which was necessarily sanctioned by the States and all the people, has governed as to every amendment to Constitution submitted from that day to this." [19]

When matched against these precedents, the Bayh amendment represents an extravagant imposition on the ability of a convention to reach a decision on proposing an amendment. The two-thirds provision is not included in S.3, the current convention guideline bill before the 96th Congress, and should be rejected if it is offered again as an amendment.

IV. THE APPLICATION PROCESS

As introduced in 1967, S. 2307, the Constitutional Convention Procedures Act, contained a provision that would have allowed individual state legislatures to pass on questions surrounding the validity of their applications for a constitutional convention. Those decisions of the state legislatures were to be binding on all others, including Congress and federal courts.[20] When S. 215, an amended version of S. 2307, was approved by the Senate in 1971, Congress took for itself the power to decide on the validity of state applications.

Cyril Brickfield, author of landmark convention studies for the House Judiciary Committee in the late 1950's, gives evidence that the Congressional attempt to intervene so intimately in the affairs of state legislatures may well be out of order. Citing the case of *Field* v. *Clark*, Brickfield in 1957 wrote, "procedural requirements in the passage of legislation are deemed to have been properly met when the legislation is certified correct by the presiding officer . . . The Supreme Court held in the Field case that the courts should not . . . go behind enrolled acts which carry the solemn assurances of both legislative houses . . . that the legislation has passed." Brickfield concluded, ". . . it would be more prudent in the light of court decisions and historical precedents to recognize the established rule that deliberative bodies have the right to regulate their own proceedings and to accept State applications (for a convention) when certified to, as having been validly adopted." [21]

If Congress involves itself in the process of determining the validity of applications, a tangle of other questions will certainly follow. Many of the state applications attach conditions which will influence the rulings on their validity. Moreover, the application process itself has become a mathematical nightmare. Since 1974, thirty applications from twenty-five states (through March 16, 1979) have been listed in the Congressional

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Record under the heading "PETITIONS" or "MEMORIALS" calling for a constitutional convention on balanced budgets. But consider the following problems:

A. The Library of Congress maintains that the Arkansas application does not count because it was only passed by one House of the State Legislature.[22] In March of 1979, however, Arkansas renewed its convention application, apparently with the concurrence of both houses of the legislature.[23]

B. The Library of Congress maintains that the Indiana application is similarly invalid, having passed only one House of the state legislature.[24] That would reduce the number of applications by one.

C. Texas provides an excellent example of how confusing the application process can become. On January 15, 1979, the House of Representatives summarized a Texas application calling for a balanced budget amendment. (Memorial No. 5). The House summary said Texas wanted a convention called if Congress failed to submit a comparable amendment.

When the Texas application was finally printed in the Senate on March 1, 1979 (POM-51), it contained no mention of a convention request. The Texas application printed March 1 by the U.S. Senate had been designated "House Concurrent Resolution No. 13" by the Texas Legislature. It noted among its several resolving clauses that its purpose was to reaffirm the provisions of "House Concurrent Resolution No. 31". That raised the question of why one concurrent resolution numbered 13 would "reaffirm" the intent of a subsequent concurrent resolution numbered 31. The Texas legislature would, no doubt, be in a much better position to clear up that matter than Congress.

The confusion cleared somewhat on March 15, 1979. On that day the Senate printed the text of the Texas Concurrent Resolution No. 31 (POM-95). It did, in fact, make amendment by convention the alternative means of obtaining a budget amendment.

Also on March 15, the House of Representatives printed a summary of the Texas application (Memorial No. 74). It appears that the January 15, 1979 House summary had simply been in error.

D. On February 22, 1979 the House of Representatives noted that Florida had requested a convention to propose a balanced budget amendment. However, on March 1, 1979, in the Senate portion of the Congressional Record, two applications from Florida were printed. One, POM-59, came from the Florida Senate. It requested Congress to call a convention to develop a balanced budget amendment. The other application, POM-60, was from the Florida House. Using different deficit figures, citing different reasons, and specifying an exact text of the desired amendment, it also requested a convention. Since the separate applications do not represent an identical request from the full Florida legislature, it would appear that it would not be valid. The Florida legislature would seem to be in the best position to explain.

E. Sixteen of the state applications (as of March 16, 1979) do not make the convention route the primary choice for obtaining an amendment. The first choice, in each case, is to have Congress approve and submit an amendment. That raises two questions: (1) Are any of these sixteen countable as "valid" convention applications, and (2) how much time would Congress have in which to act before being required to initiate the convention alternative? Of the sixteen states making the convention an alternative to Congressional action, none of them established a grace period in which Congress would be given the chance to act first. Interestingly, five states which make a convention the only means of adding a balanced budget amendment do set a grace period ranging from five months to sixty days following the receipt by Congress of valid applications from two-thirds of the states

As if the arithmetic of the application process wasn't confusing enough, the Standing Rules of the Senate do not mention the term "Application" although it is contained in Article V of the Constitution. Rule VII of the Standing Rules of the Senate mentions both "memorials" and "petitions." In fact, subsection six of that rule provides that communications from state legislatures are to be printed in full in the Senate portion of the Congressional Record. Adding the term "Applications" to Rule VII would give requests for a constitutional convention a separate identity and likely reduce some of the existing confusion. However, in view of the contemporary rush toward a convention it is conceded amending the Senate rules now would be akin to closing the barn door after the horses have left.

In summary, while court precedent indicates Congress should not involve itself so directly in the judging of the validity of state applications, the confusion attending the wording of the applications raises questions of how Congress could determine validity without specific guidance from the States.

V. OTHER RESTRICTIVE FEATURES OF S. 3

In addition to provisions already cited, S. 3 would virtually deny the courts any role as a convention arbiter. Beyond that, the current bill would require the delegates to swear an oath, not to defend the Constitution, but rather "to refrain from proposing or casting his vote in favor of any proposed amendment . . . relating to any subject which is not named or described in the concurrent resolution of the Congress by which the convention was called."[25]

Although S. 3 states that a convention must convene within one year of the time Congress approves concurrent resolution calling it into being and that the convention would meet for no longer than one year unless otherwise extended, there is no specified time in which Congress would be required to take action on the concurrent resolution itself. It becomes clear that a convention would not meet immediately and that Congress would provide itself plenty of time to act on an amendment of its own as a possible means of heading off a convention. If a convention is called, S. 3 leaves little doubt that Congress would be the final master of convention actions.

(It is more than just a matter of passing curiosity to consider what would happen if the opportunity ever arose to change the role of Congress in the Article V amendment process. That chance has never arisen, of course, under this Constitution. It did come up in an extra-constitutional way when the Confederate States drafted their own Constitution at the outset of the Civil War. Their provisional constitution simply provided that "The Congress, by a vote of two-thirds, may, at any time, alter or amend this Constitution."[26] The final Confederate Constitution's provision for amendment was notably different. In fact, it took the power of amendment completely out of the hands of Congress, leaving amendments to be proposed only by the states assembled in convention.)[27]

VI. CONCLUSION

It is lamentable that proposed legislation fits such tight prior restrictions on a possible convention. S. 3 would permit Congress to determine where, when and for how long a convention would meet; decide how the delegates would be selected; set the size of the vote required to prosecute an amendment; and give Congress limited review authority over the amendments produced by a convention. S. 3 also substantially precludes court involvement as an arbiter in the convention process.

To those who fear a "runaway convention" it need only be observed that the only group threatening to run away with it so far is Congress itself.

It is also regrettable that among those who oppose a convention and express the most fears of an unlimited assembly are those who have been so outspoken in the past in defense of individual liberty. Recent news stories have listed the American Civil Liberties Union, the NAACP, Americans For Democratic Action, Common Cause and the League of Women Voters as members of an emerging coalition to oppose a convention. Moreover, one prominent law professor has expressed fears that a convention might become a "rogue elephant."[28]

It is one thing to oppose a constitutional convention, whatever the motive. But before that opposition is converted into statutory language restricting a convention, great caution is in order. It does not seem that among those who speak eloquently for the defense and advancement of human rights, there is a clear-eyed perception of the power residing in the Article V convention clause for the preservation of those rights. Simply put, the convention option is a safety valve to be utilized when and if the Congress proves resistant to the demands of the public. This option involves a number of risks, among them the distant possibility of reducing certain protections of individual liberty. There is a converse of that, however. A convention might also enlarge guarantees of freedom. The risks are there. It should be remembered, nonetheless, that the Convention of 1787 was a gathering of risk-takers who decided that the risk of providing two means of amendment of the Constitution was not so high as leaving amendment solely in the hands of the Congress.

To submit to rigid procedural sleeves on the public's right to amend the Constitution is to Sanforize, at the threshold of free expression, a bit of liberty itself. Before falling victim to anxiety over any one amendment proposal, there should be more thought given to what acting too restrictively can do to the long range freedom of the people to speak for themselves.

FOOTNOTES

[1] *Documents Illustrative of the Formation of the Union of the American States*, 69th Congress, 1st Session, House Document No. 398, p. 877.

[2] Albert L. Sturm, *Thirty Years of State Constitution Marking: 1938–1968*, p. 55.

[3] Doyle W. Buckwalter, "Constitutional Conventions and State Legislators", *Journal of Public Law*, Vol. 20, p. 543.

[4] *Hawke* v. *Smith*, No. 1, 253 U.S. 221 (1920).

[5] *The Congressional Digest*, Vol. II, No. 6, March 1923, p. 169.

[6] Malcolm R. Eiselen, "Dare We Call a Federal Convention?", *North American Review*, Vol. 244, No. 1, (1937), p. 29.

[7] *Congressional Record*, October 19, 1971, p. 36770.

[8] *Ibid*, p. S16531.

[9] Stuart E. Glass, "Amending the Federal Constitution—Procedures of the General Services Administration and of the State Legislatures", American Law Division, Library of Congress, April 6, 1971, p. 1.

[10] *Harvard Law Review*, Vol. 85:1612, (1972), p. 1633.

[11] *Amendment of the Constitution by the Convention Method Under Article V*, American Bar Association, (1974), p. 19.

[12] *Documents Illustrative of the Formation of the Union of the American States, op. cit.*, p. 111.

[13] *Congressional Record*, October 19, 1971, p. 36770.

[14] *Annals of Congress*, December 6, 1803, p. 646.

[15] *Ibid*, p. 656.

[16] See, e.g., *Hinds' Precedents of the House of Representatives of the United States*, Section 7027, p. 1009.

[17] *Cannon's Precedents of the House of Representatives*, Vol. VIII, Section 3503, p. 904.

[18] *National Prohibition Cases*, 253 U.S. 350.

[19] *Missouri Pacific Railway Company* v. *State of Kansas*, 248 U.S. 276.

[20] *S. 2307*, August 17, 1967, Section 3(b).

[21] Cyril F. Brickfield, "Problems Relating to a Federal Constitutional Convention", House Judiciary Committee Print, 1957, pp. 14–15.

[22] David C. Huckabee, "Constitutional Convention Applications", September 29, 1978, p. 7.

[23] *Congressional Record*, March 8, 1979, p. 4372.

[24] Huckabee, *opt. cit.*, p. 7.

[25] *S. 3*, 96th Congress, 1st Session, Sec. 8 (a).

[26] Charles Robert Lee, Jr., *The Confederate Constitution*, p. 169.

[27] *Ibid*, p. 196.

[28] *The Washington Post*, March 16, 1979.●

"TECHNOLOGY FOR THE THIRD WORLD": THE INSTITUTE FOR TECHNOLOGICAL COOPERATION

● Mr. JAVITS. Mr. President, I call to the attention of my colleagues and submit for printing in the RECORD an editorial that appeared in the New York Times on March 20, 1979. The editorial expresses strong support for the administration's proposed Institute for Technological Cooperation (IFTC), which is currently being considered by the Senate Foreign Relations Committee.

The IFTC would assist developing countries in improving their scientific and technologial capacities through active collaboration between the LDC's and the United States on specific research and development projects addressed at developing solutions to the central problems of economic development.

As the Times points out:

> The dream has persisted that scientific knowledge could help poor countries to catch up with the rich ones.

I share the belief that the technological expertise of the United States could have a tremendous impact on the problems of the developing countries. The establishment of a new Institute is also in our own political and economic self-interest since it would serve better the development needs of the middle-income developing countries, which are not being helped by our present bilateral and multilateral aid programs. While these countries are making progress on the development ladder, they still have serious development problems that must be addressed in a comprehensive and cooperative manner. It is imperative that we respond to the evolving needs of the middle-income countries now that these important countries have outgrown traditional U.S. bilateral aid in order to maintain our trade ties with them which are so important to them and to us.

In a year of fiscal austerity and questioning of the effectiveness of our AID program, authorizing $25 million for a new Institute should like all programs be considered carefully. But I believe it is the very deficiencies in our current AID program and the questions as to its political effectiveness that merit serious consideration of the IFTC. The Times concurs on this point and states that the Institute represents an opportunity to improve the quality of U.S. foreign aid with high dividends and at a modest cost.

The editorial follows:

[From the New York Times, Mar. 20, 1979]

BRINGING TECHNOLOGY TO THE THIRD WORLD

Ever since the Truman Administration proposed "technical assistance" to the developing countries—with the celebrated Point Four program—the dream has persisted that scientific knowledge could help poor countries catch up with rich ones. But technology has never been fully put to work on the problems of development. An overdue attempt to improve that performance is now to be made, if Congress permits.

The Carter Administration proposes to set up a small Institute for Technological Cooperation. It would act as honest broker in training more third-world scientists in promoting international research on the food, health, population, energy, environmental and natural resource problems of poor countries.

Some of this has been done in the past by the Agency for International Development. Its agricultural research centers around the world can claim much credit for the "miracle" rice and high-yielding wheat strains that have doubled, even quadrupled, output at a fraction of the cost of traditional forms of assistance. But, as Frank Press, the President's science adviser observes, less than one percent of the world's investment in nonmilitary research is aimed at meeting the needs of the one billion people who live in absolute poverty.

Vast research, for example, is done on temperate zone crops and livestock, but very little on goats, sheep and root crops that can grow productively where soil is poor and water and fertilizer are limited. Without a breakthrough on this problem, warns the National Academy of Sciences, there will be serious food shortages by the year 2000.

Other problems cry for attention. Tuberculosis vaccine is 80 percent effective in Britain but ineffective in India; not enough has been done to find out why and to look for a substitute. Measles kills 1.5 million children in the poor countries every year because the vaccine that has virtually eliminated fatalities in the advanced nations requires more refrigeration facilities than are available in hot countries. Not enough is being done on the parasitic diseases that continue to afflict millions.

The developing countries tend to think of technology transfers as the kind that advance industrialization. They have tried to write a "code of conduct" to gain easier access to patents and other information held by multinational companies, even as they resist measures that would encourage the private instrument and joint ventures that bring such know-how.

The proposed Institute for Technological Cooperation cannot solve this complex problem. But it could help mobilize other scientific resources. The research of governmental agencies, like the Bureau of Standards, Department of Health, Education and Welfare, and the Agriculture and Energy Departments could be expanded into areas useful to the poor countries. University, foundation and other nonprofit laboratory research could also be aimed in that direction, and existing technology could be adapted for development.

In a tight-budget year that finds the United States reluctant to increase foreign aid, the institute represents an opportunity to improve the quality of American developmental aid at small cost; only $25 million in new money is asked for the first year. Even if that sum later grows somewhat, the dividends could be high.●

TOWARD DEMOCRACY AND SOCIAL JUSTICE IN BRAZIL

● Mr. KENNEDY. Mr. President, March 15 marked the Presidential inauguration in Brazil of the fifth general in a row since the military coup of 1964. After a period of brutal repression from 1969 to 1974, Brazil has moved slowly toward the fuller protection of basic human rights against arbitrary arrest and torture. Some of the enabling legislation and some of the institutions of repression remain, but we can all take heart from these first steps, and we wish the new President, General Figueiredo, well in his stated intention to continue the process of returning Brazil to full democracy under civilian rule.

I believe that it is both possible and desirable for the United States and Brazil to work together to enlarge democracy and social justice for both our peoples—so as to "consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man," as called for by the Preamble of the American Convention of Human Rights. To that end, we must all hope that Brazil will move rapidly toward national reconciliation, with an amnesty for political exiles and prisoners, and a return of free political party and electoral activity without fear of intervention by the armed forces.

The basic problems of Brazil, and of so many other developing nations, are the problems of misery and poverty—problems that can only be satisfactorily resolved in an atmosphere of full democratic participation of all of the Brazilian people in a free environment. I hope Brazil will soon be able to address its urgent social problems through a fully democratic system in which all groups have access to the Brazilian media, can organize without fear of reprisals, and can compete according to the rules of democratic dialog.

Brazil is a dynamic and creative nation, endowed with rich human and natural resources. It is a model, a giant laboratory, whose struggles to find greater freedom and social justice for its people are not only important to the Brazilian people, but are watched with great interest by the rest of the world. Not only the less developed and developing countries, but the developed countries, may have much to learn from the Brazilian experience of the next few years.

Over the coming years, Brazil can show the rest of the world how it is possible to promote social justice and freedom through democratic and peaceful means. Today I state my unequivocal support for the Brazilian people in their struggle for social justice and democracy.●

CONSTITUTIONAL AMENDMENT LIMITING GOVERNMENT SPENDING

● Mr. HEINZ. Mr. President, several weeks ago Senator STONE and I announced our intention to introduce a constitutional amendment to limit Government spending. The proposed amend-

ment will be modeled after the ideas of the Nobel Prize-winning economist Dr. Milton Friedman and the National Tax Limitation Committee. We have been hard at work the past month consulting with various economists, listening to legal scholars, and examining economic projections to insure that our amendment is fiscally responsible and insures that excessive Government spending is finally brought under control.

When Senator STONE and I announced our support for this approach to controlling the size of the Federal Government, we called for a national debate on the issue. I note that many of my colleagues have now spoken out on the need to bring Government spending under control. In addition, I have read with interest the many newspaper accounts, editorials, journal reports, and magazine articles dealing with this issue. I believe this exchange of ideas is informative and contributes to our understanding of the economic problems facing this country.

Today, I would like to bring to the attention of my colleagues three articles that recently appeared in the Washington Post and I ask that they be printed in the RECORD. I believe the three articles provide a thorough analysis of the problems inherent in direct balance-the-budget approaches and the troubling uncertainties of a constitutional convention. The points expressed reaffirm my view that Congress should support a constitutional amendment to limit Federal spending. Senator STONE and I will introduce our proposal within the next few weeks, and I am confident that the Congress will find it a reasonable and rational approach.

The articles referred to follow:

THE HISTORICAL EXPERIENCE

(By John W. Anderson)

In this happy land of short memories, half of the states' legislatures are now demanding a balanced budget enforced by constitutional amendment. Not to be outdone, several dozen congressmen have drafted language that would also require the government to pay off the federal debt within the next century.

If those ideas seem right and good to you, you owe it to yourself—and to the country—to look at their history. Those were the ideas that prevailed in this country until late in the New Deal, and they locked the American economy into a pattern of short booms that quickly crested in financial panics and severe unemployment.

There were six financial crashes and two long depressions between the Civil War and World War II.

Those depressions were periods of violent collisions between labor and management. They brought the United States closer to the European style of social-class politics than ever before or since. Through it all, presidents and Congresses agreed that federal budgets always ought to be balanced except in national emergencies, and they struggled conscientiously to pay off the war debts.

Then, in the late 1930s, things changed.

Does it strike you as important that this country has now gone through 34 years since World War II with no financial panics, and with the unemployment rate never as high as 10 percent? The reason is that the federal government has learned to use budget deficits and debt to stabilize the whole national economy. If you rule out deficits and debt, you return the economy to the jolting instability of the 19th century.

The United States had paid off the federal debt in the 1830s, but it had to borrow heavily in the Civil War. For nearly 30 years after the war, the budget was held consistently in surplus and the debts were slowly reduced. The social costs were severe.

Banks, then as now, used government bonds—that is, pieces of the federal debt—as their reserves. When the government retired the bonds, it was inadvertently tightening the money supply. The constraints got tighter than ever when Congress put the country back on the gold standard.

The first of the great American financial panics arrived in 1873—triggered, apparently, in Europe by the reparations that France paid to Germany after the war of 1870. Credit collapsed in the United States, throwing the country into a depression that lasted five years.

The 1880s brought a tremendous boom as immigrants flooded into the country, new land came into production and new resources were opened. But this surge in production, against a tightly limited money supply, forced a steady fall in prices—a disaster for the farmers and small businessmen trying to pay off loans with shrinking incomes.

In 1893 there was another panic, this time incited by financiers' fears that coinage of silver would bring inflation. Again a depression followed. In 1892 the unemployment rate was 3 percent. In 1894 it was 18 percent.

Modern Americans are apt to think of William Jennings Bryan's famous Cross of Gold speech in 1896 as a faintly comic piece of old-fashioned hyperbole:

"You come to us and tell us that the great cities are in favor of the gold standard; we reply that the great cities rest upon our broad and fertile prairies . . . We will answer their demand for a gold standard by saying to them: You shall not press down upon the brow of labor this crown of thorns, you shall not crucify mankind upon a cross of gold."

Bryan was speaking for the plains farmers who had seen wheat drop to half the price of the early 1880s, in response to steadily tightening money. It was deflation, the opposite of the present inflation.

But the distress was not confined to the plains. The extreme insecurity of industrial life generated a wave of pitched battles between the new labor unions and employers. The Homestead strike was in 1892 and the Pullman strike, that President Cleveland broke with federal troops, in 1894. Thoughtful Americans began to fear that the country was sliding toward another civil war, this time along social and economic lines.

Then pure luck ended the long deflation. Prospectors suddenly found gold in Alaska and Australia, and chemists developed the cyanide process to recover it from low-grade ores. Gold prices dropped. Ironically, the gold standard became, for a time, inflationary.

The cycles of growth and contraction continued through the early 20th century, with the greatest of the crashes coming, of course, in 1929. The collapse of credit again caused bankruptcies, resulting in unemployment that diminished demand and brought further unemployment in a long spiral downward. By 1933 the unemployment rate was 25 percent.

In England, John Maynard Keynes—in one of the great intellectual triumphs of this century—was working out this theory of employment and money. He urged governments to use their public credit to replace the collapsed private credit, and to extend public spending to offset the decline in private demand.

In the United States, the New Dealers, far less radical than their reputation, were suspicious of Keynes. When the economy slowly and painfully began to recover in 1937, the Roosevelt administration immediately reverted to conventional economics and tried to cut federal spending. President Roosevelt himself urged Congress to eliminate the deficit. As Keynes had warned, the patient immediately suffered a relapse. Unemployment shot from 14 percent in 1937 back up to 19 percent in 1938. That persuaded Roosevelt, who instantly began widening the deficit again. But it took three years, rearmament and the draft to get the unemployment rate down under 10 percent. It has been there ever since because every subsequent administration, Republican and Democratic, has followed the Keynesian method of using the federal budget as the balance wheel of the economy.

Why do a good many respectable people now want to forbid it, by constitutional amendment? Having grown accustomed to steady growth and stable prosperity, they have lost interest in the mechanism that provides it. They have forgotten what life was like without it.

HOW A SMALL CRUSADE GREW

(By Carrie Johnson)

Unless its new visibility slows it down, a campaign that many people dismissed as far-fetched could, very soon, force Congress to consider a balanced-budget amendment to the Constitution, try to set ground rules for the first federal constitutional convention since 1787, or perhaps wrestle with both huge problems at once.

The small crusade with such great implications has been the political sleeper of the year, an anti-spending, anti-Congress drive that had been endorsed by 21 states before it came to general attention when California Gov. Jerry Brown embraced the cause last month.

Since then, four more states (Arkansas, North Carolina, South Dakota and Utah) have signed on. That makes 25. Advocates such as Jason Boe, Oregon senate president and head of the National Conference of State Legislatures, expect to collect the required 34 by this summer—though opponents claim some of the resolutions are invalid.

Where did this startling movement start? Proposed anti-deficit amendments have been kicking around for years. So have convention calls on other issues.

The idea of combining the two apparently came to several men in scattered states about four years ago. One of those, state representative David Halbrook of Belzoni, Miss., recalled recently that he "was sitting around with some friends in the back of a drygoods store—no kidding—and we got to talking about what could be done, what could be done to get some handle on the [federal] government."

Meanwhile, in Maryland, state senator James Clark (D-Howard) decided that a convention call might arouse his congressional delegation, which had ignored his first appeal for a no-deficit amendment.

After getting their measure through their own states in 1975, Clark and Halbrook got together and got organized. Halbrook lobbied across the South. Clark recruited the aid of the National Taxpayers Union (NTU), a small Washington-based group best known until recently for issuing frequent lists of lavish or silly-sounding federal grants.

While using NTU's mailing lists and ties with other anti-spending groups, they worked primarily through informal networks of state legislators. Recently Clark and James Davidson, NTU's founder, did recruit one paid coordinator: George Snyder, a former Maryland state senator now based in Florida.

"If this isn't grass-roots," said Halbrook, "I don't know what is."

Instead of seeking much publicity, the movement's sponsors nurtured their obscurity to keep opposition down. "We put out just enough statements so we couldn't be accused of hiding anything," Davidson said

recently. They also encouraged impressions that their project was outlandish and their resolutions about as meaningful as endorsements of apple pie.

Still, hundreds of minor crusaders plod through the country all the time without winning even one state. This effort has caught on because its themes have at least superficial appeal. Rightly or wrongly, "balanced budget" is a catch-phrase for economic stability, strong dollars and governmental self-control—just as "deficit spending" symbolizes recklessness, inflation and general civic decline.

Clark summed up this brand of economic fundamentalism recently by saying, "People may not understand all the theory, but they know instinctively what's wrong." And when "what's wrong" seems to include an irresponsible Congress and a runaway bureaucracy, using the Constitution as a checkrein is a saleable idea.

Thus, in Virginia, where most proposed constitutional amendments get stalled for years, the balanced-budget measure went through both houses without dissent in 1966. In Oregon last November, two state tax-curbing measures were rejected, but an advisory question on the amendment plan, put on the ballot by Jason Boe, got 82 percent of the vote.

As the plan became linked with other anti-spending, anti-Washington protests, it attracted more notice and much more fire. Last year in Colorado, for instance, the proposal was backed noisily by tax-protesting groups and a bloc of aggressive, arch-conservative Republicans. It passed, but only after a legislative brouhaha.

Clark and Davidson had hoped to proceed quietly until they had perhaps 30 states in tow. Brown's leaping-in obviously shattered that strategy and touched off political jockeying that they cannot hope to control.

The publicity has also brought a scrutiny that the movement is not ready for. Their proposals are still vague; they have not yet endorsed any specific amendment language or proposed convention rules. Thus they are ill prepared to explain, for instance, what kinds of "national emergencies" might justify a federal deficit, or how convention delegates should be picked. And they now find national figures whose aid they had hoped to seek, such as economist Milton Friedman, advancing competing plans.

Moreover, the state-initiative strategy has become a dicey approach. Clark, for one, says he does not want a convention or expect one to occur; his aim has been to force Congress to submit an amendment to the states. But if apprehensions about a possible convention cause the drive to stall, Congress could easily put the amendment question back on the shelf. On the other hand, if state legislatures are not deterred, stopping at 30 or 33 states—while congressional deliberations amble on—could become difficult.

Congress and the country are just starting to focus on all the problems involved. But the next important decisions may be made in the remaining state legislatures, mostly in the East and Midwest. The immediate question is how many of those legislators recognize that their votes really matter, and that the issue is no longer as easy as apple pie.

THE AMENDING PROCESS: A MORASS OF UNKNOWNS

(By James E. Clayton)

Sometime this spring, according to those who keep track of such things, the 34th state legislature will formally petition Congress to call a constitutional convention to draft a budget-balancing amendment. What happens when (and if) that resolution reaches Capitol Hill? The answer is that no one knows. There are no precedents, no laws and few guiding principles. Congress—and the nation—would be off into the unknown.

The only guidance we have is Article V of the Constitution, which reads as follows:

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by Congress. . . .

There is nothing in that article about the scope of that convention, who is to be represented in it, how it is to proceed, or what is to happen to its product. Nor is there any indication in the Constitution of what happens if Congress simply refuses to issue the call.

Since two-thirds of the states have never asked for a convention on the same subject, there are no examples to follow. The Senate, under the prodding of former senator Sam J. Ervin Jr., did pass legislation a decade ago that attempted to fill some of the voids, but the House never considered it seriously. And the framers of the Constitution, although they must have had something quite specific in mind, left few traces in their commentaries on what a convention is to be.

It is easy, given so many unknowns, to dream up scenarios that throw the nation into a political crisis. What, for instance, if Congress refuses to call the convention? Those who have organized the drive for one say they would ask the Supreme Court to order Congress to do its duty. But the Court has never ordered Congress to do anything—an old legal maxim holds that courts do not enter orders they cannot enforce. There is a strong possibility the justices would rule the matter is a "political question" beyond their jurisdiction. If they did that, then what? Congress would be in clear disobedience of the Constitution and the states would have a moral right to make it obey in any way they could.

While that scenario is unlikely, a more refined version has Congress refusing to call a convention because the resolutions requesting it are not identical. The possibility of a congressional refusal on that ground was seriously discussed in the 1960s during the drive for a convention to deal with the apportionment of state legislatures. The issue was not resolved then because that drive fell two states short. It hasn't been resolved since. If Congress did such a thing, no one knows how its action would fare legally or politically.

The most likely scenario, of course, is that Congress would heed the resolutions and either pass a budget-balancing amendment itself or call the convention. Any other course would repudiate too many of the basic principles of the nation. If it chose to call the convention, all the other unsettled questions would arise.

Chief among them is whether Congress can restrict a convention to one subject, in this case budget-balancing. Most authorities think Congress could do that and then could ignore any action the convention took on other subjects. But it can (and no doubt would) be argued that Congress lacks that power. The argument for congressional power rests on inferences that can be drawn from the Constitution and from some of the things its authors wrote about their work. The argument against such limitations rests largely in political theory; a constitutional convention, after all, is the supreme authority of a free people.

The Constitution is also silent on who is to be represented at a convention. Should it be the states, with one vote each, as it was in 1787? Or the people as a whole with delegates allocated strictly on a population basis? Or, as Congress is, a mixture of state and popular representation? Should delegates be chosen by state legislatures or popularly elected? Presumably, Congress is the only body that can decide, since it is the body that must call the delegates together. Once they were assembled, however, they might claim the power to revise the voting pattern or any other rules that Congress had attempted to impose upon them, such as a two-thirds vote to approve amendments.

The ultimate scenario for political chaos is one in which a convention rebels against efforts by Congress to restrict its work. Suppose Congress said the convention was limited to budget-balancing, but the delegates also proposed amendments on abortion, prayer in the schools, segregation, apportionment or women's rights.

Those who say a convention can be limited assert Congress could simply refuse to submit those extraneous amendments to the states for ratification. That assumes the convention's work goes through Congress on its way to the states, an assumption based on the fact that Congress must decide whether state legislatures or state conventions are to do the ratifying. But the Constitution does not specifically route a convention's proposals through Congress. It merely says those proposals become effective when three-fourths of the states ratify them in the method proposed by Congress.

If a runaway convention—asserting that it, not Congress, speaks for the people—shipped its proposals directly to the states and told Congress merely to designate the mode of ratification, could (and should) Congress refuse to do so? Would the Supreme Court stay out of such a hassle, as it has always stayed out of arguments involving the validity of constitutional amendments? If it did, how would the impasse be resolved?

The answer to those questions, like the answers to almost all the others, is that no one knows. That's why the drive for a constitutional convention sends chills down the backs of most of those who have ever thought about the forces that could be unleashed. There are in that drive the seeds of conflicts that would make the other political crises since the Civil War look puny.●

NATIONAL ASSOCIATION OF COUNTIES SAYS "NO" TO A DEPARTMENT OF NATURAL RESOURCES

Mr. TALMADGE. Mr. President, on March 13 the board of directors of the National Association of Counties met to discuss the proposed reorganization of the natural resource functions of the Government. The association now has joined commodity, conservation, and recreation interests in opposing a reworked Department of the Interior to be called by the administration the Department of Natural Resources.

Mr. President, I ask that the resolution of the board of directors of NACO be printed in the RECORD.

The resolution follows:

RESOLUTION OPPOSING TRANSFER OF FOREST SERVICE AND SOIL CONSERVATION SERVICE FROM DEPARTMENT OF AGRICULTURE

Whereas, the President of the United States has proposed to study whether federal responsibilities for natural and environmental programs are effectively organized and to consider possible improvements; and

Whereas, the scope of the study includes a proposal to remove the United States Forest Service and the United States Soil Conservation Service from the United States Depart-

ment of Agriculture to the United States Department of the Interior; and

Whereas, the United States Department of Agriculture has a long history of land management with resource capabilities for carrying out land programs and related activities; and

Whereas, there is a close relationship between land resources and the production of food and fiber which has been historically administered by the United States Department of Agriculture; and

Whereas, when land and water resource management is viewed as the mutual responsibility of government and the private sector, the United States Department of Agriculture is centrally involved, in that 90 percent of the land area of this nation is affected by its programs and policies for conservation and its use of renewable resources; and

Whereas, the United States Department of Agriculture has historically managed to balance the demands on public lands and has more experience in the multiple use concept of public lands than any other federal department or agency; and

Whereas, such actions are being proposed which concern the transfer of certain functions of the United States Department of Agriculture to other departments will relegate said Department to less than a cabinet-level department of the federal government and leave it without a voice concerning the economic growth of this nation; therefore, be it

Resolved by the National Association of Counties, that we oppose the transfer of the United States Forest Service and the United States Soil Conservation Service from the United States Department of Agriculture to the United States Department of the Interior and that the federal government move cautiously in its deliberations regarding any change in the organization for management of the nation's renewable resources.●

ACCEPT PROGRAMS

● Mr. HAYAKAWA. Mr. President, I would like to say a few words to my colleagues about the upcoming media campaign sposored by the Alcohol Counseling Center for Early and Preventive Training (ACCEPT).

ACCEPT is a San Francisco Bay area agency that offers a program for handling early problems with negative alcohol use. The problems involved can be those of the drinking person, or someone who is close to the drinking person. ACCEPT is a privately funded, nonprofit agency serving people based on their abilities to pay for services.

The programs offered by ACCEPT are intended to help individuals whose lives are being interrupted or disturbed through alcohol use by themselves or by someone else's drinking problems.

The media campaign sponsored by ACCEPT will extend from March 22 through June 22. The purpose of this campaign is to promote public awareness of the early warning signs of alcohol-related problems in the San Francisco Bay area. I want my colleagues in the Senate to be aware that there are privately run, community-based groups doing fine, people-oriented work such as this. Organizations like ACCEPT perform noble services to the community and its people, and I believe that we should commend them for their public service interests.

All of us at one time or another have known someone who has been directly or indirectly affected by alcoholism. ACCEPT should be commended for its efforts to raise public awareness of the early warning signs of alcohol-related problems to a level of at least 60 percent by June 22, 1979.

I heartily endorse this concept, and extend my best wishes for the success of ACCEPT in its campaign.●

WHY THE SHAH FELL

● Mr. McGOVERN. Mr. President, the collapse of the Shah's regime in Iran has led some observers to draw the lesson that American willpower was lacking or that our human rights policy undermined an ally. These lessons ignore the fact, however, that the Shah's downfall was caused not by any external threat but rather by internal problems. In my view, the major fault of the Nixon doctrine—the American strategic policy which shaped our relations with the Shah—was that it exacerbated those internal weaknesses and identified the United States as unsympathetic to the legitimate nationalist aspirations of the Iranian people.

Our reexamination of U.S. policy in the Persian Gulf region should concentrate on the shortcomings of the Nixon doctrine—and on positive alternatives which do not rely on massive arms sales or military security arrangements to solve essentially political problems. George Ball, the distinguished American diplomat, has just written an analysis of what brought down the Shah which illuminates the origins and impact of the Nixon doctrine in Iran. I believe it is an important first step in learning some lessons for future American policy.

I ask that George Ball's series of articles from the Washington Star, be printed in the RECORD.

The articles follow:

WHAT BROUGHT DOWN THE SHAH

(By George W. Ball)

The most puzzling question in the aftermath of the shah's departure is not why his regime crumbled after almost three decades of autocratic power but why it did not collapse earlier.

The shah's form of government—an absolute monarchy—was a museum piece. Even as a museum piece it lacked authenticity since the Pahlavi dynasty was established only a little more than 50 years ago when the shah's father, a colonel in a Persian Cossack regiment, seized power in a military coup.

Continually conscious of his shaky claim to legitimacy, the shah staged costly extravaganzas to create the impression that his reign was in the line of succession from the great Persian emperors Cyrus and Darius, exploiting as theatrical props treasures from Persia's glorious past. In 1967 he crowned himself and his empress in the spectacular setting of the Golestan Palace and the famous Peacock Throne.

Four years later he spent $125 million of public funds to celebrate the 2,500th anniversary of the founding of the Persian empire with a spectacular pageant against the backdrop of Cyrus' former capital, Persepolis.

Though most Iranians—conditioned by their history to monarchical display—accepted the shah for what he was, the glamor of royalty had far more effect on many Americans—including presidents and secretaries of state. They instinctively accorded him a presumption of legitimacy and permanence they would never have extended to a dictator unaccoutered in the robes of royalty.

Yet, expensive as those robes might be, they did not immunize Iran from the ills endemic to most developing countries. Nor did they save the shah from the mistakes dictators habitually make.

Iran was beset by three problems that are the common cause of Third World countries: demography, urbanization and spendthrift and corrupt government. Its revolution stands out from the traditional Third World pattern only because of the country's strategic location, its huge oil resources and the role of Islamic fervor in the revolutionary process.

As with many other Third World countries, the product (apart from oil) that Iran most amply produces is more Iranians, and the consequences of an annual population increase of 2.8 percent have been twofold.

Not only has the population vaulted from 13 or 14 million at the end of the Second World War to 35 or 36 million today, but such a rapid rate of increase has drastically distorted the profile of that population, shifting the median age sharply toward the lower end of the spectrum. Today nearly half of the Iranian people are under the age of 16 and two-thirds under the age of 30.

Since subsistence farmers cannot go on indefinitely splitting up small plots among an expanding number of children who survive into adolescence, the young flocked into the cities. While at the end of the Second World War only a quarter of the population was "urban," today the cities (and particularly Tehran) have been the victims of a pernicious hypertrophy, forced by social and economic pressures to accommodate 50 percent of the entire population.

It is a currently faddish cliche that the shah's regime came apart because he tried to modernize Iran too quickly. Yet his error was not the speed of his effort but the way he undertook it.

With a mounting number of young Iranians clamoring for a place in the labor force, a wise ruler would have concentrated his country's revenues on agriculture and labor-intensive industries. Instead the shah lavished money on spectacular undertakings—process industries, steel mills, automobile factories and fantastically costly nuclear power plants—projects that absorbed significant amounts of unskilled labor only during the construction period.

Nor did he provide fulfilling employment for educated Iranians. To operate and manage these 20th century facilities, he gave preference to a vast number of foreign technicians, leaving the educated Iranian elite to find unrewarding work in a greatly overblown bureaucracy.

Even so, the shah might have mitigated the corrosive effects of many of his policies had he not developed an almost psychotic sense of his own importance—and to this the United States contributed.

During the 1960s, America had dealt with Iran as a friendly, medium-sized country that faced serious problems of development. The United States had encouraged the shah to use his nation's revenues prudently for the benefit of the people and to try to advance Iran's political and social evolution in pace with its developing economy.

FROM LAND REFORM TO PROFLIGACY

Under our prodding, the shah in 1962 adopted a land reform program and made some efforts to permit limited freedom for opposing views.

But in 1972 the United States recklessly reversed course. Instead of urging the shah to fiscal prudence, we encouraged his *folie de grandeur* and his profligacy.

That critical reversal occurred when President Nixon and the then national security

adviser, Henry Kissinger, paid a brief visit to Tehran in May 1972. Because the British had withdrawn from the Persian Gulf four years earlier, President Nixon decided that Iran was a good place to apply the so-called Nixon Doctrine, which held that instead of providing direct protection, the United States would build up friendly nations "to assume the primary responsibility of providing the manpower for [their] defense.

In the case of Iran he went beyond the literal language of his earlier pronouncements by anointing the shah as the "protector" not only of his own country but of the whole Persian Gulf area.

That meeting was a turning point in America's relations with Iran. Nixon no longer treated the shah in the correct-but-arm's-length manner we had hirtherto followed but, rather, as a co-equal leader. Iran under the shah's leadership was, he implied, a power that could provide the same protection in the Persian Gulf the United States provided in other areas of the world.

As Kissinger has recently conceded, the time to have urged the shah to stop repression and move toward a more liberal society was when he was at the height of his power and authority—or, in other words, at the precise time when Nixon and Kissinger called on him in 1972.

IGNORE U.S. LIBERALS, NIXON SAID

Within the next four years he had passed his peak; even though oil prices had by then increased fivefold, his extravagant spending on arms and grandiose projects was producing budgetary deficits and forcing him to cut back on projects already commenced.

But Nixon did not urge him to adopt more democratic practices and give more recognition to human rights. On the contrary, Nixon told the shah of his admiration and envy at the way he handled his dissident students (by putting them in jail) and advised the shah to pay no attention to American liberals who were, in his words, "all failures."

Such talk enormously inflated the shah's sense of importance, but to make matters worse Nixon recklessly agreed that the United States would sell him unlimited quantities of even our most advanced weapons—much the same as giving an alcoholic the keys to the world's largest liquor store.

Pursuant to that agreement, Kissinger, in the name of the president, directed the departments of Defense and State to sell the shah any arms he wanted, making it explicitly clear that the Iranian government—not our defense authorities—should be the final judge of what was needed.

The Kissinger directive specifically mentioned such highly sophisticated weapons as F-14s (which carry Phoenix missiles) and F-15s, both still on the drawing board at the time, and laser-guided bombs just being delivered to our troops in Vietnam.

That set the shah on a buying binge unparalled in history. Up to that point, postwar American administrations had consistently kept a tight rein on his appetite for arms, selling him only such weapons and equipment as our defense authorities thought appropriate.

U.S. AGENCY CRITICISM INHIBITED

In the 21 years from 1950 through 1971, the shah's military purchases from America had thus amounted in the aggregate to only $1.2 billion; but, in the first year following the Nixon visit, the shah ordered from the United States military goods amounting to $2.1 billion, and in the seven years following the Nixon-Kissinger visit, the purchases aggregated $19.5 billion.

The designation of the shah as America's chosen instrument entitled to special favors had major effects both in the United States and Iran. It discouraged our foreign service and intelligence bureaucracies from ever suggesting any criticism of the shah's behavior or from reporting any weakening of his political strength.

It made it personally inadvisable for any American official to urge him to modernize his political structure to keep pace with his country's progress. At the same time, it helped induce in the shah a progressive personality change.

Increasingly, our government found itself talking to a ruler who believed his own fantasies. During the 1960s the shah told me on several occasions that by the time he died he hoped that his country would achieve a standard of living equal to that of a European country (which I took to mean Greece or Portugal); in the latter 1970s he began to boast to other visitors that, by the end of his reign, Iran would be the fifth most powerful nation in the world, even overtaking West Germany, and that God had several times intervened to block assassins' bullets so he might achieve that destiny for his country.

Lacking objective advice from us and isolated from his own people by the iron barrier of his increasingly authoritarian power, the shah escaped further and further into unreality.

Since he tolerated only sycophants in his entourage, used his secret police (SAVAK) ruthlessly to suppress dissent and kept the press under tight censorship, he had no means of finding out what was going on in his country.

INSENSITIVITY TO CONDITIONS

Thus, he could hardly be expected to know that the cancer of discontent had metastasized through the whole body of Iranian society and that he had in fact alienated his entire country.

Apart from cruelty and corruption, his major fault was insensitivity to the condition of his people.

In spite of vast revenues, his wild spending led to a cash squeeze; belatedly, he responded by cutting back on construction programs, an action that ruthlessly threw unskilled workers out of their jobs. At the same time he had lopped off bureaucratic make-work that furnished employment to educated Iranians crowded out of jobs by his imported technicians.

No sector of society was immune from his heavy hand. Though his land reform program was well-intended, he had angered both the rich landowners and the mullahs by taking their lands, while pre-empting a quarter of the appropriated land for his own family's graft-ridden foundation.

He had outraged members of the professional middle class by denying them any place in the political life of the state. He had incensed the students by suppressing the free expression of their views, and offended the bazaar merchants by harsh price-control measures.

Finally—and this was his most unforgivable offense—he had sickened the whole country by the mindless cruelty of his secret police.

With members of literally thousands of families suddenly disappearing without a trace, the legion of his enemies constantly grew. When added to this was the corruption openly pacticed by his family and hangers-on and their indecent display of wealth and waste in a country where the bulk of the population was still abysmally poor, it is no wonder the shah had to go.

With almost every sector of the population hating him, Iran was clearly ripe for revolution. All that was required was a unifying symbol, and that symbol appeared in the form of Ayatollah Khomeini.

IRAN'S REVOLUTION ISN'T OVER YET

(By George W. Ball)

Particularly after 1972, when he began to acquire vast armaments, and 1974, when burgeoning oil prices encouraged his vaulting ambitions, the shah built up resentments in every part of Iranian society.

The desire to get rid of his regime was all-pervasive—shared not only by the mullahs and other religious leaders (who talked vaguely of an "Islamic republic").

Also seeking it were middle-class professional men, many of whom had been secret members of the National Front (the party of Mohammed Mossadegh) and who primarily wanted a Western-style democracy; Marxists, some presumably allied with the Tudeh Party (the pro-Soviet Communist Party that had been underground since 1954) and others who were anti-Soviet but still committed to a Marxist state; unemployed workers; and embittered students, who, whether militantly leftist or militantly rightist, all hated the shah and his brutal rule.

But since different groups had different reasons for hating the shah, they had no central focus. That need was filled when, during 1978, the Ayotollah Ruhollah Khomeini offered the convenient banner of Islamic fervor under which millions of people could unite for the single purpose of driving the shah from power.

Ironically, it was the shah himself—or at least his palace cronies—who supplied the impetus for Khomeini's emergence. In January 1978 a leading Tehran newspaper published an anonymous letter that was widely attributed to the palace—and even to the shah himself.

That letter viciously attacked Khomeini, who was then in exile in Iraq, and heaped scurrilous insults on members of his family. Some of the ayatollah's supporters demonstrated their displeasure and when police tried to break them up, six were killed.

Under Moslem practice, 40 days after the occurrence of a death, there is a day of mourning. That day of mourning was marked by another demonstration that resulted in 12 more deaths. Again 40 days later, on the day of mourning for that incident, another demonstration and more shootings occurred.

Demonstrations spread from one city to another until, in May, 34 cities were involved, including Tehran. By June thousands of people were engaging in protests.

In August, a fire in a theater in Abadan killed 430 people. Though it is still not clear who set the blaze, it raised the level of anger and excitement. Violence was building up with cumulative intensity and acquiring an increasingly ugly quality.

With religious leaders in the vanguard, all who hated the shah for quite disparate reasons found a respectable point of unity in the ayatollah's campaign—and, in the process, discovered with surprise that their anti-Pahlavi sentiments were universally shared.

By October the unrest had risen to such a point that I concluded the shah's days were numbered. What led me to that conclusion was not perceptive analysis but the despairing decision by several Iranian friends with substantial interests to leave their country with little hope of return.

What had shocked them was the discovery of their own anti-shah feelings manifest throughout the population. The entire country, they suddenly realized, was determined to have an end of the Pahlavis.

What Iran sorely needed—and still does—was a political leader who could draw the country together once the shah had departed. United only by a common desire to dethrone the shah, the masses marching under Khomeini's flag of convenience were bound to fragment once they had achieved their initial goal, thus precipitating an almost inevitable struggle for power.

Except for the ayatollah and his followers, the only institution that could command substantial power was the army, which was more the shah's private instrument than a national resource. He had personally picked and deployed the top command; and in order that they not be contaminated by the liber-

tarian ideas of the West, he had kept the armed forces strictly outside the national life of the country—to the extent that no one under senior officer rank could talk to a foreigner without permission.

During the fall of 1978 there was increasing evidence that the discontent pervading the country had found resonance in the armed forces. By the time I was asked to consult on the Iranian crisis in Washington early in December, it seemed almost certain that the army would disintegrate if called on to suppress the people's opposition to the shah.

The enlisted men and conscripts were drawn from the people and they could not be counted on to shoot their fathers and brothers; increasing incidents of insubordination were making that plain, even to the shah.

CAN KHOMEINI REGIME LAST?

If the Army did disintegrate under pressure, that could well mean civil war—which would provide the Soviet Union with the troubled waters in which it could most effectively fish.

Uncertainty as to who might win the ultimate power struggle led the Carter administration to support the shah longer than some thought prudent.

There was an understandable reluctance to give up the devil one knew for the devil no one could clearly identify. Today, of course, the final outcome is still in doubt.

The Shahpour Bakhtiar government never had a chance to survive, since it was the shah's creature. But will its successor, which is Khomeini's creature, show the requisite staying power?

That question cannot be answered with assurance, at least until the Mehdi Bazargan regime becomes something more than a provisional government designated by an aged religious leader who is not fully in control of his own henchmen.

So far the government seems to have only a vague schedule for moving toward legitimacy—presumably because the political neophytes who surround the ayatollah have not been able to agree among themselves on anything resembling a coherent program.

What has been promised, first of all, is a referendum "to be held in a matter of weeks," but that election presumably will do nothing more than record popular sentiment against the monarchy and for an "Islamic republic"—whatever that vague term may mean.

Meanwhile, some of the ayatollah's close supporters are preparing a draft constitution that is expected to follow more a presidential than a parliamentary model.

Only after that constitution has been put to the people in another referendum will elections be held to choose a new government and a new head of state or chief of government, who may, or may not, be Dr. Bazargan, and—through the point is not clear—a new parliament.

If any government survives until then—which is far from certain—it will be unable to act effectively until the liquidation of the Revolutionary Council to which the Bazargan government is now responsible.

That council today acts, in the words of the deputy prime minister, Ibrahim Yazdi, as "a kind of legislative body." It is, however, an unusual type of legislative body that executes generals without even bothering to tell the government.

Even if an Iranian government achieves legitimacy, it will face formidable tasks. The most destructive political effect of the shah's 26 years of absolute power was to exclude two whole generations of the most responsible citizens from any role in the political life of their country.

No opposition leader not in the government before 1953 has had any political experience whatever, while anyone in government since that date has been compromised by his association with the shah.

As a result, the only experienced opposition leaders are old men—at least in their 70s (Bazargan is 73), and those who would normally be managing the country have little idea how to go about taking power, and thus are easily neutralized by more activist groups.

This makes the contest for power a struggle between the very old (symbolized by the 78-year-old Khomeini) and the violent young; and since half the population is under 16 and two-thirds under 30, only the young can mobilize overwhelming numbers.

The ironic result is, therefore, that the ancient ayatollah may inadvertently have delivered his country to competing bands of armed and undisciplined youths.

Bazargan's agenda would be difficult even for an experienced government of unquestioned authority. Not only must he establish control of his government over the men around the ayatollah, he must disarm the 400,000 youthful civilians who now possess weapons looted from army camps and police station arsenals, get the army back to its barracks and return it to some discipline under new commanders.

He must increase oil production sufficiently to make possible a resumption of substantial exports if the country is to have the foreign exchange it needs to survive.

Today, many in Washington are playing a simple-minded game of historical identification. If Bakhtiar was Prince Lvov (the prime minister in the first Russian provisional government after the departure of the czar), then is Bazargan Kerensky, who was overthrown by a conspiratorial band of Bolsheviks.

Such fanciful analogies prove little. Since the Shiites are violently anti-Communist and the Iranian people have a historic hatred of Russia, Soviet apparatchiks would face a formidable—though not necessarily insuperable—obstacle in trying to impose their will on the Iranian people.

What are the forces battling for power today? The Bazargan government, though under the leadership of a long-term supporter of Khomeini's, contains technocrats, Western-educated liberals with social democratic tendencies and members of the National Front—those who served with Mossadegh in the early 1950s, and, hence, tend to be old, tired and rather conservative. These men are essentially pro-Western.

Second are those young Iranians who have been in the forefront of street fighting and find it hard to give up the guns that have provided them with a sense of power.

They are represented today on the Revolutionary Council, which does not seem to be a formally constituted body but a loose designation for whatever group of his court followers the ayatollah has most recently met with, and in hundreds of so-called revolutionary committees that have sprung up all over the country and owe allegiance to no central authority.

This proliferation of committees is in the anti-hierarchial spirit of Islam, with self-constituted autonomous groups, each in its own way interpreting and applying words of the prophet—in this case, the ayatollah.

No one is quite sure to what extent the activities of the various leftist factions are being orchestrated through the Tudeh Party (the Iranian Communist Party) that was largely liquidated and forced underground at the time of the fall of Mossadegh.

There is some evidence that members both of the people's Mujahedeen (who call themselves "Islamic Marxists") and the Marxist People's Fedayeen may have received money from Libya and weapons and training from extremist Palestinian groups.

Apart from Tehran itself, it is in the oil fields that the Marxist elements present the most serious danger.

A huge, so far unstructured Progressive Workers' Committee has emerged that probably will try to use its leverage to dictate Iran's oil policy: the number of foreign technicians who will be permitted to return, how much oil will be produced and at what price and where that oil will be sold. That could be a powerful club held over the government.

MORE STRUGGLE LIKELY

This group is likely to show its strength when the next political crisis occurs and, until there is an effective confrontation with the group and a test of its hold over the oil workers, it is impossible to predict when—and to what extent—Iranian workers may be again willing to produce an export surplus.

The most optimistic guess seems to be that Iran is not likely to produce an export flow of more than 2.7 million barrels a day (as against its former exports of 5 million barrels), even by the end of the year. It may well have to be a negotiated figure worked out with the Workers' Committee.

With its present tenuous authority, it is not at all clear whether—or how rapidly—the government can gain a full hold on the levers of national power. Meanwhile, the slow and uncertain pace with which it is moving may provide the extreme left with adequate time and freedom to organize its cells, expand its influence, extend its apparatus and ultimately seize control.

At the moment, the dominant direction is toward particularism, which shows itself not only in the emergence of many groups, each pursuing its own special objectives, but which could also result in regional ethnic fragmentation (Kurds, Baluchis, etc.).

The most likely prospect is, therefore, that Iran will face a protracted struggle among different—largely youthful—factions, each pursuing its own version of the truth, before Iranians can discover what their revolution really meant. It is a struggle that could well turn the country into another Lebanon.

Meanwhile, all one can safely conclude is that the revolution has seen only its first phase—and no one can predict the final outcome.

MIDEAST POLICY LESSONS FROM IRAN

(By George W. Ball)

The collapse of the shah's government in Iran has injected a new element of instability in a strategically vital area on which the West depends for an essential part of the oil required for its industrial existence. We must make certain we understand the lessons of that experience in shaping our policies for the future.

Let us first dispose of the fatuous contention that America could have saved the shah from the wrath of his people had we only flexed our military muscles more visibly by intervention in Angola or Ethiopia or even by steaming the 6th Fleet up the Gulf. There is no mystery about what happened in Iran. A whole country turned against a hated ruler in a long overdue internal revolution, which American intervention could only have exacerbated. One of the lessons of Vietnam is that even in situations where there is a large measure of external aggression, American power is blunted when the conflict has a revolutionary basis.

Befuddling the current post-mortem is the nostalgia of those who recall that, through the CIA, we did help restore the shah to power in 1953. But the conditions then were totally different. The shah was still a young, rather modest man who reigned rather than ruled. The Iranian people had not yet experienced the brutality from the secret police and the corruption by the royal family they came to know increasingly during the next 26 years. Furthermore, the attempted usurper of the shah's power, Dr. Mohammed Mossadegh, had betrayed his own followers by resorting to increasingly dictatorial methods.

Thus, rather than a whole country desiring to depose its ruler—which was recently the case—there was substantial opposition to the efforts of Mossadegh to dislodge the

shah. To the extent that the United States assisted in mobilizing that opposition—which is still a matter of some conjecture—we could do so only because it was there to mobilize. Even so, our assistance had an unhappy byproduct: It marked the shah in the eyes of his own people as being too much America's creature.

Thus the shah was right in saying, as he did on several occasions while resistance was boiling up during the agonizing days of 1978: "We must remember this is not 1953."

Apart from the inexorability of revolution when conditions are ripe, the first lesson we should learn from the Iranian debacle is the urgent need to reduce our dependence on Middle-Eastern oil.

Today the non-Communist nations derive 48 percent of their oil from countries on the littoral of the Persian Gulf—Saudi Arabia, Kuwait, Iraq and the gulf emirates and sultanates. Saudi Arabia alone produces 18 percent of America's oil imports. Already the drying up of Iran's oil flow is causing a substantial rise in spot oil prices that threatens to inspire some upward revision of the OPEC price structure.

From the sheer logic of survival we must stop the lotus-eating in which we have so long engaged, recognize the critical nature of the oil problem, and, through a variety of means, reduce our overall requirements and increase the domestic production of all forms of energy.

Today we have become almost ludicrously vulnerable. We have let our economic well-being—and that of other non-Communist countries—depend on the reactions of a few small backward states—particularly Saudi Arabia—to forces and pressures we cannot control no matter how much we flex our muscles and pound our chests. We are betting our economic survival, in other words, not only on the hope that the current Saudi regime—one of the world's last few absolute monarchies—will continue to survive the strains and tensions of an intensely turbulent area but that it will be willing indefinitely to exhaust its only significant natural resource at a rate substantially exceeding its own economic best interests. The risks implied in a mere statement of that reckless position should give Americans sleepless nights.

SAUDIS RESENT U.S. PRESSURE

Unless we break out of our lethargy, we will face a dour day of reckoning. Then a violent argument will ensue as to why America so stupidly slept and reproaches and recriminations will defile the political dialogue.

Yet, no matter how quickly and decisively we move, we cannot greatly reduce our dependence on Middle Eastern oil overnight. Meanwhile we must be sensitive to the needs and attitudes of countries in the gulf area, and particularly Saudi Arabia, the only nation with the marginal capacity to sustain the industrial economies of the West.

Though in the Middle East stability is only a relative term, Saudi Arabia should still prove more stable than Iran. While there are some backsliders, the Wahabi ruling family is stricter in adhering to Islamic practices; the royal family has greater legitimacy than the shah and its ramifications extend throughout the country; the population is small and more homogeneous; and, though there is immense corruption with total government receipts of $125 million a day there is enough revenue to permit a larger part of the population to have a share in them.

Yet with its inordinate wealth and traditional society Saudi Arabia and its foreign policies are still inherently unstable. The country is excessively dependent on imported unskilled labor and on foreign technicians who are an indigestible lump in the body politic. Its government's close relations with America rest on assumptions and conditions that can quickly change—and indeed may already by changing. In recent months anti-Americanism has become shockingly prevalent, and there is no doubt the Saudi government is unhappy with its American friend. The fact that three American businessmen have just been sentenced to flogging perhaps reflects this changing attitude.

That unhappiness stems in part from a mistaken reading of the Iranian experience—the belief that the United States could somehow have protected a friendly state from its own revolutionary convulsion. But the Saudi government is even more upset by our diplomatic activities in the wake of Camp David.

The Saudis resent our pressure on them to support a bilateral agreement between Israel and Egypt. As a tiny state surrounded by activist Arab countries far larger and more powerful, it cannot afford to ignore the common Arab position toward the occupied areas and, if we continue to press it to do so, we may jeopardize a relationship on which we are dangerously dependent.

The Saudis are already showing signs of alienation, offset only by their heightened dependence on us for security—a dependence highlighted by the current fighting in Yemen. They are, for the first time, showing an interest in normalizing their relations with the Soviet Union, which they have always regarded as their No. 1 enemy. Crown Prince Fahd has postponed his trip to Washington, either to show his disapproval of our post-Camp David exertions or because his government wants time to reassess its policies.

Clearly, the government is having increasing difficulty achieving agreement among its own members and making decisions, and there is reason to believe that the younger members of the royal family—largely Western educated—may be gaining influence. Some younger princes, trained in economics and less conservative politically than the elder generation (who learned their lessons in the desert and not in universities), are urging that their country restrict its oil production to perhaps no more than 6 million barrels a day—which would be catastrophic for America. They also tend to favor improved relations with the radical Arab states—a trend evident ever since the Baghdad conference in November of last year.

SOVIETS POSE THREAT TO AREA

If we are prudent, we will recognize the sensitivity of Saudi Arabia's position in the Arab world. Meanwhile, we should do everything possible to reassure not only the Saudis but other states in the area that they can depend on us for their security.

What are the major dangers that they face?

They are two in number: direct aggression by the Soviets—or by their Cuban puppets—against some state or states in the area; and Soviet supported attacks by a local state against its neighbors. In addition the United States and our Western allies face the danger that internal insurrections might install a hostile government in an oil-producing country.

I do not, for the time being, believe it likely that the present Soviet government would undertake any direct military move, that would involve too great a risk of confrontation with the United States. But we should leave no doubt as to our response. Moscow must keep its hands off the Persian Gulf area, including Iran, since any aggression there would threaten oil resources that are vital to the whole non-Communist world. We cannot let that happen.

If the Soviet Union is not likely to launch a direct attack against any state in the gulf area, it still poses a threat through its support of Ethiopia and South Yemen. The United States is moving to counter that threat by supplying aircraft and equipment to the North Yemenis and, as a warning, has ordered a carrier task force into the Gulf of Aden. There is however, serious doubt as to the effectiveness of the North Yemen fighting forces, no matter how many weapons we supply.

Though North Yemen has a far larger population than South Yemen the North Yemen military have so far shown a disturbing lack of will and competence. The Saudis are necessarily nervous at military action on their borders that can be efficiently resupplied from Ethiopia, particularly because they depend on nearly a million emigre Yemeni workers.

But an even more serious threat posed by South Yemen is to the small gulf states—in some of which Palestinians form the backbone of the work force. It is essential that we develop arrangements for military cooperation with those states as quickly as possible.

To make the threat of a U.S. reaction credible to the Soviets while reassuring the states in the gulf area, we must visibly improve our capability for quick military response. Unfortunately permanent forward basing— as distinct from the prepositioning of supplies—is no longer very feasible. (Apparently the Saudis made clear to Defense Secretary Harold Brown on his recent visit that an American base on their territory would be politically compromising.)

But we should substantially beef up our presence in the Indian Ocean, assist the Saudis with surveillance (as by the current deployment of AWACs) and give constant reminders of our improving ability to deliver force quickly, even from American bases.

With Iran eliminated as the "protector" of the gulf area, a mindless reflex is leading many to search for another surrogate country such as Egypt or Saudi Arabia to assume the shah's role as "policeman." That is, it seems to me, a temptation we should sturdily avoid. If the debacle of Iran proves anything, it is that we cannot assure the security of a strategic region by stuffing a backward state with massive quantities of arms. It shows, in other words, the fatuity of the Nixon Doctrine.

SYMPTOMS OF SAUDI MALAISE

With diligence and determination we should be able to cope effectively with external military threats to nations in the gulf area. But as experience has taught on many occasions, we can do little to influence an internal power struggle once widespread revolutionary forces have built up as was the case with Iran. To be effective we must concentrate on preventing such a buildup, which means that we must act while a nation is still relatively stable, conditioning our military commitments on its correction of conditions (including corruption) that could, sooner or later, incite revolutionary change. It is essential that this be done well before discontent spreads widely; otherwise, it may only accelerate the revolutionary process.

The government of Saudi Arabia is today showing unhealthy symptoms of a malaise that could lead to internal troubles. While many would consider the assessment overly pessimistic, one knowledgeable recent visitor to Riyadh told me: "The atmosphere in Saudi Arabia seems disturbingly reminiscent of Iran two years ago. There is widespread criticism of the government and the royal family while the increase in magnitude of the graft and corruption suggests a spirit of 'Let's get it while we can' "

If we have properly learned the lesson of Iran we should have an appropriate representative of our government talk to the Saudis in a frank but friendly manner before it is too late. He should emphasize the need for prudent reforms, including halting the corrosive evils of the current flagrant corruption. In addition—though it is a sensitive subject touching on customs with a re-

ligious sanction—he should point out the urgent need to liberalize the medieval treatment of women who are today denied the freedom that even such other orthodox Wahabi states as Kuwait and Qatar long since learned to take for granted—the opportunity to be properly educated and to work.

In a country of only 4 million people, where only one in eight can read and write Arabic and with perhaps no more than 250,000 skilled male Saudis of effective working age, the denial of normal work opportunity to half the population is not only offensive to human values but a profligate misuse of scarce human resources.

In addition, we Americans should squarely face the prospect that no Saudi government will be likely to continue permanently producing oil at a level substantially exceeding the country's revenue needs. We should, therefore, seize the present moment, when the Saudis are concerned about their security and welcome our military assurances and concrete military proposals, to try to reach an understanding that they will for at least the next 10 years or so produce oil at not less than agreed minimum level needed to sustain the Western economy while the United States and other user countries take steps to reduce their dependence.

At the same time we should caution them not to repeat Iran's error and use the vast surpluses thus generated for the reckless construction of elaborate but ill-advised projects; rather they should be encouraged to establish something akin to the Fund for Future Generations to which the Kuwaitis now commit 10 percent of their government's receipts to build up revenue against the day when their oil runs out.

If we now stay silent as we did with Iran, and do not try to condition our military help on the necessary internal measures that will relieve Saudi Arabia of grinding pressures for revolutionary change, we may one day—perhaps within two or three years—be confronted by a new regime and a new situation. If that occurs, we can be confident the new regime will exploit to the fullest the demagogic value of anti-Americanism and will very like cut back oil production.

U.S. PRESTIGE INVESTED

While we are reviewing the lessons disclosed by the debacle in Iran and its effect on our vital interests in Saudi Arabia and other Gulf states, we should also consider the possible consequences of President Carter's apparent success in achieving an agreement between Egypt and Israel. That agreement is a remarkable achievement in itself—for which the president deserves great commendation. Yet it is only the first step in bringing about a larger understanding between Arabs and Israelis. Unless the president shows equal dedication and courage in transforming this initial agreement into an overall settlement, it could conceivably do more harm than good.

Implicit in the president's spectacular diplomatic action are the hazards of a process that has caused us problems before. Our government sets out to achieve certain broad and desirable goals—in this case, an overall Arab-Israeli settlement. But as increasing obstacles are encountered, it invests such great prestige that the achievement of some kind of treaty produces a set of agreements so filled with dangerously heavy obligations, qualifications and contrived ambiguities that they create more tensions and misunderstandings than they resolve.

That was, in my view, the story of the second Sinai negotiation, where, to achieve an agreement, the United States not only obligated itself to make onerous financial commitments but also accepted humiliating restrictions on its own freedom in future bargaining that greatly inhibited its recent more ambitious diplomacy.

Though the agreement about to be formalized apparently provides at least a suggestion of a schedule for holding elections looking toward limited self-government for the West Bank and the Gaza Strip, we must be careful not only to make sure that that time schedule is maintained but that in the haggling which will inevitably accompany an agreement on modalities, the Israelis do not so emasculate the concept of self-government as to make it little more than a modification of the present military occupation.

In that case, the bitterness in the occupied area would intensify, violence would increase and the neighboring Arab states would accuse the United States of a sellout.

We must not lose sight of this point. The Palestinian issue—not the disposition of the sands of the Sinai—is at the heart of the overall Arab-Israeli quarrel. If we leave more than a million people in the West Bank and Gaza Strip under a military occupation that has already continued for 11 years, not only will we call into question the sincerity of our concern for human rights, but, left untreated, the Middle East's festering ulcer will sooner or later have lethal consequences.

Our vigorous pursuit of a Palestinian settlement is also necessary to prevent Egyptian President Anwar Sadat from being seriously undermined. Unless we can persuade the Saudis, for example, that this is only a first step and that America is fiercely determined to secure an overall settlement, the Saudis may well feel compelled by the dynamics of Arab opinion to cut back on their huge annual subsidy to Egypt. Meanwhile other Arab states may block the remittances of Egyptian workers, on which much of Egypt's foreign exchange depends. Unless America is prepared to pick up an even larger check than that contemplated by the agreement so far reached, Egypt's economy would collapse.

RISKS IN EGYPT-ISRAEL PACT

I do not at all underestimate how difficult it will be to maintain the momentum of negotiations. Once Egypt and Israel formalize their narrow arrangement for the return of the Sinai, thus halting Iraq's recent but tentative drift toward the West and driving the rest of the Arab world into hard resentment, progress toward a settlement of the central substantive problems will be extremely hard sledding. With Egypt neutralized, the Israelis will feel under even less pressure to deal with the intricate substantive issues—of which the Palestinian problem is the most important.

In view of the inertia that results from the complex interplay of Israeli domestic politics, we shall have to enjoy extraordinary pressure to convince the Israeli government to negotiate these issues seriously.

At the same time, we must do everything possible to assure the rapprochement we have arranged with Egypt and Israel does not weaken our relations with Saudi Arabia and the gulf states and thus diminish their willingness to maintain their current level of oil production. This will strain to the limit our capacity for sustained attention and sensitivity.

How we conduct our affairs in the Middle East will sternly test our wisdom and diplomatic skills. The revolution in Iran requires us to reexamine certain key assumptions of our existing policy, including the Nixon Doctrine. The repercussions on Saudi Arabia and other oil-producing states of our narrow focus on an Egyptian-Israeli treaty equally force us to question the methods by which we conduct that policy and specifically the current excessive indulgence in personal diplomacy.

Finally—and most compellingly—events in Iran and the implications of our recent summit diplomacy make it vividly clear that we must free ourselves from overdependence for energy on the inherently fragile governments of the Middle East. Iran has shown that we can no longer afford to live in a fool's paradise. Revolution is a constant threat throughout the Middle East and we now know what we should always have known—that no matter how great our military competence, there is little we can do to stop internal convulsions once they begin.●

PROPOSED CONTINGENCY PLANS

● Mr. McCLURE. Mr. President, the Senate Committee on Energy and Natural Resources has held several hearings on the administration's proposed emergency energy conservation and rationing contingency plans. Dr. Walter W. Rostow, formerly at MIT and now professor of economics, University of Texas, was one of many witnesses, but his statement stands as a beacon illuminating each of the others.

Professor Rostow today made a very incisive statement concerning the standby gas rationing program. He concludes that it is both a symptom of the failure of the United States to learn the lesson of the 1973 oil embargo and reduce foreign oil imports; and it is indicative of insidious regulations being promulgated by our increasingly centralized Federal Government. I agree with this conclusion.

There really is no physical energy shortage from natural causes, but rather one resulting from years of Government intervention and controls. Our Nation has one of the world's most generous energy endowments and it is illogical that we should now be faced with energy shortages. We have the oil, the coal, the natural gas and the uranium to provide for our needs, plus opportunities for more use of solar, wind, geothermal, and low-head hydroelectric energy. What we need is a national policy which allows us to utilize them.

The United States now imports almost half of the oil it consumes. This dependence is due to our Federal energy policy, which discourages domestic production and subsidizes imports. Unnecessary and bureaucratic Government restrictions are primarily responsible for the higher prices of fuel, the spot shortages, the push for mandatory gasoline rationing, and proposed weekend gasoline sales restrictions. The worldwide oil shortage created by the Iranian revolution has been made up largely by increased production from Saudi Arabia and other OPEC producers. The shortage and rise in fuel prices being experienced in the United States, however, is due to the loss of crude oil in the world spot markets, which is bid away by Europeans who are not under our Federal controls.

Concerning the proposed rationing plans, I believe that the economic impact of such actions would be disastrous. The imposition of more Federal controls is certainly not the direction we should be headed. While conservation definitely has its place in our production strategy, it alone cannot solve our energy crisis. We must both conserve and produce our way out.

The United States is not presently exporting oil to other countries, but we did

sign the International Energy Agreement in 1974, as a result of the 1973 oil embargo. We also have a commitment to Israel, but Israel has a relatively low oil demand and they have built up an enormous stockpile, equivalent of nearly 1 year's needs. While I did not support these agreements at the time they were made, they are now official and binding on the United States. I do not believe, however, that we will actually have to export any oil.

The solution to our energy problems has to begin in Congress. The Congress and the administration must approve a policy that allows the American economic system to produce. With the continued and growing support of concerned Americans, I believe that we are moving in that direction. Mr. President, I ask that Professor Rostow's statement be printed in the RECORD.

The statement follows:

TESTIMONY OF W. W. ROSTOW

(Charts mentioned in text not printed in RECORD)

I

I speak today as an academic student of energy and other global economic problems and as a concerned citizen of my country. It has been a privilege to live and work in Texas over the past ten years. I now have abiding attachments to the state, as I do to New York where I was born, Connecticut where I grew up, Massachusetts where I spent ten busy and productive years at MIT. But I am convinced that the overriding interest of Texas, and of every other state, is that, at long last, this nation set in motion a national energy program that would rapidly reduce our dangerous over-dependence on energy imports.

Turning to the subject matter of these hearings, my basic comments on the standby rationing program that lies before you are two: It is a symptom of the failure of the nation to use the 5½ years since the quadrupling of the international price of oil to reduce its reliance on energy imports; and it is the forerunner of a progressively tightening system of central controls on energy that this nation will experience unless we unite as a community and break out of the trap into which we have fallen.

My argument leads to the conclusion that this Committee should not approve the standby regulations now before it unless and until the President lays before the Congress an all-out energy production as well as conservation program that holds serious promise of reducing radically our energy imports and lifting the danger of protracted energy rationing from our people—as well as certain strategic dangers to which I shall refer.

II

I turn now to the energy trap into which we have fallen that promises to make the stand-by proposals before you merely the first laying around our necks of a noose that will tighten with the passage of time.

For some years now, energy experts in every part of the world have been warning that, unless non-OPEC energy production and conservation were accelerated, a major global crisis would occur in the 1980's. The crisis would occur because the demand for OPEC oil, required to balance the world's energy books, would exceed OPEC production capacity, which was expected to peak out at 35–40 million barrels per day.

In its April 1977 study the CIA set the date for the crossing of the curves as 1983. The MIT study, organized by Prof. Carroll Wilson with wide international participation, set the date sometime in the 1980's. In its May 1978 report to the Congress the Energy Information Administration exhibited the crossing of the curves, under four sets of assumptions about economic growth, non-OPEC energy production, and energy conservation, between 1981 and 1989 (Chart 1).

If this were merely a matter of experts playing with projections in an uncertain world, responsible political leaders might have noted the prognosis but awaited the oucome before acting to redress the energy balance. After all, experts can be wrong. The reason such complacency was—and is—extremley unwise is two-fold.

First, even under the most optimistic assumptions about energy conservation and lower energy/GNP ratios, the world economy will require an increase of energy production of, say, 2.5% per annum if growth is not to be inhibited and unemployment to rise. Second, and even more fundamental, are energy production and conservation lead times (Chart 2). As Chart 2 shows, energy production lead times range from 1–4 years (new onshore oil and gas fields) to 9–13 years (nuclear and hydro-electric plants) Therefore, if we await the arrival of the energy crisis of the 1980's, we will be gripped for a considerable time in an acute crisis.

Members of the Executive Branch have been aware of this danger and have warned of it in vivid terms. This is how Charles Schultze, Chairman of the Council of Economic Advisers, in a speech of November 30, 1977, described our prospects:

"Energy prices in the U.S. would skyrocket as a worldwide scramble for increasingly short oil supplies ensued.

"We would be pressed into hastily fashioned and draconian measures to force conversion to coal and other resources; to limit automobile use, to ration heating oil and gas, and to spend huge sums of taxpayers' money on crash programs.

"A desperate scramble to make good after several years' delay would most assuredly lead to a virtual scrapping of our progress in cleaning up the environment, instead of modest and temporary impacts on the environment from a well-designed energy policy undertaken in good times.

"Industries that depend heavily on energy would begin losing money, laying off workers and scrapping their productive capacity.

"Mounting energy prices would mean accelerating inflation, even as the number of jobs available in the economy declined.

"U.S. products would become increasingly uncompetitive on world markets, the value of the dollar would fall drastically, and the cost of products we import would rise rapidly.

"Finally, because business firms can predict that this would be the outcome in the absence of an energy policy, their investments in the intervening years would begin to dry up. We won't have to wait until the inevitable crisis occurs before its anticipation costs Americans jobs and incomes."

This would not be a crisis confined to the United States. Both advanced industrial and developing countries would find themselves short of oil. Here is how Richard Cooper, Under Secretary of State for Economic Affairs, on December 8, 1977, described the potential crisis:

"If our nations do not prepare for the oil shortfall in the 1980's, the framework of international cooperation which we have worked so hard to build since World War II wil be imperiled. Severe economic disturbances would be followed in some countries by political instability. The trend toward freer international trade, which has been responsible for much of our post World War II prosperity, would surely be reversed under conditions of recession and oil-induced balance-of-payments difficulties. The prosperity and cohesion of the Western industrialized nations would be at stake, putting in jeopardy our own security and ultimately our way of life.

"The non-oil producing developing countries would also be hard hit economically. These nations are not profligate energy users; these use very little energy, but their economic development—both in industry and agriculture—depends on the availability of imported energy. If oil prices are rising, the burden on the already fragile external financial condition of these countries could become insupportable. The cost of their imports would rise, and in world recession their exports would contract. Economic development would stop, if not regress."

But that is not all. Staring at the same impending crisis, the MIT study, directed by Professor Carroll Wilson, concludes: "The major political and social difficulties that might arise could cause energy to become a focus for confrontation and conflict."

I have subjected you to these somewhat ghoulish quotations to indicate the breadth, precision, and seriousness of the consensus that now exists on the dangers ahead—and not very far ahead. I could add many more such quotations from knowledgeable and responsible Americans and others—in Europe, Japan, and the Middle East.

III

While these predictions were being made, the world economy was in what might be called a period of energy remission. It appears in Chart 1 as a dip in the global demand for OPEC oil. That dip was the result of three factors: the sharp recession of 1974-1975; the coming on line of North Sea oil; and the coming on line of Alaska oil. As 1978 came to an end, the global demand for oil began to rise. OPEC had accepted for a few years a decline in the real price of oil. Its relatively fixed price was permitted to erode in the face of global inflation and a weakening dollar. But by the end of 1978, with oil demand rising, a 15% OPEC price increase was scheduled for 1979. Then came the crisis in Iran.

As of 1978, OPEC production capacity was about 36 mbod, with 31 mbod produced. Saudi Arabia, Kuwait, Iraq and a few others held 5 mbod potential production off the market to avoid breaking the OPEC price. Iran produced at just about the level of its production capacity: 6 mbod, which was 1 mbod more than total idle OPEC production capacity. Political troubles in Iran, for about two months, brought Iranian production to about 650,000 barrels per day, barely enough to meet its domestic needs. Therefore, the world confronted for an interval a version of the crisis predicted for some time in the 1980's. World demand for OPEC oil was greater than OPEC production; pipelines and reserves were run down. Saudi Arabia helped by activating 1 mbod of further capacity which it sold at premium prices. Saudi production capacity is about 10.5 mbod: it has recently raised output from 8.9 to 9.9 mbod. But spot prices shot up, as you all know, with serious implications for the U.S. balance of payments and the fate of the dollar. Iranian production is rising and oil exports have been resumed. We may have an awkward interval of shortage this spring and summer, due to the eight week gap in the oil flow. But some are assuming that, if there is reasonable political stability, the crisis will pass and we will be back in a familiar world in a few months.

This complacency ignores three new factors.

First, it is virtually certain that Iran's production will not return to 6 mbod. Representatives of Khomeini have said Iran will activate only 60% of its production capacity; that is, about 3.6 mbod. (Others have suggested a lower target.) But at an optimistic maximum, energy experts expect Iranian production to return to 4–5 mbod, rather

than 6. This lowering of the OPEC production curve in Chart 1 brings the energy crisis of the 1980's closer than it was before the Iranian crisis. Second, OPEC has had a vivid demonstration of how sensitive the international oil price is to a restriction of supply. Its members are asking themselves: Why run down our finite oil reserves rapidly when we can, at higher prices, acquire at least as much foreign exchange with less production?

This experience is reinforced by a third factor, which also results from the Iranian crisis.

Mexico and some other oil exporters have concluded that the Shah's policy of a blind rush to industrialization would be both wasteful and disruptive of balanced growth and modernization of their societies. In his second State of the Union message of September 5, 1978, the President of Mexico articulated this doctrine with great clarity. Saudi Arabia is, apparently, drawing a similar conclusion from the tragic events in Iran. Restraint on Saudi energy production over coming years could be at least as serious for the oil importers as the reduction in the Iranian supply; for Saudi Arabia commands the largest potential reserve capacity within OPEC; and production from some OPEC countries is expected to peak out and decline in the 1980's.

These three factors taken together suggest that, even if Iranian production and exports revive to their new lower level, without further political interruption, we can expect OPEC supply at substantially lower levels and higher prices than predicted for the 1980's. We have had a whiff of what the energy crisis of the 1980's will be like; we face, in any case, some awkward months before the pipelines and reserves are refilled; but, above all, the energy crisis of the 1980's is substantially closer than it was.

IV

Now, where does the United States stand in the face of this threatening situation?

In April 1977 President Carter laid before Congress a National Energy Plan. Its central purpose was to reduce U.S. oil imports to about 7 mbod by 1985 while permitting a real growth rate in our economy of 4.3 percent. This was to be accomplished by a mixture of increased conservation and increased production.

The conservation goal was to bring the energy/GNP ratio below .5 by 1985; that is, to a point where a 4.3 percent annual growth rate would be associated with a 2 percent annual increase in energy consumption. The various energy projections that have been made outside the U.S. government would suggest President Carter's conservation goal was somewhat over-ambitious. An energy/GNP ratio of .7 appears a more realistic but still impressive target for the mid-1980's. For example, the Energy Information Administration in April 1978 projected figures from .68 to .83 in a series of alternative scenarios down to 1990. But the fact is that the United States has made considerable progress in energy conservation. The energy/GNP ratio was .97 for the whole period 1960–1976, rising as high as 1.1 between 1965 and 1975. But as of 1979 we may have brought the energy/GNP ratio down to .8. This is the result of lighter, more energy-efficient automobiles, substantial measures of energy conservation in industry, and some household savings. Given the fact that our energy price system has not been fully geared to encourage conservation, it is a reputable performance. But it still means that at a 4 percent growth rate U.S. energy consumption will increase at a rate of more than 3 percent per annum. Even with a predicted slow growth rate of 2.5 percent for 1979, we would still require a 2 percent increase in energy supplies. This comes to more than an additional 1 mboed.

Where will that increment in energy consumption come from?

The answer is that, if present trends continue, it will not come from a significant increase in U.S. energy production. The attached table and Charts 3 and 4 show how the recent and projected path of U.S. energy production is likely to yield an oil import requirement of about 13 mbod rather than the 6–7 mbod envisaged in NEP.

The component production figures exhibit some interesting features.

Crude Oil and Liquids. The coming in of North Slope oil arrested the declining the declining trend for 13 months. It has now resumed and will yield, on rough extrapolation, a 1.6 mbod shortfall as compared to NEP calculations for 1985.

Natural Gas. The surge of production, in response to deregulated prices in the intrastate markets, yielded a trend, down to 1978, higher than that envisaged in NEP. It is uncertain, however, that this hopeful trend will continue in the face of the administrative complexities of the Natural Gas Act of 1978.

Coal. The great production shortfall (5.5 mboed) comes in coal, which is demand constrained. The coal price is higher than the average controlled natural gas price in btu equivalents. Demand is also constrained by environmental rulings.

U.S. ENERGY CONSUMPTION AND PRODUCTION: NEP (1977) GOALS AND CURRENT (1978) PROJECTIONS FOR 1985 (MBOED)

	Oil NGL	Coal	Natural gas	Nuclear	Other	Total production [1]	Total consumption [2]	Oil imports
1972	11.3	7.3	11.1	0.3	1.5	31.4	35.8	4.7
1973	11.0	7.2	11.1	.5	1.5	31.2	37.3	6.3
1974	10.5	7.2	10.6	.6	1.6	30.6	36.2	6.1
1975	10.1	7.6	9.8	.9	1.6	30.1	35.3	6.1
1976	9.8	7.9	9.7	1.0	1.5	30.0	37.2	7.3
1977	9.8	8.0	9.8	1.3	1.2	30.1	38.2	8.7
1978	10.3	7.1	9.7	1.4	1.5	30.1	39.1	8.0
Projections:								
1985 current production trends [1]	9.0	9.0	9.3	2.5	1.7	31.5		
1985 NEP production goals	10.6	14.5	8.8	3.8	1.7	40.0		
1985 consumption estimate							46.4	
1985 consumption at 2 percent annual increase [2]							44.9	
1985 NEP oil import goal								(net) 6.4
1985 projected oil import requirement as of 1979 [2]								About 13.0

[1] Includes some coal exports.

[2] Extrapolated from recent trends.

Nuclear. Since 1974 cancellations have outstripped new plant orders. The current production increased is based on 160,000 MW of net capacity ordered in the period 1970–1974. The shortfall is estimated at 1.6 mboed as compared to NEP projection for 1985.

As noted earlier, consumption may be less than envisaged mainly due to a probable lower average growth rate than the 4.3 percent per annum set as a target in NEP; althought, as noted earlier, considerable progress has been made in reducing the energy/GNP ratio.

Our rough-cut estimate of U.S. oil import requirements for 1985, of about 13 mbod, does not greatly differ from the Energy Information Administration's April 1978 estimate of 12 mbod (Case C: medium demand, medium supply). One major difference is the EIA's estimate of 11 mboed for coal production, as opposed to the 9 which emerges from a rough projection of the current situation. On the other hand, we are more sanguine about natural gas production in 1985.

The simple fact that emerges from this rather dismal portrait of U.S. energy production and its prospects is that, through our political processes, we as a nation have chosen to rely on increased oil imports rather than face up to the requirements for an all-out energy production effort; this excessive reliance on imports was judged imprudent before the Iranian crisis; and the direct and indirect effects of that crisis make such a policy a real and present danger.

Even if Iranian production revives to something like 60 percent of its former level, the United States, Western Europe, and Japan will experience three major effects of the Iranian crisis in 1979 and 1980: the cost of imported energy will rise, accelerating inflation and reducing real incomes; growth will decelerate and unemployment increase; some official measures to reduce energy demand will have to be installed as the deliberations of this committee suggest. The hopes for improving the American balance of payments position and strengthening the dollar in 1979 are likely to fade. We are experiencing, then, a relatively minor version of the massive energy crisis that awaits us down the road—the crisis Mr. Schultze evoked so vividly.

V

Quite aside from its economic consequences, our excessive reliance on OPEC oil has already greatly weakened the strategic position of the United States, Western Europe, and Japan; and it promises to weaken it further in the future.

There are four distinct ways in which the energy crisis has its impact on the strategic position of the United States and our allies.

Our over-dependence on OPEC supplies has tempted the Soviet Union to launch a policy of great activism in the Middle East and the Horn of Africa. Its results can be seen in Ethiopia, Yemen, Afghanistan and at other points.

It has directly weakened the strength and freedom of action of the United States. That weakness, symbolized by the low estate of the dollar and our extreme, indeed life and death, dependence on Saudi Arabia, has indirect as well as direct consequences. Whether we like it or not, in a nuclear age the United States remains the only possible guarantor of Western Europe, Japan, and our friends in the Middle East and elsewhere. When we appear enfeebled, the foundations for their security are shaken.

A gross global energy shortfall could well bring about a radical reduction in economic growth in an OECD world whose political life is already strained and corroded by almost five years of stagflation. Further large increases of unemployment against the background of a global energy shortage might well so weaken the political and military as well as economic cohesion of the OECD community as to open up major opportunities for Soviet pressure and attempted extensions of its power, backed by the image and reality of its growing arms preponderance. In addition, the oil importing nations of the developing world, whose viability depends heavily on the momentum of the advanced industrial nations, as well as on the real price of oil, would be greatly strained, with significant political and, potentially, strategic consequences.

Finally, our over-dependence on OPEC imports could well lead to direct military action, notably to protect the flow of Saudi Arabian oil. Our adversaries are likely to try to inhibit or cut off that flow by means which do not offer a target for U.S. conventional military force; but the situation in Yemen suggests the process by which we could be drawn into conflict.

I do not have to tell this committee that the economic pain and strategic danger we are now experiencing—which may worsen in the years ahead—are substantially unnecessary. You all know that this nation commands the natural resources and technologies to reduce radically our oil imports and, indeed, to make a substantially increased contribution to other nations in the form of greatly enlarged coal exports.

To do these things three changes in policy are required.

First, we must promptly deregulate the price of oil and natural gas. Every objective disinterested analysis of the problem I know—done here or abroad—begins with this requirement; for example, the analyses done by the International Energy Administration in Paris. It is the most fundamental way to stimulate both energy production and conservation. I would immediately add that this action should be accompanied by tax measures that would guarantee that windfall profits in the energy industry would be ploughed back into energy production. I would also add that, contrary to a widely held belief, deregulation is not a narrow, parochial interest of the oil and gas producing states. It will result in the accelerated depletion of their reserves and will require accelerated measures to build a new energy base in the Southwest. But deregulation is an unambiguous national interest.

Second, we must find a politically responsible way to settle promptly and definitively energy-environmental conflicts. I do not believe serious environmental degradation need result from an all-out energy production effort. But the uncertainties and wastage of time are holding up the large flows of investment necessary to expand nuclear, coal, and offshore production. In this connection we shall have to find rational rules for exploiting needed resources in the Federal Estate consistent with environmental protection. The longer we wait, the more likely it is that Mr. Schultze's prediction will prove correct: ". . . a virtual scrapping of our progress in cleaning up the environment."

Third, we must develop methods for accelerating the commercialization of known but presently high-cost methods of energy production: synthetics, *in situ* conversion of coal and lignite, shale, geopressurized methane, biomass conversion, and the other familiar but unexploited possibilities. Honest energy pricing would help. But I do believe we shall need some version of the public-private collaboration achieved during the Second World War to bring about prompt, large scale production of synthetic rubber.

Each of these three policies involves difficult choices, new ways of thinking and acting. Perhaps the most difficult is the effect of price deregulation on the rate of inflation. Without doubt, deregulation would raise the price level to a degree. On the other hand, it is clear the real price of OPEC oil will, in any case, rise, and with it the price of other forms of energy; dereguation is essential if we are ever to generate the production and conservation which might, in time, bring down the real price of energy; and we would also get some immediate mitigation of inflationary pressures. From the day the United States adopted a serious and credible energy policy, the dollar would begin to strengthen. The lack of such a policy is a major reason why the dollar is so weak in international markets—in fact, undervalued. Looking to the future, the international financial community can see only a progressively enlarged flood of dollars into the world as the United States, in effect, finances its increasing oil imports by borrowing. Those expectations would reverse if we adopted an effective national energy policy; the dollar would strengthen; the cost of imports would immediately decline; and the inflationary pressure from that source would be reduced.

There is another wholesome consequence that would follow from an effective national energy policy: this nation, in all its regions, would move towards sustained full employment. I have studied the investment requirements for a production and conservation program that would reduce oil imports to 7 mbod.* Without burdening you with details I conclude that such a program would induce additional investment of 2–3 percent of GNP. This figure is enough to close the investment gap which accounts for recent low growth rates. Moreover, some $100–120 billion (in $ 1976) would be required in the Northeast and a similar amount in the industrial Middle West. Such increases in investment would do much to re-invigorate those important but recently lagging regions of the country.

This perception, independently arrived at, lies behind the bill recently introduced into the Congress at the initiative of the Northeast Governors for an Energy Corporation for the Northeast an for the 1977 energy resolution of the Midwest Governors, supporting a similar concept.

* See "Energy and Full Employment" in Charles J. Hitch (ed.), *Energy Conservation and Economic Growth*, Boulder, Colorado: Westview Press for the American Association for the Advancement of Sciences, 1978, pp. 59–112.

VII

I would not underestimate the difficulty of shaking this nation out of its present passivity, moving as if hypnotized down the road to a truly major crisis. I would not underestimate the problems involved in formulating and implementing the three lines of policy I have described. And I know there are Americans and there are both friends and adversaries of America abroad who believe we have come to a stage in our hisotry when we no longer command the capacity for a resilient, energetic response to challenge. They think we are trying to go down, as gracefully as possible, in the style to which we are accustomed.

I don't happen to believe that is true. I think we were spoiled by the ease of economic progress in the 1950's and 1960's—during an era of cheap energy—and that we are in an awkward and rather dangerous transition to a time when we face our energy problems and get on with the job. But what I think doesn't much matter. It is the performance of the nation from here on out that will answer the question. And I can't think of a better place to start than with the insistence of this committee that the stand-by provisions before you not go into effect unless the President lays before the Congress an all-out energy production as well as conservation program of the kind I outlined earlier. Such a program is the only hope we have that we are not entering a world of permanent and ever tighter rationing and centralized controls over our lives.●

FEDERAL SPENDING THROUGH THE TAX LAWS

● Mr. KENNEDY. Mr. President, each year, the Joint Committee on Taxation of the Congress prepares a table identifying the many different forms of Federal spending through the tax laws and providing revenue estimates for each tax expenditure.

In this period of fiscal austerity, in which most forms of Federal spending are receiving strict scrutiny by Congress in an effort to reduce spending wherever possible, it is important that Congress give equally strict scrutiny to the large amount of Federal spending that takes place each year through tax subsidies—an estimated $170 billion for fiscal year 1980.

Mr. President, I believe that all of us will find the Joint Committee on Taxation's analysis of interest. I submit for the RECORD table I from the committee's pamphlet, "Estimates of Federal Tax Expenditures for Fiscal Years 1979–1984," dated March 15, 1979. I also submit for the RECORD a table I have prepared comparing direct spending and tax spending in each budget function, and a table comparing the annual increases in direct spending and tax spending since 1971.

The material follows:

TABLE 1.—TAX EXPENDITURE ESTIMATES BY FUNCTION[1]

[Fiscal years; in millions of dollars]

Function and item	Corporations						Individuals					
	1979	1980	1981	1982	1983	1984	1979	1980	1981	1982	1983	1984
National defense:												
Exclusion of benefits and allowances to Armed Forces personnel							1,370	1,470	1,585	1,715	1,850	2,000
Exclusion of military disability pensions							120	130	135	145	150	160
International affairs:												
Exclusion of income earned abroad by U.S. citizens							530	555	600	645	695	755
Deferral of income of domestic international sales corporations (DISC)	1,170	1,260	1,300	1,400	1,525	1,640						
Deferral of income of controlled foreign corporations	530	445	480	520	560	605						
Special rate for Western Hemisphere trade corporations	15	5										

Footnotes at end of table.

TABLE 1.—TAX EXPENDITURE ESTIMATES BY FUNCTION [1]—Continued

[Fiscal years; in millions of dollars]

Function and item	Corporations						Individuals					
	1979	1980	1981	1982	1983	1984	1979	1980	1981	1982	1983	1984
General science, space, and technology: Expensing of research and development expenditures	1,550	1,745	1,980	2,230	2,490	2,780	30	35	40	45	50	55
Energy:												
Expensing of exploration and development costs	1,060	1,160	1,280	1,365	1,475	1,605	430	505	590	675	890	1,025
Excess of percentage over cost depletion	1,190	1,265	1,355	1,440	1,525	1,625	435	485	525	535	540	550
Capital gains treatment of royalties on coal	10	10	10	10	15	15	65	75	90	100	110	115
Residential energy credits							715	435	465	505	555	610
Alternative conservation and new technology credits	220	390	495	595	460	160	(2)	(2)	(2)	(2)	(2)	(2)
Natural resources and environment:												
Exclusion of interest on State and local government pollution control bonds	200	220	245	270	295	325	215	240	265	290	320	355
Exclusion of payments in aid of construction of water and sewage facilities	10	60	110	110	110	110						
5-yr amortization on pollution control facilities	−25	−10	15	55	95	90						
Tax incentives for preservation of historic structures	5	5	5	5	5	5	5	5	1	10	10	5
Capital gains treatment of certain timber income	315	355	400	440	485	530	90	100	115	125	140	150
Capital gains treatment of iron ore	10	10	10	10	10	10	10	10	10	10	10	10
Agriculture:												
Expensing of certain capital outlays	75	75	80	85	85	90	445	430	475	545	565	585
Capital gains treatment of certain ordinary income	10	10	15	15	15	20	365	385	405	425	445	465
Deductibility of noncash patronage dividends and certain other items of cooperatives	505	540	590	625	670	710	−170	−175	−190	−200	−210	−220
Exclusion of certain cost sharing payments							(2)	30	75	80	80	75
Commerce and housing:												
Dividend exclusion							450	450	470	495	515	540
Exclusion of interest on State and local industrial development bonds	240	380	335	395	455	510	255	305	360	430	490	555
Exemption of credit union income	90	100	115	125	140	155						
Excess bad debt reserves of financial institutions	780	855	965	1,015	1,090	1,260						
Deductibility of mortgage interest on owner-occupied homes							8,225	9,290	10,965	12,935	15,265	18,010
Deductibility of property tax on owner-occupied homes							5,920	6,615	7,765	8,905	10,330	11,980
Deductibility of interest on consumer credit							2,585	2,945	3,475	4,100	4,835	5,705
Expensing of construction period interest and taxes	525	555	585	615	645	675	90	145	165	160	155	150
Excess first-year depreciation	50	50	50	55	55	60	135	135	145	150	160	170
Depreciation on rental housing in excess of straightline	70	65	65	70	70	75	290	285	290	295	305	320
Depreciation on buildings (other than rental housing) in excess of straight line	135	135	140	150	165	185	120	120	125	135	150	165
Asset depreciation range	2,460	2,880	3,400	3,940	4,330	4,300	130	150	180	215	225	225
Capital gains (other than farming, timber, iron ore, and coal)	555	625	725	785	870	965	7,520	10,150	10,905	11,730	12,615	13,580
Deferral of capital gains on home sales							1,125	1,010	1,115	1,225	1,350	1,485
Capital gains at death							9,015	10,005	11,105	12,275	13,555	14,965
Corporate surtax exemption	3,070	135										
Reduced rates on first $100,000 of corporate income	3,270	6,940	7,425	7,890	8,350	8,735						
Investment credit, other than for TRASOPs and for rehabilitated structures	13,405	15,370	17,380	18,965	20,180	21,300	2,665	3,090	3,510	3,870	4,110	4,360
Investment credit for rehabilitated structures	55	120	140	155	170	185	10	60	65	65	65	70
Transportation:												
Deductibility of nonbusiness State gasoline taxes							350					
5-yr amortization on railroad rolling stock	−40	−40	−40	−40	−35	−20						
Deferral of tax on shipping companies	75	70	75	75	80	90						
Community and regional development:												
5-yr amortization for rehabilitation of low-income housing	5	5	10	10	10	5	10	10	15	20	15	10
Exclusion of interest on State and local housing bonds	450	680	975	1,320	1,715	2,165	90	140	200	270	350	440
Education, training, employment and social services:												
Exclusion of scholarship and fellowship income							355	365	375	390	400	410
Parental personal exemption for students age 19 or over							935	1,020	1,025	1,020	1,020	1,020
Exclusion of employee meals and lodging (other than military)							325	350	380	410	445	480
Exclusion of contributions to prepaid legal services plans							15	20	35	10		
Investment credit for employee stock ownership plans (TRASOPs)	385	450	520	600	655	360						
Deductibility of charitable contributions (education)	320	355	380	420	455	485	710	795	925	1,070	1,240	1,140
Deductibility of charitable contributions to other than education and health	395	440	475	520	560	600	5,320	5,965	6,920	8,030	9,310	10,805
Maximum tax on personal service income							1,335	1,625	2,030	2,540	3,175	3,970
Credit for child and dependent care expenses							610	705	770	845	925	1,015
Credit for employment of AFDC recipients and public assistance recipients under work-incentive programs	55	120	160	185	215	240	5	40	55	65	70	75
General jobs credit	1,035	215	110	55	35	20	860					
Targeted jobs credit	125	345	470	320	85	85	15	135	190	135		
Employer educational assistance							20	30	30	35	40	40
Health:												
Exclusion of employer contributions for medical insurance premiums and medical care							8,255	9,595	11,150	12,955	15,030	17,490
Deductibility of medical expenses							2,890	3,120	3,525	3,985	4,505	5,090
Expensing of removal of architectural and transportation barriers to the handicapped	10	(2)	(2)	(2)	(2)	(2)						
Deductibility of charitable contributions (health)	195	220	235	260	280	300	1,065	1,195	1,385	1,605	1,865	2,160
Income security:												
Exclusion of social security benefits:												
Disability insurance benefits							615	735	860	1,010	1,175	1,370
OASI benefits for retired workers							5,455	6,430	7,535	8,750	10,115	11,630
Benefits for dependents and survivors							825	940	1,075	1,210	1,365	1,540
Exclusion of railroad retirement system benefits							275	305	345	365	380	390
Exclusion of Workmen's compensation benefits							1,035	1,285	1,590	1,975	2,450	3,035
Exclusion of special benefits for disabled coal miners							50	50	50	50	50	50
Exclusion of unemployment insurance benefits							1,780	1,935	2,150	2,095	2,010	1,940
Exclusion of public assistance benefits							355	395	425	455	515	525
Exclusion of disability pay							140	150	155	165	175	185
Net exclusion of pension contributions and earnings:												
Employer plans							11,325	12,925	14,740	16,815	19,175	21,860
Plans for self-employed and others							1,920	2,205	2,535	2,920	3,355	3,860
Exclusion of other employee benefits:												
Premiums on group term life insurance							875	915	950	990	1,030	1,075
Premiums on accident and disability insurance							75	80	85	90	90	95
Income of trusts to finance supplementary unemployment benefits							10	10	10	10	10	10
Exclusion of interest on life insurance savings							2,475	2,720	2,990	3,290	3,635	4,015
Exclusion of capital gains on home sales for persons age 55 and over							300	535	590	645	710	785
Additional exemption for elderly							1,670	1,855	1,950	2,045	2,150	2,255

Footnotes at end of table.

TABLE 1.—TAX EXPENDITURE ESTIMATES BY FUNCTION [1]—Continued

[Fiscal years; in millions of dollars]

Function and item	Corporations						Individuals					
	1979	1980	1981	1982	1983	1984	1979	1980	1981	1982	1983	1984
Additional exemption for the blind							30	35	35	35	40	40
Deductibility of casualty losses							435	475	540	610	685	775
Tax credit for the elderly							160	160	160	160	160	160
Earned income credit:												
Nonrefundable							265	535	515	495	475	455
Refundable							840	1,535	1,475	1,415	1,360	1,305
Veterans benefits and services:												
Exclusion of veterans disability compensation							905	1,005	1,085	1,165	1,265	1,340
Exclusion of veterans pensions							45	55	60	60	60	65
Exclusion of GI bill benefits							195	170	150	135	120	105
General government: Credits and deductions for political contributions							80	100	140	100	125	100
General purpose fiscal assistance:												
Exclusion of interest on general purpose State and local debt	3,245	3,515	3,900	4,335	4,815	5,360	2,120	2,365	2,625	2,915	3,240	3,600
Deductibility of nonbusiness State and local taxes (other than on owner-occupied homes and gasoline)							10,935	12,450	14,690	17,335	20,455	24,135
Tax credit for corporations doing business in U.S. possessions	685	730	805	885	970	1,070						
Interest: Deferral of interest on savings bonds							615	625	640	655	665	680

[1] All estimates are based on the law enacted as of Dec. 31, 1978.

[2] Less than $2,500,000.

TABLE—FEDERAL SPENDING IN FISCAL YEAR 1980

[In billions of dollars]

Budget function	Direct spending [1]	Tax spending [2]	Total (2)+(3)	Budget function	Direct spending [1]	Tax spending [2]	Total (2)+(3)
(1)	(2)	(3)	(4)	(1)	(2)	(3)	(4)
National defense	125.8	1.6	127.4	Health	53.4	14.1	67.5
International affairs	8.2	2.3	10.5	Income security	179.1	36.2	215.3
General science, space and technology	5.5	1.8	7.3	Veterans benefits and services	20.5	1.2	21.7
Energy	7.9	4.3	12.2	Administration of justice	4.4		4.4
Natural resources and environment	11.5	1.0	12.5	General government	4.4	.1	4.5
Agriculture	4.3	1.3	5.6	General purpose fiscal assistance	8.8	19.1	27.9
Commerce and housing credit	3.4	72.9	76.3	Interest	57.0	.6	57.6
Transportation	17.6	.03	17.6	Allowances	1.4		1.4
Community and regional development	7.3	.8	8.1	Undistributed offsetting receipts	(−)19.0		(−)19.0
Education, training, employment and social services	30.2	13.0	43.2	Total	531.6	170.3	702.0

[1] Source: Outlays recommended by administration in the fiscal year 1980 budget (Jan. 22, 1979).

[2] Source: Joint Committee on Taxation, "Estimates of Federal Tax Expenditures for Fiscal Years 1979–1984" (Mar. 15, 1979).

TABLE—INCREASES IN DIRECT SPENDING AND TAX SPENDING

Fiscal year	Direct spending			Tax spending			Fiscal year	Direct spending			Tax spending		
	Amount (billions)[1]	Index (1971=100)	Percent increase over prior year	Amount (billions)[2]	Index (1971=100)	Percent increase over prior year		Amount (billions)[1]	Index (1971=100)	Percent increase over prior year	Amount (billions)[2]	Index (1971=100)	Percent increase over prior year
1971	$211.4	100.0		$51.7	100.0		1976	366.4	173.3	12.3	98.5	190.5	6.0
1972	232.0	109.7	9.7	59.8	115.7	15.7	1977	402.7	190.5	9.9	114.5	221.5	16.3
1973	247.1	116.9	6.5	NA	NA	NA	1978	450.8	213.2	11.9	124.4	240.6	8.6
1974	269.6	127.5	9.1	82.0	158.6	NA	1979	493.4	233.4	9.4	150.7	291.5	21.2
1975	326.2	154.3	21.0	92.9	179.7	13.3	1980	531.6	251.5	7.7	170.3	329.4	13.0

[1] Source: Fiscal year 1980 budget.

[2] Source: Publications of the Joint Committee on Taxation, 1972–79.

SUM OF THE EXPENDITURE ITEMS BY TYPE OF TAXPAYER, FISCAL YEARS 1979–84

[In millions of dollars]

	Corporations and individuals	Corporations	Individuals
Fiscal year:			
1979	150,655	38,495	112,160
1980	170,320	42,760	127,560
1981	192,675	47,770	144,905
1982	216,260	52,280	163,980
1983	241,935	56,180	185,755
1984	270,285	59,485	210,800

Note: These totals represent the mathematical sum of the estimated fiscal year effect of each of the tax expenditure items included in the table. The limitations on the use of the totals are explained in the text.

Source: Staffs of the Treasury Department and the Joint Committee on Taxation ●

DICK CLARK AS AMBASSADOR AT LARGE

● Mr. HAYAKAWA. Mr. President, I would like to offer some comments regarding the nomination of Senator Dick Clark to serve as U.S. Ambassador at Large. I have voted for the nomination in committee. However, it is necessary for me to point out that after reading Dick Clark's remarks before the Judiciary Committee I felt uncertain whether the Senate has at its disposal all the information needed to reach a correct decision. I, therefore, wrote to the Department of State requesting a clarification of certain ambiguous aspects surrounding the Clark appointment. The State Department promptly supplied the needed information. While it clarifies more fully the role which Senator Clark will play in his new job, I still have some reservations in this regard. Nevertheless, rather than delaying the confirmation process any longer I decided to make my exchange with the State Department a matter of public record. Mr. President, I accordingly request that my memorandum of March 20 to the State Department and the reply be printed in the RECORD as part of my comments. Thank you Mr. President.

The material follows:

NOMINATION OF SENATOR DICK CLARK

Senator Hayakawa would deeply appreciate it if you could furnish him promptly with answers to the following questions:

1. Senator Clark states that part of his diplomatic efforts will be "to induce repres-

sive states to moderate their practices." He would thus seem to have a role in the implementation of the U.S. human rights policy toward other countries. What will be the scope of his official policy making power in the human rights area? What will be his role vis a vis the Office on Human Rights? Will his role be the equivalent of an ex-officio member? What specific functions might he be involved in in this capacity? Would he ever be sent on a trouble-shooting mission to countries whose human rights record the U.S. is concerned about?

2. Senator Clark will also be involved in "finding political solutions to regional political disputes." I would like for this to be defined with greater precision. Am I correct in presuming that the geographical emphasis of this aspect of his role will be in Africa? What precisely will his functions be? Would he serve in an adjunct capacity to Ambassador Andrew Young? Might he at some future date be named head U.S. negotiator in relation to the future of a nation in Africa or any other continent?

3. What will be the budget and projected personnel requirements for his diplomatic role?

4. How much of Senator Clark's time is to be devoted on the average to diplomatic functions vis a vis the implementation of refugee programs?

DEPARTMENT OF STATE,
Washington, D.C., March 21, 1979.

DEAR SENATOR HAYAKAWA: This is in response to John Backer's memorandum to me of March 20 regarding the nomination of former Senator Dick Clark as Ambassador-at-Large and U.S. Coordinator for Refugee Affairs.

On Mr. Backer's first two points, Senator Clark has not stated that part of his personal diplomatic efforts would be "to induce repressive states to moderate their practices." Nor has he said that he would be involved in "finding political solutions to regional political disputes." These quotations are taken out of context from Senator Clark's testimony before the Senate Judiciary Committee on March 14, 1979, when he was pointing out the need to recognize the causes as well as the effects of refugee problems overseas. Taken in context, it is clear that he was speaking about the combined efforts of the U.S. Government, rather than just his own role:

Despite the participation of many other governments and international agencies, the U.S. share of the current refugee problem entails a substantial financial burden. Therefore among the most crucial elements of our refugee policy we must include strenuous diplomatic activity to alleviate the causes of refugee migration and equally strenuous activity to get other governments to assume a greater share of the burden. Increased emphasis on this aspect of our work means different types of activity:

Encouraging other governments to work with us in finding political solutions to regional political disputes that are causing refugees to flee;

Exerting diplomatic influence, in cooperation with other governments, to induce repressive states to moderate their practices;

Working with the international agencies, such as the UN High Commissioner for Refugees, to improve their programs and management of resources, and urging other governments to give their full support to these ends; and

Encouraging other governments to carry their own fair share of the burden, in terms both of providing resettlement opportunities and making financial contributions to international efforts.

The basis of Senator Clark's authority is the President's directive of February 28, 1979, which was made available to the Foreign Relations Committee before the confirmation hearing and submitted for the record. It states that the U.S. Coordinator, working under the direction of the President and the Secretary of State, will "be responsible to the fullest extent permitted by law" for, among other things:

(b) Coordination of all United States domestic and international refugee and resettlement programs with a view to assuring that policy objectives are met in a timely fashion;

(f) Representation and negotiations on behalf of the United States with foreign governments and international organizations in discussions on refugee matters and, when appropriate, submitting refugee issues for inclusion in other international negotiations;

As with his other responsibilities, Senator Clark is assisted "in the coordination and implementation of U.S. Government refugee policies, programs, and activities" by an Interagency Committee on Refugee Affairs. The Committee consists of representatives of all federal agencies involved in U.S. refugee efforts.

On the third point, it is difficult to separate out the budget and personnel requirements for Senator Clark's diplomatic role, since the U.S. refugee programs and policies involve such a close relationship between domestic and international efforts. Senator Clark has one staff member who devotes his attention solely to diplomatic functions, but he also calls upon the assistance of experts in the State Department and other agencies when appropriate.

Finally, it is misleading to imply a distinction between diplomatic functions and "the implementation of refugee programs." By necessity the success of our programs depends on cooperation and negotiations with other governments and international organizations to provide relief to refugees overseas and to bring them to the United States. In recognition of the importance of minimizing the U.S. burden by encouraging others to increase their contributions, Senator Clark has stated that he intends to devote a portion of his time to diplomatic efforts to strengthen international contributions to refugee programs. However, the day-to-day operational responsibilities for specific refugee programs will remain with the appropriate agencies.

I hope that this clarifies your questions about Senator Clark's role. The President and the Secretary of State are confident that his mandate has been properly defined to give him the responsibilities and authority necessary to carry out the functions of Ambassador-at-Large and U.S. Coordinator for Refugee Affairs.

Sincerely,

DOUGLAS J. BENNET, JR.,
Assistant Secretary for Congressional Relations.●

NO OIL SHORTAGE, JUST A SHORTAGE OF LEADERSHIP AT DOE

● Mr. METZENBAUM. Mr. President, as my colleagues are well aware, more than a year ago I first called for the resignation of Dr. James Schlesinger as the Secretary of Energy. For many months, it was a solitary crusade but today I no longer feel lonely.

Last week, I was joined on the floor by a group of distinguished Senators and I note that yesterday, my good friend, the junior Senator from Tennessee, made an eloquent statement indicating his disapproval of the Secretary's leadership at DOE.

Since last week's colloquy, more evidence has surfaced to bolster our contention that the Department of Energy under Dr. Schlesinger is rapidly losing the confidence of the American people. Numerous articles have appeared in newspapers and magazines outlining the depth of dissatisfaction with the policies of the Department of Energy and editorials calling for the President to accept the reported offer of Dr. Schlesinger's resignation have appeared.

While I understand that he is not actually joining our call for Dr. Schlesinger's resignation, I commend our distinguished majority leader for the statements he made last Saturday in his weekly press conference. I feel that he hit at the crux of the argument that we have been making in relation to the problems at the Department of Energy. According to the Washington Post, my good friend from West Virginia pointed out that the Department of Energy under Dr. Schlesinger has been marked by—

> Shifts in policy, shifts in direction, confused statistics, etc., etc., that are causing great troubles. The administration should have had its standby oil supply proposals up before Congress two years ago. There is still no comprehensive energy policy in place that I know about . . . we're just sort of on a treadmill.

I could not be more in agreement but I will go one step further and place the blame where it rightfully belongs—on the shoulders of the Secretary of Energy.

Last Sunday, another of our distinguished colleagues, the senior Senator from Idaho and chairman of the Foreign Relations Committee voiced similar complaints on the CBS network show, Face the Nation. Senator CHURCH also did not join us in the call for the Secretary's resignation, but spent several moments outlining the same problems we have had in dealing with the Department of Energy. He has publicly called it the fudge factory.

Mr. President, every day, more and more evidence comes forth to strengthen the case against the Secretary of Energy.

For instance, the Secretary presented a plan to Congress recently for emergency conservation. Included in the four-point plan was a proposed ban on weekend gasoline sales.

Last month, the Secretary told the Senate Energy Committee that weekend and Sunday closings may be necessary by this summer to make up for lost supplies resulting from the Iranian oil squeeze.

But now we learn from another Washington Post article that an internal Department of Energy study completed more than a week before the proposal was sent to Congress concludes that a ban on weekend gasoline sales "would result in longer service station lines the rest of the week and save little gas."

Continuing the DOE study says:

Reduced hours of operation of gasoline stations should be discouraged, if not prohibited.

The DOE study, according to the Washington Post, found that ending weekend gas sales would create longer lines on other days and result in more gasoline waste than each of seven other possible savings plans.

What I wonder about, Mr. President, is how much money did we spend to make a study and come up with that amazing conclusion. If we spent any more than calling up a dozen service station operators who were in business in 1974 to have them cite their experiences, then we wasted a lot of the taxpayers' money.

Last Sunday, in an incisive article in the New York Times, Richard Halloran added more fuel to the fire of our argument and threw a giant cloud of suspicion over the so-called shortage we are now suffering. In a well-documented article entitled "Oil Facts Don't Quite Match the Rhetoric," Mr. Halloran laid bare the facts of this so-called shortage that Dr. Schlesinger has been laying before us. And, Mr. President, after reading this article, no reasonable person could come to any other conclusion than that our Department of Energy, in conjunction with the oil industry, has been a willing partner in, at best, drastically overstating the shortage from Iran or, at worst, deliberately deceiving the American public.

I ask unanimous consent that the article be printed in its entirety at this point in the RECORD.

One day later, Mr. John O'Leary, Dr. Schlesinger's right-hand man at the Department of Energy, virtually confirmed Mr. Halloran's contentions and also verified what many of us have been suspecting—that the oil companies have created the so-called shortage by holding back supplies in anticipation of price decontrol.

Mr. President, I ask unanimous consent that the article from the New York Times of March 20, 1979, by Richard Halloran, entitled "Increased Iranian Shortfall Seen," be printed in its entirety in the RECORD at this point.

Mr. President, I am also aware that the President, after last week's colloquy and in answer to a letter from my distinguished colleague, the junior Senator from Arizona, stated that he still has full confidence in Dr. Schlesinger. The President added that the Secretary needs all the help he can get.

I would add that the American consumer is more in need of all the help he can get—and he certainly is not getting any from the Secretary of Energy.

I again urge the President to accept the offer of resignation that the Secretary of Energy told the Senate Energy Committee he has made. Only then can we get the new and forceful leadership that is so desperately needed at the Department of Energy.

Mr. President, I ask that two articles concerning this subject, "Energy Battle Takes a Turn for the Worse," from the March 26, 1979, issue of U.S. News & World Report and "Oil: How High Is Up?" from the March 26, 1979, issue of Time magazine be printed in their entirety in the RECORD.

The articles follow:

[From the New York Times, Mar. 18, 1979]

OIL "FACTS" DO NOT QUITE MATCH THE RHETORIC

(By Richard Halloran)

WASHINGTON—Bewildered by the continuing uproar over the supply of oil, or lack of same? You're in good company.

The Department of Energy says—Energy Secretary James R. Schlesinger testified so last week—that the nation is short 500,000 barrels a day, and creeping toward 800,000 barrels. The Congressional Research Service says the shortage is only 80,000 barrels a day. The big oil companies say that, worldwide, it's 2.5 million barrels a day and so they must parcel out deliveries to make sure everyone gets a fair share. The General Accounting Office, Congress' investigative arm, finds that puzzling. It says that the companies are cutting the United States back 10 to 15 percent while at the worst the loss of Iranian oil puts it down only 4 percent.

Such reputable challenges to the "official" figures from the Department of Energy and the American Petroleum Institute, the industry's trade association, suggest that the crisis talk is overblown—at least for now. During the three months since Iran's troubles turned off the tap on its exports, demand for crude oil and its refined products, such as gasoline, has risen only 1.9 percent, compared with the same period a year ago. Supplies are up a solid 3.4 percent. Conventional wisdom has it that the United States is dipping into its stocks 500,000 barrels a day more than normal. But the numbers show that an average of 250,000 barrels a day less than a year ago is being drained out, and at this point in the annual supply and consumption cycle, dipping into stocks is usual.

Moreover, the basic crude oil stocks appear to be quite sufficient. They are down from the level of a year ago—Government officials and oilmen agree they were abnormally high then—but they are above the level of the same period in 1977, a more nearly average year. The latest figures show that the slide that began last August may have bottomed in January, with stocks picking up now. Production of domestic oil is up; imports of crude are up—not down, despite the loss of 900,000 Iranian barrels a day; and imports of refined products are up.

Why then there should be shortages of refined products, especially of jet fuel? Although some oil companies have reported spot shortages of jet fuel and several airlines have cancelled flights, since December, demand has been almost exactly what it was a year ago, and the year before that. Indeed, air lines have been consuming the same amount of jet fuel they did back in 1973, before the Arab oil embargo, and jet fuel stocks are inside the range within which they have fluctuated for more than two years.

Gasoline is less mysterious. Americans are driving more. Even so, stocks appear healthy, dropping from last year's high to roughly the 1977 levels in December through February. The difficulties with unleaded gasoline are unrelated to Iran; the companies say refinery capacity is inadequate to keep up with demand, and they haven't built more because current price controls would not give them a reasonable return on their investment. But at the other end of the scale, distillate fuel, largely heating oil, is in trouble. Consumption is up and stocks have fallen to their lowest levels in more than two years, presumably because of the cold weather.

Outside of heating oil, why all the fuss? At first, many oil companies asserted that they had to ration their products because Iran meant their supplies of crude oil had shrunk. In recent weeks, however, the vocabulary has changed. Oil executives contend now that "prudent management" makes the allocations necessary. They say they must be ready for the driving season next summer and the heating season next fall. But some Government analysts speculate privately, as did the General Accounting Office publicly, that the oil companies are holding supplies out of the market because they expect, one way or another, that prices will go higher—and by doing so, they guarantee that prices will go higher. Some also suggest that the companies may have shifted supplies into the spot market, where a barrel of oil commands upward of $6 or more than the posted price of $14.

It has also become increasingly clear that the oil companies are using the current troubles as an argument for removing controls from domestic crude oil. The theme that runs through most oilmen's speeches and press releases today is that if controls are removed, the companies will spend the money at home to explore and produce more crude and to build more refineries, thus reducing the reliance on foreign oil.

The argument over decontrol is reportedly also running through the Administration, with a decision by President Carter expected soon. Secretary Schlesinger favors decontrol to stimulate production. But Mr. Carter's chief inflation fighter, Alfred E. Kahn, fears the consequences. Many economists and oilmen contend that, at least for the foreseeable future, consumption will continue up, no matter what prices are set. The President's domestic policy adviser, Stuart E. Eizenstat, is said to worry about the political consequences. The head of the Council on Environmental Quality, Charles Warren, is worried that removal of price controls will be linked with relaxed pollution restrictions to get more efficient use of fuel.

For now, Iran's new government is producing almost enough to cover what is supposed to be the worldwide shortfall. At the same time, new questions have arisen, the answers to which may determine whether American motorists wait in line this summer to buy gasoline: They include:

Will Saudi Arabia continue producing enough to overcome the potential shortage from Iran? The Saudis have cut back from the 10.4 million barrels a day they produced in December to 9.5 million barrels a day, withdrawing almost 1 million barrels a day from the world supply.

Will Libya, Iraq, and other big producers hold crude oil out of the market, breaking long-term contracts to sell in the spot market? The plans of the producing nations may become clear—along with their new prices—after their March 26 meeting in Geneva.

Will the agreement reached in the International Energy Agency work? The 19 members, including the United States and Japan, agreed two weeks ago to cut imports by 5 percent by conserving or producing more. But the plan is voluntary and vague about 5 percent of what and when.

Will a shortage of oil, or something else, produce a recession in the United States and the rest of the industrial world? No matter what the cause, less oil will most likely be consumed and thus ease the pressure on supplies.

One thing seems certain, and that is that the price of oil and gasoline will continue to go up. As an oil executive said over coffee the other day: "When Iranian oil went off the market, OPEC tacitly agreed to limit production. It's much simpler to limit production so that price increases are automatic. The OPEC nations are acting the same way the Texas railroad commission did for 30 years."

[From the New York Times, March 20, 1979]

INCREASED IRANIAN SHORTFALL SEEN

(By Richard Halloran)

WASHINGTON, March 19.—John F. O'Leary, Deputy Secretary of Energy, testified today that the United States had not yet experienced a shortage of oil caused directly by the halt in imports from Iran, but warned that the nation might be deficient by 900,000 barrels a day, or 4 percent of current consumption, before long.

As President Carter and his economic advisers met at Camp David, Mr. O'Leary sketched out an assessment of the oil situation that differed from earlier analyses in which senior officials of the Administration said the United States was already short 500,000 barrels of oil a day.

Mr. O'Leary acknowledged that there had been what he called a "statistical shortage" because of the lag—due to the time needed for transportation—between the beginning of the cutoff in Iran and the last arrival of tankers in the United States.

But he said that an actual shortfall would "in all likelihood" not develop until this month.

In testimony before the House Energy and Power subcommittee, Mr. O'Leary also said that oil companies had been restraining deliveries, causing some dislocation to consumers.

Some critics of the oil industry have asserted that the companies are holding back until they can get higher prices. But Mr. O'Leary defended their action.

"Companies with an adequate stock position are husbanding and safeguarding that stock position," he said. "That is entirely prudent. We could find ourselves in a terrible position from the standpoint of stocks in June when the driving season starts."

There were the following other developments in energy today:

Senator Henry M. Jackson, Democrat of Washington, chairman of the Energy and Natural Resources Committee, announced that the committee would investigate the cancellation by the Standard Oil Company (Ohio) of a tanker facility in Long Beach, Calif., and a pipeline system to move oil from California to the Middle West and East. He said that Gov. Edmund G. Brown Jr. of California and the company's president, Alton Whitehouse, would be invited to testify.

The Republican Senate and House leaders, Senator Howard H. Baker Jr. of Tennessee and Representative John J. Rhodes of Arizona, urged President Carter to name a new energy administrator with special powers and to formulate a new policy to encourage the production of energy.

Opposition to the President's proposed standby plan to close gasoline stations on Sundays was strong both in the Congress and at a meeting of representatives of tourist-oriented state governments in Tampa, Fla. The general theme was that the closings would severely damage the tourist business while not saving a large amount of gasoline.

The Army's Corps of Engineers recommended that the Secretary of the Army approve plans to build a $600 million oil refinery at Hampton Roads, Va., a spokesman for the Hampton Roads Energy Company said. If the 175,000-barrel-a-day refinery is built, it would be the first new refinery on the East Coast in 24 years.

The director of Pemex, the Mexican national oil company, Jorge Diaz Serrano, said in Mexico that the price of Mexican oil, of which the United States imports 400,000 barrels a day, would be raised by an undisclosed amount on April 1.

[From U.S. News & World Report, Mar. 26, 1979]

ENERGY BATTLE TAKES A TURN FOR THE WORSE

Efforts to cope with the nation's energy problems are bogging down in turmoil and recrimination.

In a rapid-fire barrage of developments in mid-March:

Energy Secretary James Schlesinger's resignation was demanded in Congress, but President Carter answered by giving him strong support.

Standard Oil Company (Ohio) canceled a pipeline project in the Western U.S. necessary to speed up oil production in Alaska.

Five nuclear power plants were ordered shut down by the government, a move that will cost an extra 100,000 barrels of oil a day.

Texaco, Inc., after a promising gas strike in its first try, reported failure of its second drilling effort in the Atlantic Ocean.

Auto manufacturers warned that meeting the government's 1985 fuel-efficiency standards would "cost three times as much as it did to put a man on the moon."

Coming at a time when fuel shortages are spreading and prices rising, these developments seemed to stall, for the time being, decisive action by the government on energy problems. Much of the furor over energy swirled around Schlesinger, who has been one of Carter's chief advisers since the 1976 presidential campaign.

A group of Democrats took to the Senate floor on March 14 to denounce Schlesinger in an attempt to force his resignation. Senator Howard Metzenbaum of Ohio, a leader of the movement, said that the U.S. needs "new leadership and direction" in dealing with its energy problems.

Even lawmakers who defended Schlesinger as a man of integrity who is trying to solve energy problems that Congress has ducked admitted that he is often wrong, unpopular and stubborn. A White House aide privately describes him as "insufferably arrogant."

President Carter, however, appears satisfied with Schlesinger. In a letter to one critical senator, the President wrote: "I continue to have full trust and confidence in Secretary James Schlesinger. He has a very difficult job, and needs all the help and support he can get—he's got mine."

Schlesinger, in an appearance before the Senate Energy Committee, disclosed that oil consumption has surged to a record 21 million barrels a day, citing it as proof that Carter's call for voluntary energy conservation was not working. As a result, he said, mandatory curbs on energy use may be necessary sooner than planned.

More bad news came on March 13, when Sohio announced cancellation of plans for a 1-billion-dollar pipeline to transport Alaskan crude oil from Long Beach, Calif., to Midland, Tex.

After spending 50 million dollars and five years trying to obtain more than 700 government permits, Sohio claimed the project is no longer economically attractive. Said a company official: "A quagmire of federal and state regulations . . . can bog down any project, no matter how worthy and regardless of the national interest."

The pipeline would have allowed oil companies to increase production in Alaska from 1.2 to about 2 million barrels a day by eliminating a transportation bottleneck on the West Coast, where there are not enough refineries to handle all of Alaska's output. The pipeline also would have reduced the high cost of shipping Alaskan oil through the Panama Canal.

Some congressmen accused California Governor Jerry Brown of sabotaging the project in order to keep a glut of oil in California. State officials, however, blamed Sohio for the delays.

The five nuclear power plants ordered shut down on March 13 by the Nuclear Regulatory Commission are located in the East, the nation's most oil-dependent region. The NRC action followed revelation that faulty design of the plants—at Shippingport, Pa.; Wiscasset, Me.; Scriba, N.Y., and two at Gravel Neck, Va.—left them vulnerable to possible earthquake damage.

The shutdowns, which could last for several months, will place an added strain on U.S. energy supplies already pinched by the Iranian oil cutback.

Loss of the nuclear plants also will hamper government plans for coping with oil shortages by transferring power from areas with nuclear reactors to those depending on oil.

CONSUMERS PAY

Operators of the plants warned that the action will result in higher electric bills. Virginia Electric & Power Company said that the Gravel Neck shutdown could make electricity 6 percent more costly.

Atop all this, hopes for major oil and gas discoveries in the Atlantic Ocean suffered another setback with Texaco's announcement that a well it was drilling to confirm an earlier gas discovery came up dry. Nine wells drilled by other companies also have been dry.

Meanwhile, the nation's auto makers warned that increases in fuel efficiency would come at great expense to the driving public. Testifying at House hearings, they said that it would require an investment of 80 billion dollars to meet the government's 1985 deadline for producing cars that average 27.5 miles per gallon.

With the nation's energy policy in such seeming disarray, even critics had to agree with Schlesinger when he said: "The only way the outlook will change is for Americans to have the will to do it."

[From Newsweek, Mar. 26, 1979]

OIL: HOW HIGH IS UP?

Jimmy Carter returned from his successful Mideast peace mission last week only to find a new war raging on the domestic energy front. Even as supplies continued to tighten in the aftermath of the Iranian oil cutoff, Americans were consuming record amounts of petroleum—and in some locations, gasoline pumps were running dry amid predictions that prices could climb to $1 a gallon as early as this summer. While the Administration continued to discount the nation of an oil-induced recession, others were far from convinced. "You are going to see a *deep* recession, not just an ordinary recession," said Democratic Sen. Henry Jackson.

The news last week was uniformly discouraging. Standard Oil Co. of Ohio announced it was canceling plans for a California-to-Texas pipeline that would have carried excess Alaskan crude from the West Coast to inland refineries. Exxon declared it would phase out its historic policy of selling oil to non-affiliated companies. "Basically, we don't have enough oil," explained a spokesman. And the Nuclear Regulatory Commission (NRC) ordered the closing of five East Coast nuclear plants because they might be unsafe in an earthquake. To make up the generating capacity lost in the closings, the utilities involved will have to burn an additional 100,000 barrels of oil a day—roughly half the amount of oil consumed by Israel. "Who needs Iran when we have the NRC?" sighed an official of the Energy Department.

If this weren't bad news enough, a preoccupied President Carter and his staff still had not come up with an effective plan for domestic conservation. On Capitol Hill, Senate critics were in full cry for the scalp of Energy Secretary James Schlesinger, principal architect of what energy policy there is.

OPEC MEETING

But the worst may be yet to come. Next week, ministers of the Organization of Petroleum Exporting Countries (OPEC) sit down in Geneva for what could be their most important meeting since the Arab oil embargo five years ago. When the closing of the Iranian oil fields cut world output by up to 4 million barrels a day, many OPEC members were quick to tack on surcharges, and now—angry over the prospective peace treaty between Egypt and Israel—they want to make

even bigger increases official. Algeria, for example, is pushing for a 28 per cent price hike in the second quarter that would push the official rate from $13.34 a barrel to around $19. As in the past, the Saudis are expected to resist such increases, and if spot prices collapse from their current level of over $20 a barrel, they may succeed. Much to everyone's surprise, Iran last week signed several contracts to sell oil well below the latest spot prices. But if OPEC does push through a big increase, there could be a serious recession.

President Carter is expected to make a major speech soon on the born-again energy crisis. Almost certainly he will call for voluntary conservation efforts and may seek to close service stations on certain days and limit the heating and cooling of public buildings. The big question is whether he will raise the price of domestic crude oil. Under current law, the President can begin next June 1 to dismantle the cumbersome controls that oilmen say have discouraged both production and conservation. But decontrol, though it might cut consumption by raising prices, would further strain Carter's already shaky anti-inflation program. Administration officials have held an endless series of meetings on the issue since last fall, but so far there is no consensus. "This is a tough call," says one White House staffer.

CALLS TO RESIGN

But even the hint of decontrol was too much for some Senate liberals who joined last week in a chorus demanding the resignation of Schlesinger, a chief booster of decontrol. "Why shouldn't Congress abolish the Department of Energy or at least ask for your resignation in light of your performance over the last year?" Democrat John Durkin of New Hampshire asked Schlesinger during a hearing. The Energy Secretary could barely hold his temper. "In the course of your statement you have accumulated more misapprehensions and misinformation than I have seen put together in any question—if that's what it is—yet provided here on Capitol Hill," he told Durkin. "As to my own resignation, I have offered it several times . . . That offer is still open."

But Jimmy Carter expressed his "full trust and confidence" in Schlesinger, and the Energy Secretary still seemed firmly in control as he limned the crisis facing the country. Even if Iran succeeds in increasing its exports from the current average of less than 1 million barrels a day, "we will continue to have a very tight situation with regard to oil supply," he asserted.* Americans are consuming oil at a record rate of 21 million barrels a day, he said, and spot shortages of both heating and diesel fuel "could appear in the coming weeks if there is another major cold spell." That point was strongly underscored by a report from the American Petroleum Institute: in the single week ended March 9, total U.S. petroleum stocks plunged 19 per cent (chart). "The call for voluntary conservation isn't working," declared Schlesinger.

Sohio's decision to shelve its $1 billion California-to-Texas pipeline worsened the supply problem. Federal officials fear the lack of the pipeline will discourage Alaskan producers from increasing their output. Today, the West Coast oil surplus runs to 500,000 barrels a day, but because of a law forbidding the sale of Alaskan crude to foreign buyers, that oil has to be shipped to Gulf Coast terminals via an expensive Panama Canal route.

*One reason for the continuing U.S. shortage is that international oil firms, responding to guidelines of the International Energy Agency, are now allocating available supplies according to a formula that favors nations heavily dependent on imports. Thus the U.S., which produces about 50 per cent of its oil needs, suffered a proportionately greater cut in allocations than Japan, which is forced to import virtually all the oil it consumes.

Sohio officials said they were backing out of the project largely because of lengthy environmental delays by California officials—prompting one critic of Gov. Jerry Brown to label him the "ayatollah of California." Fearing damage to his Presidential ambitions, Brown charged that the delays "came from an unwillingness on the part of British Petroleum Co. and its subsidiary, Sohio, to enter into a responsible agreement to clean up the air they would dirty" while unloading oil at a Long Beach terminal. "The days when British Petroleum can ride roughshod over foreign governments are over," he said.

STRANGE LOGIC

Oilmen insist that decontrol is the best answer to the impending shortages. Sun Co., for example, is sitting on a lot of what the government calls "old oil"—reserves that were discovered before 1973. At the current government ceiling price of about $5.80 a barrel, says John Savoy, Sun's manager for policy analysis and development, it simply doesn't pay to pump old oil. Consequently, Sun is allowing some of its older drilling rigs to fall apart—and that, strange as it may seem, makes good economic sense in today's wacky world of oil. For once a well deteriorates to the point where it can produce only ten barrels a day, the old oil becomes "stripper oil"—and producers may charge whatever the market will bear.

Supporters of decontrol also argue that it would encourage the use of costly "enhance recovery" techniques to tap the two thirds of a reservoir commonly left in the ground once conventional drilling methods are exhausted. Lawrence Goldstein, an economist for the Petroleum Industry Research Foundation estimates that enhanced recovery could eventually add 10 to 15 billion barrels to domestic proven reserves. And over the long term, higher prices would lead to new exploration that by some estimates could double or triple proven reserves. Samuel Schwartz, senior vice president of Continental Oil Co., figures that if oil prices are gradually decontrolled and drillers are given more access to Federal land "oil production could be increased by as much as 500,000 barrels a day by 1981."

PRICE IMPACT

Those benefits, however, would not come cheaply. Jonathan C. Zamzow, an energy economist for Chase Econometric Associates, notes that refiners paid an average of $12.50 per barrel of crude last year under decontrol, he says, the price would soar to $17. That increase would ripple throughout the economy, increasing the overall cost of living by one-half of 1 percent this year and a full percentage point in 1980. "We're talking about an awfully large increase in oil prices," says Zamzow.

That point hasn't escaped the Administration's chief inflation fighter, Alfred Kahn. Although he made his reputation by deregulating the airline industry, Kahn opposes any move to free oil prices at least until the fall when the first round of labor negotiations under wage-price guidelines will be over. Though Treasury Secretary Michael Blumenthal and Federal Reserve chairman G. William Miller both favor decontrol, the crucial Administration figure may well be domestic adviser Stuart Eizenstat. But so far he has said little, and White House insiders say he simply has not yet decided whether to recommend decontrol to the President.

Regardless of what happens domestically, there was growing evidence last week that conditions were deteriorating in the Mideast. Palestinian guerrilla groups urged Arab oil producers to retaliate against the Israeli-Egyptian settlement by using their oil weapon. Even in traditionally friendly Saudi Arabia, says Cyprus-based OPEC watcher Ian Seymour, "there are growing elements" calling for action against the West. "The Saudis are in transit at the moment," adds one DOE expert, "and I don't know where they are in transit to."

HISTORIC CRUNCH

It was plain that Western governments could no longer postpone the hard decisions. "There is no coming back from this one," says a London-based analyst. "Iran was a random thing. But when are we going to learn that the world is made up of special circumstances like these and that history is written afterward?" Last week, the lesson of history became increasingly clear. Another oil crisis was no longer just around the corner—it had arrived.●

CONGLOMERATE MERGERS

● Mr. HELMS. Mr. President, one of the issues we will be asked to discuss in this Congress is the issue of conglomerate mergers. Some in this body have already suggested the need for antimerger legislation which would restrict the size of corporations who wish to merge. I suggest that discussion on the problems we may or may not face as a result of the growth of corporate size and power has just begun.

Mr. President, this week U.S. News & World Report features a debate-format interview with two of our colleagues, Mr. HATCH, of Utah, a Republican member of the Judiciary Committee and the Antitrust Subcommittee, and Mr. KENNEDY, of Massachusetts, chairman of the Judiciary Committee. Both of these men have strong opinions on the issue of large corporate mergers. Let me commend U.S. News for bringing the contrasting views of our two colleagues to publication. I am sure we will hear much more on this issue from both men—but the discussion they have is a valuable one that should have wide distribution. It is extremely important that we carefully consider proposals that will affect the traditional economic structure of our country. I ask consent that this debate be printed in full in the RECORD.

The material follows:

A BAN ON BIG-COMPANY MERGERS?

INTERVIEW WITH SENATOR EDWARD M. KENNEDY, DEMOCRAT, OF MASSACHUSETTS

Yes—"The power they create threatens democracy, tends to reduce competition."

Q. Senator Kennedy, why do you favor banning mergers by large companies?

A. There are several good reasons for doing it, in my view. Such mergers concentrate economic power in fewer and fewer hands. They reduce diversity of economic decision making and thereby hinder innovation. The power they create threatens democracy and tends to reduce competition. And the substitution of absentee conglomerate ownership for independent businesses disrupts a business's relationship with its workers, customers and community.

Q. How do mergers hurt competition?

A. They hurt competition in three basic ways:

Where diversification comes by merger rather than internal growth, the number of new competitive enterprises is reduced. When control of companies is concentrated in fewer and fewer hands, the opportunities and incentives for companies to cooperate rather than compete increase. Also, some mergers increase barriers for competitors wanting to enter the market or entrench an already dominant firm's position in a market.

Q. Just how rapidly is economic power being concentrated in fewer and fewer companies?

A. In 1975, there were 14 mergers in which the purchase price was 100 million dollars or more; in 1977, there were 41 mergers of that size; in 1978, 80 mergers of that size or larger. In 1975, the 500 largest manufacturing companies owned 83 percent of all manufacturing and mining assets. By 1977, that percentage had increased to 89 percent.

Q. What size merger should be banned?

A. The bill I am sponsoring would affect about 1 or 2 percent of mergers now taking place. The bill affects mergers between two companies, *both* of which are very large. Companies with annual assets or revenues exceeding 2 billion dollars—essentially the top 100 manufacturing corporations—would not be able to merge with each other. Firms with at least 350 million dollars in revenues or assets—another 500 firms or so—could not acquire another firm of that size unless they divested themselves of assets equal to the assets of the company acquired or proved that the merger would increase efficiency or competition.

My bill would not restrict mergers involving small and medium-sized companies. Such mergers are most likely to improve management, increase availability of capital, improve efficiency and promote liquidity.

Q. Are you saying that bigness is bad in itself?

A. No. I want to make it clear that I'm not opposed to bigness per se. As a matter of fact, I think companies that have grown large from internal growth based on innovation, creativity, managerial expertise, efficiency and productivity are to be applauded. But I do object to growth through acquisition that is unrelated to productivity, efficiency, business management or service to the consumer.

Q. Don't mergers often lead to better management and greater efficiency—in short, lower prices for consumers?

A. There may be some instances in which mergers do provide better efficiency, increased productivity and better service to consumers—and such mergers are allowed under our bill's exceptions. But in most instances it appears that large mergers do not have that result.

In fact, that's not even why many mergers are undertaken. Many mergers are made for tax reasons, or simply to grow for growth's sake, or sometimes because executive compensation is linked to revenue or profit growth.

This can cause many problems, especially for the employes of the acquired company whose owners no longer have a direct stake in their livelihood or in the community where the firm is located. It can lead to profitable firms being closed down for tax reasons and the workers thrown out of work. This has happened in my own state and elsewhere.

Q. Don't some mergers give companies access to capital and technology that they wouldn't otherwise have?

A. Some do, and they would still be permitted under my proposal. If a company can prove that a merger will increase productivity, improve service and lead to better prices for consumers, then it ought to be able to move ahead.

Q. Aren't the present antitrust laws adequate to attack mergers that would reduce competition?

A. I think the Justice Department and the Federal Trade Commission can use them to a stronger degree than they have. But even with more-aggressive action, the present law cannot adequately address the problem of conglomerate mergers. For example, the courts have generally interpreted the existing antitrust laws as forbidding mergers that would reduce competition in a particular market, but not mergers that increase overall economic concentration.

Q. Wouldn't new restrictions on mergers only add to the regulatory burden already imposed on business, and thus help drive up prices?

A. On the contrary, they would ward off that threat of greater regulation. Economic concentration historically has led to demands for regulation. Reducing economic concentration is a necessary step in keeping our system of unregulated private enterprise as a viable alternative to extensive government regulation and control of very large businesses. And as we have seen in the airline industry, federal regulations often tend to reduce competition and drive up prices.

Q. How big an expansion of the federal bureaucracy would be needed to enforce the merger ban you propose?

A. The Justice Department's antitrust division has about 425 lawyers on its payroll and a budget of 38 million dollars. Since there are relatively few mergers affected by the bill, there would not be a need for greatly increased resources.

The bill, which does not ban all mergers but rather prohibits those that are not justified, could be enforced by existing personnel with a reordering of the antitrust division's priorities.

INTERVIEW WITH SENATOR ORRIN G. HATCH, REPUBLICAN OF UTAH

No—"Mergers are not the danger to small business; big government is."

Q. Senator Hatch, why do you oppose banning mergers by big companies?

A. We built a big country. Should we have stopped at the Mississippi? We don't ban families when they reach a certain size. Why ban a company just because it grows?

Bigness is not the issue here; quality is. I am much more concerned about whether or not a company—large or small—is providing consumers with a good product or service at a reasonable price.

The point is not big or small; it's good or bad. If a business—or a labor union or governmental bureaucracy, for that matter—is doing a bad job, it must be corrected, regardless of its size.

J. C. Penney built a big and good business. McDonald's is a big and good business. On the other hand, many of us know some smaller businesses that are not serving people as they should.

To repeat: Good or bad is the issue, not big or small.

Q. Don't mergers often reduce competition?

A. Mergers that substantially reduce competition or lead to monopolization should—and will—be blocked under current antitrust laws.

Actually, in industries where a few large firms dominate the market, acquisitions by big companies can pump new life into smaller and less efficient businesses to make them serious competitors, thereby protecting jobs and usually creating new ones.

Business should not bear the burden of proving a merger is good. Why should businesses have to spend billions of dollars annually to justify their existence to an almighty federal government, which already has the legal means at its disposal to correct abuses through existing antitrust laws? These costs will just be passed on to consumers, who will be the ultimate losers.

The government should have the obligation to prove that a particular merger is a threat to competition.

Q. Isn't there a danger that big mergers will concentrate economic power in fewer and fewer companies?

A. Properly enforced, our present antitrust laws are more than adequate to prevent unreasonable concentration.

Q. Aren't small businesses often hurt by mergers?

A. Only in isolated situations. You can point to some small businesses that have been acquired because of the power of larger businesses. Nevertheless, our free-market system permits mergers which do not substantially lessen competition or tend to create monopolies.

With present-day government regulations and tax policies, it is very difficult for small firms to get investment capital. A merger is one way a small company with great research-and-development potential can get capital to expand and develop and become a successful competitor. Mergers are not the danger to small business, big government is!

Q. Aren't many mergers economically unsound, stemming only from a desire for unlimited growth?

A. No. Many U.S. companies have grown in order to compete effectively in the world marketplace. American firms have been losing business abroad because they have to compete with government-subsidized foreign cartels.

Only strong, diverse, efficient American companies of competitive size can compete in world markets and combat government-subsidized foreign competitors domestically.

Q. Don't mergers sometimes create inefficiency?

A. No. Mergers don't create inefficiency, poor management does. In fact, mergers can help increase a firm's efficiency and stability. The threat of acquisition provides a necessary check upon management. Sometimes, a new boss is just the thing to get people back on the ball.

Q. When companies use their excess cash to buy other companies instead of spending it to increase output and jobs, aren't they hurting the economy?

A. I don't see anything wrong with firms spending their money for acquisitions. Given today's high costs and low profit levels, there's often no rational basis for firms to invest in new plants and equipment, when they can acquire already-existing plants and equipment while stabilizing jobs.

Q. For tax purposes, some firms buy a small concern and then close it down. Is that fair?

A. If there is a problem, I suspect that it is in the tax laws, not the merger laws. Maybe it is the tax laws that should be changed.

However, most of us realize that if the small company is capable of making profits, the big company will keep it going or spin it off in some productive way.

Q. Don't employes frequently lose their jobs as a result of mergers?

A. On the contrary, acquisitions may often be the only way to save a dying company and jobs. And by making more alternative employment opportunities available within the company, mergers can help stabilize employment.

Also, large firms typically give their employes better fringe benefits than smaller, underfinanced concerns.

Q. Are our present antitrust laws adequate to block some of today's large mergers that reduce competition?

A. The present laws have all the teeth necessary to block anticompetitive mergers. They just haven't been enforced adequately. The Justice Department and the Federal Trade Commission have more than enough lawyers, but there is some jurisdictional overlap between the two agencies, which results in inefficiency.

We need to utilize law enforcement more effectively than we have in the past, in order to protect the interests of the consumers and taxpayers of America.●

CAMBODIA

● Mr. McGOVERN. Mr. President, last summer I raised a strong protest against the massive violations of human rights in Cambodia. I raised the possibility that the United Nations Security Council should consider some action to end the systematic slaughter of Cambodians sanctioned by the Pol Pot government. Since last summer, of course, there has been a change of regime in Cambodia, although not by the authority of the U.N. as I had suggested. Mr. William Shawcross, the British journalist responsible for exposing many of the horrible practices of the Pol Pot regime, recently examined the changes in Cambodia since the Vietnamese invasion force captured Phnom Penh on January 7, 1979. The changes he reports confirm the brutality of the Pol Pot regime toward its people.

Mr. Shawcross mentions the possible future political role of Prince Sihanouk. In recent days, the Prince has expressed a renewed interest in returning to Cambodia and in assuming a more active political role. He remains the one individual who might be acceptable to the Cambodian people, the Vietnamese, the Chinese, and the United States. His return to a major governing role in Cambodia could be the single most useful step to facilitate the withdrawal of Vietnamese forces and to hasten the social and economic reconstruction of that war-torn nation. We should put diplomatic pressure on China to support a Sihanouk-Hanoi diplomatic settlement and we should resume efforts to normalize our relations with Vietnam to improve our ability to influence future developments in the region.

I ask that William Shawcross' article, "Cambodia Is Safer for Now in Enemy Hands," from the March 18 Washington Star, be printed in the RECORD.

The text of the article follows:

CAMBODIA IS SAFER FOR NOW IN ENEMY HANDS

(By William Shawcross)

The immediate cause, certainly the catalyst, of China's invasion of Vietnam was Vietnam's own previous invasion of Democratic Kampuchea. After Chinese action in Vietnam began, many nations, including the United States, linked the two invasions, calling for the withdrawal of foreign troops from all countries in Indochina. This was not acceptable to the Vietnamese but the Chinese welcomed it. China's ambassador at the UN declared on February 27 that "the Chinese government has repeatedly made it clear that we do not want an inch of Vietnamese territory. . . . The question now is whether or not the Vietnamese authorities can also commit themselves to withdraw all their invading forces from Kampuchea."

Well, on March 5 China announced that its mission in Vietnam was accomplished and that the withdrawal of its troops had begun. There was no similar announcement from Hanoi about Kampuchea. Indeed, on that very day the Vietnamese and their Cambodian supporters, the forces of Heng Samrin, captured Poipet, the principal border town with Thailand, and raised their flag by the bridge at Aranyaprathet, the main road into Thailand. If, as some diplomats and "Western analysts" had argued, the Chinese invasion of Vietnam was designed to pressure Vietnam out of Cambodia, it does not seem to have been a success.

The Vietnamese invasion of Kampuchea aroused widespread protest in the West and in the Third World. At the UN Security Council debate about it, only two countries—the Soviet Union and Czechoslovakia—supported the Vietnamese action. The general reluctance to endorse a blatant violation of one country's sovereignty by another was commendable enough. Vietnam's traditional hostility toward Cambodia and its evident ambition to incorporate all of Indochina into a federation dominated by Hanoi make suspicion about its motives understable.

Nevertheless, the principle of territorial integrity is not always applied in such a straightforward manner. Cambodia was invaded once before, nine years ago, without official U.S. protest. And an invasion of Uganda by Tanzanian forces began last month with nary a peep from Ambassador Andrew Young.

The rulers of Democratic Kampuchea were not winning any prizes for good government. It seems reasonable to ask, therefore, what the actual effect of the Vietnamese invasion of Cambodia has been. The account that follows is based principally on talks with diplomats in Hong Kong and Bangkok, Thai officials, refugee workers, missionaries and Cambodian refugees in Thailand.

Last summer Senator George McGovern caused a minor sensation when he speculated whether the United Nations should intervene in Cambodia. He was appalled, he said, by the well-confirmed reports of brutality perpetrated by the Khmer Rouge leaders of Cambodia against their own people. Those reports also led President Carter to call the Khmer Rouge "the world's worst violator of human rights." The stories brought out by refugees from Cambodia were being loudly promoted by the propaganda machinery of Hanoi.

The simmering feud between the two communist neighbors and former allies had burst into public in January 1978, when Democratic Kampuchea denounced Vietnam and Vietnam launched a limited attack into Kampuchea. The feud involved ancient rows over the two countries' common border, Kampuchea's perception of Vietnam's desire to "swallow" it, and the clear provocations the Khmer Rouge had offered: constant brutal raids over the border to kill Vietnamese villagers and disrupt the "new economic zones" which Vietnam was trying to establish. "Their purpose" said a senior Vietnamese official, "is to provoke a disease which keeps us always sick." He said it was part of China's plan to debilitate Vietnam.

It became clear last summer that Vietnamese patience was nearly exhausted. So the Khmer Rouge leadership, "the Pol Pot-Ieng Sary clique" in Hanoi's words, began to prepare to return to the jungles and mountains whence they had emerged only in April 1975. Phnom Penh and other towns were still only very lightly populated and so preparations for evacuation were simple; all stores of food and ammunition were shifted to the countryside.

The Khmer Rouge do not seem to have anticipated the speed with which the Vietnamese would roll through eastern Cambodia and capture Phnom Penh, but a dry season attack at the end of 1978 was considered inevitable. When the Vietnamese captured Phnom Penh on January 7, they found they needed to import food not only for themselves but also for the Cambodian civilians they now controlled.

Ever since, the Vietnamese apparently have had trouble getting supplies. They are short of food in Vietnam itself. And in their blitzkrieg on Phnom Penh they inevitably bypassed Khmer Rouge positions. At once their lines of communication came under attack. These attacks do not seem to have abated. Through January and early February the Vietnamese had to continually reinforce their positions. By the time the Chinese invasion began, they had 15 to 16 main force divisions of 1,000 men each deployed in Cambodia, with only six stationed on the northern perimeter of Hanoi.

It is not clear how many men the Khmer Rouge are still able to field—estimates in Bangkok range from 15,000 to 60,000. Their tactics are said to be very successful; they are using the same guerrilla techniques the Vietnamese used against the United States, and thus forcing the Vietnamese to stick to the roads and the towns. In many ways the Vietnamese situation appears similar to that of the Lon Nol government which the Khmer Rouge forced into smaller and smaller enclaves in the 1970–75 war. The Khmer Rouge also are said to be using heavy weapons such as artillery and armor for major battles. They recaptured the town of Takeo for a few days and have staged frequent raids on Phnom Penh's Pochentong airport, capturing supplies and killing defenders. One of those ubiquitous "Western analysts" in Bangkok states with certainty that Russians and Cubans have been killed at Pochentong.

Meanwhile, the Cambodian refugees have poured into Thailand, about 2,000 in the last month. They are almost all poor peasants from the western provinces of their country. Most are children and most of the rest are women, very few of their menfolk came with them. The women say many of the men are dead. They all tell similar stories about the impact of the Vietnamese invasion upon their lives.

Some of the refugees did not know that the Vietnamese were coming. They simply became aware of that, for whatever reason. Khmer Rouge controls upon their village had relaxed, and so took the opportunity to flee into the forests. When the Vietnamese together with their few Cambodian collaborators have approached a village, the Khmer Rouge usually have left without a fight. The Vietnamese appear anxious to win the hearts and minds of the people and seem to behave well towards them. They distribute rice and cooking utensils so that families can once again eat *en famille* instead of *en masse*. They also either appoint or supervise the election of new village officials. Refugees give the impression that these changes are widely welcome, despite the fact that they are imposed by the ancient enemy of the Khmers.

But the Vietnamese apparently are stretched too thin to stay in the villages they have occupied. Invariably they move on, sometimes leaving behind a radio for emergency calls. This is ineffective. The Khmer Rouge then return, discover from spies they left behind what has happened, kill those who collaborated (or were elected to official posts under Vietnamese guidance), take away the food and then force the people to march into the jungle, where the Vietnamese (confined to the roads, like the Lon Nol troops a few years ago) cannot reach them. This pattern seems to have been repeated frequently, at least in the west of Cambodia. One missionary who works with the Khmer refugees (and previously lived for years in Cambodia) conjures up the dreadful image of hundreds of thousands of people trapped in the jungle without medicine, food or water. Another refugee worker estimates that there are now about 30,000 in this plight along the border with Thailand. Most are detained there by the Khmer Rouge and the new war.

The Khmer Rouge, however, are only one hazard. The way some foreign refugee workers here tell it, the Thai authorities can pose almost as great a threat to refugees. If they

are lucky, refugees coming west may meet little groups of right-wing Khmer Serei (Free Khmer) guerrillas who are based along the border and help refugees through the minefields which both the Khmer Rouge and the Thais have laid. In Bangkok, refugee officials insist that Thai troops either have orders to send Cambodians back into Cambodia (to certain death if the Khmer Rouge discover them) or to kill them on the spot. In the last two months almost 3,000 refugees have actually made it to Thailand. Refugee officials claim that hundreds may have been killed by the Thais. Many of those who have been allowed across have been subjected to total body searches by Thai troops and have been parted from any gold or other valuables they may have been able to secrete from the Khmer Rouge.

The Thai authorities insist on segregating all those refugees who have arrived since the Vietnamese invasion. They say this is to sift out the Khmer Rouge amongst them. The new arrivals are being detained in a special camp at Trat in southeast Thailand; all foreigners are refused access. But this camp is already full and those to whom I spoke are in a temporary camp at Aranyaprathet, where they are lucky to be under control of as humane and well intentioned a district officer as one could hope to find.

It is hard when talking to these refugees, especially through an interpreter, to envisage the lives they have had to lead in recent years. Those to whom I talked had tales not of enormous massacres, but rather of relentless cruelty and hardship. One girl said that all the men in her family had disappeared because they were Lon Nol soldiers. All of them spoke of starvation, of unremitting labor and of the terminal disappearance—hands tied in front, pushed into the jungle—of anyone who offended the Khmer Rouge. Almost all of these people were suffering at least from anemia and worms; some of the children seemed much sicker. But they did not speak with obvious rancor; some even made jokes as they told their stories. The impression of Cambodia today is still, however, horrifying.

The Vietnamese are still not secure enough in Cambodia to have allowed visits by Western journalists. But East European reporters have been there and they have recounted stories which, even in the light of all we know about the nature of the Khmer Rouge, are hard to believe. Recently Alan Dawson, the UPI bureau chief in Bangkok, met in Hanoi Wieslaw Gornicki, a Polish correspondent. Gornicki said that the Vietnamese took him to the town of Prey Veng and told him that almost all the 20,000 inhabitants had been massacred by the Khmer Rouge, their bodies thrown into the sewers. Gornicki asked Dawson, "Have you ever heard of liquid bodies? What we saw were the remains, which were just liquified flesh with millions of maggots and worms." Dawson observed that the Poles, allied to Vietnam's ally the Soviet Union, have reason to exaggerate the crimes of the Khmer Rouge; nevertheless, he believed that Gornicki and other East Europeans were truly shocked by what they had seen.

Understandably enough, the refugees are not clear what they wish to do next. Some say they would return home if Sihanouk were in power again. Others maintain that the prince is discredited by his alliance with the Khmer Rouge. But clearly they regard the Vietnamese as less of a threat than the Khmer Rouge. It is to join the Heng Samrin forces, not the Khmer Rouge, that some groups of men have already returned to Cambodia.

For almost four years now the Khmer Rouge have run loose in Cambodia, demonstrating their hatred of the Cambodian people. They have caused, at the very least, several hundred thousand deaths. Even though they are now facing extinction and might be expected to cherish more carefully the fish through which they should swim, the reprisals continue. They are still killing and at this moment thousands of peasants are corralled in the jungles, starving to death just so Vietnamese should not have them. One Western doctor who worked in Phnom Penh before April 1975, who at first welcomed the Khmer Rouge victory, and who has worked with refugees since then, points out that in the last four years Khmer Rouge cadres have become younger and more violent. Pol Pot is trying to create a society with no past in which no alternatives are possible. He has not yet succeeded completely; the implications of complete success are really frightful.

Some in Bangkok believe that the Vietnamese and Chinese might still come to an agreement over Cambodia, and could arrange the return of Sihanouk. But at the moment Sihanouk would be powerless; he could do nothing to deal with the Khmer Rouge. But if and when the Vietnamese manage to deal with the Khmer Rouge, the prince would have a chance of restoring some sort of order to his country. It is not much of a chance because there are so few people who could help. The Vietnamese are said to be finding it almost impossible to locate any Cambodian administrators or technicians, they have either been killed or are too frightened to reveal themselves for fear of a Khmer Rouge resurgence.

Jimmy Carter probably was right when he called the Khmer Rouge the world's worst human rights violators. So is it consistent to ask that the Vietnamese withdraw and the country be returned to them? Such a call may have a dim strategic logic, above all to provide a buffer between Thailand and Vietnam, but it has nothing to do with the fate of the Cambodian people. In the refugee camp at Aranyaprathet, many Cambodians and those who work with them seem to believe that, however unattractive in principle, Vietnamese imperialism might help Cambodia in the short term. In the long run they maintain that no Cambodian puppet, be he Heng Samrin or anyone else, will always dance to Vietnam's tune.

Mao Tse-tung wrote in his essay on "Contradictions" that the people should make any alliance to defeat its greatest enemy. The greatest enemy of the Cambodian people is undoubtedly the Khmer Rouge. The contradictions between the Khmers and the Vietnamese can wait for resolution; those between the Khmers and the Khmer Rouge cannot.●

THE SOFT DRINK BOTTLING INDUSTRY

● Mr. SASSER. Mr. President, today I am pleased to cosponsor S. 598, the Soft Drink Interbrand Competition Act, which is designed to protect the competitive nature of the soft drink bottling industry.

The recent decision of the Federal Trade Commission with respect to the legality of territorial licenses has important implications for the soft drink industry. The right of a small soft drink bottler to market his product depends in large part on his right to maintain exclusive territoriality for distribution. Thus, the FTC decision not only has the potential to destroy the relationship between the small bottler and larger, parent companies, but it could also destroy the basis for the keen competitive spirit which pervades the soft drink industry.

This legislation is also important for keeping the cost of soft drinks at reasonable prices. In the last 38 years, the average price per ounce of soft drink has increased only 2.6 percent, compared to 344 percent in the Consumer Price Index for the same period. The FTC action would facilitate the takeover of small bottlers by the larger, national companies, thereby opening the way for price increases more consistent with the Consumer Price Index.

S. 598 will also play a major role in protecting the existence of the most economical and ecologically sound soft drink package ever to appear—the returnable bottle. As major bottlers take over the industry, assuming the FTC decision would stand, returnables could cease to exist. S. 598 will prevent such action, maintaining the substantial price savings of returnables over disposable cans.

Finally, and perhaps most important, S. 598 will protect the small soft drink bottlers of our Nation. In my own State of Tennessee, there are 60 soft drink bottling operations. Thirty-two of those are single plant operations. Thirty-eight employ between 1 and 49 persons. The small bottler and the benefits of his operations are important to Tennessee, as I am sure they are throughout the Nation.

Mr. President, I am cosponsoring S. 598 because of implications it has for protecting the competitive structure of the soft drink industry, because it will maintain low costs and environmentally safe packages for the consumer, and because it will insure the continued viability of small soft drink bottlers. I am pleased to join Senator BAYH and my colleagues in full support of the Soft Drink Interbrand Competition Act.●

NUTRITION AND HEALTH

○ Mr. McGOVERN. Mr. President, 2 weeks ago Senator KENNEDY's Health Subcommittee heard testimony about the current status of the national cancer program. The National Cancer Institute testified that cancer incidence and mortality have continued to increase in the 1970's, with incidence increasing somewhat more rapidly than mortality. Even when smoking-related cancers are removed from the incidence data there were still increases in cancer incidence. In fact, cancer is the only major cause of death in the United States that has continued to rise throughout this century. Thus, even though we are investing almost a billion dollars a year in cancer research, we have not yet been able to turn the corner on reducing overall cancer incidence and mortality.

However, there have been some very interesting findings reported recently. Sandwiched between Senator KENNEDY's 2 days of hearings on March 5 and 7, was a news article in the New York Times by Ms. Jane Brody that indicated cancer-blocking agents have been discovered in foods. The basic research findings, presented at a symposium on the environmental determinants of cancer, suggest a range of possible new approaches to prevent cancer. Of particular note was that some vegetables and fruits carry naturally occurring chemicals that are

potent and apparently safe inhibitors of certain carcinogens. In addition, it has been recognized for some time that there is a correlation between high fat diets and cancer of the colon and breast, which suggests the possibility that fat is a cancer promoter.

We have seen some encouraging signs on other fronts as well. For example, since 1968 there has been a 24-percent decrease in age-adjusted mortality from cardiovascular disease—our No. 1 killer. The exact reasons for this decline are not yet fully understood, but it is believed that it is because of altered smoking habits, and lowered blood pressure and blood cholesterol levels—the three major heart disease risk factors.

The probable causes of this decline bring to mind testimony given to the Select Committee on Nutrition and Human Needs in 1976 during its hearings on the relationship between diet and health. The then-Assistant Secretary for Health, Dr. Ted Cooper, told the committee:

> In formulating health policy, I believe that we have now reached a crucial point.
>
> Many of today's health problems are caused by a variety of factors not susceptible to medical solutions or to direct intervention by the health provider.
>
> While scientists do not yet agree on the special causal relationships, evidence is mounting and there appears to be general agreement that the kinds and amount of food and beverages we consume and the style of living common in our generally affluent, sedentary society may be the major factors associated with the cause of cancer, cardiovascular disease, and other chronic illnesses.

In concluding that series of hearings, the present Assistant Secretary for Health, Dr. Julius Richmond, concurred with his predecessor. In all, 6 of the 10 leading causes of death were linked to diet. It was this realization, more than anything else, that led to the publication of "Dietary Goals for the U.S." in 1977 and the updated second edition later that year.

The concept of setting dietary guidelines has been well established since 1943 when the Food and Nutrition Board of the National Academy of Sciences set forth "Recommended Dietary Allowances" (RDA) for the first time. The RDA, which focus on micronutrients, protein, and total energy in the diet, are now in their eighth edition and were most recently revised in 1974.

"Dietary Goals for the U.S." simply extended to macronutrients the same approach the NAS had been using for years with regard to micronutrients.

I cannot envision the Congress legislating specific national dietary guidelines. The "Dietary Goals" report was intended as the committee's best advice, based on current scientific evidence, on how to minimize the disease risks associated with our current diet. Its recommendations are directed toward keeping Americans healthy. It is not meant to be therapeutic advice to those people who already have some type of illness.

The "Dietary Goals" should be viewed in an on-going context as part of the evolution of a national agriculture, food, and nutrition policy. As part of that process a number of groups and individuals are trying to bring to the public's attention the vital diet and health relationship. For example, April has been chosen Natural Foods Month by the National Nutritional Foods Association in cooperation with its various regional and educational affiliates across the country.

The National Nutritional Foods Association is a nonprofit organization representing retailers, manufacturers, distributors, publishers, educators, and agronomists from every State of our Nation. Natural Foods Month was created to remind Americans of the need to establish better dietary goals for the maintenance of their health.

Fruits, vegetables, and whole grains, which were once the mainstay of the American diet, now comprise less than 25 percent of the diet. Last year, for instance, consumers spent $22 billion on alcoholic and soft beverages alone. The average American ate over 125 pounds of fat and more than 100 pounds of sugar. According to Dave Ajay, president, National Nutritional Foods Association, "It is this tremendous increase in the consumption of refined, 'empty calorie' foods that has led to the initiation of Natural Foods Month."

Many educational events will be held throughout the country in April by members of the National Nutritional Foods Association to increase the nutrition knowledge of all citizens.

For instance, during April the National Nutritional Foods Association will feature on its nationally syndicated "Viewpoint on Nutrition" educational television series special programs that can help the consumer to make wise nutritional choices for the promotion of better health through better nutrition.

Finally, a more specific attempt to disseminate the Dietary Goals recommendations was undertaken last year by the Alameda County, Calif., Heart Association. A similar initiative was begun by the Division of Preventive Medicine of the Massachusetts Department of Public Health. I believe my colleagues would find these two Publications and the article on Cancer Blockers to be of interest. Therefore, I ask unanimous consent that they be printed in the RECORD.

The material follows:

FOOD AND HEALTH: THE U.S. DIETARY GOALS

During this century, the composition of the average diet in the United States has changed radically. Fruits, vegetables and grain products, which once were the mainstay of the diet, now play a minor role. At the same time, the consumption of fats and sugars has risen to the point where these two foods alone now comprise at least 60 percent of the diet, an increase of 20 percent since the early 1900s.

In the view of many doctors and nutritionists, these and other changes in the diet amount to a wave of malnutrition that may be as profoundly damaging to the Nation's health as the widespread contagious diseases of the early part of the century. The overconsumption of foods high in fat, cholesterol, refined and processed sugars, salt and alcohol has been associated with cardiovascular diseases, obesity, diabetes, dental diseases, cirrhosis of the liver, and some cancers. It has been conservatively estimated that improved nutrition might cut the Nation's health care costs by $40 billion.

Cardiovascular diseases claim more American lives than all other causes of death combined. One in three men and one in six women can be expected to die of heart disease or stroke before age 60. It is estimated that 35 million suffer from high blood pressure and that about 5 million are afflicted with diabetes. It is believed that approximately one-third of all adults in the U.S. are overweight to a degree that interferes with their health and longevity.

Many of these health problems are closely linked to our general over-consumption of food, combined with our sedentary lifestyle. At the same time, our eating habits may also be leading to malnutrition through undernourishment. Fats and sugars are relatively low in essential micronutrients, and diets high in these foods can lead to vitamin and mineral deficiencies.

The rise in American malnutrition motivated the U.S. Senate Select Committee on Nutrition and Human Needs to establish the Dietary Goals for the United States. During 1976–77, the Committee considered a wide variety of scientific data and testimony in developing the recommended guidelines. The information received came from dieticians, nutritionists, research scientists, health officials, professional panels, and health organizations, including the American Heart Association.

This is the first time that a government body has closely examined the American diet. In the Dietary Goals, the Committee has attempted to recommend guidelines for improving our eating habits, which in turn should lower our risk of the associated illnesses. It should be noted that the U.S. Dietary Goals very closely parallel the dietary recommendations of the American Heart Association.

Briefly, the U.S. Dietary Goals recommend that we avoid overweight, eat more fruits, vegetables, and grains, eat less sugars and sweets, eat less fat and cholesterol, and eat less salt. Based on a survey of the eating patterns of 6000 households, it is estimated that less than 3 percent would meet the Dietary Goals. Following the Goals' guidelines would clearly indicate a major change in our lifestyle and eating habits.

In the following pages, the Dietary Goals are examined in five parts: weight control, carbohydrate, sugars, fat and cholesterol, and salt.

One must approach the suggested diet as an average to be reached over a period of a few days, and not expect to eat each day the exact recommended proportion from fats, carbohydrate, and protein, or the exact amount of salt and cholesterol. Keep in mind as well that the Dietary Goals are guidelines for the general population, that is, for the "average" person. Nutritional requirements vary from individual to individual and will be particularly different for certain groups such as young children, pregnant and lactating women, the elderly, and persons with physical or mental ailments. For the average person, however, there is substantial evidence that following these guidelines may be generally beneficial.

WEIGHT CONTROL

Goal: To avoid overweight, eat only as many calories as are used; if overweight, eat fewer calories and increase exercise.

About one-third of the American population is overweight to a degree which has been shown to diminish life expectancy. Fifteen million Americans are overweight enough to be considered obese, a condition which seriously raises their risk of ill health.

Obese persons frequently have high levels of blood cholesterol, blood pressure, and blood glucose. Obesity is associated with the onset and progression of heart disease, hypertension, diabetes and gall bladder disease. Data from a major study indicated that each

10 percent reduction in weight in men 35–55 years old would result in about a 20 percent decrease in incidence of coronary disease. Conversely each 10 percent increase in weight would result in a 30 percent increase in coronary disease.

The food energy needs of individuals vary from day to day depending upon their level of physical activity. People become overweight by eating more calories than their bodies use. This may mean that they are eating more than before, that they are physically less active, or both. Also, people's caloric needs decrease as they grow older.

Clearly our society is physically less active than during the early parts of this century or even just 20 years ago, while our food energy consumption (number of calories) has remained about the same. As one result, more adult Americans are putting on more body weight and body fat than ever before, and this trend is appearing earlier and more often during childhood and adolescense.

New weight reduction diets are continually marketed to the overweight public promising quick and easy weight loss; however, they often result only in frustration or temporary weight loss. The most successful course has often been to modify the total diet in a balanced manner to include less calories, combined with increased exercise.

The Dietary Goals in sections relating to fat, sugars, and carbohydrate, are to a great extent guidelines that will help us maintain normal weight. We need to cut down on high calorie foods such as those with high fat, sugar, or alcohol content. On the other hand we should greatly increase our consumption of the lower calorie complex carbohydrates (starches, vegetables, fruits, and beans). At the same time, regular exercise can and should play an integral role in maintaining proper weight.

The obvious, but often difficult solution is to eat less and be more physically active.

CARBOHYDRATE

Goal: Eat more complex carbohydrates (starches) and "naturally occurring" sugars. At present they comprise about 28 percent of energy intake (calories) and should be increased to about 48 percent.

Until the turn of the century, complex carbohydrates—fruits, vegetables, beans and grains—were the principal source of energy (calories) in the American diet. Since 1910 there has been a decrease in complex carbohydrates and an increase in fats and sugars in the U.S. diet.

Much of this change has occurred in the past 30 years. Compared to 1947, people in 1976 ate (per person, per year) 18.3 pounds less vegetables, 31 pounds less flour and cereal products, 19.5 pounds less fruit, and 21 pounds less potatoes. While the consumption of these complex carbohydrate foods has decreased, the total level of food energy consumed has remained about the same. We are simply eating more fat and refined sugars to compensate.

There are several possible reasons for this change. A key factor may be the rise in real income, allowing a movement away from inexpensive foods such as greens, beans, potatoes, and whole grains. A related factor might be the prestige value associated with more expensive foods, such as steak and butter. There is also relatively little advertising or promotion of fruits, vegetables, and whole grains. Advertised foods tend largely to be highly processed foods with high fat, high sugar, or high salt content.

The eating of complex carbohydrates—fruits, vegetables, beans and whole grains—may be important to health for several reasons. They are good sources of vitamins, minerals, and fiber, they can help to control weight, and they may help reduce the risk of heart disease, certain cancers, and diabetes.

It is possible to be well-fed and yet undernourished at the same time. By eating more fat and sugar and less complex carbohydrate, Americans are sometimes getting inadequate amounts of vitamins and minerals. Fats and refined sugars are relatively poor sources of these nutrients, particularly in view of their caloric value.

It is important to note that there is only limited knowledge of the human requirements for most nutrients, and the full range of vitamins and minerals is still unknown. Although vitamin and mineral supplements and fortification may improve chances for obtaining vitamins and minerals, they cannot be seen as substitutes for food. Nor can it be assumed that taking supplements or eating fortified foods, while continuing to eat a diet high in fats and refined sugars, will meet one's nutritional needs.

Some complex carbohydrates, particularly whole grains and legumes (beans), are good sources of protein. This vegetable protein has the advantage that it is relatively free of the high fat and cholesterol content that frequently accompanies animal sources of protein, such as red meat and dairy products. When whole grains and legumes are eaten together they are an excellent low fat, protein source. For example, 1½ cups cooked rice and ½ cup cooked beans is equivalent in calories and protein to 3 ounces of cooked, drained regular ground beef.

Contrary to popular belief, starches such as breads, cereals, potatoes, corn, rice, and pastas have considerably less calories than foods with high fat or sugar content. By displacing fats and refined sugars in the diet, complex carbohydrates are likely to ease the problem of weight control.

There is also increasing evidence that moderate consumption of complex carbohydrates may affect blood fat and cholesterol levels, important risk factors in heart disease and diabeters. Most population groups with a low incidence of heart disease consume 65 percent to 85 percent of their total energy in the form of starches. We eat only 28 percent of our energy in starches.

The dietary fiber which occurs in complex carbohydrates, particularly whole grains, may also be beneficial. Only recently have the properties of fiber and its role in nutrition begun to be explored. It is postulated that an increase in fiber consumption will markedly reduce the incidence of bowel cancer and other disease, primarily those of the intestine.

In short, this goal simply suggests we eat more fruits, vegetables, and starches. Highly refined fruits and vegetables should not be thought of as the nutritional equivalents for the same foods in their fresh forms. For example, potato chips are 40 percent fat, are highly salted, and have fewer vitamins and minerals than a baked potato.

SUGAR

Goal: Reduce the consumption of refined and processed sugars by about 45 per cent to account for about 10 percent of total energy intake.

Sugar consumption has been increasing in the U.S. for more than a hundred years. In 1976, Americans consumed on the average 126.4 pounds of refined and processed sugars per person. In 1875, we consumed less than 40 pounds per person. Just since 1960, consumption has increased 15 pounds per person.

A large portion of the sugar we consume is concealed in the form of food products and beverages, such as candies, soft drinks, cakes and cookies, sugared cereals, and ice cream. Soft drink consumption in the U.S. doubled between 1960 and 1975, rising from an average of 13.6 gallons per person to 27.6 gallons. This translates to 295 12-ounce cans or 21.5 pounds of sugar a year.

The increased use of refined sugar in food products is traceable in large part to the desire of food manufacturers to create unique products with a competitive edge. For example, the addition of sugar in cereal in 1948 was the primary reason for the recovery of slumping cereal sales. Since then, the variety of sweetened cereals has grown dramatically.

Refined sugar is essentially an energy (calorie) source that offers no other nutritional value. Sugar with its "empty calories" often displaces complex carbohydrates in the diet, depriving the body of essential vitamins and minerals. There is some evidence that sugar calories may actually increase the body's need for certain vitamins.

Sugar is certainly implicated in tooth decay, which may be the most widespread disease related to diet. Eating sugar and sugared foods can lead to cavities, gum disease, and eventual loss of teeth. It has been estimated that 98 percent of American children have some tooth decay and by age 55 half of the population have no teeth. Countries with lower sugar consumption have also been shown to have less dental disease.

This goal recommends that sugar consumption be cut almost in half, from 18 percent of our caloric intake to 10 percent. This would return the consumption of such sugars to a point slightly below that of the early 1900s. We should reduce our eating of candies, sweet baked goods, sugared cereals, ice cream, and particularly soft drinks. Total elimination of soft drinks from the diet would help many people reach at least half the recommended reduction in sugar. Fruit juices make a good substitute.

It is important to remember that refined and processed sugars have been added in many forms to a wide range of products. Examine the ingredients on product labels closely. If sugar or some kind of sugar such as corn syrup, fructose, dextrose, honey or molasses is listed as one of the first two or three ingredients, it is reasonable to assume that there is a lot of sugar added.

There are many misconceptions about honey and molasses. In reality they are little better than white sugar. Honey has only a trace of micronutrients and molasses contains some iron and little else. Like other sugars, both are very high in calories

FAT AND CHOLESTEROL

Goal: Reduce overall fat consumption from approximately 40 percent to about 30 percent of energy intake. Reduce saturated fat consumption to account for less than 10 percent of energy intake. Reduce cholesterol consumption to about 300 Mg. per day.

Our high level of consumption of fat and cholesterol presents a definite threat to our health. High cholesterol levels in the blood, especially certain types of cholesterol, are strongly correlated to heart attack and atherosclerosis. Blood cholesterol is the result of two factors: the cholesterol our body manufactures and cholesterol that we consume in animal products. It is widely believed that eating foods high in cholesterol thus increases our risk of heart diseae.

Fat poses a risk in several ways. First it is the most concentrated source of food energy. Fat supplies 9 calories per gram whereas protein and carbohydrates supply only 4 calories per gram. Thus the overconsumption of fat is usually a contributing factor to overweight and obesity, which in turn are associated with high blood pressure, heart disease, and other illnesses. Secondly, eating saturated fats, which are found in both animal and vegetable products, has been directly linked to increased levels of blood cholesterol. As previously mentioned, high fat consumption also displaces complex carbohydrates, which generally carry higher levels of vitamins, minerals and fiber. And finally, there is evidence from studies of populations suggesting a connection between dietary fat and cancer of the breast and colon.

Overall fat consumption has risen 25 percent since the beginning of the century, or about 24 pounds a year per person. Approxi-

mately 42 percent of our food energy (calories) is from fats. Of these fats, 38 percent are saturated, 45 percent are mono-unsaturated, and 17 percent are poly-unsaturated. It would be benefical if we could not only decrease our total fat consumption but also substitute more polyunsaturated fats in place of saturated fats. Whereas saturated fats increase blood cholesterol, poly-unsaturated fats lower cholesterol.

The U.S. Dietary Goals and the American Heart Association Dietary Recommendations both advise that we reduce considerably our overall consumption of cholesterol and fats, especially saturated fats. This is not an easy task. We most often eat fat and cholesterol in the form of animal produtcs such as red meats, eggs, and dairy products. The fat and cholesterol contribution of a few individual foods can be quite significant. For example, the goal suggests eating less than 300 mg. cholesterol per day, however a single egg yolk contains 250 mg.

Here are a few suggestions for avoiding fat and cholesterol. Select lean meats, poultry and fish and trim off any visible fat. Cut down on butter, lard, shortenings, salad dressings oils and fried foods. Substitute margarine made with poly-unsaturated oil for butter, but keep in mind that margarine is still very high in calories. When you must use oil, use vegetable oils such as corn, safflower, and sunflower oils. Substitute non-fat and low-fat milk for whole milk, and low-fat dairy products for high-fat dairy products. Be more aware of the hidden fat in foods such as hamburger, cheese, ice cream, french fries, bakery products, eggs, whole milk, potato chips, and many highly processed foods.

There are a few exceptions to these guidelines. Eggs, though high in cholesterol, are an excellent, inexpensive source of high quality protein, vitamins, and minerals. For this reason it may be advisable that infants and young children, the elderly, and women until they reach menopause, include eggs in their diet. Likewise the low-fat dairy products recommendation probably should not be applied to infants and young children.

SALT

Goal: Limit the intake of sodium by reducing the intake of salt to about 5 grams per day (1 teaspoon).

The primary source of sodium in the American diet is salt (sodium chloride). Studies indicate that the desire for salt is not a physiological necessity but rather an acquired taste. Individual salt consumption in the U.S. is estimated to range from 1 to 4 teaspoons a day, however the average human requirement is probably about 1/10th of a teaspoon.

Sodium is difficult to avoid as it occurs naturally in many foods. Sodium is also added to many processed foods in the form of salt to enhance the flavor.

The most adverse health effect of excessive salt consumption is high blood pressure. The exact relationship between salt and high blood pressure is not firmly established, however salt clearly increases the blood pressure of many individuals. High blood pressure in turn accelerates coronary heart disease. It is estimated that approximately 35 million people suffer from high blood pressure, 40 percent of whom are unaware of their condition.

The available data suggest that it is prudent to reduce the intake of salt in the diet. The Dietary Goals suggest a level of 5 grams of salt per day or about 1 teaspoon. Because many foods contain sodium, the daily goal will be met for most people without the addition of salt or consumption of foods with visible salt. We should particularly cut down on high salt foods such as pretzels, potato chips, french fries, corn chips, salt nuts, pickled foods, ham, bacon, smoked meats, and seasoned salts.

One exception to this level should be noted. People who do heavy work under hot conditions or who exercise extensively can lose significant amounts of sodium through sweat. They will require higher levels of water and sodium to compensate.

SUMMARY: THE U.S. DIETARY GOALS

Keep your weight normal. Eat only as much food as your body uses. If you are already overweight, eat less and exercise more.

Eat more fruits, vegetables and starches. Eat more breads, cereals, rice, potatoes, pastas, beans, fresh vegetables and fruits.

AND EAT LESS OF THESE

Eat less sugars and sweets. Eat less white sugar, brown sugar, honey, molasses, raw sugar, dextrose, and corn syrup. Cut down on candies, sweet baked goods, sugared cereals, ice cream and particularly soft drinks.

Eat less fat and cholesterol. Choose lean meats, poultry and fish. Cut down on eggs, butter, salad dressings and fried foods. Substitute non-fat or low-fat milk for whole milk, and margarine for butter. Use poly-unsaturated vegetable oils. Eat less foods with hidden fat such as hamburger, cheese, french fries, ice cream, and potato chips.

Eat less salt. Think twice before you add salt to food. Cut down on high salt foods such as pretzels, potato chips, french fries, corn chips, pickled foods, salted nuts, ham, bacon, smoked meats, and seasoned salts.

U.S. DIETARY GOALS

WHAT ARE THE U.S. DIETARY GOALS?

The Dietary Goals are a set of national dietary guidelines prepared in 1977 by the U.S. Senate Committee on Nutrition and Human Needs. The Goals are based upon available scientific information which is reviewed in the full report.*

WHO SHOULD USE THE DIETARY GOALS?

The Goals are written for the general public. Individuals, families, food program directors and food service managers should use the Goals as guidelines in purchasing and preparing food. Medical professions and government agencies should use the Goals in developing agricultural, food and health policies.

WHY DO WE NEED THE DIETARY GOALS?

Changes in dietary patterns in the U.S. over the past fifty years have led to an increase in obesity, diabetes, cardiovascular disease, dental caries, hypertension, and certain types of cancer. In fact six of the ten leading causes of death have been associated with diet. Although following the Dietary Goals cannot guarantee the prevention of illness, it can significantly decrease the chances that these diseases will develop.

Here are the seven Dietary Goals with some important information to help you make healthy food choices.

Goal one. To avoid overweight, consume only as much energy (calories) as is needed; if overweight, decrease caloric intake and increase exercise.

Obesity is the most common type of malnutrition in the U.S. Too much body fat complicates every disease and may contribute to the development of high blood pressure, diabetes and heart disease. Weight lost through fad diets or reducing gimmicks usually returns quickly. For best results in weight reduction, increase exercise while eating a nutritious, low fat diet.

Goal two. Increase the consumption of complex carbohydrates and "naturally occurring" sugars from about 28 percent of caloric intake to about 48 percent of caloric intake.

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*The full report of the Dietary Goals for the U.S. is available from the Government Printing Office, Washington, D.C. 20402. Stock Number 070-04376-8. $2.30.

There are two types of carbohydrates: simple and complex. Simple carbohydrates (sugars) can be found naturally in fruits and vegetables or can be added to foods during processing to increase their sweetness (See Goal 3). Complex carbohydrates (starch) are found naturally in cereals, grains, bread and pasta. Complex carbohydrates are often added during processing to thicken food products.

It is best to eat carbohydrates in whole grain products and fresh fruits and vegetables since these foods are packed with vitamins, minerals and fiber.

Goal three. Reduce the consumption of refined and processed sugars by about 45 percent to account for about 10 percent of total caloric intake.

Sugar is only one kind of sweetener being added to our foods. By law, all sweeteners must be listed on food labels. Check your food labels for other forms of sugar:

Dextrose, maltose, lactose, fructose, glucose, sucrose, maple syrup, corn syrup, honey, molasses, dextrins, and brown sugar.

Goal four. Reduce overall fat consumption from approximately 40 percent to about 30 percent of caloric intake.

Fat is fattening. There are 9 calories in every gram of fat as compared with 4 calories per gram of carbohydrate or protein. Check your food labels for the number of grams of fat. If you multiply this number by 9, you will find out how many "fat" calories are in that food.

Goal five. Reduce saturated fat consumption to account for about 10 percent of total caloric intake, and balance that with polyunsaturated and mono-unsaturated fats, which should account for about 10 percent caloric intake each.

Although the caloric value of all fats is the same, fats vary in their effect on blood cholesterol levels. High levels of blood cholesterol are associated with heart disease.

Saturated fats tend to raise the level of cholesterol in the blood, while poly-unsaturated fats tend to lower the level. Mono-unsaturated fats have little effect on blood cholesterol. This list, together with your food labels, will help identify the type of fat in the food you eat.

High in Poly-unsaturated Fats: Safflower oil, corn oil, soybean oil, cottonseed oil, sesame seed oil.

High in Saturated Fats: Butter, lard, palm oil, coconut oil, hydrogenated oils, meat and chicken fat, fat back.

High in Mono-unsaturated Fats: Olive oil, peanut oil.

Goal six. Reduce cholesterol consumption to about 300 milligrams a day.

Cholesterol, a fat-like waxy material is essential to life. It is in all animal cells, but never in plant cells. You should choose foods that will supply protein and other nutrients, without excessive amounts of cholesterol. Here is a list of high protein, low cholesterol foods:

Low fat or skim milk, buttermilk;
Low fat yogurt;
Cheese made from low fat milk;
Uncreamed cottage cheese, farmers or pot cheese;
Ricotta cheese made from skim milk;
Peanut butter;
Nuts;
Beans (kidney, black, lentils, garbanzo);
Fish; and
Chicken without the skin.

Goal seven. Limit the intake of sodium by reducing the intake of salt to about 5 grams a day.

Four checkpoints in reducing dietary Sodium:

1. Reduce salt used in home cooking and at the table.

2. Choose foods that have not been previously processed, e.g. fresh fruits and vegetables.

3. Reduce consumption of food with "visible salt", e.g. pretzels, potato chips, corn chips.

4. Reduce consumption of food with "hidden salt", e.g. canned soups and vegetables, luncheon meats, bouillon, convenience foods (TV dinners, meal mixes, food from fast food restaurants).

CANCER-BLOCKING AGENTS FOUND IN SOME COMMON FOODS

(By Jane E. Brody)

Cancer researchers have discovered that a number of common substances, including certain food additives, pesticides, vitamins and constituents of vegetables, can block the action of cancer-causing chemicals.

Among the effective agents, studies in animals and people indicate, are the preservatives BHA and BHT, which are commonly added to cereals and baked goods, and a group of chemicals naturally present in such vegetables as cabbage, Brussels sprouts and broccoli. Vitamins C and E and certain chemical relatives of vitamin A have also shown effectiveness against cancer-causing chemicals, as have several sulfur-containing pesticides.

The findings, described last week at a symposium on the environmental determinants of cancer, offer a wide range of possible new approaches to cancer prevention. Some, in fact, are already being tested in people who are highly susceptible to developing certain types of cancers. Others require further study to be certain that they prevent cancer rather than promoting it or causing some other serious damage.

ORIGIN OF NEW TECHNIQUES

The new techniques stem from chemical carcinogenesis, the process—still understood only incompletely—through which chemicals cause cancer. The investigation of this process began with the discovery more than 30 years ago by Drs. Elizabeth and James Miller that chemical carcinogens had to be activated in the body before they could change normal cells to cancer cells.

Dr. Elizabeth Miller, a University of Wisconsin biochemist who presided over one of the sessions at the symposium last week, explained the current understanding of carcinogenesis as follows:

Most of the substances now thought of as carcinogens are actually precarcinogens. These may be either detoxified in the body to form harmless compounds or they may be activated into "proximate" and finally "ultimate" carcinogens.

The ultimate carcinogen can attach itself to critically important target cell molecules, including DNA, RNA and proteins that are involved in transmitting genetic information from one cell generation to the next. Once attached to its target, the carcinogen can initiate the development of cancer by altering the genetic message of the cells. Next, researchers believe, promotion of the initiated cells occurs. A second substance, such as a hormone, acts as a promoter, causing the initiated cells to grow into a clump of similar cells and finally into a full-blown cancer.

"In terms of cancer prevention," Dr. Miller said at the meeting, "if you interrupt these processes anywhere along the way, you stop tumor production."

In light of this understanding, Dr. Lee Wattenberg of the University of Minnesota outlined four possibilities for cancer prevention. "By far the best thing you can do, of course, is avoid exposure to the carcinogen," he said, adding that this is and probably always will be the most potent weapon for cancer prevention.

A second approach is to block the chemical formation of carcinogens within the body, for example, the hookup of nitrites with amines from foods to form nitrosamines, which are potent carcinogens. Studies described by Dr. Steve Tannenbaum of the Massachusetts Institute of Technology showed that ascorbic acid (vitamin C) and alpha-tocopherol (a free form of vitamin E) can inhibit the formation of nitrosamines in the stomach and large intestine of experimental animals. However, Dr. Wattenberg said his own research revealed no anticancer effect of vitamins C or E.

Studies are under way in Canada and South America as well as in the United States to test the ability of ascorbic acid and alpha-tocopherol to prevent cancers of the stomach and large intestine in people known to be highly susceptible to these cancers.

A third tactic—the one Dr. Wattenberg, among others, is focusing on—is to intercept the carcinogen before it hooks up to its target, either by preventing the chemical from reaching its target or by blocking the link-up with the target. In studies of this approach, the inhibitor is given before or simultaneously with the carcinogen.

Dr. Wattenberg reported that BHA, an antioxidant used as a food additive, can block a rather large group of carcinogens, including nitrosamines, polycyclic hydrocarbons—which are believed to be important in smoking-caused cancers—and urethan, an industrial carcinogen. It works by altering enzymes, thus preventing activation of the precarcinogen and increasing the amount of the chemical that is detoxified. BHT, another antioxidant food additive, has a similar effect but is too toxic to consider using it as an anticancer agent, Dr. Wattenberg said.

Disulfiram (the alcoholism drug known as Antabuse) and related chemicals used as pesticides also block the activation of precarcinogens, but these are also too hazardous to be used aaginst cancer, he added.

However, certain naturally occurring chemicals called indoles that are found in plants of the cabbage family are potent and apparently safe inhibitors of certain carcinogens. In addition to cabbage, these indoles are found in broccoli, Brussels sprouts, turnips, cauliflower and related vegetables.

In animal studies, two such indoles markedly reduced the ability of a carcinogen to cause breast cancers, Dr. Wattenberg reported. And a detailed diet study by Dr. Saxon Graham of the State University of New York at Buffalo revealed that people who eat a lot of cabbage, Brussels sprouts and broccoli are less likely to develop cancer of the colon.

Other plant constitutuents called coumarins, found in a variety of fruits and vegetables, are also able to block carcinogen-caused mammary cancers in experimental animals.

Dr. Paul McCay of the Oklahoma Medical Research Foundation described yet another dietary approach to inhibiting carcinogens—a low-fat diet. In worldwide studies, diets high in fat have been linked to an increased risk of developing cancers of the colon and breast. Dr. McCay said that when animals are placed on a low-fat diet, the detoxifying action of enzymes appears to be encouraged; fewer cancers develop in response to a carcinogen and those that do develop grow more slowly.

However, the reverse occurs when the animals are fed a diet high in fats, particularly polyunsaturated fats. In Dr. McCay's opinion, "eating as little fat as possible is the best idea."

Dr. Wattenberg cautioned that carcinogen inhibitors can be unpredictable. Some may actually promote the action of certain carcinogens while blocking others. Timing is also critical: the drug phenobarbitol, for example, suppresses cancer when given before exposure to the carcinogen, but it fosters the development of cancer if it is administered after the carcinogen.

Another way to inhibit carcinogens, Dr. Wattenberg has reported, is to flood cells with decoy targets that tie up the carcinogen, thereby preventing its link-up with heredity-determining molecules. One such effective trapping agent is a compound called glutathione.

In the fourth approach, carcinogenic action may be blocked after the chemical has linked up with critical cell molecules and initiated the cancer process, probably during the promotion phase. Dr. Michael Sporn of the National Cancer Institute said at the symposium that a derivative of vitamin A called 13-cis retinoic acid is being tested as a cancer preventive in patients who face a very high risk of developing bladder cancers. The compound may also be able to inhibit cancers of the breast, lung, pancreas, colon and esophagus.●

REPEAL AUTHORITY TO SEIZE GOLD

● Mr. McCLURE. Mr. President, I am honored to cosponsor S. 30, a bill introduced by my good friend, Senator JESSE HELMS, to amend the Federal Reserve Act to terminate the authority of the Secretary of the Treasury to require the delivery of gold owned by private citizens to the Treasurer of the United States.

This obscure provision of the Federal Reserve Act came into being in the Depression year 1933 at a time when emergency legislation was being enacted with little regard for the lessons of history or the freedom of individuals.

I quote from this provision, 12 U.S.C. 248(n):

> Whenever in the judgment of the Secretary of Treasury, such action is necessary to protect the currency system of the United States, the Secretary . . . in his discretion, may require any or all individuals . . . to pay and deliver to the Treasurer of the U.S. any or all gold coins, gold bullion, and gold certificates owned by such individuals . . . Upon receipt of such . . . the Secretary . . . shall pay therefore an equivalent amount of any other form of coin or currency coined or issued under the laws of the U.S. . . . Any . . . failing to comply . . . shall be subject to a penalty equal to twice the value of the gold or gold certificates.

Many such laws thus passed have since been repealed or revised.

In 1973 Congress restored the right of Americans to own gold. I'm proud to have been a sponsor of the legislation that restored this important freedom.

I believe that it is now time to repeal this antiquated provision which once again might be used to deprive Americans of the right to own gold.

I believe that any rationale for retaining this provision would be riddled with inconsistencies.

I quote the Assistant Secretary of the Treasury, C. Fred Bergsten:

> Consistent with the general move toward elimination of a monetary role for gold, and toward its treatment internationally and domestically like any other commodity, the United States repealed the prohibition on the holding of gold by private U.S. citizens effective December 31, 1974.

I believe he is tragically wrong, and if he checks his facts, he will learn that the leaders in Congress who pushed that bill through were not those who think gold has been "demonetized"—or should be.

But, if the Treasury Department thinks that gold has no proper role in

the monetary system, then protecting "the currency system" and seizing gold would seem contradictory.

If Americans are free to buy and own gold like any other commodity such as shoes or potatoes, why should the Federal Government have the authority to confiscate this or any other such private commodity?

And what would an equivalent amount of any other form of coin or currency issues by the United States be? Would it be $42.22 per ounce gold, as is the "official" price at which U.S. gold reserves are still accounted?

This bill has received the support of the Chairman of the Federal Reserve Board, G. William Miller. In a letter to Senator HELMS he stated he had no objection to the proposal.

The President has said that mandatory wage and price controls would be "ill-advised and also counterproductive." It would seem that consistency would dictate that the administration's policy concerning economic controls would extend to support the repeal of the extraordinary power of the Secretary of the Treasury to seize gold.

I personally cosponsored HELMS' successful Gold Medallion Act of 1978 because Americans have demonstrated a desire to have and own gold. The U.S. gold market is now that largest in the world. There is a growing domestic demand for a gold unit for investment, display, collecting, and exchange.

Americans feel secure when they have the option to buy and own gold. The confiscation of freshly produced gold medallions or any other privately held gold would be an act which would greatly lower public confidence in the integrity of our Government or the future or our currency—especially at a time when the U.S. Treasury is selling off U.S. gold to wealthy foreign investors and bankers.

I want to thank the Institute on Money and Inflation for the work they have done for me on this legislation. It is vitally important that we have a public policy research organization like IMI to provide Members of Congress with important data on sound money legislation.

Mr. President, I urge adoption of this bill and I submit this data for printing in the RECORD.

The material follows:

REPEAL THE POWER TO SEIZE GOLD

By Mr. HELMS:

S. 30. A bill to repeal section 11(n) of the Federal Reserve Act (12 U.S.C. 248(n)); to the Committee on Banking, Housing, and Urban Affairs.

Mr. HELMS. Mr. President, in the depth of the depression, Congress made a number of changes in the law which were subsequently repealed or revised.

In 1973, Congress acted to restore the freedom of Americans to own gold. At that time, Congress did not address the subject of a little-known provision of the Federal Reserve Act, 12 U.S.C. 248(n). This subsection is as follows:

"(n) Exchange of gold coin, bullion, and certificates for other currency on order of Secretary of Treasury; costs; penalties.

"Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations, and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations, and corporations. Upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise."

I believe this subsection should have been repealed when the freedom to own gold was restored.

I asked the Chairman of the Federal Reserve Board, William E. Miler for his thoughts on this bill and he responded saying:

"DEAR JESSE: Thank you for your letter of December 14 requesting views on the proposed repeal of 12 U.S.C. 248(n), which grants the Secretary of Treasury authority to call in gold from private holders. I have no objection to the proposal.

"Sincerely,

BILL."

The Treasury Department has, as we know, adopted a policy of reducing the monetary role of gold. Therefore, it seems anachronistic to keep the arbitrary authority over gold which supposedly has no monetary role. But even if we were on a gold coin standard, this extraordinary power would be unjustifiable.

Finally, some with whom I have discussed this bill feel that the Congress can again vote to confiscate gold. That is true. However it would require an overt act of Congress before that authority could be exercised. Today all that is needed is "adjustment" undefined except as to somehow protect the "currency system."

I introduce this bill today, as the beginning of the 96th Congress so that opinions can be requested for appropriate agencies, businessmen academicians, and interested citizens, so that early in the 96th Congress action can be taken on this archaic piece of law.●

THE 200TH ANNIVERSARY OF THE DAILY JOURNAL

● Mr. WILLIAMS. Mr. President, I would like to call my colleagues' attention to the 200th anniversary of the Daily Journal newspaper. Since February 16, 1779, the Journal has been recording the Nation's history, its triumphs and failures, its good news and bad. Only two other newspapers in the United States and no other paper in New Jersey have reached such an impressive milestone in their history.

The Journal is to be commended not only for its length of service to Elizabeth and the State of New Jersey, but it should also be commended for its consistently high caliber reporting. Through the years, Journal reporters have pursued the truth with dogged determination and a fine eye for separating fact from fiction.

Of course, the paper was not always so committed to publishing totally realistic portrayals of events of the day. In its fledgling years, the Journal was run by feisty reporter-editor-printer Shepard Kollock who is said to have "deliberately distorted the news to give the British forces nearby a false impression that the American troops were in fine condition." Evidently even the enemy read the Journal.

I would like to take a few moments to share this brief history of the paper with my colleagues in the Senate. The following article by Jean-Rae Turner appeared in the February 16, 1979, edition of the Daily Journal.

I ask that it be printed in the RECORD. The article follows:

200TH ANNIVERSARY

The Daily Journal—New Jersey's oldest newspaper and one of the six oldest in the country—is 200 years old today.

A special edition featuring copies of front pages containing major news stories during that period will be published April 20 as part of a celebration of the birthday anniversary.

The Journal was born on Feb. 16, 1779 as "The New Jersey Journal," a weekly, in the backroom at Day's Inn, the site of B. Altman's parking lot in the Short Hills Mall on the Morris Turnpike, to serve as the voice of those fighting for independence.

New York City had been under British control since the summer of 1776 and all the printers espoused the Loyalist cause. Gen. Henry Knox, after consulting with Gens. Nathanael Greene, "Mad" Anthony Wayne and George Washington, decided the Revolution needed a printer favorable to the cause.

Young Alexander Hamilton, who served on Gen. Washington's staff at the Morristown headquarters during the winter encampment, referred Gen. Knox to Shepard Kollock, a young first lieutenant in the field artillery. Hamilton and Kollock met on St. Christopher Island in the West Indies, where Kollock had gone because of poor health. After a hurricane in 1776, Hamilton a native of the island, wrote a most eloquent account of the storm and took it to Kollock, who was working on a newspaper there, for publication.

Kollock was impressed by Hamilton's essay and urged Hamilton to attend the Academy in Elizabethtown. Hamilton did so and their friendship resumed when Kollock returned to the colonies.

After Kollock agreed to become editor of the new government-subsidized venture, he was given an honorable discharge from the army. He obtained the necessary printing equipment from his uncle, William Goddard, in Philadelphia and set up his print shop. The army supplied him with paper from military supplies and he was given large quantities of army rags to make his own paper.

In those days, all the work of publishing a newspaper was done by one person. Kollock collected the news, wrote the stories, set the type and printed the paper. The paper then was distributed by circuit riders. Kollock is said to have deliberately distorted the news to give the British forces nearby a false impression that the American troops were in fine condition. He did not write about the terrible suffering at Morristown during one of the worst winters of the war.

The publisher was forced to move his small press frequently to avoid capture by the British. It is said that he even put out one edition on a tiny island in the Passaic River. Despite the many moves, Kollock only missed one edition—during the week of the Battle of Springfield, when the British ad-

vance was stopped just below First Mountain.

Kollock moved across the Passaic River to Chatham in 1782, to New Brunswick in 1783 and to Elizabeth in 1785, where the paper has remained.

The paper was first published at the White House on Elizabeth Avenue (Water Street) at Jefferson Avenue, a dwelling built by Gov. Philip Carteret in 1680.

Later he moved to the home of his father-in-law, Isaac Arnett, on E. Jersey Street on the site of the Second Presbyterian Church. He built his first office on Broad Street opposite the First Presbyterian Church on the site of the Regent Theater in 1800 or 1801. The paper has been at different sites on Broad Street ever since.

These locations included "two doors south" of River's Tavern, 1 Grant's Row at the corner of E. Jersey Street, north of E. Jersey Street and, in 1888, at 72–74 Broad Street next to the National State Bank.

In 1924, a building was constructed at 195–297 N. Broad St.

Kollock sold the Journal when he was appointed postmaster in 1818. It subsequently was sold many times and its name was frequently changed.

Frederick Foote, a former teacher at the old North End School at Salem Avenue and North Broad Street, joined the firm in 1863 and started the daily newspaper, "The Elizabeth Daily Journal," in 1871. He merged the old weekly and the new daily in 1890.

Augustus C. Crane joined the staff as a copy boy and rose rapidly. In 1905, he became president. He was succeeded by his son, Fred L. Crane on Jan. 9, 1923.

His grandson, Robert C. Crane, served as editor and publisher from 1948 to 1959, when the paper was sold to Mid-Atlantic Newspaper Inc., headed by Ralph Ingersoll. The paper's name was changed to The Daily Journal on June 1, 1960.

It was purchased by its current owner—Hagadone Newspapers Inc.—on July 25, 1975.

Hagadone Newspapers constructed a new $2 million publishing plant next to the N. Broad St. structure, opening it in July 1977 and conducting a series of open houses to show the public its computer-operated facility.●

THE SOVIET MIRV

● Mr. HATCH. Mr. President, the news in last week's New York Times is very disturbing to me and should be of great concern to every Member of this body. According to information just released by the CIA, the Soviet Union has test fired a missile with the capability of carrying up to 14 individual warheads.

I am sure that all of my colleagues will remember the controversy that surrounded the test firing of the SS–18, the largest ballistic missile in the world, last December. At that time it was reported that the Soviets had encrypted the telemetry of the test to prevent the United States from monitoring the results of the test. Well, shortly after that test the Soviets test fired another SS–18 and the United States was able to monitor the results. Those results show conclusive evidence that the Russians have no intention of slowing down the arms race. They have sat back and watched the United States make several unilateral cancellations and delays in strategic programs, all the while they were moving forward to increase their own strategic capability.

This news raises the spector of verification once again. Many of my colleagues have argued that we will be unable to verify Soviet compliance of a new SALT II accord. I am sure that they will see this as proof that we are able to monitor Soviet programs. What they will not mention is that it is now evident that the SS–18 has the capability to carry more than 10 wareheads, the number that was supposedly agreed upon in the SALT II negotiations. If this was agreed and the Soviets were planning on living within the parameters of the agreement, then why would they be testing a missile carrying in excess of that number? It also raised the question of future verification problems. How will the United States know if the SS–18's deployed by the Soviets are carrying in excess of the number of warheads permitted? Pictures alone will not give us the necessary data.

Mr. President, I am concerned that the Soviets will attempt to use SALT II in the manner that they used SALT I to further their own strategic goals and widen the growing assymetry between the two nation's strategic forces. During the life of the SALT I interim agreement there were many charges that the Soviets violated the agreement. Mention was made of the deployment by the Soviet Union of heavy missiles beyond the limitations implicit in the interim agreement. Concern has been magnified by other Soviet actions. These include the deployment along the Trans-Siberian Railway in Soviet Asia of silos that allegedly are for launch control but that, on removal of the purported launch-control facilities, could easily be converted to accommodate ICBM's. It has also been alleged that the Soviet Union has sought to conceal activities at Kamchatka and Sary Shagan, where tests of antiaircraft radars against medium-range missiles fired at angular trajectories, simulating the flight of incoming U.S. ICBM's, comes close to violating the letter of the ABM Treaty.

These allegations and more lose their force in light of the manifold ambiguities in the SALT I agreement and the ABM Treaty. The least that can be concluded, however, is that the Soviets are prepared to exploit and all ambiguities and uncertainties about compliance and monitoring procedures will multiply as the focus in SALT II shifts to the qualitative aspects of contending strategic postures. The actions by the Soviets in December are exactly in the area of qualitative improvements. These are the hardest to verify and may be the fatal flaw in a SALT II agreement.

On February 23, 1978, Mr. Paul Warnke, then the chief arms control negotiator for the United States, testified before the Senate Foreign Relations Committee and stated:

> The anticipated SALT II agreement is adequately verifiable. This judgment is based on assessment of the verifiability of the individual provisions of the agreement and the agreement as a whole.

This testimony came before the United State lost the monitoring stations that we had in Iran. This came before we were in danger of losing our station in Turkey. Can we be sure that compliance with the agreement will fall within the ability of the United States to monitor such compliance. I seriously question that we will have that capability. Technology has taken us to a point where national technical means appear to be insufficient to do the job required. The possibility of missile deployment in buildings undetectable by satellite-surveillance looms large. It may be that the apparent increased activity of Soviet submarine building may well be aimed at such a program. The increased range and accuracy of new SLBM's has made this a viable option.●

GREEK INDEPENDENCE DAY

● Mr. DOLE. Mr. President, to the Greek people March 25 is a day of pride. On that date in 1821 Bishop Germanos and the Greek people raised high the flag of revolt and gave notice that the Greeks were again a free people. The ensuing struggle was long and difficult, but after 8 trying years it culminated in victory, and freedom returned to the birthplace of democracy.

NEED FOR A FREE AND INDEPENDENT GREECE

It is imperative that the integrity and independence of the birthplace of democracy and freedom be preserved. In today's world, this area is of utmost strategic importance, for it guards the Mediterranean, gateway to the Atlantic. Strife must not be allowed to end the delicate fabric of peace in this area, for this fabric is the protective cloak of Western Europe.

RIGHTS OF GREEK CYPRIOTS

Cyprus remains a weak stitch in this fabric, and will be as long as the fundamental rights of Greek Cypriots continue to be violated. Though the Greek Cypriots constitute 80 percent of the Cypriot population, 40 percent of the island, containing a staggering 70 percent of the island's natural resources, remains under illegal foreign domination. It is imperative that we do all in our power to help the Greeks, Turks, and Cypriots resolve this situation by peaceful means. This issue should not be left by the United States to merely simmer on the back burner, with the chance that a new conflagration may ensue.

LESSONS TO BE LEARNED FROM THE GREEKS

The Greeks originated the values of freedom and democracy and there is much we can learn from them. Indeed, all Western thought and culture is indebted to the Greeks.

One of the many lessons the Greeks have taught us is the power of a single man's courage. Western civilization rests on a foundation built by Greeks who had the courage to pursue what they know to be right. I would like to cite a few of the men whose courage is a continual source of inspiration to me. The development of Western philosophy was made possible because Socrates had the courage to stand up for his teachings, even when this cost him his life. Themistocles, knowing that ships would be needed to defeat the invading Persians, advocated this until he convinced the populace, despite heavy opposition. Today we take special note of the extraordinary courage of Bishop Germanos, Alexandros Ypsilantis and the countless others whose courage resulted in the liberation of Greece.

Individual courage is necessary to achieve great things, but often it alone is not enough. The ancient Greeks could not have succeeded if their city-states had not unified to defeat the Persians. The revolution of 1821 almost failed when it started to break up into factions. Fortunately, the movement was again unified, thereby enabling its success. It would be instructive for us to bear in mind this proven need for unity as we enter the 1980's.

THE BIGGEST LESSON

Perhaps the biggest lesson to be learned from the Greek experience is that the pursuit of freedom is an invincible force, for freedom is a gleaming idea that cannot be dulled by the passage of time. For 1,800 long years the Greeks languished under under foreign domination, first Roman, later Byzantine, and finally Ottoman, March 25, 1821, proved that even 1,800 years without knowing the feeling of freedom could not erode the Greek determination to be free. May our drive to preserve, and quest to further freedom be as unyielding.●

LEGEND IN PUBLIC SERVICE

● Mr. CULVER. Mr. President, at age 87, Mrs. Ruth Hollingshead of Albia, Iowa, can look back at more than a half-century of intensive political and civic activity with the same drive and enthusiasm that first motivated her to get into public affairs. She calls herself an "old warhorse," but her spirit and her sparkle reinforce the belief in our democratic system of all who know her. Her career can be appropriately called a "legend in public service."

Her extraordinary public career includes 54 years on the board of trustees of the Albia Public Library, 16 years on the Iowa Democratic Central Committee, 21 years as postmaster, three terms on the School Board, and overseas service in World War I as a canteen worker. Her single try for elective office came when she ran for Congress in 1938. She has had a happy marriage and raised two sons while maintaining her public service activities. To this day, I can think of no one who is a more alert and sagacious observer of the current political scene than Mrs. Hollingshead. She knows it because she was so long a part of it—and still is.

Mr. President, I submit an article about Mrs. Hollingshead in the Des Moines Register of March 7, 1979, to be printed in the RECORD.

The article follows:

ALBIA'S "OLD WARHORSE" STILL KNOWS POLITICS

(By Randy Evans)

ALBIA, IOWA.—It has been 40 years since Ruth Hollingshead opened the eyes of people in southern Iowa by running for Congress.

She no longer is running. Advancing years have slowed her to a walk.

But the years haven't dimmed her enthusiasm for politics nor taken away her spunk.

"I don't want to rust out," said the 87-year-old Albia resident. Her career in public service includes an astonishing 54 years on the board of trustees of the Albia Public Library, 16 years on the Iowa Democratic Central Committee, three terms on the Albia School Board, 21 years as postmaster here, and even overseas duty during World War I as a canteen worker.

GOINGS ON

Politicians still come knocking on the door of the self-proclaimed "old warhorse" to talk about issues and enlist her support. And Ruth has occasionally flagged down a passing reporter from the big city to question him about the goings on at the capitols in Des Moines or Washington, D.C.

One of her longtime friends said of the white-haired woman with the infectious smile, "She's a wise and tough old bird. . . . She was a woman's libber before the word was even coined."

Hollingshead disagrees with the notion that she is a "libber," although she readily admits that you can get her dander up if you seriously believe that women aren't qualified to serve in Congress or that they aren't entitled to be paid equally with men.

ELECTION IRONY

Ironically, however, Hollingshead believes it was women who kept her from being elected to the U.S. House of Representatives in 1938.

"She's convinced—at least she told me once," said one friend, "that she lost that race for Congress to Karl LeCompte because voters thought she should stay home and cook and mind the kids instead of galloping off to Washington."

Said Hollingshead: "The men supported me a lot better than the women did. They were a lot more open-minded about a woman running. It was the housewives who thought I should stay at home.

"My mother voted for me—or so she said. But my mother's friends didn't vote for me. They thought I'd gone off my rocker. Of course, they were Republicans."

Other than her three terms on the School Board here, Hollingshead's campaign for Congress was her only try for elective office.

"Let me tell you," she said, "that took all the running out of my system. I wouldn't even run for the church board after that. . . . I was just utterly exhausted, and I just didn't want to go through it again."

THE BEST THING

Although at the time she was disappointed when defeated by LeCompte, a Corydon newspaperman, Hollingshead now says, "It was the best thing that ever happened to me that I lost—on account of my family.

"They wouldn't have been happy," she said of her late husband, Albert, and their two sons, "Lige," and Milton, who now live in Colorado. "I said (to Albert) afterwards, 'Why did you let me run?' And he said, 'How in the hell could I stop you?' "

Albert knew then what others found out later, if they already didn't know: That Ruth Hollingshead is not easily swayed. Indeed, Albert, a born and bred Republican, converted to the Democratic faith when his wife announced her candidacy.

"He changed," Ruth said with a chuckle one day recently. "He couldn't live with me and not change."

BOSSY, BULLHEADED

Monroe County Attorney Frank J. Karpan, 58, a longtime Democrat and friend of Hollingshead, put it this way: "She's bossy, domineering, bull-headed. No question about that. . . . She's very opinionated, and she expresses them in a very firm and loud tone of voice."

Informed of Karpans comments, Hollingshead said, "I'm not bullheaded, but I am bossy, I guess. I have opinions for everyone, but they don't always listen to me, and I have opinions on everything."

"They never use the term 'wishy-washy' about me. I've been called many things, but not that."

Hollingshead got her first taste of politics as a child when she accompanied her father, Wiley S. Fall, Democratic county chairman here, on his political travels. And she tagged along to the Democratic National Convention around the turn of the century. "I don't remember who the candidate was, but I can remember I had my first ice cream sundae then," she said.

After graduating from the University of Iowa in 1914, Hollingshead taught history and economics in Albia, Cedar Falls and Mason City. ("Meredith Willson was one of my pupils in Mason City," Hollingshead said. "I didn't teach him music though. I taught him modern European history. . . . It would be ancient history now.")

Hollingshead returned to Albia after World War I, and she began dabbling again in politics after ratification in 1920 of the 19th Amendment to the U.S. Constitution, which gave women the right to vote.

DOESN'T SUPPORT ERA

She was not, however, one of the active suffragettes in Iowa. And she has not supported ratification of the Equal Rights Amendment because she thinks it has drawbacks, including the possibility that women could be drafted into the military.

"I was quite indifferent about it," she said, referring to the fight to win the right to vote for women. "I wasn't anywhere where they were getting all hot and bothered about it. . . . I was more interested in hard roads than I was in the women's right to vote."

But when women got the right, Hollingshead traveled through southern Iowa, speaking at rallies to encourage women to use their newly acquired privilege.

She joined the Democratic State Central Committee in 1920, and in 1932 she was a delegate to the national convention that nominated Franklin D. Roosevelt for the first time.

OUTLIVED THEM ALL

Hollingshead recently attended a celebration in Des Moines honoring former U.S. Senator Dick Clark, and she was depressed when she observed that none of her contemporaries from her nearly 60 years in politics was present. "I've outlived them all," she sighed.

But the loyal Democrat took heart when someone pointed out that that included Republicans, too.●

TRIBUTE TO SENATOR DEWEY BARTLETT

● Mr. HEINZ. Mr. President, Dewey Bartlett was, although not in the order it comes to mind, a good American, good legislator, good public servant good fighter, good advisor, good companion, good example, and good husband and father.

While sharing my colleagues' admiration for his perseverance, commitment to his principles, his love for his job and his country, and the great strength he drew from prayer—I would like to recount a brief personal impression of the late Senator from Oklahoma as my own tribute to him.

During 1978, Dewey and I were scheduled to travel to Geneva to observe the SALT II negotiations and the MTN talks. Our flight from Dulles Airport was postponed and rearranged several times because of the critical Senate votes on the sale of F-15 fighter planes to Saudi Arabia taking place that evening. As the day wore on, it became apparent that we would either make the 9 p.m. flight, or have to miss the trip. Being a little new and inexperienced with such lofty matters, I took Dewey aside in the Cloakroom and asked him what we should do. "John," he said, "we have got to stay and

vote, and we have got to go to Geneva—and if our good colleagues and the good Lord need us in both these places, then they will find a way to do it." Dewey must have used his connections, because we made the vote and the plane.

Our flight to Geneva gave me the opportunity to learn a lot from the Senator from Oklahoma. He made a profound impression as he shared his thoughts on the role of our Nation's leaders in shaping the discussion and resolution of complex and critical issues such as arms control and energy policy. And, at the same time, he injected his own vibrant, personal belief that people, not policies should come first.

I admired Dewey Bartlett, not just for his skills as a politician and a legislator, but especially as a wise and humorous man who was willing to share his experience and knowledge with a junior Senator who was trying to learn his way around.

The Senate will be a different place without Dewey Bartlett—but it will be a better place for the spirit and love of this Chamber he left with us.●

SOUTH YEMEN

● Mr. HATCH. Mr. President, recent developments in Iran as well as the pressures of the Israel and Egypt negotiations have apparently prevented U.S. officials from paying the amount of attention to South Yemen it deserves.

The war between North and South Yemen requires our full attention and concern. The developments in South Yemen appear to be another element in the overall Soviet strategy to change the political systems in the area and at the same time cut off the energy resources of the free world. Thus, the events in Yemen appear to be the natural concomitant of events in Africa and Iran. Unfortunately, the prevailing opinion in the United States seems to be that this war between North Yemen and South Yemen is a longstanding fight between primitive tribes. Under such circumstances, the theory goes the United States should not get involved in these internal problems. Such opinions merely show how ill-informed both the politicians and the media seem to be.

Intelligence sources in Oman indicate that the Soviets decided to take advantage of the psychological effects on the free world of the events in Iran. The sure signs of such Soviet decisiveness are the presence of 1,500 Soviet advisers who appear to be in basic control of the entire state apparatus. Also reported to be in South Yemen are 400 affiliates of the East German secret police as well as 3,000 Cubans.

Furthermore, General Vladimir Sharajew was recently transferred from Ethiopia to Aden. This latter event particularly underlines the seriousness of the situation because General Sharajew is alleged to be the head of the KGB department responsible for the Indian Ocean area. Recently he directed the activities of the Soviet, East German, Cuban and Ethiopian forces in the Ogaden and Ethiopia itself. General Sharajew presumably controls similar activities in South Yemen. The recent attack on North Yemen is really aimed at creating disturbances in Saudi Arabia, the United Emirates and Kuwait. This danger had been recognized by the late King Faisal of Saudi Arabia who repeatedly warned the United States about paying more attention to the political situation in Iran.

These same problems concern the States of the United Emirates for the Soviet Union has apparently already tried to create disturbances through the agency of South Yemen. These disturbances had been brought under control solely because the Shah of Iran sent regular troops to the area at the time. The fall of the Shah obviously has changed the whole situation and raises the question of the stability of these States. Of course, the very same problem arises for Kuwait, which, unfortunately, is caught between pro-Soviet Iraq and precariously unstable Iran.

In the light of these facts, what may have seemed to be rivalry between primitive tribes gains international significance. Not to recognize this significance is not just a political sin, but rather a grievous error similar to our assessment of the situation in Iran prior to the Shah's fall.

In the irrigation canals (kanats) of Iran there is a certain fish which is white and blind. That fish symbolized the position of the U.S. Government with respect to the recent events in Iran. I would hope that that fish will not again symbolize our position with respect to the events in Yemen.●

PRINCETON'S PRESIDENT AND SOME ENLIGHTENING REMARKS

● Mr. WILLIAMS. Mr. President, President Bill Bowen of Princeton University spoke recently to a gathering of Princeton alumni who serve here in Congress and on Capitol Hill in a variety of positions.

I found his remarks most enlightening and I think they raise many of the fundamental issues that face Federal policy in higher education.

It is a pleasure for me to share President Bowen's remarks with my colleagues and I ask that the text of his speech be printed in the RECORD.

The remarks follow:

REMARKS BY WILLIAM G. BOWEN

In Alec Leitch's Princeton Companion published last fall, the legacy to the University from Woodrow Wilson (of this year's centennial Class of 1879) is described as "a vision of an institution dedicated both to things of the mind and the nation's service. . . ."

That continues to be our vision, and we fulfill it in essential ways through our commitment to scholarship and research of the highest quality. This will be the theme of my annual report to the University community later this spring, and I would like to take advantage of this very special gathering here in Washington to discuss with you what I believe are—and should be—widely shared convictions and concerns in this area.

As Jim Leach emphasized on the floor of the House last year, and as President Carter stated in his recent budget message, scholarship and research constitute an essential investment in the nation's future. They yield insights and discoveries that increase productivity, that enhance the competitive position of American industry, and that can serve to improve standards of living all over the world. While precise calculations of economic effects are not possible, careful studies suggest that advances in knowledge have accounted for roughly one quarter to one third of the increase in national income in the United States since 1929.

As is evident in the sciences and engineering, but is no less true in other branches of knowledge which help us to understand other peoples and societies, scholarship and research also contribute importantly to national security and improved international relations. They are essential as well to the very concept of freedom. I do not believe I exaggerate when I say that all the freedoms of our society depend in significant degree on the critical exercise of scholarship and research, unfettered by any ideological or political harness and uncompromising in the pursuit of truth.

Finally, scholarship and research matter greatly for more intangible reasons that have to do with our zest for learning, and with the hopes, fears, and spiritual concerns that drive us. Any literate society, interested in human values, needs its poets and philosophers, its art historians and its scholars of religion, no less than its physicists, mathematicians, and engineers. All are necessary for our health and vitality—and perhaps even for our individual and collective sanity. (Please note that at this point in time I did not think it appropriate to mention economists!)

Fortunately, there is today in the United States an enviable capacity for outstanding accomplishments in many disciplines—much of it, especially in scientific fields, developed since World War II. According to figures compiled by the National Science Foundation, for example, of 492 major technological innovations in the period 1953 to 1973, 65 percent resulted from work in the United States. And 50 percent of the Nobel Prizes in science awarded since the war have gone to Americans, as opposed to only 20 percent up to that time.

As we think about the origins of this capacity to generate new ideas, we need to remember Francis Bacon's injunction of three and a half centuries ago that we must "from experience of every kind first endeavor to discover true causes and axioms; and seek for experiments of Light, not for experiments of Fruit. For axioms, rightly discovered and established, supply practice with its instruments not one by one, but in clusters, and draw after them trains and troops of works."

While the task of finding applications of new knowledge is obviously of enormous importance, the applications and the technologies of any given age depend critically on the basic research of earlier times, generally conducted by people interested in understanding the fundamental "axioms" of their fields without the deliberate intention of solving a practical problem or achieving a specific utilitarian end.

I realize that basic research frequently is criticized—and sometimes even ridiculed—by those who question its significance and who seek assurances of more or less immediate payoffs. In assessing such views, we do well to recall that the most important medical advances of this century are rooted in basic research that included no hint whatsoever of such applications as the development of antibiotics, that one of the most important "practical" discoveries of all time (hybrid corn) owes much to a one-time Princeton professor, George Shull, who was equally fascinated by his studies of the evening primrose, and that the modern science of genetics received more than a small push forward as a result of a study by Gregor Mendel that could well have been titled "How to Segregate Round from Wrinkled Peas"—a surefire candidate for a "Gold Fleece" award in its time.

It certainly is true that scholarship and research, and even basic research, are conducted in places other than universities, but universities offer special advantages, and evidence suggests that the university environment has proven to be exceptionally conducive to major advances in knowledge.

To cite just one set of findings: When the National Science Foundation recently compile a list of 85 significant advances over the past 20 years in four fields (mathematics, chemistry, astronomy, and the earth sciences), university scientists were found to have been responsible for more than 70 percent of them. (I might note that a tabulation of where the university scientists received their highest degrees showed that, as small as it is, Princeton ranked fifth, and was one of only four universities—with Harvard, the University of California at Berkeley, and Columbia—to have educated at least one person in each of the four fields. A tabulation of where the work was done showed that Princeton ranked second, behind only the California Institute of Technology.)

There are, I believe, several characteristics of universities which account in large measure for this record of accomplishment. First, universities are committed to the twin concepts of academic freedom and the pursuit of the most fundamental questions, however unsettling or controversial they may be. Moreover, the university environment tends to encourage independent thinking, comprised as it is of individuals who are charged with a particular responsibility to think for themselves, to challenge each other as well as orthodoxies old and new, and to feel no obligation to follow anyone else's sense of the right way to attack a particular problem.

Another characteristic of universities is that they encompass work in a great variety of disciplines. Thus it is possible—though no one should claim that it happens always or necessarily—for faculty members in various fields to "kibitz" on the work of colleagues in other fields, thereby providing fresh perspectives and some hope of avoiding overly narrow approaches to fundamental problems. The relatively small size and the cohesiveness of Princeton offer special opportunities in this regard, and the cross-departmental programs we have established in such areas as energy and environmental studies, East Asian and Near Eastern studies, and economic development and modernization represent efforts to take advantage of this characteristic.

Finally, universities are "special" because of the interrelationship between research and teaching which is as important as it is evident. The involvement of graduate students in advanced research—and frequently at Princeton of undergraduates as well—not only provides exceptional opportunities to prepare the next generation of scholars, but benefits the scholarship and research of this generation by subjecting it to new sources of criticism. Almost every faculty member on our campus, I suspect, can cite examples where students have asked a question or made a suggestion that opened a promising new line of inquiry, clarified a puzzle, or called into question a convention that ultimately proved to be deficient.

What this means, in part, is that the investment in university research produces a double benefit: Not only is the research accomplished in an unusually conducive environment, but those who will be the research leaders of the next generation are instructed and encouraged at the same time.

This relationship between scholarship and research, on the one hand, and teaching, on the other, was discussed in a memorable Baccalaureate address given in 1975 by Gregory Vlastos, at that time the distinguished chairman of our Philosophy Department, when he identified four processes necessary to advance and disseminate knowledge: (1) the discovery of new ideas and new forms; (2) the critical scrutiny of these innovations; (3) the assimilation of these very new results with the vast inheritance of previously discovered knowledge; and (4) the transmission of appropriate portions of this aggregate to succeeding generations of incoming students. "The excellences at the two extremes—of research and teaching," he went on to say, "have essential bonds with what comes in between—with criticism and erudition: without excellence in each of these the creator's work would be wild and the teacher's shallow."

As we look to the future of scholarship and research, we need to bear in mind that, as always, it is the quality of the people involved that matters most—our principal task is educating, recruiting, and motivating those rare individuals who are genuinely creative as well as committed to the hard work that is indispensable to first-rate scholarship and research. Unhappily, however, even the best people generally require at least some support. I am not convinced that the hair shirt will attract the best people to theology or poetry, never mind to Chinese politics or Plasma Physics. To be sure, pain can lead to creativity—but these days it would be more than just fashionably outrageous to argue the case for poverty as a stimulus to good work; it would be extraordinarily foolish and extraordinarily dangerous.

In my annual report, I shall describe in some detail the decrease in the real value of federal support for scholarship and research that has been a fact of the last decade at the major research universities. From a national standpoint, suffice it to say that the federal government supports about two-thirds of the nation's total basic research effort and more than two-thirds of all research and development conducted at colleges and universities. And federal support or basic research, in constant dollars, has declined by roughly five percent over the last decade. Looked at another way, between 1962 and 1975, while the fraction of GNP devoted to research and development in West Germany increased by 80 percent and the comparable fraction in Japan grew by 31 percent, in the United States there was a 15 percent decline.

This is a time, I know, when many of us question the role of government in various areas; I know that I do. But let us make no mistake about the role of government in supporting basic research. It is rooted directly in the character of the activity: basic research is unpredictable, and the benefits it confers take the form of new ideas which no private entity can keep entirely to itself, but which naturally and inevitably "spill over" to the entire society. Accordingly, there is widespread agreement with the proposition that government has a clear responsibility to foster advances in knowledge which are the common property of all. President Carter, his science advisor Frank Press, and others have spoken forcefully of the importance of increasing support for research, and especially basic research, and they have done so at a time of great budgetary stringency. They deserve credit for making this case, and the case they have made deserves the support of all who have a sense of the long-term values at stake.

Beyond the general question of levels of support, I have time today only to mention, almost in passing, five other specific concerns related to the future of scholarship and research—all of them, I think, familiar to you, and all deserving of much more attention that I can give them in this talk.

First, there is the terribly discouraging outlook for young scholars in essentially all fields of knowledge. As is well known various factors—anticipated declines in enrollment, an unfavorable age distribution of faculties, tight budgets, and legislative pressures for later retirement—have combined to diminish drastically opportunities for new people to be appointed and then advanced. One set of projections done for the American Council on Education illustrates the seriousness of the problem. If certain factors are held constant (student-teacher ratios, fractions of age-groups being educated, etc.), and if all faculty members who do not retire before age 65 were to continue teaching until 70, aggregative statistical projections indicate that on a net basis there would be literally no new faculty openings across the country for six consecutive years—from 1983 through 1988. All such projections are, of course, based on assumptions subject to modification, and I am certain that in fact there will be some openings in many institutions, including Princeton. Still, the national outlook has to be seen as bleak—and not of course just for the individuals concerned, but for the quality of teaching and research, dependent as it is on new people, new ideas, and the continuity of research efforts. We cannot afford to lose a generation.

Second, there is the problem of support for the major tools of scholarship and research—which are very expensive. Special mention has to be made of the major research libraries, critical as they are to scholarship in all fields, and of the costs involved in providing proper equipment and instrumentation in laboratories. What is needed in these areas is both more money and some new organizational arrangements that will facilitate the sharing of costly resources.

Third, there is a danger that the combination of severe budgetary limitations, political pressures to spread the available funds broadly, and worries about "relevance" will strengthen the inclination of both writers of proposals and reviewers of proposals to prefer "safe" projects. Yet, it is often true that the most "unpredictable outcomes" are the most significant. The same NSF study referred to earlier documented the importance of broadly-gauged, flexible research projects. In studying the origins and characteristics of the 85 most significant advances in the four scientific fields over the last 20 years, it was found that only 43 percent of the projects which led to these advances had actually contained, in the funding proposal, a direct reference to the significant outcome; 40 percent of the advances were derived from grants for broadly defined research in the general area; and 17 percent were related neither directly nor generally to the justification used in requesting support.

A fourth concern—and I hate even to mention it because I know everyone in Washington is sick to death of hearing about it—is administrative burdens. Having mentioned it, I'm almost sorry already that I did, because it's become a kind of code phrase, used in some cases to say things I don't want to say but do not have time today to disavow. In any event, it is a fact that, whatever the reasons and justifications, time and personnel available to do research have been reduced by substantially increased administrative demands. As always, what is needed is a balanced perspective, some acceptance by the universities of their own responsibilities to be at least reasonably orderly and businesslike in their procedures, some trust on the part of government, and a renewed determination by all concerned not to let contract administration become an end in itself, independent of, if not destructive of, other goals. When bureaucratic detail and regulatory zeal threaten to crowd out creative effort, there are no winners, and the original purpose of the undertaking is defeated.

Fifth—and this is an enormous subject all its own—in our concern for science, tech-

nology, productivity, and all the rest, we dare not lose sight of the importance of those other fields of knowledge which give meaning and direction to our lives. Asymmetries in the support of the sciences and humanities need to be reviewed in the most thoughtful way—not with an eye to somehow "equalizing" things, an objective both impossible and undesirable—but with an eye to recognizing the separate needs and critical contributions of each set of subjects.

Scholarship and research, and our concerns for their future, can be thought of in quite practical, utilitarian terms; and in one sense, there is nothing wrong with such a conception since these activities do matter so very importantly to our well-being. But such an orientation is, in my view, dangerously incomplete.

Ultimately, our commitment to the advancement of knowledge must be seen at least as much in terms of values that are more easily felt than entered on any ledger of the usual kind. For me at least, the importance of our commitment to scholarship and research transcends measurable needs. It reflects our pressing irrepressible need as human beings to seek understanding for its own sake. It is tied inextricably to the freedom to think freshly, to see propositions of every kind in ever-changing light. And it celebrates the special exhilaration that comes from a new idea.

My greatest personal debt to Princeton as a teaching institution derives from an experience I had as a beginning graduate student in the fall of 1955. As a student in one of the last classes in the History of Economic Thought taught by Professor Jacob Viner, I was given the privilege of seeing at first hand what constitutes scholarship of a high order, and how the standards and values of scholarship can inform work that otherwise might seem routine or pedestrian—and, for that matter, can affect the whole of a person's life. I hope that those who were unable to witness Professor Viner's scholarship, or who do not know the fruits of it, will nonetheless sense the spirit of what I am trying to say through the following comment of his:

"All that I plead on behalf of scholarship is that, once the taste for it has been aroused, it gives a sense of largeness even to one's small guests, and a sense of fullness even to the small answers to problems large or small which it yields, a sense which can never in any other way be attained, for which no other source of human gratification can, to the addict, be a satisfying substitute, which gains instead of loses in quality and quantity and in pleasure-yielding capacity by being shared with others—and which, unlike golf, improves with age." ●

NOT A CZAR, BUT A WIZARD

● Mr. DOLE. Mr. President, tomorrow night, upward of 50 million children of all ages will turn on a television set, forsake the workaday world of traffic jams and pollution, and journey to a place which the songwriters assure us is "beyond the moon, beyond the stars * * * over the rainbow."

Now naturally we take special pride in the fact that Dorothy Gale begins her voyage to Oz from Kansas. On this fortieth anniversary of "The Wizard of Oz," when there might seem little that has not been said about that fantastic kingdom, might we simply put in a plug for Dorothy herself. In the midst of blatant unreality, of poor administration and rampant deceit by the powers that be, she remains a paragon of commonsense and priarie virtues.

We hope the analogy with Washington, D.C. is apt.

But Oz remains what it has always been: A dream brought to life, a utopia gone awry. It has good and evil, beauty and wickedness. Ultimately, it gives way before the desire of a young farmgirl from Kansas to rediscover what it is about home that gives her a sense of identity and purpose.

Is it too much to compare the last decade to Dorothy's journey? Would it spoil the fun to attach a moral? Might not all of us rediscover the foundation of homely virtues—individual respect for one another, courtesy, a generous heart, a bold courage—that light up Dorothy's Kansas? And, fortified by such knowledge, perhaps we could approach our current problems with the steady hand that even a tornado cannot stay. Perhaps we can not melt down OPEC or the rate of inflation, but we can try.

Of course, we have always been proud of the home we share with Frank Baum's timeless creations. We have always known "there's no place like home." After all, Dorothy may have run away to Oz. But she came back to Kansas.●

CLARENCE K. CHU HING

● Mr. MATSUNAGA. Mr. President, it is with great sadness that I inform my colleagues of the recent death, in Hawaii, of Clarence Kealoha Chu Hing, the president of the Hawaii State Veterans Council.

Mr. Chu Hing, a life member of the Veterans of Foreign Wars of the United States (VFW), was a beloved friend of veterans throughout the United States and had devoted much of his adult life to the welfare of veterans and their families. He was especially interested in the long-term health care needs of veterans in Hawaii, since the island State has no VA hospital or domiciliary facility and, at the time of his death, he was actively promoting the establishment of a long-term care facility for veterans at Tripler Army Medical Center in Honolulu.

Clarence Chu Hing was an active member of Kawaihao Church, serving as President of its Board of Trustees, and gave unselfishly and unstintingly of his time to many other civic endeavors. His untimely death is a great loss to the people of Hawaii and the Nation, and I know that veterans throughout America will join me in this expression of heartfelt sympathy to Clarence's bereaved family.●

NO TIME LIMIT ON FAIRNESS

● Mr. HATCH. Mr. President, on March 22, 1972, Congress gave final approval to House Joint Resolution 208, proposing the equal rights amendment to the Constitution. The resolution expressly provided that ratification by three-fourths of the States would have to occur within 7 years to be effective. Today, exactly 7 years from the date of that resolution, the equal rights amendment has not been adopted by three-fourths of the States. Yet, in the minds of some people, the amendment is still open to ratification by the States. How can this be?

Congress purported late last year to extend the ratification period for the equal rights amendment by approximately 3½ years. There can be no "time limit on equality" we were told by proponents of this action.

Let me briefly refresh the memories of my colleagues with respect to the extent of the constitutional violation worked by the ERA extension:

First. For the first time in the history of the Nation, Congress extended the time period within which ratification of a proposed amendment could occur;

Second. In extending the time period for consideration, Congress specified that debate could continue only in those States which had not yet ratified the amendment. No matter how many times such States had rejected the amendment, they were to be allowed 3½ more years of debate. Those States that had already ratified—no matter how hastily— were to be locked in forever to their action. They were prohibited from rescinding their ratifications even during the extension period;

Third. State legislators who had ratified the amendment on the basis of the 7-year time period, or who had relied upon it in making their decisions, were, in effect, told that they were foolish in having relied upon the express terms of a congressional resolution;

Fourth. Congress adopted the extension resolution by a majority vote in each House despite the fact that the original resolution had been adopted by a two-thirds vote. Thus, the Members of the 92d Congress who had voted for the amendment on the basis of the 7-year time period, or who had relied upon it in making their decisions, were deceived in the same way as the State legislators. In approving the extension resolution by a simple majority vote, it was improperly assumed that the same coalition achieved in the 92d Congress for the ERA with a 7-year time limit would have been achieved had there been a longer period of time;

Fifth. Congress approved the extension through the use of a completely novel sort of legislative vehicle. It created a joint resolution which did not require the approval of the President. Extension proponents faced an insurmountable paradox—they wanted to avoid involving the President in the constitutional amendment process, something which he is prevented from doing by the Constitution while utilizing a legislative vehicle that would not require the two-thirds majority required by article V for constitutional amendments;

Sixth. Congress implicitly suggested that constitutional questions of recission, time period extensions, and vote majorities were all "political questions" with respect to which courts had no review authority. Thus, with respect to the provision of the Constitution specifying how that document was to be amended, Congress would be entitled to act in any manner that it wished. Constitutional

checks and balances, and separation of powers, under this theory, would be inapplicable to the most fundamental provision of the entire Constitution.

Mr. President, I do not believe that the Constitution has ever been as abused by this body as it was during the ERA extension debate. We have purported to establish constitutional precedents that will live far after the substantive debate over the Equal Rights Amendment is completed. They are precedents which, in the context of other amendments not viewed so favorably by the majority as the ERA, will be recognized as undermining the integrity of the Constitution, and subordinating considerations of fairness to short-term political goals.

I do not believe that the ERA extension action was legal.

It is clear now that there will be extensive litigation over our action. There is no way, unfortunately, that we can now avoid an extended debate over this matter. The certainty of procedure that has traditionally been the hallmark of article V has been eroded, and the Constitution will presently be involved in a imbroglio of a basically political nature. Not only will the constitutional processes of our Government now be tested in what might be an extremely tortuous series of litigation, but, most assuredly, the legitimate cause of equal rights for women will be done no good. The ERA extension debate was not completed last year. It is only now beginning.●

EXTENSION OF ERA RATIFICATION DEADLINE

● Mr. BAYH. Mr. President, on October 6 of last year the Senate voted by a margin of 60 to 36 to extend the time period for the ratification of the equal rights amendment until June 30, 1982. This extension period for ratification begins after today.

During the consideration of the resolution to extend the time period for ratification, the Senate rejected an amendment by Senator GARN which would have permitted a State which has already ratified the ERA to withdraw its ratification during the extension period. One of the reasons advanced by the distinguished Senator from Utah in support of his amendment was that several States in ratifying the ERA had also ratified the language stating the original time limit for the ratification period. No evidence, however, was provided by the General Services Administration, the Justice Department, or any individual legislature, that such State legislatures had passed the amendment contingent upon the 7-year time limitation.

Despite Congress rejection of the contention that some States had relied upon the 7-year limit, there have been several resolutions introduced in various State legislatures to declare the ratification of the equal rights amendment "null and void" once the original deadline had expired. I think that it is extremely important for those legislatures considering such legislation to understand that such resolutions have no binding legal effect.

I submit for the RECORD legal opinions on the so-called null and void resolutions from the Department of Justice, the office of the attorney general of Kansas, and the Library of Congress.

The material follows:

DEPARTMENT OF JUSTICE,
Washington, D.C., February 27, 1979.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your letter of February 21, 1979, requesting our views on the constitutionality and validity of bills apparently pending in the legislatures of several States which purport to "withdraw" prior ratifications of the proposed Equal Rights Amendment by those States if that proposed amendment is not ratified by the requisite number of States by March 22, 1979. For reasons set forth more fully in our opinion to the Counsel to the President of October 31, 1977 and in our testimony before your Subcommittee on November 1, 1977, we do not believe that State legislatures may "withdraw" ratifications of the proposed Equal Rights Amendment.

In our October 31 opinion, we concluded—after examination of relevant historical precedent and case law—that States may not rescind a ratification of a proposed amendment. We went on to say that applicable case law rejected the proposition that States, rather than Congress, are to have the final say concerning whether an amendment has been ratified within a "reasonable" time. It follows from these conclusions that a State's attempt to "withdraw" a prior ratification would not have legally binding effect on the 96th or 97th Congresses should either of them have occasion to decide whether the proposed Equal Rights Amendment has become part of the Constitution.* When the 95th Congress adopted H.J. Res. 638, it necessarily decided that a period of slightly more than ten years was "reasonable" for the States to consider ratification of the proposed Equal Rights Amendment. It is our firm view that no State legislature may constitutionally set aside that judgment of the Congress by either "withdrawing" or "rescinding" a prior ratification.

Sincerely.

JOHN M. HARMON,
Assistant Attorney General, Office of Legal Counsel.

SEPTEMBER, 14, 1978.

Hon. BIRCH BAYH
Chairman, Subcommittee on the Constitution of the Senate Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views regarding whether this Congress or a future Congress, should the occasion arise, might take into account purported rescissions by States of their ratifications of the proposed Equal Rights Amendment. For reasons stated hereafter, we think that nothing in Article 7 of the Constitution would preclude Congress from considering purported rescissions in making its ultimate determination whether that proposed amendment had been ratified in a timely fashion so as fairly to represent the contemporaneous consensus of three-fourths of the States.

Because this precise question has never arisen, there are no court decisions directly on point. Two cases decided by the Supreme Court, however, offer some guidance. In *Dillon* v. *Gloss*, 256 U.S. 368, 375 (1921), the Supreme Court stated that

an alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and . . . if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress.

Reasoning from this language, the Court unanimously held that Congress had the power to establish a time period for ratification and indicated *in dictum** that a period of seven years for ratification would generally be constitutionally acceptable.

In *Coleman* v. *Miller*, 307 U.S. 433, 453–54 (1939), the Court, appearing to depart from the more mechanical approach of *Dillon*, identified the substantive considerations upon which the reasonableness of a time period might be based:

the question of a reasonable time in many cases would involve . . . an appraisal of a great variety of relevant conditions, political, social and economic . . . [And it] can be decided by the Congress with full knowledge and appreciation ascribed to the national legislature of the political, social and economic conditions which have prevailed during the period since the submission of the amendment.

We think that part of the "full knowledge" ascribed to Congress by this language in *Coleman* could include the fact of purported rescissions by one or more States and that this fact could therefore be taken into consideration by Congress in its final determination of the timeliness question. We would emphasize, however, our view that purported rescissions may not, consistently with Article V, be viewed as having legally binding effect nor could the 95th Congress bind future Congresses on this point in connection with the present effort to extend the time period for ratification of the proposed ERA.

Sincerely,

JOHN M. HARMON,
Assistant Attorney General, Office of Legal Counsel.

STATE OF KANSAS,
OFFICE OF THE ATTORNEY GENERAL,
Topeka, February 13, 1979.

[Attorney General Opinion No. 79–19]

Hon. KEITH FARRAR,
Kansas House of Representatives, Topeka, Kans.

Hon. LEE HAMM,
Kansas House of Representatives, Topeka, Kans.

Re U.S. Constitution—Amendments—Contingent Ratification

Synopsis: The provisions of 1972 House Concurrent Resolution No. 1155 (L. 1972, ch. 388), by which the Kansas Legislature ratified the proposed Equal Rights Amendment to the U.S. Constitution do not manifest a legislative intent that such ratification be contingent upon ratification of the proposed amendment by the required three-fourths majority of the states by the original deadline therefor established by Congress. Irrespective of any such legislative intent, the validity of a state's contingent ratification of an amendment to the U.S. Constitution can be determined only by Congress.

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* Our letter to Chairman Bayh of the Subcommittee on the Constitution of the Senate Committee on the Judiciary of September 14, 1978 discusses this issue as well as other related issues. A copy of that letter is attached.

* After stating that the reasonableness of the seven-year period involved there had not been challenged, the *Dillion* court went went on to say, 256 U.S., at 376, "nor could [the reasonableness of the seven-year period] well be questioned considering the periods within which prior amendments were ratified."

DEAR REPRESENTATIVES FARRAR AND HAMM: You inquire whether the State of Kansas is bound by its ratification of the proposed Equal Rights Amendment to the U.S. Constitution, if thirty-eight states have not ratified the proposed amendment by March 22, 1979. In your letter of January 16, 1979, you stated your belief that the 1972 Legislature clearly intended that its ratification of the amendment be contingent upon the ratification thereof by the constitutionally required three-fourths majority of states within the original deadline set by Congress. In essence, your inquiry is whether the Kansas ratification is rescinded automatically if the amendment is not thusly approved by March 22, 1979. It should be noted that Congress subsequently extended the ratification deadline an additional 39 months, such that the proposed amendment becomes part of the U.S. Constitution only if ratified by the required number of states within the extended time. See 124 *Cong. Rec.* H. 8665, Aug. 15, 1978; 124 *Cong. Rec.* S. 17318, Oct. 6, 1978. Even though we presume that this congressional action may have prompted your request, it is not, in our view, pertinent to answering your inquiry.

The 1972 Kansas Legislature ratified the proposed Equal Rights Amendment by adopting House Concurrent Resolution No. 1155 (L. 1972, ch. 388). The principal resolving clause of this resolution states as follows:

"Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the foregoing and above recited amendment to the constitution of the United States be, and the same is, hereby ratified by said legislature of the state of Kansas as a part of, and amendment to, the constitution of the United States."

In our judgment, the foregoing resolution expresses a clear legislative intent to ratify unequivocally the proposed Equal Rights Amendment, as set forth in the preamble to 1972 House Concurrent Resolution No. 1155 It does not contain any reservation or contingency to such ratification. Further, we find nothing in the preamble to this resolution that would imply contrary legislative intent.

The first portion of the preamble, in reciting the congressional resolution whereby the proposed amendment was submitted to the states, provides in pertinent part:

"[T]he following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several states within seven years from the date of its submission by the Congress. . . ."

The remaining paragraph of the preamble recites almost identical language, as follow:

"Whereas, Said article will become valid as a part of the United States Constitution only if ratified by the legislatures of three-fourths of the several states within seven years from the date of its submission by the congress. . . ."

We do not find in these quoted excerpts from the preamble an express manifestation of legislative intent that the Kansas ratification be contingent upon the approval by said three-fourths majority by March 22, 1979, the end of the seven-year period. It appears that the latter excerpt is merely a restatement of similar language in the congressional resolution, and is not, as you imply, a condition or contingency upon which the Kansas ratification depends. In our judgment, the preamble to 1972 House Concurrent Resolution No. 1155 does nothing more than recite the facts giving rise to the resolution, *i.e.*, the adoption of a congressional resolution containing the proposed amendment and submitting the proposition to the states.

Generally, a preamble to a statute is merely "explanatory of the reasons for its enactment and the objects sought to be accomplished " (footnote omitted) 73 Am. Jur. 2d *Statutes* § 92. As to the import of a preamble in statutory construction, the Kansas Supreme Court, in *State, ex rel.*, v. *Consumers Cooperative Association*, 163 Kan. 324, 345 (1947), quoted with approval the general rule then stated in 50 Am. Jur. 297, § 309 (now essentially restated in 73 Am. Jur. 2d *Statutes* § 92):

" 'The preamble is especially helpful when the ambiguity is not simply that arising from the meaning of particular words, but such as may arise in respect to the general scope and meaning of a statute. The preamble is not, however, conclusive. Where the language of a statute is plain and unambiguous, the courts may not resort to the preamble of the act. It has also been held that the necessity of resorting to the preamble in order to ascertain the true intent and meaning of the legislature is fatal to any claim which by ordinary rules of interpretation can be sustained only by clear and unambiguous language. The preamble is not an essential part of the act, and cannot confer or enlarge powers.

Express provisions in the body of the act cannot be controlled or restrained by the preamble. Hence, it has been stated by some courts as the general rule that if there is a broader proposition expressed in the act than is suggested in the preamble, the body or enacting part of the law will prevail over the preamble.' "

Even though the foregoing technically applies to preamble included as prefatory to a statute, the rules applicable there have relevance to the concurrent resolution adopted by the 1972 Legislature to ratify the Equal Rights Amendment. Accordingly, since the language of the resolution itself is plain and unambiguous, resort to the preamble to ascertain legislative intent is inappropriate. Nonetheless, we find nothing in the preamble that would impart a contingency to the ratification accomplished by the principal resolving clause of the concurrent resolution.

It is our conclusion, then, that 1972 House Concurrent Resolution 1155 itself does not convey any legislative intent to ratify contingently the Equal Rights Amendment. Further, we find nothing in the legislative history of this resolution that would impart such an intent. See *1972 Journal of the Kansas House of Representatives*, pp. 875, 876; *1972 Journal of the Kansas Senate*, p. 550.

However, assuming *arguendo* that the contingency you suggest is implicit in the Kansas resolution, it should be noted that the validity of a conditional ratification may be decided only by the United States Congress, if and when the required majority of states ratify the proposed amendment. Rescission of the Kansas ratification of the Equal Rights Amendment has been the subject of numerous opinions written by the Attorney General in the years since the amendment was approved. Although the precise question of whether a state may contingently ratify and subsequently rescind a proposed constitutional amendment due to failure of the contingency has not been considered previously by this office, it entails the general question: does a state have constitutional power to ratify, and later rescind its ratification of, a constitutional amendment?

This question has been answered by the 1939 U.S. Supreme Court decision in *Coleman v. Miller*, 307 U.S. 433, 83 L. Ed. 1385, 59 S. Ct. 972. Here, in holding that Congress must decide whether the Kansas Legislature could effectively ratify a proposed amendment which a previous legislature had rejected, the Court stated the controlling rule:

"[T]he question of the efficacy of ratifications, in the light of previous rejection *or attempted withdrawal*, should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment." *Id.* at 450, 83 L. Ed. at 1394, 59 S. Ct. at 980. (Emphasis added.)

The Court decided *Coleman* in light of the "historic precedent" of the adoption of the Fourteenth Amendment of the U.S. Constitution in 1868. The Legislatures of Ohio and New Jersey had both rescinded earlier resolutions ratifying the proposed amendment. Despite those rescissions (and ratifications following earlier rejections by some of the southern states), Congress declared the amendment ratified and part of the U.S. Constitution, reciting that three-fourths of the States had ratified, naming Ohio and New Jersey as among that number. The Court noted: "This decision by the political departments of the Government as to the validity of the adoption of the Fourteenth Amendment has been accepted." *Id.* at 449, 450, 83 L. Ed. at 1394, 59 S. Ct. at 980.

In summary, the U.S. Supreme Court, with deference to the separate and co-equal powers of Congress, concluded in *Coleman* that Article V of the U.S. Constitution vests in Congress plenary control over the constitutional amendment process, that questions as to the effectiveness of rescissions or withdrawal of earlier ratifications may only be decided by the Congress and that neither courts nor state legislatures may interfere with that determination.

None of the foregoing is to suggest that the Kansas Legislature may not withdraw or rescind its ratification of the proposed Equal Rights Amendment. If Kansas, or any other state which has previously ratified the amendment, chooses to rescind, Congress must then decide, as it did in 1868, whether or not such rescissions are effective. Whether the Congress will abandon or follow its "historic precedent" also is a question which only the Congress may decide.

However, as discussed above, the Kansas Legislature, in our judgment, has not contingently ratified the proposed amendment whereby its ratification is no longer binding if thirty-eight states fail to ratify the amendment by March 22, 1979.

Very truly yours,

ROBERT T. STEPHAN,
Attorney General of Kansas.
W. ROBERT ALDERSON,
First Deputy Attorney General.

AN ANALYSIS OF THE CONSTITUTIONALITY AND LEGAL VALIDITY OF LEGISLATION PENDING IN SOME STATE LEGISLATURES WHICH DECLARES THEIR PRIOR RATIFICATIONS OF THE PROPOSED EQUAL RIGHTS AMENDMENT (ERA) "NULL AND VOID"

Pursuant to your request we have examined the legislation currently pending in certain state legislatures, and which has actually been passed in South Dakota, and in the analysis that follows we have attempted to assess the constitutional and legal validity of such bills and/or resolutions. These bills or resolutions declare the States' prior ratifications of the proposed Equal Rights Amendment (ERA) "null and void" after the original, unextended deadline of March 22, 1979 passes.

These "null and void" resolutions can be viewed in either one of the following two ways:

(1) merely as rescissions, i.e., *withdrawals* of the state legislatures' prior ratifications of the proposed amendment or

(2) as challenges to H.J. Res. 638, the 95th Congress' extension of the original deadline for thirty-nine additional months beyond March 22, 1979.

Our research has led us to conclude that when interpreted in either manner such legislation which passed in South Dakota and which is pending in other state legislatures is subject to the discretion of Congress under the political question doctrine and that Congress well could determine that such legislation is ineffective in accomplishing its purported goals. If interpreted as a rescission, the validity of such a measure is really an "open question" because, as will be shown below, the question is a political one for the Congress, sitting at the time the thirty-eighth state legislature has ratified, to make the ultimate determination. At this stage, it would be premature to say how that Congress will resolve the issue. We can only conjecture based upon available case law and past legislative precedents.

When looked upon as a challenge to the H.J. Res. 638 extension measure, the problem becomes somewhat more complex. It involves the overall general matter of whether the state legislatures did in fact condition their ratifications upon the presence of the original seven year time limit contained in the underlying resolution of the proposed amendment. In terms of making the challenge by actually suing in court, other relevant questions include those relating to whether the parties have (1) a "justiciable" claim (2) a claim which is "ripe" for judicial resolution and (3) "standing" to bring the case into a court of law. Our research has led to the conclusion that Congress could reasonably make the determination that the state legislatures did *not* make their ratifications contingent upon the March 22, 1979 deadline, and even assuming they did, it would be practically impossible to present sufficient evidentiary proof to establish that such was the case. With respect to the questions of "justiciability," "ripeness," and "standing" standards for bringing a challenge in Federal court, the situation at this time is of such a nature that it is unlikely that a Federal court would find the challenge to the legality of the extension ripe for judicial review; not to also say that the issue is, on the precedents, one which comes within the purview of the "political question" doctrine and would therefore be beyond the review of the courts. The analysis which follows will discuss in detail first, the matter of rescission and second, the question of challenging the legal validity of H.J. Res. 638.

The term "rescission" is used here to mean the act of revoking or repealing a prior action of a state legislature ratifying a proposed constitutional amendment. The pendency of the ERA before the States has revived a longstanding controversy—whether a State, once having voted to ratify, may withdraw—i.e., "rescind"—its ratification. In our March 5, 1977 report on the efficacy of a rescission of a ratification, we stated that this issue seems to be regarded by the Supreme Court as raising a political question, and, therefore, a matter for Congress to decide. *Coleman* v. *Miller*, 307 U.S. 433 (1939).

The only time that Congress has dealt with the issue was in the instance of the Fourteenth Amendment. (See pp. 6–8 of Killian, "The Efficacy of State Rescission of Ratification of a Federal Constitutional Amendment," March 15, 1977, for a detailed discussion of how Congress dealt with the rescission issue in the instance of the Fourteenth Amendment.) In that case, the Congress adopted a concurrent resolution listing twenty-nine States—including two States (Ohio and New Jersey) which had ratified but subsequently rescinded—as having ratified. Accordingly, "being three-fourths and more of the several States of the Union," Congress concluded that the ratification process was completed. 15 Stat. 709. The resolution, which did not expressly state the basis of the congressional action, counted as ratifying States two States which had attempted to rescind their prior ratifications.

The issue of rescission would not appear to be foreclosed by this one precedent since the actions of one Congress do not bind subsequent Congresses. It may be regarded as persuasive precedent by the current Congress and subsequent Congresses, but it is not binding upon them. Unlike courts, Congress does not operate under the principle of *stare decisis*. Therefore, the question of whether a rescission by a State is valid is an open one.

Congress has not stated a general position with respect to the rescission issue or as regards ERA. The problem apparently was not discussed by the 92d Congress when it approved the proposed Equal Rights Amendment. During the debate in the 95th Congress on the question of extending the March, 1979 deadline, H.J. Res. 638, measures relative to defining Congress' position on rescission were introduced but all were defeated. [See *Congressional Record*, Vol. 124 (1978): August 15, considered and passed the House; September 28, October 3, 4, 6, considered and passed the Senate.] It will be a matter for the 97th Congress, after June, 1982 (the extended deadline), to resolve if three more States ratify.

Decisional authority indicates that Congress could adopt a general rule with respect to rescission. For example, Congress could amend 1 U.S.C. 106(b) to provide for the purposes of determining the thirty-eight States needed to make the three-fourths required for ratification, the Administrator of the General Services Administration shall accept (or, alternatively, disregard) as valid any attempted rescissions of prior ratifications. Congress has never done this to date. Of course, such a statutory requirement could be amended at anytime.

In the final analysis, the rescission question is an open one. It does not need to be faced until the thirty-eighth State, counting those rescinding States, has ratified. If the "null and void" resolutions pending in certain state legislatures and passed by South Dakota are viewed as rescissions, nothing constitutionally would prevent the 96th Congress from stating its own position on rescission; however, it would be acting prematurely because to date thirty-eight States have *not* ratified, and a decision with respect to rescission at this time would not be binding upon future Congresses. Of course, a future Congress may decide to abide by the action taken by a prior Congress. In light of *Coleman* v. *Miller* and other cases, the decision of the proper course to be followed when the issue of rescission is raised appears to rest exclusively with the Congress.

If the "null and void" bills are viewed as a challenge to the validity of the 95th Congress' extension of the deadline for the proposed ERA, H.J. Res. 638, it is necessary to first examine the basis for that extension.

When the 95th Congress considered the extension issue, there were actually two factors involved: (1) whether Congress had the authority to extend the ratification deadline of the proposed ERA and (2) if there was such authority, what procedure could Congress use to express that extension of time. We shall briefly summarize the basis of the congressional determination of its answers for the two questions. (For a more detailed explanation, see Lewis, "Analysis Regarding the Issue of Extending the Ratification Deadline of the Proposed Equal Rights Amendment," August 19, 1977.)

The question of whether Congress may extend the deadline for ratification of a proposed amendment is not adressed by the Constitution itself. Article V simply provides that Congress, by a two-thirds vote of each House, may propose amendments to the States; an amendment becomes a part of the Constitution when ratified by three-fourths of the States. There is no mention of either deadline or extension.

Congress itself first imposed a deadline when it submitted the Eighteenth (Prohibition) Amendment to the States and provided in the language of the Amendment that it would not become valid unless ratified by the required number of States within seven years. The Supreme Court upheld this requirement holding that the matter of setting time limits for ratification was a "detail" clearly within the power of Congress, and that seven years was a reasonable time. *Dillon* v. *Gloss*, 256 U.S. 368 (1921).

Moreover, the Supreme Court has also held that other questions concerning the ratification process have been committed by the Constitution to the Congress rather than the courts for resolution. As we have indicated earlier, the Supreme Court has declined to involve itself in the resolution of such questions as the length or lapse of time that could cause a pending amendment to lose its vitality or the authority of a State to rescind its ratification of a proposed amendment. *Coleman* v. *Miller*, *supra*. As we have emphasized above, these are political questions, and the discretion of Congress to decide them is final and unreviewable by the courts.

The seven year time limit for ratification of the ERA, unlike the Eighteenth Amendment, was not included in the text of the ERA itself. It was simply part of the underlying resolution passed by Congress when it proposed the Amendment. The time limit is not a substantive part of the proposed amendment as submitted to the State and did not require ratification.

The seven year ratification deadline was established by Congress in the first place and was included in the accompanying resolution rather than in the text of the ERA itself. The Supreme Court has affirmed the authority of Congress to determine the details of the ratification process, to set reasonable time limits, to judge the validity of a purported rescission, and to determine if an amendment has lapsed. While the Supreme Court has not ruled on the question of extension of the ratification period, the Dillon and Coleman decisions, read together, lead to the conclusion that this is a political question committed to Congress rather than the courts.

Based upon the foregoing reasoning, the 96th Congress approved H.J. Res. 638. It did so by a simple majority vote, believing that that was all that was necessary given the following three points (1) the two-thirds requirement, like any supermajority requirement, is rare and whenever the Constitution requires it, that requirement is clearly spelled out; (2) the alteration of the time deadline contained in the underlying resolution proposing the amendment and not in the text of the amendment involves a procedural change and not a substantive one relative to the amendment itself; and (3) past congressional practice, e.g. in the case of the adoption of the Fourteenth Amendment by the 39th Congress, a simple majority was all that was used to pass the concurrent resolution listing rescinding States as having ratified the Amendment.

Therefore, while there was virtually no case law on the question, in Congress view, both logical principles, derived from a reading of Article V and the Constitution itself in terms of what is and is not spelled out, and historical precedent led to the conclusion that only a simple majority of each House was required to extend a time period not built into the text of a proposed amendment as is the case of the proposed ERA. Congress could have, by internal rule, required a larger majority, but that internal rule did not appear to be required by the Constitution.

Challenges to the legal validity of the extension measure, H.J. Res. 638, are directed for the most part at the above two issues:

(1) that Congress did not have the authority to extend the deadline in the first instance and (2) even assuming it did have the power, to do so by a simple majority vote violated the Constitution because when dealing with a constitutional amendment the vote requirement should be two-thirds.

The recent phenomenon of "null and void" bills from some States can be viewed as an expression of opposition to the constitutional and legal validity of H.J. Res. 638. One contention made by those supporting such a challenge is that the state legislatures that ratified the proposed ERA did so contingent upon the seven year time limitation. The argument made is that these state legislatures ratified contingent upon the ratification thereof by the constitutionally required three-fourths majority of the States within the original deadline set by the 92d Congress in 1972. This theory is reminiscent of the one raised by Professor Jules B. Gerard, Washington University Law School, St. Louis, Missouri, when H.J. Res. 638 was pending before the 95th Congress. In his June 14, 1978 letter to the House Judiciary Committee, Professor Gerard set out a case for the reliance of States upon the seven year time limit in the underlying resolution proposing the ERA. In a subsequent letter and also in testimony before the Senate Judiciary Subcommittee on the Constitution, he claimed that he was not arguing reliance but rather in the contractual sense that the seven year period was a term mutually consented to by the States and the Congress, and he pointed out that a number of the States in fact included the time in their ratifying resolutions. Regardless of whether one speaks in terms of reliance or mutual consent to an agreed upon term, Congress may not find the thesis persuasive. [For a more detailed analysis of the Gerard theory, see our earlier memorandum, "State Ratifications of the Proposed Equal Rights Amendment (ERA)," June 28, 1978.]

From our research concerning 1 U.S.C. 106(b) and the procedures that in the past have been followed and accepted by the Administrator of G.S.A., we found that the only thing required of the States that they ratify the *text* of the proposed constitutional amendment. We define the *text* as the substantive sections of the amendment because there are what in fact become part of the United States Constitution when duly ratified by three-fourths of the States. If a State chooses to include the time period in its ratifying resolution and certification, the action of adding dispensable language would *not* make the ratification defective.

Professor Gerard made the presumption that those States which did mention the seven year time limit did so deliberately. His theory can only be adequately supported by examining the debates which were conducted in the state legislatures at the time they approved the proposed ERA and to ascertain from these the actual intent of the States which decided to incorporate the time limit in their ratifying documents. This form of research is practically impossible because with the exception of a few States, no records of debates are kept by the legislatures. Furthermore, our research has revealed that many of the early States that ratified did so very quickly with little opposition and there was hardly any debate over the question.

Professor Gerard also asserted that many of the States explicitly stated in their ratification documents that their ratifications were *conditioned* upon the time limit. Our examination of the ratifications by those States does not point to that conclusion. There is a significant case law holding that a State cannot condition its ratification of a proposed constitutional amendment. *Leser* v. *Garnett*, 258 U.S. 130, 137 (1922); *Hawke* v. *Smith*, 253 U.S. 221 (1920).

In our June 28th memorandum discussing the Gerard arguments, we concluded that from the available case law, States may not impose conditions or reservations on their ratification of an amendment, since their sole function under the Constitution is simply to approve or disapprove the language proposed by Congress. We also pointed out that, unless the time limit is embodied in the actual language of the proposed amendment, the inclusion of language from the underlying resolution does not serve to condition or limit an otherwise unconditional ratification. Recently there have been two State Attorney General Opinions which have essentially rejected Professor Gerard's contentions.

In response to an inquiry whether Vermont's ratification of the ERA extended beyond the seven year time period specified by Congress for ratification, the State Office of the Attorney General, after some analysis, stated,

Vermont ratified the Equal Rights Amendment on March 1, 1973. The seven year ratification period was contained in the proposing clause of the Amendment, not in the text. Since Vermont had no authority to ratify anything but the text of the E.R.A., it is therefore our opinion that Vermont's ratification of the Equal Rights Amendment remains valid after the expiration of the seven year period or until June 30, 1982, unless Congress determines to extend it further.

Letter of January 5, 1979, Re: Opinion No. 50-79, Op. Att'y Gen., at 3.

The Kansas Office of the Attorney General also issued an opinion basically reaching a similar conclusion. Op. Att'y Gen. No. 79-19, February 13, 1979. This Opinion examined the language of the Kansas Legislature's ratification resolution and stated,

In our judgment, the . . . . resolution expresses a clear legislative intent to ratify unequivocally the proposed Equal Rights Amendment . . . It does not contain any reservation or contingency to such ratification. Further, we find nothing in the preamble to this resolution that would imply contrary legislative intent.

Op. Att'y Gen. No. 79-19, *supra* at 2.

The Kansas State Attorney General's Opinion went on to emphasize that the preamble to its legislature's ratifying resolution did "nothing more than recite the facts giving rise to the resolution, i.e., the adoption of a congressional resolution containing the proposed amendment and submitting the proposition to the states." *Id.*

Not only did the Office of the Kansas State Attorney General not find in the Kansas resolution any evidence that the Kansas legislature intended to ratify the ERA contingently, it also found after examining the relevant documents embodying the legislative history, that there was nothing in the legislative history of the resolution that revealed such an intent. *Id.* at 4.

In your request in addition to asking us to examine the constitutional and legal validity of the "null and void" bills pending in some state legislatures and passed by South Dakota, you inquired as to the likelihood of actual court challenges after March 22, 1979 with respect to the extension measure. Some States which pass these "null and void" resolutions may want to actually litigate the issue, e.g., by going to court seeking a declaratory judgment to nullify the extension. Another possibility is that the States which have not ratified may seek a writ of prohibition from a court directing the Administrator of the General Services Administration *not* to accept any more ratifications after the original March 22, 1979 deadline.[1] States that have not ratified could try to sue requesting elimination of all the past ratifications with a declaratory judgment stating that the amendment process is over. States opposing H.J. Res. 638, the extension measure, contend that it is unconstitutional because Congress lacked the power to enact it and notwithstanding its constitutionality, their ratifications have expired and are "null and void." These States would be suing to seek a declaratory judgment holding to that effect.

In order for any of the above legal challenges to H.J. Res. 638 to be heard in a court of law, the claim must be "justiciable," be "ripe" for judicial resolution, and the parties suing must have "standing" to bring the case in the first place.

The courts will only decide questions of law which present a "case or controversy." If the questions presented meet this requirement, they are regarded as being "justiciable." The Federal courts do not sit to render advisory opinions. In an effort to explain what a "case or controversy" is, Chief Justice Hughes once wrote:

"A 'controversy' in this sense must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." (*Aetna Life Ins. Co.* v. *Haworth*), 300 U.S. 229, 240-241 (1937).)

While there is a great deal of vagueness in Chief Justice Hughes' definition and in the labels he used, it can be discerned that the term "case or controversy" at the very least implies the existence of *adverse* parties whose contentions are submitted to the court for adjudication.

Not only must there be a "case or controversy" present, the suit must be "ripe" for judicial review and resolution. The complaining parties must either be immediately harmed by the law being challenged or at the very least threatened with the harm of the enforcement of the statute. *Poe* v. *Ullman* 367 U.S. 497 (1961). The controversy must have "ripened" to the point where it should be decided by a court.

Another requirement that the parties seeking to challenge H.J. Res. 638 must possess is "standing" to sue. "The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated." *Flast* v. *Cohen*, 392 U.S. 83, 99 (1968). The "gist of the question of standing" is whether the party seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). Standing as a doctrine is composed of both constitutional and prudential restraints on the power of the Federal courts to render decisions. In sum, standing generally requires that the plaintiff have a "stake" in the outcome of the controversy; that there be injury in fact; and

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[1] Both the writs of prohibition and mandamus are discretionary writs which only apply to ministerial acts.

A *writ of prohibition* is directed at a public official ordering him or her to refrain from performing a certain act.

A *writ of mandamus* is directed at a public official ordering him or her to perform the official duties that he or she is supposed to be carrying out. Mandamus cannot be used to order an official to perform a task that is not officially within the realm of the duties he or she is authorized to perform as defined by statute and/or the office itself.

that a successful court determination will bring relief to the plaintiff. *Warth* v. *Seldin*, 422 U.S. 490, 498–499, 501 (1975); *Baker* v. *Carr, supra; Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976).

Applying the above standards to potential lawsuits challenging the constitutionality of H.J. Res. 638 will probably result in Federal courts finding the litigation premature and not ready for judicial resolution. The effect of the extension measure will not occur until the new deadline, June 30, 1982, when at that time if thirty-eight States have not ratified the proposed ERA, the Congress will have to reassess the political, social and economic situation and determine whether another extension is warranted. A legal challenge now would be premature. There does not appear to be a "case or controversy" ripe for review. In the situation with the actual adoption of the amendment, it occurs when the thirty-eighth State has ratified and not before that occurrence. Legal challenges to adoption of the Equal Rights Amendment could not occur until after the amendment is part of the Constitution and actually goes into effect. After that in a suit by a party claiming his or her rights have been violated under the ERA, the defendant could conceivably allege that there could be no denial of rights because the amendment was improperly ratified. This allegation by the defendant could be directed at (1) the number of States that ratified and/or (2) the extension. At that point, but not before, both issues would probably present a justifiable case ripe for adjudication.

However, a court may at the very outset, even before June 30, 1982, determine that the challenge to the constitutionality of H.J. Res. 638 is a "political question" and not a matter for judicial review. In an earlier analysis, we pointed out that whether Congress may extend the time period for ratification of the proposed ERA and whether a State may rescind a prior ratification of a constitutional amendment were issues that raised political questions which must be resolved by Congress. Lewis, "Appraisal of the Relationship Between Extension and Rescission With Respect to the Equal Rights Amendment (ERA)," October 31, 1977. Congress' power to determine each of these matters is based upon the continuing validity and applicability of the political question doctrine. (See *Baker* v. *Carr, supra; Powell* v. *McCormack*, 395 U.S. 486 (1969); *Gilligan* v. *Morgan*, 413 U.S. 1 (1973). These cases indicate that the resolution of certain questions, described as being political questions, is committed by the Constitution to the other branches of the national government. Congress decided to extend the deadline for ratification of the proposed ERA when it passed H.J. Res. 638, and it may well be that a court will follow the precedent in *Coleman* v. *Miller, supra*, and deem the matter as one involving a "political question" and Congress' determination being beyond the review of the judicial branch.

Even if a court does not regard the extension question as being political in nature and non-justiciable, a challenge at this time would probably not only fail to get into court because of the absence of a "case or controversy" and the lack of "ripeness" but also because the parties do not have standing. The parties making the challenge will have to prove to the court that they are the proper plaintiffs because they (1) have a "stake" in the outcome; (2) have suffered injury from the extension; and (3) will benefit directly from the court's judicial resolution of the case. Assuming that state legislators are going to bring the suits challenging the constitutionality of H.J. Res. 638, they would have to prove that they meet every one of the foregoing three standards and therefore have standing to sue.

These requirements have been interpreted very strictly by the Supreme Court and are difficult to meet. However, such potential plaintiffs might pursue their actions in state courts where the standing requirements have generally not been construed as narrowly.

In summary, our research leads us to conclude that an assessment of the constitutional and legal validity of the recent "null and void" resolutions pending in some state legislatures and passed by South Dakota entails examining them from two perspectives: (1) as rescissions of prior ratifications or (2) as challenges to H.J. Res. 638 which extended the deadline for the ERA. Viewed as rescissions, their validity is an open question to be resolved by the Congress sitting at the time that the thirty-eighth State has submitted its ratification. When interpreted as a challenge to the H.J. Res. 638 extension measure, their validity is in doubt if they rest on the proposition that their prior ratifications were passed contingent upon that original seven year limitation. As we explained, it is practically impossible to prove that the state legislatures conditioned their ratifications on that ground. Moreover, it would appear that if the members of the state legislatures decided to pursue the legal challenge to the extension by initiating a lawsuit in Federal court their action would be premature. There does not appear to be a case or controversy ripe for review at this time. Furthermore, such litigants are going to have to meet the stringent standing requirements for maintaining an action in the Federal courts. There is also the possibility that a court will not even review the extension issue because based on current precedent it could conclude that the matter is a "political question" beyond judicial review.

KAREN J. LEWIS,
Legislative Attorney, American Law Division.●

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If there be no further morning business, morning business is closed.

EXTENSION OF THE PUBLIC DEBT LIMIT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 2534, which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 2534) to provide for a temporary increase in the public debt limit, and for other purposes.

The Senate resumed consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending amendment, amendment No. 111, by the Senator from Colorado (Mr. ARMSTRONG) and the Senator from Kansas (Mr. DOLE).

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

And I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

REMOVAL OF INJUNCTION OF SECRECY—EXECUTIVE M, N, AND O, 96TH CONGRESS, 1ST SESSION

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Treaty of Extradition with the United Mexican States (Executive M, 96th Congress, first session); and two related protocols to the Convention on International Civil Aviation (Executives N and O, 96th Congress, first session), transmitted to the Senate today by the President of the United States.

I ask that the treaties be considered as having been read the first time, that they be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

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

The messages of the President are as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty of Extradition Between the United States of America and the United Mexican States, signed at Mexico City on May 4, 1978.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern extradition treaties being negotiated by the United States. It expands the list of extraditable offenses to include narcotics offenses, aircraft hijacking, bribery, and obstruction of justice, as well as many other offenses not now covered by our existing Extradition Treaty with Mexico. Upon entry into force, it will terminate and supersede the existing Extradition Treaty and Additional Conventions between the United States and Mexico.

This Treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable considerations to the Treaty and give its advice and consent to ratification.

JIMMY CARTER.

THE WHITE HOUSE, *March 22, 1979.*

To the Senate of the United States:

I transmit herewith, for advice and consent of the Senate to ratification and acceptance, respectively, the following two related Protocols:

The Protocol Relating to an Amendment to the Convention on International Civil Aviation (Chicago, 1944), done at Montreal September 30, 1977.

The Protocol on the Authentic Quadrilingual Text of the Convention on International Civil Aviation (Chicago, 1944), with annex, done at Montreal September 30, 1977.

I also transmit, for the information of the Senate, the Report of the Department of State with regard to these Protocols.

The 1944 Chicago Convention establishes the International Civil Aviation Organization (ICAO) and a framework for the safe and reasonable conduct of international civil aviation. The 1977 Protocols are designed to permit the establishment of an authentic Russian language text of the Chicago Convention on an equal footing with the English, French and Spanish texts, which are currently the only existing authentic texts. The U.S.S.R. has been a Party to the Chicago Convention since November 14, 1970, and Russian has been an official working language at ICAO since early 1972.

Additionally, several other Eastern European States use Russian in ICAO. While these Protocols impose no new substantive obligations on the United States, they would appear to be quite important in facilitating the complete integration of the Russian language speaking States, or States which use Russian for aviation purposes, into the international civil aviation community. I therefore recommend that the Senate give early and favorable consideration to these Protocols and advice and consent to their respective ratification and acceptance.

JIMMY CARTER.

THE WHITE HOUSE, *March 22, 1979*.

RECESS UNTIL 2 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 2 p.m. today.

There being no objection, the Senate at 12:45 p.m., recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. PRYOR).

RECESS FOR 30 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 2 p.m. recessed for 30 minutes; whereupon, at 2:30 p.m., the Senate reassembled when called to order by the Presiding Officer (Mr. PRYOR).

SPECIAL ORDERS FOR MONDAY, MARCH 26, 1979

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday, after the two leaders or their designees have been recognized under the standing order, Messrs. DOLE, DANFORTH, and DOMENICI be recognized, each for not to exceed 15 minutes.

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

ORDER DISCHARGING COMMITTEE ON RULES AND ADMINISTRATION FROM FURTHER CONSIDERATION OF SENATE CONCURRENT RESOLUTION 8

Mr. McGOVERN. Mr. President, this request has been cleared with both the majority leader, the minority leader, as well as with the chairman of the Rules Committee and the ranking minority member on that committee.

Under those circumstances, I ask unanimous consent that the Committee on Rules and Administration be discharged from further consideration of Senate Concurrent Resolution 8, the so-called Hayakawa-McGovern resolution.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object—and I will not object—the distinguished Senator is correct.

Could we also state for the record that the Committee on Rules and Administration is acceding to this request, because there is a time constraint involved here, that this is not meant to be a precedent?

Mr. McGOVERN. Yes. The problem, as the majority leader knows, is that this resolution calls for the sending of observers to the Rhodesian election, and that election is practically on us. So if we are going to do anything, we have to move expeditiously.

It is under those conditions that I make this request.

I want to thank the Senator from Rhode Island, the distinguished chairman of the committee (Mr. PELL), and Senator HATFIELD, the ranking minority member on the committee, for their cooperation in this matter.

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

RECESS FOR 30 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 2:30 p.m., recessed for 30 minutes; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. BAUCUS).

EXTENSION OF PUBLIC DEBT LIMIT

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I yield to the distinguished Senator from New Mexico.

Mr. DOMENICI. Mr. President, I thank my good friend, Senator HELMS.

Mr. President, perhaps one of the strongest arguments to be made for a mandated balanced budget, or at least a balanced budget presumption, has already been made this year by a majority of Senators, and these Senators have done so by their votes because the committees of the Senate on March 15 must send reports from the authorizing committees to our Budget Committee.

Preliminary work completed late last night for my distinguished colleague, Senator BELLMON, the ranking minority member of the Budget Committee, and me, shows that the requests of the authorizing committees of the Senate total between $30 and $40 billion more than the budget request of the President.

That means that if the authorizing committees of the Senate had their way, instead of a $29 billion deficit we would have a $59 to $69 billion deficit, and that is not just something that exists in the air. It is now a matter of record.

Our committees have said to the Budget Committee, "Here is our recommendation," and it is $30 to $40 billion more than the President's request, in terms of budget authority that which fires the cost of the future, $70 billion in budget authority more than the President asked in his budget.

Mr. HATCH. Mr. President, will the Senator yield for a question?

Mr. DOMENICI. I am delighted to yield.

Mr. HATCH. I did not get what the Senator was talking about. Who is authorizing this amount of money?

Mr. DOMENICI. I say to my good friend from Utah, under the Budget Impoundment Act, every authorizing committee of the Senate must furnish to the Budget Committee its recommendations for what we should spend in the year we are talking about, fiscal year 1980.

Mr. HATCH. I see.

Mr. DOMENICI. They all go through a formal process of evaluating the American programs under their jurisdiction and they recommend.

I say to my friend, they are all running around the country saying: "We want a balanced budget. We do not want this mechanistic system being recommended. We need to use judgment."

The judgment was used and it asks for between $30 and $40 billion more than the President.

Mr. HATCH. The Senator is saying $59 to $69 billion?

Mr. DOMENICI. In deficits.

Mr. HATCH. In deficits.

Mr. DOMENICI. Asked for by the Senate committees, correct.

Mr. HATCH. Could I ask the Senator one other question?

Mr. DOMENICI. Indeed.

Mr. HATCH. Does this include the off-budget items that are always hidden in Congress and the American people never hear about?

Mr. DOMENICI. I say to my good friend from Utah this $30 to $40 billion, and we will be perfecting it, are just the outlay figures that are shown in the normal budget manner as outlays. If they are off-budget items that we do not put on the budget they are not included in this deficit that I am asking about.

Mr. HATCH. In other words, we could add those to the $60 or $70 billion?

Mr. DOMENICI. Indeed.

Mr. HATCH. I heard, at least according to the distinguished chairman of the Senate Budget Committee, that the off-budget items that are never mentioned, that the American people never hear about, that were not put into the $29 billion deficit lean and austere budget of the President, approximate $12 billion more. So we are talking about, I guess, $72 to $82 billion.

Mr. DOMENICI. Correct.

Mr. HATCH. I apologize to the Senator for interrupting.

Mr. DOMENICI. I make this point to the Senator from Utah and other Senators who will have interest and take some interest in what we are doing and saying here today. I emphasize that these numbers are the recommendations of the authorizing committees. I am not suggesting that the Budget Committee is going to do this. I mean I hope they cut $10 billion out of the President's $29 billion so that it is only $19 billion. The point I am making is that while we are busy as Senators saying we do not want any constitutional approach, we will do it ourselves, yet when it comes to doing it to programs that we have created we recommend more, never less. We are saying spend more, while the American people are crying spend less, and then we do not want a system that will assure a balanced budget, because we say we will do it ourselves.

I came to the Chamber, because I think there is a good lesson to be learned. The evidence is that we will not do it unless it is forced on us.

I was not for any balanced budget forced on us from the outside. I thought we should do it. I still lean that way. But I am growing extremely concerned

as to whether we will have the will to do it with our own special interests, with committees wanting to keep their programs, their projects going, not having the strength to at least come in with recommendations equivalent to the President's so-called lean and austere budget when almost everyone says we can do that and cut some more. But instead of that the committees are recommending $30 to $40 billion more and then, when the committee goes through a month of trying to cut, those very same people will be down here saying: "You didn't cut enough. Why don't you have a balanced budget?" What we will do is ask them where they were when they recommended $30 to $40 billion more than the President.

Mr. HATCH. One of the points I am making is that $30 to $40 billion plus the $29 billion deficit of the President, which is expanded by $5 billion more by the Congressional Budget Office, does not include approximately $12 billion in off-budget items no one mentioned and the American people and taxpayers of this country are deceived by.

Mr. DOMENICI. I hope that we will vote on this Dole-Armstrong amendment. I am a cosponsor of it and pleased to be.

It seems to me that it says clearly and unequivocally that in 1981:

> Budget Committee, you have a mandate from this institution from all 100 Senators; you have a mandate to bring in a balanced budget, and if you do not two-thirds of the Senators are going to have to vote for a budget that is anything more than a balanced budget.

We can have all kinds of technical arguments as to what does a balanced budget mean; can we not go off budget? But the facts are we set a pretty good trend of what the budget is. Following the same principles we know how to get to a balanced one. So what I am assuming this amendment means is, using the same budget authority, same outlay approach, come in with one that shows no deficit. If you want more than that two-thirds you will have to vote on it.

I know that 51 Senators could come up here in a few months with an amendment and destroy that amendment, but at least we will have put on the record a good substantial mechanical way to do it. We will have given the Budget Committee the impetus by mandate of this Congress to do it, and we will provide a way to get around it in the event they want to, and that is for more than a majority voting to get around it.

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

Mr. DOMENICI. Let me make one further point.

Indeed, the final figures may show that the committees have asked for almost $40 billion outlays above the President's number and about $70 billion in authority. That is a deficit of $59 to $69 billion.

I emphasize that these numbers will change slightly. But, it is manifestly clear that if actions speak louder than words, then the authorizing committees are screaming, "spend more," while the American people are crying, "spend less."

I believe that the President's budget should be cut an additional $10 billion, not increased by the $30 billion that the authorizing committees have requested. When the American people realize what the Senate committees have asked for—this enormous increase of 7 percent in the Federal budget on top of a Presidential request of almost an 8-percent increase—I believe the pressure for a constitutional amendment for a balanced budget will increase.

I am not naturally disposed to a mechanistic approach to the budget. But, I must admit that I am shocked by the recommendations of the authorizing committees. In light of these requests, I am going to take a look at whether or not we in Congress will ever really be able to take the pressure that comes with real budget cutting.

Perhaps it may be that the American people, in their innate wisdom, have realized that Congress cannot be trusted to really cut the budget, to show the political courage it takes to stand up to the interest groups whose main aim is to "Get theirs," and the consequences be damned. I hope that we will prove the American people's skepticism misplaced. But, certainly the recommendations of the authorizing committees must give us all pause.

I must also commend the Senate Finance Committee, which alone of the authorizing committees apparently asked for no more than the President's budget, based upon preliminary examination.

I thank my good friend, Senator Helms, for yielding the floor, and it is not with joy that I make this report. It comes at a most opportune time, however, it appears to me, because there was a great deal of discussion as to whether we should be doing what we are doing here in the Chamber, and I think we should. And if there have been arguments that the Budget Committee will take care of it, then I say yes. But why do you not help us? So pass the amendment. It will provide an invaluable tool when we come around to that budget. Should it be balanced in 1981 or not? We can say the Senate told us to, and so I think we should know that it is going to be tough, and we need some help from the institution. When the institution's committees say that a lean and austere budget should be $30 or $40 billion heavier, more severe, add that much more to the expenditures. I think the Senate should know about it. Maybe a few more Senators will vote for the amendment that is pending before us.

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

Mr. DOMENICI. I am pleased to yield.

Mr. ARMSTRONG. Mr. President, I simply wish to take a moment to thank the Senator from New Mexico for his very valuable contribution which is, as he pointed out, most timely.

I am distressed to hear what he has said to us, but it does underscore the importance of adopting the pending amendment.

As one who serves on the Budget Committee with the Senator from New Mexico, I must also congratulate him for the perspicacity and leadership he has shown not only today but on many occasions in the Budget Committee, and if we had a whole Congress full of Members like the Senator from New Mexico perhaps the pending amendment would not be necessary.

But I appreciate his indication of support for the amendment and his cosponsorship and his good words.

Mr. HATCH. Mr. President, will the Senator yield for a comment?

Mr. DOMENICI. I would be pleased to yield.

Mr. HATCH. I am delighted to hear the message of the distinguished Senator from New Mexico. As I understand it, the Senator has just come back from an election where he told his people that he was going to try to stand up for a balanced budget in this society, and try to get inflation under control, and I am pleased to see the Senator from New Mexico, as he has always done, doing everything he can to try to fulfill those obligations.

One of the things I think which really turned out to be one of the best editorials I have seen in recent months is in the Wall Street Journal of Wednesday, March 21, 1979. It is entitled "It's about Time." It says this:

> IT IS ABOUT TIME
>
> President Carter has ordered all federal agencies to include limits on credit programs when they prepare their next budget. At long last there is a glimmering recognition of the ongoing explosion in federal credit programs. Both the Executive and the Congress have long chosen to ignore this problem, which by now is well out of hand.
>
> In the current fiscal year over $159 billion will be advanced to borrowers under federal auspices, including federally guaranteed loans by private lenders and loans by government sponsored agencies. That figure has climbed 30% in the last two years. In the last five years, funds raised under federal auspices have ranged from 25% to 40% of all borrowing in the U.S. economy. The Congressional Budget Office notes that in this fiscal year only $4.3 billion—the net increase in loans outstanding of "on-budget" federal agencies—will show up in the federal budget. The rest of the $159 billion is invisible.
>
> What all this means is that in recent years Washington has secretly commandeered $150 billion of the nation's financial resources, allocating them to its pet projects with barely a nod in the official federal accounts. Even this figure on borrowing, of course, doesn't include all the hidden allocations—untold billions more are commandeered under another cloak, federal regulation. And this enormous impact on the economy comes in addition to the $500 billion spent above-board in the federal budget.
>
> The beauty of all this, from a Washington point of view, is that Congress and the federal bureaucracy can run politically attractive programs without ever having to go directly to the taxpayers for money. The money, along with the federal budget deficit, comes out of the credit markets, where no one notices except enterprises starved for loans or equity capital. And even the pressure here is not overwhelming so long as the Federal Reserve covers the debts through inflation.
>
> Congress has been generous indeed with its credit programs. It has guaranteed the bonds to build a gold-plated Washington, D.C., subway system and has underwritten New York City's notes. It sponsors the Student Loan Marketing Association, which has some $1.3 billion in loans outstanding. It backs the Federal National Mortgage Association, which holds some $42 billion in hous-

ing debt. These are but a few of the government's off-budget credit enterprises.

The CBO, to its credit, can see several problems with all this activity. For one thing, borrowers and lenders alike tend to be less careful about borrowing when Uncle Sam is the guarantor. Student loans, with their high 18% default rates, have been a particular problem but by no means the only one.

There is a broader economic effect in the fact that the government, in allocating credit and setting up political dependencies that are hard to end, reduces the ability of the credit markets to adapt to changing needs. Credit has continued to flow into housing, for example, at times when housing was in surplus but there were major unmet needs in particular for industrial capital. Inefficient use of available capital means that living standards will improve more slowly if at all.

Finally, of course, there is that problem of inflation. The inefficient use of capital increases pressure on the Fed to inflate; but ultimately that only discourages saving and makes the capital squeeze worse.

President Carter's new order is only the first small step toward bringing the problem under control. The credit problem is especially intractable because many of the programs establish entitlements—giving guarantees or other help to anyone who meets certain criteria. The administration wants Congress to cap the process by setting limits on federal lending programs as well as an overall limit on government credit. We are happy to see that Nancy Teeters, a new governor at the Federal Reserve, supports this idea, calling government credit "a major loophole in the federal budget process."

Congress, of course, does not easily surrender powerful tools. But Congress is in trouble with the voters over its failures of stewardship and would do well to ask what it can do to make amends. The only thing wrong with restricting credit allocation is that it is about 10 years overdue.

I thank my dear friend from New Mexico and I applaud his efforts here today.

I hope that my colleagues on the floor will support the distinguished Senators from Kansas and Colorado in this amendment before the Senate.

Mr. HARRY F. BYRD, JR. Mr. President, the Senator from New Mexico, in his comments earlier, mentioned the fact that President Carter had called his new budget a lean and austere budget.

The Senator from Virginia does not regard this new budget as being lean and austere. When Jimmy Carter was a candidate for President in 1976, one of his major campaign planks was that the Federal budget was swollen beyond all reason and that it was vitally important that a balanced budget be achieved.

Now, since that time, including the budget now pending before Congress, Federal spending has increased more than 30 percent. This new budget alone calls for an increase in spending of 9 percent. So I do not call that a lean and austere budget.

How can it be considered lean and austere, when it provides for a 9-percent increase in spending on top of what President Carter himself had called "swollen" Federal spending?

The second comment I wish to make is this: The Senator from New Mexico mentioned the deficit figure as being $29 billion for fiscal 1980, the budget now before Congress.

That figure, of course, is correct on a unified budget basis. When the budget is considered on a unified basis, then the surpluses which exist in the trust funds are used to reduce the Federal budget funds deficit. That is how the figure of $29 billion is arrived at. But there is a substantial surplus in the trust funds, mostly in the civil service retirement fund and in the unemployment insurance fund.

When one disregards the trust funds—and trust funds can be used only for a specific purpose—one finds that the deficit in the Federal funds; namely, for the general operations of Government, is $49 billion. Yes, there is a $49 billion deficit in the Federal funds budget.

Mr. President, I think something of a major nature must be done to bring runaway Federal spending under control.

Mr. President, I ask unanimous consent to have printed in the RECORD three tables which I have had prepared, dealing with unified budget receipts, outlays, and deficits; deficits in Federal funds and interest on the national debt; and a third table showing the national debt in the 20th century.

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

Unified budget receipts, outlays, and surplus or deficit for fiscal years 1958 to 1980, inclusive

(Prepared by Senator HARRY F. BYRD, JR., of Virginia)

[In billions of dollars]

Fiscal year	Receipts	Outlays	Surplus (+) or deficit (−)	Fiscal year	Receipts	Outlays	Surplus (+) or deficit (−)
1958	79.6	82.6	−3.0	1970	193.8	196.6	−2.8
1959	79.2	92.1	−12.1	1971	188.4	211.4	−23.0
1960	92.5	92.2	+.3	1972	208.6	231.9	−23.3
1961	94.4	97.8	−3.4	1973	232.2	247.1	−14.8
1962	99.7	106.8	−7.1	1974	264.9	269.6	−4.7
1963	106.6	111.3	−4.7	1975	281.0	326.2	−45.2
1964	112.7	118.6	−5.9	1976	300.0	366.4	−66.4
1965	116.8	118.4	−1.6	1977	357.8	402.7	−45.0
1966	130.8	134.6	−3.8	1978	402.0	450.8	−48.8
1967	149.5	158.2	−8.7	1979*	448.7	487.5	−38.8
1968	153.7	178.8	−25.1	1980**	502.6	531.6	−29.0
1969	187.8	184.6	+3.2				

*2d Concurrent Congressional Budget Resolution.
**Estimated figure.

Source: Office of Management and Budget.

Deficits in Federal funds and interest on the national debt for fiscal years 1959 to 1980, inclusive

(Prepared by U.S. Senator HARRY F. BYRD, JR., of Virginia)

[In billions of dollars]

Year	Receipts	Outlays	Surplus (+) or deficit (−)	Debt interest [1]	Year	Receipts	Outlays	Surplus (+) or deficit (−)	Debt interest [1]
1959	65.8	77.0	−11.2	7.8	1970	143.2	156.3	−13.1	20.0
1960	75.7	74.9	+0.8	9.5	1971	133.8	163.7	−29.9	21.6
1961	75.2	79.3	−4.1	9.3	1972	148.8	178.1	−29.3	22.5
1962	79.7	86.6	−6.9	9.5	1973	161.4	187.0	−25.6	24.8
1963	83.6	90.1	−6.5	10.3	1974	181.2	199.9	−18.7	30.0
1964	87.2	95.8	−8.6	11.0	1975	187.5	240.1	−52.6	33.5
1965	90.9	94.8	−3.9	11.8	1976	201.1	269.9	−68.8	37.7
1966	101.4	106.5	−5.1	12.6	1977	241.3	295.9	−54.5	41.9
1967	111.8	126.8	−15.0	14.2	1978	270.5	332.0	−61.5	48.7
1968	114.7	143.1	−28.4	15.6	1979 [2]	306.1	361.3	−55.2	59.8
1969	143.3	148.8	−5.5	17.6	1980 [2]	332.8	381.8	−49.0	65.7

[1] Interest on gross Federal debt.
[2] Estimated figures.

SOURCE: Office of Management and Budget.

The National Debt in the Twentieth Century [1]

(Totals at the end of fiscal years; rounded to the nearest billion dollars)

1900	1
1901	1
1902	1
1903	1
1904	1
1905	1
1906	1
1907	1
1908	1
1909	1
1910	1
1911	1
1912	1
1913	1
1914	1
1915	1
1916	1
1917	3
1918	12
1919	25
1920	24
1921	24
1922	23
1923	22
1924	21
1925	21
1926	20
1927	19
1928	18
1929	17
1930	16
1931	17
1932	19
1933	23
1934	27
1935	29
1936	34
1937	36
1938	37
1939	48
1940	51
1941	58
1942	79
1943	143
1944	204
1945	260
1946	271
1947	257
1948	252
1949	253
1950	257
1951	255
1952	259
1953	266
1954	271
1955	274
1956	273
1957	272
1958	280
1959	288
1960	291
1961	293
1962	303
1963	311
1964	317
1965	323
1966	329
1967	341
1968	370
1969	367
1970	383
1971	409
1972	437
1973	468
1974	486
1975	544
1976	632
1977	709
1978	780
1979 [1]	839
1980 [1]	899
1981 [1]	940
1982 [1]	952

[1] Gross Federal debt estimated figures.

SOURCE: Office of Management and Budget.

Mr. HARRY F. BYRD, JR. Mr. President, at this point, acting on the request of the majority leader, I ask unanimous consent that the Senate stand in recess awaiting the call of the Chair.

The PRESIDING OFFICER. Will the Senator withhold that request for a moment?

Mr. HARRY F. BYRD, JR. Yes, I withhold it.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 4355(a), appoints the following Senators to the Board of Visitors to the U.S. Military Academy: the Senator from Louisiana (Mr. JOHNSTON) (Appropriations), the Senator from Nebraska (Mr. EXON) (Armed Services), the Senator from Kansas (Mr. DOLE) (At-Large), and the Senator from Nevada (Mr. LAXALT) (Appropriations).

The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 9355(a), appoints the following Senators to the Board of Visitors to the U.S. Air Force Academy: The Senator from South Carolina (Mr. HOLLINGS) (Appropriations), the Senator from Colorado (Mr. HART) (Armed Services), the Senator from Alaska (Mr. STEVENS) (Appropriations), and the Senator from Arizona (Mr. GOLDWATER) (At-Large).

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. HARRY F. BYRD, JR. Now, Mr. President, I renew my request that the Senate stand in recess awaiting the call of the Chair.

The PRESIDING OFFICER. Without objection, the Senate stands in recess subject to the call of the Chair.

Thereupon, at 3:25 p.m. the Senate took a recess subject to the call of the Chair.

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

EXTENSION OF THE PUBLIC DEBT LIMIT

The Senate continued with the consideration of H.R. 2534.

DEBT LIMIT DISCIPLINE

● Mr. CHURCH. Mr. President, the bill which is being debated today, to raise the Federal debt limit to $830 billion, has become an annual ritual which, in my view, the Senate has taken far too lightly in the past.

Debt limit legislation originates in the House of Representatives. The Senate is always presented with this bill at the last minute. If the Senate does not concur in the House's action to increase the debt ceiling, the Federal Government would be unable to function. It is a "must bill," a cliffhanger over a bottomless abyss.

Senator DOLE has offered an amendment to the debt limit bill this year which would inject a measure of discipline into this process. It would also reinforce congressional restraint in regard to future spending. The Dole amendment would freeze the debt ceiling at its new level, until Congress either achieves a balanced budget or approves of future deficits by a two-thirds vote.

The Federal deficit, Mr. President, is declining. Current estimates indicate that the deficit for the present fiscal year will be less than the $39 billion set by Congress, perhaps even down to half of the $66 billion deficit in the last year of the Ford administration. President Carter's budget for the coming year anticipates a deficit of less than $30 billion, and I believe that Congress should lower it further. Nevertheless, the urgency of balancing the budget is still not being taken seriously enough.

The Dole amendment will focus attention on deficit spending as we take up the appropriation bills later in the session. On this basis, I will vote for it.●

UP AMENDMENT NO. 50

(Subsequently Printed Amendment No. 116)

(Purpose: Substitute for Dole Amendment No. 111)

Mr. LONG. Mr. President, I send an amendment to the desk, on behalf of myself and Messrs. PACKWOOD, MAGNUSON, MUSKIE, ROBERT C. BYRD, CRANSTON, BUMPERS, HART, BENTSEN, STEWART, CHILES, and NELSON.

The PRESIDING OFFICER. Is the Senator asking unanimous consent that the pending amendment be laid aside?

Mr. LONG. This is an amendment to the amendment, Mr. President.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG), for himself and others, proposes an unprinted amendment numbered 50:

In lieu of the language proposed to be inserted by Amendment 111, insert the following:

SEC. 5. Congress shall balance the Federal budget. Pursuant to this mandate, the Budget Committees shall report, by April 15, a Fiscal Year Budget for 1981 that shall be in balance, and also a Fiscal Year Budget for 1982 that shall be in balance, and the Budget Committees shall show the consequences of each budget on each budget function and on the economy, setting forth the effects on revenues, spending, employment, inflation and national security.

Mr. LONG. Mr. President, I share the desire of other Senators who have been discussing the proposal for a balanced budget that the budget should be balanced, and it is my hope that the budget will be and can be balanced for fiscal year 1981.

It is my understanding that Congress already has enacted a proposal which provides that we shall have a balanced budget for 1981. That was the amendment of Mr. HARRY F. BYRD, JR., which was agreed to some time ago.

However, what I object to, and what I believe the majority on this side object to, is the proposal which would provide that in a situation in which, by virtue of war or by virtue of a depression, a recession, or economic conditions, it might be totally and wholly impractical and not in the national interest to have a balanced budget, we nevertheless would

have no choice but to go ahead with it, even though it would clearly be wrong.

It reminds me of the old story they tell along the Mississippi River, about a big flood. The morning after the flood, a man looked out and saw a straw hat moving around on top of the water, and he said, "What's that?"

The lady said, "That's Grandpa."

He said, "Why is that?"

She said, "Grandpa said he was going to mow the grass today, come hell or high water."

[Laughter.]

Mr. President, I can recall when Gerald Ford, an honest and sincere man, was President of the United States and was committed to a balanced budget. I recall that his program to fight inflation played the major role in the fact that the Nation soon found itself in a deep recession that could have been disastrous. It could have led to a depression, perhaps of the depth that occurred during the Hoover administration.

When the economy began to decline precipitously, Mr. Ford called me in and said that he was going to have to ask for a big tax cut because, otherwise, what could happen to the economy from that point forward could be a disaster. I became persuaded that he was right about that. He asked me what I thought about it, and I said:

> Mr. President, the worst thing you could do would be to do what Herbert Hoover did in 1929: While the country was going into its worst depression in this century, when he should have been trying to put more money into circulation and save the people from the disaster that was occurring, the Government, instead, was trying to balance the budget by cutting spending and putting more and more people out of work and adding to the downward spiral. That helped bring about the disaster that put a great country on its knees for many years to come.

Mr. President, that economic mistake is the greatest disservice that was done to the Republican Party in this century. It meant that the people of this country were not willing to trust the Republicans with the executive branch of the Government from 1932 until 1952. That is a long time for a party to stay out of power, because the people felt that the Republicans did not appreciate the fact that there come times when the survival of families—the ability of a family to earn a living—is more important than balancing the budget.

So that if such conditions occur, we should not have it so that just one-third of the Senate or one-third of the House would have a veto over a matter that could mean the survival of the country.

So far as I am concerned, I would like to vote for a balanced budget. This is an amendment to bring that about.

The first order of business, if you want a balanced budget, is to call upon the Budget Committees to bring in a balanced budget. We cannot vote for a balanced budget if we do not have one in front of us. Someone should say: "Which item do you cut? Where do you cut? How do you make the reductions? How do you suggest we go about all this?" That responsibility, under the laws we have passed, is the responsibility of the Budget Committees, so we call upon the Budget Committees, as the first order of business, to submit to us a balanced budget.

We say, "Insofar as it might have some consequences that might be hard to handle, tell us what that would be, and we could take all that into account in voting on it."

Mr. President, to a considerable degree, this amendment was inspired by a suggestion by the Senator from Oregon (Mr. PACKWOOD). Mr. PACKWOOD has an amendment that says something to the effect that the President of the United States shall submit to us two budgets if he wants to recommend an unbalanced budget. If he wants to recommend a budget that is not in balance, he should also submit one that is in balance, so that we would have the choice and vote for the one he is recommending or vote for the one he says he would be recommending if he had to submit a balanced budget.

It was in large measure because I observed the logic of that approach that I thought we should say that they should submit a balanced budget. Then, if someone thinks we should not have a balanced budget, including those on the Budget Committee, they can make recommendations to the contrary. They could say that to do this would not be in the Nation's interest, that we should do something else.

I hope that those on the Budget Committee, who have the jurisdiction and the duty to bring us a recommendation, will bring us, in good faith, their recommendation of what they think a balanced budget should be, and we could work from there.

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

Mr. LONG. I yield.

Mr. PACKWOOD. I appreciate the compliment of the Senator from Louisiana.

In reading the Senator's amendment, I want to make sure we are talking about the same thing. The Senator does not mean that by April 15 of this year, the Budget Committee shall present a balanced budget for fiscal year 1981 and for fiscal year 1982?

Mr. LONG. That is what I do mean.

Mr. PACKWOOD. This year?

Mr. LONG. Yes.

Mr. PACKWOOD. Then, is there anything binding on the Budget Committee, next year, when they present their concurrent resolution to April 15, 1980, for the fiscal year 1981 budget, that that budget be in balance?

Mr. LONG. It is my intention that they must recommend to us a balanced budget for fiscal years 1981 and 1982.

Mr. PACKWOOD. In the concurrent resolution, the first concurrent resolution that is presented to Congress, by April 15, 1980?

Mr. LONG. We want them to submit, by April 15 of this year, a balanced budget for 1981, as well as their recommendation for a balanced budget for 1982.

Mr. PACKWOOD. The Budget Committee, as I understand it, is planning to submit some out-year projections and out-year budget projections. However, the important part of the Senator's amendment, I thought, was that the Budget Committee, when it presented its concurrent resolution for fiscal year 1981, by April 15, 1980, would present a balanced budget.

That is a different thing from the Budget Committee by April 15 of this year presenting their outyear budget projection for fiscal year 1981.

What they present us on April 15 of this year is not what binds this Congress for fiscal year 1981. It is their suggestion. It is their hope. It is their prayer for what happens in 1981. But what binds this Congress in fiscal year 1981 is the first and then the second concurrent resolution presented in 1980. And if that is not what this resolution means, it is what I thought it meant and, if it is not what it means, then I have some misgivings about just asking the Budget Committee to present us a hope by April 15 of this year as to what we might do to balance the budget a year and a half hence.

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

Mr. LONG. Mr. President, let me say to the Senator from Oregon that my intention is the same as his intention. I want the budget committee to recommend to us a balanced budget and one that we can vote for. I completely respect the right of that committee and anyone else and every member on it, just as I respect the right of every Senator to offer an amendment or offer a substitute, and I respect the right of everyone to offer an alternative to it, to say no, we should not have a balanced budget, we should to thus-and-so.

But my intention is, as the Senator's intention, to require that they submit a balanced budget to us so that we can act on a balanced budget.

Mr. PACKWOOD. Then I think perhaps the amendment should read this way, bearing in mind the Budget Committee now has the power to submit a balanced budget for 1982, but it is not binding. Perhaps the amendment should read:

> By April 15, 1980, a fiscal year budget for 1981 that shall be in balance and by April 15, 1981, a fiscal year budget for 1982 that shall be in balance.

That is the concurrent resolution that they submit to us.

Mr. LONG. Mr. President, before we vote on the amendment——

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

Mr. LONG. In a moment.

Mr. DOLE. We may not do it today.

Mr. LONG. Before we vote on the amendment, unless the Senator from Maine (Mr. MUSKIE) has arrived on the scene prior to that time, I will suggest the absence of a quorum and explore his views to see if he agrees with me and if he agrees with the Senator from Oregon about this matter.

I say that, because I have discussed this matter with the Senator from Oregon, with the Senator from Maine, as well as the Senator from West Virginia, and others.

Let me say that after I discussed this subject with the Senator from Oregon, I discussed it with the majority leader (Mr. ROBERT C. BYRD), and he appointed on our side of the aisle an ad hoc committee to talk about this matter. That included Mr. MUSKIE, Mr. MAGNUSON, Mr. CRANSTON, Mr. BUMPERS, Mr. HART, Mr. BENTSEN, Mr. STEWART, Mr. CHILES, Mr. NELSON, and Mr. NUNN.

And these Senators, discussing this matter, felt that we should have a balanced budget and we should have the opportunity to vote for the balanced budget and at the same time any Senator and the Budget Committee itself, if it wanted to, having reported out a balanced budget, could also report an alternative budget and say that they would urge that we vote for the alternative budget instead.

Mr. PACKWOOD. Was it the understanding of the Senator from Louisiana and the group to which he alluded that the budget the Budget Committee reports out is to be balanced? Will the concurrent resolution that they send out, and that will be the resolution from which we work, contain a balanced budget?

There is some very good language in here about the Budget Committee shall present what the effects will be on revenues, spending, employment, inflation, and national security of a balanced budget. At the same time the Budget Committee can send out an alternative unbalanced budget, and they can say, "Look, if you want to balance the budget that means cutting $8.5 billion from defense, $3 billion from social security, $2 billion from health, and $2.5 billion from education, but that will balance the budget." At least it will be the budget that we work from. It will be the concurrent resolution.

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

Mr. LONG. I hope the Senator from Maine has heard enough of the debate to know what we are discussing here. I wish to let him state his view of this matter. Otherwise, he can reserve judgment and we will come back to him.

Mr. MUSKIE. I am ready, but the Senator from Virginia (Mr. HARRY F. BYRD, JR.) has been seeking recognition.

Mr. HARRY F. BYRD, JR. I have been seeking recognition.

Mr. MUSKIE. He is before me, and I have no objection to yielding.

Mr. LONG. Then I yield to the Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, the Senator from Oregon points out that this amendment, as it stands, is completely ineffective.

Can the Budget Committee or any other committee make a reasonable logical estimate today of the revenues and expenditures for fiscal 1981 and 1982?

Mr. PACKWOOD. Two and a half years.

Mr. HARRY F. BYRD, JR. Two and a half years hence? Why, the Office of Management and Budget and the Treasury Department cannot even make it on an annual basis. Yet, this would be asking them to look ahead 2½ years. It is just totally ineffective because what the Budget Committee submits this year dealing with the outyears would not even require a binding vote.

The other aspect of the proposal is this: I think we should understand what the law requires today. What is the law today? Here is what the law says:

> Beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.

That is the law now. That became law on October 10, 1978.

That amendment was passed by the Senate by a vote of 58 to 28 on the 31st day of July 1978. Then the Senate appointed conferees. Every conferee, except one, was opposed to that amendment and had voted against that amendment.

But a funny thing happened on the way to the House of Representatives. What did the House do? It took a very unusual action. The House instructed its conferees to support in conference the Byrd amendment which had been passed by the Senate of the United States. So the Senate conferees, although opposed to the Byrd amendment, were locked in and the amendment was locked in.

Then when it went to the President of the United States he signed it on October 10, 1978. That is the law now. The basic part of this amendment which has been proposed is already the law.

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

Mr. HARRY F. BYRD, JR. Yes.

Mr. PACKWOOD. It is the law, but I was interested in the exchange that the Senator from Virginia had with Mr. McIntyre some time ago about whether or not the President was going to, indeed, submit a balanced budget or whether they were going to seek to amend or change the law.

Mr. HARRY F. BYRD, JR. I do not want to interrupt the Senator at that point but, if I may, I think they would need to wait a little longer, according to what Mr. McIntyre said. They would have to wait a little longer so they could get a little clearer picture as to what the revenues and expenditures would be, which emphasizes that they cannot even look ahead to the next 9 months when the fiscal 1981 budget will be submitted. It would be much more difficult, of course, to look ahead 30 months, as the new proposal would require.

Mr. PACKWOOD. It is interesting though, after the Senator's discussion with Mr. McIntyre, I made some inquiries as to how the administration regards the law. It says:

> Your amendment is beginning with fiscal year 1981. The total budget outlays of the Federal Government shall not exceed its receipts.

That does not require the President to submit a balanced budget. He can submit a budget that is $40 billion in deficit.

Mr. HARRY F. BYRD, JR. This pending proposal does not require the President to submit a balanced budget.

Mr. PACKWOOD. I agree. I do not think, however, that Senator LONG intended to do what I am afraid this does. I think he intended it for the Budget Committee—it does not do it.

Mr. HARRY F. BYRD, JR. I am just judging the Long proposal by what the legislation actually says.

Mr. PACKWOOD. Here is what we are up against if we adopt it as it is written. The President does not have to submit a balanced budget. All the law says is that we shall have one. That is up to Congress.

Mr. HARRY F. BYRD, JR. That is right.

Mr. PACKWOOD. He can submit one which is $40 billion out of whack. It should be announced, and it should state, that it will require the President to submit an alternative balanced budget. But unless we change the date that the Senator from Louisiana suggests, we are right where the Senator from Virginia says. It is a pious thing. It is a hope, it is a message. It is something that the Budget Committee will recommend ahead of the fiscal year, in effect.

Mr. HARRY F. BYRD, JR. It is worse than being a hope and a pious thing. It would be misleading to Congress and to the country because there is no way that they can sit here today and work up a reliable budget for 2½ years hence. This budget year is half over but the President is still submitting changes in key figures.

Mr. PACKWOOD. We can make the best estimate possible. I have just gone on the Budget Committee, and I think in fairness we ought to make the best estimate possible for 2, 3, or 5 years ahead. But, most important, if we change slightly the date in this amendment so that indeed it says, "The concurrent resolution that the Budget Committee presents to this Congress by April 15, 1980, for the budget for fiscal year 1981 shall be a balanced budget," that is a very important step.

Then if the Budget Committee wants to say the effects of that are terrible and cataclysmic and we are going to lose a war to the Russians or that social security is going to be cut, if we do, then that is a choice Congress can make, given those alternatives. But this amendment as written does not do that.

Mr. HARRY F. BYRD, JR. You are quite right. It does not do that at all. As I say, the law today states—and let me read it once more, it is only 18 words—

> Beginning with fiscal year 1981 the total budget outlays of the Federal Government shall not exceed its receipts.

That is the law today. The proposed new legislation is not stronger than that. So the proposed amendment by the Senator from Louisiana adds nothing to what is already present law yet it would displace a proposal by the Senator from Kansas (Mr. DOLE), which seeks to force some fiscal discipline on the Congress.

Mr. DOLE. Mr. President, will the Senator from Virginia yield?

Mr. HARRY F. BYRD, JR. Yes.

Mr. DOLE. I concur with the Senator from Virginia. This is a hoax. It is supposed to tell the American people that Congress will balance the Federal budget.

There is a great demand by the American people that we balance the budget. However, there are some who might be fooled by this language. Congress can get

off the hook. We can all put out a newsletter and quote this section as indicating that we are going to balance the Federal budget.

I might suggest there never were any Republicans contacted about trying to work out this compromise. We were told about it after the fact. It seems to this Senator that if we want to try to approach this in the right way we might be able to work out some amendment that has some substance. I certainly share the view expressed by the distinguished Senator from Virginia which is that this compromise does not do anything.

We could do this now. The Budget Committee can bring this over, right now. I know they have a very able staff. They have got the figures. They can make the projections. Why wait until April 15? We could do it tonight.

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

Mr. DOLE. I do not have the floor.

Mr. MUSKIE. The Senator has been a member of the Budget Committee and has been through the markup sessions, which have not even begun. We have 20 Members today, including 10 new ones. To suggest to Senators that we could tonight produce——

Mr. DOLE. Well, by tomorrow.

Mr. MUSKIE (continuing). A budget resolution for the Senate's consideration is as unrealistic as to suggest that I can fly around the moon.

Of course, we have able staff. But what the Senator is asking us to do, if you adopt this proposal, is something different from what we would be likely to do, insofar as I can try to predict with the behavior of 20 unpredictable members of the Budget Committee, is going to be different, and it is going to be hard to do in the time frame.

The Senator may not be aware, but we have modified the proxy rule in the Budget Committee, and that is going to create an attendance problem for the upcoming markup.

We have got to do all of this between April 1 and April 15. I am perfectly prepared to try, if that is the Senate's wish, and I think we can present by April 15, but not long before, a budget resolution which indicates what you have to do to achieve a balance by fiscal year 1982, and an alternative one—the phrase used by Senator PACKWOOD, as I understand it—which will show what we have to do to get a balance by 1981. The Senate will then be in position to vote on which of those it prefers.

Now, as I came into the Chamber, I understood Senator PACKWOOD to be raising the following questions: Would you not have the same procedure for next year? Certainly, we could have the same procedure next year. As a matter of fact, I think there is something to be gained by focusing the country's attention hopefully, but at least the Senate's attention, on the consequences of the two budget approaches, and there may even be three budget approaches.

I am for anything that contributes to a gradually stiffening discipline in the budget process. That is what I think the Senator from Oregon had in mind, and, I think, that is what the committee had in mind.

It is true, as Senator DOLE has suggested, that this sort of ad hoc group was developed on our side of the aisle. But as soon as we thought we had something that made sense, the next instinct of that group was to see if we could get some support on your side of the aisle. I wish that it had happened simultaneously, but it did not.

In any case, this is a product of several hours of concentrated attention, and I would commend it to my colleagues. I do not know whether it can sell, but I commend it as a sound approach to the problem. It is a commitment.

You cannot pass the 1981 first resolution this year, but you can adopt in principle a budget for 1980 that is consistent with a balanced budget in 1981 and commit yourself to some figures for 1981.

The Senate can then change its mind about it next year or economic conditions next year might by their nature change, but it would be a commitment insofar as you can make a commitment for the future.

Several Senators addressed the Chair.

Mr. LONG. Mr. President, I believe I have the floor.

The PRESIDING OFFICER (Mr. STEWART). The Senator from Louisiana has the floor.

Mr. LONG. Mr. President, permit me to say I have discussed this matter with the Senator from Kansas (Mr. DOLE) and I have discussed it with him more times than once today, and I discussed this precise language before I even offered the amendment.

I want to also say, Mr. President, that in discussions I have had with the Senator he has impressed me as being most fair, most reasonable, most considerate of any suggestions someone had to offer. The Senator has never impressed me for a moment as being ironclad or locked in on any particular word or phrase or language that appears in his amendment or in what we have here.

I have explained to him the problems as I saw them that would be involved, from this side of the aisle, in agreeing to the kind of thing that he would like to do, and I have tried to explain to him what some of the problems might be in reaching a meeting of the minds on doing something effective.

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

Mr. LONG. I want to do something effective about this. Yes, I yield to the Senator.

Mr. DOLE. I want to make clear, that while the Senator and I did discuss the debt limit matter earlier today, we did not discuss this specific amendment earlier today. About 3:30 p.m., we first saw this amendment. Maybe I misunderstood, but I was under the impression that I would be given an opportunity to meet with some Senators on this side about this substitute amendment. However, at 4 o'clock, I found the Senate was considering the substitute amendment language. Thus, there was no meeting of the minds on the substitute amendment. It was presented to us as a take it or leave it proposition.

I do not want to quarrel with the distinguished Senator from Louisiana. All I am saying is that we were not part of the meeting that drew up the substitute language. I am not suggesting we have all the answers. Now, however, you have one Republican's support.

Mr. LONG. I would hope, Mr. President, that we would have a lot of Republican support. May I say, from my point of view, the genesis of what we have here was the Packwood amendment, to begin with. It was the Senator from Oregon (Mr. PACKWOOD) who suggested that the President ought to submit two budgets, that if he wants to submit one that is not going to be balanced, he ought to submit one that is balanced as well, explaining how he, the President, would go about balancing the budget if he were compelled to do so.

In the discussions we have had about this matter, the name of Senator PACKWOOD has been mentioned many times, that he had a very thoughtful suggestion and that we ought to consider asking the committee to report in the alternative, as well as even asking the President to report in the alternative.

This does not refer to an alternative budget, but implicit in it is that when the committee reports out a balanced budget, if it, for any reason, in its conscience feels there are reasons why we should not do that, it has the privilege to report out something different as well, and it would give us the option to vote for whichever one we want.

I would think, Mr. President, that what we are talking about here could lead to the type of situation where the Budget Committee on one side, the House side, would recommend that we balance the budget one way, and the Budget Committee on the Senate side would recommend that we balance the budget in a different way, and any Senator who might like some of the recommendations on the House side and some of the recommendations on the Senate side could put together his own package and suggest his own proposal as to how the budget should be balanced. In the end, we would have to decide, do we want a balanced budget or do we not want one?

I would think our committee would recommend a package of how we would do it if we had to balance it, and the Senate would recommend a package on how it would do it if it had to balance the budget.

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

Mr. LONG. I yield.

Mr. PACKWOOD. I think there is great merit in the argument Senator MUSKIE is making, because there are two types of opinion in this Congress. One view says that once we are given the direction to balance the budget, we will do it right away. The other says that even though we have been given the direction to balance the budget, we will not do it.

I think it would be salutary for both views to consider the options and weigh the consequences.

I think it would be fair to ask the

chairman of the committee, did you read the amendment Senator LONG has submitted for the Budget Committee, in its concurrent resolution next year, to submit a balanced budget?

Mr. MUSKIE. I have read it. I see no reason not to make it applicable in the future.

Mr. PACKWOOD. The reason why I think it should be nailed down more specifically, for the Budget Committee to say, as of April 15 this year, "We think this may be how the budget ought to be balanced," if there is no compulsion that next year the budget will be balanced, this could be a charade to avoid balancing the budget next year. I do not think there is any intention of doing that, but there is a feeling that that is something that might happen.

Mr. MUSKIE. Mr. President, let me say that what we would present is a full budget for 1980, a full budget for 1981, and a full budget for 1982 by April 15 of this year. Then, with respect to the 1981 balanced budget target, we would present a full budget for 1980 and a full budget for 1981, because the 1980 budget would be different in the two cases.

In other words, if you are moving for a 1982 balance, the 1980 budget can be relaxed or less austere than if you are moving for a 1981 balance.

So when you adopt this year's budget with either of these scenarios, you are making a commitment this year to a balanced budget in either 1982 or 1981. So this year's program will not be meaningless; it will be meaningful next year, if you have the same procedure.

I have no objection to writing it in here. We may find, after 1 year's experience, that that is a pretty rigid procedure, but, be that as it may, I have no objection to adopting the procedures suggested.

Mr. PACKWOOD. If the Senator will yield, I think it is very important that there be written into it a requirement that the first concurrent resolution next year be for a balanced budget. I think there is good prospect that we could do it by April 15 of this year for a year and a half away, stating what we think our revenues might be and what our expenditures might be. We know that if a year from now we are going to be able to present a concurrent resolution that is not balanced, there are some who sort of feel, "Well, they are not going to do it." I think we ought to put in here a requirement for a balanced budget, so that we will be working from a concurrent resolution, at the start, that is balanced.

Mr. MUSKIE. As a matter of fact, may I say to the Senator, not only will we have to do it this spring, but this fall, because otherwise, you know, we will not have completed what we began in the spring.

So I am perfectly agreeable that appropriate language be added.

Mr. DECONCINI. Mr. President, will the Senator yield for a question?

Mr. LONG. One moment.

While we have been discussing this matter, I asked our staff to prepare language to cover the point made by the Senator from Oregon (Mr. PACKWOOD). I have the language prepared, and I would invite any Senator to take a look at it and see if it carries out what they had in mind. If someone finds something wrong with it, he can let me know, but in due course I plan to modify the amendment to do what the Senator suggests.

This accomplishes what I had in mind. I know how suspicious Senators can be; I have been that way myself sometimes. But I would certainly want, in good faith, everyone to understand that what we are trying to do here is have the Budget Committee recommend a balanced budget for fiscal year 1981 and a balanced budget for fiscal year 1982, and then to allow everybody to take a look at these budgets. If anyone has some doubts about it, talk about them. And there will be people outside Congress who will be concerned about it; let them all make themselves heard, and then if the people say, "No, you must not balance the budget," then by the time we get through with it, the concerned people, many of whom want a balanced budget now, when they look at what that will amount to, will say, "Oh, my goodness, that will break the country." Give them a chance to be heard; for all we know they might be right. If we are doing the wrong thing for the country, by the time we get through, they might come around to that point of view.

I yield to the Senator from Arizona.

Mr. DOMENICI. Mr. President, I have a point for the Senator from Maine. You said you would have to report out a balanced budget now, but you would not have to do that by this amendment, would you? It only says April 15.

Mr. MUSKIE. What we would have to do in September is to follow through on whatever decision the Senate and Congress would reach with respect to the choice presented to them in spring.

Mr. DECONCINI. But would Congress only make a choice on the 1980 budget and not be making a choice on the 1981 budget?

Mr. MUSKIE. No. I want to make that clear. Let us take the 1981 target. We will report out with respect to that option in the 1980 budget and a full 1981 budget. Last year we put 5-year budget projections in the report. This year we will put 1980 and 1981, with a balance in 1981.

Mr. DECONCINI. Can the Senate in this Congress bind 1981 now?

Mr. MUSKIE. Well, it can pass any law now and repeal it next year.

Mr. DECONCINI. That is right. It could be repealed next year.

Mr. MUSKIE. That is correct.

Mr. DECONCINI. So this really has no binding effect except it is the sense of the Senate at the time.

Mr. MUSKIE. It has the same effect any of the pending amendments would have. Congress could change its mind about those next year.

Mr. DECONCINI. But the amendment of the Senator from Kansas, as I understand it, is a little different. It goes a little further than that.

Mr. MUSKIE. In what sense?

Mr. DECONCINI. Well, it set forth a surtax if the budget is not balanced.

Mr. MUSKIE. What is to prevent the Congress from repealing that?

Mr. DECONCINI. It would take an affirmative act to repeal that or we will have a surtax or a balanced budget.

Mr. MUSKIE. This would take an affirmative act.

Mr. DECONCINI. All we would have to do is just take the concurrent resolution and change it. It would be a lot easier than changing the surtax that would be placed on it.

Mr. MUSKIE. But we still have to have action by each House, agreement by each House.

Mr. DECONCINI. Would the Senator from Maine agree that the proposal where a surtax would be imposed, where a balanced budget did not exist, it would be much more difficult to overcome than the concurrent resolution as passed in 1979 for 1981?

Mr. MUSKIE. It depends upon the state of the economy. I would expect if the economy is deteriorating, if we have 11 percent unemployment, the climate in this Chamber could change drastically. Is the Senator saying that somehow we should find a way to tie the hands of future Congresses to act on such matters?

Mr. DECONCINI. No. This Senator is saying that what we should do is tell the American public we want a law today that is going to bind the Senate in 1980 and 1981 for a balanced budget.

Mr. MUSKIE. Irrespective of the consequences?

Mr. DECONCINI. At that time, certainly, this body could elect to change it. But we should not hold up this amendment and tell the public that this is balancing the budget for 1981, because it is not.

Mr. MUSKIE. Let me say to the Senator that the Senator's surtax amendment is absolutely no guarantee, absolutely none, that we will have a balanced budget in 1981. As a matter of fact, if that surtax should hit at a point when we are in a recession, it could deepen the recession; it could reduce revenues—Herbert Hoover tried this in 1931; it could raise the social cost of income support programs; and we would end up with a worse deficit, not less.

Mr. DECONCINI. Right. And if the Senator would agree——

Mr. MUSKIE. The Senator would want to tie our hands today so we could not meet that emergency.

Mr. DECONCINI. That is not correct. If the Senator will yield, the amendment No. 113 would permit overriding that by a two-thirds vote, which would indicate that it is so severe that it is a national emergency, and not just to continue spending with deficit dollars.

Mr. MUSKIE. I have a different view than the Senator about when we should deal with a national emergency. Should we deal with it when we first perceive it, or should we deal with it after the roof has fallen in?

For over 21 years I have seen the difficulty in this body in getting a two-thirds vote for anything. As a matter of fact, the cloture vote has been reduced from two-thirds to three-fifths because of the difficulty of getting a two-thirds vote. So what the Senator would put in the hands of a minority of one-third is the absolute veto power over economic policy

with which it disagreed, a policy designed to meet the onslaught of a depression.

(Mr. EXON assumed the chair.)

Mr. DOLE. Will the Senator yield?

Mr. MUSKIE. If that is the kind of rigid, fixed, imprisoning kind of policy the Senator wants written into law, it is his privilege to support it, I do not. But when the Senator seeks to support his proposal by suggesting that this proposed alternative has no binding effect, then I challenge him.

It has a binding effect unless, when Senators vote for balanced budgets, they are just voting headlines back home. I would assume that when a Senator votes for this amendment for a balanced budget in 1981 that either he means it or he does not mean it. If all he is doing is finding a convenient occasion to say to the people back home, "I am for balanced budgets in 1981," a vote as to which he has mental reservations that he intends to implement a year from now, then I cannot see that any vote the Senate takes amounts to anything.

This proposal, if the Senators' words and votes mean anything, if it results in the approval of a 1981 balanced budget late in April when we act on the first concurrent resolution for 1980. I would assume that the Senators who vote for it mean what they are saying. If they mean what they are saying, they are going to have to vote for the same thing in September. If they mean what they are saying then, they are going to have to vote the same way the following April. And if they do not, they are going to be held accountable.

What the Senator wants, apparently, is to write this matter into the Constitution, or something like that, so that the one-third minority hereafter—whatever the exigencies of the country's economic environment, whatever national security needs may be, whatever economic conditions may be—would have an absolute veto power over economic policy.

I am not ready to tie up this Congress in those kinds of handcuffs. The Senator may be, and he has made his point very clear. That is his prerogative.

With respect to this description of this amendment, he is completely in error.

Mr. DECONCINI. It appears to me that the amendment at the desk now by the Senator from Louisiana does not bind anyone to anything. It only says the Budget Committee shall report by April 15 a fiscal year budget for 1980 and 1981. There is no vote; there is no affirmative action whatsoever. The original amendment of the Senator from Kansas, amendment 113, which is at the desk, has affirmative action now. That is what this commitment ought to be. As the Senator from Maine says, if we vote for this we should live by it and not be afraid to do just that.

Mr. MUSKIE. The Senator now reduces himself to 6 weeks.

The Senator from Arizona would like to vote before he knows the consequences of each budget on each budget function and on the economy, setting forth the effects on revenues, spending, employment, inflation and national security. He does not want to know those facts even though it only takes 6 weeks to get them before he votes.

This amendment requires that the Senate vote on the first budget resolution.

Mr. DECONCINI. Where does it require that the Senate vote?

Mr. MUSKIE. The Budget Reform Act requires that the first concurrent resolution be adopted by May 15.

Mr. DECONCINI. For 1981?

Mr. MUSKIE. The Senator's amendment does not adopt a budget for 1981. This does not adopt a budget for 1981.

Mr. DECONCINI. That is my point.

Mr. MUSKIE. But it commits us, as of this moment, to a specific budget for 1981, or will in April, which we would then have to repudiate in order to vote differently a year later. Is the Senator not willing to put himself on the line after the consequences are understood? It is easy to be for a balanced budget when you do not know whether that would reduce social security benefits, whether it would reduce veterans' benefits, whether it would require a tax increase in order to avoid those two results, whether it would require a reduction in health benefits or education benefits.

It is easy to vote for a balanced budget, as the polls tell us. The polls tell us that 70 percent of the American people are for a constitutional amendment to balance the budget; but then, when you get down through the elements of the budget and ask the same voters, are you for taking a substantial cut in social security to get that balance, 70 percent say, "No." When you go through national defense, education, health, all the major elements of the budget, the American people say, "No." So they want both a balanced budget and all of these goodies, favorite programs and the Senator does not want them to know, when he votes for a balanced budget, that their favorite programs might be in danger.

What this amendment says is that by April—6 weeks from now—we will then vote on whether we are for a balanced budget in 1981, after we know the consequences of that action. That kind of vote, taken 6 weeks from now, takes more courage than just a general vote for a balanced budget today, before we know what the consequences are going to be. That is what the game is all about.

Mr. DECONCINI. If the Senator will yield, that is not what this says. Nobody can kid himself in this body.

Mr. MUSKIE. I am not in the habit of kidding myself.

Mr. LONG. Mr. President, I ask unanimous consent to modify my amendment, after the words, "April 15," on the second line, to insert the figure, "1979," and on the fourth line, at the end thereof, after the word "balance,", insert the words "and by April 15, 1980, a fiscal year budget for 1981, that shall be in balance, and by April 15, 1981, a fiscal year budget for 1982 that shall be in balance;".

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

The amendment is so modified.

The amendment, as modified is as follows:

SEC. 5. Congress shall balance the Federal budget. Pursuant to this mandate, the Budget Committees shall report, by April 15, 1979, a Fiscal Year Budget for 1981 that shall be in balance and also a Fiscal Year Budget for 1982 that shall be in balance, and by April 15, 1980, a Fiscal Year Budget for 1981 that shall be in balance, and by April 15, 1981, a Fiscal Year Budget for 1982 that shall be in balance; and the Budget Committees shall show the consequences of each budget on each budget function and on the economy, setting forth the effects on revenues, spending, employment, inflation and national security.

Mr. LONG. Along the line of what the Senator from Maine is saying, I am amused to tell what happened last year on the tax bill. Some of our friends proceeded to vote for first one tax cut and next another, until, by the time they got through fattening up the tax cut, you could not comply with the budget resolution and take out the tax increase that was implicit in repealing the deduction for the State gasoline taxes. When the motion was made to strike that out of the bill, the Senator from Maine made the point of order that we could not do that, because at that point, the bill would violate the budget resolution. One would have thought that we were Jesse James and his brother, Frank, in here robbing the Senate of the United States of all its rights, because the budget resolution said that you could not consider an amendment that would break the budget.

After the Senators had enjoyed the fun of voting for all the billions of dollars of goodies to add to the bill, they then felt that they were being imposed upon, because some of the tax increases in the bill that made it possible to have all these tax cuts could not then be taken out.

Compare the furor that we heard from the Republican side of the aisle on that occasion, when Mr. HELMS made the motion, and when the Republican whip would have led one to believe that we were absolutely taking away the rights of all Americans, committing an act of tyranny to what will happen when we are going to have to vote for a balanced budget no matter whom we have to ask to pay increased taxes; that we are going to vote for a balanced budget no matter what poor people have to suffer, however many of them there are or however aged they may be, or how disastrous their plight may be; that we are going to vote for a balanced budget even though it means that the country cannot be defended and that any time the Communists want to take us over, all they have to do is come and take us with a minimum of resistance.

The amendment offered by the Senator from Kansas proposes to say, "Fine." They want to lock it in by requiring a two-thirds majority to pass a budget. Even if the Senate, by a unanimous vote, wants to change it, and over on the House side, a majority wants to concur with what the Senate did, we could not have an unbalanced budget because there may be some timid souls over there who think that, in the minds of their constituents, balancing the budget is so sacred that they dare not do what the national interest requires. One-third on the other side could prevent the major-

ity of both Houses from providing for the safety of the Nation or avoiding a mistake that would do grievous injury, that would make one want to cry, involving the fate of 20 or 30 million unfortunate Americans.

I should think, Mr. President, that if anybody wants to balance a budget, he would want somebody to bring him a concrete proposal he could vote for. I should hope, Mr. President, that as a result of this, we would see what the Budget Committee in good conscience would recommend to us; to say, well, if you are going to balance this budget, you are going to have to cut out a lot of things some people will not like. I have been telling some of the people now, "I am not going to vote to take away your burial allowance; I am not going to vote to take away that money to bury grandmother." But that is nothing compared to what we will have to do to balance the budget, if I hear the Senator from Maine, the chairman of the Budget Committee, correctly.

We will have to do some things that we are reluctant to do. It is a lot easier to say, "I am for balancing the budget; we are going to balance it unless a two-thirds majority says, do not balance it." Why not say, "We will balance it unless a unanimous vote agrees that we will not balance it"? It would involve similar logic.

This is a good-faith proposal, that the committee would do what I hope it would do. I point out that the Senator from Kansas (Mr. DOLE) is a member of that committee. I hope that he and others on that committee will, in good faith, tell us how they think this budget ought to be balanced and give us their best judgment as to how it can be done.

I hope I can support it. To set the stage, I shall hold the amendment in good faith. I want to vote for a balanced budget. I hope it can be done in a way that does not do grievous injury to anybody. If you want a balanced budget, show us how to balance it.

I yield to the Senator from Kansas.

Mr. DOLE. Will we have an opportunity on our own to discuss the Senator's amendment?

Mr. MUSKIE. Mr. President, I ask unanimous consent to add the ranking member of the Budget Committee (Mr. BELLMON), who has had a chance to study this amendment, as a cosponsor. He wanted to indicate that the Budget Committee leadership is united behind this amendment.

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

Mr. LONG. I ask unanimous consent that the Senator from Georgia (Mr. NUNN) be added.

Mr. FORD. Mr. President, I ask unanimous consent that I may be added as a cosponsor.

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

Mr. LONG. I am prepared to yield the floor, Mr. President.

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

Mr. DOLE. Mr. President, I have been listening to the debate on the balanced budget here today and I certainly have total respect for all those who have addressed the issue. But I would like to turn to the specific issue before us, the amendment that I proposed yesterday. As the distinguished Senator from Arizona just pointed out, this amendment provides that, beginning with fiscal year 1981, there may be no more statutory debt limit increases beyond the May 1, 1980, level unless the second concurrent resolution on the budget provides for a balanced or surplus budget or more than two-thirds of the House and Senate agree to a resolution which projects a deficit.

The amendment does not address the question whether there ought to be any additional increases in the debt limit for fiscal year 1980. It increases and extends the combined temporary and permanent debt at the same level provided in H.R. 2534, $830 billion, which will cover our debt needs through the end of fiscal year 1979.

It implements the so-called Byrd amendment, which the distinguished Senator from Virginia discussed earlier. The Byrd amendment, which passed last year, as part of Public Law 95-435, provided that Congress shall balance the budget by fiscal 1981.

The Dole-Armstrong amendment implements the administration's projection that we will have a balanced budget by fiscal year 1981. That projection is contained in the March 1979 OMB update of the President's budget. In that document, OMB projects a $3 million surplus for 1981.

The amendment would permit a deficit in the event of extraordinary circumstances.

The amendment also allows sufficient time for the administration and the Congress to plan for the difficult choices a balanced budget will impose.

The Dole-Armstrong amendment further permits debt limit increases after the budget is balanced. This is necessary because even with a balanced budget the public debt is still raised by off-budget items.

If we look at the House action on an amendment quite similar to the Dole-Armstrong amendment, I think one would find a very close vote on the matter. I did not look at the rollcall vote, but I understand there was bipartisan support for the amendment.

I certainly wanted and still want to cooperate in trying to find some solution to a very difficult problem.

I assume we will have 50 votes on balanced budgets in this year. This is only the first.

Perhaps if the two-thirds vote is too restrictive, we could change it to three-fifths.

Mr. President, at the appropriate time, I will offer a perfecting amendment to the Dole amendment which would change the levels to three-fifths. The perfecting amendment would also include the Long amendment, then we could have both amendments before us.

UP AMENDMENT NO. 51

(Subsequently printed amendment No. 117)

Mr. DOLE. Mr. President, I send that amendment to the desk.

The PRESIDING OFFICER. The amendment to the Dole amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 51.

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

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

The amendment is as follows:

At the appropriate place in the amendment strike "two-thirds" and insert in lieu "three-fifths" and insert at the appropriate place the following:

SEC. 5. Congress shall balance the Federal budget. Pursuant to this mandate, the Budget Committees shall report, by April 15, a Fiscal Year Budget for 1981 that shall be in balance, and also a Fiscal Year Budget for 1982 that shall be in balance, and the Budget Committee shall show the consequences of each budget on each budget function and on the economy, setting forth the effects on revenues, spending, employment, inflation, and national security.

Mr. LONG. A point of order, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. LONG. Would that not be an amendment in the third degree?

My amendment is to the Dole amendment.

The PRESIDING OFFICER. The amendment offered by the Senator from Kansas is an amendment to the text proposed to be stricken by the Senator's amendment and, as such, it is a second degree amendment, is in order, and takes precedence over the amendment of the Senator from Louisiana.

Mr. DOLE. Mr. President, I would modify the last part of the perfecting amendment to conform with the modification of the Long amendment which was previously sent to the desk.

The modification would take care of the questions raised by the distinguished Senator from Oregon (Mr. PACKWOOD).

I think now the perfecting amendment addresses the issue raised by the distinguished Senator from Maine that a two-thirds requirement is too high. Now it has been changed to three-fifths.

The amendment, as modified, is as follows:

At the appropriate place in the amendment strike two-thirds and insert in lieu three-fifths, and insert at the appropriate place the following:

SEC. 5. Congress shall balance the Federal budget. Pursuant to this mandate, the Budget Committees shall report, by April 15, 1979 a Fiscal Year Budget for 1981 that shall be in balance, and also a Fiscal Year Budget for 1982 that shall be in balance, and by April 15, 1980, a Fiscal Year Budget for 1981 that shall be in balance, and by April 15, 1981, a Fiscal Year Budget for 1982 that shall be in balance and the Budget Committees shall show the consequences of each budget on each budget function and on the economy, setting forth the effects on revenues, spending, employment, inflation and national security.

Mr. DOLE. Mr. President, the amendment as modified it addresses the concerns of the distinguished Senator from Louisiana because we have added the

Long amendment, as modified, as part of the perfecting amendment.

It seems to me that we are now in a position to discuss the issues.

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

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

The yeas and nays were ordered.

Mr. DOLE. Mr. President, let me just review one more time what the amendment would do in its present form.

It would implement the Byrd amendment passed last year. It satisfies the administration because it implements their projections for a balanced budget in fiscal year 1981. It would permit a deficit in the event of extraordinary circumstances, and allows time for Congress to make a determination.

It permits debt limit increases after the budget is balanced. I think we have satisfied some of the resistance by changing it from two-thirds to three-fifths vote.

If we can argue that we just cannot legislate this kind of amendment on the Senate floor, then I assume the same argument can be made against every constitutional amendment now pending in the Judiciary Committee.

Perhaps there are better ways to address the issue. The Senator from Kansas is willing to find the appropriate way to address the question of a balanced budget. The issue is not going to go away.

Most of the constitutional amendments pending before the Judiciary Committee require a balanced budget. Many of those would permit a deficit if we had a two-thirds vote in both houses of Congress.

I share the views expressed by the distinguished Senator from Maine, that a balanced budget is difficult to achieve.

It could be argued that these proposed constitutional amendments, like the Dole-Armstrong amendment, may in some way interfere with the budget process.

We have attempted to address a concern responsibly. I still hope, as I said to my distinguished chairman earlier today, there is some way to resolve this impasse in a bipartisan fashion. Maybe there will be a way to resolve it by Monday, or even later tonight.

Certainly, the Senator from Kansas—I cannot speak for the Senator from Colorado—is willing to compromise, my good faith is demonstrated by sending the three-fifths modification to the desk.

I think there is the broader question of whether we are ever going to have any meaningful vote on budget balancing amendments, whether they be statutory or constitutional.

There is a great deal of pressure being applied by State legislative bodies, and it is being applied on them by voters in their States to balance the budget. Every State in the Union except Connecticut and Vermont has adopted a balanced budget requirement.

I agree with the distinguished Senator from Maine, maybe the polls do not indicate whether we should move or not move on a constitutional amendment any more than we should move, perhaps, on direct election or any other measure.

We all could give the figures on how much Government spending has skyrocketed. I know the difficulties we are facing.

As I said to the distinguished Senator from Louisiana in the hallway today, we should be responsible. If we can be satisfied that the approach of the Senator from Louisiana is the most responsible approach, then the Senator from Kansas may accept it. There are those who feel very strongly the substitute is not the right approach. Perhaps we need to make further modifications either to the Armstrong-Dole amendment or to the Long amendment, or both.

The Senator from Kansas hopes we will have an opportunity—Republicans and Democrats—to sit down and try to construct some compromise.

If we are being told, in effect, "Take that amendment or nothing" then I suggest we just vote on the amendment now pending and find out what the sentiment may be, and then proceed to consideration of other amendments. But I am just speaking now for one Senator.

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

Mr. DOLE. I am prepared to yield, and I yield the floor to the Senator from Colorado.

Mr. ROBERT C. BYRD. Mr. President, the Senator cannot yield the floor.

Mr. DOLE. I yield for a question.

Mr. ARMSTRONG. I appreciate the Senator yielding.

I feel, as the Senator from Kansas has expressed, that there are many in this Chamber who are prepared to compromise and are prepared to work with other Senators who wish to bring this issue to a point of resolution.

However, I think there is great danger that in the course of this debate we are going to lose perspective as to the very reason why the Senator from Kansas has brought this amendment before us. It is well to talk about the prerogatives of the Senate and the prerogatives of the Budget Committee and the prerogatives of Congress and how we are going to bring resolutions to the floor, and this, that, and the other thing.

In his remarks the other day before this body, the Senator from Kansas forcefully pointed out that over and over again, not just this year but every year since we can remember, people have been talking about balancing the budget.

Somehow, there was always a reason to put it off, a reason to refer it to committee, always a reason—that this was not the time or this was not the vehicle. For one reason or another, we never met the issue head-on.

As a consequence, we have not met the issue head-on; and every year, except 1, in the last 20, we have had large deficits. They have not been modest deficits, but deficits of staggering, breathtaking, stupendous proportions.

These are not just numbers on some economist's chart. The consequence of these deficits has been a raging inflation which has affected every family, every working man and woman, every business, every municipal government, everyone in this country.

Last year, inflation was 9.5 percent, and the outlook is not bright for an early conclusion with respect to deficits of that magnitude.

I suggest that the circumstances—not just somebody's theory but what actually has transpired in the country and is now transpiring—justify extraordinary measures. What the Senator is suggesting is that we have an extraordinary majority if we are going to increase the debt limit in the years ahead. He has not said it cannot be done. He has not barred further debt increases at sometime if a supermajority feels that is necessary. He simply has said that we cannot go on in this particular way without causing great damage to the economy of our country and great hardship to many families.

I said that this is not a theoretical concern. The stock market is stagnant. The dollar is plunging. Inflation is raging at high levels and threatens to go out of control.

The Senator is right in suggesting that it is time to do something. I think the subject which has been hinted at, that there is something drastic about this measure, is completely wide of the mark. This is not a punitive measure. It is not all that unusual. After all, the requirement for a two-thirds majority is the same kind of requirement that already exists in our budget procedure. You cannot bring a bill to the floor unless there has been a resolution adopted on certain dates and unless the appropriations bills conform to that requirement. So this is nothing that is farfetched or unusual.

I hope we will proceed to vote. Personally, I would like to vote on this matter this afternoon. I see no reason for it to lay over, unless there is a real spirit of accommodation and a sense that we can work something out. If that is the case, I assure the Senator from Kansas that I will be pleased to work with him or anybody else over the weekend, or whenever we can, to resolve this matter. Barring that, I will support the pending amendment and hope others will as well.

Mr. DOLE. Mr. President, I appreciate the response of the Senator from Colorado.

I think assurances have been given to some that we probably would not arrive at a vote unless there could be some compromise of the differences. I am not certain that that will happen in the next hour or so. Therefore, I doubt that there will be any votes this evening.

I assume that a number of Senators here would like to speak on the general issue and on the amendment itself. We are prepared to do that at some length.

Does that satisfy the Senator from Colorado?

Mr. ARMSTRONG. It does.

If the Senator from Kansas will yield further, I should like to address an inquiry to the distinguished chairman of the Finance Committee about the effect of his portion of the amendment. I ask the chairman if he will clarify the amendment as it now stands. I have read the interesting colloquy he engaged in with the distinguished chairman of the Budget Committee on October 15 regarding the jurisdictional questions, and I am not sure whether or not the Senator's

amendment unintentionally changes the outcome of that decision.

In brief, as I understand what happened last October 5, it was to say that anything in the outyears—that is, beyond the budget years—which was normally a finance committee bill or normally a bill assigned to another committee would not fall within the jurisdiction of the Budget Committee.

However, it seems to me that there might be an interpretation of the amendment of the Senator from Louisiana, were it to be adopted, to place an additional year—that is, beyond the budget year—within the jurisdiction of the Budget Committee. Therefore, if that happened, under section 306 of the Budget Act, I am wondering if additional years legislation would come under the Budget Committee's jurisdiction.

I doubt that the chairman intended that, and I wonder whether he can clarify that.

Mr. LONG. We will consider that. There are ways provided in the law that those types of problems can be satisfied. We would propose to comply with the requirements of the budget law. I do not know that I would try to abide by the suggestion that the Senator from Kansas made yesterday afternoon, that we should not be denied the opportunity to vote on his amendment by a technicality or by one of the provisions of the budget law. There are ways it can be done, and the Senator from Kansas is pretty familiar with those problems. He serves on the Budget Committee. I am learning, and I have been for some years. We have in mind complying with the procedures that are necessary in the budget law, and in due course we will.

Mr. ARMSTRONG. Perhaps at another time—apparently, he is not prepared to take us into his confidence now—the distinguished chairman could go into that, because it seems to me that this is an important issue.

As things now stand, I understand the parliamentary situation is that the Finance Committee cannot bring to the floor a tax bill affecting current year revenues or budget year revenues unless it had obtained a waiver from the Budget Committee. I am concerned that whether or not we adopt the Senator's portion of the pending amendment, the effect would be to extend the jurisdiction of the Budget Committee an additional year. Is it the Senator's opinion that that would not be the case?

Mr. LONG. What we would have here, in the first instance, is that on April 15 we would have projections of what is to be expected if we are to balance the budget as envisaged by the Budget Committees. It may be that the Budget Committees will recommend some things that would cause some problems on the Finance Committee and perhaps the Appropriations Committee as well. But at that point we are not bound by it. We are looking at what they think you would have to do to have a balanced budget. Obviously, that will leave open the alternatives for any of us to suggest that you should do it somewhat differently—for example, if their projections would envisage that we pass a tax, that does not bind the Senate at that point to do it that way and it does not bind us to pass that particular tax. It simply says, "Here is how we think it should be done"; and we would hope to work from that and arrive at what we think would be the best way to balance the budget.

Mr. PACKWOOD. Mr. President, if I may further respond, as I read this and intended it, the Budget Committee's binding authority is only year by year, other than for some very technical exceptions that we already discussed in past debates in the Chamber. If this passes by April 15 this year, the Budget Committee will recommend how they think the budget might be balanced in fiscal year 1981 and fiscal year 1982.

Let us say, for example, the Budget Committee says, "All right, we think the way it might be balanced in 1981, considering that we might have a 7, 8, to 9 percent inflation, is there will simply be no tax cut and because people are pushed into higher tax brackets and the revenues go up it will catch up with the expenditures, and that is our estimate how we might balance the budget in fiscal year 1981."

That is not binding on this Congress.

Mr. ARMSTRONG. Is the Senator saying, then, the amendment, if adopted, does not expand the jurisdiction of the Budget Committee within the meaning of section 306 of the Budget Act?

Mr. PACKWOOD. It is not my intention. I do not think it does. The Budget Committee has authority now to bring out estimates, guestimates, if you want to call them that, estimates or suggestions. The only thing binding is the resolution we finally adopt, the last one in September.

As I read the resolution, the Budget Committee will do two things for fiscal years beyond the fiscal year that we are preparing the budget for. The Budget Committee will make suggestions as to how the budget might be balanced, cutting expenditures, increasing taxes, or a combination of both. On April 15 of the year in which we are preparing the budget for the following fiscal year, the Budget Committee will come forth with a concurrent resolution and that resolution, according to this amendment, will be a balanced budget resolution, and they may come forth with alternative suggestions for 1 year, and that after we debate it and after we get to September 15 will bind this Congress. But we are giving them no additional authority beyond what they currently possess for outyear binding budget recommendations.

Mr. ARMSTRONG. I appreciate the Senator's explanation.

I wonder if the distinguished chairman of the Budget Committee shares that understanding of the amendment.

Mr. MUSKIE. Yes, I share it. I think that explanation is a very lucid one. I found nothing in it, and I listened closely, with which I will disagree.

Mr. ARMSTRONG. I am sorry. I cannot hear the Senator.

Mr. MUSKIE. I listened to the explanation of the distinguished Senator from Oregon very closely because I was interested in his response, and I found nothing in what he said to which I take exception.

Mr. ARMSTRONG. I thank the Senator for the explanation, and while for policy reasons I still adhere to my early decision, I think that clarification is useful so there will not be any muddy water in the RECORD about expanding the jurisdiction of the Budget Committee.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas still has the floor.

Mr. BUMPERS. Mr. President, will the Senator from Kansas yield for a question?

Mr. DOLE. I yield for a question.

Mr. BUMPERS. The perfecting amendment offered by the Senator from Kansas provides that once the Senate adopts a balanced budget, it may not be rescinded by less than three-fifths vote of the Senate. Is that correct?

Mr. DOLE. That is correct.

Mr. BUMPERS. This is a simple piece of legislation. Of course, it is not a constitutional amendment. Could not that requirement of the three-fifths majority be amended at any time by a simple majority of the Senate?

Mr. DOLE. That is correct.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for what I believe is a correction?

Mr. DOLE. I yield.

Mr. ROBERT C. BYRD. The distinguished Senator asked if the amendment by the distinguished Senator from Kansas meant that a three-fifths vote of the Senate is what is being required. The Senator means three-fifths vote of both Houses, does he not?

Mr. DOLE. That is right, both Houses.

Mr. BUMPERS. That is a correction. I misspoke myself. I meant both Houses.

But both Houses can change that requirement by a simple majority. The Senator will agree with that, will he not?

Mr. DOLE. I would like to point out that my amendment, if the distinguished Senator from Arkansas would note, applies to the debt limit. It simply provides that beginning with fiscal year 1981 there may be no more debt limit increases beyond the May 1, 1980 level unless the second concurrent resolution on the budget provides for a balanced or surplus budget or unless more than three-fifths of the House and Senate agree to a budget resolution which projects a deficit.

Mr. BUMPERS. We can do either of two things then. We can adopt by that time a balanced budget or three-fifths of Congress can vote to raise the debt ceiling. Is that the substance of the amendment?

Mr. DOLE. Yes.

Mr. BUMPERS. If it can be changed by a simple majority vote, what is the purpose of the requirement of three-fifths vote? Procedurally I assume at the time we reach that point any Senator could offer an amendment to amend this amendment to require a simple majority and once that is done, then a second vote will be taken to raise the debt ceiling by a simple majority. Is that not correct?

Mr. DOLE. It is the view of the Senator

from Kansas that we are going to have more discipline and we are not going to permit a debt limit increase unless we have a balanced budget or surpus budget or more than three-fifths of the House and Senate agree to a budget resolution which projects a deficit.

Mr. BUMPERS. If I may pursue this just a little further, does not the Senator object to that part of the substitute amendment which goes beyond 1981? What is the objection to that part of the substitute which carries it 1 year further to 1982 and also requires a balanced budget in that year?

Mr. DOLE. As the Senator from Kansas said earlier, I am still not satisfied—maybe before we finish the distinguished Senator from Maine can satisfy all of us. Just what legal effect does the April 15, 1979, provision have on the Budget Committee as far as the fiscal year 1981 budget is concerned or the fiscal year 1982 budget is concerned? That is one of the reservations. All we have said, in effect, and I assume the Senator is talking about the Long substitute, is that Congress shall balance the Federal budget. Pursuant to this mandate, the Budget Committee shall report by April 15, 1979, the fiscal year budget for 1981, which shall be in balance.

I think the question has been asked of the distinguished chairman a number of times, is the understanding of this Senator correct that on April 15, 1979 or soon thereafter we would vote on a budget for 1981?

Mr. MUSKIE. The Senate will vote, as I understand the Senator's amendment, on the budget for 1980, which it must under the present law; and in addition, the same resolution, as I read this amendment, would require the Senate to vote on the balanced budget for 1981.

Mr. DOLE. Would we avoid any votes in April next year?

Mr. MUSKIE. Of course not, because each year the Senate and Congress as a whole have the responsibility to adopt a budget for the current year. That would mean we would have to take a look at what we voted on this year in light of the economic circumstances a year from now, and either we affirmed our vote of this year or changed it.

There is one other point to be made. As the Senator knows, even if we agreed to a balanced budget for 1981 this year and also next year, the makeup of those two budgets could be different, depending upon the rate of inflation, the rate of unemployment, and so on. So it would be necessary for us to act again next year. Indeed, it would be the better part of wisdom to act again next year, because the makeup of the balanced budget for 1981 next year would very likely look different than the makeup for the 1981 balanced budget we put together this year, and to prevent ourselves from recognizing the need for making those changes, I think, would be foolhardy.

But, as I read this, it is an attempt within the constraints of our inability to control economic forces ultimately and within the requirements of the Budget Act to enable the Senate to make a commitment within 6 weeks to a balanced budget for fiscal year 1981, if that is the decision of the Senate after the Senate has been given the Budget Committee's best estimate of the consequences of such a decision. The Budget Committee will also present the option of a balanced budget in 1982 to the Senate for its consideration.

Then, of course, in addition, the Budget Committee may have some recommendations to offer with respect to either year for the consideration of the Senate, which I would expect the Senate would regard it as its duty to do. Then, of course, it is always open to any Senator to offer a substitute to any budget resolution or amendments to any budget resolution. All the options would be open, but the commitment would be clear.

The Budget Committee, may I reassure the Senator, would not try to play games with it. If you tell us to present a balanced budget for 1981, we will do our best to present it in such a way that there was a reasonable distribution among the priorities in the budget. We would not try to play games that would prejudice any particular interest or any other priority. I can assure the Senate of that. We would present a straight document, an honest document, that reflected, as best we could, our understanding of the priorities which the Senate wished to have addressed in that balanced budget.

Mr. DOLE. I appreciate the comments of the Senator from Maine, I have the greatest respect for him. I know how diligently the Budget Committee works. I have been on the Budget Committee so I know how painful the process is. I also know how easy it is to say one thing and do another—and I am not talking about the distinguished Senator from Maine. But I think the Senator had a chart last year that indicated that those who stood up as conservatives were really not conservative about budget cutting.

We had the example this year in the Committee on Agriculture where we had to cut about a half-million dollars out of the school lunch program and the summer program, and that was not easy.

Then we moved over to the Committee on Finance, where we had to take $1.5 billion out of the health care category, and that was not easy, but it was done to stay within the $29 billion deficit.

So the Senator from Kansas certainly understands the enormity and the severity of the problem and the way it has been addressed—which I think is in the most appropriate way—by the Budget Committee. So I certainly have no quarrel with the distinguished chairman of the Budget Committee.

Several Senators addressed the Chair.

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

Mr. DOLE. Yes, I yield.

Mr. MUSKIE. There is another point I need to make. As the Senator knows, and as everyone in the Senate now knows, on March 15 every committee of the Senate, including Appropriations, Finance, and the other legislative committees, is required under the Budget Act to report to the Budget Committee its best estimates of program needs for the budget year for which we are budgeting.

We have received those March 15 reports for fiscal year 1980. We have not totaled them up finally, but if I understand correctly these reports ask us to provide almost $40 billion more in budget authority than is required over current law.

So even before we get to cutting the President's budget, we are going to have to look at and cut most of the additional requests that committees have told us on March 15 are essential services for fiscal year 1980.

That is not going to be easy. I am on a couple of legislative committees myself, and try as we might we were not able to hold our requests down to the President's recommendations.

Now we are being asked to cut below the President's recommendations in order to achieve a balance in 1981. Senators ought to understand that.

It is consequences of that kind about which I am talking. We have all these legislative committees making honest judgments based on their experience of the minimum necessary in the areas over which they have jurisdiction. But we are going to have to ignore those recommendations, by and large, or cut even more deeply into some functions of the Government in order to preserve what legislative committees have recommended as to other functions, and that is not going to be easy.

Mr. DOLE. Mr. President, I would be happy to yield to the distinguished majority leader, but not for a motion to table.

Mr. ROBERT C. BYRD. I would like to ask the Senator a question.

Mr. DOLE. I yield for a question.

Mr. ROBERT C. BYRD. May I ask the distinguished Senator how long he intends to hold the floor?

Mr. DOLE. I might say in all candor to the distinguished majority leader that I have just checked, and there are five proponents of the amendment missing on this Senator's side. I would assume I would talk as long as necessary for them to return.

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

Mr. DOLE. I yield for a question.

Mr. ROBERT C. BYRD. Mr. President, may the Senator yield for a statement, and I ask unanimous consent that he may?

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

Mr. ROBERT C. BYRD. Mr. President, no Senators have been informed on this side of the aisle that there would not be votes today, and so if Senators leave on their own momentum or volition, with the obvious understanding of the Rules that the pending amendment is subject to a motion to table at any time but is not debatable, as I see it they make their own choice. I am sorry if they have been advised that there will not be a vote.

We have been moving along at a rather casual pace in order to let committees meet the May 15 deadline, allow committees to meet without interruption so they can get legislation on the calendars.

I have stated that the Senate would not be in on Fridays through April so as to give committees an opportunity to meet on Fridays and summon witnesses

to be present on Fridays who may have to travel long distances without any fear that the Senate will be meeting and committee members cannot get to the Senate committees.

I am going to stick to that promise. I did say the promise would not hold in the event there is emergency legislation or expiring deadlines or immediately impending legislation, and so on. I do not guess that is the case here.

But I think I would be, in keeping with my own promise, fully justified to come in tomorrow since Senators have left, four or five of them gone home, on the other side of the aisle and, perhaps, with the understanding over there that there is not going to be any vote today. So under my own assurance to the Senate I think I certainly would be justified in asking the Senate to come in tomorrow.

But I am not going to do that in this instance. However, in the future I might be forced to ask the Senate to come in on Friday. I hope that Senators would on Thursdays at least not leave too early because the Senate might have to reach a decision on a tabling motion involving an important amendment to the debt limit.

Now, having said that, Mr. President, I ask unanimous consent, if the Senator will yield to me for this purpose, that when the Senate completes its business today—I take it the Senator is not going to hold the floor for a considerable length of time.

Would he be willing to vote if enough of us over here were paired? I have not checked our sheet, but I am willing to take a gamble one way or the other. On Monday, who knows how many will be absent? How many will be absent on that side on Monday? How many will be absent on that side on Tuesday? I am willing to make a gamble here.

If he has five absentees, I am willing to give a pair for one of those. Senator LONG is willing to give a pair for another one. Let us have a showdown tonight. Let us have a shootout now. I do not know whether we will be in better shape on my side on Monday or Tuesday than we are now, or whether we will be in worse shape. But I am willing to take a gamble. Would the Senator be willing to let us pair off and let us reach a vote on the motion to table?

Mr. DOLE. Mr. President, I certainly appreciate the suggestion of the distinguished majority leader. I have considered it carefully. But I decided not to do it.

I will just say the Senator from Kansas has been around for 2 days. We have had recesses. I know they were well motivated with the greatest intentions. I have not been known to delay the Senate in the 11 years I have been here. I have not delayed the Senate too long.

I did not make any assurances to those who left on this side there would be no votes. I hinted to a few Senators on the way out that they might be protected, but not that I could protect them. However, I do have 30 or 40 pages here on the merits of the constitutional amendment to balance the budget and other material that I could read. I prefer not to do that because I respect the Senate and I respect those who have commitments. I would hope that we might extend this matter until another day in this one instance. I think this is the only time I can recall from memory that the Senator from Kansas has tried, not to delay but maybe to extend a matter until another day.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. DOLE. Yes.

Mr. ROBERT C. BYRD. Mr. President, the Senator is right in saying that he is not accustomed to delaying the Senate. I have to say that to his credit. As a usual thing, he is willing to call up an amendment and get a time limitation on it of 5 minutes, 10 minutes, 30 minutes. He is very fair and reasonable in that respect. Will the Senator yield for a unanimous-consent request?

Mr. DOLE. Yes.

ORDER FOR RECESS UNTIL 11 A.M. MONDAY, MARCH 26, 1979, AND FOR A RECESS DURING SESSION ON MONDAY

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 11 a.m. Monday with the proviso that after the orders for the recognition of Senators, and no later than 12:30 p.m., the Senate stand in recess until the hour of 3:30 p.m. on Monday, the reason being Senators are being invited down to the White House for the signing ceremony with respect to the Mideast Treaty. Senators will be leaving at 1 o'clock, I believe, or thereabouts. The signing ceremony is at 2 o'clock. I assume it would be 3:30 before all Senators could be back on the floor. If we came in early we can at least get the orders for the recognition of Senators out of the way, we could get morning business out of the way, and I could provide further, if it meets with the manager's approval, that the resumption of the Senate on the pending bill will not reoccur until 3:30 p.m. on Monday.

Mr. DOLE. Reserving the right to object, I might just add I would be willing to add to that agreement that we have an up or down vote on my amendment at 4 o'clock.

Mr. ROBERT C. BYRD. Mr. President, I might be willing to gamble on Monday. We may have a vote in relation to the amendment by 4 o'clock, or maybe some other motion which may be made.

Mr. DOLE. I was hoping we might avoid that other motion.

Mr. ROBERT C. BYRD. Mr. President, will the Senator allow me to get this request so Senators will know that there will be no more votes today, that they can meet their airline reservations, and the Senate can proceed to debate?

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from West Virginia?

Mr. DECONCINI. Reserving the right to object, and I do not believe I will object, I am not sure exactly whether I heard the unanimous-consent request.

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 11 a.m. Monday; that at no later than 12:30 p.m. on Monday the Senate stand in recess until the hour of 3:30 p.m. on Monday; that at the hour of 3:30 p.m. on Monday the Senate resume its consideration of the debt limit message.

Mr. DECONCINI. And there will be no more votes tonight?

Mr. ROBERT C. BYRD. There will be no more rollcall votes tonight.

Mr. DECONCINI. I have no objection.

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

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

Mr. DOLE. Mr. President, I might just suggest, and again with reference to the perfecting amendment, I am very willing to enter into a time agreement on Monday, if we could have an up or down vote. It is not that I want to delay consideration of the debt-limit increase. I know that starting about April 3 it has certain consequences we want to avoid.

I would suggest we may be able to work out some additional compromise between now and Monday at 4 o'clock. Certainly, we are prepared to work tomorrow and over the weekend. Failing that, the Senator from Kansas would be willing to vote on the amendment—not the entire amendment but the perfecting amendment—30 minutes after we convene on Monday.

Mr. LONG. Will the Senator yield?

Mr. DOLE. I yield.

Mr. LONG. As far as this Senator is concerned, Mr. President, he wants the Senate to work its will. I really do not anticipate that we are going to have any difficulty getting right to a vote.

Mr. DOLE. I do not either.

Mr. LONG. I think it would be just as well to leave every Senator with his own rights. I fully respect the rights of the Senator. So far as I am concerned, I am not aware of any Senator's desire to filibuster. I think we would do just as well if we try to protect the rights of all Senators. There may be some who might object or who might want to make some motion or offer some amendment of which I am totally unfamiliar. I think it would protect all if we leave it just the way it is. I would think we could settle this issue on Monday and go to the next issue.

Mr. DOLE. I appreciate the advice from my distinguished chairman. I think it is good advice. I want to assure the majority leader we have no intention of trying to delay on Monday, or whenever the vote may occur.

I am prepared, not to have any more votes, but to suggest that perhaps between now and Monday we can address some of the reservations we have about the proposal presented by the distinguished chairman. Perhaps there may be room for compromise or there may not be.

I want to comment on one other point. The distinguished Senator from Arkansas said that they could change if mine were adopted by a majority vote. But it takes 60 votes to support cloture. I believe

that those who supported my amendment, where we asked for a three-fifths vote to increase the debt, should be aware of that in the event there was an effort to change.

I am prepared to yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator form Louisiana (Mr. LONG) has discussed the pending amendment and so has the distinguished Senator from Maine (Mr. MUSKIE), and others.

On yesterday, I appointed an ad hoc committee to consider legislation that would represent a responsible approach to balancing the budget. We all want to balance the budget. I get many letters from back home asking "When are you going to balance the budget? When are you going to cut Federal spending? And when am I going to get my check?"

Some group will wire me to "balance the budget. Cut Federal spending." And within the next week or so I will find members of the same group in my office urging me to use my influence, which they think is immeasurable, limitless, as a matter of fact, to get this Federal agency or that Federal agency to approve an application for Federal funds for such-and-such a project in that community.

So, Mr. President, they want to have it both ways.

Mr. LONG. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. LONG. Mr. President, recently one of the able mayors of the State of Louisiana was in my office. He said, "Please be considerate and tolerant of my city council. They sent you up two resolutions the same day. One of them was to say that Congress should not make any of these grants with strings and all that, but just give us our share of money in revenue sharing and not have any more grants-in-aid. Just give us our share of the money and let us spend it as we see fit. The other was a request to get us a $700,000 grant."

He said, "Please be tolerant of my people and understand that they have to play a little politics just like some of you people do, from time to time. Do not expect us always to be consistent, because that is not how it is with these fellows who have to run for office."

I think we should be, because our constituents one day find that they have their ox in the ditch and Congress must come to their aid and save the old family homestead, and the next day, they find that Congress did something for someone else along the same line, in which they did not share the benefit, so they write in, upbraiding us for being irresponsible and spending money on something that is not entirely necessary.

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

Mr. President, to go on with my statement, Congress has been moving in this direction. Last year, the President projected a budget deficit of $60 billion in January. Congress, through its budget process, reduced that budget deficit from $60 billion to something like $39 billion, which was a $21 billion reduction in the deficit. So Congress has been moving in this direction, and it recognized the national mood when it did that.

We all want to continue in that direction. We want to balance the budget. But we want to approach this matter in a responsible way. It is easy to vote for an amendment that says, "Balance the budget; Congress must balance the budget this year." That is easy. But, Mr. President, when it comes to determining what areas will be cut, I have a feeling that Senators are going to hear from people back home, because if we have to make cuts, are we going to make them in defense? The President has pledged a 3-percent increase annually in the defense budget. He did this at the NATO summit, and the other NATO countries pledged that they would also increase their annual defense budget in real terms by 3 percent. So are we going to cut defense?

If not, what are we going to cut back? Are we going to cut out some of the social programs? We have a move on in this country for a constitutional amendment that will mandate a balanced budget annually. What that will do is remove from the Congress, if such an amendment is ever adopted, that fiscal tool which has been used by Franklin D. Roosevelt and all Presidents subsequent thereto from time to time, the budget. Deficit spending, call it whatever you may, it will remove that fiscal tool to deal with economic situations that cannot be foreseen in advance. Congress has to have flexibility in enunciating and formulating fiscal policy and it has to use the budget—as a tool, an instrument. So there as a great wave around this country for a constitutional amendment.

They say, "Well, I balance the budget in my household. I cannot operate on an unbalanced budget in my household. Why cannot those people in Washington balance the budget?"

People in West Virginia say, "We have a constitutional provision that mandates West Virginia to balance its budget." That is true, I say to the distinguished Senator from Kansas. West Virginia has a surplus right now. I do not know what it is, 50 some million dollars, I suppose. A surplus. West Virginia is mandated to balance its budget. But the Federal Government has many responsibilities that the States do not have. National defense is one of those responsibilities. The Federal Government has to provide for the national defense.

So, to those States the legislatures of which are asking Congress to balance the budget or are moving in the direction of a constitutional convention and moving in the direction of a constitutional amendment that would mandate a balanced Federal budget, I say, "Present your inventory of items that you would be willing for the Federal Government to reduce or eliminate. Tell us where you want to cut the Federal funding for your State."

Mr. President, that is what this amendment that was offered by Mr. LONG and other Senators attempts to achieve. It is a realistic approach. It mandates Congress to balance the budget. It requires the Budget Committee, by April 15 of this year, to report a balanced budget for 1981 and a balanced budget for 1982, together with the consequences of such balanced budget, so that Senators may see, and the people back home may see, what the consequences will be of a balanced budget in 1981 and what the consequences will be of a balanced budget in 1982. They will see whether veterans' programs are going to be cut; they will see whether education programs are going to be cut; they will see whether welfare programs are going to be cut; they will see whether national defense will be cut. Then they can make their choice.

But just blindly to vote for something and say, "Let us have a balanced budget,"—no, unless two-thirds of both Houses or three-fifths, whatever it may be, may say otherwise.

Mr. President, the hue and cry we have heard for a balanced budget is going to be a volume of moans and groans when the people find out what this means. Let us vote for a balanced budget with our eyes open, knowing and saying where the cuts are going to be, where the reductions are going to be. If you want a balanced budget, let us understand whether we are going to have to cut social programs, whether we are going to have to cut defense programs or whatever. Let us understand where the cuts are going to have to be made. Let us make a decision on that. That is the responsible approach, Mr. President.

Mr. MUSKIE. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. MUSKIE. There are even two other alternatives. If, for example, a balanced budget forces us to cut too deeply into some very high-priority programs like defense or income support programs, an alternative for balancing the budget might be to increase taxes. There is more than one way to balance a budget. In addition to reducing spending, we could increase taxes.

There is still another alternative. There are tax expenditures, which have been a very volatile and controversial subject on the floor of the Senate. We might balance the budget by eliminating some of those that are of great value to business groups or education groups or health groups. All of these consequences, of which there are many need to be examined, presented, and understood. The majority leader is absolutely right in his analysis and debate. I could not do it better.

I compliment the majority leader on assembling this ad hoc group to put together this approach. Even this approach is a little restrictive, but I think we ought to get used to it. I think it is going to work out well. I hope that Senators read the majority leader's statement and understand that those of us who put it together intended to do what it says: to spell out the consequences, but to clearly point to the road of the balanced budget and give the Senate a chance to vote for it.

Mr. ROBERT C. BYRD. Yes, and give our constituents a chance to see what is

going to be reduced, what is going to have to be reduced, or what will be increased in order to achieve that goal of a balanced budget.

We are not buying a pig in a poke. We are going to buy a balanced budget with our eyes open.

It is for that reason, realizing that Senators all want the balanced budget, that I appointed the ad hoc committee and named Mr. MUSKIE as chairman of it, and Mr. LONG, chairman of the Finance Committee—Mr. MUSKIE is chairman of the Budget Committee—Mr. MAGNUSON, chairman of the Appropriations Committee, Mr. CRANSTON, majority whip, Mr. HART, Mr. CHILES, who is also on the Budget Committee, Mr. NELSON, Mr. BENTSEN, who is chairman of the Joint Economic Committee, Mr. BUMPERS, Mr. NUNN, who is on the Finance Committee, and that committee worked yesterday and today seeking a language that would represent a responsible, reasonable, realistic approach to this problem that concerns all of us.

We welcome bipartisan support of it and, as Mr. LONG indicated, during those meetings he referred to the amendment that had been offered by Mr. PACKWOOD, and it was the consensus of everyone there that we would like to have and hope to get Republican sponsors, and we have some.

So it should be a bipartisan approach. After all, the Democratic Party wants a balanced budget. The Republican Party wants a balanced budget. Neither party has a monopoly on the desire for a balanced budget. Both parties want it. So let it be a bipartisan effort; that is exactly what the amendment offered by Mr. LONG and others represents.

I want to compliment the members of the ad hoc committee. I hope that over the weekend Senators will study the amendment, and realize that it does represent a reasonable approach, because sooner or later they are going to meet this thing coming back. It is not just a question of voting for a balanced budget today, but sooner or later we are all going to have a showdown on the reductions that will have to be made in some areas to achieve a balanced budget.

With that in mind, I hope Senators will support the amendment and feel that it is a responsible answer to the concerns that are being expressed.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the language of the amendment (No. 50, as modified.)

In lieu of the language proposed to be inserted by Amendment 111, insert the following:

SEC. 5. Congress shall balance the Federal budget. Pursuant to this mandate, the Budget Committees shall report, by April 15, 1979 a Fiscal Year Budget for 1981 that shall be in balance, and also a Fiscal Year Budget for 1982 that shall be in balance, and by April 15, 1980, a Fiscal Year Budget for 1981, that shall be in balance, and by April 15, 1981, a Fiscal Year Budget for 1982 that shall be in balance; and the Budget Committees shall show the consequences of each budget on each budget function and on the economy, setting forth the effects on revenues, spending, employment, inflation and national security.

Mr. ROBERT C. BYRD. Mr. President, I have no further need for the floor. I am going to yield it, for the moment.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, that Senators may be permitted to speak therein for up to 10 minutes each, and that the period not extend beyond 30 minutes.

The PRESIDING OFFICER (Mr. BRADLEY). Without objection, it is so ordered.

"SARATOGA" SLEP AMENDMENT

Mr. WARNER. Mr. President, today in the Senate Armed Services Committee my senior colleague, Senator HARRY F. BYRD, JR., offered an amendment, which I was honored to cosponsor, to S. 429, the supplemental authorization bill for fiscal year 1979. This amendment, which was adopted by the committee, will insure that the rebuilding of the aircraft carrier *Saratoga* will be at the least cost to the U.S. Government and will prevent the use of over 1,100 sailors who would otherwise be assigned to the shipyard labor force to rebuild the *Saratoga*.

Mr. President, the many issues of this amendment will be debated in depth when the bill is considered in this body. My purpose today is to cite certain background information before the committee on this matter and to place in the RECORD information which will be useful on a number of the issues.

Congressional concern over the cost factors and other implications of the *Saratoga* shipyard assignment has existed for 2 years.

First, in 1977 the Senate Armed Services Committee report on the Defense Authorization bill emphasized the committee's concern over whether the preliminary Navy plan represented "the least cost approach."

Later, in 1978, Congress enacted legislation requiring the Navy to conduct a complete review of the matter including a cost comparison analysis.

The Navy completed the study on the carrier modernization program and the study was submitted to Congress on January 25.

Subsequently, the Senate Armed Services Committee conducted hearings on the legally mandated study and received testimony from the Secretary of the Navy, the Chief of Naval Operations, the Comptroller General of the United States and others. Deputy Secretary of Defense Duncan testified on this matter at an earlier hearing.

The Navy study concluded that it would be from $37 to $80 million more costly to accomplish the *Saratoga* modernization at Philadelphia. In addition, the Chief of Naval Operations pointed out in the study that there would be severe manpower and military readiness problems associated with the necessary assignment of over 1,100 of the *Saratoga* crew personnel as involuntary industrial labor at the Philadelphia Naval Yard.

On the basis of the negative impact on manpower and military readiness of a Philadelphia assignment and on the basis of "the large cost difference in favor of Newport News * * *" the Chief of Naval Operations unequivocally recommended that the *Saratoga* be assigned to Newport News.

This recommendation was subsequently overruled by the Deputy Secretary of Defense.

On the basis of all this information, the Armed Services Committee today adopted the *Saratoga* amendment.

The primary reasons for this committee action were:

First. It will save the taxpayers a minimum of at least $80 million. Despite all the accounting arguments attacking the cost studies of the Navy and the Comptroller General, there is no doubt of the validity of their conclusions.

Second. The amendment will preclude as a matter of law the use of over 1,100 trained seamen and petty officers of the *Saratoga* crew who would otherwise be assigned as part of the shipyard work force because of the inability of recruiting more than 1,600 new Federal workers.

The reduction in the readiness of the operating fleet caused by the 1,100 crew diversion as a shipyard work force would be indefensible. The fleet is already below full strength in many ratings. Further, over 50 percent of the crew which would be assigned to Philadelphia, will be engineering ratings which are critical to fleet readiness and in short supply at this time.

The committee amendment is in full accord with the recommendations of the uniformed Navy, including the Navy's chief procurement officials and the Navy's chief operating officer, the Chief of Naval Operations, Adm. Thomas B. Hayward.

Mr. President, when this issue is fully debated on the floor, the soundness of the committee's decision will be amply demonstrated in all its implications.

I ask unanimous consent that the following attachments to my statement be printed in the RECORD.

First. A two-page summary setting forth some of the issues affecting both the American taxpayer and the personnel of the U.S. Navy.

Second. A more detailed nine-page summary of the issues involved.

Third. A summary of the report of the Comptroller General of September 22, 1978.

Fourth. The memorandum of the Chief of Naval Operations of January 23, 1979, on the SLEP least cost study approach.

Fifth. The Senate Armed services staff memorandum submitted to all committee members.

Sixth. A memorandum of November 10, 1977, from the Commander of the Naval Sea Systems Command to the Chief of Naval Operations recommending that Newport News be designated as the first SLEP execution yard, and a further memorandum of November 23, 1977, from the Chief of Naval Materiel to the Chief of Naval Operations endorsing the November 10, 1977, memorandum recom-

mending the Newport News location. Both of these documents will be printed in the hearings of the Committee on Armed Services of February 9.

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

THE SARATOGA ISSUE

BACKGROUND

The SLEP program will be an over $2 billion effort to extend the life of four aircraft carriers. For two years, Congress has been concerned with the cost and other implications associated with the shipyard assignment of the Saratoga—the first SLEP. In order to ensure that the SLEP assignment would be made on the basis of "fairness and competition", the Congress, by law in 1978, held up the SLEP assignment until the Navy submitted a comprehensive report, including comparative cost, on shipyard assignments. Other sequential developments were: in the fall of 1977 the highest procurement officers of the Navy recommended the Newport News location; in April 1978, prior to the cost study, the Secretary of the Navy and the Vice President announced Philadelphia; on January 23, 1979 the Chief of Naval Operations, based on the cost and other military considerations that emerged from the legally mandated study, recommended Newport News; on January 25, 1979 the Deputy Secretary of Defense overruled the Chief of Naval Operations.

ISSUE FOR THE CONGRESS TO DECIDE

The Congress must decide whether to insist upon achieving the cost savings, the better Navy manpower utilization, and other advantages associated with a Saratoga assignment to Newport News or to endorse the Administration's intervention and an assignment to Philadelphia.

RESULTS OF A PHILADELPHIA ASSIGNMENT

Cost—A minimum $80 million additional cost at Philadelphia

Using current government-wide cost guidelines applicable when private and public entities are competing for the same work, the comprehensive Navy study, independently confirmed by the General Accounting Office, found that to assign the Saratoga to Philadelphia would cost an additional $80 million. This $80 million premium is unacceptable when the Navy can afford only 39 attack aircraft in the FY 80 budget.

Higher labor costs are primarily responsible for the additional $80 million cost at Philadelphia: higher man-day costs resulting from higher government wages and fringe benefits ($112 at Newport News compared to $169 at Philadelphia in 1977); and higher productivity at Newport News resulting from the long Newport News carrier experience, the newly trained nature of the projected Philadelphia work force, and various other productivity studies.

The extra costs at Philadelphia could be as low as $37 million only by assuming a 7.1% federal payroll cost for civilian retirement rather than the OMB validated and required 20.4% (GAO indicated that recent retirement cost experience would justify a 30% payroll factor), and further assuming the enactment of legislation reducing future federal blue-collar increases which Congress has failed to enact in the last several years and has not been recommended by the Administration to the current Congress.

SHIP'S CREW MUST MAKE UP FOR LABOR DEFICIENCIES AT PHILADELPHIA

Because of an inability to recruit more than 1600 new federal workers, 1100 of the Saratoga crew must be assigned to supplement the shipyard work force at Philadelphia. Newport News, on the other hand, has in being a full civilian work force available to modernize the Saratoga.

Moreover, the Saratoga crew will be compelled, in effect, to subsidize the labor cost at Philadelphia by $73 million, the additional cost of a full civilian labor force were it available.

REDUCTION IN MILITARY FLEET READINESS

The diversion of 2½ years of 1100 urgently needed and highly trained Saratoga crew members to perform industrial shipyard work will reduce the readiness of the Operating Fleet, already 25% below full strength in many of the skilled ratings to be detailed to the shipyard. Admiral Hayward: "We need them badly elsewhere".

AGGRAVATION OF NAVY RECRUITING AND RETENTION PROBLEMS

When assigned as part of a shipyard work force, many sailors are compelled to perform duties for which they are unfamiliar and have not been trained. Consequently, desertion rates rise about 60% and the Navy's already severe recruiting and retention problems are intensified.

DISCHARGE OF CURRENTLY EMPLOYED WORKERS TO CREATE NEW GOVERNMENT JOBS

In order to create 1600 new federal jobs at Philadelphia, almost twice as many (2600) trained, private sector employees at Newport News will be discharged, of whom 50% will be black—trained in many instances at federal expense. This can only be accomplished by using 1100 military personnel to displace 1100 union employees at Newport News. This result is contrary to all federal and congressional labor policies.

EFFECT ON OTHER NAVAL SHIPYARDS

The expansion at Philadelphia can be expected to increase the pressure for further reductions at other Naval shipyards, which under the current DOD budget must now absorb without Philadelphia a 1500 job cut by end FY 79 and another 1900 job cut for FY 80.

INTEGRITY OF THE NAVY PROCUREMENT PROCESS

The Newport News recommendation of the Chief of Naval Operations was made strictly on the basis of economic and military considerations—in the best interest of the Navy in terms of the least cost to the government and the avoidance of severe personnel problems. Sound procurement policy demands that the *SARATOGA* be assigned on the basis of least cost and military advantage.

ANSWERS TO CERTAIN ARGUMENTS

With respect to the charge that the cost estimates are "soft"—there is nothing uncertain about the cost estimates for the roughly 1.5 million man hours already programmed for SLEP, and there will be no change in the relative cost at the two yards for the additional *SARATOGA* man hours to be determined. The Navy omitted certain accounting issues, some of which would have reduced the cost difference at Philadelphia, but also omitted others which would have widened the cost gap to Newport News's further advantage. The Navy provided sound answers to all of these accounting questions.

With regard to an alleged need to create a third carrier capable yard on the East Coast, both Secretary Claytor and Admiral Hayward testified that Philadelphia is already a carrier capable yard. Indeed there are five U.S. shipyards that are now carrier capable, ample capacity for future Navy needs.

With respect to the current strike at Newport News (not over wages but union representation), SLEP would not involve the shipyard production force before August 1980 and it can be firmly anticipated that the strike will be settled long before that date. Navy work is presently on schedule with two-thirds of the workers already having returned. SLEP design work is unaffected by the strike.

PHILADELPHIA IS NOT THREATENED WITH DECLINE

Without SLEP, Philadelphia will continue as a critical and amply utilized shipyard in its specialized role of overhaul and repair. As the size of the U.S. Navy, and particularly carrier forces, has stabilized, there is no justification for undertaking a costly expansion at Philadelphia while at the same time contracting at Newport News.

THE AMERICAN TAXPAYER

The Philadelphia assignment will involve (1) the unnecessary waste of at least $80 million per ship, (2) the unnecessary reduction in the readiness of the Operating Fleet of the United States Navy, and (3) the unnecessary addition of 1600 new federal government employees.

The Congress cannot justify this result to the American taxpayer.

THE SARATOGA DECISION FOR THE CONGRESS

SUMMARY

Because the 15-year Service Life Extension Program (SLEP) will be a crucial and expensive procurement, Congress has for two years been concerned that the selection of the shipyard to modernize the first aircraft carrier in the program, the U.S.S. *Saratoga*, be on "a sound economic and businesslike basis" consistent with principles of "fairness and competition." As a special precaution, Congress in 1978, by law, required the Navy to perform a comprehensive study of the comparative costs and other factors relevant to assigning such programs to either public or private shipyards.

Based on the Navy study, the Chief of Naval Operations recommended that for cost reasons—the *Saratoga* could be modernized for $80 million less at Newport News—and for military reasons—1100 fewer Navy crew and 1600 fewer federal civilians would be required, disruption from emergency naval work would be avoided, and existing carrier work force skills could be preserved—the *Saratoga* be assigned to Newport News. The Navy's general findings were independently confirmed by a comprehensive GAO study.

The Administration has overturned summarily the findings and recommendations of the Chief of Naval Operations. The decision for the Congress is whether to endorse the Administration's intervention and a Philadelphia assignment or insist upon achieving the cost savings, the better Navy manpower utilization, and other advantages associated with a Newport News assignment.

BACKGROUND

The Navy has been planning a major modernization, beginning with the U.S.S. *Saratoga*, of four aging aircraft carriers as a way of relieving the need for new carrier construction while still being able to deploy 12 carriers at sea until the year 2000. SLEP differs from the normal overhaul or reconditioning of a ship in that it is of far greater scope and complexity. As a complete rebuilding and conversion program, rather than a routine overhaul and maintenance program, the SLEP is funded under the Navy ship procurement account and, therefore, requires Congressional authorization.

Although three shipyards on the east coast and two on the west coast technically have the facilities to modernize carriers, the Navy quickly reduced the alternative sites for the *Saratoga* SLEP to the private shipyard at Newport News, Virginia, and the public shipyard at Philadelphia, Pennsylvania. As the Navy began a preliminary shipyard assessment, the Senate Armed Services Committee, in May 1977, questioned the cost of implica-

tions and the wisdom of placing the SLEP program in a public shipyard (requiring substantial new hiring and training of unskilled personnel) at a time when private shipyard employment was expected to decline sharply. The Committee requested a justification of such a procurement approach and also a cost comparison analysis as required by OMB regulations, neither of which were forthcoming.

In July 1977, the Pesident, in a letter to then Congressman Eilberg, stated that with respect to the Philadelphia Navy Yard, "another 2000 positions are expected to be created at that installation in 1980." Following the normal Navy procurement process, in November 1977, both the Commander of the Naval Sea Systems Command and the Chief of Naval Materiel recommended to the Chief of Naval Operations that Newport News be designated for the first SLEP carrier. Later, In April 1978, Vice President Mondale announcing the "transfer" of the Saratoga to the Philadelphia Navy Yard, emphasized that the Administration had succeeded in its efforts to alleviate the impact of a broken campaign pledge, the closing of Frankfurt Arsenal.

In May 1978, the two Armed Services Committees adopted language requiring the Navy, as a matter of law, to conduct a least-cost analysis for both the SLEP and the DDG-2 modernization programs. Funds for activities related to either yard were frozen until 60 days after a report covering both of these progams had been submitted to the Congess. The purpose of the language, as stated in the House Committee report, was "to emphasize fairness and competition" and "to insure that the merits of the ultimate assignment of the Saratoga is founded on a sound economic and businesslike basis."

Furthermore, in April of 1978, 25 members of the Congress joined in requesting the General Accounting Office (the investigative arm of Congress) to conduct a cost study and review of the Saratoga assignment. That GAO study concluded that it would be from $90-105 million more costly to accomplish the Saratoga overhaul at Philadelphia rather than Newport News.

THE NAVY COST STUDY

In performing its analysis, the Navy found that in order to complete the work on time at Philadelphia, 1100 combat-trained Navy crew personnel would be necessary to supplement a civilian work force of 1600, not-yet-hired, not-yet-trained government civilian personnel. At Newport News, the work force would consist of 2600 in-place, skilled carrier experienced private sector employees.

On January 25, 1979, the Congress received the legally mandate Navy cost study, the product of months of professional analysis, in which Admiral Hayward recommended the Newport News location because of an $80 million cost difference favoring Newport News based on the application of existing law and OMB cost regulations. By understating current civilian retirement cost and assuming federal wage reform, the Navy study found the cost advantage to Newport News could be as little as $37 million. Although their own figures had indicated an even greater cost advantage to Newport News, the GAO endorsed the Navy's $80 million difference as realistic.

This $80 million cost advantage to Newport News is only reasonable given the substantial differences in manday rates between the two yards (1977: $112 per day to $169 per day), the well-documented productivity advantage at Newport News, and the much greater experience in aircraft carrier work at Newport News.

In addition, Admiral Hayward concluded that many non-cost factors favored Newport News:

No Diversion of Combat-Trained Personnel from the Operating Forces of the Fleet Which Reduces Military Readiness.

The Chief of Naval Operations noted that the scarce manpower assets represented by the 1100 crew would be urgently needed for the operational readiness of the fleet. The fleet is 25 percent below full strength in most of the ratings which would be detailed to the shipyard. Moreover, the Navy is presently falling short on its recruiting goals.

Less Turbulence in Naval Personnel.

When assigned as part of a shipyard work force, many ratings are compelled to perform duties for which they have been neither trained nor normally perform and desertion rates rise considerably (about 60%) when Naval personnel are assigned to perform industrial labor at a shipyard. Re-enlistment rates also go down considerably.

No Interference With Other Navy Work.

Admiral Hayward also cites in support of his recommendation the "ability of Newport News to take all four SLEP ships without interference with other Navy work." The Philadelphia Navy Yard, as part of its normal overhaul mission, is required, when necessary, to perform emergency repair and overhaul work. The interference of this high priority emergency work, if it occurred, would extend the Saratoga modernization and delay its completion. Admiral Hayward emphasized the "fact that Newport News will not be required to respond to high priority emergency work, as Philadelphia would, which could dilute the SLEP effort."

Lesser Demand on Navy Civilian and Uniform Personnel.

As previously mentioned, the Navy is currently below authorized strength for uniformed personnel and is not meeting its recruiting goals. Moreover, current DoD regulations require that the number of Navy civilian personnel (including the 1500 naval shipyard workers in FY 1979 and 1900 for FY 1980) be reduced by 12,000 by the end of the next fiscal year. The increase of 1600 workers at Philadelphia will surely aggravate these already planned reductions.

Preservation of Critical Carrier Skills.

Admiral Hayward cites this factor as a reason for the assignment to Newport News. Without the SARATOGA, 2600 civilian shipyard workers, all trained in carrier construction, will be discharged due to lack of work. Presently, Newport News has only three surface ships under construction—two Navy, one commercial. By August 1980, only one surface ship—the carrier VINSON will remain under construction. Even if Newport News were to be awarded a carrier in the FY 1980 budget, this would only forestall further layoffs but would not restore the jobs of the 2600. Consequently, attempting to create a carrier capability at Philadelphia would be more than offset by a reduction in such a capability at Newport News.

Claytor View and Duncan Decision

Navy Secretary Claytor recommended that the SARATOGA to go Newport News unless relief were granted from existing manpower ceilings. If ceiling relief were granted on balance, Philadelphia would be "an acceptable alternative."

Deputy Secretary of Defense Duncan simply concluded that ". . . the cost study and other non-cost factors considered have not provided a sufficient basis to change the decision the Secretary of the Navy made last April."

Reasons for supporting the Navy cost study, the GAO study, and the recommendations of the Chief of Naval Operations.

To Avoid the Waste of $80 Million Dollars.

Despite technical arguments over the details of the cost estimates, all responsible officials have concluded that it will cost millions more to modernize the SARATOGA at Philadelphia. As the first of four and possible eight carriers to be modernized, the wasted funds could approach one-half billion dollars. Payment of such a premium cannot be in the best interest of the Navy or the nation. These funds are urgently needed to support other defense activities.

Avoid Reduction in Military Readiness.

Assigning 1100 trained, uniform naval personnel as a part of the industrial shipyard work force must inevitably lower fleet readiness. Removing 1100 combat-trained personnel from their fleet assignments is a dangerous and extravagant diversion. The Navy is already 25 percent below full strength in most of the ratings which would be detailed to the shipyard, and furthermore, the Navy is currently unable to meet its recruiting goals.

Avoid the Misuse of Crew Personnel as Industrial Labor.

Admiral Hayward, strongly opposing the use of 1100 trained and skilled SARATOGA crew personnel as part of the industrial shipyard work force, testified that absenteeism rises about 60 percent among Navy crewmen assigned to shipyard duties; the retention problem more than doubles; many of the ratings involved will be compelled to perform duties for which they have neither been trained nor normally perform.

Avoid Eliminating 2600 Private Sector Jobs In Order to Create 1600 Government Jobs.

The 2600 skilled carrier workers will be terminated at Newport News if the *Saratoga* is assigned to Philadelphia. Over 50% of the 2600 displaced workers at Newport News will be skilled, black workers, most of whom were trained at government expense. Abolishing 2600 union jobs in order to create 1600 new federal payroll jobs is a fundamentally unsound employment policy which Congress should not endorse.

Displacement of Private Union Jobs with Military Labor.

It should be totally contrary to Congressional policy to permit the use of military labor for laying off an equal number of private civilian jobholders already working and able to accomplish the modernization at a lesser cost.

The Inappropriateness of Using Navy Crew Labor to Hold Down Shipbuilding Costs at Philadelphia.

The GAO stated that the cost of a full civilian force at Philadelphia, if available, would be $73 million higher than the work force contemplating the use of the 1100 *Saratoga* crew members. The *Saratoga* crew, therefore, would involuntarily subsidize the cost of the *Saratoga* by $73 million over what a full civilian force would cost. The Department of Defense offered no justification for this result.

Protect the Integrity of the Navy Procurement Process.

It is essential to the Navy procurement process that decisions be made strictly on the basis of economic and military considerations. By law, the Navy was required to evaluate both of these considerations with respect to the *Saratoga* assignment. After an extensive and objective study, the Navy has provided the results to the Congress. The Defense Department has not refuted these results and indeed is unable to refute these results. Consequently, the Congress should insist that these economic and military considerations alone should be the basis for an assignment decision.

OPPOSITION ARGUMENTS AND RESPONSES

The Cost Estimates are "Soft" and Uncertain.

For every doubtful accounting issue favorable to Philadelphia eliminated by the Navy, there are corresponding cost issues likewise ommitted favorable to Newport News which would greatly increase the cost difference.

The total SLEP work is expected to extend beyond the present 1.5 million man hours already programmed. However, as both Admiral Hayward and the GAO testified, the relative difference in cost between the two locations is not expected to change and has been established with a high degree of confidence.

Newport News has a History of Late Deliveries While Philadelphia has Met All Delivery Deadlines in the Last Three Years.

For well over a decade—not three years—all of the work performed by Newport News comparable to that done at Philadelphia (i.e. overhauls) has met the agreed upon delivery dates. These include 19 Navy submarines, both attack and ballistic, as well as the overhaul and refueling of the carrier ENTERPRISE and the cruiser LONG BEACH.

It was only in construction of new ships where uncertainties and Navy-imposed design changes were extensive, that original delivery dates were not met.

Cost Overruns Render Cost Estimates for Newport News Understated.

SLEP will be performed under a cost plus fixed-fee contract totally different than the contracting procedures of the 1960's and 1970's which were the root cause of the claims problems experienced by all three of the major private shipbuilders in recent years. The Navy has admitted to liability claims settlements for $165 million.

The only new ship construction comparison between Newport News and Philadelphia concerns command ships—the LCC 19 built by Philadelphia and the LCC 20 built by Newport News—both constructed in the same time frame—1965–1971. The Philadelphia ship was delivered in February 1971, 28 months late in delivery, and cost $36 million more than the Newport News ship delivered in December 1970, only eight months late.

Philadelphia Should Not be Charged With Any Loss in Federal Taxes.

The current government-wide cost guidelines require that for comparison purposes, government yards should include the cost of taxes foregone, had the work been performed at a corporate taxpaying entity. The charge is that Tenneco is not representative of any profits that might be lost by Newport News.

The Navy study conforms to regulations, however, even if Newport News were treated as a separate entity corporate taxes will be lost in the absence of SLEP. Currently, every Navy ship under construction at Newport News is in a profit position. Furthermore, losses from past claims were written off in 1978 and will, therefore, not offset any future profits. The SARATOGA contract (cost plus fixed-fee) as in other like-contracts, would involve a probably target profit of 9–10% resulting in corporate taxes to the federal government. Such taxes would, therefore, be lost if the SARATOGA is performed at Philadelphia.

Interestingly enough, even if the factor of lost taxes were eliminated from the cost comparison, as Philadelphia supporters are urging, the cost difference in favor of Newport News would be even greater—by over $10 million. The reason for this is that the Navy added to Newport News's cost figures $28.7 million as the estimated Saratoga profit. If one eliminates from the cost analysis the $18 million of lost corporate taxes, then one also has to eliminate from the cost analysis the $38 million charged to Newport News as profit.

The 15–20 percent Productivity Advantage by the Navy for Newport News is Unfair Since It Was based on Comparisons of Submarines Rather than Carrier Overhaul.

The GAO testified that several official Navy studies over the last 10 years have indicated that private productivity was consistently more than 20 percent higher than Navy shipyards.

A 1971 Ernst & Ernst study commissioned by the Navy concluded that the cost per man hour in Naval shipyards was 49 percent higher than in private yards and that similar jobs took from 39 percent to 59 percent more man hours in Naval yards than in private yards. More recent studies in 1972 and 1977 by Booz-Allen confirmed that these kinds of cost differences still exist (for details see GAO testimony before the Senate Armed Services Committee, February 9, 1978).

Admiral Hayward also summarized the productivity advantage for Newport News as follows:

It is also considered reasonable to assign a productivity advantage to Newport News in view of that yard's experience in the construction and overhaul of large ships and the fact that Newport News will not be required to respond to high priority emergency work, as Philadelphia would, which could dilute the SLEP effort. This is significant in that it has a direct beneficial effect in the areas of planning, management and supervision, as well as on the accomplishment of the industrial effort on the waterfront. Though difficult to assess, the advantage is real and should not be ignored if a true comparison of costs is to be made.

Common sense and logic would indicate the productivity advantage of a trained carrier work force in being compared to 1600 yet-to-be-hired and trained civilian workers and 1100 of the Saratoga crew who will be detailed as a part of the shipyard work force.

It is Unfair to Penalize Philadelphia by Excluding Overhead Reducations Resulting from SLEP.

The Navy wisely excluded this element from both yards because of the unpredictability of the other business to be at both locations during the SARATOGA period. In addition, as Admiral Hayward points out, the SLEP effort at Philadelphia would be diluted whenever that yard responded to high priority emergent repair and overhaul work (one of the primary purposes of Navy yards).

The Navy cost study also excluded certain other cost issues, which had they been included, would have favored Newport News—the failure to charge Philadelphia with depreciation and interest expense—the exclusion of increased overhead costs at other yards due to other work being pulled to Philadelphia for pre-SLEP buildup—the increased cost and negative morale impact of assigning 1100 crewmen to the Philadelphia work force—the cost of reduced fleet readiness due to the unavailability of the 1100 crew personnel.

The Steel Workers at Newport News will Increase Future Wages Greater than Now Projected.

As a defense contractor, Newport News is bound by the Presidential wage guidelines of about 7% per year. In order to be on the safe side, the GAO cost study on SLEP allowed for a 12% annual increase at Newport News which still results in the $80 million additional cost at Philadelphia.

Since the Navy has Complete Control of Philadelphia, It Will Be Better Able to Manage a Modernization.

There has never been any difficulty between the Navy and Newport News on cost type fixed-fee contracts over the many years of servicing and overhauling Navy ships. Admiral Hayward, whose command will do the managing on the contract recommended Newport News, among other reasons, because of its long experience in carrier construction work.

The Navy will have a binding contract to protect itself at Newport News. The company would have every incentive for the highest performance in order to have a record justifying further SLEP work.

On the contrary, the emergency work and unexpected repair work at Philadelphia would pose an additional problem with management control.

Present Strike at Newport News Could Jeopardize the Saratoga SLEP.

The current strike has resulted from a dispute over which one of two unions should represent the workers and not over wages and fringe benefits. Once the representational issue is resolved there will be no further basis for a strike.

Even at the present time the strike is not affecting production.

Approximately two-thirds of the production work force has returned to work with the numbers increasing each day. The shipyard force would not begin work on the SARATOGA until August, 1980, in any event.

In the meantime, work on the Saratoga is of a design and engineering nature and is proceeding wholly unaffected by the strike.

EXTENDING THE SERVICE LIFE OF AIRCRAFT CARRIERS—WHERE SHOULD THE WORK BE DONE?

The Navy plans to extend by 15 years the service life of four aircraft carriers. The Navy estimated it will take 28 months to do the work on each carrier, and it plans to do the work between October 1980 and November 1989.

The U.S.S. Saratoga is the first carrier scheduled, and the Navy decided to have the Philadelphia Naval Shipyard do the work on the U.S.S. Saratoga at an estimated cost of $554 to $569 million.

The Navy considered having the work done on contract by the Newport News Shipbuilding and Dry Dock Company and the estimated cost was $539.1 million.

This report discusses the Navy's cost estimates and other factors the Navy considered in deciding to do the work at Philadelphia and recommends that the decision be validated again.

DIGEST

The Navy has established a program—called the service life extension program—to extend by 15 years the normal 30-year life of its 4 Forrestal Class aircraft carriers to insure that it has a total of 12 deployable aircraft carriers to year 2000. The Navy estimated that it will take 28 months to do the work on each carrier, and it plans to do the work between October 1980 and November 1989.

The U.S.S. Saratoga is the first carrier scheduled for the extension program, and the Navy decided that the work on the U.S.S. Saratoga would be done by the Philadelphia Naval Shipyard at an estimated cost between $554 million and $569 million. The lower estimate assumes that the Congress passes the proposed wage board reform bill which would lower future pay raises for Federal blue collar employees: the $15 million higher estimate assumes no reform.

The Navy considered having the Newport News Shipbuilding and Dry Dock Company in Virginia do the work on contract and estimated that it would cost $539.1 million. Although the cost estimate was lower, the Navy said the difference is insignificant in relation to the total estimated cost and the estimates are rough estimates based on many unknown factors. For this reason, the Navy concluded that for decision making purposes the costs were about eqaul and made

the site selection decision on the basis of other factors.

EVALUATION OF COST ESTIMATES

GAO found that the Navy had to make assumptions concerning the size and complexity of the work package because the specific work is currently being defined. In addition, the Navy made several assumptions about future conditions which may or may not be correct. The final work package is not expected before February 1980. Total costs cannot be determined with any degree of accuracy at this time and could be off by millions.

GAO reviewed the Navy's methodology for estimating the various cost elements for reasonableness and consistency and adjusted the Navy's estimates where appropriate. The revised estimates should not be considered as GAO's estimates of the costs for the actual program, but rather as comparative costs which could be used with other factors to evaluate the Navy's site selection decision.

GAO's review disclosed the following differences in assumptions, inconsistencies, and errors in the Navy's cost study.

Using military personnel to do 395,000 labor days of work at Philadelphia which lowered its estimated costs, but not considering the use of military personnel at Newport News to lower its estimated costs.

Projecting labor and overhead rates on the basis of bids for ship construction when actual rates were available for making projections.

Including profit on shipbuilder material at Philadelphia and double profit on this material at Newport News.

Estimating contract modification costs at both Newport News and Philadelphia using the Newport News basic construction price and a factor used for estimating changes to contracts for follow-on ships rather than lead ships.

Estimating military personnel costs in discounted 1977 dollars and all other costs at the anticipated price levels that will exist in the future.

The net effect of these inconsistencies and errors was that the Navy understated the estimated costs at Philadelphia and overstated them at Newport News. The revised estimates showed that it would cost between $88.9 million and $105.2 million less at Newport News. This compares to the Navy's estimates of $14.9 million to $29.9 million less at Newport News.

GAO's review also disclosed that additional costs should have been considered such as the costs to hire and train new personnel at Philadelphia to perform the work and the costs for facility modifications at both Philadelphia and Newport News to accommodate the program.

OTHER FACTORS

As indicated above, the Navy made the site selection decision on the basis of other factors as well as costs. According to the Navy, the relevant factors were:

There are learning advantages for both the production work force and shipyard management by having the overhauls done in series at one shipyard.

The Philadelphia Naval Shipyard is the secondary aircraft carrier shipyard on the east coast, and it met all the Navy's basic criteria required for accomplishing the program on all four ships.

The Newport News shipyard could perform the work on the U.S.S. Saratoga, but construction of a new aircraft carrier at the shipyard would preclude it from accomplishing the work on the follow-on ships.

The Navy considered (1) sending the first to Philadelphia and (2) sending all four ship to Newport News and follow-on ships to Philadelphia.

The Navy identified the following advantages to the first alternative.

Utilities available carrier capability at Newport News during fiscal years 1980-82.

Provides an orderly and steady buildup of the personnel required at Philadelphia to perform the work.

Provides increased workload for Philadelphia during the buildup.

The Navy identified only one advantage to the second alternative which was that it provides increased workload for Philadelphia. However, the following disadvantages were identified by the Navy.

Short training lead time at Philadelphia to develop aircraft carrier expertise.

Requires the use of the ship's crew to perform part of the work.

Requires rapid buildup in Philadelphia from the 7,700 people in December 1977 to 9,650 people by the end of fiscal year 1981.

The Navy may not meet congressionally directed policy of doing no more than 70 percent of shipwork in-house.

Requires an increase in the personnel ceiling at Philadelphia.

Based on historical information, Philadelphia may have difficulty in hiring the required skilled workers and there may not be sufficient time to recruit and train unskilled workers to perform the work on the first ship. It appears that generally similar problems would not exist at Newport News for the first ship, but could exist for the follow-on ships if a new aircraft carrier is constructed at Newport News.

Newport News is currently constructing an aircraft carrier for the Navy and if additional work is not obtained, many workers would be *subject to lay offs as the work* on the carrier *is completed*. Many of these skilled workers *could* be used to perform the work on the U.S.S. Saratoga. The Navy plans to modify its ship overhaul schedule to support the increased employment during the buildup at Philadelphia and to provide training for the new people.

GAO found that the cost differences were greater than the Navy estimated and that Newport News may be able to perform the work on the follow-on ships in series by using the facilities currently used for commercial work.

On June 22, 1978, Newport News told the Navy that it had the facilities required to overhaul the four ships in series under the Navy schedules without conflicting with other Navy programs. The Newport News' proposal involved using facilities in the south yard for the lead ship and facilities in the north yard, now being used for commercial work, for the follow-on ships. It estimated that minor modifications costing about $2.5 million in 1978 dollars would be required and that a lead time of 3 to 6 months would be sufficient to make the facility modifications. Newport News probably would not need to use north yard facilities for the follow-on ships if a new aircraft carrier is not constructed at this site.

GAO found that the Navy's evaluation of Newport News' facilities was limited primarily to the facilities in the south yeard which are currently used for Navy work and that the Navy did not know whether the service life extension program could be done in the north yard. This issue requires further evaluation. The Navy requested from Newport News some additional information concerning the facilities' capability. This information was furnished to the Navy on August 28, 1978, and the Navy is evaluating it.

RECOMMENDATION

In view of the large cost differences between the two sites and the new information which indicates that Newport News may be able to perform the follow-on service life extension programs, a revalidation of the site selection decision is appropriate. Consequently, GAO recommends that the Secretary of the Navy reevaluate the decision to do the service life extension program work on the U.S.S. Saratoga at the Philadelphia Naval Shipyard and determine whether the decision can still be justified.

AGENCY COMMENTS

As requested, GAO did not follow its usual procedure of obtaining written comments on this report from agency officials. However, GAO discussed the matters covered in the report with Navy officials and their comments are incorporated where appropriate.

[Dollar amounts in millions]

Location and cost element	Amount included in Navy study [1]	GAO adjustment	Revised estimate [2]
Philadelphia with wage board reform:			
Basic shipbuilder conversion and contract modification allowance	$363.0	$1.0	$364.0
Projected escalation	30.8	−.6	30.2
Reserve for program growth	4.2	−4.2	
Government-furnished material, services, and test	67.0		67.0
Military personnel	69.7	15.9	85.6
Corporate taxes lost	19.3	−5.1	14.2
Total	554.0	7.0	561.0
Philadelphia without wage board reform:			
Basic shipbuilder conversion and contract modification allowance	376.6	2.6	379.2
Projected escalation	31.9	−.6	31.3
Reserve for program growth	4.5	−4.5	
Government-furnished material, services, and test	$67.0		$67.0
Military personnel	69.7	$15.9	85.6
Corporate taxes lost	19.3	−5.1	14.2
Total	569.0	8.3	577.3
Newport News:			
Basic shipbuilder conversion and contract modification allowance	374.0	−95.9	278.1
Projected escalation	51.6	−13.6	38.0
Reserve for program growth	3.4	−3.4	
Government-furnished material, services, and test	67.0		67.0
Military personnel	39.7	45.9	85.6
Contract administration	3.4		3.4
Total	539.1	−67.0	472.1

[1] Assumes (1) a ship's crew of 1,474 military personnel at Philadelphia and 300 military personnel at Newport News and (2) the crew does 395,000 labor-days of work at Philadelphia and none at Newport News.

[2] Assumes a ship's crew of 1,474 military personnel at both locations.

WASHINGTON, D.C.,
January 23, 1979.

Memorandum for the Secretary of the Navy.
Subject CV Service Life Extension Program (SLEP) Least-Cost Approach Study
Enclosure (1) CV Service Life Extension Program (SLEP) Least-Cost Approach Study

1. Enclosure (1) is forwarded for your review and submission to the Secretary of Defense for consideration and transmittal to the Senate and House Armed Services Committees.

2. The comparative costs contained in enclosure (1) vary substantially from the initial study submitted in May of this year and is now considered a factor in the final shipyard assignment decision. The principal reasons for the changes are the incorporation of some new assumptions and some revisions in methodology. Two major changes are:

(a) Newport News has offered to make their North Yard commercial facility available to do the SLEP industrial work. This facility had previously been restricted to commercial work only.

(b) The initial study compared program costs using a nucleus crew of 1474 in Philadelphia with a crew of 300 in Newport News. This premise was criticized within the GAO report which asserted that the Navy's initial comparison was not based upon true comparative assumptions. Enclosure (1) therefore includes estimated program costs using both 300 and 1474 Navy personnel in Newport News.

3. The enclosed study, although utilizing the guidelines of OMB Circular A–76, differs in that firm bid data from candidate activities could not be obtained. The work package is being developed and is not sufficiently well defined for shipyards to bid. The estimates used in this revised study remain primarily Class F quality based on an incompletely defined work package. A more definitized work package will not be available until May 1979; however, the relative cost difference between the shipyards is not expected to change.

4. In view of Newport News Shipbuilding's offer to utilize their North Yard facility for follow-on CV SLEPs, it is now possible to do the four ship program at Newport News without interference with other projects. This factor eliminates some of the major concerns attendant to assignment of CV SLEP to Newport News considered in submission of the initial study.

5. The percentage increase in productivity awarded Newport News over Philadelphia on page 3 of enclosure (8) of the study as the result of allowing the same fixed number of mandays at both yards, while discounting the differences in labor charging practices, is considered a reasonable approach for study purposes. Though not mentioned in the study, it is also considered reasonable to assign a productivity advantage to Newport News in view of that yard's experience in the construction and overhaul of large ships and the fact that Newport News will not be required to respond to high priority emergent work, as Philadelphia would, which could dilute the SLEP effort. This is significant in that it has a direct beneficial effect in the areas of planning, management and supervision, as well as on the accomplishment of the industrial effort on the waterfront. Though difficult to assess, the advantage is real and should not be ignored if a true comparison of costs is to be made.

6. Enclosure (7) of the study points out the rationale for excluding from the cost study specific dollar savings on other (non-CV SLEP) government work at either shipyard due to the allocation of overhead. These cost avoidances are estimated to be $44 million at Philadelphia and $18.2 million at Newport News. It can be argued that the respective cost avoidances should be deducted from the cost of each yard, providing a net advantage of $25.8 million for Philadelphia. However, the decision to exclude these costs is concurred in for the following reasons:

(a) There is no way of predicting with certainty what other work would occur in either yard in the absence of CV SLEP (and the resultant overhead effects are therefore unpredictable).

(b) It is not clear that the $18.2M and $44M are comparable costs (i.e., include the same cost elements).

(c) The present study has not reflected the costs associated with equipment depreciation and/or interest expenses at Philadelphia (such costs are implicit in the overhead rates of commercial activities).

In summary, the omission of the $44 to $18.2 million comparison works to Philadelphia's disadvantage, while the omission of depreciation/interest costs works to Philadelphia's advantage. Since these effects are difficult to estimate and tend to be offsetting in the comparison, it is prudent to omit them for the cost comparison.

7. It is also stated in enclosure (7) of the study that a decrease in manday rates of between $20 and $27 per manday would occur at Philadelphia if SLEP is accomplished there. This would be due to an increase in the shipyard direct labor workload base. The amount of work impacted is based on the current workload projection at Philadelphia with CV SLEP. This decrease accounts for the major reduction in the cost of SLEP itself at Philadelphia in the revised cost study.

8. The current restriction in formal assignment of the first CV SLEP to an industrial activity is requiring unusual dual planning efforts to preserve the scheduled 1 October 1980 start date of Saratoga SLEP. The lack of official assignment is also adversely affecting the Navy's ability to firm up the East Coast overhaul schedule for 1979 and beyond. This is having a serious downstream effect on public and private shipyard workload scheduling with concomitant effects on ship homeport changes. It is essential that a decision on the assignment of Saratoga SLEP be permitted no later than 1 April 1978 in order to retain the existing CV SLEP schedule.

9. The effect of the Leach Amendment to the Civil Service Reform Act and related executive limitations on civilian personnel end strength will require a net reduction of approximately 12,000 in the Navy's civilian employment level. The additional personnel required at Philadelphia to accomplish SLEP would be additive to this figure and would, therefore, result in a further reduction to the Navy's civilian employee ceilings elsewhere. These limitations severely impact any expansion of work at the Navy's industrially funded activities.

10. Despite the large cost difference in favor of Newport News, cost alone still is not controlling. Decisions of this nature seldom take into account other less tangible factors, particularly those affecting our naval personnel. They should not be overlooked in this instance. Since two-thirds of all Atlantic Fleet carriers are already homeported in Norfolk, far less turbulence to our people will result from a decision favorable to Newport News. Likewise, the ability to conduct the majority of the SLEP with over 1,100 fewer naval personnel who can avoid the rigors of a lengthy shipyard environment is also of paramount importance, to say nothing of the advantage accruing to our better use of these scarce manpower assets elsewhere in the Fleet. Taken in aggregate with all the other relevant factors, such as ability of Newport News to take all four SLEP ships without interference with other Navy work, lesser demand for both military and civilian manpower and preservation of critical CV skills, and severe limitations on the Navy's civilian end strength, cost lends strong support to reversing the earlier decision, and assigning CV SLEP to Newport News. Accordingly, I conclude that on balance the first CV SLEP should be assigned to Newport News.

T. B. HAYWARD,
Admiral, U.S. Navy, Chief of Naval Operations.

WASHINGTON, D.C.,
March 21, 1979.

Memorandum for all committee members.
From Frank Sullivan.
Subject: SLEP Testimony.

Attached is a copy of the staff summary of testimony on the USS Saratoga Service Life Extension Program. This summary is the one that the Chairman announced would be made available to all Committee Members as part of the consideration of the FY 1979 Defense Supplemental Authorization Bill.

Attachment.

STAFF SUMMARY OF TESTIMONY ON THE U.S.S. SARATOGA SERVICE LIFE EXTENSION PROGRAM

INTRODUCTION

This paper summarizes testimony received by the Senate Armed Services Committee on the Navy's Service Life Extension Program (SLEP) for aircraft carriers. The key issue in this testimony is assignment of the first carrier SLEP to Philadelphia Naval Shipyard vice Newport News Shipbuilding and Dry Dock Company. Testimony was received from Deputy Secretary of Defense Charles W. Duncan, Jr., on January 30, 1979 and from the following witnesses on February 9, 1979:

Honorable W. Graham Claytor, Jr., Secretary of the Navy.

Admiral Thomas B. Hayward, USN, Chief of Naval Operations.

Honorable Elmer B. Staats, Comptroller General of the United States.

Dr. Claude S. Colantoni, Professor of Accounting and Chairman of the Accounting Department, Wharton School, University of Pennsylvania.

Mr. William N. Lanen, Assistant Instructor in Accounting, Wharton School, University of Pennsylvania.

Mr. Thacher Longstreth, President, PenJerDel Corporation.

Mr. Gordon W. Rule, Procurement Consultant to Senator Warner.

Three key studies that compared the costs of undertaking the SLEP in the Philadelphia and Newport News yards supported the testimony of the witnesses: (1) a Navy cost analysis completed in January, 1979; (2) a September, 1978 General Accounting Office (GAO) review of an earlier Navy cost study; and (3) a study by Mr. Lanen of the Wharton School completed in January, 1979. Only the Navy study is part of the hearing record; however, relevant facts and considerations from the other two studies are included in this paper to clarify testimony.

BACKGROUND

The Navy has decided to extend, by 15 years, the service life of four aircraft carriers of the Forrestal class through an extensive overhaul and modernization program. Although the current Navy program is for the modernization of only these four carriers, Admiral Hayward has testified that all eight remaining carriers may be modernized. The USS SARATOGA (CV–60) will be the first ship of this class to be modernized. The Navy plans to begin work on the SARATOGA SLEP in October, 1980 at the Philadelphia Naval Shipyard. In making this decision, the Navy had also considered undertaking the SLEP at Newport News Shipbuilding and Dry Dock Company. There has been substantial disagreement over the relative cost and noncost considerations associated with doing this

work in either yard. While it would be desirable on a cost basis to undertake the four SLEPs in series at one yard, the decision on the yard for the SARATOGA does not necessarily prejudge yard selections for the SLEPs of the last three carriers.

The concern of the Senate Armed Services Committee in the yard selection for this first carrier SLEP was first presented in the Committee's Fiscal Year 1978 Authorization Report:

". . . current Navy plans to annually modernize four DDG-2 destroyers in naval shipyards and two in private yards and to perform the carrier service life extension in a naval shipyard may not be in the national interest. It seems inconsistent to project serious declines in future private yard workforces and at the same time plan to increase naval shipyard workforces to perform the DDG-2 modernization and carrier service life extension programs. Further, the committee is not convinced that Navy's current plans represent the least cost approach.

Accordingly, the Secretary of the Navy is requested to review current Navy plans and be prepared to justify the recommended procurement approach in connection with the Fiscal Year 1979 authorization request. In addition, a copy of the cost comparison study of inhouse versus contractor costs, as required under the provisions of Office of Management and Budget Circular A-76, should be made available to the committee when completed".

The committee's concern was reemphasized in the Fiscal Year 1979 Authorization Report:

". . . the Secretary of the Navy was requested to be prepared to justify the recommended procurement approach in connection with the fiscal year 1979 authorization request.

Justification of the recommended procurement approach was not available, presumably because the required studies had not been completed. Yet a decision on the procurement approach for one of the programs was announced.

The committee, therefore, recommends bill language to prevent the Navy from taking any action to carry out the SLEP or modification programs, except advance planning or purchase of long-lead items, until a report has been submitted to the committee evaluating the cost and other factors entering into the choice of public versus private shipyards for such work".

Part of the requested report—the portion covering the carrier SLEP program—was submitted by the Department of Defense on January 25, 1979 (the Navy cost analysis) and was addressed in testimony. (The part of the requested report covering the DDG-2 modernization program was submitted by the Department of Defense on March 13, 1979.)

RECOMMENDATIONS OF WITNESSES

The current recommendations of the witnesses are as follows:

Deputy Secretary of Defense Duncan—"We continue to feel that the Philadelphia Naval Shipyard is the logical place to perform the SARATOGA SLEP and that the cost study and other non-cost factors considered have not provided a sufficient basis on which to change the decision the Secretary of the Navy made last April". (letter to Chairman Stennis, January 25, 1979)

Secretary of the Navy Claytor—"Under these circumstances unless relief from civilian end-strength limitations anticipated last year can in fact be obtained, I must recommend that we contract out the SLEP of SARATOGA to Newport News. If, however, such relief is possible I feel that the pros and cons, given the various uncertainties, are sufficiently balanced that assignment of USS SARATOGA to Philadelphia Naval Shipyard would be an acceptable alternative to the Navy". (memorandum to the Secretary of Defense, January 25, 1979)

Admiral Hayward—"Taken in aggregate with all the other relevant factors, such as the ability of Newport News to take all four SLEP ships without interference with other Navy work, lesser demand for both military and civilian manpower and preservation of critical CV skills, and severe limitations on the Navy's civilian end strength, cost lends strong support to reversing the earlier decisions, and assigning CV SLEP to Newport News. Accordingly, I conclude that on balance the first CV SLEP should be assigned to Newport News". (memorandum to the Secretary of the Navy, January 23, 1979)

Comptroller General Staats—"We believe the current Navy figure of $80 million in favor of Newport News is the more realistic". (testimony, February 9, 1979)

Dr. Colantoni and Mr. Lanen—"It is our conclusion that a significant difference in cost between the two locations has not been documented". (testimony, February 9, 1979).

Mr. Longstreth—"A great deal of soft material, I guess that is the way Secretary Claytor described it, would indicate that it is quite, quite clearly established that there is no 80 or 100 million-dollar differential here, which has been talked about, but quite obviously not documented, that we are talking about a difference which is probably, a very, very small one insofar as we can identify positively, and that the extraneous aspects, which were touched upon by the Navy and by the Defense Department, are probably going to be crucial in the final decision that must be made". (testimony, February 9, 1979)

Mr. Rule—"every single factor involved in making a sound and prudent decision in this case clearly tilts in favor of Newport News". (testimony, February 9, 1979)

SHIPYARD CAPABILITIES

1. Philadelphia Naval Shipyard—This shipyard is a publicly owned yard that specializes in the overhaul and emergency repair of naval vessels. The yard is not experienced in either the overhaul or construction of aircraft carriers. Modest facility modifications and new equipments, totaling $2 million, have been identified in order to undertake this SLEP at Philadelphia. However, the work force at the yard would have to be expanded over a 24-month period from 8,000 to 9,600 Navy civil service employees to accomplish the work; this additional manpower will come from unskilled workers trained after they are recruited. In addition, Philadelphia must be augmented with a ship's crew of 1,474 naval personnel in order to complete the SLEP on the 28-month schedule; five more months would be required if the ship's crew were not used.

2. Newport News Shipbuilding and Dry Dock Company—This shipyard is currently constructing a nuclear powered aircraft carrier, CARL VINSON (CVN-70), and is the most experienced U.S. yard for carrier work. Newport News has identified $2.5 million in required facility modifications for the SLEP. Newport News plans to use 2,600 workers no longer needed for CVN-70 construction to accomplish the SARATOGA SLEP. If these workers are not so employed, Newport News will most likely be forced to release them. The availability of adequate, skilled labor at Newport News would permit on schedule completion of the SLEP with a ship's crew of only 300 naval personnel although the work could be undertaken with the ship's crew of 1,474 personnel and fewer shipyard workers.

COST ISSUE

Several studies have been completed that compare the costs of the SARATOGA SLEP performed at Philadelphia and at Newport News. All studies show a higher cost for accomplishing the SLEP at the Philadelphia Naval Shipyard. The GAO review of the earlier Navy cost analysis and the most recent Navy study are believed to be the most valid for comparing relative costs. In testimony, Mr. Staats stated:

"GAO has not had an opportunity to review in detail the revised (Navy) study, however, we do not have serious problems with the Navy's cost estimates. As pointed out earlier we had reached substantial agreement on the prior data. The paramount question here is what assumptions should be used, and what data should be compared".

Due to the lack of cost information available to Mr. Lanen, his cost estimates, which show a $4 million advantage to Newport News, are not satisfactory for meaningful comparison. In testimony, Mr. Lanen agreed that he did not have access to Navy or GAO data and, therefore, had to make a number of assumptions on his own. GAO reviewed Mr. Lanen's study and found that necessary adjustments resulted in a $88.9 million cost advantage in Newport News' favor. Other cost analysis issues raised in Mr. Lanen's study are included in subsequent sections of this paper.

Final cost estimates for the SLEP cannot be developed because the complete SLEP work package has not been defined. There is some uncertainty as to whether the GAO and Navy studies identify relative costs between the two yards that are representative of any final cost estimates.

In sum, both studies show Newport News to be less costly:

GAO concludes that the cost difference would range between $89 and $119 million; and

Navy concludes that the difference would be between $37 and $80 million.

Cost of Saratoga SLEP

(Fiscal year 1981—dollars in millions)

	GAO	Navy
Newport News:		
GAO		$472
Navy		476
Philadelphia:		
With Wage Board reform:		
20.4 percent retirement:		
Factor	$575	$537
14.1 percent	561	525
7.14 percent	---	512
Without reform:		
20.4 percent	591	556
14.1 percent	577	543
7.14 percent	---	529

Three assumptions in the GAO and Navy studies are critical: size of the work augmentation by the ship's crew, likelihood of blue-collar wage board reform, and the appropriate civil service retirement factor. To be able to validly compare the costs of the two shipyards, the basis must be consistent. Although this issue is not directly discussed in testimony, comparisons that propose a 1,474-man ship's crew augmentation for Philadelphia and 300-man augmentation for Newport News are invalid because they fail to include the costs to the Navy of poorer fleet readiness, lower reenlistment rates, and other personnel problems associated with the larger work augmentation at Philadelphia. If these costs could be fully quantified, a valid comparison with different augmentation levels would be possible. In the absence of such data, the only valid basis for comparing the costs of Philadelphia and Newport News is with the same ship's crew augmentation. The costs in the preceding table are on this basis.

For assumptions concerning wage reform and civil service retirement costs, there is uncertainty. In the preceding table, a range of appropriate factors has been used. GAO has stated that passage of wage board reform legislation does not appear imminent. GAO recommends that a 20.4 percent or higher retirement factor be used. From October, 1976 through June, 1977, the Office of Manage-

ment and Budget required the use of a standard retirement cost factor of 24.7 percent of payroll; this was reduced to 14.1 percent in June, 1977. The Office of Federal Procurement Policy is now proposing to increase this factor to 20.4 percent.

The Navy has also estimated that if it decided to use only a 300-man ship's crew at Newport News, the cost would increase by $48 million. However, this decision by the Navy should be on the basis of a cost-benefit analysis regarding the use of naval personnel and should primarily be independent of a decision on yard selection.

MANPOWER ISSUES

1. Navy's Civilian Employment Levels—Current congressional and executive limitations will require a reduction of approximately 12,000 Navy civilians by the end of FY 80. This includes reductions in Naval shipyard employment levels of 1,500 personnel during FY 79 and another 1,900 during FY 80. These reductions and possibly 1,600 additional cuts may have to be made by other Naval shipyards if the Philadelphia Naval Shipyard is to expand by 1,600 Navy civilians. Deputy Secretary Duncan has assured the Navy that 1,600 personnel spaces will be made available for the Philadelphia Naval Shipyard without requiring offsetting reductions elsewhere. (It is uncertain whether he was referring to offsetting reductions elsewhere in the Navy or in Naval shipyards.) Deputy Secretary Duncan indicated that this increase may have to come from the 1.25 percent flexibility in civilian manpower ceilings given to the Secretary of Defense by law. The Deputy Secretary was not questioned as to why he had not considered this extraordinary measure to preclude layoffs of already employed and trained workers at other public yards. In summary, an increase of 1,600 civil service employees at Philadelphia will occur at the same time that at least a 3,400-worker reduction will be realized at other public yards and a 2,600-worker layoff will occur at Newport News.

2. Use of Naval Personnel as Shipyard Workers—Admiral Hayward has indicated that of all the non-cost issues, the impact on naval personnel is the most important. Regarding the option provided by Newport News of using about 1,200 fewer naval personnel for the SLEP, Admiral Hayward has stated:

"Overhauling in Newport News will afford the reassignment of those 1200 personnel throughout the Navy which is fundamentally undermanned. With 1200 less personnel on board, personnel turbulence inherent in life at an industrial activity is minimized. Twelve hundred fewer personnel will be subjected to the hardships of the shipyard which include:

"Family separation or a short term move

"Difficult interface of responsibilities for equipment repair

"Industrial facility inconveniences attendant with a ship's tear-down and resulting loss of shipboard hotel services, messing and berthing."

Most of those 1200 personnel will be trained and experienced operators whose skills are needed to better operate other fleet units".

In addition, he stated:

"We know that absenteeism (unauthorized absence and desertions) for ships in overhaul occurs at a rate about twice the Navy norm and the impact on retention (our most significant Navy problem) will be predictably adverse".

and

"My staff has compiled data on two carriers which illustrates a dramatic drop in career and first-term retention during periods of overhaul, i.e., there was a 20% decline in reenlistment on each carrier".

In testimony, Mr. Staats refers to a previous study of Navy overhaul practices in which GAO "concluded that the use of these highly trained personnel to do industrial task, administrative, and support functions represents a waste of training and experience that is needed on operational ships and elsewhere in the Navy".

OTHER ISSUES

1. Labor Productivity—The Navy cost study assumes a 15–20 percent labor productivity advantage for Newport News; GAO believes this estimate is reasonable. As Dr. Colantoni and Mr. Lanen noted, this productivity advantage was not developed in detail but is an estimate based upon previous studies of public versus private shipyard productivity. These studies have shown the following advantages for private yards:

STUDY

Navy comparison of submarine overhauls in Newport News and Bremerton Naval Shipyard: Ernst and Ernst.

Increase in public yards compared to private yards

Year	*Percent greater*
----, Man-hours expended	15 to 20
1971, Man-hours expended	39 to 59

In addition, the Ernst and Ernst study showed that the average cost of a public yard work is 49 percent greater than in a private yard. In 1972, Booz-Allen compared the costs of public and private yards, but did not identify the differences caused by labor productivity and wage rates. This study showed the following percentage cost increases in public yards:

	Percent
Conversions	17–115
New construction	40
Repair	23

In 1977, Booz-Allen revalidated its earlier study. At that time, they found the average daily wage rates at Newport News and Philadelphia to be:

Newport News	$112
Philadelphia	$169

2. Overhead—In testimony and studies on the Saratoga SLEP issue, the manner in which shipyard overhead was handled is poorly described and appears to be inconsistent with the principle of including only those costs that are affected by the decision. In the Navy study, the total overhead at both Philadelphia and Newport News was reallocated over the greater work base that would result from assigning the SLEP to that yard. While such a reallocation would be valid from a cost accounting approach, it is not valid from a decisionmaking approach.

In making a decision as to the relative costs of assigning the Saratoga SLEP to Philadelphia or Newport News, only the marginal costs of the decision should be included. From the Government's point of view, certain overhead costs at both yards represent sunk costs. At Philadelphia, the Government's decision to continue to operate the yard at a workload that would support about 8,000 employees commits the Government to pay certain overhead costs; these costs are sunk. Likewise, the Government already has certain sunk overhead costs associated with the assignment of other Government work to Newport News.

In the Navy's cost analysis, some portion of these sunk costs in both yards are reallocated to the Saratoga SLEP.

By doing so, the marginal costs to the Government of the SLEP decision are misstated. GAO did not challenge the Navy on this reallocation. In testimony, Dr. Colantoni appears to be challenging the Navy on this issue; however, his testimony is unclear on this point. In his study, Mr. Lanen states: "It is important, therefore, to insure that the labor rates for Philadelphia Naval Shipyard do not include any fixed overhead which would not, by definition, be affected by performance of the SLEP". This should also apply to Newport News.

In its study, the Navy apparently identifies the amount of sunk overhead allocated against the Saratoga SLEP as $44 million at Philadelphia and $18.2 million at Newport News. Forwarding memoranda of the Navy study address this issue as follows:

"It can be argued that the respective cost avoidances (sic) should be deducted from the cost of each yard, providing a net advantage of $25.8 million for Philadelphia. However, the decision to exclude these costs is concurred in for the following reasons:

"(a) There is no way of predicting with certainty what other work would occur in either yard in the absence of CV SLEP (and the resultant overhead effects are therefore unpredictable).

"(b) It is not clear that the $18.2M and $44M are comparable costs (i.e., include the same cost elements).

"(c) The present study has not reflected the costs associated with equipment depreciation and/or interest expenses at Philadelphia (such costs are implicit in the overhead rates of commercial activities).

"In summary, the omission of the $44 to $18.2 million comparison works to Philadelphia's disadvantage, while the omission of depreciation/interest costs works to Philadelphia's advantage. Since these effects are difficult to estimate and tend to be offsetting in the comparison, it is prudent to omit them for the cost comparison".

Concerning overhead at Philadelphia, there is also the issue of the allocation of training costs, estimated at $2 million, for the 1,600 unskilled workers to be hired and trained. The Navy's approach was: "The increased training costs from the influx of the personnel build-up will be borne by the individual customers with work in the shipyard prior to the commencement of the CV–SLEP program. The cost to customers of the training and inefficiencies due to the new hires is considered to be offset by a decrease in the overhead portion of the manday rate due to the increase in the direct labor base". These training costs are marginal costs directly related to the Saratoga SLEP and should be charged to Philadelphia's costs. GAO stated: "The Navy's study should have included other costs such as costs to hire and train personnel to do the work", (among others).

3. Corporate Taxes Lost—Dr. Colantoni and Mr. Lanen criticized the charge of $14.2 million, used in both the Navy and GAO studies, against the cost of the SLEP in Philadelphia based upon loss of corporate federal taxes if the work is not performed at Newport News. The Navy and GAO used a factor of 4.58 percent of revenues in calculating lost taxes. This is based upon the average of federal taxes paid as a percentage of total revenues of Newport News' parent corporation, Tenneco, over 1974–1977. Their criticism was based upon two arguments:

The profit rate at Newport News has not been equal to the overall Tenneco rate; and

There might be other business at Newport News generating profits and federal taxes if they do not undertake the SLEP project.

The Office of Management and Budget Circular A–76 requires that for cost comparisons between Government and private facilities, corporate taxes lost be included as a factor. In this regard Tenneco (not Newport News) pays federal taxes against its overall corporate profit. For this reason the use of percentage of tax to total corporate revenue appears to be the most valid ap-

proach. Regarding the second point, while Newport News might acquire additional business this would most likely be at the expense of another U.S. private shipyard, hence no new taxes would be generated. Only the corporation that pays them would change.

4. Better Cost and Work Control in a Navy Yard—Secretary Claytor has stated that there is an advantage to assigning the SLEP to Philadelphia in that Navy yards under Navy control do have better control of the work than private yards because there are no contractor or costing disputes. Several statements were made by various witnesses regarding cost overruns, claims, and litigation associated with past Newport News government shipbuilding work and the possibility of such problems on the Saratoga SLEP. Mr. Rule countered, in part, this argument by stating that Newport News has greater incentive than Philadelphia to control costs. In both yards the Saratoga SLEP will be accomplished under a cost-type contract. If Philadelphia gets the contract, the project order will not have a cost ceiling and there will be no penalty for exceeding the target cost. There is no incentive to control costs. Newport News will get a cost plus incentive fee contract. This contract will have a penalty: Newport News' profit will be diminished by every dollar over the target cost. So Newport News, unlike Philadelphia, has an incentive to save money and make a profit.

5. Schedule—Both shipyards can start and complete the SLEP on schedule assuming that Philadelphia is augmented by a 1,474-man ship's crew and that Philadelphia can recruit and train the necessary additional workers on a timely basis. In this regard, Philadelphia has achieved a net gain in employment in FY 78 greater than that required in any of the three years following start of the SLEP in October 1980. (Whether the skill categories recruited in FY 78 are the same as would be required for the SLEP build-up was not presented.)

In addition, both Philadelphia and Newport News have the capability to accomplish all four carrier SLEPs without interfering with other work. Newport News has stated that it is willing to commit the necessary facilities in the south and north yards for the work on the four ships provided that it received a similar commitment from the Navy. In this regard, Secretary Claytor stated:

"So as we look at it now there are no congestion problems immediately foreseeable, However, this is still a possibility, particularly as we get to subsequent SLEPS, and if Newport News should engage in a major private shipbuilding program that would occupy the entire north yard and shipbuilding picked up in the years ahead, there could be a congestion problem there that would not be under our control."

6. Need for Carrier-Capable Yards—At present, there are two carrier-capable yards on the U.S. east coast: Newport News and Norfolk Naval Shipyard. There is no requirement to upgrade Philadelphia so that it is also fully carrier-capable. Secretary Claytor stated: "An advantage there (regarding Philadelphia), of course, is one I have mentioned, the desirability of maintaining a second East Coast Navy yard with current carrier capability, but I don't think this is a driving factor either, since both Norfolk Naval Shipyard and Newport News are qualified. It would be desirable but not driving". In this regard, Mr. Staats noted: "Section 809 of the Defense Industrial Reserve Act of 1973 (PL 53-155) clearly states that for mobilization planning, Government-owed plants are to be held to the minimum requirements for immediate use in time of national emergency, and that to the maximum extent practicable, reliance will be placed upon private industry for support of defense production".

7. Labor Controversies at Newport News—Currently, there is a labor dispute at Newport News over which union will represent the yard's workers. While work at the Saratoga SLEP will not start for 18 months, long-term disruption of the work effort at Newport News could delay scheduled completion of current work and thereby impact on start of the SLEP. In addition, Secretary Claytor stated in this testimony: "the fact that there is a serious labor problem down there (Newport News), that shows no signs of improving, is a factor that one has to consider".

8. Cost Impact of Unionization at Newport News—At the present time, the wage rate of yard employees at Newport News is substantially lower than the rate at Philadelphia. Whether this would apply in the future was questioned in light of the fact Newport News yard workers may be represented by a new union, United Steelworkers. The Navy and GAO studies assumed annual wage increases of 12 percent at Newport News in calculating labor costs. This is 5 percent over the Presidential wage guidelines of about 7 percent per year. GAO indicated that for every percent increase above 12 percent, Newport News' costs would increase by $2.4 million.

9. Public/Private Split of Overhaul and Repair Work—Congress has mandated that 30 percent (by cost) of the Navy's overhaul and repair work go to private shipyards. The Navy has indicated that assignment of the Saratoga SLEP to Philadelphia will not violate this directed allocation for FY 79 through FY 83. It should also be noted that additional overhaul work (one destroyer and one frigate) are being transferred to Philadelphia as part of the buildup for the Saratoga SLEP.

10. Interference by Other Navy Repair Work—A primary mission of Philadelphia is emergency repair work on naval ships. Substantial demand for this unscheduled work could interfere with progress and cause cost growth on the Saratoga SLEP.

11. Carriers Homeported in Norfolk—Admiral Hayward stated: "Since two-thirds of all Atlantic Fleet carriers are already homeported in Norfolk, far less turbulence to our people will result from a decision favorable to Newport News". However, Secretary Claytor stated: "There are some carriers already homeported in Norfolk, so there would be less disruption if the homeported carriers are kept there. But I must point out that three out of the first four carriers to be SLEPed, including the Saratoga, are not homeported at Norfolk. I think this is not really a driving factor".

WASHINGTON, D.C.,
November 10, 1977.

From Commander, Naval Sea Systems Command.
To Chief of Naval Operations.
Via Chief of Naval Material.
Subject: CV 59 Class Service Life Extension program (SLEP); Shipyard selection.

1. During the CEB of 21 June 1977, NAVSEA presented the results of a study conducted relative to selecting a shipyard to accomplish the CV 59 Class Service Life Extension Program (SLEP). It was recommended that Philadelphia Naval Shipyard be designated for planning purposes. Final selection would be contingent upon favorable action on shipyard personnel ceiling increases. A decision was expected by the last quarter of FY 78. It now appears likely that naval shipyards will have constrained ceilings. Based upon a detailed study of the industrial base NAVSEA recommended during the CEB of 16 September 1977 that the first SLEP ship be assigned to Newport News Shipbuilding and Drydock Company. The rationale for this recommendation was that the Newport News workforce can readily accept the ship without requiring early build up and training and associated start up costs. In fact, Newport News may be able to accommodate one or more of the follow SLEP ships depending on the out year new construction programs (CVV/CVN).

2. It is desirable to have the active involvement of the execution yard to insure orderly and effective advance planning. Neither Philadelphia nor Newport News is in a position to allocate resources to SLEP planning without some assurance of being the execution yard, subject, of course, to Congressional authorization. It would work to the Navy's advantage to make a decision concerning the execution yard now. This would alleviate the difficulties that NAVSEA is experiencing in getting started.

3. Accordingly, it is recommended that Newport News be designated as the U.S. SLEP execution yard.

4. If this recommendation is approved, NAVSEA will initiate negotiations for a planning contract, which will include dry docking, T&I evolutions scheduled for the availability, CFE procurement and off-ship prefabrication. These items plus an option to start early clearly defined and limited production work will preclude any delay which could possibly result from administrative time required for finalization of the prenegotiated SLEP conversion contract. This option utilizing FY 81 funds will not be exercised until the FY 81 full-funding has been authorized and appropriated. The Department of the Navy FY 79 budget has been adjusted to cover assignment to Newport News. Specifically, $20M has been transferred from FY 81 full-funding to FY 80 advance procurement for the additional work under the planning contract and an increase of $36M in the end cost (FY 81) as compensation for no ship's force involvement in production cost.

C. R. BRYAN.

Washington, D.C., November 23, 1977.

First Endorsement on COMNAVSEASYCOM ltr 942CB/JIK 4720 Ser 69-942C of November 10, 1977.
From Chief of Naval Material.
To Chief of Naval Operations.
Subject: CV 59 Class Service Life Extension Program (SLEP); Shipyard Selection.

1. For reasons of continuity, assignment of all SLEPS to the Philadelphia Naval Shipyard is the preferable alternative. However, timing and ceiling constraints recommend against this alternative for the first SLEP. Sizable disruption to workloading plans for all naval shipyards would be caused by movements of ceiling points to Philadelphia Naval Shipyard to accommodate build up necessary to accept the first SLEP unless personnel ceiling relief beyond the POM end year FY-79 level is provided. Furthermore, an early decision is needed to permit definitive planning.

2. Accordingly, this endorsement concurs with the basic recommendation to perform the first SLEP at Newport News Shipbuilding and Dry Dock Company and the subsequent SLEPs at Philadelphia Naval Shipyard.

E. M. MICHAELIS.

CONSERVATIVE SUPPORT FOR THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, support for the Genocide Convention is not confined to one end of the political spectrum. That may surprise people. It is not a simple liberal proposal. Organiza-

tions and individuals from varied and opposing ideological backgrounds have rallied behind the Genocide Convention and the universal ideals which it embodies. Christians and Jews, Republicans and Democrats, Presidents, top ranking Pentagon officials, numerous labor unions, and the legal profession have all endorsed this treaty. Let us look today at what some of the recent supporters of this treaty have had to say:

In February 1976, the Department of Defense fully endorsed the Genocide Convention, claiming that ratification would be a "positive step in the national interest of our country." In addition to the Defense Department, the judge advocate generals for the Army, Air Force, and Navy gave their full approval in separate opinions.

In February 1970, President Nixon urged the Senate "to consider anew this important convention and to grant its advice and consent to ratification." He stated further that ratification was needed to "demonstrate unequivocally our country's desire to participate in the building of international order based on law and justice."

The American Bar Association, which had for many years opposed the Genocide Convention, reversed its position in February 1976. The ABA concluded that its arguments had not withstood the test of time and they now fully support Senate ratification of the convention. Numerous other legal authorities have given their endorsement to the Genocide Convention, including former Chief Justice Earl Warren, who lamented:

> We as a nation should have been the first to ratify the Genocide Convention . . . Instead, we may well be the last.

In the field of journalism, conservative columnist, William F. Buckley, Jr., has given his complete endorsement to the Genocide Convention. In an editorial in the Chicago Daily News on June 21, 1977, Mr. Buckley wrote that—

> We should officially identify ourselves as approving the proposition that genocide is a violation of international law.

Mr. Buckley's article is concise and well argued and I ask unanimous consent that it be printed in the RECORD.

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

THE SENATE AND GENOCIDE

(By William F. Buckley, Jr.)

Senator Javits has announced his intention to press for the ratification of the Genocide Convention, and although there are abundant reasons to doubt it will save any endangered species, the arguments in favor of its passage outweigh the negative arguments. Here is what one should bear in mind in thinking about any international human rights law:

1) The ideological enemies of human rights, most conspicuously the Communist states, will not be contained by the legislation. But this does not mean that the legislation cannot be put to useful effect. It wasn't until September, 1973, that the Soviet Union ratified the several conventions on human rights passed by the United Nations in the late '40s; and, while on the same binge, the Soviet Union ratified in 1975 the Helsinki agreements.

Add the new Soviet Constitution, and one would think one could go to live in the Soviet Union as to a libertarian paradise. As for China, human rights is regarded as a kind of kinky Western habit, to be shunned along with Beethoven and Mozart.

2) Non-ideological enemies of human rights are much likelier to benefit from stipulated definitions of human freedom. Evelyn Waugh's prophetic book, "Black Mischief," describes the state of Azania in which efforts, hilariously clumsy, are made to emulate the manners and morals of the British. The Azanians manage to get things just a little confused, as when a reception is given to two visiting British ladies representing the Royal Society for the Prevention of Cruelty to Animals. The Society's name is misread by the local host, who gives a speech on the earnest efforts being made in Azania to imitate the British by the Cultivation of Cruelty to Animals.

The pasquinade is wonderfully carried off, but the residue of the novel reminds us that norms achieved by the more civilized states after millenia of agonizing experience are a part of the universal patrimony. If and when human rights finally arrive in nations like Iran and Chad, it will be because of the persistent idealism of such people as have fought for universal declarations of human rights.

3) The Genocide Convention was signed by President Truman in December of 1948, and although three times recommended to the floor of the Senate, to the Foreign Relations Committee, has heretofore failed of passage. Probably the main reason for this was the opposition of the American Bar Assn. It was widely feared, during the '50s and '60s, that Americans might be detained in murky parts of the globe and charged with "genocide" against American Negroes or Vietnamese peasants, tried and imprisoned.

In fact, our passage of the Genocide Convention or our rejection of it, would not have stood in the way of a state that chose to press such a charge against a U.S. citizen. Available to us in such situations is nothing more than our diplomatic resources, and our atom bombs. If Marshal Amin decides to try a U.S. reporter for complicity in genocide because he carries a check book of the Chase Manhattan Bank that has branches in South Africa, he will do so irrespective of any legislation passed by the Senate.

Even so, the recommendation of the Bar Association, which now favors ratification, is based on the attendant protocols. The Genocide Convention's Article V reads: "The contracting parties shall enact the necessary implementing legislation to enforce provisions of the convention." This means that only Congress can pass laws that would give teeth to the Genocide Convention: and Congress is in our hands, not in those of General Amin.

(4) With these qualifications, what is the point of the convention? It is a moral point, but moral points are after all about all we have left. We should officially identify ourselves as approving the proposition that genocide is a violation of international law.

The crime of genocide is one of the distinctively hideous crimes of the century: practiced against the Armenians, against the Jews, against any number of African tribes, against Asiatics, against Cambodians—and, in less than a systematic way, against Irish. The failure of the Senate to declare itself on the subject is itself arresting, and Senator Javits is right to urge its passage.

Mr. PROXMIRE. Mr. President, the Defense Department, the American Bar Association, Mr. Nixon, and Mr. Buckley are no sentimental softies. If there was ever a question of whether ratification of the Genocide Convention was against our national interest, these men have answered it. I fully agree with Mr. Buckley that "the failure of the Senate to declare itself on the subject is itself alarming," and I strongly urge the Senate to remedy this disgrace by ratifying the Genocide Convention.

Mr. President, I yield the floor.

SENATE RESOLUTION 113—AUTHORIZING THE APPEARANCE AND/OR THE FILING OF A BRIEF ON BEHALF OF THE SENATE AS AMICUS CURIAE IN *HUTCHINSON* V. *PROXMIRE, ET AL.*, NO. 78-680

Mr. ROBERT C. BYRD. Mr. President, on behalf of myself and the distinguished minority leader (Mr. BAKER), I send to the desk a resolution and ask for its immediate consideration.

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

The second assistant legislative clerk read as follows:

> A resolution (S. Res. 113) authorizing the appearance and/or the filing of a brief on behalf of the Senate as amicus curiae in the Supreme Court proceedings in *Hutchinson* v. *Proxmire, et al.* No. 78-680, on the issue of the scope of Article I, section 6, of the Constitution, the speech and debate clause.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the resolution.

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

Mr. ROBERT C. BYRD. Mr. President, this resolution authorizes the Senate to appear as amicus curiae before the U.S. Supreme Court and to file a brief on behalf of the U.S. Senate in the case of Hutchinson against Proxmire, et al.

I just looked that term up in a dictionary, and I have looked it up in several dictionaries. The pronunciation is amicus curiae, and I hope Senators will pardon me if I differ from their pronunciation. I have heard it about a hundred different ways.

Mr. BAKER. I will pronounce it that way from now on.

Mr. ROBERT C. BYRD. For 200 years, the speech or debate clause of the U.S. Constitution has protected the independence of the legislative branch of our Government. It protects what we say in order to insure a meaningful exchange of ideas in debate. It prevents either the executive or judicial branches from interfering in or usurping the powers and prerogatives which are given to the Congress under the Constitution.

In recent years a series of decisions and a pronouncement of dicta from the courts have either endangered the speech or debate clause or confused its meaning and application. It is important that the Senate enter as an amicus in order to defend and protect our Constitutional prerogatives.

It is for the Senator from Wisconsin in his brief to assert his defenses on the grounds available to him. The Senate, as an institution, has its own sepa-

rate and special interests with respect to the speech or debate clause, and it is to that issue that the Senate brief would be addressed.

The purpose of the amicus brief is to defend the interests of the Senate. The conclusion might be drawn by the Judicial branch that we are uninterested in our rights if we fail to defend them.

Finally, Mr. President, both Houses of the Congress have previously appeared as amicus curiae in important cases where constitutional prerogatives were involved. There is a precedent for doing so. Failure to do so in this case, when the rights and interests of the legislative branch are directly affected, could lead to the diminution of those rights.

For all these reasons, Mr. President, I urge that the resolution be passed.

I urge that the resolution be agreed to, and I yield to the distinguished minority leader.

Mr. BAKER. I thank the majority leader.

Mr. President, I join the majority leader in this request, and I am pleased to cosponsor the resolution. I think it is not only an appropriate but also a highly desirable act by the Senate, and I express my thanks to those who have sponsored it.

Mr. PROXMIRE. Mr. President, I thank both the majority leader and the minority leader from the heart for this.

I think the majority leader put it very well when he said this is not a matter of taking the part of a Senator. This is a matter of defending the interests of the Senate.

I also am happy to say that the House leadership, including Speaker O'NEILL, Majority Leader WRIGHT, and Minority Leader RHODES, also have taken action to support the amicus curiae. I am extremely grateful for the steps they have taken. I think it is right to defend the rights of both legislative bodies, although I have a personal interest, which is something else.

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

The resolution (S. Res. 113) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas the Supreme Court of the United States on January 8, 1979, issued a writ of certiorari in the case of *Hutchinson* v. *Proxmire, et al.*; and

Whereas this civil action against the Senator from Wisconsin (Mr. Proxmire) seeks damages for actions that were performed within the scope of the Senator's duties and responsibilities as a Member of the Senate under the Constitution of the United States; and

Whereas the Senate, by Senate Resolution 463, 94th Congress, has supported the defense of Senator Proxmire in defending the civil action brought against him for the purpose of protecting the interests of the Senate; and

Whereas in this case the Supreme Court will consider the scope and meaning of the protection provided to Members of the Congress by Article I, Section 6, of the United States Constitution, the speech and debate clause, including the application of this provision to Senators and their aides, and the types of activity protected; and

Whereas this case involve the informing function of the Congress and the right of Members of the Senate to inform their constituents, colleagues, and the public; and

Whereas this case involves the investigation and oversight functions of the Congress and the right of the Members of the Senate to obtain information in their contact with the executive branch of the Government; and

Whereas the District Court and the Circuit Court of Appeals have recognized the application of the Speech and Debate clause to the conduct complained of in this case; and

Whereas a decision in this case may impair the constitutional independence and prerogatives of every individual Senator, and of the Senate as a whole; and

Whereas the Senate of the United States has a responsibility to insure that its interests are properly and completely represented before the Supreme Court: Now, therefore, be it.

Resolved, That there is established a committee of the Senate consisting of the President pro tempore of the Senate, the Majority Leader and Minority Leader of the Senate, and the chairman and ranking minority member of the Committee on Rules and Administration. Such committee is authorized and directed to appear and/or to file, on behalf of the Senate of the United States, a brief as *amicus curiae* in the case of *Hutchinson v. Proxmire et al.*, now pending in the Supreme Court of the United States.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the Supreme Court.

Mr. ROBERT C. BYRD. Mr. President, lest future scholars be puzzled by what has been said about the pronunciation of this Latin term, until recently I thought the only pronunciation was amicus curiae. I continued to search, however, and found that it could be pronounced as amicus. But I will stick with my own old ways, old-fashioned as they are.

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

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. Mr. President, I spent 3 years in law school at the University of Tennessee, and I spent 17 years practicing law. Never before have I heard that term pronounced with the resonance and with the appeal that the majority leader has pronounced it, and I herewith declare that to be my preference for pronunciation.

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

Mr. ROBERT C. BYRD. I yield.

Mr. PROXMIRE. Mr. President, I think we should recognize what "amicus" really means. It means "friend"—and these are two good friends, believe me. They are not only "amicuses"; they are "amicii."

Mr. BAKER. Mr. President, I think we are out of our depth.

COMMEMORATION OF DAYS OF REMEMBRANCE OF VICTIMS OF THE HOLOCAUST

Mr. ROBERT C. BYRD. Mr. President, I send a resolution to the desk, cosponsored by myself, Mr. DANFORTH, Mr. BAKER, and Mr. JACKSON, and I ask that it be stated.

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

The second assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 16) relating to a ceremony to be held in the Capitol Rotunda as part of the commemoration of the days of remembrance of victims of the holocaust.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

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

Mr. ROBERT C. BYRD. I yield.

Mr. PROXMIRE. Mr. President, I am delighted to support the resolution. It calls to our attention the terrible tragedy of the attempt by Hitler's Germany to exterminate the Jews. This resolution is similar to the Genocide Convention I have been talking about almost every day for 11 years.

This would not simply be a resolution indicating our sympathy and our consternation but a resolution indicating that we intend to do something about it.

Mr. President, I hope that this fine resolution, which I support—and I commend the leaders for offering it—will be followed this year, at long last, after 30 years, by ratification of the Genocide Convention.

Mr. ROBERT C. BYRD. Mr. President, due credit should be given to Mr. DANFORTH. I believe that his is the first name to appear on the resolution.

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

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. Mr. President, I take special pleasure in the resolution that is now before the Senate. I was especially pleased to nominate the distinguished Senator from Missouri (Mr. DANFORTH) to serve on this commission. I did so with the knowledge that his background and educational experiences would make him especially and suitably sensitive to the matter at hand. I believe this resolution is a vindication of that judgment.

I express my appreciation to both Senator DANFORTH and Senator JACKSON for their recommendation, and I support the action taken. I express my agreement with the remarks made by the distinguished majority leader and by Senator PROXMIRE.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

Resolved by the Senate (the House of Representatives concurring), Whereas, Public Law 95-371 designates April 28 and 29 of 1979 as "Days of Remembrance of Victims of the Holocaust;"

Whereas, on November 1, 1978, the President of the United States established the President's Commission on the Holocaust, which was charged with the responsibility of recommending appropriate ways for the nation to commemorate the Days of Remembrance of Victims of the Holocaust;

Whereas, the President's Commission has recommended that a one-half hour ceremony be held in the Capitol Rotunda on April 24, consisting of prayers, speeches, readings and musical preservations as part of the Days of Remembrance activities;

Whereas, the President's Commission has recommended that the U.S. Senate and U.S. House of Representatives should stand in recess during the ceremony: Now, therefore be it

Resolved by the Senate (the House of Representatives concurring), That from noon on April 24, 1979, the Capitol Rotunda shall be available until 1:00 p.m. for a ceremony as part of the commemoration of the Days of Remembrance of Victims of the Holocaust.

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

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

The motion to lay on the table was agreed to.

CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I believe the are three measures on the calendar that have been cleared for action by unanimous consent. The minority leader is present, and he can verify that that is the case.

I ask unanimous consent that the Senate proceed to the consideration of calendar Nos. 45, 46, and 47.

Mr. BAKER. Mr. President, reserving the right to object—and I will not object—the majority leader is correct. I appreciate his inquiry in that respect. These items are cleared on our calendar, and we are happy to join him in the request to proceed to their consideration.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

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

AUTHORIZING PRINTING OF "DEVELOPMENTS IN AGING: 1978"

The resolution (S. Res. 108) authorizing the printing of additional copies of part 1 of the Senate report entitled "Developments in Aging: 1978," was considered and agreed to, as follows:

Resolved, That there shall be printed for the use of the Special Committee on Aging the maximum number of copies of part 1 of its annual report to the Senate, entitled "Developments in Aging: 1978", which may be printed at a cost not to exceed $1,200.

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

Mr. BAKER. 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, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-38), explaining the purposes of the measure.

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

Senate Resolution 108 would authorize the printing for the use of the Special Committee on Aging of the maximum number of copies of part 1 of its annual report to the Senate, entitled "Developments in Aging: 1978," which may be printed at a cost not to exceed $1,200.

AUTHORIZING PRINTING OF "FIRST CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1979"

The concurrent resolution (S. Con. Res. 15) authorizing the reprinting of the Senate report entitled "First Concurrent Resolution on the Budget—Fiscal Year 1979" (S. Rept. 95-739), was considered and agreed to, as follows:

S. CON. RES. 15

Resolved by the Senate (the House of Representatives concurring), That there shall be reprinted for the use of the Senate Committee on the Budget one thousand copies of its report to accompany Senate Concurrent Resolution 80, Ninety-fifth Congress, second session, entitled "First Concurrent Resolution on the Budget—Fiscal Year 1979" (S. Rept. 95-739).

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

Mr. BAKER. 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, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-39), explaining the purposes of the measure.

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

Senate Concurrent Resolution 15 would authorize the reprinting for the use of the Senate Committee on the Budget of 1,000 copies of its report to accompany Senate Concurrent Resolution 80, 95th Congress, second session, entitled "First Concurrent Resolution on the Budget—Fiscal Year 1979" (S. Rept. 95-739).

This proposal is similar to that contained in Senate Resolution 84, which was referred to the Committee on Rules and Administration on March 1, 1979. Since the concurrence of the House of Representatives is required on proposals to print additional copies costing in excess of $1,200 (44 U.S.C. 703), the Committee on Rules and Administration is expressing its approval of this proposal by reporting out this original concurrent resolution in lieu of Senate Resolution 84.

The printing-cost estimate, supplied by the Public Printer, is as follows:

Printing-cost estimate

Back to press (1,000 copies) ------ $3,043.86

LARRY J. LARSEN

The resolution (S. Res. 111) to pay a gratuity to Larry J. Larsen, was considered and agreed to, as follows:

S. RES. 111

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Larry J. Larsen, widower of Louise W. Larsen, an employee of the Senate at the time of her death, a sum equal to three months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funderal expenses and all other allowances.

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

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

The motion to lay on the table was agreed to.

TECHNICAL CORRECTIONS AMENDMENT TO THE DISTRICT COURTS IMPROVEMENTS ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 2301.

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

The second assistant legislative clerk read as follows:

A bill (H.R. 2301) to amend the Federal District Court Organization Act of 1978 with respect to certain administrative matters arising from the redrawing of the Federal judicial districts in the State of Illinois.

The bill was considered, ordered to a third reading, read the third time, and passed.

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

Mr. BAKER. Mr. President, 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, I ask unanimous consent that Calendar Order No. 41, S. 443, which is a companion bill, be indefinitely postponed.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The second 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.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of Dennis R. Wyant to be Deputy Assistant Secretary of Labor for Veterans' Employment, that being Executive Calendar Order No. 67.

There being no objection, the Senate proceeded to consideration of executive business.

The PRESIDING OFFICER. The nomination will be stated.

DEPARTMENT OF LABOR

The second assistant legislative clerk read the nomination of Dennis R. Wyant, of Maryland, to be Deputy Assistant Secretary of Labor for Veterans' Employment.

Mr. CRANSTON. Mr. President, I urge the Senate to confirm the nomination of Dennis R. Wyant to be Deputy Assistant Secretary of Labor for Veterans' Employment—DASVE.

The nomination of Dr. Wyant for the position was received by the Senate on March 1, 1979, and referred jointly to the Veterans' Affairs and Labor and Human Resources Committees. I chaired a joint confirmation hearing on March 12. On March 16, the nominee submitted to the committees written responses to a number of questions, as Senator THURMOND and I had requested at the hearing.

If confirmed by the Senate, Dennis Wyant will be the second person to serve in the capacity of DASVE. By law, he will be the principal adviser to the Secretary of Labor with respect to the formulation and implementation of all departmental policies and procedures to carry out chapters 41, 42, and 43 of title 38, United States Code, as well as all other Labor Department employment and training programs as they affect veterans.

Of paramount importance to me, as well as to many others, is the DASVE's access to the Secretary in his role of principal adviser, as well as arrangements that have been made with respect to his relationships to the Assistant Secretaries of Labor. I stressed this question of access at the confirmation hearing and requested that a letter be sent to the chairman of both committees by Secretary Marshall assuring direct access to him and outlining relationships with the Assistant Secretaries. At this time, Mr. President, I ask unanimous consent, that a copy of Secretary Marshall's letter of March 14 be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. CRANSTON. Mr. President, the challenges facing Dr. Wyant as DASVE are difficult—indeed, some might call them impossible. Since authorized by law in October 1976, the DASVE position has been officially filled for only about 11 months, and the position has been officially vacant since last July.

During the confirmation hearing, Dr. Wyant's commitments, priorities, and thoughts with respect to the important position to which he has been nominated were explored extensively. Testimony in support of the nominee was heard from the Blinded Veterans Association, Veterans of Foreign Wars, Disabled American Veterans, Paralyzed Veterans of America, American Association of Minority Veterans' Program Administrators, and the Non-Commissioned Officers Association. Letters on behalf of the nominee were received from the American Legion and Amvets.

I am convinced, as are the other members of the Veterans' Affairs and Labor and Human Resources Committees, that Dennis brings with him to this position enormous dedication, determination, and enthusiasm for the task at hand—providing meaningful training and employment opportunities to our Nation's veterans.

Mr. President, in closing, I would like to express my deepest appreciation and thanks to the present Deputy Assistant Secretary of Labor for Employment and Training, Larry Weatherford, who for the last 7 months served as interim Deputy Assistant Secretary of Labor for Veterans' Employment. His commitment to veterans' employment problems was, and, I hope will continue to be, a major and most constructive one. He was an exceptionally able caretaker. All of those who are involved in this area owe Larry an enormous debt of gratitude for a job well done.

Mr. President, the nomination of Dennis Wyant has been long and anxiously awaited. I urge the Senate to take prompt and affirmative action on the nomination at this time so that he can be officially installed as the new Deputy Assistant Secretary of Labor for Veterans' Employment.

At this time, Mr. President, I ask unanimous consent that there be printed in the RECORD, preceding Secretary Marshall's letter, a biographical sketch of the nominee.

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

PERSONAL DATA SHEET

Dennis R. Wyant, Ed. D., 10113 Hurst Street, Bethesda, Maryland 20014. Telephone (301) 897-8576. Age 34; married, two children; height 6 feet 3 inches; weight 186 pounds; excellent health with the exception of a visual impairment.

Education: Doctor of Education, June 1974, major Adult Education, minor Vocational Education (GPA-4.0), University of Cincinnati. Masters of Business Administration, December 1971, major Marketing (GPA-3.5), Wright State University. Attended approximately 15 additional courses in Management, Sales, Business Systems, Training Procedures, Public Speaking, and Data Processing. Accredited as National Service Officer in 1973. Certified as Rehabilitation Counselor (CRC) 1975. Received Able Toastmasters Award (ATM) and Distinguished Toastmasters Award (DTM).

Employment: September 1977 to present. Special Assistant to the Administrator, Veterans Administration. Coordinates all activities for handicapped individuals and disabled veterans in the nation's second largest Federal agency (over 200,000 employees). Also work on special projects involving handicapped veterans (over 5,000,000). Top advisor to many committees, both in and out of the Federal government, involving legislation, regulations, publications and training relating to handicapped individuals.

May 1976 to September 1977, Chief of Economic Concerns and Disabled Veterans. Coordinator for the White House Conference on Handicapped Individuals, serving as a Division Head to conduct National Conference on Handicapped Individuals. Worked with all aspects of Vocational Rehabilitation, Affirmative Action, Personnel Management, Economic security and opportunity for handicapped individuals.

January 1975 to May 1976, Staff Coordinator to Committee on Disabled Veterans, President's Committee on Employment of the Handicapped. Served as Chief liaison with veterans organizations and volunteer health organizations involving disabled veterans and handicapped individuals. Provided technical assistance to consumer organizations for solving the employment problems facing handicapped individuals.

February 1973 to January 1975, National Field Director for the Blinded Veterans Association. In this position, an outreach program to assist handicapped persons with rehabilitation and employment opportunities was conducted. Other duties involved lobbying, fund raising, public relations, contract and grant proposals, publications, administration and management of four regional offices.

May 1966 to February 1973, employed by large marketing oriented business equipment manufacturer, National Cash Register. 2 years as a Sales Representative, 1½ years as a Sales Training Instructor, 1 year as a Course Developer, 2 years as a Training Coordinator for new EDP Sales Representatives. Involved in recruitment, selection, and management development. Supervised three Training Specialists.

Outside Activities: Consultant or Advisor to the American Foundation for the Blind (job opportunities and job retention for the blind), President's Committee on Employment of the Handicapped, White House Conference on Handicapped Individuals, Intra-agency Committee on handicapped employees; board member for the D.C. Job Placement Division of the National Rehabilitation Association. I have also served the Blinded Veterans Association as Chairman of the Board, National President, Vice-President, Secretary, Convention Chairman, Fund Raising Chairman, as well as other regional committee assignments.

Publications: Blinded Veterans in Search of Work, The Disabled Puerto Rican Veteran: A Study, Double Dilemma, Two Good Reasons Why You Should Hire Disabled Veterans, Purple Heart Movin' On, Blinded Veterans Across the Atlantic, and also Tie the Speaker to the Audience.

Awards and Honors: Cardinal Citation (Outstanding Alumni Award of the College), Veterans Administration Commendation, Diener Award for Service to Blinded Veterans, BVA Commendation, Semi and Regional finalist for White House Fellows. Who's Who in America, Meritorious Service Award from the President's Committee on Employment of the Handicapped, Governor's (Ohio) Community Action Award, Service to Mankind and Best Speaker of the Year by Kettering Ohio Sertoma Club, one of the five outstanding young men of the year by the Greater Dayton Jaycees. Winner of 23 speech contests, finishing third in regional-international competition on two occasions. Red Cross Four Gallon Blood Donor Certificate, and a Brown Belt in Karate.

EXHIBIT 1

U.S. DEPARTMENT OF LABOR,
Washington, March 15, 1979.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: At his confirmation hearings on March 12, 1979, Dr. Dennis Wyant, the President's nominee to become the next Deputy Assistant Secretary for Veterans' Employment (DASVE), was asked to provide a statement on the extent of his direct access to me.

As Dr. Wyant indicated at the hearings, he met with me on March 7 to discuss a number of subjects including how we could best communicate to ensure that veterans' concerns were reaching the highest echelons of the Department. I assured Dr. Wyant at that time that he would have complete access to me and my staff, either in person or via phone or memorandum, with the choice to be his based on factors such as timeliness and the need to include a substantial amount of detail. I also encouraged Dr. Wyant to keep me informed of all veterans' issues which he believes require my involvement.

During our meeting on March 7, Dr. Wyant and I also discussed ways in which he could most effectively carry out his responsibilities to me as principal advisor on the formulation and implementation of policies and procedures affecting veterans. Dr. Wyant told me that in the 8 weeks he had been with the Department of Labor he had been the recipient of total cooperation

not only from the entire staff of the Employment and Training Administration, but also from each of the line Assistant Secretaries. I expect that this cooperation will continue and, through it, Dr. Wyant will be afforded every opportunity for communicating his concerns either to me or the appropriate Assistant Secretary. Working together in this fashion I would hope that the Department can be most effective in dealing with veterans' needs.

I hope that this letter satisfactorily responds to the concerns of the Committee expressed at Dr. Wyant's confirmation hearings.

Sincerely,

RAY MARSHALL,
Secretary of Labor.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

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

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominee, and that the Senate return to legislative session.

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

SPECIAL ORDERS

Mr. ROBERT C. BYRD. Mr. President, the Senate will meet at 11 a.m. on Monday. I believe there are three orders for the recognition of Senators, are there not?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may be added to that list of special orders for a 15-minute speech.

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

ORDER DESIGNATION PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the aforementioned orders there be a period for the transaction of routine morning business not to extend beyond 12:30 p.m. and that Senators may be permitted to speak during that period for not to exceed 3 minutes each.

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

ORDER AUTHORIZING CERTAIN ACTION DURING RECESS UNTIL MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess of the Senate over until 11 a.m. on Monday the Vice President of the United States, the President pro tempore of the Senate, and the Acting President pro tempore of the Senate be authorized to sign all duly enrolled bills and joint resolutions and that the Secretary of the Senate be authorized to receive and appropriately refer messages from the other body and/or from the President of the United States and that committees may have until 5 p.m. tomorrow to file committee reports.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at 11 a.m. on Monday. After the two leaders or their designees have been recognized under the standing order, there will be four orders for the recognition of Senators, in each case not to exceed 15 minutes, at the conclusion of which there will be a period for the transaction of routine morning business not to extend beyond 12:30 p.m. with Senators to speak during that period for up to 3 minutes each.

At the conclusion of morning business, if it is prior to 12:30 p.m. or no later than 12:30 p.m., the Senate will stand in recess until the hour of 3:30 p.m. at which time the Senate will reconvene and the pending matter before the Senate at that time will be the debt limit measure with Mr. DOLE's perfecting amendment pending. There is also pending, but it does not have precedence over Mr. DOLE's perfecting amendment, an amendment that was offered by Mr. LONG and other Senators to Mr. DOLE's amendment to the debt limit measure. As of now the pending question would be on the perfecting amendment by Mr. DOLE to the debt limit measure.

Mr. President, rollcall votes will likely occur on Monday in relation to the amendments or in relation to motions that may be made. Tabling motions may be made. Motions to commit may be made. There are various motions that can and may be made. And Senators I think should be on notice that rollcall votes are expected.

During the interim from 12:30 p.m. to 3:30 p.m. Senators will attend the signing ceremony in respect to the Middle East Treaty at the White House. That signing ceremony, I believe, begins at 2 p.m. and is not expected to last over 30 minutes, perhaps, but ample time should be given and is being given to Senators to return to the Senate by 3:30 p.m., at which time the Senate will resume its consideration of the debt limit measure.

That is the statement of the program.

Mr. President, I hope that committees will take advantage of tomorrow's recess to work. The idea of our being off on Fridays is to accommodate committees in their work.

There is a May 15 deadline that has to be met. The first concurrent budget resolution has to be adopted, not just passed by the Senate, but has to be law by May 15. So I urge all committees to utilize this time on Fridays and at other times during the week, when possible, to get their work done.

Time is flying. Spring is here. The snows of winter have gone.

The year's at the spring
And day's at the morn;
Morning's at seven;
The hillside's dew-pearled;
The lark's on the wing;
The snail's on the thorn:
God's in his heaven—
All's right with the world.

RECESS UNTIL 11 A.M. MONDAY, MARCH 26, 1979

Mr. ROBERT C. BYRD. Now, Mr. President, all is right with the world. I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 11 o'clock Monday morning.

The motion was agreed to; and at 6:31 p.m., the Senate recessed until Monday, March 26, 1979, at 11 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate March 22, 1979:

DEPARTMENT OF LABOR

Dennis R. Wyant, of Maryland, to be Deputy Assistant Secretary of Labor for Veterans' Employment.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duty constituted committee of the Senate.

EXTENSIONS OF REMARKS

ROBERT J. MILTON MERITORIOUS SERVICE AWARD

HON. ROBERT McCLORY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 22, 1979

● Mr. McCLORY. Mr. Speaker, a longtime friend and fellow public official, Lake County Auditor Robert J. Milton, died last year after devoting virtually his entire life to public and political affairs in Lake County and in the State of Illinois.

Prior to his service as auditor for Lake County, Bob Milton served as an alderman in the city of Lake Forest, as a member of the Lake County Board and for many years as the chairman of the Lake County Republican Central Committee—the principal Republican political organization in Lake County, Ill., and as Republican State central committeeman of my congressional district.

Mr. Speaker, in addition to his elected political and public offices, Bob Milton served under Gov. William G. Stratton and other State officials. For a brief period Bob Milton served as an administrative assistant on my staff for Lake County during my early years in this body.

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