lence are not only un-American but also contrary to the climate of racial understanding that has been developing in Dallas in recent years.

Under our constitutional system of government, all groups, even those on the outer fringe of society like the Ku Klux Klan, are granted freedom of speech. However, that does not mean that the Klan has the right to intimidate others or to deny anyone the rights it enjoys.

I am confident that the people of Dallas will conduct themselves with restraint Saturday, and that when the day is over, the Klan will have succeeded only in embarrassing itself and not our great city.●

SENATE—*Friday, November 2, 1979*

(Legislative day of Monday, October 15, 1979)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

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

God of our fathers and our God, we thank Thee for all that is great and good in America. Thou knowest our defects and our needs before we call upon Thee. But our earnest supplication is that we may correct what is wrong and accentuate what is right. Come to us, abide with us in this place, strengthening us in our labors, sharpening our insights, and reinforcing our judgments. Give us grace to do justly, to love mercy, and to walk humbly with Thee. May goodness and mercy follow us that wherever we may dwell, that place may be Thy house forever. 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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., November 2, 1979.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ERNEST F. HOLLINGS, a Senator from the State of South Carolina, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

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

THE JOURNAL

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

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader, the Senator from West Virginia, is recognized.

A GREAT LADY PASSES QUIETLY INTO OUR HISTORY

Mr. ROBERT C. BYRD. Mr. President, early yesterday morning, Mamie Doud Eisenhower died at the age of 82.

Once, it is reported, when Mrs. Eisenhower was asked how she most wanted to be remembered, she replied merrily, "Just a good friend." Perhaps that comes closest to the mark of how she is perceived by the American people, for her memory evokes primarily feelings of warmth and admiration for the dignity and modest demeanor that she brought to her role as the wife of a military leader and President of the United States.

Mrs. Eisenhower was born in the closing years of the 19th century in Boone, Iowa. Her lifetime spanned some of the most tumultuous years in modern history. Though she lived in a era of crashing empires and clashing armies; of horse-drawn carriages yielding passage to automobiles and spaceships; of changing roles and clamoring competition among individuals, groups, and nations; Mamie Eisenhower never seemed to lose sight of the steadying principles to which her life was committed.

She once confided that, from the time she first met Dwight Eisenhower, she knew he was destined for greatness. His subsequent career confirmed her intuitions, and Mamie Eisenhower seemed ever content to help her husband fulfill the destiny that she knew lay in his path.

During her years as First Lady, Mrs. Eisenhower embodied happily the classic role of a good wife, mother, and grandmother. She is recalled, most often, at President Eisenhower's side, lending her charm, grace, love, and quiet strength to her husband and to the country he served.

Mrs. Eisenhower has passed from our midst, but to all who knew her, publicly and privately, she has left a feeling of fondness and respect that will never be lost by this generation, and which will never be forgotten in American history.

Mr. President, I presently have no requests for any time. I ask unanimous consent, Mr. President, that I may reserve my time, momentarily.

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

RECOGNITION OF THE ACTING MINORITY LEADER

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

THE AMERICAN STANDARD OF LIVING

Mr. STEVENS. Mr. President, on Monday, during the colloquy that was led by the Senator from Illinois, I placed in the RECORD an article concerning a statement that was made by Mr. Volcker. I would like to refer to that article again, mainly because of a feeling I have had as I thought about that article, in which Mr. Volcker said that we should, as Americans, dedicate ourselves to reducing our standard of living in order to meet the problem of high interest rates.

The more I thought about that, the more I came to the conclusion that that is a sort of "let them eat cake" type of statement. That thoroughly amazes me, that such a statement would come from one of the financial leaders of this country. I cannot imagine that any one appointed to that position by any President that I have known or have had the privilege of working with, from the days of Harry Truman, through President Eisenhower, President Kennedy, President Johnson, President Nixon, President Ford, making a statement such as that would go unchallenged by the administration.

I raise the matter again this morning because the impact of that article, to me, is that those who are less fortunate in this country, those who are not the heads of corporations or people of substantial wealth who would be the prime borrowers from our banking system—I am talking about, when I say "the less fortunate," the new young couples who are seeking loans for new homes, or the small companies that are seeking loans for the expansion of their businesses—normally, they pay a little bit more than those prime borrowers. To have a situation where one of the financial leaders of this country tells them that they must cut down their expectations in order to meet

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

the problems of high interest leads me to believe that we ought to thoroughly reanalyze the powers that have been given to that individual. I have had some personal conversations with members of the Joint Economic Committee along that line.

Specifically, also, I have inquired as to the extent to which foreign capital is coming into this country—and by that, I emphasize, I mean OPEC capital coming into this country—with a demand for higher interest payments than we have been paying in the past to those domestic sources of capital that are available to expand our money in circulation.

That was mentioned yesterday, to a certain extent. But if we are in a situation of sending out of this country $50 billion to $60 billion for oil produced by the OPEC countries, and their surpluses are coming back into this country to enter our money market at rates in excess of that which our people can afford to pay, then I think we have got ourselves into a worse cycle than anyone imagines. I am quite hopeful that the members of the Banking Committee, and particularly the members of the Joint Economic Committee, will dig deeply into the sources of these funds that are receiving these extremely high interest rates. It is to me, again, one of the more difficult things to comprehend.

Mr. President, just to make sure that the RECORD shows what I am talking about, on October 29, I requested that the article of Federal Reserve Chairman Paul Volcker be printed in the RECORD. In that article, he stated that in order to trim inflation the U.S. standard of living must be reduced.

As I say, I have seen nothing to indicate that the administration has reacted as it should have reacted to that comment. Senator BENTSEN reacted, I think, in a way that was proper. He said—this appears on page 29886 of the RECORD from the statement I put in the RECORD. Senator BENTSEN stated, "I interpreted that"—and he referred to Mr. Volcker's comment—"to mean that we will have lengthened unemployment lines, that we will have some loss of output in our economy, in order to correct the inflationary trend."

To me, it means a great deal more than that. It means that for my children, who are just reaching the age of starting their own families, as they buy a home and sign up for payment of mortgages for 30 years, those mortgage rates are going to be in excess of 15 percent. When we started our family, we had a home and our interest rates were about 5 percent, and we thought they were high at the time.

But if you expand over a 30-year period the payment of any interest in excess of 10 percent for the young families in this country, it just means to me one thing: There are going to be fewer and fewer new homes built.

As we worry about the problems of Chrysler, as we worry about the problems of the inflation generally, in terms of how they affect us now, I think people like Mr. Volcker ought to be worried about the problems of high interest rates and how they are going to affect our children's children 30 years from now when their children are trying to keep this American economy going.

It appalls me to believe that the Federal Reserve Chairman could be quoted, as the Wall Street Journal stated, that in order to trim inflation, to meet the problems of high interest, the U.S. standard of living had to be reduced.

I think in that statement alone there are, again, seeds of revolution, and it is time people really thought about what they are doing when they force on future generations the burdens and the mistakes of this generation.

Mr. President, I do not have any requests for time on this side.

RECOGNITION OF SENATOR DOLE

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

Mr. ROBERT C. BYRD. Will the Senator yield for a unanimous-consent request?

Mr. DOLE. I yield.

MIGRATION AND REFUGEE ASSISTANCE—S. 1668

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after third reading of S. 1668, and the time having been yielded back thereon—I presume it will be today—the Senate proceed immediately to the consideration of H.R. 4955, Calendar Order No. 397, that the text of S. 1668 as amended by the Senate be substituted therefor, and without further motion or debate, third reading of H.R. 4955 ensue immediately, and S. 1668 be indefinitely postponed.

This request is necessary because there is a House bill on the calendar and once the Senate completes its action on the Senate bill on which there is a time agreement, there is no time agreement on the House bill.

Mr. STEVENS. Mr. President, there is no objection from the minority.

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

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator for yielding, and I yield such time from my own order as necessary to make up for the time yielded to me.

S. 1969—RULEMAKING IMPROVEMENTS ACT

Mr. DOLE. Mr. President, I am introducing a bill, for myself, and Senator HATCH, Senator HEINZ, Senator LAXALT, Senator SIMPSON, Senator STEVENS, and Senator THURMOND. Through this bill, the Rulemaking Improvements Act, we propose improvements in the procedure by which Federal administrative agencies promulgate regulations. Regulatory reform has long been the subject of public concern and debate. I believe I speak for many of my colleagues in noting that our constituents have repeatedly made the depth of their concern known to us both in our mail and most recently during the August recess.

Several regulatory reform proposals have been subjected to close scrutiny in this body. Under the leadership of the distinguished Senator from Iowa (Mr. CULVER) the Subcommittee on Administrative Practice and Procedure of the Judiciary Committee, of which I am a member, has held extensive hearings on a range of regulatory reform legislation and will soon be marking up those bills. The Governmental Affairs Committee, chaired by the distinguished Senator from Connecticut (Mr. RIBICOFF) has also been working on the regulatory reform legislation that is within its jurisdiction.

The Senator from Kansas recognizes, and I know the Members of the Senate also recognize, that the men and women who administer our laws in Federal agencies are dedicated and hard-working public servants. Certainly this bill in no way impugns the efforts of those individuals. Yet they must work within a regulatory structure we establish. And it is this regulatory structure which is failing the citizens of this country. It is our responsibility to act without delay.

THE INFLATIONARY IMPACT OF FEDERAL REGULATION

At the outset we must recognize that what we have called regulatory reform encompasses not one, but many distinct problems of Federal regulation. And, like so many of the issues which confront us, the problems of Government regulation are related to other national problems. I believe that the problem of Government regulation significantly contributes to another major problem of our day—that of runaway inflation.

Regulations attempting to prescribe our behavior in an incredible range of areas pour out of Washington at a rapidly increasing rate. Yet one finds that the growing body of Federal regulations has been accompanied by a corresponding ignorance of the complete range of effects produced by such regulation. This ignorance has often resulted in unexpected costs and other adverse effects which threaten to undermine the salutary goals of appropriate regulation.

Billions of dollars of private spending are required to comply with literally thousands of detailed regulations. The 1978 Federal Register, through which these regulations are published, contained a total of about 61,000 pages, publishing about 7,000 new rules, and about 32,000 other Government documents.

Just in this decade we in the Congress created seven new regulatory agencies, including EPA and OSHA, and enacted 29 new major regulatory statutes. According to a study by the Joint Economic Committee, direct Federal regulatory agency expenditures rose from $2.2 billion in 1974 to $4.8 billion in 1979, a 115-percent increase in agency operating

expense alone. Yet the costs of complying with Federal regulations are never reflected in an agency budget. Compliance with Government regulations imposes a sizable tax on business, yet this tax never benefits the Treasury of the United States.

Through regulation by administrative agency, we at least think we can see who will benefit by regulation and are moved by this vision to take action. Yet the burdens of regulation are so deceptively imposed that we have remained almost blithely unaware that the benefits of government regulation are achieved only at a price. The price may be an actual dollar cost, such as increased consumer prices, or it may be a social cost, such as the dampening of individual initiative.

A study done by the Tax Foundation concluded that the cost to the consumer of complying with Federal regulations in 1976 was $62.9 billion. That amounted to more than $300 for every man, woman, and child living in the United States, and 20 times the $3.1 billion spent to operate the agencies that year. For 1979, it is estimated that $102.7 billion will be the cost to the consumer of complying with Federal regulations, or about $400 per person. A study conducted by the center for study of American business indicates that the cost of filling out Federal paperwork alone comes to about $25 to $32 billion annually.

In short, Federal regulation aggravates our already extreme rate of inflation by imposing costs on the private sector which raise prices without a corresponding rise in productivity. Indeed, as Dr. James Miller of the American Enterprise Institute has noted:

> Regulation often has a greater effect upon consumer welfare [than other inflationary factors] because it operates directly upon the real supply of goods and services.

Of course, while noting these extreme costs, we must also recognize that the benefits of appropriate regulation will not be achieved without cost. But at the same time the Federal Government must not embark on a program of regulation unconcerned by costs. Sadly, our present rulemaking structure is such that, in the words of Dr. William Lilley and Dr. James Miller writing in the public interest:

> A regulation is often promulgated whereby the final incremental improvement to achieve a stated objective yields small benefits relative to costs or great costs relative to benefits.

THE CAUSE OF THE PROBLEM: BROAD DELEGATIONS OF LEGISLATIVE AUTHORITY

In the recent past, we in the Congress have worked to give all Americans a clean environment, safe consumer products, a safe working place, protection from deceptive merchandising, and many other protections which in previous years were the responsibility of either the private sector or government at the local level—in the cities, counties, and States. We have pursued these goals by identifying a particular problem in legislation, stating in often general and ambiguous statutory terms the policy of Congress toward that problem, and then creating a Federal agency and authorizing it, again often in the broadest terms, to regulate the area in question.

By creating agencies with such broad authority, we have passed on to these agencies the authority to make, in the form of administrative regulations, the kind of policy judgments which properly we should make. We have delegated authority to the agencies to achieve multiple, and often inconsistent, objectives. We want agencies to reduce certain risks to health, safety, or environmental quality while avoiding, or at least minimizing, the adverse impact on the subjects of agency regulations, whether industry, consumers, or the Nation at large.

As a result of this delegation of authority, agencies must now make a range of conflicting, yet extremely significant, value choices about various aspects of our national life without meaningful guidance from the elected representatives of the people. Judge David Bazelon, a senior judge of the District of Columbia Circuit Court of Appeals, a court which deals with much of the litigation involving Federal agencies, has decried this failure of the legislative branch to give more direction to agency decisionmaking. In January of 1977, Judge Bazelon wrote:

> Traditionally, in democratic societies, it is elected legislatures that make the hard value choices . . . increasingly, however, our legislatures have been delegating their value choices to administrative agencies—institutions which cannot resolve value conflicts through the relatively simple expedient of a show of hands.

Similarly, the Administrative Conference of the United States, in a report published in March of this year, observed—

> The agency problem of structuring discretion to accommodate multiple considerations in decisionmaking has not received sufficient congressional attention.

At this point in our history, I do not suggest that we can remove rulemaking authority from our Federal agencies. It would be impossible for Congress to make all the detailed decisions agencies must make on a regular basis. Consequently, the legislation I propose today takes no steps toward undermining an appropriate role for the administrative energy in our governmental structure. Rather, this bill is founded on my belief that we in Congress must fulfill our responsibility to shape the discretion of Federal agencies and provide the legal guides to channel agency actions along the sound policy course we set. Such action by the Congress would be welcomed not only for our frustrated citizens, but also by the agencies themselves, which, in an immediate and practical way, suffer from the absence of clear congressional guidance in their daily work.

A BASIC REFORM: AN ADAPTATION OF COST-BENEFIT ANALYSIS

The Senator from Kansas believes that cost-benefit analysis is one technique we must adapt for administrative rulemaking in order to require an agency to evaluate the complete range of effects of a proposed rule. By shaping agency decisionmaking through a requirement that rulemaking include some sort of cost-benefit analysis, Congress can reestablish its dominant role as overall policymaker for our regulatory system. Hence, the bill that I am introducing today would require agencies to perform a kind of cost-benefit analysis of each proposed rule.

Cost-benefit analysis, in its traditional form as an accounting technique, saw its first widespread use in the late 19th and early 20th centuries, when it was adopted by American municipalities to evaluate proposals for urban sewage systems. Over the course of the years, it has been employed for a variety of public and private uses. In 1936, Congress approved cost-benefit analysis for water resource development projects, incorporating a requirement in the Flood Control Act of 1936 that acceptable projects demonstrate that "the benefits to whomsoever they may accrue are in excess of the estimated costs." At present, the name "cost-benefit analysis" no longer describes merely an accounting technique, with the implication of a solely mathematical procedure. Rather, as the report of the Administrative Conference points out, cost-benefit analysis now refers to "any analytical method which organizes available information on alternative courses of action, and thereby displays possible tradeoff opportunities to the decisionmaker."

Those concerned with the improvement of the regulatory process have increasingly focused on some sort of cost-benefit analysis as a sensible avenue of reform. Even in areas where the dollar cost of regulation does not reflect the spectrum of actual costs, such as in environmental and health regulation, expert opinion, including, for example, the National Academy of Sciences, has advocated the use of some form of cost-benefit analysis.

Quite simply, the principle of cost-benefit analysis reflects commonsense. However, encouraging agencies to perform such an analysis is not enough. Many observers have pointed out how effectively agencies have avoided performing such analyses. Last month, a report of the Office of Management and Budget, evaluating the performance of "regulatory analyses" by certain agencies under Executive Order 12044, observed—

> Agencies try to avoid the requirement of a regulatory analysis, afraid that if they do an analysis, it will be the subject of public "sniping" or peer criticism. . . .

Agencies have also avoided performing such analyses on more legitimate grounds. For example, the Clean Air Act of 1970 specifically instructs the Environmental Protection Agency to establish air quality standards based on considerations of public health. This requirement has been interpreted within the EPA to mean that other considerations, like economic factors, cannot be considered.

Thus what is needed is a basic statutory provision requiring cost-benefit analysis. Consequently, this bill proposes amendments to our basic charter of adminis-

trative procedure, the Administrative Procedure Act.

The bill the Senator from Kansas introduces today requires a cost-benefit analysis which has been shaped by several obvious conclusions about what must be the reasonable policy for Federal regulation. First, it is undeniable that a rational regulation must have an ultimately beneficial impact. To plot a course for this goal, an agency, just like any private enterprise, must evaluate and compare the anticipated benefits, costs and other adverse effects of a proposed rule.

Yet Federal regulation presently has such a broad sweep through our lives that the impact of a regulation can take many shapes, ranging from a new expense imposed on a business, to protecting the natural beauty of a particular region. Thus, what is considered to be a benefit or a cost often cannot be described in numbers. As a result, any analysis of the anticipated benefits, costs, and adverse effects of a proposed rule cannot procede solely on a mathematical basis, but must involve the exercise of reasonable judgment by agency officials.

Second, it is critical that the public participate in any cost-benefit analysis. Obviously, the people who will be affected by a rule often have the best appreciation of its impact. Efficient and fair regulation requires that these people be heard and that an agency be able to take advantage of their expertise.

Finally, this bill is based on the conclusion that judicial review plays a vital role in the rulemaking process, acting as a reasonable check on the necessary discretion of agency officials. Any cost-benefit analysis must, therefore, be subject to judicial scrutiny to insure an agency acts fairly and does not unreasonably ignore public comment on a proposed rule.

This bill establishes a new standard for the promulgation of Federal regulations. Under the provisions of this bill, a new regulation could become effective only when any agency reasonably concludes that the benefits of a proposed rule would outweigh its costs and other adverse effects, and when the agency is convinced that the proposed rule is the most cost-effective means to achieve the identified benefits.

To provide an agency with sufficient data to reach such a conclusion, the present rulemaking procedure is modified to require agencies to identify the anticipated benefits, costs and other adverse effects of a proposed rule at the outset of the rulemaking process, when the notice of proposed rulemaking is published. The interested members of the public are then given an opportunity to participate in the rulemaking by presenting evidence of other benefits, costs, and adverse effects not identified by the agency.

It is only after all this information is before the agency that it must make its ultimate determination that the benefits of the rule outweigh its costs, and that, in light of the alternative means to achieve the identified benefits, the rule is the most cost-effective route to those benefits. The agency is required to explain this determination when it publishes the final rule. Both the initial analysis in the notice of proposed rulemaking and the final analysis are made part of the rulemaking record and, therefore, directly subject to judicial review.

The specific provisions of this bill are obviously more detailed and I leave a detailed explanation of them to the bill's section-by-section analysis, which I will ask to have printed in the RECORD together with the bill.

Mr. President, I am pleased to report that several well-recognized experts in the area of Government regulation, especially on the subject of cost-benefit analysis, have reviewed this bill and have expressed their support. For the information of the Senate I have attached two letters of support, from Dr. James Miller and Dr. Murray Weidenbaum, to the section-by-section analysis, and I ask unanimous consent that these letters be printed in the RECORD together with the bill and a section-by-section analysis.

The experience of both of these men has uniquely equipped them to deal with the practical and theoretical ramifications of cost-benefit analysis. Dr. Miller was assistant director for Government operations and research of the Council on Wage and Price Stability in the Ford administration and presently is codirector of the center for the study of government regulation of the American Enterprise Institute. Dr. Weidenbaum is the director of the center for the study of American business at Washington University and is presently a resident scholar at the American Enterprise Institute.

In closing, the Senator from Kansas must reiterate that this bill offers solid improvements over other proposals for some form of regulatory analysis. First, under this bill agencies could promulgate only ultimately beneficial rules. Second, agencies would be required to evaluate alternative means of achieving their goals and could promulgate only cost-effective rules. Third, this bill requires a more specific articulation of benefits and costs than any other proposal, including a description of who receives the benefits and who bears the burdens of a rule. Finally, the bill affords judicial review of the agency's regulatory analysis.

I urge my colleagues in the Senate to support this measure as a long overdue process.

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

S. 1969

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; FINDINGS AND PURPOSES

SECTION 1. (a) This Act may be cited as the "Rulemaking Improvements Act".

(b) The Congress finds that the growing body of Federal regulations has been accompanied by a corresponding ignorance of the complete range of effects produced by such regulation, and that this ignorance has often resulted in unexpected costs and other adverse effects which threaten to undermine the salutary goals to be achieved by appropriate regulation. In making this finding, the Congress has determined that—

(1) the goal of rational Federal regulation must be the promulgation of rules which have an ultimately beneficial effect;

(2) the present rule making procedures do not sufficiently provide for the detailed analysis by Federal agencies of the anticipated benefits, costs, and other adverse effects of a proposed rule which is a prerequisite to reasoned rule making;

(3) many of the anticipated benefits, costs, and other adverse effects of a proposed rule to be considered in any such analysis cannot be described numerically and the significance of individual benefits, costs, and other adverse effects may vary over time as a result of changing circumstances and the changing policy views of the public, the Congress, and the courts;

(4) consequently, any complete evaluation of the anticipated benefits, costs, and other adverse effects of a proposed rule must not be conducted primarily on a mathematical basis, but must allow for the exercise of properly delegated, reasonable discretion by agency officials in weighing competing values;

(5) judicial review of the agency analysis of the anticipated benefits, costs, and other adverse effects of a proposed rule through the incorporation of such analysis in the rule making record is necessary to provide a completely effective mechanism to ensure that agency officials do not exceed their proper discretion in rule making; and

(6) the current statutory exceptions to rule making procedures have permitted agency officials to give internal agency interpretations of statutes or rules or general agency policy statements the status of rules which have the force and effect of law, even though such interpretations and policy statements are issued without public participation and enforced without the fair notice which is considered fundamental in our legal system.

DEFINITIONS

SEC. 2. (a) Section 551 (4) of title 5, United States Code, is amended to read as follows:

"(4) 'rule' means the whole or part of a statement by an agency or by an official of an agency, other than an order issued pursuant to an adjudication under section 554 of this title, which is—

"(A) designed to implement, interpret, or prescribe law or policy, or to describe the organization, procedure, or practice requirements of an agency; or

"(B) applied by the agency in a manner which will have the effect of implementing, interpreting, or prescribing law or policy, or of describing the organization, procedure, or practice requirements of an agency;".

(b) Section 551 of such title is amended by adding at the end thereof the following new paragraph;

"(15) 'emergency rule' means a rule which becomes temporarily effective prior to the expiration of the time period specified for notice of proposed rule making and public participation under section 553 of this chapter or any other provision of law, and which is published by an agency in the Federal Register with an explanatory finding that a delay in the effective date of the rule would—

"(A) seriously injure an important public interest;

"(B) seriously damage a person or class of persons without serving any important public interest; or

"(C) substantially frustrate legislative policy and intent.".

IMPROVEMENTS IN RULEMAKING PROCEDURES

"SEC. 3. (a) Section 553(a)(2) of title 5, United States Code, is amended by inserting "exclusively" immediately after "relating".

(b) Subsections (b), (c), and (d) of section 553 of such title are amended to read as follows:

"(b)(1) General notice of proposed rule

making shall be published in the Federal Register, unless each person subject thereto is named and personally served with notice. Such publication or service shall be made not less than 60 days before the effective date of the rule. Such notice shall be a part of the rule making record and shall include—

"(A) a statement of the time, place, and nature of the rule making proceedings;

"(B) a specific statement of the legal authority under which the rule is proposed;

"(C) the proposed terms of the rule;

"(D) a clear and precise description of each reasonably significant benefit likely to be achieved by the proposed rule and an explanation of how each such benefit will be achieved by the proposed rule, including—

"(i) a statement identifying the persons or the classes of persons who will benefit from the proposed rule;

"(ii) a description of the nature of the benefit; and

"(iii) a description of each condition that must exist before a benefit is achieved, whether or not the achievement of the condition is within the control of the agency, and how each such condition will be attained;

"(E) a clear and specific description of the reasonably significant direct and indirect costs and adverse effects likely to be incurred by the public and private sectors as a result of the proposed rule, including, but not limited to, a description of such costs as those costs to be incurred by consumers, wage earners, businesses (including small business concerns as defined in section 3 of the Small Business Act), markets, particular geographic regions of the country, and Federal, State, and local governments, and a description of such adverse effects of the proposed rule as the adverse effects on productivity, competition, the balance of international trade, supplies of important manufactured products or services, employment, paperwork required of the public and private sectors, the environment, and the quantity of energy resource supply and demand.

"(F) a clear and precise explanation of how each cost or adverse effect specified under subparagraph (E) will result from the proposed rule, including, but not limited to—

"(i) a statement identifying the persons or the classes of persons who will incur costs due to the proposed rule or be adversely affected by the proposed rule; and

"(ii) a description of each condition that must exist before each cost or adverse effect is produced, whether or not the achievement of the condition is within the control of the agency, and how each such condition will be attained; and

"(G) a clear and precise explanation of how, in the reasonable judgment of the agency, the benefits of the proposed rule identified pursuant to subparagraph (D) will outweigh the costs and other adverse effects identified pursuant to subparagraphs (E) and (F), including a description of all reasonable alternative public or private means for achieving the identified benefits and an explanation of why such benefits cannot be achieved by public or private means other than the promulgation of the proposed rule.

"(2) This subsection does not apply when the agency for good cause finds that—

"(A) notice and public comment on the proposed rule are unnecessary due to the routine nature of the matter or the insignificant impact of the rule; or

"(B) it is necessary to promulgate an emergency rule. An agency which promulgates an emergency rule shall publish such rule in the Federal Register wth a statement of its findings under subparagraph (B) and a description of the reasons of the agency for such finding. Such emergency rule shall be effective for no longer than 60 days.

"(3) The analysis of the anticipated benefits, costs, and other adverse effects required under this subsection shall not be performed by any person under contract with the agency.

"(c) (1) After notice of proposed rule making required by subsection (b) of this section, the agency shall give interested persons not less than 30 days to participate in the rule making through the submission of written data, views, arguments, and statements which (A) explain any benefits, costs, or adverse effects of the rule which supplement, contradict, or are in addition to the benefits, costs, or adverse effects identified by the agency pursuant to subsection (b) of this section or (B) describe means of achieving the benefits of the proposed rule in a manner which more effectively minimizes the costs and adverse effects which will result from the proposed rule. As part of this participation in the rule making afforded to interested persons, the agency shall give such interested persons the opportunity for the oral presentation of evidence and the cross-examination of experts or other persons whose opinions constituted a significant part of the agency analysis required under subsection (b), unless the agency finds that no substantial issue of fact or law exists.

"(2) Notwithstanding any other provision of law, a rule may be published as a final rule and may become effective only if the agency reasonably determines that all the relevant matter before the agency as a result of the rule making substantially indicates that—

"(A) the reasonably significant benefits of the rule outweigh the reasonably significant costs and other adverse effects of the rule; and

"(B) the proposed rule will achieve such benefits at the lowest cost and with the fewest adverse effects in light of the alternative means of achieving those benefits identified in the rule making.

"(3) An agency shall publish a final rule in the Federal Register with a clear and specific explanation of its conclusion that the rule complies with the provisions of paragraph (2), including, but not limited to, a description and comparison of the anticipated benefits, costs, and adverse effects of the proposed rule considered by the agency to be reasonably significant. Such explanation shall be included as a portion of the rule making record for the rule.

"(d) Unless a longer period of time is required by law or is provided in the rule, a final rule, other than a rule which grants or recognizes an exemption to or relieves a restriction from a rule, may become effective 30 days after the date of its publication in the Federal Register.".

Rulemaking Improvements Act Section-by-Section Analysis

Findings and purposes

Section 1. The Rulemaking Improvements Act addresses the failure of the present law governing administrative rulemaking to establish procedures by which reasonably cost-effective regulations are promulgated with the maximum public participation. Section 1 of the Act states the finding of Congress that the pervasiveness of Federal regulation has combined with the generality of the provisions for agency rulemaking under curcurrent law to produce well-intended regulations whih create unexpected costs and other detrimental effects out of proportion to the benefits sought.

Several conclusions which underlie this finding are then reiterated. These conclusions are (1) that a rational regulation must have an ultimately beneficial impact, (2) that achieving this goal requires an agency to evaluate the anticipated benefits, costs, and other adverse effects of a proposed rule, (3) that what is considered to be a benefit or a cost often cannot be described in numbers and, indeed, what effects are considered to be a benefit or a cost often changes, (4) that, as a result, any analysis of the anticipated benefits, costs, and adverse effects of a proposed rule cannot proceed solely on a mathematical basis, but must involve the exercise of reasonable judgment by agency officials, (5) that judicial review of this analysis by incorporating the analysis in the rulemaking record is a necessary check on the judgment of agency officials, and (6) that the exceptions to rulemaking under current law allow agencies to establish law in secret and apply it without fair notice.

Definitions

Section 2. The current definition of "rule" in 5 U.S.C. § 551 subjects only those agency statements "designed" to "implement, interpret, or prescribe law or policy," to rulemaking procedures. In recent years, the number of various kinds of agency statements which actually "implement, interpret, or prescribe law or policy" and dispose of important rights or benefits, but yet are not promulgated pursuant to public rulemaking has dramatically increased. Such "secret" agency regulations take many forms, including unpublished general counsel opinions, operations manuals, and "private" agency rulings. For example, since 1970 the Office of the General Counsel of the Environmental Protection Agency has issued opinions interpreting statutes administered by it. These opinions are the basis for a manual of "Criteria and Policy Notices" which, distributed to Regional Administrators, Division Directors, and other EPA functionaries, controls the day-to-day application of these statutes. Yet these opinions and the EPA manual are not published and are promulgated without prior public comment.

Section 2 remedies this abuse in part by including in the definition of rule not only statements designed to have the effect of law, but also those statements applied with such an effect. Lack of design to "implement, interpret, or prescribe law or policy" therefore can no longer provide an excuse from normal rule making procedures. Other sections, described below, also are directed towards this problem.

Subsection (b) of section 2 adds the definition of an emergency rule to the present list of definitions in the Administrative procedure Act. Such emergency rule can become effective for a short period of time without compliance with the rule making procedures of the APA. An emergency rule may be promulgated in this manner only in the extraordinary circumstance where an agency finds that delay in the effective date of the rule would seriously injure an important public interest, seriously damage a person or class of persons without serving any important public interest, or substantially frustrate legislative policy and intent. The mechanism of the emergency rule is clearly an exception to what Congress is establishing in this Act as the minimally acceptable procedure for the promulgation of administrative rules. As such, it is anticipated that the provision for emergency rules will be rarely used, and then only in the extreme cases set out in the definition.

Improvements in rulemaking procedures

Section 3. Subsection (a) of this section also deals with the "secret" law problem discussed above by amending the rule exception of 5 U.S.C. §553(a)(2) to apply to a matter which exclusively relates to internal agency management or personnel, or exclusively to public property, loans, grants, benefits, or contracts. By requiring a matter to relate exclusively to the enumerated subjects, an agency statement which arguably deals with these subjects, but also has the broader effect of implementing law as described in the definition of "rule" will not be exempted from the normal making procedures under 5 U.S.C. § 553(a)(2).

Subsection (b) of section 3 significantly expands the notice of proposed rule making which must be published before a rule becomes effective. This expanded notice is the first step in the new rule making procedure established by the Act by which an agency must clearly state in advance of the effective date of the rule the terms of a proposed rule, the benefits to be achieved by the rule, the costs and other adverse effects of the rule, and its conclusion that the benefits of the rule would outweigh its costs.

Not every benefit and cost which could conceivably result from the proposed rule must be described in the notice of proposed rule making. Only those benefits, costs, and other adverse effects which the agency sees as "reasonably significant" in terms of their magnitude and their likelihood of occurrence must be included.

This section leaves the concept of a "benefit" open for the purposes of rule making to include a broad range of effects which at any particular point in time might be considered beneficial. Thus a "benefit" might be an effect popularly viewed as beneficial, such as comparatively clean air, or it might be a public policy goal statutorily defined as beneficial, such as the health of workers in a particular industry. In describing a benefit, the agency must identify the persons or groups who will benefit from the propcsed rule, describe the nature of the benefit, and describe each condition that must be obtained before the benefit is achieved and how each condition will be obtained.

The persons who will benefit from a proposed rule must be identified to ensure that the benefit is reasonably significant. A benefit that redounds only to a few people is less likely to be characterized as reasonably significant than one which benefits a whole community. In addition, identifying the beneficiaries of a proposed rule for comparison with those who bear the cost burden of it will aid in the evaluation of the cost-effectiveness of the proposed rule.

Similarly, the Act requires a description of each condition needed to achieve each benefit so that only reasonably significant benefits are identified and used as a justification for a proposed rule. A benefit which is based on several conditions which themselves are unlikely to occur could not be seen as reasonably significant under this section or justifying extreme regulatory costs. On the other hand, a benefit with few conditions, or with conditions likely to occur is more reasonably significant.

Outside of these requirements, the statute does not require the description of a benefit to take any particular form. Some benefits are liable to quantification; many are not. Consequently, the description of a benefit may be done in numbers or in words, or both.

This section requires the costs and other adverse effects of the proposed rule to be described in the same manner as the benefits and those who would bear the costs of a rule or suffer an adverse effect as a result of a rule to be identified in the same manner as its beneficiaries. Examples of the types of costs and adverse effects which should be identified are also given in the statute.

The final required element of the notice of proposed rule making is an agency explanation of how the benefits of the proposed rule will outweigh its costs and other adverse effects, including an explanation of why the benefits cannot be achieved by public or private means other than through the proposed rule. This provision essentially requires an agency to explain its conclusion that a proposed rule could be promulgated under the standards of this Act; that is, the agency must represent that, based on its study and analysis, the benefits of the proposed rule would outweigh its costs and other adverse effects, and that the proposed rule is the most cost-effective means to achieve the identified benefits.

The word "outweigh" was specifically chosen to describe the acceptable relationship between the benefits and costs of proposed rule. Since the Act recognizes that many benefits, costs, and adverse effects cannot be described numerically, it follows that "outweigh" is not intended to refer to a numerical ratio. Rather, "outweigh" reflects the view that agency officials must exercise reasonable judgment in evaluating the impact of the benefits, costs, and adverse effects which will be produced by a proposed rule. A rule may only be proposed and subjected to public comment if the appropriate agency officials reasonably conclude that the beneficial effects which can actually be achieved by the rule will not be reduced to insignificance by the costs and adverse effects also produced by the rule when viewed from a broad perspective which includes both the relative impact of the rule on those benefited and on those burdened.

"Reasonable judgment" has been used to describe the ultimate conclusions of the agency regarding the anticipated operation of a proposed rule to reinforce the point that this analysis is not expected to be a mechanically mathematical process. The judgment exercised by the agency officials in their analysis is to be reviewed according to a variation of the familiar "reasonable man" standard. For this reason, the Act requires, both in the publication of a proposed rule and in the promulgation of a final rule, an agency to clearly identify the benefits, costs, and adverse effects it finds to be reasonably significant and to explain its conclusion that the benefits outweigh the costs and other adverse effects.

This Act retains the exemption from rulemaking procedures presently in 5 U.S.C. § 553(b) for insignificant rules. This exception recognizes that there are rules whose impact is so insignificant that regulatory analysis of them would itself create costs which would outweigh any benefits of such rules. The new emergency rule is also included in this exemption from the rulemaking procedures. An emergency rule can be effective for no longer than sixty days.

Title 5 U.S.C. § 553(b) is, however, modified to delete the exemption from rule making for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." This exemption has been the regular vehicle for the "secret law" abuse described above. Under the guise of this exemption agency officials have created and applied "interpretations" or "policy statements" which dispose of significant rights without prior notice or public comment. Statements with such an effect are examples of the kind of agency regulatory activity which Congress clearly intended to subject to the original rule making provisions of the A.P.A. Deleting this exemption will help to remedy this abuse, while the rule making exemption of 5 U.S.C. § 553(a)(2) remains available for the rules governing a genuinely internal agency matter.

The new version of 5 U.S.C. § 553(b) set out in Section 3(b) of the Act includes the added restriction that the analysis of the benefits, costs, and other adverse effects of a proposed rule required by this subsection may not be performed by any person "under contract with" the agency. It should be noted that this provision will not prevent an agency from hiring outside experts and consultants to assist in the analysis. The provision will prevent an agency from giving the whole task of regulatory analysis to an outside organization. Agencies are presently capable of performing the analysis required by the Act without dramatic increases in their budgets. In the past, however, agencies have contracted out these sorts of analytical tasks to private firms specializing in such work. One common result of this practice has been that these analysis merely justify some predetermined agency action without the critical scrutiny required by this Act. Furthermore, a regulatory analysis done on a private contract basis often is more costly than if performed by agency personnel.

By prohibiting this practice and requiring agency personnel to perform the analysis, this provision underscores the requirement that this analysis be a part of the decision-making process which leads up to a proposed rule. Also, the provision limits the unnecessary government expense involved in paying private firms for this analysis.

Title 5 U.S.C. § 553(c) is amended to provide a public comment period of not less than thirty days. This subsection specifically enumerates various forms public comment might take, including explanations of benefits, costs, or adverse effects "in addition to, supplementing, or contradicting" those described in the agency analysis, or descriptions of other means of achieving the identified benefits in a more efficient manner. Such comment allows those who would be affected by a proposed rule and those who are intimately familiar with the subject of the proposed rule to educate an agency concerning the expected operation of the rule and to point out errors in the analysis of the agency.

Under the new version of this subsection the agency must also give interested persons the opportunity for the oral presentation of evidence and the opportunity to cross-examine agency experts, unless no substantial issue of fact or law exists. This provision allows minimal "adjudicatory" procedures in the context of informal rule making to allow realistic public participation in which the assumptions and views of agency experts and decision-makers are thoroughly explored and to allow full development of a rule making record which may be subject to effective judicial review.

Under paragraph (2) of the new subsection (c), the agency then must evaluate all the information before it and may promulgate a final rule only if it concludes that all the reasonably significant benefits of the rule will outweigh all the reasonably significant costs and effects of it, and if all the relevant matters before the agency substantially indicates that the proposed rule will achieve the identified benefits at the lowest cost and with the fewest adverse effects in light of the alternative means identified in the rule making. "Outweigh" is used here with the same meaning as explained above. The agency must publish an explanation of this conclusion when it promulgates the final rule. This explanation must include the agency's rationale for its selection of certain benefits, costs, and adverse effects from all the data before it as the reasonably significant benefits, costs, and adverse effects weighed in its analysis. In this way, the agency's response to the comments of the public will be clearly set out and open to scrutiny.

This agency explanation and the original notice of proposed rule making are made part of the rule making record. As a result, the regulatory analysis of the agency is subjected to judicial review. No change is made in the standard of review, ensuring that the courts will maintain their present posture and not become regulators themselves by undue involvement in the rule making process.

The new version of subsection (d) eliminates from 5 U.S.C. § 553(d) the exemption for "interpretative rules and statements of policy" from the requirement of advance publication. Once again, deletion of this exemption is directed towards correcting the "secret law" abuse discussed above. This subsection preserves the current law that a

final rule may become effective thirty days after its publication in the Federal Register.

AMERICAN ENTERPRISE INSTITUTE
FOR PUBLIC POLICY RESEARCH,
Washington, D.C., October 2, 1979.

Hon. ROBERT J. DOLE,
Dirksen Senate Office Building, U.S. Senate, Washington, D.C.

DEAR SENATOR DOLE: This is in response to your letter of September 19, 1979, requesting my evaluation of your proposed bill, "Rulemaking Improvements Act". (It should be noted for the record that these views are my own and do not necessarily represent those of the American Enterprise Institute.)

The salient features of your proposal would appear to be as follows: (a) in order to promulgate a new regulation, an agency would have to make a reasonable determination and demonstrate that the expected benefits of the proposal exceeded the expected costs, (b) the agency would have to show that the regulation was cost-effective (that is, the benefits would be secured at lowest cost), and (c) these requirements would be subject to judicial review.

In my judgment, the approach to regulatory reform incorporated in your proposed bill is right on the mark. Based on my experience as Assistant Director (for Government Operations and Research) of the Council on Wage and Price Stability, and my further studies of regulatory phenomena here at AEI, I have become convinced that the three reform elements described in the previous paragraph are essential to achieving a substantial improvement in the performance of regulatory agencies—especially those dealing with health, safety, and the environment. This is not to say, of course, that estimating benefits and costs and appraising alternatives would be an easy matter; clearly, in many cases agencies would have to exercise a degree of "judgment" in making their ultimate determinations, and your bill provides for this. But I can think of no better overall approach to improving agency decisionmaking than to require the agencies to be guided by the benefit-and-cost impacts of their regulatory actions. Moreover, I think it particularly important that your bill provides for judicial review. From experience, it would seem that such a requirement is the most efficient way of assuring that agencies comply with the straightforward intent of Congress.

Finally, I am glad to see that your bill incorporates a requirement that agencies determine as well the *distributional* effects of proposed regulation—both those who would benefit and those who would bear the costs. My experience at the Council on Wage and Price Stability was that on the whole agencies resist this kind of determination, yet when accomplished it constitutes one of the more important considerations in determining the final outcome. [On some of these issues, you may find of relevance the first enclosure, my article entitled, "Lessons of the Economic Impact Statement Program," *Regulation: AEI Journal on Government and Society* (July/August 1977), pp. 14–21.]

Let me now mention three other points which you may wish to consider. First, as you know, the Supreme Court has under review the Fifth Circuit's decision in the "benzene case" (*American Petroleum Institute* vs. *The Occupational Safety & Health Administration*). If the circuit court's decision is upheld, in my judgment the Occupational Safety & Health Administration (OSHA) would have to be reasonably cost-effective in its decisionmaking, and moreover the standard implied by *API* might well permeate the other regulatory agencies. But if the decision is overturned, the performance of OSHA, and perhaps that of many other regulatory agencies, would deteriorate still further. Thus, your proposal might well be viewed as a device for assuring that Congressional intent (to the degree it is consistent with the circuit court's decision rather than the formal position adopted by OSHA) will in fact be implemented.

Second, as drafted, the proposed bill applies only to new rules and regulations. You might wish to consider adding a provision that "sunsets" existing rules and regulations over a period of years (specifying, perhaps, a timetable for this to take place). This would mean, of course, that existing rules would have to pass through the new standard incorporated in the bill. [On this point, you may find of relevance the second enclosure, my article entitled, "Regulation and the Prospects for Reform," in Charles F. Phillips, Jr. (ed.), *Regulation, Competition and Deregulation—An Economic Grab Bag* (Lexington: Washington and Lee University, 1979), pp. 171–192, esp. p. 191.]

Finally, you might wish to consider a clarification concerning the standards for judicial review. As the bill is written, it would appear that an aggrieved party could bring suit only on the basis that the agency's determination with respect to benefits and costs had been "arbitrary and capricious". To have the desired effect on agency decisionmaking, it might be desirable to provide a stricter test—for example, giving aggrieved parties an opportunity to show that the agency's decision was unreasonable on the merits. (I realize, of course, that you may wish to avoid *de novo* review and that the need for any clarification along these lines may be related to Congressional action on Senator Bumpers' amendment modifying standards for judicial review.)

Sincerely yours,
JAMES C. MILLER III,
Co-Director, Center for the Study of Government Regulation.

AMERICAN ENTERPRISE INSTITUTE
FOR PUBLIC POLICY RESEARCH,
Washington, D.C., September 24, 1979.

Hon. ROBERT DOLE,
U.S. Senate, Committee on the Judiciary, Washington, D.C.

DEAR SENATOR DOLE: This is in response to your letter of September 20. Your regulatory reform proposal impresses me as a very helpful addition to the toolkit of regulatory reform. It is a very considerable improvement over earlier proposals.

The incorporation of benefit-cost analysis would be a major step forward.

Thank you for the opportunity of seeing your draft bill. Best wishes on your efforts to promote it.

Sincerely,
MURRAY L. WEIDENBAUM,
Resident Scholar.

Mr. STEVENS. Mr. President, I rise to support the bill of the distinguished Senator from Kansas. Because of the proliferation of costly Federal agency regulations, business growth and productivity has been significantly retarded. The often unnecessary burdens, particularly upon small businesses, of stringent manufacturing, research, labor, and environmental requirements have decimated the efficiency of the private sector. Unfortunately, however, the problem of overregulation has only been recently appreciated. In the last few months, a number of proposals have been circulating containing a variety of solutions for this costly problem. I believe Senator DOLE's bill is one of the best.

Many of the other bills, while containing good points, are so extensive in their suggested changes of regulatory analysis, the practice of administrative law, and the position of administrative law judges that enactment in the near future is improbable. Senator DOLE's bill, the Rulemaking Improvements Act, on the other hand, simply requires the agency to conduct and publish an economic analysis of all proposed rules, provide a forum for discussion, insure that the most beneficial rule be enacted, if any, and authorize judicial review of the agency's decision.

In contrast to the many other proposals floating around, the Dole bill does not require that a given rule's impact on the economy be a certain numerical figure before the agency must conduct an economic analysis of the rule. Many of these proposals set $100 million as the threshold figure before an agency is required to conduct an economic analysis. In Alaska, Federal agency rules, however, often do not have an impact of $100 million. Yet, many of the rules issued in the last few years have had enormously adverse effects upon many of our local communities.

For example, the Postal Service recently proposed discount postage rates for standardized packages which could be processed through their machines. Nonstandardized packages, however, would be subject to a surcharge. The effects of such a surcharge for many Alaskans would be horrendous. Many places in Alaska can only be reached by airplane, and, hence, much of the food consumed by Alaskans in these local communities must be flown in.

The most economical way for the food to reach these communities is via the Postal Service. Yet, the food is stored in large, nonstandardized sacks which would be subject to the surcharge. Many of the residents of these communities live at subsistence levels. Consequently, any increase in postage rates for them would be disastrous. So, you see, the impact of such a rule would not reach $100 million. However, the impact on people's lives would be great. That is why this bill's approach to analyzing all rules irrespective of cost is preferable.

The Dole bill also authorizes the economic analysis to be part of the official rulemaking record for judicial review. It is naive to assume that an agency will be as complete and as accurate in its analysis if no one can seriously question their work. Besides, present judicial review of agency rules often discuss economic issues if the rule has any significant economic impact. Hence, specifically providing for judicial review will do nothing more than put the agencies on notice that they had better do a reasonable job in their analyses.

Finally, Senator DOLE's proposal prohibits the agencies from contracting out these analyses to the private sector. Abuses in Federal/private consulting arrangements have been rampant. In fact, the Civil Service and General Services Subcommittee of the Governmental Affairs Committee of which I am ranking minority member began hearings 3 weeks ago on Federal/private consulting practices. Many of the instances we heard

showed that Government employees could have done what was contracted out to the private sector to do; the result being wasted Government resources.

There are many other provisions of the Senator's bill that are similarly laudable, and I appreciate this opportunity to cosponsor such a thoughtful piece of legislation.

RECOGNITION OF SENATOR PROXMIRE

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin is recognized for 15 minutes.

ECONOMIC FORECASTING A PRECARIOUS SCIENCE: WHY ACTIONS SHOULD BE BASED ON FACTS

Mr. PROXMIRE. Mr. President, in the 22 years I have been in the Senate, I do not know whether I have given a historic speech or not. But if I ever give a historic speech, it is the one I am going to give right now. I am very honored that the Presiding Officer is the distinguished Senator from South Carolina (Mr. HOLLINGS), who is one of the ablest Members of the Senate. I challenge him to listen to what I have to say because I think he may find it interesting. He is a member of the Appropriations Committee and the Budget Committee and he is as concerned as I am about Government spending, about inflation, and what we can do about it.

Mr. President, for months and months, indeed years, economists have ended up with egg on their face because they insist on making policy on the basis of predictions and forecasts which do not happen.

They have been wrong about a recession. In the future we may have one but this year we have not had one, and as of now we are not in one.

They have been extremely wide of the mark in predicting price rises and inflation. It has been grossly underestimated.

Their predictions on unemployment have been dead wrong. Instead of rising dramatically, the rate has been stable.

Just this morning, the BLS told us unemployment was 6 percent in October, which is about the same level it has been at for the last year.

Forecasts of industrial production, GNP, and other indicators have missed by far more than any statistical margin of error. After months of the most pessimistic estimates, new factory orders rose by a whopping 3.9 percent in September.

When the composite index of leading indicators was announced this week, the economists were amazed, chagrined, and embarrassed once again. Instead of going down, in line with the forecasted recession most of them say we are in, it went up. And while the August to September inventory figure was not available when the leading indicators were announced Tuesday, we know now that manufacturers' inventories rose eight-tenths of 1 percent in September, the smallest rise this year.

This should tell us something and it should tell them something.

It should tell us not to base policy on forecasts and predictions.

It should tell them to wait for the facts; to base policy on what happens and not on their computer runs; that economics is an art not a mechanistic science; and that there are unpredictable and impetuous forces at work over which they have little or no control nor which they can forecast accurately.

CONGRESS SHOULD LEARN FROM THIS

If the economists are unwilling or unable to learn from the mass of wrong predictions and forecasts, those of us in Congress should learn from it. In my view we should take two specific actions.

PROPOSAL FOR BUDGET AND FISCAL POLICY

The first has to do with the budget and fiscal policy.

Instead of basing our budget levels on forecasts—routinely wrong—made 10 months before the fiscal year begins and 22 months before it is over, we should propose and pass a budget which would automatically adjust to whatever economic circumstances come about.

What the President and Congress should do is to propose and pass a budget which would be in balance if the economy grew at its historic rate—somewhere between 3 and 4 percent.

No matter how good or how bad the forecasts were, the budget would automatically adjust to conditions as they actually happened. If the economy grew at 6 percent instead of 3 percent, a surplus of about $50 billion would automatically happen because receipts would grow and some expenditures would drop.

If, on the other hand, there were a recession and there was no growth or zero growth, such a budget would produce a deficit of about $50 billion at present levels, which would be the right economic policy in those circumstances. The deficit would come about as receipts declined and expenditures for unemployment, social security, welfare, and other stabilizers increased.

If such a policy had been in effect, we would have had 12 budget surpluses in the last 17 years instead of 16 of 17 deficits and only 1 small surplus. The latter has been one of the major causes—not the only cause—but a major cause of our present outrageous level of double digit inflation. This Proxmire proposal would have given us the surpluses we should have had in the sixties and seventies and the deficits to pull us out of the depression in the thirties.

Instead of depending on the computer runs of the Office of Management and Budget, the Congressional Budget Office, or the steadily growing private economic computer operatives to forecast policies in January 1980 for fiscal year 1981 beginning the following October and continuing through September of 1982, we would have a budget which would be in balance, in surplus, or in deficit according to what actually happened to the economy.

If we in Congress want to bring budget policy into some rational state, this is the direction we should move.

MONETARY POLICY

Mr. President, that is not enough. We should also institute, through congressional oversight of monetary policy and the Federal Reserve Board a similar more steady and sustained monetary expansion.

Under article I, section 8 of the Constitution. "The Congress shall have power to coin money, (and) regulate the value thereof."

That power has been delegated to the Federal Reserve Board which is a creature of the Congress and independent of the executive branch.

That is a congressional power. It is not an executive power. It is a congressional power. The independence by the Federal Reserve Board is not of the Congress. It is an independence of the executive.

It is therefore the duty and responsibility of Congress to determine general monetary policies while leaving the day to day administration of it to the Federal Reserve.

As the population and the economy grows, which the latter has done at a 3- to 4-percent rate over our history, the money supply must also grow if merely to keep enough cash and credit in circulation to fund business and economic activity.

But instead of a roller coaster monetary policy, with periods of excessive expansion and excessive tightening, we should have a policy of generally sustained growth at a more steady level.

That is precisely the policy the Federal Reserve announced October 6, a policy which many people felt was too painful. But it is the right policy. It is antinflationary. At the present time, it would be a stimulative policy in the event we moved into a recession.

If the money supply grew at a sustained general rate of say 4 percent, for example, and that rate was kept relatively steady, it would supply credit during periods of recession, and hence be a stimulus to the economy, and it would have a restraining effect when the economy was growing at a high rate and when inflation was excessive. There is no magic as such in the specific number, except that it should sustain the economy at its approximate historic growth rate and be at a level which would take account of institutional leakages which occur.

BOTH FISCAL AND MONETARY POLICIES NEEDED

To make such a system work we need both a more automatic fiscal and more automatic monetary policy. They should move together like animals in Noah's Ark.

We cannot, as we have been doing, run huge budget deficits in a period of double digit inflation and expect monetary policy, even of the tightest kind, to rescue us from our follies.

We need a complementary set of policies which run in tandem. If at the moment we had a surplus in the Federal budget—as we should have—monetary policy could be eased tremendously, the inflation rate would be considerably lower, and interest rates would fall.

If the proposals I am making were in effect, we would in fact have a budget much more restrained than it now is and interest rates much lower than they now are.

CONCLUSION

Policy can no longer be made on the basis of forecasts, computer runs, and year-ahead projections. Turning to tea leaves, soothsayers, or examining entrails would bring equal or better results.

We must put in place policies which will bring greater stability and greater sense to both fiscal and monetary policies so that they are more or less automatically expansionary in periods of downturn and recession, and restraining in periods of excessive exuberance and runaway inflation.

Mr. President, there has only been one outstanding economist we have had in the Senate in the history of this body. That was Paul Douglas, who was a great economist, president of the American Economic Association. He wrote the definitive work on the theory of wages, and this is a policy he believed we should not follow, to determine what policies we follow based on projections made. We cannot tell what will happen in the future. We should base them on the events as they occur.

That is exactly what the proposal I make this morning would do.

I commend such policies to both the administration and the Congress.

It is time we acted to bring ourselves out of the present fiscal and monetary mess occasioned by excessive dependence on the painfully wrong, indeed endemically wrong, forecasts of the experts.

Mr. President, I ask unanimous consent to have printed in the RECORD composite indexes of leading, coincident, and lagging indicators: September 1979.

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

COMPOSITE INDEXES OF LEADING, COINCIDENT, AND LAGGING INDICATORS: SEPTEMBER 1979

The composite index of leading indicators increased 0.8 percent in September to a level of 141.3 (1967=100), according to preliminary data released today by the Bureau of Economic Analysis, U.S. Department of Commerce. On the basis of more complete data, the August index level was revised to 140.2, which is 0.1 percent above the revised July level of 140.1. Change in total liquid assets was the major contributor to the August revision.

Six of ten indicators available for September contributed to the increase in the index: layoff rate, change in total liquid assets, contracts and orders for plant and equipment in 1972 dollars, stock prices, new orders in 1972 dollars, and building permits. Layoff rate contributed the greatest increase.

Four of ten declined: average workweek, vendor performance, change in sensitive prices (the weighted 4-month moving average of the monthly changes had a negative effect on the index even though sensitive prices increased at an increasing rate in September), and money supply in 1972 dollars. Vendor performance—percent of companies receiving slower deliveries—contributed the greatest decline.

The composite index of coincident indicators, which is a monthly approximation of aggregate economic activity, decreased 0.1 percent in September to a level of 144.5 (1967=100). On the basis of more complete data, the August index level was revised to 144.6, which is 0.4 percent below the revised July level of 145.2.

The composite index of lagging indicators increased 3.5 percent in September to a level of 173.0 (1967=100). On the basis of more complete data, the August index level was revised to 167.1, which is 1.0 percent above the revised July level of 165.4.

The leading index is designed to predict monthly movements in aggregate economic activity, which is approximated by the coincident index. The lagging index is expected to move, after a time lag, in the same direction as the coincident index and thus to confirm the movements in the coincident index. These concepts are more fully explained in the Handbook of Cyclical Indicators, a supplement to Business Conditions Digest (BCD), available from the Superintendent of Documents at the price of $4.00.

More data on the composite indexes as well as other important measures of economic activity, appear in *BCD*. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Annual subscription: $40.00.

Indicator	Basic data						Net contribution to Index [1]		Direction of change August to September
	April	May	June	July	August	September	July to August	August to September	
Average workweek, production workers, manufacturing (hours)	[3] 39.1	40.2	40.1	40.2	[1] 40.1	[3] 40.0	−0.09	0.10	−
Layoff rate, manufacturing (percent) [4]	[3] 1.1	1.0	[3] 1.1	[3] 1.2	[3] 1.5	[3] 1.2	−0.33	0.36	+
New orders, manufacturing, consumer goods and materials (billions of 1972 dollars)	37.16	37.42	36.80	35.80	[3] 35.72	[3] 36.36	−0.01	0.11	+
Vendor performance, companies reporting slower deliveries (percent)	76	76	70	60	55	51	−0.19	−0.17	−
Net business formation (index: 1967=100)	[3] 130.4	[3] 130.1	[3] 131.0	[5] 132.6	NA	NA	NA	NA	
Contracts and orders, plant and equipment (billions of 1972 dollars)	[3] 14.79	[3] 13.04	[3] 14.52	[3] 13.31	[3] 13.70	[3] 14.40	0.07	0.14	+
Building permits (index: 1967=100)	122.5	130.7	132.4	123.4	133.6	143.4	0.25	0.25	+
Change in inventories on hand and on order (annual rate, billions of 1972 dollars) [6]	20.02	[3] 16.96	[3] 15.40	[3] 15.38	[3] 13.70	NA	−0.12	NA	
Change in sensitive prices (percent) [5]	2.24	[3] 1.87	[3] 1.79	1.97	[3] 1.97	1.78	0	−0.10	−
Stock prices, 500 common stocks (index: 1941–43=10)	102.07	99.73	101.73	102.71	107.36	[3] 108.60	0.30	0.08	+
Change in total liquid assets (percent) [6]	[3] .76	[3] .76	[3] .81	[3] .88	[3] 0.92	[3] 0.95	0.15	0.12	+
Money supply (M2) (billions of 1972 dollars)	526.2	522.8	523.9	524.4	523.7	[3] 523.4	−0.06	−0.03	−
Percent change in the index [7]							0.07	0.78	

[1] Net contribution of each individual component is that component's share in the composite movement of the group.
[2] Revised.
[3] Preliminary.
[4] Series is inverted in calculating the composite index of leading indicators: a decrease in the layoff rate is considered an increase in the series.
[5] Estimated.
[6] Smoothed by a weighted 4-mo moving average (with weights 1, 2, 2, 1) placed at the terminal month of the span.
[7] The percent change in the index equals the sum of the net contributions of the individual components plus the trend adjustment factor of 0.099 (except for occasional rounding differences).
NA—not available.

COMPOSITE INDEX OF LEADING INDICATORS (1967=100)

	January	February	March	April	May	June	July	August	September	October	November	December
Monthly:												
1972	118.9	120.3	122.1	122.7	122.9	123.2	124.1	125.8	127.8	129.2	130.1	131.6
1973	132.3	133.4	133.2	132.4	132.4	132.6	132.1	130.9	130.6	130.8	131.1	129.8
1974	130.1	130.4	130.1	127.7	127.0	124.9	123.2	120.5	116.9	114.2	111.3	109.2
1975	106.9	106.4	107.1	109.4	111.9	115.5	118.3	119.2	119.9	120.5	121.2	121.7
1976	124.5	125.7	126.4	126.3	128.0	129.7	130.2	129.9	130.1	129.9	131.8	132.5
1977	131.9	133.0	135.6	136.0	135.8	135.5	135.0	136.9	138.0	139.1	139.4	140.2
1978	139.1	140.3	141.5	141.8	142.5	141.2	142.0	142.9	[1] 143.6	[1] 142.8	[1] 143.1	
1979	[1] 142.5	142.7	[3] 143.2	[1] 139.8	[1] 140.1	[2] 140.5	[1] 140.1	[1] 140.2	[2] 141.3			
Percent change:												
1972	1.2	1.2	1.5	0.5	0.2	0.2	0.7	1.4	1.6	1.1	0.7	1.2
1973	.5	.8	−.1	−.6	0	.2	−.4	−.9	−.2	.2	.2	−1.0
1974	.2	−.2	−.2	−1.8	−.5	−1.7	−1.4	−2.2	−3.0	−2.3	−2.5	−1.9
1975	−2.1	−.5	.7	2.1	2.3	3.2	2.4	.8	.6	.5	.6	.4
1976	2.3	1.0	.6	−.1	1.3	1.3	.4	−.2	.2	−.2	1.5	.5
1977	−.5	.8	2.0	.3	−.1	−.2	−.4	1.4	.8	.8	.2	.6
1978	−.8	.9	0	.9	.2	.5	−.9	.6	.6	[1] .5	[1] .6	[1] .2
1979	[1] .4	.1	[1] .4	[1] 2.4	[1] .3	[1] .3	[1] .3	[1] .1	[2] .8			

Footnotes at end of tables.

COMPOSITE INDEX OF LEADING INDICATORS (1967=100)—Continued

	Quarterly				Percent change			
	I	II	III	IV	I	II	III	IV
1972	120.4	122.9	125.9	130.3	3.5	2.1	2.4	3.5
1973	133.0	132.5	131.2	130.6	2.1	−.4	−1.0	−.5
1974	130.2	126.5	120.2	111.6	−.3	−2.8	−5.0	−7.2
1975	106.8	112.3	119.1	121.1	−4.3	5.1	6.1	1.7
1976	125.5	128.0	130.1	131.4	3.6	2.0	1.6	1.0
1977	133.5	135.8	136.6	139.6	1.6	1.7	.6	2.2
1978	139.9	141.9	142.0	[1] 143.2	.2	1.4	.1	[1] .8
1979	142.8	[1] 140.1	140.5		[1] −.3	[1] −1.9	.3	

[1] Revised. [2] Preliminary.

COMPOSITE INDEX OF COINCIDENT INDICATORS[1] (1967=100)

	January	February	March	April	May	June	July	August	September	October	November	December
Monthly:												
1972	113.8	114.2	115.4	116.4	116.9	116.6	117.5	119.0	119.4	121.3	122.6	123.9
1973	124.8	126.1	126.7	126.6	126.9	127.2	127.7	127.2	127.9	128.9	129.7	129.0
1974	127.7	127.0	126.9	126.6	127.0	127.1	126.9	126.1	125.4	124.2	121.2	117.7
1975	115.4	113.7	112.3	112.6	113.4	114.2	115.1	116.7	117.5	117.9	118.4	118.9
1976	120.3	121.6	122.4	123.3	123.4	123.6	124.0	124.3	124.3	124.1	125.6	127.1
1977	126.3	127.6	129.7	130.0	130.6	131.3	131.7	131.9	132.6	133.8	134.7	135.7
1978	134.0	135.0	136.9	139.3	139.5	140.1	140.5	141.4	141.4	[2] 143.0	[2] 144.3	145.5
1979	144.8	144.9	[2] 146.6	[3] 144.1	[2] 145.6	145.0	[3] 145.2	[3] 144.6	[3] 144.5			
Percent change:												
1972	1.6	0.4	1.1	0.9	0.4	−0.3	0.8	1.3	0.3	1.6	1.1	1.1
1973	.7	1.0	.5	−.1	.2	.2	.4	−.4	.6	.8	.6	−.5
1974	−1.0	−.5	−.1	−.2	.3	.1	−.2	−.6	−.6	−1.0	−2.4	−2.9
1975	−2.0	−1.5	−1.2	.3	.7	.7	.8	1.4	.7	.3	.4	.4
1976	1.2	1.1	.7	.7	.1	.2	.3	.2	0	−.2	1.2	1.2
1977	−.6	1.0	1.6	.2	.5	.5	.3	.2	.5	.9	.7	.7
1978	−1.3	.7	1.4	1.8	.1	.4	.3	.6	0	[2] 1.1	.9	.8
1979	−.5	.1	[2] 1.2	[2] −1.7	1.0	[2] −.4	[2] .1	[2] −.4	[3] −.1			

	Quarterly				Percent change quarterly			
	I	II	III	IV	I	II	III	IV
1972	114.5	116.6	118.6	122.6	3.2	1.8	1.7	3.4
1973	125.9	126.9	127.6	129.2	2.7	.8	.6	1.3
1974	127.2	126.9	126.1	121.0	−1.5	−.2	−.6	−4.0
1975	113.8	113.4	116.4	118.4	−6.0	−.4	2.6	1.7
1976	121.4	123.4	124.2	125.6	2.5	1.6	.6	1.1
1977	127.9	130.6	132.1	134.7	1.8	2.1	1.1	2.0
1978	135.3	139.6	141.1	144.3	.4	3.2	1.1	2.3
1979	[2] 145.4	[2] 144.9	[3] 144.8		.8	−.3	[3] −.1	

[1] Includes Employees on nonagricultural payrolls; Industrial production index; personal income less transfer payments in 1972 dollars; manufacturing and trade sales in 1972 dollars. [2] Revised. [3] Preliminary.

COMPOSITE INDEX OF LAGGING INDICATORS[1] (1967=100)

	January	February	March	April	May	June	July	August	September	October	November	December
Monthly:												
1972	105.4	104.6	104.9	105.6	106.3	106.9	106.9	107.2	108.1	108.9	109.5	110.2
1973	112.5	114.2	115.9	118.2	119.5	121.7	124.4	127.4	129.6	129.6	130.0	131.5
1974	132.9	131.8	131.5	135.5	139.4	140.4	142.2	142.6	143.2	143.1	141.9	141.9
1975	140.6	135.9	132.4	129.0	126.9	122.4	122.7	122.4	122.1	122.7	120.6	120.1
1976	119.5	119.0	118.7	118.7	119.2	120.1	120.4	120.0	121.1	120.7	120.2	119.9
1977	120.2	121.0	121.7	122.3	123.1	125.0	125.2	126.5	127.8	129.4	131.1	131.7
1978	134.1	135.9	137.2	137.8	140.0	142.9	143.5	144.5	146.4	148.1	152.7	155.2
1979	157.5	158.5	158.5	161.9	162.5	164.0	[2] 165.4	[2] 167.1	[3] 173.0			
Percent change:												
1972	−1.1	−0.8	0.3	0.7	0.7	0.6	0	0.3	0.8	0.7	0.6	0.6
1973	2.1	1.5	1.5	2.0	1.1	1.8	2.2	2.4	1.7	0	.3	1.2
1974	1.1	−.8	−.2	3.0	2.9	.7	1.3	.3	.4	−.1	−.8	0
1975	−.9	−3.3	−2.6	−2.6	−1.6	−3.5	.2	−.2	−.2	.5	−1.7	−.4
1976	−.5	−.4	−.3	0	.2	.8	.2	−.3	.9	−.3	−.4	−.2
1977	.3	.7	.6	.5	.7	1.5	.2	1.0	1.0	1.3	1.3	.5
1978	1.8	1.3	1.0	.4	1.6	1.4	1.1	.7	1.3	1.2	3.1	1.6
1979	1.5	.6	0	2.1	.4	.9	.9	[2] 1.0	[3] 3.5			

	Quarterly				Percent change			
	I	II	III	IV	I	II	III	IV
1972	105.0	106.3	107.4	109.5	−1.7	1.2	1.0	2.0
1973	114.2	119.8	127.1	130.4	4.3	4.9	6.1	2.6
1974	132.1	138.4	142.7	142.3	1.3	4.8	3.1	−.3
1975	136.3	126.1	122.4	121.1	−4.2	−7.5	−2.9	−1.1
1976	119.1	119.3	120.5	120.3	−1.7	.2	1.0	−.2
1977	121.0	123.5	126.5	130.7	.6	2.1	2.4	3.3
1978	135.7	139.9	144.8	152.0	3.8	3.1	3.5	5.0
1979	158.2	162.8	[3] 168.5		4.1	2.9	[3] 3.5	

[1] Includes average duration of unemployment; labor cost per unit of output, manufacturing; manufacturing and trade inventories in 1972 dollars; commercial and industrial loans outstanding. [2] Revised. [3] Preliminary

THE CONSTITUTION AND THE GENOCIDE CONVENTION ARE CONSISTENT

Mr. PROXMIRE. Mr. President, I would like to once again comment on an article entitled "Constitutional Rights and Human Rights" by Prof. Louis Henkin.

In examining American policy on international human rights law, Professor Henkin criticizes our Nation's inconsistency. He points out that arguments against ratification of certain human rights agreements, including the Genocide Convention, have been proven without substance and should be abandoned.

Two such arguments are based on faulty constitutional grounds—first, that human rights treaties deal with matters reserved to the States, and, second, that these treaties infringe on the authority of the Constitution. Professor Henkin is one of many constitutional experts who refute these arguments.

Since World War II, human rights have been handled on an international level, through treaties and agreements, without contradicting States rights. *Missouri* v. *Holland* (252 U.S. 416) is only one court decision which shows that treaties do not violate States rights.

Nor could human rights treaties be used to subjugate the Constitution to international law. As in *Reid* v. *Covert* (354 U.S. 1), many judicial decisions have proven that the Constitution simply cannot be overridden by international treaties.

Those who oppose the Genocide Convention on constitutional grounds, base their arguments on rhetoric, not reality. Professor Henkin points out the fact that former Senator Bricker, for years a leading opponent of the Genocide Treaty, implied through his own actions that the Constitution does not forbid human rights treaties. The following passage from Professor Henkin's article reveals the ironic truth:

> That Senator Bricker sought for years, unsuccessfully, to amend the Constitution to limit the treaty power, principally to prevent United States adherence to human rights conventions, is evidence that in his view and that of his supporters, the Constitution would not prevent such adherence if not amended.

It is time we face reality. It is time we remove the obstacles blocking America's crusade for human rights. It is time we ratify the Genocide Convention.

RECOGNITION OF SENATOR NUNN

The PRESIDING OFFICER (Mr. EXON). Under the previous order, the Senator from Georgia (Mr. NUNN) is recognized for not to exceed 15 minutes.

Mr. NUNN. Mr. President, I ask unanimous consent that the time allotted the majority leader, which I believe is 15 minutes, be assigned to me.

Mr. PROXMIRE. Mr. President, I yield whatever time I may have remaining to the Senator from Georgia.

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

Mr. NUNN. I thank the Senator from Wisconsin.

Mr. President, I yield to the Senator from Kansas whatever time she desires.

Mrs. KASSEBAUM. I appreciate the Senator from Georgia yielding me a few minutes.

STARVING CHILDREN IN CAMBODIA

Mrs. KASSEBAUM. Mr. President, I am joining this morning with elected women around the world in making a concerted effort to address the problem of children starving in Cambodia.

I think we would all agree that the children have had no part in the terrible struggles that have caused the situation that has developed in Cambodia.

We are hoping through concerted efforts that the doors can be opened to at least give assistance to the children.

I think it is interesting to note that in 1921, as starvation was rampant in the Soviet Union, finally concerted pressures around the world allowed the doors to be opened in assistance to children, and that 1 million children were saved at that time.

The Soviet Union has since acknowledged their appreciation that that effort had been made. I think it is time now the Soviet Union recognizes, as well as the Government of Vietnam, that they must open their doors and allow assistance to be given to the children who are dying of starvation in Cambodia.

Isadora Duncan said, "So long as little children are allowed to suffer, there is no true love in this world."

Mr. NUNN. Mr. President, I commend the Senator from Kansas for that excellent statement, and I associate myself with her remarks.

That is a message all of us need to hear and the whole world needs to hear, and I hope the Soviet Union will pay some heed to the plea that has been made.

I also hope the Soviet Union will consider the many requests coming from many parts of the world to join in an effort to help take care of the starving people in South Asia.

This is one of the tragedies that has occurred in the last hundred years, and I think it is up to all of us to do everything we can to raise our voices in order to alert the world that, while we are watching on television a holocaust which took place in the 1940's, another holocaust is taking place before our eyes.

So I commend my colleague from Kansas.

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

Mr. NUNN. I yield.

Mr. ROBERT C. BYRD. Mr. President, I, too, associate myself with the remarks made by the able Senator from Kansas. I join the distinguished Senator from Georgia in expressing the hope that there will be those who will listen: the Phnom Penh authorities, the Vietnamese authorities, and the Soviets, who I hope will bring to bear whatever good offices they can bring to bear, in an effort to influence the Phnom Penh authorities to open up their hearts to the suffering and have some compassion for innocent people—men, women, and children.

We all want to see people live. We want to help people to live.

This is a tragic thing; barbaric; something that is unbelievable. It is inconceivable that any government that purports to be a civilized government would act so heartlessly to reject the mere offer of food for saving dying men, women, and children.

I congratulate the Senator from Kansas.

ORDER FOR RECESS UNTIL 12:30 P.M. TODAY

Mr. ROBERT C. BYRD. Mr. President, I have had difficulty securing consent for the Foreign Relations Committee to meet while the Senate is in session. I am told by the Foreign Relations Committee chairman that it is important that Mr. JAVITS, who is the ranking minority member on that committee, remain in the committee during the markup today, since the committee can only meet until 12:30 today under the rules.

That being the case, it would be difficult for a manager to be procured for the refugee assistance bill, because the manager, I believe, must be out of that committee, and the ranking minority manager also would be from that committee.

Therefore, I ask unanimous consent that when Mr. NUNN completes his statement under the order, the Senate stand in recess until 12:30 p.m. today, and at that time the Senate then proceed to the refugee assistance bill.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that my 5 minutes under the standing order of the leader be transferred to the control of Mr. NUNN.

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

Mr. ROBERT C. BYRD. Mr. President, if any time has been yielded back thus far by any Senator who has an order, I ask unanimous consent that that time be transferred to the control of Mr. NUNN, if he should require it.

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

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

SALT AND NATIONAL SECURITY: WHERE DO WE GO FROM HERE?

Mr. NUNN. Mr. President, as I stated on July 25, I cannot in good conscience support ratification of the SALT II treaty in the absence of a firm, public commitment by the administration to request and fight for substantial annual real increases in defense spending on the order of 5 percent or more in budget authority over the coming years. In my judgment, such increases are essential if we are to begin to halt the adverse trends in the East-West military balance and if the SALT II debate is to be something

more than one more milestone marking the emergence of Soviet military superiority.

I am convinced that the fundamental issue for our Nation and for the Senate is not the treaty alone, but rather the degree to which we as a nation are prepared to recognize and arrest the continuing slippage that has taken place in the American military posture during the past 15 years. American military power has failed to keep pace with an unparalleled Soviet military buildup and an increasingly aggressive Soviet intervention policy.

Since 1970, the Soviet Union has invested a total of $104 billion more than the United States in military equipment and facilities, and $40 billion more in research and development. Soviet foreign policy, invigorated by this relentless military buildup and uncertain American response to it, is seeking to gain a stranglehold over the economic foundations of Western prosperity and military power. This is the common denominator of Soviet activities in Angola, Ethiopia, South Yemen, Afghanistan, elsewhere in Africa, the Middle East, and South Asia.

The SALT process has not caused the erosion in America's military position, but neither has it prevented that erosion, nor will its ratification solve it. A sedative does not cure the disease, but it can dull the pain to the point that the patient does not seek immediate treatment. The cure lies not in the treaty, but in ourselves: We simply have not competed effectively with the Soviet military buildup that has continued steadily since the mid-1960's. The issue now is whether we are prepared to do so.

In the strategic nuclear area that SALT deals with directly, it is evident that we will need larger expenditures to maintain essential equivalence. These larger expenditures must not occur at the expense of general purpose forces and readiness.

Yet, this is exactly what was occurring as of July 1979. The executive branch was "robbing Peter to pay Paul," within the budget process while the Congress, led by the House Defense Appropriations Subcommittee, was cutting back on readiness. Unless we have a definite commitment and pronounced leadership for larger and more effective military budgets, this Nation will be indulging in a national security charade. As one Senator, I cannot prevent this charade; but if these conditions continue, I will not become part of it by voting for SALT II.

This is why I asked for a dedicated additional defense effort and why I requested to see the evidence of the Presidential commitment in the form of the 1981 budget and the new 5-year defense plan prior to a vote on SALT II.

The military problems we face have been 15 years in the making and cannot be resolved overnight. I do not pretend to be the Secretary of Defense, nor will I attempt to play that role. I am aware that the U.S. Constitution, the two-year term of Congress, and the 4-year Presidential term prevent legally binding multiyear defense spending commitments. But the word must go out to our allies and adversaries alike—the slumber is over—America has awakened. That is the real significance and importance of the defense budget plans and figures that will be submitted next month, and in January, and in the years ahead.

National security goals, budgets, and efficiency—these should be the three focal points underlying the debate over our future national security. They are all interrelated.

A totalitarian government would never admit its military weaknesses in public. In a democratic society, however, if we are going to engage in a meaningful debate on national security goals, missions and budgets, we must candidly recognize the weakness in our current posture and the adverse trends.

First. We have lost strategic nuclear superiority. We are now in a tenuous position that I would characterize as clinging parity.

Second. The Soviets have achieved an advantage in long-range theater nuclear forces in Europe. NATO's theater nuclear weapons are too limited in range and too vulnerable to preemption. NATO's general purpose forces are not trained for sustained combat in a nuclear or chemical environment.

Third. NATO has a questionable capacity to sustain a conventional defense of Europe because of continuing severe shortages in available stocks of ammunition and war reserve equipment, a lack of sufficient strategic sea and air lift resources, and the absence of a reliable manpower mobilization base. To put it simply, the United States no longer has strategic nuclear superiority, but this fundamental change is not reflected in NATO's theater nuclear and conventional force posture.

Fourth. Because of the shortages in strategic lift, the U.S. capability to rapidly deploy sizable forces to the Indian Ocean, the Middle East or elsewhere is questionable at best.

Fifth. The chronic shortages in funding for training, operations and maintenance that have plagued all the services during the past decade have reduced the readiness of much of our force structure. While there is no political lobby for readiness, there is no military substitute for it.

Sixth. Our dwindling Navy is spread too thin today. With the Western World growing more dependent on foreign sources of oil, the U.S. Navy is being given more missions and more responsibility with fewer ships being built every year. We cannot continue to expand naval requirements while reducing naval capabilities.

It is apparent to all objective observers that we have problems. I am not suggesting that there is a cause for panic or for scare tactics. I am not suggesting sudden massive increases in defense spending. The budget must, however, demonstrate a solid commitment to modest but steady increases in defense spending for the foreseeable future. It must show a commitment to getting more military muscle out of the defense budget, as well as a determination to develop more realistic national security goals for the 1980's and beyond.

Most of all, the American people must be told the facts. While continuing to seek ways to achieve meaningful arms control, the United States must demonstrate that it is totally committed to provide for its national security. We have gone for too long a time without that demonstration. Without it, we cannot maintain an adequate defense posture with or without SALT II.

It is obvious that the United States cannot, without spending more on defense than we have during the past decade:

First. Assure essential equivalence at the strategic nuclear level;

Second. Redress the theater nuclear imbalance in Europe;

Third. Contribute to the creation of a truly formidable NATO conventional deterrent;

Fourth. Expand the capabilities of our Navy; and

Fifth. Establish a flexible, mobile combat force.

Whether the increase in the U.S. defense budget over the next 5 years is 3 percent, 5 percent, 7 percent, or even 10 percent, the United States cannot do it alone. These challenges must be met in concert with our allies in the free world.

Thirty-five years after World War II, America is at a crossroads as to our national security goals. We came out of that war with overwhelming military and economic strength and were largely self-sufficient. Much of the rest of the world was in ruins. Our allies needed us more than we needed them, and our adversaries feared and respected us. The world is now a different place.

Russia has built a massive military machine; Western Europe and Japan are economic superpowers; the United States has lost its nuclear dominance and has become economically dependent on overseas sources for oil and many key raw materials.

The time has come to recognize that this fundamental shift has altered our traditional military requirements and has imposed upon the Atlantic Alliance and our Pacific allies the need for greater investment in defense and greater military specialization and cooperation.

NATO was created as an instrument to protect Western Europe from a direct military attack by the Soviet Union, yet the security of Western Europe today is just as sensitive to events in the Middle East and in the Indian Ocean as it is to the events along the German border. The same can be said of Japanese dependence on these areas.

The United States possesses inherent advantages in strategic and theater nuclear arms, in naval power, and the ability to project military force in areas distant from Europe.

Our NATO Allies, for political as well as military reasons, are not in a position to unilaterally guarantee their own securities against nuclear threats, or threats to their economic lifeline outside of Europe. We must remain the leading partner in these areas, but our partners must help.

Our NATO partners enjoy a natural advantage in conventional ground and tactical air forces confined to the Eu-

ropean theater. The United States alone has never been in a position to guarantee the conventional defense of Western Europe. NATO has never felt the necessity of providing essential equivalence in the conventional arena because of America's nuclear guarantee. Because of shifts in the strategic balance, this complacency must end. Soviet essential equivalence in the nuclear balance must be met by NATO essential equivalence in the conventional balance. America must play a role as a contributing partner, but our European allies must assume the role of leading partners in achieving essential equivalence in the conventional arena.

While we should continue to carry out our share of the NATO long-term defense plan, the United States must for the foreseeable future devote an increasing proportion of our defense effort to upgrading and expanding our Navy and Air Force for contingencies outside Europe.

The sea lanes in the Indian Ocean are as vital to Europe as are the highways and railroads in central Europe. Only with America as the leading partner can we defend the former. Only with the Europeans as leading partners can we defend the latter.

Japan too must be prepared to assume a substantially larger responsibility for her own defense against immediate threats to her own territory. The United States should not seek to substitute improved Japanese military power for U.S. military presence in Asia. Improvements in Japan's self-defense efforts, however, may permit U.S. forces to shift more of our attention to other priority missions such as defense of U.S. and Japanese sea lines of communication at extended distances from Japan, particularly in the Indian Ocean.

The United States has of necessity been the leader of the free world in military matters since World War II. We must continue to lead, but in the context of a maturing partnership cognizant of the fundamental changes that have occurred in the last decade.

Our challenge is to consider these fundamental changes and to develop national security goals which are clearly understood by the American people. We can no longer rely primarily on nuclear dominance and slowly mobilized industrial capacity to deter war. We must take a fresh look at our national security goals in close consultation with our allies.

I have never subscribed to the notion that military problems can be solved by simply throwing money at them. We must tighten our belt so that any additional funds can buy hard military muscle. There are several areas that merit our attention:

First. Our gift for technological innovation has enabled us to produce the most sophisticated systems in the world. Our present challenge is to also use our know-how and technology to build durable weapon systems that can be maintained in the field and afforded in sufficient numbers to carry out our defense missions. The world's most sophisticated fighter plane cannot defeat Soviet airpower if it is constantly in the shops for repairs. Nor can the world's greatest tank prevail if outnumbered 5 to 1.

Second. We must limit and reduce the proportion of the budget used for manpower—even if it requires our political leaders to make uncomfortable choices.

The Volunteer Force was based on the theory that all the taxpayers should bear the additional cost of manpower directly, rather than impose an implicit tax on those drafted. Like most Washington theories, this one has been only 50 percent implemented. The additional manpower cost has not been borne by increased general taxes or reduced social spending, but instead comes directly from the other parts of the defense budget.

In 1964, manpower costs accounted for 48 percent of the defense budget. If the manpower proportion had remained constant at the 48-percent level between 1970 and 1978, we would have had an additional $100 billion in today's dollars to spend on military investment and readiness rather than manpower. Additional defense funds which are made available should not be gobbled up just to keep bailing wire and bandaids on a policy that has lost its logical credibility but not its political support.

Third. We must also reassess the current practice of stretching our readiness dollars over the entire force structure. We must carefully examine the feasibility of staggering levels of readiness for U.S. units in conjunction with their planned deployment schedules.

Fourth. We must be no less innovative in exploiting our advantage in land-based tactical airpower. It is a paradox that we continue routinely to maintain our sea-based tactical airpower on station in areas where we have at hand a comparatively large force of land-based tactical air forces; yet, only occasionally do we deploy carriers in the Indian Ocean, a place we have no land-based aviation.

Thus far, I have outlined three fundamental factors needed to redress our military posture—a determination of national security goals, increased defense spending, and a stricter setting of military priorities to get more out of the defense dollar. I recognize that progress in strategy, budgets and efficiency is highly interdependent and difficult, but we must get the improvement process moving—and moving now.

As a first step, the administration has agreed to submit to the Senate a comprehensive outline of the 1981 budget and 5-year defense plan with budget figures in November prior to the debate on SALT II. The substance of these documents, however, remains unknown. As a bare minimum, I would expect this November plan to include:

First. A clear unambiguous commitment together with a public explanation of the need to make real increases each year in defense purchasing power for as long as the Soviets continue their substantial military buildup.

Second. A clear and unambiguous commitment to request and fully support defense budgets for fiscal year 1981 through fiscal year 1985 which allow real growth in defense budget authority on the order of 5 percent annually or more.

Third. An explicit identification of the inflation estimates contained in each year of the 5-year budget.

Fourth. A commitment to a new process of requesting annual supplemental budgets to make up for unpredicted increases in inflation or reductions made by Congress in inefficient programs.

Fifth. A firm commitment to a process of getting more military strength from the defense dollar by setting a limit on the proportion of manpower costs in the defense budget.

In the final analysis, my primary criteria for judging the adequacy of the defense budget for the next 5 years will be the extent to which it effectively addresses the deficiencies which I have outlined.

Adjusting the fundamental factors behind our military posture—national security goals, budgets, and efficiency—will take time. But we must begin.

Above all, I will be looking for leadership. The President must lead. The President of the United States is the leader of the American people and the free world. He must alert the Nation and our allies to what has transpired in the global military arena for the past 15 years. He must employ the enormous educational power of his office to inform the American people, and those who look to the United States for leadership, of the adverse trends in the defense posture of the Western World, and stimulate the development of the new mature partnerships that are needed.

He must explain the nature of the challenge—the fact that the Soviet Union is spending 11 to 15 percent of their GNP on defense—the fact that the United States is now spending less of our GNP and less percentage of our national budget on defense than at anytime since before the Korean war.

He must make it clear that the United States can pursue arms control and at the same time compete effectively to protect our security.

He must formulate the necessary remedies, explain their need to the American people. the Congress, and our allies, and fight for their enactment.

We have reached a point in the history of America and the free world where steady, unwavering and unequivocal Presidential leadership on defense issues is the prerequisite to preparedness, to deterrence, and to meaningful arms control agreements.

Mr. President, I thank the Senator from West Virginia for yielding to me.

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

Mr. NUNN. Yes, I will be glad to yield to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I sat here listening to the speech of the distinguished Senator from Georgia, and I want to compliment him. It is the kind of speech we should be hearing here almost every day.

Our country has never been in as bad condition militarily in my lifetime, and I have been associated actively with the military 37 years of my life, and 13 years since my retirement.

Our personnel in the Reserve are one-half of what they should be; in the

National Guard the personnel are one-half of what they should be.

As the Senator mentioned, we are outnumbered in tanks 5 to 1. We do not even have a workable main battletank. We have been working on it since World War II.

We are outnumbered in tactical aircraft 2 to 1. Our Navy was in better shape before Pearl Harbor than it is today.

I get sort of, not amused but, a frightened feeling when people advocate that the President might consider sending forces to protect our oil sources in Arabia. Mr. President, we do not have enough forces to send anyplace. I would have a hard time—and I hate to say this—thinking of a country we might have a chance of whipping on the ground.

Our airpower is a different thing. We still retain qualitative superiority in the air even though we are outnumbered.

They talk about the lack of Soviet strategic air forces. They have as many strategic bombers as we have. They have a Backfire bomber that can deliver bombs on the soil of the United States, land in Cuba, and return.

So, Mr. President, with all this talk of SALT coming up, I think the important thing is not SALT because, unfortunately, SALT does not disarm either side in nuclear power, and both sides have more nuclear power today than either side needs.

I would like to see a treaty that says, "Let us start disarming," not unilaterally but multilaterally to the end that we can eventually do away with nuclear forces and depend, if we have to depend, on a system for wars on conventional arms.

Again I admire the Senator for the position he has taken. It is my pleasure to serve on the Committee on Armed Services with him. We respect him for his knowledge, we respect him for his courage in speaking out.

I again thank the Senator for the message he has given the American people. I can only say there is a hopeful sign. Polls I have seen in the last few days show that the American people are becoming aware of the pitiful plight of our military and want us to do something about it.

In closing, I say to my friend from Georgia, who serves with me, that we can do a big job in the Committee on Armed Services by cutting down on the waste that the Senator and I know occurs in the Pentagon.

Why, for example, should we have three Air Training Commands? We only need one.

Why should we be training Navy helicopter pilots by the Navy while the Army and the Air Force train under the Army?

Why do we have four Tactical Air Forces? Why do we have now three Materiel Airlift Commands when the design is to have one?

I think it is time our Committees on Armed Services in both Houses take the Pentagon to task, rake them over the coals, and tell them instead of them telling us what we think they should have and how much of it they should have.

Again to you, sir, my thanks for a very, very fine job.

Mr. NUNN. I thank my colleague from Arizona for those words, which mean a great deal coming from him. I do not know anyone who has been as stalwart about national security consistently as the Senator from Arizona. He is one of the strongest voices for national security in this country, and has been for many years.

So I thank him for his assessment and his kind words.

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

Mr. NUNN. I yield to the Senator from California.

Mr. CRANSTON. I, too, want to express my admiration for the very thoughtful statement made by the Senator from Georgia, who has been so diligent and dedicated in learning about, understanding and setting forth for the benefit of others the condition as he sees it of our military preparedness and nonpreparedness.

I believe, with the Senator, that it is very important that we insure that we have the strength we need to deal with reality in a dangerous world. I am prepared to work with him to that end.

I trust, also, that we will be able to mesh a sound policy of power with a sound policy of peace and move toward the sort of a SALT structure that I gather the Senator from Arizona had in mind as he expressed the wish that SALT would lead to real cuts in nuclear armament. If that can be done, we will be far more secure if it is done on a mutual basis with the Soviet Union.

I also feel that it is very necessary to do our utmost to insure that money invested in military matters is not wasted. There is plainly a significant amount of expenditure, as the Senator from Arizona stated, that is unnecessary. If we can rid ourselves of that, it will be far easier to have the funds available for the sort of preparedness that the Senator from Georgia outlines.

It is also important for another reason. We are plagued with deficits; we are plagued with inflation. We are going to have difficulty in securing the funds that some believe are needed for our national defense, because of the problems of an unbalanced budget and perhaps a larger deficit next year than this year.

If we could find ways to eliminate the spending that is not necessary, it would be a simple task to provide the funding that is necessary.

I had one question that I wanted to ask the Senator: In referring to the diminishing funds available for manpower since 1964, he used the figure of $100 billion that would have been available.

Is that a cumulative figure from 1964 to now?

Mr. NUNN. That is a little bit tricky. I am not suggesting that we can go back to the 1964 percentage for manpower. What I am saying is, if he had kept the proportion allocated to manpower in the budget in the year 1964, and if we applied that figure, that proportion, which was about 48 percent, to the defense budgets that have been submitted since 1970, from 1970 to 1978, through those 8 years, cumulatively, we would have had $100 billion more. I am not counting the years from 1964 to 1970. I am applying it to the decade of the 1970's. The reason for that kind of comparison is because we have had a spending gap with the Soviet Union of $104 billion.

I think it is interesting to note what could have happened. I am not saying we could go back to the 1964 manpower situation. I think that would be totally impossible. What I see coming right now, as we stand here talking, there are people in the Pentagon who are scratching out ways to maintain the Voluntary Force levels by pouring out more money in the front end.

Not only that, it is taking money out of the defense structure because it is coming out of the total budget. It is also having a regressive effect on career benefits for the people staying in for 20 or 30 years. What we are getting is the worst of both of those worlds. We are getting higher attrition at the front end. We are having a tremendous turnover. We are having more and more training costs. We are seeing deterioration in the quality of the forces. We are seeing tremendous pressures on recruiters for numbers and yet seeing more and more of our defense dollars not only going for manpower, but going to the very early stages when people were in the service, instead of spreading it over a career force.

It is not only the reduction in benefits in the career force that is perceived that is causing the problem, it is the fact, particularly in the enlisted ranks, that so much of the progress young enlisted persons can make in their military careers comes in their first 4 years. After that, there is not a lot to look forward to in terms of promotions or in terms of increased pay, because we have front-loaded the personnel system.

So what I am saying to the Senator from California is that the President has got to come to grips with this problem, the Congress has got to come to grips with it, and the American people have.

We have to say that we are not going to spend but so much of our defense budget on manpower. If we get over that, and the Volunteer Force will not work, then we are going to have to start looking for alternatives.

I suggest to the Senator from California that the budget that may be coming up here within 10 days may contain an inordinate amount of money simply to keep the manpower we have got today in the services. I think that that is something we cannot continue to do.

If they come up with a budget that is going to be front loaded with more bonuses, more first-term pay, and that kind of thing, then we are going to have to ask the question, "How far are we willing to go to keep the Volunteer Force going?"

I think the recruiting problems that are being experienced now and the recruiting scandals we have read about in the papers, are only the tip of the ice-

berg of what is coming in the future. We are having the young sergeants who are out there, and some of the top people in the military, who are having tremendous pressure put on them to meet quotas.

The Secretary of Defense, in his posture statement this year—it was not picked up much in the press—basically said, very frankly, if you read it very carefully, that we are going into an era of more money going into recruiting with less quality coming out.

We simply have to come to grips with that. I do not know the answers. But I do know that the answer is not in the direction we are going today.

Mr. CRANSTON. I thank the Senator very much for a very lucid explanation. I look forward to working with him to find those answers, as well as on the defense budget and the matter of arms control, which should be a policy that accompanies a policy of power based upon adequate defense. I thank the Senator from Georgia.

Mr. NUNN. I thank the Senator from California. I certainly share his goals and look forward to working with him. I thank him for his kind remarks.

Mr. President, I do not know how much time I have remaining, but I would be glad to yield back the remainder of my time.

RECESS UNTIL 12:30 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 12:30 p.m.

Thereupon, at 11:46 p.m., the Senate took a recess until 12:30 p.m., whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. BAUCUS).

MIGRATION AND REFUGEE ASSISTANCE

The PRESIDING OFFICER. Under the previous order the Senate will now resume consideration of the pending business, S. 1668, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 1668) to authorize additional appropriations for the Department of State for migration and refugee assistance for fiscal years 1980 and 1981.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally against both sides on the bill.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. McGOVERN. Mr. President, it is my understanding that the measure now before the Senate is Senate bill 1668.

The PRESIDING OFFICER. The Senator is correct.

Mr. McGOVERN. Mr. President, the purpose of this bill is to authorize additional appropriations for fiscal years 1980 and 1981 in the amounts of $207,290 million and $203,610 million respectively for the Department of State to finance the migration and refugee assistance program. These amounts will raise the total figures authorized for migration and refugee assistance to $456,241 million for fiscal year 1980 and $457,798 million for fiscal year 1981.

Although the United States provides assistance for refugees throughout the world, the additional funds authorized by this bill are necessary chiefly because of the dramatic upsurge in refugees in Southeast Asia. Hundreds of thousands of Vietnamese have fled Vietnam. War and government repression in Laos and Kampuchea have created a refugee population of about 200,000 people in Thailand, whose plight is sometimes obscured because of the less dramatic nature of their flight. Another quarter of a million estimated people have fled to the People's Republic of China since early 1978.

With 60,000 refugees a month arriving in the Southeast Asian countries early this summer, these countries began turning away new arrivals and threatening to expel others unless the international community demonstrated a willingness to accept more refugees for permanent resettlement.

I think Senators can appreciate the dilemma these small, in some cases impoverished, countries were faced with in trying to absorb a flood of needy people from outside their own borders.

President Carter's announcement at the Tokyo summit that the United States would raise its monthly quota from 7,000 to 14,000 provided the impetus that was needed to deal with this tragic situation. Other countries strongly criticized Vietnam's harsh actions, and Vietnam's increasing isolation and growing economic problems led it to reassess its position and policies. Hanoi curtailed—at least for a time—the mass expulsion of its own citizens. The refugee flow dropped to about 10,000 persons in August. Unfortunately, we cannot count on such restraint continuing into the future. In addition, a Vietnamese military offensive has been launched against the guerrilla forces under Pol Pot in Cambodia. The effect of renewed war and famine in Cambodia could be to stimulate a large new influx of refugees into Thailand. We must be prepared for such an eventuality even as we try to do what we can to prevent it.

This bill authorizes $84 million of additional funds to support the Southeast Asian program of the U.N. High Commissioner for Refugees, and it authorizes $105 million more to pay the costs associated with the doubling of the U.S. refugee quota.

What are the essential elements of an appropriate U.S. policy in this tragic situation? First, the United States must update its laws dealing with all refugee matters, and not just those from Southeast Asia. S. 643, the Refugee Act of 1979, which has passed the Senate by a vote of 85 to 0, does this by creating more realistic and regular procedures for dealing with refugee matters.

Second, the United States must continue to press other countries to respond more generously to the needs of the Southeast Asian refugees. Our efforts along these lines have already had beneficial results, for other countries pledged at the Geneva Conference in July to increase the number of refugees they would accept for resettlement from about 36,000 during the previous 12 months to nearly 124,000 during the following year.

The Southeast Asian countries must not turn away those who have risked so much for freedom, but must continue to provide a place of first asylum, and yet they cannot be expected to accept unlimited numbers of refugees unless they have confidence that other nations will in time provide places of resettlement. Refugee processing centers are urgently needed in Southeast Asia, and renewed efforts to establish those centers are essential.

An internationally supervised program providing food and medicine to the people of Cambodia is also essential. If this is not done—and, Mr. President, these figures seem almost beyond comprehension—some authorities estimate that 2 million to 3 million Cambodians could die. This would be a holocaust on a scale that I think almost boggles the mind. It would exceed those killed in some of the major wars in the history of mankind, and it would produce a new flood of refugees that would move into Thailand and other countries.

Mr. President, when the Committee on Foreign Relations was considering this problem, I offered an amendment to the bill, which was unanimously adopted by the Committee on Foreign Relations. It gives the President the authority to spend up to $30 million of funds that have already been appropriated in the foreign aid program. In other words, without adding to the overall size of the foreign assistance program, this amendment, which I sponsored in the committee, would give the President the right to transfer within existing funds up to $30 million of foreign aid funds that could be utilized to meet this tragic situation in Cambodia.

It gives the President the flexibility to respond quickly to an emergency situation. Such action, of course, carries no implication of U.S. recognition of the Vietnamese-imposed government in Cambodia.

I think we have to remember at all times that the American response to this tragic problem of massive starvation in Cambodia is not a political response. It is not an endorsement or a condemnation or a moral judgment on the government, such as it may be, that is in power in Cambodia, but simply a response of human beings to the suffering of other human beings, many of whom are innocent infants who are faced with certain death if outside countries do not respond quickly to this tragic problem.

The need for other countries to do more should not be used as a reason for the United States to do less. I think President Carter is to be commended for his decision to increase the number of refugees that we would accept.

This will not be easy. Obviously, it will produce some anxiety among some of our own people, at a time when jobs are in short supply, that we undergo an influx of additional people who will need employment.

On the other hand, we should not exaggerate the difficulties. Over three-fourths of the Indochinese refugees who have already come are already basically self-supporting within a year of their arrival, and a large percent of them are working at jobs that are unattractive to many Americans.

We must, of course, make sure that helping the refugees does not hurt American citizens who are concerned about unemployment and inflation. Sound and imaginative Government policies dealing with energy and the economy are needed so that all can benefit from the great opportunities available in the United States.

Finally, Mr. President, no effort to deal with the Southeast Asian refugees will be successful unless there is a diplomatic solution to the conflicts in that area.

I would like to add that I believe the Senate has an excellent record of responding to these tragic situations. We have demonstrated our concern time and time again, and once more we have the opportunity through this legislation to put that concern into concrete terms.

As far back as October 12, 1978, I was joined by 79 other Senators in a letter that I drafted to Secretary Vance urging him to consider a U.S. initiative to place the Cambodian crisis on the agenda of the U.N. Security Council for appropriate action.

This was at the time when, according to all reports, tens of thousands, if not hundreds of thousands, of people were being killed in Cambodia by their own Government.

We wrote as follows:

An initiative of this kind would still be useful as a demonstration of our view that Cambodia has become a uniquely horrible situation warranting a uniquely vigorous response from the world community.

On June 19 of this year the Senate passed by a vote of 98 to 0 an amendment of mine stating that it was the sense of the Senate that the President should call on the Secretary General of the United Nations to convene an emergency session of the General Assembly to deal with the refugee crisis. A large bipartisan group of Senators was prepared to join with Senator DOLE and me, the sponsors of that amendment, in calling up our resolution that would have directed our ambassador to the United Nations to place the question of Cambodian food and medical relief before the General Assembly, and to devise an emergency program to deal with the crisis.

Mr. President, I also want to commend Senator SASSER, Senator DANFORTH, and the distinguished Presiding Officer of the Senate at the present moment, Senator BAUCUS of Montana, on their excellent report following their recent trip to Cambodia and Thailand. I know that was a teremendously exhausting trip they undertook in the middle of a busy congressional session, but it is a measure of their commitment to do something about this deeply human problem that Senator DANFORTH, Senator SASSER, and Senator BAUCUS undertook this very worthwhile effort.

I wholeheartedly support their recommendations, and I urge all of my colleagues to work for the full implementation of the recommendations made by our colleagues who have visited this tragic part of the world.

UP AMENDMENT NO. 726

(Purpose: Technical amendment to S. 1668)

Mr. McGOVERN. Mr. President, there is a minor technical amendment I would like to ask the Senate to dispose of. I send it to the desk at this point and ask for its immediate consideration.

The PRESIDING OFFICER. The Chair informs the Senator that until committee amendments are agreed to floor amendments are not in order.

Mr. McGOVERN. Mr. President, in view of the technical nature of this amendment, which is really just a language change, I ask unanimous consent that the amendment be considered at this time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. McGOVERN) proposes an unprinted amendment numbered 726:

On page 2, beginning on line 3, strike out "H.R. 3363" and all that follows through "are" on line 5, and insert in lieu thereof, "the Department of State Authorization Act, Fiscal Years 1980 and 1981 is".

Mr. McGOVERN. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Dakota.

The amendment was agreed to.

Mr. HELMS. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, the human tragedy of the Vietnamese-controlled Government of Cambodia refusing to permit donations of food to save innocent civilians now starving by the thousands every week is a horror which should anger and appall the civilized world.

Several possible explanations come to mind concerning this callous behavior of the Communist leaders of Vietnam:

First, it is well-known that the Cambodians and the Vietnamese have been ethnic rivals in Southeast Asia for centuries. It may well be that the Communist overlords now dominating Phnom Penh have opted for genocide as a sort of grisly final solution to the ancient feud.

Second, it is possible that the Vietnamese are sacrificing the lives of starving millions of Cambodians in an exercise of diplomatic blackmail to gain recognition, or to extract other concessions from the United States.

Third, the Vietnamese may be assuming that mass starvation of the Cambodian people will help in the mopping up of the remnants of the forces of the deposed Cambodian Government, now fighting a desultory guerrilla war from the jungles in remote parts of Cambodia.

In any event, Mr. President, this tragedy should serve to expose some phony self-styled "humanitarians" in our own country.

For years the word genocide has been bandied about by the opponents of the Vietnam war to characterize the American effort in Southeast Asia.

Now, however, a true genocide is taking place—on a colossal scale. First, the Communist Government of Cambodia began a butchery of the educated classes that wiped out more than a million Cambodians. Today Cambodia has shrunk from a nation of more than 7 million residents to something less than 3 million people.

Thirty years ago, the Jews were murdered in Europe, while the world stood by and did nothing. Are we now willing to stand on diplomatic niceties while the second genocide in our lifetime unfolds?

I urge President Carter to instruct Ambassador McHenry to submit a motion before the U.N. General Assembly urging the Government of Vietnam to use its dominant influence on the authorities in Phnom Penh to permit the immediate establishment of a truck bridge to carry the vast supplies of rice and medicine now located near the border in Thailand to the starving and disease-ridden populace of Cambodia. If the United Nations is to retain any moral credibility whatsoever, such a resolution should pass overwhelmingly. Any nations daring to oppose this humanitarian measure surely will carry an eternal badge of shame.

At the same time, I would urge President Carter to demand publicly that both the Soviet Union and China use their influence to persuade Vietnam to act in accord with civilized standards. The Soviet Union provides Vietnam with essential goods and services, and retains, therefore, compelling influence over the decisions of the Vietnamese Government. One word from Chairman Brezhnev to the government in Hanoi would produce an immediate change of policy on this issue. Soviet failure to act implicates the Soviet Union in this crime of genocide.

Legal niceties are irrelevant when dealing with those perpetrating this monstrous genocide. President Carter should make it clear to the Vietnamese, whose quarter of a million troops are occupying most of Cambodia, that any interference with the delivery of food and medicine will be dealt with sternly.

The world should be reminded that the Soviet Union is providing food for the Vietnamese soldiers in Cambodia and for a small percentage of the urban population. But the needs of the masses of humanity in Cambodia are now going unmet. Every day that we delay in providing relief supplies means the death of additional thousands of people. Time is of the essence.

Let it not be said, when the final chapter is written about that Cambodian tragedy, that the last remnants of the Cambodian people died because the United States lacked the will to step forward while a nation of people perished.

I shall go into this somewhat more in detail when my amendment is called up.

UP AMENDMENT NO. 727

(Purpose: To extend the Indochina Refugee Assistance Program for two additional years)

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

The PRESIDING OFFICER. The Chair informs the Senator that until the committee amendments have been disposed of, a floor amendment will not be in order.

Mr. CRANSTON. I ask unanimous consent to proceed with this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON), for himself and Mr. HAYAKAWA, proposes an unprinted amendment numbered 727.

Mr. CRANSTON. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 2, insert the following new section:

SEC. 3. (a) Section 2(b) of the Indochina Migration and Refugee Assistance Act of 1975, as amended, is further amended to read as follows:

"None of the funds authorized to be appropriated by subsection (a) may be available for obligation after September 30, 1981."

(b) The amendment made by this section shall take effect on October 1, 1979.

Mr. CRANSTON. Joining me as a cosponsor of the amendment is my colleague from California (Mr. HAYAKAWA), who is away from the Senate in attendance at the funeral of President Park of Korea.

I ask unanimous consent that my colleague's written statement in support of our amendment be printed in the RECORD following my own.

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

Mr. CRANSTON. I also ask unanimous consent that a letter written separately to me and to Senator HAYAKAWA by Representatives BIZZ JOHNSON and BOB WILSON expressing support of the California delegation for our amendment be printed in the RECORD.

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

WASHINGTON, D.C., *November 1, 1979.*

Senator ALAN CRANSTON,
Room 229 Russell SOB

DEAR ALAN: The Indochinese refugee problem is of great concern to our delegation as it is to you. Your efforts to extend the Indochinese Migration and Refugee Assistance Act of 1975 through the Cambodian Relief bill, S. 1668 has our support in light of the current impasse in the House on passing the Refugee Policy legislation and the approaching termination of Federal funds for the existing IRAP program on November 20.

We understand, of course, that the Cranston-Hayakawa Amendment, which would provide for an additional two years of full Federal funding for all Indochinese Refugees, is intended to bridge the gap until the refugee policy bill can be enacted and assure continued funding for the current IRAP program until then.

As you know, California now has over 100,000 refugees. This number is increasing monthly due to secondary migration and the settlement into California of substantial numbers of new refugees under President Carter's new monthly quota of 14,000 refugees.

Without Federal funding to continue this program, millions of dollars in costs will shift to California taxpayers. The consequences of such a shift may seriously impair the willingness of Californians to resettle such large numbers of refugees.

When this matter reaches the House, we will give you every assistance we can to get your amendment through conference.

With best regards.

Sincerely,

HAROLD T. JOHNSON,
BOB WILSON,
Members of Congress.

Mr. CRANSTON. I wish to say at the outset that the legislative agenda for today incorrectly describes my amendment as providing a 5 year extension of the Indochina refugee assistance program. It is only for 2 years.

Our amendment extends until September 30, 1981 the authority provided in the Indochina Migration and Refugee Assistance Act of 1975 to reimburse State and local public agencies in full for cash and medical assistance furnished to refugees from Vietnam, Laos, and Cambodia.

The present authorization for the Indochina refugee assistance program expired on October 1 this year. The IRAP program currently is being continued under the authority of House Joint Resolution 412.

The Senate on September 6 approved Senate 643, the Refugee Act of 1979, which established a new refugee assistance program to replace the Indochina refugee assistance program and other similar refugee assistance programs. The Refugee Act of 1979, however, has yet to be considered by the House of Representatives. In the meantime, the authority for IRAP has expired and States and local public agencies are in considerable doubt as to whether the non-Federal share of cash and medical assistance provided to refugees will continue to be reimbursed.

Approval and enactment of the Cranston-Hayakawa amendment will not displace the new refugee assistance program provided in S. 643 should that bill be enacted. S. 643, by its terms, will have the effect of folding the IRAP program into the new refugee assistance program. Thus, the net effect and the purpose of the Cranston-Hayakawa amendment is to assure certainty in funding for the current IRAP program until Congress resolves the issues involved in the Refugee Act of 1979.

The cost of the Cranston-Hayakawa amendment is less than the cost of the new refugee program authorized in S. 643.

The costs of our amendment will be $320.8 million in the current fiscal year and $441.9 million in fiscal year 1981.

Budget authority for refugee assistance already has been approved by the Senate in S. 643. Since the amendment I am offering would be superseded by S. 643, if that bill is enacted, the amendment has no effect on the current congressional budget.

Mr. President, the need for strengthened refugee assistance programs has been studied carefully by the the Human Resources Committee and Health Committee of the California Assembly. I ask unanimous consent that the recommendings and findings of these two California legislative committees be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. CRANSTON. I urge the Senate to adopt the amendment. I am glad to have the sense that the distinguished Senators handling the measure are prepared to accept it.

EXHIBIT 1

INDOCHINESE REFUGEE RESETTLEMENT PROGRAM IN CALIFORNIA: JOINT COMMITTEE RECOMMENDATIONS

FEDERAL RESPONSIBILITIES

1. That a federal interagency task force be formed and made responsible for all activities related to refugee resettlement, for monitoring and evaluating the effectiveness of voluntary resettlement agencies, for coordinating all federal resettlement programs, and for collecting and disseminating to appropriate local authorities current and projected demographic data on the refugees.

2. That the United States Public Service be made responsible for conducting health screenings and immunizations of all Indochinese refugees immediately upon their arrival in the United States and for immediately forwarding notification of findings on the health status of each refugee—along with the name, address and phone number of the refugee's sponsor and voluntary resettlement agency—to the county health department at the refugee's destination.

3. That voluntary resettlement agencies be reimbursed at a realistic per capita rate and that they be held responsible for true resettlement of the refugees whom they bring into the country. That, through refugee sponsors, clothing, food, permanent housing, health care referral and beginning English language instruction be immediately provided and that the voluntary agencies be responsible for notifying the Immigration and Naturalization Service whenever, within the first year or resettlement, a refugee in their charge moves to a new location.

4. That refugees entering the country under family reunification be provided an intermediate sponsor to assist them, unless a refugee's family has the resources to support the incoming person.

5. That special project funds be provided to public health departments of counties in which there are concentrations of 200 or more Indochinese refugees, for medical follow-up including treating and monitoring identified health problems, particularly active tuberculosis, venereal disease, intestinal parasites, malnutrition-related illness, skin disease and mental health problems. Funds should be sufficient to provide for bilingual staff, ancilliary testing services, public health outreach, transportation, and preparation and distribution of public

health education and information materials in appropriate languages.

6. That the refugee program be continued at 100 percent federal participation for more than one year.

Or that the federal government should establish and administer a cash and medical assistance program for refugees, with uniform eligibility standards and payment levels.

7. That the assistance program for refugees have:

(a) A continuous appropriation for aid payments and medical assistance, social services, English as a second language (ESL), vocational training, and employment services,

(b) Or at least a continuous appropriation for aid payments and medical assistance and a line item for the other services.

8. That the refugee program provide funding for English as a second language (ESL) for every non-English-speaking, adult refugee.

STATEMENT OF SENATOR HAYAKAWA

I am again pleased to join with my distinguished colleague, Senator Cranston, in introducing this amendment to the Migration and Refugee Assistance bill, S. 1668. This is the Senate version of H.R. 4955 passed by the House.

The Indochina Migration and Refugee Assistance Act of 1975 authorized full federal reimbursement to state and local agencies for cash and medical assistance to refugees from Vietnam, Laos, and Cambodia. That authorization expired September 30, 1979. Subsequently, Senator Cranston and I introduced an amendment to S. 643, the Refugee Act of 1979, extending this full federal support for one year. It was approved by the Senate. Unfortunately, however, the House of Representatives has yet to act on this legislation.

Although the present program is being continued under the authority of H.J. Res. 412, the state and local public agencies are concerned about federal reimbursement of funds expended since October 1.

I appreciate the past support of my colleagues in providing full federal reimbursement to the state and local governments for the costs incurred in aiding the refugees in their resettlement. It is now imperative that Congress acts promptly and in an expedient manner to assure these public agencies of continued full federal reimbursement.

Let me add that this amendment will have no effect on the current Congressional Budget.

Mr. McGOVERN. Mr. President, the Senator from California is correct. The amendment does make sense. I know the special problems in his State, where some 31 percent of all the refugees who have come into the United States have settled. So, even in a very large State like California, this obviously places a very heavy burden. As I understand, what the Senator is trying to do is reassure State and local agencies that they will be supported in their efforts.

Mr. CRANSTON. That is correct.

Mr. McGOVERN. And reimbursed for providing cash and medical assistance for these refugees under the circumstances. I would have no problem accepting the amendment.

Mr. CRANSTON. I thank the Senator.

Mr. HELMS. Mr. President, I am informed that a Senator on this side of the aisle has some question about this amendment. He is on his way to the floor. I wonder if the distinguished manager of the bill would object that we have a quorum call briefly, until he arrives.

Mr. McGOVERN. Either that, or if other Senators have amendments they are ready to offer, we could lay this amendment aside.

Mr. HELMS. I know that the Senator from California wants to catch a plane. I do not want to delay him.

Mr. CRANSTON. Could we take up something else, with the understanding that when the Senator arrives it could belaid aside and my amendment taken up again?

Mr. HELMS. I have an amendment, and the Senator from Missouri has an amendment.

Mr. CRANSTON. I ask unanimous consent that we take up another amendment and start immediately with that, with the understanding that when the Senator with the question returns that amendment will be laid aside and action on my amendment completed. Maybe he is now on the floor. Senator THURMOND?

Mr. THURMOND. Mr. President, I have just been informed that the amendment being offered by the distinguished Senator from California would add another 5-year authorization for reimbursement of the States for State-rendered reimbursible service.

Mr. CRANSTON. It is not 5 years. Two years. That is an error in the RECORD.

Mr. THURMOND. I think the distinguished Senator from California and I agreed on 2 years.

Mr. CRANSTON. It is 2 years.

Mr. THURMOND. It is 2 years? Then I have no objection to that.

Mr. CRANSTON. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California (Mr. CRANSTON).

The amendment (UP No. 727) was agreed to.

Mr. HELMS. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. President, I thank the Senators very much for their cooperation.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

Mr. McGOVERN. Mr. President, I move the adoption of the committee amendments, en bloc.

The committee amendments, en bloc, were agreed to.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 561

(Purpose: To authorize the President to furnish assistance to alleviate the human suffering in Cambodia caused by famine)

Mr. DANFORTH. Mr. President, I call up amendment No. 561.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH), for himself, Mr. SASSER, Mr. BAUCUS, and Mr. MELCHER, proposes an amendment numbered 561.

Mr. DANFORTH. 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 bottom of page 2, add the following:

SEC. 3. Chapter 9 of part I of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following:

"SEC. 495H. CAMBODIAN DISASTER RELIEF ASSISTANCE.—(a) The Congress, recognizing that prompt United States assistance is necessary to alleviate human suffering arising from famine, disease, and war in Cambodia, authorizes the President to furnish humanitarian assistance, on such terms and conditions as he may determine, for the people of Cambodia. Such assistance may include food, medicine and medical care, clothing, housing and other forms of shelter, and transportation for emergency supplies and personnel. In addition to amounts otherwise available for such purposes, there is authorized to be appropriated for the fiscal year 1980 for the purposes of this section $30,000,000, which amount is authorized to remain available until expended.

"(b) Assistance under this section shall be provided in accordance with the policies and general authority contained in section 491.

"(c) Obligations incurred prior to the date of enactment of this section against other appropriations or accounts for the purpose of providing humanitarian assistance to the people of Cambodia may be charged to the appropriations authorized under this section.

"(d) Nothing in this section shall be interpreted as endorsing the Vietnamese invasion of Cambodia or as recognizing any group claiming to be the Government of Cambodia.".

Mr. DANFORTH. Mr. President, I ask for the yeas and nays on this amendment.

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

The yeas and nays were ordered.

Mr. DANFORTH. Mr. President, this amendment was originally brought to the attention of the Senate several days ago, sponsored originally by the distinguished present Presiding Officer, the Senator from Montana (Mr. BAUCUS), the Senator from Tennessee (Mr. SASSER), and myself, without any solicitation whatever of cosponsors. Senators MELCHER, COHEN, BOSCHWITZ, DURENBERGER, DOMENICI, HELMS, and SIMPSON have asked to be cosponsors, and I ask unanimous consent that their names be added as cosponsors.

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

Mr. DANFORTH. Mr. President, this amendment would authorize an additional $30 million for relief for the people of Cambodia. The funds so authorized could be used for the relief of the people of Cambodia wherever they may be found in distress, whether within the country of Cambodia itself, Thailand, or anywhere else. The money could be used for the relief of famine and disease, which is now being suffered by the people of that unfortunate part of the world. As the Presiding Officer well knows, three of us went to Thailand and then visited the refugee areas on the border of Thailand, and visited Phnom Penh, the week before last.

We witnessed firsthand the tragedy of what was happening to the Cambodian people. What is involved here is the survival of an entire race of people. The Cambodians numbered about 7 to 8 million just a few years ago, and now their numbers have been diminished to about 4 million, and thousands of additional people are dying every day. We visited the areas on the border of Thailand and we saw tens of thousands of people simply lying on the grounds suffering from starvation, suffering from malaria, unable to move, literally dying before our eyes.

That is the situation which we witnessed.

Mr. President, on next Monday a pledge conference is being held at the United Nations to which all countries, I believe, have been invited to send representatives. The three of us who went to Thailand and Cambodia 2 weeks ago, together with Secretary Vance and others, will be attending that pledge conference at the United Nations on Monday.

President Carter has stated that it is the intention of the administration to pledge $69 million for the relief of the people of Cambodia. To date, some $39 million has been authorized, and this $30 million would increase that amount to the $69 million which has been promised by President Carter. That is what this amendment is all about.

The authority in just slightly different form has been passed by the House of Representatives, where it was known as the Zablocki amendment. Now we would do the same in the Senate.

Mr. President, what is involved, of course, is the survival of a nation, of a race of people. What is involved is the alleviation of human suffering in its most acute form. But there is something else which is also at stake here, and that is our perception of the United States, what we stand for, and what kind of country we are.

The three of us who made the trip to Thailand and Cambodia are all members of the same generation. Our earliest memories are of the time of the Second World War, and immediately thereafter.

At that time, the United States was united in a common purpose: We were united in a consensus. We shared a common set of values, humane values—values concerning the worth of individual people wherever they happened to live in the world. What was at issue in the early 1940's was two competing value systems: One which treated individuals as things, to be used, to be abused, to be disposed of; and another value system represented at that time by the United States and the Western World in general, which recognized the humane values, which recognized the worth and dignity of the individual person.

That is exactly what is at stake here.

There is a word which has been used to describe the national spirit. The word is malaise.

The question has been raised whether or not the American people really believe in anything, whether we really stand for anything, whether our sole concern is simply looking into ourselves internally, caring about ourselves, carrying about our own prosperity, caring about our own standard of living.

I do not believe that the people of this country have lost their idealism. I do not believe that the people of America have stopped standing for the same values that we believed in when the three of us who made this trip were growing up.

Now we have an opportunity in this amendment to state quite clearly, tangibly, what America stands for, to make a sacrifice. It is not much of a sacrifice when you consider the total amount of the Federal budget. But it is to make a very real financial commitment to the salvation of people who are suffering so desperately.

They are people who really do not have very much in common with us. They are located on the other side of the world. If we were to punch a hole from Washington, D.C. through the globe it would come out in Cambodia.

They are people who speak a different language, who have different customs, who practice a religion which is not very widely practiced in the United States. They have been fought over, scrapped over, for years by two competing Communist regimes. They are far different from anybody we see on the streets of Washington or in our own States, in our own constituencies. Yet they are human beings, and they have that basic dignity that everyone has, just by virtue of the fact that he is the creation of God.

Now we come to the question of what kind of value should be attributed to these people. Are they simply tools to be manipulated around by some totalitarian regime, to be granted food or denied food for a political purpose, to be granted medical attention or denied medical attention for some political purpose? Or are they deserving of food and deserving of medical attention just because they are men, women, and children?

That is what this amendment is all about.

At a time when we quest for a national purpose, when we quest for our own sense of idealism again, that idealism is embodied in the opportunity, the privilege, that our country has been given to come to the aid of the people of Cambodia.

That is why, Mr. President, it is a privilege for me to offer this amendment at this time.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, I can hardly match the eloquence of the distinguished Senator from Missouri, but I wish to commend him and add my support to his amendment.

Mr. President, I also commend the distinguished chairman of the Foreign Relations Committee and the distinguished ranking member as well for taking action on this very crucial legislation (S. 1668).

S. 1668, which authorizes an additional $410 million in appropriations under the Migration and Refugee Assistance Act for fiscal year 1980 and 1981, provides the additional financial assistance that the United States has pledged to help refugees of Southeast Asia who are fleeing oppression, and who are making such a valiant effort to avoid the starvation and war that have surrounded them in the last decade.

As I have said many times before, America should be proud of its willingness to offer a helping hand to the less fortunate of the world. Our whole tradition has been helping others around the world. We are a great nation of refugees—indeed, no other nation in the world has refugees as such a basic part of its population.

I would also like to commend the Senators from South Dakota for his contribution to this legislation on behalf of the starving people of Cambodia. Once again, Senators MCGOVERN and DANFORTH both displaying their sincere commitment to the humanitarian relief efforts for the people of Southeast Asia.

Unless massive relief efforts are mounted and undertaken today in Cambodia, the international community is going to see a furtherance of famine and disease which will threaten the existence of the remaining Khmer men, women, and children. These people are wandering desperately from town to town in search of food and shelter. Thousands are reported to be languishing on the Thai border, waiting for help from the outside world as the major Communist regimes in the world fight for preeminence in the area. The very existence of these people is at stake. Reports that we have heard time and time again on the Senate floor talk about the millions who have died and the millions who are continuing to die.

I have a special interest in legislation of this kind and a special sympathy for people suffering from such attrocities, because I also was a refugee, as were my family and my wife's family as well. In fact, all the families of my colleagues in the Senate are refugees, if not in this generation, in generations that preceded them. It is with sincere conviction and great pleasure that I rise in support of the bill as a whole and Senator DANFORTH's amendment on behalf of the Cambodians.

I also want to take a moment to praise a specific relief effort that is taking place in Minnesota. The American Refugee Committee, which is a Minnesota-based rescue operation, has already sent doctors, nurses, and medical technicians to the Cambodian border to help the people, to save what lives can be saved. In early November, the American Refugee Committee is planning to send an additional 50 or more doctors and nurses to that area, entirely on a voluntary basis and entirely supported by voluntary contributions. I think that praise on the Senate floor on their behalf is certainly most deserved.

Mr. SASSER. Mr. President.

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

Mr. SASSER. I yield to the Senator from New York.

Mr. JAVITS. I had in mind speaking on this matter, but I should like to do it

when our heroes—to wit, Senators DANFORTH, BAUCUS, and SASSER—have completed. If the Senator will please go ahead, I shall speak in support.

Mr. SASSER. I thank the Senator from New York, Mr. President. I shall be brief.

I rise this afternoon in support of the amendment offered by Senators DANFORTH, BAUCUS, and myself. I associate myself with remarks made by my distinguished and able friend from Missouri, JOHN DANFORTH. He spoke of a revitalization of the American people—a reunification of effort—and an agreement on a common consensus for helping the deprived, desperate, and miserable people of Cambodia.

I say to my able colleague from Missouri that I, too, sense this mood sweeping across our country. In my native State of Tennessee, I am receiving communications from many individuals from all walks of life, from church groups of all denominations, wanting to know how they may be of assistance. With a united voice they are deploring the conditions that they see, night after night on television. The misfortune that has come to the desperate peoples of Cambodia has been met with an outpouring of concern and positive action from the people of Tennessee.

We have described what we found on the border of Cambodia and Thailand. We saw there the grim reality of a human misery unparalleled in the last 20 years; human misery that may well have been unparalleled in this century.

I saw children in the final stages of malnutrition, irreversible malnutrition. I looked into the eyes of mothers who were carrying tiny babies, mothers unable to give the babies the nourishment that they needed, because the mothers themselves were suffering from extreme malnutrition. I saw evidence of disease wracking a whole race of people. Mr. President, this is what I, myself, and my able colleague from Missouri and my distinguished friend from Montana saw with our own eyes.

I think the Senator from Missouri is eminently correct when he says that this country is rising to its finest calling when its heart goes out and it sends help to a people halfway around the globe, to a people with whom we do not share a common religion; a people, indeed, with whom we probably do not share a common political philosophy; but people who are human beings and are deserving of the basic necessities of life such as food and shelter.

Mr. President, I think that is really what this country is all about. Over 200 years ago, Thomas Jefferson said, "America is the last hope of mankind." That is just as true today as it was 200 years ago. I am proud of the conduct of my distinguished colleagues, JOHN DANFORTH and MAX BAUCUS. They hold witness that Jefferson's statement is still true.

The reaction of our colleagues in the Senate, who have pressed us and questioned us closely about what we saw and inquired of us what they may do to help, and the outpouring of the American people in sympathy for these desperate, miserable people in Cambodia, I think, are evidence also that America still is the last best hope of mankind.

So, Mr. President, I am honored to rise in support of the Danforth amendment. I think it is right and proper. I think that what the Senator from Missouri seeks to do is in the finest tradition of this country and, certainly, in the finest tradition of the U.S. Senate.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, Senator DANFORTH and Senator SASSER have very eloquently and adequately described the conditions of Cambodia and Southeast Asia as we saw it. In addition, even more graphically, in the last several weeks, on the evening television news and in newspaper accounts, we have received an even more distressing and despairing sense and flavor of the tragedy of Southeast Asia.

Senator DANFORTH mentioned that the population of the Khmer people in Cambodia was estimated at about 8 million people a few years ago. Now it is down to about 4 million people—4 milion people have died of starvation and disease, many were killed, exterminated, many have fled the country. I, frankly, am very proud at the response that descriptions of the tragedy in Cambodia have received in America.

Senator SASSER mentioned his perception of a sense of humanity moving across the country. I found it in Montana; I know Senator DANFORTH has in Missouri, as have other Members of the Senate in their home States.

We are all receiving telephone calls, letters, from people who want to help, who are very frustrated in not knowing precisely how to help, but, nevertheless, feel the need and the urge to do something.

In addition, many other people all over the world want to help. They, too, are a bit frustrated, but, nevertheless, the feeling and the need is there.

The difficulty, however, is really twofold. In the first place, we do have some medical supplies, some food, some aid, being sent to that part of the world. Regrettably and unfortunately, and almost incomprehensibly, the authorities in control in Phnom Penh are not opening up the borders. They are not letting in all the food, aid, and help, in terms of personnel and supplies that are desperately necessary to prevent as many as 2 million Khmer people from starving to death, and as Senator DANFORTH said, literally to prevent the extinction of a race.

So it is absolutely imperative that we continue to build upon this sense of humanity, this religious and moral basis of American society, to make sure that what we have begun will result in actual fruition, so that, as a matter of fact, the people will receive as much aid as is absolutely humanly possible and necessary.

So our efforts have only begun. Yes, we talked about the need. Yes, we have helped dramatize and focus the need upon Cambodia. But here in the Senate and in the other body, and in all forums, not only in this country but in the world, we as a human people, not only as Americans and in the spirit of Thomas Jefferson but as human beings and members of human society, have this higher calling to do what is absolutely necessary to help those fellow human beings who desperately need our help.

Mr. President, I want to urge all of us to continue our efforts. In doing so, again I give my highest praise to my two very good friends and colleagues, Senator DANFORTH and Senator SASSER.

Once again I state my admiration for the initial efforts of Senator DANFORTH. He is really the conscience of the Senate, the originator, one of the first voices to get this movement going. Were it not for his efforts, I am sure that many more people in that part of the world would be suffering even more than they are today.

Mr. President, once more I hope this is really only the second or third step out of many we are taking to help make sure the people get the food they need, because this will be one of America's finest hours if we do continue to proceed.

Equally important, it will mean, I hope, that the 1980's are a decade of greater American and human sensitivity to the world's problems.

We have seen tragedy and, in some senses, have become callous. We see tragedies so often on the evening news, that the tendency in human nature is to become rather insensitive to the tragedies, such as Bangladesh and Biafra.

This current tragedy in Cambodia is testing our values as Americans and human beings. We must rise above obstacles and frustrations as well as protect our sensitivity to human suffering, as we work to provide the aid that is so necessary to the people of Cambodia.

Mr. President, I am sure the amendment will pass very quickly. Again I say, that is just the initial effort we must undertake.

Mr. JAVITS addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, this amendment is eminently satisfactory to me. I commend the authors of the amendment for their enterprise. I find it to be more adapted to the situation than the House amendment, both of which address the question of a supplemental authorization of $30 million to the Cambodian people, in addition to the $39 million in reprogramed funds which President Carter has pledged.

As a conferee, which I expect to be, I will certainly hope that we get this kind of money, instead of money with strings attached which may be hard to administer.

Mr. President, while I have the floor, I would say that this is a situation equivalent to genocide. Genocide can be by inaction as well as by action. We can let people starve to death after cutting them off from everything they have or can get to keep them alive. This involves large numbers of people, Mr. President, as has been very carefully explained.

When I said a minute ago that these three Senators are our heroes, I would like to explain what I mean.

The Senate is a great time-honored institution. It has had many great days and many great people. We often look around the Chamber and wonder whether there are any more Websters, Clays, Calhouns, Tafts, Borahs, and many other great figures who have served in this Chamber, including Presidents like Kennedy and Johnson.

Mr. President, the prestige, the solicitude, the courage of this Chamber is always extremely valued to people like myself who have served a long time. I believe I speak the conscience of the Senate in thanking these three young Senators for having initiated this move and going out there, for taking the risks which were run, but, beyond everything else, for comporting themselves with such dignity and with such ability as to shed great credit on the Senate of the United States.

I hope they will continue in this matter, and that others will in this pattern. It is very auspicious.

May I say one other thing, as a member of the Foreign Relations Committee, Mr. President, about what appalls me in this situation.

This is endless, Mr. President. There are 4 billion people in the world. We could have hundreds of millions who are refugees if these policies of driving people out of a country for political purposes continues.

I deeply believe, Mr. President, that both we and the Soviet Union, as the great superpowers on Earth, have to take this into account. And I believe the Soviet Union is not pulling its weight in the boat.

Mr. President, it is a pretty open secret that the Soviet Union is backing the Vietnamese and that the Vietnamese have loosed this trend of refugees not only upon us, but upon Southeast Asia and upon Thailand.

We have appealed, in my judgment, time and again to the Soviet Union to join with us in the same responsible behavior which is being shown on this floor this afternoon.

It is a fact that the Vietnamese backed Heng Samrin regime in Cambodia has claimed the Soviet Union has already provided 200,000 tons of food.

But, Mr. President, our inquiries—and I am speaking of me, and perhaps my colleagues have also made inquiries at the State Department—indicate that just 10,000 tons have been shipped into the country. Two Soviet ships are now docked in a Cambodian port. At the moment, that 10,000 tons, if it is feeding anybody at all, very likely would be feeding the troops which are driving people out of the country and putting the country into the condition in which it is. The Soviet Union has also been flying unspecified amounts of food into Cambodia but those supplies are almost solely for the use of the Vietnamese troops.

Western countries have so far put up $101,140,000 for relief programs in Cambodia and along the Thai border. As far as we know, the Soviet Union has pledged nothing. Also, the Soviet Union has never contributed to the United Nations High Commissioner for Refugees. Japan, to which I give the greatest credit, increased its contribution to the UNHCR Indochina refugee program from 25 to 50 percent, thereby reducing what we are asked to contribute.

Here we have pledged in this Chamber alone, over a 2 year period, over $300 million in U.S. contributions to the United Nations High Commissioner for Refugees.

Obviously, the Soviet Union has great influence, to say the least, over Vietnam and this Heng Samrin regime I urge the Soviet leaders to think a while. It is not unusual that someone who loosed the flood is, in turn, inundated by it. That is not unusual in world history.

I think this is a very, very potent element in what we are discussing, and we had better look to it: Our Government and what we say to the Soviet Union as to the responsibility of its conduct in this matter.

For myself, I would welcome any disclosures that I am wrong, any disclosures of what they are doing in order to help in this situation.

However, being a super power—and I think the Soviet Union is very proud of being a super power—is not a free ride. It also calls for responsibility in the world in which you are a super power.

I can only express the hope, as a U.S. Senator, that the Soviet Union will show at least the same sense of responsibility, the same humanity, and devote the same kind of resources to dealing with this problem that we are showing here this afternoon.

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

Mr. JAVITS. I yield.

Mr. STEVENS. Mr. President, I want to take a moment to commend Senators DANFORTH, BAUCUS, and SASSER, on behalf of the minority leadership, for bringing this issue so clearly to the attention of the Nation and the world.

On Tuesday of this week, during our Republican policy luncheon, Senator DANFORTH gave a startling account of the situation in Cambodia. It was indeed a dramatic moment for all of us to be made so personally aware of the degree of the problems of starvation and malnutrition among the people of Cambodia.

The mission of these Senators in going to the Far East to witness the situation firsthand is something for which all of us in the Senate should be grateful. I commend the Senators for their sensitivity, for their compassion, and for the personal time and effort they expended in order to bring us this personal report.

I intend to support the Danforth amendment, and I urge all Members of the Senate to do so.

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

Mr. STEVENS. I yield.

Mr. ROBERT C. BYRD. Mr. President, I wonder whether we can get an agreement to the effect that final passage will occur not later than 3:30 p.m. today, and we could set votes back to back.

Mr. STEVENS. There is no objection. We hope we can do better than that, as the managers of the bill indicate. But we certainly can enter into an agreement to vote on final passage not later than 3:30 p.m.

Mr. JAVITS. We have notice of one amendment on the other side of the aisle, and I suggest that we protect any Member who has an amendment, so that he will not be trapped.

Mr. ROBERT C. BYRD. We will try to get in touch with Senators on our side who have amendments and ask them to come to the floor.

I ask unanimous consent that, with paragraph 3 of rule XII being waived, the final vote occur no later than 3:30 p.m. today.

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

Mr. TSONGAS addressed the Chair.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. ROBERT C. BYRD. Mr. President, could we reach an agreement whereby there will be votes back to back?

Mr. DANFORTH. Mr. President, that is perfectly satisfactory with me. I think we would be ready to proceed, at least so far as this amendment is concerned, in the very near future. Before we have a vote on this amendment, I would like to proceed for about 2 minutes, and the Senator from Massachusetts would like to be heard on it. I think that having back-to-back votes makes eminently good sense.

Mr. PELL. Does the Senator wish a rollcall vote on his amendment?

Mr. DANFORTH. Yes. The yeas and nays have been ordered on this amendment.

Mr. PELL. Mr. President, how much time remains on this amendment?

The PRESIDING OFFICER. All time on the amendment has expired. Time remains on the bill.

Mr. JAVITS. Mr. President, I yield 10 minutes on the bill to Senators who wish to speak.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. TSONGAS. I thank the Senator for the time.

First, I would like to acknowledge the efforts of Senators DANFORTH, SASSER, and BAUCUS in representing the Senate in this very important issue. I say to you that I am proud of you and proud of the honor you have brought to the Senate.

I would feel free, however, in suggesting to you that while you have done a great deal for these people, this trip has done something for you as well. I think you are forever changed by the experience and are better for it, and that is to your credit.

I also say to the Senator from New York that when he looks around and wonders whether any Websters are left, I would be happy if there were a lot more Javitses around, and I would feel a lot better about this body.

OXFAM CAMBODIA RELIEF EFFORTS

Mr. President, I join my colleagues who have expressed their deep concern for the plight of the Cambodian people. I support Senator HELMS' amendment and I would like to add one more name to the list of organizations he mentioned.

Oxfam, an international self-help development agency, with headquarters in Boston, has been at the forefront of the emergency relief effort. Oxfam was the first private organization to negotiate successfully with the Heng Samrin government for permission to send in emergency food aid. This past August, the agency flew 40 tons of food and medical supplies directly into Phnom Penh. Oxfam has been the only agency given a guarantee by the Heng Samrin Government that its aid will not go to military personnel. The organization has also been permitted to monitor the distribution of its contributions.

In addition, Oxfam now has organized an international consortium of some 37 nongovernmental agencies to provide a massive aid program of $50 million over the next 3 to 6 months. More importantly, they have received permission to distribute these supplies within Cambodia, directly to the starving masses.

I believe that Oxfam's efforts are an excellent illustration of how a private group, unencumbered by political constraints, can act quickly and efficiently in an emergency situation.

There is no doubt that its actions have already saved the lives of thousands of people. But there is much more to do. Many more people need to be saved. Oxfam, and all the other agencies mentioned by Senator HELMS need the funds from this legislation to carry on their activities. I am certain that Oxfam would be sorely missed if the organization were mistakenly excluded from this program.

Mr. President, I ask unanimous consent that Oxfam be added to the list of private organizations that should be used to facilitate our emergency relief program in Cambodia.

I also urge my colleagues to read an excellent article in the October 31 edition of the Christian Science Monitor entitled, "Cambodia: 'Possible extinction by Christmas'," which describes Oxfam's tenacious efforts to provide emergency assistance. Mr. President, I ask unanimous consent that the full text of this article be printed in the RECORD.

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

[From the Christian Science Monitor, Oct. 3, 1979]

CAMBODIA: "POSSIBLE EXTINCTION BY CHRISTMAS"

(By Stephen Webbe)

The book on the conference room windowsill was entitled "The Family Man." Inspirational anywhere else no doubt, here it was bitterly ironic; disaster specialist Jim Howard was telling of the tragedy of Cambodia, a once-bountiful and smiling land that may not, for all the compassion of an outraged world, be prevented from going gently into that good night.

An 18-year veteran of Oxfam, a self-help development agency, Mr. Howard was relating his impressions of the ravaged country at the John F. Kennedy School of Government here. Mr. Howard, a Quaker who lives with his wife and four children in Oxford, England, had flown in for an urgent conference on Cambodia's plight with his counterparts at Oxfam-America's national headquarters in Boston. He is one of only a handful of Westerners to have traveled in Cambodia recently.

Last August Mr. Howard flew into Phnom Penh with 40 tons of Oxfam food and medical supplies and stayed on to hammer out a relief plan with the Vietnamese-backed Heng Samrin regime. He later drove from Phnom Penh to Ho Chi Minh City, inspecting rural areas of Cambodia en route. "I was allowed to go wherever I wanted," he says.

Mr. Howard returned to Cambodia in September with Oxfam's second food consignment, leaving after the third one arrived to help prepare a relief barge in Singapore. The barge, laden with 1,500 tons of food that included rice and flour, was towed by tug to Kompong Som, where it docked on October 13. Two other barges were due to sail before the end of October.

"The humanitarian needs are so great in Cambodia, that the time has gone for any more debate," Mr. Howard declares. "Unless we act now, then I think we may see the possible extinction of the country before Christmas." He insists that if there is any disturbance of "marginal supplies" presently reaching the country from Vietnam and the Soviet bloc "then I'm quite sure the Cambodian population will die of hunger and melt into the ground."

Mr. Howard, a civil engineer who saw his share or horrors in the Second World War, estimates that about one half of Cambodia's 7½ to 8 million people were slaughtered by the Pol Pot forces before their tormentors were driven into Thai border country earlier this year by an invading Vietnamese army. "I have never seen atrocities of the caliber that I've seen under the Pol Pot regime," he exclaims. "If they've destroyed 30 percent of the population there, in American terms that would be the destruction of 40 to 50 million people."

The situation is quite "as bad, if not worse than anything I have seen in 20 years of experience with disasters in countries like Bangladesh, India, and Biafra," he declares.

Oxfam, which heads a consortium of European, American, and Australian voluntary agencies in Phnom Penh claims not to have encountered the political and administrative obstacles that have bedeviled the aid efforts of others in Cambodia—in particular those of UNICEF and the International Committee of the Red Cross.

The agency, which began life as The Oxford Committee for Famine Relief in Oxford, England 37 years ago, recently achieved what Mr. Howard called "a breakthrough agreement"—to provide the Phnom Penh government with $50 million in relief aid. "It's a momentous agreement," he says, "because the Cambodian government has now agreed to large-scale relief throughout the country." The Cambodian ministries, he notes, "are calling the shots here and not the Vietnamese." He adds that the Phnom Penh government has given Oxfam unhindered access to the country and he expects continuing cooperation from officials.

Under the aid program, Cambodia can hope for 70,000 tons of rice and maize (corn) for immediate consumption; 600 tons of rice, sugar, oil, and milk powder for hospitals and orphanages; 50 diesel trucks and four Land Rovers; and 19,000 tons of grain and vegetable seed for an immediate planting program. In addition Oxfam will provide irrigation pumps, fish nets, pesticides, soap, blankets, mosquito nets, and hand hoes.

The aid program has two aims, says Mr. Howard. "The first pressing need is to feed the people. The second is to restore their capacity to produce food and become self-sufficient again."

Mr. Howard explains that Oxfam is currently fund-raising for the aid package which, he says, will make the difference "between life and death" for Cambodia. He says he hopes the American people will respond with generous financial support.

Cambodia, he says, has undergone one of history's "most horrific experiences." "I have seen the prisons and the mass graves and the torture facilities."

Pol Pot's forces, he notes, massacred the bulk of the nation's intelligentsia and professional classes. "It is so staggering because here was an attempt to build a pure, wholesome society based on the simple life in the countryside and away with all the Western capitalistic trash of motorcars and equipment. And the end result is a society that's possibly on the point of extinction."

Mr. Howard says that Pol Pot forces killed 31 of 35 engineers in Phnom Penh's water treatment plant. "Now where do you get those sort of men from? They take 10 or 12 years to train. If you've destroyed them, you've done something worse than pull down a few buildings. You've destroyed the ability for human society to survive."

The railway in Phnom Penh, he says, has only four locomotives left and something less than five percent of its staff. Says Mr. Howard: "We see a society at the very end of its human tether."

Oxfam-America officials assert that the Pol Pot regime "systematically destroyed all symbols of Western capitalism and technology in a purge of unbelievable severity and bestiality." The money economy was destroyed and schools, hospitals, factories, machinery and motor vehicles were wrecked countrywide, they maintain. Farm equipment and fishing gear fared no better, it seems: hoes, irrigation pumps, and warehouses were destroyed, along with fishing boats, their nets and the tools for making them. And lepers, the officials claim, were exterminated along with cats and dogs.

Mr. Howard confirms the devastation. "There has been massive destruction of all the wherewithal of human society," he says. "Not only the destruction of the human beings, but everything that moved or worked in terms of vehicles, equipment, laboratories, paper, pens, pencils—everything has been smashed in this society."

Oxfam-America says there is now a major health problem in Cambodia, which is compounded by lack of professional staff of all kinds and the near total absence of medical equipment, drugs, and supplies.

"We've seen high schools and buildings with thousands and thousands of people dying with tuberculosis. Mr. Howard recalls, "There's no food for them; there's no doctors. There are only 50 doctors in Cambodia today."

Mr. Howard says that his first visit to Phnom Penh indicated that "all the access we wanted" was available for mounting a relief program. In discussions with the Cambodian ministries of health and foreign affairs, he established priorities and the means of operation "There are now no more barriers to substantial aid going in from the people of goodwill," he says.

"Clearly Oxfam is not able to do this alone," he adds, explaining that when in the Cambodian capital he agreed with the representatives of UNICEF and the Red Cross that all three would jointly mount as substantial a program as they could, with food and transport as the first priorities.

"There's an impression on the international scene that the Phnom Penh government has been difficult and restrictive in its approach to aid," Mr. Howard remarks. "But I think the restrictions are logical if you've seen the conditions of Phnom Penh and the government's problems there, the lack of transport and personnel."

He believes UNICEF and the Red Cross have created problems for themselves by proposing to install "very large staff structures" in Phnom Penh. This, he says, has "frightened the government there that they would be pretty near outweighed number-wise." The Heng Samrin government has permitted Oxfam to station seven of its officials in Phnom Penh. "We have demanded and got

permission to monitor all the supplies going in through the consortium," says Mr. Howard. "We have insisted that our food will not be used by the military and they have given us their solemn promises that this will be the case. If it's not the case, then we will withdraw our supplies instantly."

Mr. Howard is not given to underestimating the cost of Oxfam's Cambodian relief operation. The DC–8s they use cost $100,000 each to charter, he says and the barges cost half a million dollars to hire. "Oxfam has to raise money," he shrugs. "We have no great residue of cash in our banks. So it's really for people to support this effort.

There's a need for American support, both private and public, he asserts. "There is a major card to be played by the United States, a card of friendship, that would be way, way above any monetary value," he goes on. "I don't think the U.S. can really sit on the sidelines and see a nation that it's been concerned with go under for the lack of . . . what? The cost of a [Boeing] 747?"

The reason Oxfam uses ocean-going barges, Mr. Howard explains, is because the dock installations at Kompong Som have been destroyed and such vessels are very easily unloaded by manual labor. "You need no cranes," he says. "The cargo is above the deck." He implies that for an untrained dock labor force, suffering from malnutrition, deep-draught freighters would be a little too much to handle.

Quite apart from relieving immediate hunger, Mr. Howard emphasizes the urgent need to restore the bounty of the land. "We desperately need seeds in the ground," he says. "We have to help them to come back quickly into growing food. We've just missed the monsoon period, the main rice-growing period which is now, so it's clear we will not get another major harvest before December 1980–January 1981. The 1979–80 crop has been missed."

Mr. Howard says that he believes that less than 10–15 percent of Cambodia's rich agricultural land has been planted. "In my travels across Cambodia I've looked across thousands and thousands of hectares of rice land that has not been planted. It's under weed. There's clearly a tremendous shortfall coming towards us in January."

But the predicament is not entirely bleak, he feels. "There is enormous possibilities of vegetables—maize and other crops—being planted now and helping through the coming months."

Where cash for Cambodia is concerned, Oxfam-America believes seeing is believing. Says executive director Joseph Short, "The US government has only at this point committed seven million dollars, but has not made clear how it will spend it." Of the $110 million UNICEF and the Red Cross propose to spend on aid for Cambodia, he stresses that they "do not actually have the money. It's a hope at this stage."

Adds Mr. Howard: "I'm quite sure that UNICEF and the Red Cross have a major role to play in Cambodia. There's no question. But at this stage they've had very serious operating problems and I think they keep producing these figures in the hopes that they may tempt the government in Cambodia to respond and allow them to operate. We hope that will happen. But it's a matter of operational facts that we're interested in. Ours is the only ship in Cambodia.

Mr. Short hopes the money Oxfam is asking for now will have a "catalytic" effect on the general cash appeal for Cambodia. "We think in four months the money is going to be flowing in on a grand scale," he says. "The timely contributions now by individuals are going to have a tremendous multiplier effect." And Mr. Howard emphasizes: "I think people mustn't hold back and say we'll leave this to the government. Governments have done nothing for Cambodia since January."

He notes that the Phnom Penh government has "asked us not to help Pol Pot and we have agreed not to." Mr. Howard stresses that the former Cambodian ruler "can't be allowed to survive and go on battling away because this country will never come to peace. Cambodia needs peace above everything now."

He says that the great fear of the Phnom Penh government is a Vietnamese withdrawal under pressure "from China or elsewhere" that would bring Pol Pot sweeping back into power. "We see no survival under Pol Pot," he says gravely.

"After all, we've been and looked inside the gas chambers, if you like, and if we ignore this, then it's on our own heads."

Mr. TSONGAS. Mr. President, there is concern as to the process that is being engaged in here. In addition to the enormous need for massive amounts of food aid, we must recognize the desperate need for volunteers to help distribute the aid which is flowing into Southeast Asia for the relief of starving Cambodians.

In conversations with relief agencies directly involved in this humanitarian effort, I have learned that there is a severe lack of both medical and nonmedical personnel to assist in this effort. In many of the makeshift settlements on the Thai border, food lays untouched because there are not enough volunteers to distribute it to the weak and the sick refugees.

At the same time, I have learned that there are many, many people in the United States who wish to volunteer for this relief effort. In fact, one agency has informed me that they receive approximately 125 calls per week from both medically trained individuals and even those with no specialized training who are willing to take time out of their lives to work in the camps in Thailand. Although some international agencies like the American Refugee Committee in Minneapolis have organized efforts to send personnel to these settlements, there is still a tremendous need for many more people.

We must do something to bridge the gap that exists here. We must establish a program to train and transport volunteers to help in this noble effort.

I hope that immediate action can be taken to rectify this dire situation; thousands will die if we fail to act quickly.

Mr. President, it is my understanding that there are literally hundreds of volunteers around the country who are prepared to go into Cambodia and into Thailand to help in this situation. However, the problem is not so much the obvious need for foodstuffs and medical supplies but also the coordinating of volunteer efforts and the willingness to volunteer with respect to the needs there.

I hope the committee will give some thought as to how we can proceed to coordinate these efforts. It is all well and good to have hundreds of Americans who want to go over there and who are technically qualified. However, given the absence of a mechanism to coordinate that outpouring of interest, I suspect that many people will die before that organizational hurdle is overcome.

I am not going to offer an amendment, but I ask the committee to give this matter their consideration, and perhaps we can work together to arrive at a solution.

Mr. PELL. In response to the Senator's inquiry, the Committee on Foreign Relations is going to hold a hearing on Tuesday afternoon in connection with this subject, in an effort to figure out what can be done.

However, if a government is determined to kill its own people or to let them die, the question is how to get people in and how to get goods in.

Mr. TSONGAS. I am sensitive to those problems, and I look forward to the Tuesday session. Perhaps I can participate with a statement at that time.

The final point I make, Mr. President, is that I went to a conference last weekend sponsored by the African-American Institute. One of the black Africans from South Africa said to me, "How is it possible for the United States to be so concerned with Cambodia and not be concerned with the millions of refugees in South Africa?"

This is not the time to go into that in detail. I just want to raise that question and hope that our compassion will spread to the African Continent as well.

I thank the Senator from New York for this time.

● Mr. DOMENICI. Mr. President, as I said in my statement of September 28, 1979, we in Congress must support the prayers and efforts of many Americans whose hope is to give the Cambodians a ray of physical relief and a chance to live.

As we debate this issue today, I am quite pleased that the basic facts are now well known. When John D. Robb, Jr., president of the Albuquerque-based Christians for Cambodia, first contacted me in Gallup, N. Mex., he was very concerned that, like the holocaust, the facts might not be widely known until it became too late.

The land we know as Cambodia is now called Kampuchea, and its native people, the Khmers are in danger of extinction. While the historic, military, and political causes of the catastrophe are many, it is our responsibility to act. We should leave the blaming and the judging to the higher will and use the time we have to deliver the needed food and medical supplies.

The obstacles to our assistance are many and they are a true test of our will to help. The societal and physical infrastructure is in shambles. The simple delivery of aid is vastly complicated by a badly damaged road system with few needed bridges. The cars and trucks lack parts and fuel. The effort to destroy any semblance or hint of modern influences have been sadly successful.

A rich tradition of agriculture in Kampuchea is a major irony, as one of the world's former large exporters of rice now awaits this precious commodity for its very life. Cambodia was once also known for its colorful and lively markets where fresh fruit and fish were abundantly available. The marketplace has also been destroyed leaving virtually no trace of its former vitality. One United Nations official has estimated that the minimum 300,000 tons of food, medicine, and other basic supplies would require 8,000 flights in the next 6 months.

The downward spiral of agricultural failures is due largely to the fierce military forces of Pol Pot's Khmer Rouge and Heng Samrin's Vietnamese-backed regime. Day-to-day survival prevents planting or harvesting of scarce crops whose scarcity increases with every cycle of negligence.

Mr. President, our nonpartisan approach to aid must also reach the international arena where China is a backer of Pol Pot and the Soviet Union supports Heng Samrin. In my recent letter to the President of the United States, I have requested that our State Department or the President himself step up our efforts to secure Chinese and Russian cooperation in this international effort to save Kampuchea from famine.

While we have reason to fear that aid will be diverted from the Cambodians to the Vietnamese Army, and the Russians fear that aid will reach Pol Pot, our national concern must transcend these fears and we must do all in our power to see that aid reaches the bulk of starving Cambodians. And, Mr. President, we must strive to reach the children of Kampuchea or the "International Year of the Child" will become known as the year the children of Kampuchea died of starvation.

In closing, Mr. President, I applaud the valiant efforts of relief organizations like the International Committee of the Red Cross, UNICEF, Oxfam-America, and American Friends Service Committee. These responsive groups are excellent channels for the efforts of new groups like Christians for Cambodia of Albuquerque, N. Mex., and other Americans who can place international compassion above their own immediate concerns.

I am very proud of New Mexico's Christians for Cambodia as they reflect the true American love of life and the readiness to back this love with meaningful assistance. On Sunday, November 11, 1979, Christians for Cambodia will hold two rallies. One will be in Albuquerque and the other will be at the United Nations in New York.

May we follow the example, Mr. President of the Christians for Cambodia. They are demonstrating a fundamental law of physics that is also a fundamental law of cooperation—namely, that forces acting in direct opposition to each other are mutually annihilative. Forces acting in parallel and in the same direction are effective in their sum total and forces acting in opposition are decreased in proportion to the angle of divergence. May we act in parallel and in the same direction to preserve an entire culture from extinction.

Therefore, Mr. President, I wholeheartedly join as a cosponsor of Senate amendment No. 561, offered by Senator DANFORTH for himself and others. This amendment to S. 1668, the migration and refugee assistance authorization bill for fiscal year 1980, will authorize $30 million in new funds for Cambodian disaster relief.●

Mr. DANFORTH. Mr. President, will the Senator from New York yield me 2 minutes on the bill so that I may speak with reference to amendment No. 561?

Mr. JAVITS. I yield.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the name of the Senator from South Carolina (Mr. THURMOND) be added as a cosponsor of amendment 561.

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

Mr. DANFORTH. Mr. President, just one further point on this amendment. It is a little embarrassing to me to hear it called the Danforth amendment, as it was called at least once this afternoon.

What was most heartening about the trip we took and everything that has gone on since has been the spirit, the teamwork, and the absolute unanimity of approach chemistry, if you will, that has existed among the three Senators who went on the trip, Senator SASSER, Senator BAUCUS, and myself.

So often in the Senate individuals seem to proceed in different directions at great speed. The three of us have been operating in absolute tandem. The whole reason this is called the Danforth amendment is for some reason it fell to be my lot to be the one who actually sent it to the desk, but it is the three of us who are operating as we have throughout in absolute tandem, and it has been a great experience for me to participate with these two fine Senators in what we have been trying to do.

Mr. President, I ask unanimous consent that Senator EXON be added as a cosponsor.

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

Mr. HELMS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. Is the understanding of the Senator from North Carolina correct that we will have a rollcall vote on the pending amendment back to back with the final passage vote in event the yeas and nays are ordered on final passage?

The PRESIDING OFFICER. The Chair will state to the Senator there is no such agreement to that effect at this time.

Time on the amendment has expired. Time is now being used from the bill itself.

Mr. PELL. There is an informal understanding to that effect.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. PELL. Mr. President, I yield such time as may be necessary to the Senator from Nebraska on the bill.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, I thank the leader of the bill, and I thank my friend from Missouri for agreeing to add me as a cosponsor.

I am going to be brief, but I have a question or two after some comments.

Mr. President, I shall ask that following my remarks there be printed in the RECORD a copy of a story by Mr. Henry S. Bradsher of the Washington Star of today, headlined "Viets Exercising 'Manifest Destiny' in Cambodian Tragedy, Exiles Say," and the first part of his story says:

> An estimated half of Cambodia's 7 or 8 million people have now died. The Vietnamese, who have always had a strong racial contempt for their neighbors, want to be rid of even more of them so their fertile land can be colonized with settlers sent by Hanoi, Cambodian exiles and Western aid specialists on Indochina say.

Mr. President, I ask unanimous consent that that article be printed in its entirety in the RECORD.

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

(See exhibit 1.)

Mr. EXON. Mr. President, I rise once again to thank my three distinguished colleagues, as I did yesterday, for their trip, and I am very pleased that I am a cosponsor of this amendment.

We have been hearing today about genocide. I am wondering what we can do other than pass this bill. I wonder if we have done all that we can through the United Nations.

It seems to me that, if anything like is true what has been heard in the Chamber and what is contained in the article that we have just agreed unanimously to print in the RECORD, it would seem to me that this is a case for the United Nations to hold some kind of an emergency meeting to see if they cannot bring some pressure to bear through that international organization.

I ask the managers of the bill if they know what, if any, activities are planned by the United Nations or some of their good offices in this area at the present time.

Mr. DANFORTH. Mr. President, responding to the Senator from Nebraska, on Monday there will be a pledge conference held at the United Nations at which I think all of the countries have been invited to attend to pledge contributions to the world relief efforts to be adopted for the people of Cambodia.

Also, last Monday Senator SASSER and I went to the United Nations to meet with the Secretary General, Mr. Waldheim, and he stated his strong support for our efforts and particularly stated his support for the so-called land bridge to deliver needed food and medical supplies to the people of Cambodia.

I think the Senator from Nebraska has made a very excellent suggestion. However, not enough has been done. Not enough has been done in the United Nations. Not enough has been done around the world to call attention to the great disaster, to the tragedy that is taking place.

Any resolution in the United Nations, any address made in the United Nations would be a step in the right direction.

World opinion must be focused on this issue. There is absolutely no reason for this situation to continue to exist.

According to the world food program, which is a United Nations organization, within three days of being given notice trucks can start traveling along High-

ways 5 and 6 from Thailand into Cambodia delivering the needed food.

Therefore, the question has been put very squarely to the officials in Phnom Penh and Hanoi. They can say yes or no. So far they have said no. If they say yes, the people can be saved.

I think that the most important thing we can do is to continue to rivet the attention of the world on the situation in Cambodia, and the most obvious place to do that is the United Nations.

Mr. EXON. I thank my friend from Missouri, and I wish to follow up and see if I can understand the situation. We can pass this bill today. We can have a meeting on Monday by various States that wish to participate in providing relief. We can talk to the Secretary General of the United Nations about how to get trucks moving on Highways 5 and 6 in Cambodia.

I have not seen any indication yet, though, that the Secretary General of the United Nations has demanded an emergency meeting of some kind by that body to bring whatever pressure to bear is necessary on the people who are preventing food from America and around the world to go in and help those starving millions.

Is there anything we can do in the Senate now to maybe encourage, at least with some proper language, a meeting to do something about the problem other than just getting together and providing some money or some food for relief?

All of those things, as well intentioned as they are, are not going to accomplish anything until somehow someone has the guts to stand up and tell the rulers in that part of the world that we are not going to stand by and let half of the people of Cambodia starve if in fact half of them are not gone already.

Should we be a little tougher in our approach? That is my question.

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

Mr. DANFORTH. I yield.

Mr. JAVITS. I do not know if Senator EXON was in the Chamber when I just spoke about the responsibility of the Soviet Union.

Mr. EXON. I heard the Senator's remarks. They were very well taken.

Mr. JAVITS. I thank the Senator, and that is it. In short, we can make that crystal clear here that our Government—Secretary Vance, it is my understanding, is going to be at the U.N. pledge conference on Monday himself—has to point the finger at where the responsibility is and has to make it clear to the Soviet Union and to its friends and allies:

> If you are going to be a super power in this world, it is not a free ride. You have a responsibility, too. And the world has to call you to account for that responsibility.

And the responsibility should be fixed where it lies.

I do not think that represents dragging politics into humanitarianism. I think that it is very important to be sure we do everything we can to see that this tide of refugees is not so great as to engulf us all. And it could very well happen if this practice continues of driving masses of people out of a country because you are worried about their political reliability.

Mr. EXON. I thank the manager, and I yield the floor.

EXHIBIT 1

VIETS EXERCISING "MANIFEST DESTINY" IN CAMBODIAN TRAGEDY, EXILES SAY

(By Henry S. Bradsher)

An estimated half of Cambodia's 7 or 8 million people have now died. The Vietnamese, who have always had a strong racial contempt for their neighbors, want to be rid of even more of them so their fertile land can be colonized with settlers sent by Hanoi, Cambodian exiles and Western aid specialists on Indochina say.

They are both horrified and saddened by what seems to be the reason that authorities in Phnom Penh were slow to allow supervised distribution of relief supplies and are still refusing to open up enough routes to bring in sufficient food.

The Vietnamese who control Cambodia through a puppet regime, according to this explanation, are quite content to watch the starvation of those who have survived the Pol Pot regime. The Vietnamese army is now fighting to destroy the remnant guerrilla bands of Pol Pot.

The Vietnamese "want Cambodian territory, so they want the people to die or to flee to Thailand, so their land will be free for them to take over," according to In Tam.

In Tam is the secretary-general of the Confederation of Nationalist Khmers (Cambodians) that was established five weeks ago to unite anti-Communist opposition to both Pol Pot and Heng Samrin, the Vietnamese front man in Phnom Penh. The confederation is headed by Cambodia's long-time leader, Prince Norodom Sihanouk, who is now living in Peking.

Despite the hatred for those who butchered their country from the Khmer Rouge victory in April 1975 until the Vietnamese takeover last January, the confederation agrees with Pol Pot on what the Vietnamese are doing.

Pol Pot's foreign minister, Ieng Sary, told the United Nations on October 9 that "the Vietnamese aggressors have attempted to exterminate the Kampuchean (Cambodian) nation and people through starvation and massacre in order to turn Kampuchea into a part of Vietnam."

He said that since January, Vietnamese troops have killed half a million Cambodians and their actions have caused the death by starvation of a half million more. Other estimates of deaths so far this year run lower, but both Heng Samrin and western relief workers say between two and three million Cambodians are now in danger of starving to death.

A U.S. expert on Cambodia said there is a widespread perception among Indochina specialists that the Vietnamese feel a sense of "manifest destiny" about Cambodia.

Just as Americans filled up the continent from the Atlantic to the Pacific, pushing aside or killing Indians, so the Vietnamese have a determination to take over what remains of the once-great Khmer empire.

In the 12th century, when they built the magnificent temples at Angkor Wat, the Khmers dominated the area now known as Indochina and Thailand. But within two centuries they were under strong attack by Thais and Annamites, the people from what is now central Vietnam. By the mid-18th century Cambodia had been reduced to a small, weak state maintained by the Thais and Annamites as a buffer between them.

Saigon, which had originally been a Khmer settlement, and the rich Mekong River delta west of it were taken away from Cambodia and colonized by Vietnamese. This encroachment was proceeding up the Mekong toward Phnom Penh when the French arrived in the mid-19th century to establish colonial control. They froze the situation.

Now, with outside influence removed, the Vietnamese are continuing a historic movement to absorb Cambodia, according to western specialists. "That's why the present situation is very worrying," In Tam said.

The Vietnamese watched Pol Pot try to remake Cambodia by killing all former opponents and their families, forcing people out of the cities to their deaths from disease or hunger in the countryside, and other brutalities. Then, after border clashes, Hanoi's army invaded Cambodia last Dec. 25 and installed Heng Samrin in Phnom Penh on Jan. 8 while pursuing Pol Pot's forces into the jungles.

The "final solution" of Vietnam's centuries-long drive to take over ancient Khmer lands seemed to be at hand.

According to Ieng Sary, 250,000 Vietnamese settlers have already moved into areas emptied of Cambodians. Others report that families have joined some Vietnamese soldiers for apparently permanent residence.

In Tam is now in Washington with vague hopes of American support for stopping the Vietnamese. He also plans to go to New York to try to talk to United Nations' officials. He wants pressure on Phnom Penh to let in more food and he wants an international conference to decide his country's future.

In the opinion of specialists on Cambodia, In Tam is probably second only to Sihanouk as a natural leader of the Cambodian people today.

A general who held high offices in the American-backed Lon Nol regime, which ousted Sihanouk in 1970, and who lost a 1972 presidential election to Lon Nol that many observers thought was stolen, he was the only major leader of the Lon Nol years who kept the common touch and understood the downtrodden peasants.

In Tam made up with Sihanouk recently. Financed by the 10,000-strong Cambodian exile community in the United States, he flew from his exile home in Utah to a meeting of 38 leaders with Sihanouk in North Korea, where the prince was then staying. They formed the confederation.

Sihanouk plans to visit Western Europe later this month and come to the United States in January seeking support for a non-Communist solution to Cambodia's travail. Then he says he is prepared to plunge into the jungles of Cambodia to lead a guerrilla war against the Vietnamese.

Sihanouk recently began writing a series of five letters to the government of Vietnam calling on them to negotiate the establishment of his country's independence. So far he has received no answer. If the Vietnamese continue to ignore him, he said, then he will fight.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the Senator from Iowa (Mr. JEPSEN) and the Senator from Arkansas (Mr. PRYOR) be added as cosponsors of the amendment.

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

Mr. PELL and Mr. BOSCHWITZ addressed the Chair.

The PRESIDENT pro tempore. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, I wish to be added as a cosponsor to the amendment.

We are going to hold hearings in the Foreign Relations Committee on Tues-

day on this question, and we hope that at least one of these Senators who were there will come with us. I spoke to the Senator from Tennessee and we gained a lot from his knowledge.

What is the route we should follow if the Government persists in its determination, its apparent determination, that it would rather kill people about whom it is not sure than have them survive? Does the Senator believe we should go in with force? What does the Senator think about the idea of a massive airlift, which is one thought I have been trying to circulate?

Mr. DANFORTH. Mr. President, first I am delighted to ask unanimous consent that the Senator from Rhode Island be added as a cosponsor.

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

Mr. DANFORTH. I think the answer to that question is that the people with whom we have spoken, logistics experts on the delivery of large amounts of food and medical supplies, agree there really is only one practical way of doing it, and that is by truck, because of the tonnage involved and because of the need to practically put the food in the mouths of these people who are so sick they cannot even travel a few hundred yards.

If food were dropped by air perhaps some of it would reach people in need, but most of it probably would be taken by the army, the Vietnamese.

So I think really the attention should be focused to the maximum extent possible on the truck route, which is by far the most advisable practical route.

Mr. KENNEDY. Mr. President, I simply want to express my strong support for the amendment offered jointly by Senator BAUCUS, Senator SASSER, and Senator DANFORTH, to authorize $30 million for Cambodian relief. I commend them for their leadership in focusing the attention of the American people on the massive human tragedy now unfolding in Cambodia, and for offering this tangible hand of support to a desperate people.

On Wednesday, I chaired a Judiciary Committee hearing to receive a report from them on their trip to Southeast Asia, and, Mr. President, it was powerful testimony on what more must be done if the world is to avoid mass starvation, threatening the lives of millions of people. As the Senators stated so eloquently—the very survival of the Khmer people and nation is at stake.

Their testimony, and that of other recent visitors to the area—including Joan Baez and voluntary agency representatives—paint a picture of the genuine horror that is the daily existence for millions of Cambodians today. The awesome scale of the present suffering alone should be cause enough for America's concern. Our basic decency and humanitarian instincts as a nation are being tested—as well as that of the entire international community. We simply cannot stand mute in the face of calamity of such unspeakable proportions—a tragedgy of death and misery greater than any the world has known since the days of the holocaust.

What we are doing this afternoon is to respond to this tragedy the best we can —by offering America's helping hand in support of the international relief efforts now underway in Cambodia. We are authorizing additional funds to meet the escalating appeals for food, medicines, and other relief supplies.

My only concern, Mr. President, is that even as we act today to provide an additional $30 million for Cambodian relief, we must recognize that this will barely reflect our traditional one-third contribution to humanitarian relief efforts. As a brief table I will insert in the RECORD shows, by Monday—after the pledging conference on Cambodian aid called by Secretary General Waldheim in New York—the total outstanding appeals for Cambodia will reach some $177 million. One-third of that figure would be $59 million—and to date the United States is moving to contribute $69 million—barely over one-third for the first 6 months.

However, after 6 months, it is now clear another $180 million will be required. So we must be mindful that within a very short period of time the United States must consider offering additional support—either through the use of the reprograming amendment offered by Senator MCGOVERN, that is contained in the bill—or through additional authorizations and appropriations.

But this amendment is an important step, and I strongly support its adoption by the Senate.

Mr. President, I ask that the table I referred to—as well as the prepared statements of two voluntary agency witnesses before the Judiciary Committee yesterday—be printed at this point in the RECORD.

The material follows:

GENERAL REVIEW OF AID PROGRAMS TO CAMBODIA

[Summary of approximate estimates]

Current international appeals	Anticipated appeals	U.S. actions to date
1. $112 million UNICEF/Red Cross for 6 mo inside Cambodia	$120 million for 6 mo (maybe more).	$39 million from existing authorities.
2. 60 million UNHCR for next 6 mo in Thailand for Cambodian refugees.	$60 million	$30 million from fiscal year 1980 foreign aid appropriation.
3. $5 million voluntary agency appeals from around the world		
$177 million for 6 mo (⅓ of $177 million would be $59 million).	$180 million (for next 6 mo) (⅓ of $180 million would be $60 million).	$69 million to date (EMK amendment will add at least $30 million to the above funds)

STATEMENT OF REV. ROBERT L. CHARLEBOIS

I am the Rev. Robert L. Charlebois and I serve as Special Assistant to the Executive Director of Catholic Relief Services of the United States Catholic Conference. Catholic Relief Services is the official overseas private voluntary agency of the American Catholic Church.

I would like to give you a historical perspective as well as my observations, having recently returned from the border area several weeks ago. In 1969, while I served as Program Director of Catholic Relief Services in Vietnam, I made my first preliminary investigation of the needs to improve the quality of life in Cambodia. We were received with the strong support of the Sihanouk Government, the local Catholic Church and concerned Buddhist communities. Catholic Relief Services retained its presence in Cambodia assisting the social economic development and after the generation of refugees in 1970, began to focus its programs, projects and services based upon refugee needs. We were the first voluntary agency operating within this context and remained fully operational until the fall of Cambodia in 1975. It is worthy of mention to this distinguished group that Catholic Relief Services expended a total of $13,945,820.79 from November, 1972 to April, 1975. It is perhaps the largest single relief operation by a private voluntary agency for a given number of recipients in one country.

With the private unofficial initiatives by Catholic Relief Services with the newly formed Pol Pot Government meeting without success, CRS designed its strategy for full operations to assist refugees from Cambodia, Vietnam and Laos in Thailand. Again, through private and unofficial initiatives, CRS began the very first feeding of Cambodian refugees along the Cambodia/Thailand border on July 4, 1979. The CRS Mercy Convoys have reached in excess of 600,000 Cambodians living within Kampuchea and have made the difference between life and death for thousands of them. This is a matter of record. This is a matter of fact. The CRS Mercy Convoys are moving out of Bangkok every other day for the border areas. They have been funded through both private funds of Catholic Relief Services as well as grants from AID, EEC and UNHCR.

With the recent increased military activity forcing greater numbers of Cambodians to stay on Thai soil, CRS has had to duplicate the feeding programs which is administered within Cambodia before its fall. The present situation coupled with the weakness and disease of the people and the overall desperate urgency of their physical status, impels us to design and implement food programs joined with medical and nutritional services. Our present goal within the next three weeks is to prepare sufficient food to feed 350,000 of the weakest of the Cambodian refugees. This refugee area will also receive the benefit of the CRS medical personnel and necessary medications.

CRS is fortunate to be able to respond to these crises of tragedy. Permit me to quote directly and unedited, from a telex I received from Mr. Joseph Curtin, the CRS Program Director in Thailand. This telex was received just one and a half days ago.

"FYI CRS opened soup kitchen at the Cambodian border in Klong Kaithuen feeding over four thousand refugees a day until shelling began. That military then transferred 49 thousand refugees to a newly created camp 60 KMS inland and CRS set up tents and reopened soup kitchen to serve 6,000 patients in hospital tents. Conditions are very primitive and many have died due to disease, hunger and exposure to sun and rain. Many Nuns have come to volunteer their services to help feed patients. We now have one hundred orphans in tents which we care for. Former Cambodian nutrition staff members have escaped and are now in the camp working for me. Regards, Curtin"

Catholic Relief Services would be the very first to commend the Royal Government of Thailand for their cooperation, interest and permission to freely operate within a very delicate, dangerous and sensitive portion of

their country. The problematic areas should be obvious inasmuch as they represent intelligence clearance, Thai military security clearance and logistical support, as well as a continuous shift in the Royal Thai Supreme Command regarding the location and status of the Cambodian refugees. Regarding these problematic areas, special acknowledgment must be given to Ambassador Morton I. Abramowitz whose continual support and active interest has been a source of inspiration to our spiritually motivated staff.

During the entire period when CRS has been actively touching the lives of over a half million Cambodian refugees on the border, we have both privately and unofficially and publicly and officially endeavored to respond to the needs of the refugees within Kampuchea. These initiatives have been by way of actively supporting the international agencies' endeavors as well as joining a consortium of agencies who have approval to render aid. Some of these offers have been accepted, others have been rejected and still others are pending. It would be premature at this time to go beyond reality with "guesstimates." For the record, I wish to state emphatically that CRS is more than willing and more than ready to render any assistance, furnish any commodities within its professional competence and material resources.

There are a multiplicity of other problematic areas that may well need to be addressed. I will be happy to respond to any questions for which my professional experience and Cambodian background can provide answers.

Thank you.

STATEMENT BY EDWARD F. SNYDER ON BEHALF OF THE AMERICAN FRIENDS SERVICE COMMITTEE AND THE FRIENDS COMMITTEE ON NATIONAL LEGISLATION

I appreciate your invitation to make a few comments about the desperate situation in Cambodia, now officially called Kampuchea.

I was the chairperson of a five-person delegation for the American Friends Service Committee which visited Kampuchea September 17 and 18. Previously I had visited and traveled extensively in Cambodia in the years 1967–1969 when I was Quaker International Affairs Representative in Southeast Asia, based in Singapore. I also visited the country to explore relief needs and the general situation in 1970, just after the Lon Nol government ousted Sihanouk and United States troops crossed the Vietnamese border into Cambodia.

While in Kampuchea last month we visited a hospital in Kampong Speu thirty miles west of Phnom Penh, an orphanage, and a former high school used as a prison and execution center in Phnom Penh. We met with the Deputy Minister of Public Health and her deputies, had extensive talks with the representatives of UNICEF and the International Committee of the Red Cross (ICRC), then in the midst of negotiations with Heng Samrin government officials, and drove one hundred miles through eastern Kampuchea to the Vietnamese border on Highway 1. Less than a week later I visited Khmer refugee camps at Aranyapratet and Kamput in Thailand on the western Kampuchean border.

In Kampuchea everyone is hungry. Most people are malnourished. Many people have died from starvation and disease. The number of children in the vulnerable age range of birth to five years is far below normal.

In the hospital we visited in Kampong Speu there were 485 patients, 200 beds, 13 nurses, and no doctors. A shelter full of children with worried eyes and thin bodies, too weak to cry, sat watching us as we stood silently trying to absorb the sights, sounds, and smells of that awful place. They were the fortunate ones. They at least were getting some food. Others are still in the countryside. The civilians under the control of the Pol Pot forces in western Kampuchea are in much worse shape, according to all reports.

This is no ordinary famine caused by crop failure or war. It is that, but much more. It culminates a decade of disaster for the Khmer people which included five years of civil war during which there were three years of intense United States air bombardment, followed by a four-year nightmare under Pol Pot and other leaders whose theories of governance returned Kampuchea to a primitive agrarian society built on intimidation and death. An estimated one-third of the population have died or been killed in the past four years.

In the areas now controlled by the Vietnam-backed Heng Samrin government in Phnom Penh, the major part of the country, officials confront incredible problems. Simultaneously a massive food distribution system must be organized; transportation, communication, and public utilities must be restored; hospitals, orphanages, and schools must be started; food production must be more than trebled in a year; and small industries commenced. A finance and currency system must be created to replace rice—the current medium of exchange. Yet this Herculean task, which would be difficult for even the most experienced planners and administrators, has fallen to a tiny group of educated and trained Khmer survivors, still traumatized by their experience, who are willing to work with their ancient foes, the Vietnamese, to rebuild their country.

During our two-day stay in Kampuchea, we had intense conversations with people and ample opportunity for personal observations. In story after story the following picture emerged. The Pol Pot government carried to a shocking extreme policies of return to agrarian society, nationalism, anti-intellectualism, anti-urbanism, and anti-foreignism. Policies were implemented by violence, often by teenagers placed in authority by Pol Pot since they were least likely to have been corrupted by alien influences. Cities were emptied; banks, cinemas, and libraries were smashed. The educational and health systems were dismantled. People were forced to work long hours in the fields at subsistence food levels or less. Thousands died of starvation, disease, or execution. Students and diplomats returning from abroad to help rebuild their country were special targets for torture and death, as were teachers, technicians, and those who spoke a foreign language. Now the continuing war between the Heng Samrin and Pol Pot forces is creating new misery and refugees.

No one who is exposed personally to human misery on this scale can remain unaffected by it. I feel a great kinship with the other witnesses appearing before you today urging faster, more urgent action.

I feel that all channels for speeding delivery should be explored. The "land bridge" idea is one. After being there, I thought an airlift of food in cargo planes flown to provincial airports would be feasible. Airdrops into militarily contested areas might be the only way to get food to some of those in most desperate need. The Kompong Som route is already open and can rapidly be strengthened into a sturdy land bridge into the interior from this southern port.

This is a time of general frustration for all those involved in what is an intractable problem, in which many more people will die. In this situation the tendency to search for scapegoats is probably inevitable. My own feeling is that no nation has done enough. But energies would be better expended in moving ahead constructively rather than trying to assess blame.

Among the most frustrated people are those in the Ministry of Public Health in Phnom Penh. Our meeting with them began at seven in the morning with the Deputy Minister Chey Kanya and four of her associates. They outlined their many needs, with multivitamins and antibiotics heading the list. One of the doctors present had spent four years working as a peasant under Pol Pot. He was resuming his medical profession again and had been named to head the medical school. His frustration was: no students, no books, no equipment. He pleaded quietly for up to date books, since the medical library had been destroyed by Pol Pot forces.

Our delegation returned just in time to report to the Board of the American Friends Service Committee meeting in New York City. On September 30 it authorized $200,000 in immediate relief, half for multivitamins and antibiotics, half for rice. At this moment, I am happy to say, 400 tons of rice from the American Friends Service Committee is on its way to Kompong Som from Singapore, part of the cargo on a barge chartered by Oxfam.

Perhaps the most useful contribution I might make to this hearing is to try to suggest some of the factors in the current situation which appear to me to create frustrations and roadblocks.

1. Don't underestimate the purely physical problems of organizing a food distribution system in Kampuchea. Four years as a primitive agrarian society has left the physical infrastructure in a shambles. Food, trucks, and drivers are clearly needed. But also a whole support system of gasoline, diesel oil, spare parts, mechanics, unloading facilities, fork lifts, etc. must be provided. Transport equipment is now being shipped in with food and medicines.

2. Don't underestimate the human limitations of the Kampuchea people on whom much of the burden of administering and distributing the food will rest. Only a few trained people survive. It is hard for us to comprehend the catastrophe through which these people have passed. Nearly everyone we talked to in Kampuchea had lost at least one and sometimes all of their immediate families to death through starvation, disease, or murder by the authorities. This was especially true of the educated and skilled people. The survivors are clearly traumatized by this experience.

In this chaotic situation it should not surprise us if the decision-making process is slow or confused. Those of us who live and work in Washington know that even here not every decision is made either promptly or efficiently or correctly. Let's hope for perfection in Phnom Penh and Washington, but let's be realistic in our expectations of what is possible.

3. In Phnom Penh and Hanoi, as in all other capitals, there are differences of opinion among various government officials. This complicates decisionmaking. In each capital, some are primarily concerned with the humanitarian needs of the people. Others give first priority to military security and political factors. The two approaches are often divergent.

Moreover, historically Khmers and Vietnamese share a mutual suspicion and hostility. And it must certainly be true that Hanoi and Phnom Penh often have different priorities and perceptions which slow decision-making and prevent faster action on food relief.

One must also remember that the Khmer doctors, nurses, administrators, teachers, and technicians who have now surfaced to help feed people, start schools, run hospitals and orphanages are in a vulnerable position. They are cooperating with the Vietnamese, and in another turn of the wheel of misfortune in Kampuchea they could find themsleves viewed as traitors either by a resurgent Pol Pot force backed by China, or a revived Lon-Nol-type military government backed by Western powers.

4. Don't expect the Heng Samrin government or the Vietnamese to credit the United States with good intentions. Not all the scars from the war have healed. The memory of United States bombing and napalm is still fresh. We had occasion to be reminded of this when, as part of our trip, we visited the former Quaker rehabilitation center, now located in Qui Nhon, Vietnam. People are still being admitted regularly to have artificial limbs made because they have lost a foot or a leg to an exploding mine when working in the field. The morning we visited the Quang Nghia hospital, three persons had been admitted, wounded by an exploding mine.

The mistrust of United States intentions and proposals is wide and deep. This is one reason why Phnom Penh is not likely to accept proposals involving large numbers of foreign technicians or a Western-run food distribution system in their country. A proposal for a "land bridge" if it included hundreds of foreigners traveling about the country would pose serious security questions for a government still fighting a war. Would these outsiders be secret intelligence agents for the C.I.A. or Thailand or China? To think that these questions will not be asked is to seriously underestimate the fear and suspicion present in Indochina. In this climate, it is quite unrealistic to expect the Heng Sanrim government to make an immediate favorable response to a general proposal for a "land bridge", for it would vitally affect its still precarious internal security. The United States also does not move very rapidly on issues involving its vital national security interests—witness the extended consideration of the SALT II Treaty.

5. All relief efforts will be complicated so long as the civil war continues. In the brutal nature of war it is nearly inevitable that each side will seek to deny food and arms to the military forces and civilian supporters of the other side. And this war is no exception. But it is also important to distinguish between rhetoric and policy. The Heng Samrin government has firmly opposed any aid to the Pol Pot area, but it has not turned back aid which has been sent to it even though some donors were also sending aid to civilians in the Pol Pot areas.

6. Each claimant in the civil war will also attempt to prevent the other from being recognized as the legitimate representative of the Kampuchean people. Those who would aid the Peoples' Republic of Kampuchea in Phnom Penh would therefore be well advised to send aid to "all the needy people in Kampuchea" rather than aid to "both sides," which formula implicitly legitimates the Pol Pot claim. It is regrettable but true that failure to observe such niceties of communication may itself convey more or less than the speaker intends and thus impede relief efforts.

Whatever may be said for the decision to continue recognizing Pol Pot's group at the United Nations, it is clear it has hampered international relief efforts. Major United Nations organizations like the World Food Program, Food and Agriculture Organization, World Health Organization, and the UN Development Program must deal with Pol Pot representatives in New York, but those under their control can only be found with difficulty in the jungles of western Kampuchea. Fortunately, UNICEF is not confined to dealing with governments recognized by the United Nations. It can deal with emergency situations involving children anywhere. Thus UNICEF can and has entered Phnom Penh and is now carrying the burden of the relief and reconstruction effort for the whole United Nations system. Decisions on relief efforts might have been reached considerably faster if the various United Nations agencies had been able to talk through a Heng Samrin Kampuchean mission at the United Nations in New York rather than through one UNICEF representative in a hotel room in Phnom Penh.

7. Efforts must be made to develop a viable political solution in Kampuchea even as the food crisis continues. The government in Phnom Penh should represent a broad spectrum of Khmer life and not be tied too closely to an outside power. This would help meet the security needs of Vietnam and Thailand. But it would be quite unrealistic to expect that Vietnamese troops will be withdrawn if there is a real possibility that Pol Pot or another Chinese-supported faction could return to power in Phnom Penh. This is especially true so long as tensions remain high between China and Vietnam in the region.

If the United States could develop a more neutral stance on conflicts in the region between China/Pol Pot and U.S.S.R./Vietnam, it might be able to play a more active role in food distribution and in the search for an acceptable political solution in Kampuchea. This could be done in part by moving toward normalization and restoration of trade relations with Vietnam.

The achievement of a solution which would enable Kampuchea to live in peace after this turbulent decade will require a high order of diplomatic statesmanship and forbearance and patience on the part of all the Kampucheans involved as well as the United States, China, Vietnam, Thailand, and the Soviet Union. The big powers in the region and Kampuchea's neighbors can do no less than to give a much higher priority to the welfare of the Kampuchean people and thus help restore peace to that suffering nation and people.

We appreciate the fact that you have called this hearing, Senator Kennedy. It helps to build a sense of urgency and a factual base for more rapid action to meet the crisis in Kampuchea.

We are glad that President Carter has requested $69 million for emergency relief for Kampuchea, and we hope the Congress will respond quickly and affirmatively.

We hope that the Heng Samrin government will review the idea of some sort of land bridge from Thailand which parallels the distribution now under way out of Kompong Som harbor, that is, a distribution system operated by Phnom Penh authorities monitored by UNICEF or other international observers. We also hope the idea of some sort of airlift to provincial areas or emergency airdrops in contested areas will also be considered, at least until the regular shipments by sea have reached their scheduled size. But it seems advisable for proposals such as these to be refined further by UNICEF and ICRC representatives to meet anticipated objections, and then proposed to the Phnom Penh authorities.

In conclusion, we want to stress our belief that UNICEF and ICRC have a sound, well-conceived program under way, as do a number of private voluntary agencies. Food and medicine are now arriving regularly and these programs should be encouraged to expand rapidly.

UNICEF hopes to be delivering at the rate of 10,000 tons a months by early November, 20,000 tons a month by early December, and 30,000 tons a month by late December, and continuing then at this monthly level. Early shipments should be directed to those areas of greatest need. Since the 1980 rice crop will not be harvested until November and December of next year, it will clearly be necessary to continue the UNICEF/ICRC program beyond its six-month period, at least until the end of 1980.

It is especially important that food shipments be supplemented with material like rice seed, farming tools, fishnets, and fertilizers so that Kampuchea can again become self-sufficient in food production.

And it is obvious that a generally acceptable political solution must be given high priority. The Khmer people cannot survive another decade like the one just passed.

Mr. KENNEDY. In addition, Mr. President, I would like to submit for the RECORD a copy of a paper prepared by the Department of State outlining various contingency plans for relief operations in Cambodia. This preliminary planning paper underscores the scope of food and medical needs, and the hurdles the international community faces in getting into Cambodia.

The material follows:

AIRLIFT OF COMMODITIES INTO KAMPUCHEA

Given the numerous questions regarding the possibility of helping the International Agencies to get more food into Kampuchea at a more rapid rate by using air transport, the following very preliminary data is provided.

This presentation assumes the cooperation of the authorities within Kampuchea and the governments in the area. It also assumes international insurance underwriters will not invoke war risk clauses on aircraft insurance rates. Assuming maximum cooperation from all parties a commercial effort could probably be launched in 3-5 days.

In a similar exercise in 1975 before the fall of the Lon Nol Government, but under combat conditions, 1,500 tons per day of commodities were delivered by air to a number of enclaves in the country. That airlift required the services of a total of 10 DC–8 cargo aircraft plus 30 C–130 type aircraft. Each aircraft flew an average of two sorties a day at a cost of approximately 1.5 million dollars a month excluding cost of cargo.

At present, the International Committee at the Red Cross and NICEF estimate that 30,000 tons of food need to get delivered in Kampuchea per month. Unless a land route is opened, the agencies estimate that this rate cannot be reached until the end of the year. At present, the rate estimated for November is not likely to reach more than 15,000 tons.

PHNOM PENH OPTION

If 15,000 tons are to be delivered by air to Phnom Penh each month assuming daylight operations only, this would require 6 DC–8 type aircraft or 3 747 type cargo aircraft. The airlift to Phnom Penh alone will cost an estimated $190,000 per day. It is not presently feasible to estimate local distribution costs by truck or helicopter from Phnom Penh. However, 50 ten ton trucks would be required, and these are on order by UNICEF/ICRC.

THREE AIRPORT OPTIONS

If it were possible to use three airports, the jet strips at Phnom Penh and Siem Reap plus the shorter strip at Battanbang, for example, the latter would require Hercules sorties a day for Hercules aircraft, at a cost of $50,000 per day and approximately $190,000 for the 747 sorties to Phnom Penh and Siem Reap. These are exclusive of commodities cost.

If 200 tons each at Phnom Penh and Siem Reap plus 100 tons at Battambang were air delivered, this would require a minimum of 50 ten-ton trucks distributed at these three locations for on the ground distribution.

Assuming the trucks could make one 50-mile trip per day carrying ten tons, a number of cargo-carrying helicopters each carrying a maximum of three tons would be required at a cost of $2,000-$3,000 per flying hour to deliver to inaccessible areas. A helicopter effort would probably require military

deployment, as there are no commercially available heavy lift helicopter in the region.

AIR DROP OPTION

Air dropping of commodities could only be done by Hercules type aircraft which would be limited to 2–5 tons per sorties depending upon the altitude flown and would cost thousands of dollars per ton delivered. Initial costs to prepare for air drops exclusive of flying time and commodity costs are estimated at $6 million for special equipment.

COMMENT

The International Agencies are attempting to increase their airlift capability. Their ability to do so will depend on the attitude of the authorities in Phnom Penh. The foregoing information does not relate to their present plans which envisage (1) building up the air capability to a smaller degree—perhaps up to 6,000 tons a month (2) attempting to maximize the amount which can be carried away from the seaport by using more trucks, and (3) attempting to utilize the Mekong River and build up trucking capability at the river port in Phnom Penh.

Air-landing food within Kampuchea will, in the short-run, encounter the same constraint of landing food at the seaport or riverport—insufficient trucks in place as yet to distribute food from the point of arrival.

Mr. DOLE. Mr. President, as early as 1977, I have initiated and endorsed repeated efforts in response to the plight of the Cambodian people, beginning with my calling attention to the human rights violations that became apparent at that time. In more recent years, my efforts have included the sponsorship of measures to increase U.S. assistance to Cambodian refugees. At the beginning of last month I cosponsored an amendment with my distinguished colleague from Massachusetts (Senator KENNEDY), calling for generous U.S. support of international relief efforts for Cambodia. It is therefore in keeping with my continuing concern and interest in the tragedy that has developed over the years that I am supporting S. 1668.

This legislation, by authorizing additional funds for our refugee program, will help meet the continuing demand for vitamins, antibiotics, and vehicles to transport patients. In a firsthand account of their recent trip to Southwest Asia, Senators DANFORTH, SASSER, and BAUCUS testified on October 21 in front of the Judiciary Committee. They were given assurance by UNICEF and the International Red Cross that trucks could start rolling from 3 to 5 days after notice of authorization to do so is received.

To the U.S. Government and other nations remains the task to provide food and money. With the world community lies the responsibility to apply all the pressure that is needed on the governments of Hanoi and Phnom Penh, so that the green light is indeed given, and trucks are allowed to cross over from the Thai border into Cambodia. All testimonies heard concurred that the only effective way to distribute medicine, food, and other supplies was by road. Airlift would simply not respond to the particular needs and requirements of the survivors.

Our positive response to the tragic situation in Cambodia need not and should not be taken as recognition of either the Pol Pot or the Heng Samrin regime. These are separate issues that should be treated independently. Our only concern at this time must be directed toward the innocent victims who find themselves caught in the middle of a conflict, without a clear understanding of its roots. Their suffering must cease.

My support of Senator DANFORTH'S amendments is consistent with this view.

How many are dying on a given day? A U.S. embassay official's reply to this question was: "We have stopped counting." A 5-year-old girl who dies upon arrival in a refugee camp becomes a mere statistic. To her mother who watched the efforts of a medical team trying to revive her, political considerations have lost all relevance. As pain, hunger, and death transcend politics, so must our concern for the hungry and the sick. Our humanitarian efforts must be directed in helping those who have managed to survive and can only continue to do so with our assistance.

Phnom Penh's official food request consisted of 108,000 tons of rice and wheat, 15,000 tons of sugar, and 8,500 tons of vegetable oil. On October 16, the first substantial food shipment arrived in Kompong Son to be dispatched 150 miles away to Phnom Penh: A mere 1,500 tons to feed the thousands of people in refugee camps, whose emaciated bodies have become a haunting reminder of the magnitude of the tragedy.

Having indicated my full support of this legislation on humanitarian grounds, I should like to call the attention of my colleagues on one item of the appropriations requested by the State Department. The sums of $1.29 million for fiscal year 1980 and $1.38 million for fiscal year 1981 are included for 49 new positions in the State Department, to meet the expanded refugee programs. There seems to a degree of controversy regarding the number of positions to be filled.

The report submitted by the Senate Committee on Foreign Relations indicates that 49 new positions are to be filled. The State Departments budget office indicated that only 25 new positions were to be added to the 24 already in existence. The first question that I should like to address is: Are we talking in terms of 25 or 49 new positions?

In either case, the intent of this legislation is to revive the sick and the dying through food and medicine, not to bury them under additional bureaucracy and redtape that are the unavoidable consequences of increased staff. Are that many additional people truly necessary?

Finally, should we allocate increased amounts for fiscal year 1981, prior to a full assessment of refugee programs in fiscal year 1980? I welcome other viewpoints on this matter.

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Missouri. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from California (Mr. CRANSTON), the Senator from Kentucky (Mr. FORD), the Senator from Alaska (Mr. GRAVEL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Vermont (Mr. LEAHY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Wisconsin (Mr. NELSON), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Illinois (Mr. STEVENSON), the Senator from Alabama (Mr. STEWART), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Nevada (Mr. CANNON) is absent on official business.

I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY) and the Senator from Connecticut (Mr. RIBICOFF) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BELLMON), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Maryland (Mr. MATHIAS), the Senator from South Dakota (Mr. PRESSLER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from California (Mr. HAYAKAWA) is absent on official business.

The PRESIDING OFFICER (Mr. HEFLIN). Are there any Senators in the Chamber who have not voted?

The result was announced—yeas 76, nays 0, as follows:

[Rollcall Vote No. 386 Leg.]

YEAS—76

Baucus	Goldwater	Packwood
Bentsen	Hart	Pell
Biden	Hatch	Percy
Boren	Hatfield	Proxmire
Boschwitz	Heflin	Pryor
Bradley	Helms	Randolph
Bumpers	Hollings	Riegle
Burdick	Humphrey	Roth
Byrd, Harry F., Jr.	Jackson	Sarbanes
Byrd, Robert C.	Javits	Sasser
Chiles	Jepsen	Schmitt
Church	Kassebaum	Schweiker
Cochran	Kennedy	Simpson
Cohen	Laxalt	Stafford
Culver	Levin	Stennis
Danforth	Long	Stevens
DeConcini	Lugar	Stone
Dole	Magnuson	Thurmond
Domenici	Matsunaga	Tsongas
Durenberger	McClure	Wallop
Durkin	Melcher	Warner
Eagleton	Metzenbaum	Weicker
Exon	Morgan	Williams
Garn	Moynihan	Young
Glenn	Muskie	Zorinsky
	Nunn	

NAYS—0

NOT VOTING—24

Armstrong	Gravel	McGovern
Baker	Hayakawa	Nelson
Bayh	Heinz	Pressler
Bellmon	Huddleston	Ribicoff
Cannon	Inouye	Stevenson
Chafee	Johnston	Stewart
Cranston	Leahy	Talmadge
Ford	Mathias	Tower

So Mr. DANFORTH'S amendment (No. 561) was agreed to.

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

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

The PRESIDING OFFICER. Without objection, the motion to lay on the table is agreed to.

Mr. JAVITS. Mr. President, we are waiting for other amendments, if there are any.

The PRESIDING OFFICER. Are there further amendments?

AMENDMENT NO. 565, AS MODIFIED

Mr. HELMS. Mr. President, I call up my amendment at the desk, as modified.

The PRESIDING OFFICER. The amendment will be stated.

The legislation clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 565, as modified:

On page 2, add a new section 3 to read as follows:

SEC. 3. All funds authorized under this or any other Act to provide humanitarian assistance to the people of Cambodia shall, to the maximum extent practicable, be provided through international agencies and private voluntary organizations, among others, such as the World Relief Committee, World Medical Missions, Inc., Cama Services, World Vision, Food for the Hungry, Thailand Baptist Mission, and Catholic Relief Services, OXFAM and International Rescue Committee.

Mr. HELMS. Mr. President, I ask unanimous consent that the distinguished Senator from South Carolina (Mr. THURMOND) be added as a cosponsor.

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

Is this the amendment of the Senator on which there is a 45-minute limitation?

Mr. HELMS. I will say to the Chair that is correct, but I do not intend to use nearly that much time.

Mr. President, could we have order in the Chamber?

The PRESIDING OFFICER. The Senate will be in order.

Mr. HELMS. Mr. President, it would be almost gilding the lily to offer a lengthy discourse on the subject at hand. So many eloquent statements have been made by able Senators, including the three distinguished Senators who made a trip to Cambodia and Vietnam.

Incidentally, Mr. President, I want to express my personal appreciation to Senator SASSER, Senator DANFORTH, and Senator BAUCUS for making the trip and coming back and giving us a first-hand report.

It is unnecessary to say that all of us have empathy with the situation which now exists in Cambodia. For my part, I think of a 5-year-old girl in Raleigh, N.C., named Jennifer, and I think every day, save for the grace of God, the picture that I saw in the paper the other day would be our children.

I think all of us have the same motivation. It is a great thing for this Senator from North Carolina to observe the unanimity on this question.

I want to pay my respect to the distinguished Senator from New York (Mr. JAVITS) for putting his finger on the problem, as he so often does.

Senator JAVITS emphasized earlier this afternoon that there must be a broad understanding around the world as to the role that the Soviet Union is playing in this matter.

Mr. President, the human tragedy of Cambodia has struck us with shocked disbelief. It is incomprehensible that, in this day and age, the global community is confronted with the possibility of the near, or total, elimination of a race of people.

It is incomprehensible because the world community has both the will and the means necessary to prevent this horrible tragedy from being carried to its unthinkable and abhorrent conclusion. An estimated 2.5 million people are now suffering human deprivation on an unparalleled scale. The humanitarian will is there to alleviate this suffering. However, will this outpouring of concern and compassion be thwarted by the most brutal of considerations—who will exercise political control over the future Cambodia?

Mr. President, the people of Cambodia will not die because the world community is unwilling to respond to their plight. The people of Cambodia will die because of a deliberate decision that they are expendable for the sake of political considerations.

They will die if the world community decides it is helpless to affect this decision. Yet, Mr. President, if we fail in our efforts to influence a decision in favor of hundreds of thousands of innocent people, may God help us. We will find ourselves sitting once again on the sidelines while the holocaust of Nazi Germany is reenacted under different circumstances in a different area of the world.

In the U.S. Senate, we have represented a wide spectrum of opinion regarding the nature of our relationships with the parties to this tragedy—the Soviet Union, Vietnam, and the People's Republic of China. Yet, can we in all honesty say that any one of these three countries is acting as responsible, concerned members of the world community? Has any one of these three nations given any indication that the value of one single human being in Cambodia far outweighs whatever political benefits they perceive they would gain from whomever controls that country? The answer is apparent. I think it is incumbent upon our Government to exhaust all avenues, both public and private, in pressing the case for the Khmer of Cambodia. Whatever our perceived policy considerations when it comes to our relationships with the Soviet Union, Vietnam, and the People's Republic of China, nothing can outweigh the human dimensions of Cambodia. Nothing is worth sitting by helplessly awaiting the inevitable human execution to run its course.

Mr. President, during the next 2 months, Americans will celebrate two holiday seasons, that of Thanksgiving and Christmas. I am sure I speak for millions of my fellow countrymen when I say we approach these seasons with a sense of despair and sorrow. We have been exposed to the plight of the Cambodians though the print media and television. Our distinguished colleagues (Mr. SASSER, Mr. BAUCUS, and Mr. DANFORTH) have written a most moving report on their trip to Thailand and Cambodia.

The pictures of starving and diseased children who have miraculously made it to Thailand, only to die before their ravaged bodies can receive strengthening nourishment and life-saving medication must sear our collective consciences. These scenes, repeated day after day, surely must haunt us all. We thank the good Lord above that these are not our children. But, what if by an accident of birth or circumstance they were our children? The agony, sorrow, and helplessness which this question provokes is too awesome to comprehend. But it is a question we must ask ourselves. What if they were our children?

Place yourself in the position of hundreds of thousands of Khmer. What future would there be for your family—your children? If we turn our backs on these innocent people because we fear we are incapable of influencing the outcome of this tragedy, then we turn our backs on our own families and our own children. And if helplessness turns to insensitivity, all mankind will be the loser. For if it becomes easy to accept the death of the Khmer, eventually it must become easier to accept these circumstances as being the inevitable history of mankind.

However, as we await the outcome of international efforts to reach an agreement with the Vietnam-backed regime in Phnom Penh to establish a well organized and effective relief operation in Cambodia itself, much remains to be done in maximizing the effectiveness of assistance to refugees in Thailand. I am concerned that, despite all the Government of Thailand has done to ease the plight of Khmer refugees, we can do much more to assist them in this humanitarian effort. And the problems of coping with the refugee problem in Thailand is increasing as news reports now indicate that literally thousands of new refugees are streaming across the border from Cambodia.

There are many private voluntary organizations, including religious organizations, which have had decades-long service to the people of Indochina. They could do more than they are already doing in addressing the needs of these refugees if they had the resources to do so. I am very close to many of these organizations. I would cite one example: World Medical Missions, Inc., from my own State of North Carolina. There is a serious shortage of medical personnel to attend to the overwhelming needs of thousands of refugees pouring into Thailand.

World Medical Missions, in conjunction with the World Relief Committee, just this week will be sending 10 doctors to Thailand to help in the refugee camps. One may correctly ask what is unique about World Medical Missions sending doctors to Thailand? What is unique is the fact that 9 of the 10 doctors are former medical missionaries

who have had significant experience in Indochina. Therefore, they will be able to begin immediately tending to the medical needs of refugees without worries as to their capability in making the necessary cultural adaptation. If adequate assistance were available to pay transportation costs and maintenance allowances in Thailand, some 75 missionary doctors with similar experience would be available to assist in meeting this great human need.

The list is endless. There is Cama Services in Thailand where Gary Johnston, a young American born in Thailand, is delivering badly needed medicine and protein supplements to the Khlong Kai Thuan refugee camp. The medicine and food were sent from California, and Gary hauled these vitally needed supplies to the camp in a small pickup. Without his efforts and the support of Cama Services, malnutrition and disease would have claimed an even higher human toll.

The story is the same for virtually every private voluntary organization in Thailand—organizations such as World Vision, Food for the Hungry, the Thailand Baptist Mission, and Catholic Relief Services, to name but a few. They are all doing a very effective job with very limited resources. With more resources, they could place more people to help in the camps. With more people, we can assist more refugees. And by reaching more refugees, then the all too common death of a refugee who is too weak to crawl the last hundred yards to obtain food will become an uncommon occurrence.

Mr. President, that is why I am offering an amendment today to H.R. 4955. My amendment would provide that to the maximum extent practicable, the additional $30 million in new authorizations for relief activities in Cambodia would be channeled through the private voluntary agencies. These organizations have an historic track record of providing assistance on a more cost-effective basis than government-to-government programs. These organizations need only adequate resources to get the job done. Their people are dedicated and experienced in handling situations such as this, and there is a wealth of talent available which has a cultural understanding of this area of the world—an understanding which is critical to the success of our activities. Therefore, I would hope that the managers of H.R. 4955 could accept my amendment.

Mr. President, in conclusion, I would reiterate some of the concerns I have expressed today. Throughout history, there have been numerous examples of man's inhumanity to man which have shocked human sensibilities. But, I am sure my colleagues would agree with me that the situation in Cambodia is of such a tragic magnitude that it leaves us stunned. I think all of us, no matter how large or how small our contributions may be, must do all that is humanly possible to ease the plight of these unfortunate people. I know we have the backing of the American people in this endeavor, and with God's help and our own perseverance, we can make a difference for these people.

Mr. President, to summarize, I have been on the telephone almost constantly for the last week with various citizens in this country and abroad. Last evening I spoke at some length with Billy Graham, of my State. Billy and I grew up about 21 miles apart, he in Charlotte, N.C., and I in the little town of Monroe. Billy and his associates are doing great work in trying to assure as much aid as possible, on a private basis, to these tragically unfortunate people in Cambodia.

Billy Graham's son, Franklin Graham, is doing a remarkable job in, for example, lining up former medical missionaries. I think he has some 30 on his list now who are willing to go to Cambodia and attend to the miseries of the people there, which gets us to the point of this amendment, Mr. President.

The purpose of this amendment is to make certain that there is no administrative delay in the utilization of every worthwhile private group that is willing to become involved in solving this tragic dilemma. The amendment is clear and I believe it is going to be accepted by the distinguished managers of the bill.

As for these private groups I have mentioned, such as the Cama Services in Thailand, where Gary Johnston, a young American born in Thailand, is delivering badly needed medicine and protein supplements to the Khlong Kai Thuan refugee camp, without the efforts and the support of Cama Services, malnutrition and disease would have claimed an even higher human toll.

Senator DANFORTH has described vividly how some of these people we seek to help are so weak that they cannot move their bodies 100 yards to available food and medical treatment. These private organizations are willing to send people in who are willing to do the so-called dirty work, to get involved on the most intimate level. I, for one, am grateful to them for taking the lead.

This is a time when Government and private initiatives can work together and, hopefully, the little girls and the boys and all others who are victims of this incredible tyranny can receive assistance.

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

Mr. PELL. Mr. President, I congratulate the Senator from North Carolina on his amendment. I think it is an excellent one. I speak, perhaps, subjectively because, for some period of time, I was in charge of a voluntary agency program when we were looking after Hungarian refugees who were escaping from the ravages of the Hungarian revolution in 1956.

The advantage of using these voluntary organizations is twofold: One, they charge the U.S. Government less. They have a lower standard of living and fringe benefits, and the taxpayer gets more for his dollar, I think, when they do it.

Second, and, I think, even more importantly, by using the voluntary agencies, we build up a constituency for that kind of agency in the United States that we would otherwise not have; for example, the Catholic relief agencies would have a constituency that the Government would not have. The more help that can be funneled through these private agencies, the better, in my view.

Mr. JAVITS. If the Senator will yield, Mr. President, I just want to say that the amendment is acceptable to me. I join Senator PELL in considering it an excellent amendment.

I point out that Senator HELMS has graciously consented to write into the amendment, in specifying various voluntary agencies which are acting in this field, the words "among others," so that those who may have been unintentionally omitted, who are very active, will not feel put out. I hope that they will make themselves known to us.

Mr. PELL. I thank the Senator. I share that thought, although I am glad to see that my alma mater, the International Rescue Committee, which the Senator from New York directed with me, is also included.

Mr. JAVITS. Also the Oxfam, which is a British enterprise, is included.

Mr. HATCH. Will the Senator yield to me?

Mr. JAVITS. I yield 3 minutes on the bill to the Senator.

Mr. HATCH. Mr. President, I also agree with the distinguished Senator from North Carolina, as well as with my colleagues from New York and Rhode Island. There is no question something has to be done about these problems. I think this is an intelligent and appropriate way to solve them.

I just add one other thing. As I sat in the hearings before the Judiciary Committee this last week, I was astounded to see the depths of degradation that those who would be punitive against these poor Cambodian people and others who are suffering have gone to keep them in the bad state that they are in. I think the weight of world opinion must be brought against them. Much has been said about that. I endorse all that has been said.

I certainly, again, compliment our three Senators who have taken the time to take an arduous journey and to bring these facts to light more than they have been brought to light, Senators SASSER, DANFORTH, and BAUCUS.

One other thing I would add. That is that, as we heard these hearings, we had credible witness from Senator SASSER, who said he believes it to be true, and Joan Baez, who was there, that there is much evidence, and there are many people who would testify to it, from these troubled areas that nerve gas and poison gas have been used on these people as though they were guinea pigs.

I condemn that. I think the weight of world opinion ought to go against that. I think it deserves to be publicized and brought out. I hope that our media will bring this to the attention of the world.

Mr. HATCH. I thank my colleague from North Carolina. I certainly thank my colleague from Ohio for allowing me to have this time.

Mr. JAVITS. Mr. President, I yield to the Senator from Ohio such time as he may desire.

Mr. GLENN. Mr. President, I thank the distinguished Senator from New York.

As chairman of the Subcommittee on East Asian and Pacific Affairs, I am glad

to join in urging the Senate to pass S. 1668, and its amendments, which authorize additional funds for refugee assistance in fiscal years 1980 and 1981. The bill also authorizes the President to use up to $30,000,000 in funds already authorized for foreign aid in support of an internationally supervised program to provide food and medical assistance to the people of Cambodia.

Just a few weeks ago, my subcommittee held hearings in which we had Ambassador Dick Clark, who has been working on the refugee problem, and Assistant Secretary for the Far East for Far Eastern Affairs, Dick Holbrooke, with us to discuss this whole refugee situation and its underlying causes, and several key points emerged. The first was that war and famine now endanger the lives of 2 to 3 million Cambodians. Unless the international community acts quickly, the Cambodians—already decimated by the massacres of the Pol Pot regime—may virtually cease to exist as a people. Nothing comparable to such a development has occurred since the holocaust days in Europe in World War II.

Let there be no mistake, the suffering is no less intense for a person in Cambodia than it was for those involved in the holocaust in Europe in World War II.

A program to assist the Cambodian people implies no recognition of the regime imposed upon the country by Vietnam. It is a purely humanitarian measure. If successful, it will not only save Cambodian lives, but reduce the number of Cambodian refugees who will flee into Thailand.

Second, the ability of the world to deal with the Indochinese refugee crisis depends upon the cooperation of many nations. The ability of the United States to persuade other countries to accept larger numbers of refugees for resettlement is dependent on our willingness to increase our own efforts, as authorized by this bill. I want to emphasize how much progress has been made in getting other countries to increase their financial contributions and their provision of new homes for the refugees. Japan has agreed to fund 50 percent of the cost of the Southeast Asian program of the United Nations High Commissioner for Refugees. At the Geneva Conference on Refugees held in July of this year, other countries pledged to increase their refugee resettlement quotas from an annual rate of about 36,000 to nearly 124,000. The funds provided in S. 1668 represent the U.S. contribution to this worldwide response to the human tragedy we are witnessing in Southeast Asia.

We should be aware that despite the difficulties refugees face in adjusting to a new life in a new land, over three-fourths of the Indochinese refugees have become basically self-supporting within 2 years of their arrival. This is a welcome development. But it should not lead to complacency on our part. We must continue to monitor the impact of the refugees on the job and housing markets. We must continually devise imaginative programs, so that these new immigrants will contribute to our economic strength rather than threaten the economic security of American citizens. We have met such challenges many times in our history, and we can do so again.

Mr. President, there is one other area I would like to cover. I would like to add my voice to that of the senior Senator from New York (Mr. JAVITS) who has expressed very well today my view that there is another nation that must be called to account for its role in the troubles afflicting Southeast Asia, and that is the Soviet Union.

Their activities in support of Vietnam's efforts in Cambodia are really at the heart of this problem.

Some of us have visited the Soviet Union and find that the first place they want us to go is Leningrad, where they can show us the tomb where there are some 300,000 to 400,000 people buried from World War II days. They point to that 900 day siege of Leningrad as typical of what happened to some 20 million Russians killed during World War II. They tie all their activities to this as a defense, saying that will never happen to them again.

Yet I would say that if the Soviets were to cut off their military aid and economic aid to Vietnam, that the situation that is ongoing in Vietnam and Cambodia—the plight of 2 or 3 million people who face starvation there—could be solved within a very few weeks. That could be if the Soviets just did not give their support, both military and economic, to Vietnam and direct that whole effort.

Since world opinion is focused on the Vietnamese, I say that at the same time, every time we say Vietnamese we should say the Soviet-Vietnamese effort in Cambodia, because it is that joint effort that may well result in some 2 or 3 million people starving.

I am not a Red baiter, but I believe in calling facts facts. We know Vietnam is only sustained in its incursion into Cambodia by having its economy and its military machine propped up by direct Soviet help, massive intervention and massive help. And that is the only reason Vietnam is able to sustain that operation in Cambodia. I say that we must lay this at the doorstep of the Soviet Union.

I call on the United Nations and any of the international organizations dealing with this problem to address their questions not only to the Vietnamese, but address their questions to the Soviet Union, because without the direct help of the Soviet Union, without the direct approval of the Soviet Union, we would not see today some 2 or 3 million people facing starvation in that area of the world.

I think we need to bring attention to that, and to keep attention focused on the underlying support, where the problem is really stemming from. And it is stemming from the Soviet Union.

I thank the Senator for yielding his time.

MILWAUKEE RAILROAD RESTRUCTURING ACT—CONFERENCE REPORT

Mr. MAGNUSON. Mr. President, I submit a report of the committee of conference on S. 1905 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. HEFLIN). The report will be stated.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1905) to provide for the orderly restructuring of the Milwaukee Railroad, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of November 2, 1979.)

Mr. MAGNUSON. Mr. President, I thank the Senator from Oregon for his help in this matter, and all those involved in the desperate effort to save the Milwaukee Railroad.

I would not butt in on this fine debate here, but time is of the essence. A Federal judge ordered the railroad embargoed the night before last, I believe. We want to get this to the White House where it will be signed and, hopefully, we will be able to ask the Federal judge to take judicial notice of the fact that we are passing this bill, and he could revoke his embargo order. But that remains to be seen.

I yield to the Senator from Oregon who did such yeoman work in the conference on this matter.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, what we are up against, in essence, is the bankruptcy court. We want to keep the Milwaukee Railroad running—crops are on the ground in Iowa—and not have the railroad quit running through Montana, the Dakotas, and people laid off.

I do not know what the ultimate result of the bankruptcy and the reorganization will be, but we face an immediate situation and every day we delay is 1 day closer to disaster for many of the areas served.

This bill does two simple things. There are others, but it does two simple things. One, in order to institute a labor settlement, there is a $75 million provision in this for the labor settlement, but that is given a preferred status as a claim of the administration on the assets of the railroad. The bankruptcy judge and the creditors agreed. So that is up-front money that will be paid back. We need not worry about that out of the bankruptcy and liquidation proceedings.

In addition, there is a $10 million grant to get the railroad going now, and, we might as well face it, it is a grant.

If we tried to make that a preferred claim, the bankruptcy court would not have accepted it. It would have wasted the assets and whatever time we had to take to do this.

The railroad must run tonight, tomorrow, the next day, if we can make it do so. This bill will do that. There is no guarantee it will be running 8 months from now. There are other provisions for the ICC to look at the service. There is

time in it for the bankruptcy judge to decide about liquidation.

But, at the moment, this will keep it running now in what is genuinely a critical period.

Mr. MAGNUSON. Mr. President, we are very hopeful this will all be worked out.

The only argument in the conference with the House was the question of the labor provisions which were resolved.

Mr. MELCHER. Will the Senator yield?

Mr. MAGNUSON. Yes.

Mr. MELCHER. Mr. President, I want to thank the chairman, the ranking member of the Appropriations Committee, the ranking member of the Commerce Committee, for the prompt action on this conference.

Indeed, time is of the essence. The circumstances have been described by the two Senators. They are absolutely accurate.

The railroad is shut down, is leaving the products on the line waiting to be moved.

We notified the White House that the House acted, that the Senate would be acting within minutes.

I asked the President to take a positive stance in support of the bill, and I hope that when that message is relayed to Judge McMillen in Chicago, he will take judicial notice of that fact and will remove his embargo this afternoon, so that the railroad can again operate.

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

Mr. MAGNUSON. I yield.

Mr. BAUCUS. Mr. President, as has been stated, we are in an emergency. We hope that this legislation will be wrapped up and signed by the President momentarily, allowing the Milwaukee to resume its operations.

I would like to commend Senators MAGNUSON, CANNON, PACKWOOD, and LONG for their efforts in enacting this legislation in time to avoid a serious crisis. I especially appreciate the efforts of the Senate and House Commerce Committee staff, who have "gone that extra mile" to bring this legislation to the floor as quickly as possible.

Mr. President, I would like to ask a few questions of the Senator from Washington, who so ably led the Senate conferees. Nowhere in section 6 or in the statement of managers is the term "implementation of the plan" defined. We need to determine what this term means. I do not want to see an employee-shipper acquisition plan survive the Interstate Commerce Commission and bankruptcy court review process, obtain adequate public and private financing, but then fail due to the fact that the last "i" has not been dotted and the last "t" not crossed on, for instance, rehabilitation loan financing documents which the Federal Railroad Administration has not completely processed by the deadline. In other words, the fact that necessary financial commitments have been made, but not all of the funds have been disbursed by April 1, 1980, should not render the plan's implementation a nullity.

Mr. MAGNUSON. The Senator's interpretation of the meaning of "implementation of the plan" is correct.

Mr. BAUCUS. Furthermore, does subsection 6(a)(3) contemplate that employee protection claims could be used as one of the financial components for implementing an employee or shipper-employee ownership plan? Would an exchange of assets for relinquishing labor protection claims be a suitable form of financing? Could employees' labor protection claims be transferred to the new employee or employee-shipper owned railroad, the new railroad assuming the labor protection obligation of the present Milwaukee Railroad estate, and the transfer of labor protection obligations thus meet the criteria established in section 6?

Mr. MAGNUSON. The Senator is correct. The conference report contemplates that the employees' labor protection claims could be treated in the manner you describe.

Mr. BAUCUS. Finally, section 6 of the conference report makes three references to the phrase "fair and equitable to the estate of the Milwaukee Railroad." It is my understanding that the intent of the conferees is to use the term "estate" in the same manner as that term is used in section 205 of title 11, United States Code. In other words, the same standard of fairness and equity to the estate of a railroad in reorganization under the Bankruptcy Act shall apply to the determination of feasibility to be made by the Interstate Commerce Commission with respect to an employee or employee-shipper ownership plan that has been submitted to the Commission pursuant to section 6. Does my understanding correctly state the intent of the conference report?

Mr. MAGNUSON. The Senator from Montana has stated accurately the intent of the conferees.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

MIGRATION AND REFUGEE ASSISTANCE

The Senate continued with the consideration of S. 1668.

Mr. HELMS. Mr. President, I am prepared to yield back the remainder of my time, if the distinguished manager of the bill is willing to do so.

Mr. PELL. I yield back the remainder of my time, if the Senator from New York has nothing further.

Mr. JAVITS. I have nothing further.

Mr. HELMS. Mr. President, I thank both managers of the bill for their cooperation, and I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from North Carolina.

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, I ask unanimous consent that the name of the distinguished Senator from Utah (Mr. HATCH) be added as a cosponsor of the amendment just adopted.

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

Mr. PELL. I, too, would like to be a cosponsor.

Mr. HELMS. Mr. President, I ask unanimous consent that the name of the distinguished Senator from Rhode Island (Mr. PELL) be added as a cosponsor of the amendment.

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

Mr. JAVITS. Mr. President, we have been given notice of another amendment; and in order to give the attachés an opportunity to inform Senators, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HUDDLESTON and Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

UP AMENDMENT NO. 728

(Purpose: To require the President to report to the Congress the estimated total cost of United States domestic and foreign refugee assistance programs for fiscal years 1980 and 1981)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky (Mr. HUDDLESTON) proposes unprinted amendment numbered 728:

At the end of the bill insert the following new section:

SEC. . Within 60 days after the date of the enactment of this Act, the President shall report to the Senate and the House of Representatives—

(1) the estimated total costs to the United States, during fiscal year 1980 and fiscal year 1981, of domestic and foreign assistance to refugees under all programs of the United States Government, and

(2) the estimated total costs to State and local governments during such fiscal years for assistance to refugees which is attributable to such programs.

Mr. HUDDLESTON. Mr. President, I submit this amendent for the purpose of permitting us to ascertain the total cost to the American taxpayer of all of our refugee programs.

I was struck by the remarks of the distinguished Senator from Ohio (Mr. GLENN) when he indicated that it is necessary for us to continue to monitor our efforts in this area so that we know what impact it may have on this country so that we will know whether or not we are doing the right thing as far as the refugees are concerned and as far as the citizens of the United States are concerned.

One of the difficulties that I have

noted in attempting to analyze the efforts of the United States has been that it is not always easy to determine what our total expenditures in this field happen to be.

The purpose of this amendment is just simply to give to Congress on a periodic basis the actual cost of our refugee assistance both within the United States and anywhere else in the world that they might occur.

Mr. President, within the last 2 years there have been substantial increases in the domestic and foreign refugee assistance programs which are funded by the United States. Because this assistance is spread among many different programs, it is extremely difficult to ascertain the total cost of these efforts. During the debate on the refugee reform bill, S. 643, I determined, after a great deal of time and effort, that the total cost would probably be over $1 billion in fiscal year 1980.

My amendment to S. 1668 would provide a clear picture of exactly how much the American people are providing in the form of their tax dollars, to assist the refugees of the world. It would require the President to report to Congress within 60 days on the total cost of our foreign and domestic refugee assistance programs in fiscal years 1980 and 1981. It would also require a good-faith estimate of the costs which must be borne by State and local governments. This amendment would prevent the true costs from being hidden among a variety of different programs, some of which are not categorized as refugee programs. For example, approximately $160 million of the food stamp program goes to refugees.

In October of this year the Roper Organization officially released a poll which showed that 72 percent of the American people believe that we should admit less than 7,000 refugees per month. The primary reasons for this opinion were that we should help our own needy first and that refugees are too much of a burden because of the expense of resettling them. I am certain that if more people knew the actual cost of refugee assistance, the result of this poll would have been more one sided.

Mr. President, in order for a democratic government to operate effectively the citizens and elected officials must be adequately informed on the issues. My amendment will assure that there is adequate information about a cost to the American taxpayer which is growing by astronomical proportions.

I do not advocate that we stop our refugee assistance efforts. However, I do believe that we must not continue to ask the American public to carry a disproportionate share of the burden for the world's 14 million refugees.

I believe that the columnist William Raspberry accurately reflected the belief of most Americans when he stated:

> I am proud of America for opening its doors—and is hearts—to the "boat people." But I do wish that we could save some of our sympathy—and our cash—for our own "wretched refuse" who, no less than Hungarians or Cubans or Vietnamese, want a chance at the good life the country has to offer.

I believe the managers of the bill have had an opportunity to look at this amendment and they are in agreement with it.

I yield to the distinguished manager of the bill, the Senator from Rhode Island.

Mr. PELL. Mr. President, the Senator from Kentucky is correct.

Speaking for the majority side, I had a chance to look at the amendment and think it is an excellent one and am glad to accept it.

Mr. JAVITS. Mr. President, I, too, feel that the amendment is a fine one. We should know what the tab is. But I am a little worried about one thing. We never know what the other body may feel about it or what are the practicalities of getting this information within any kind of a reasonable time limit.

I know the Senator does not want to hold up this bill. It is really the kind of bill we should not hold up.

So with that caveat, we will do whatever the situation permits, but I do not wish to mislead the Senator about that.

Mr. HUDDLESTON. I certainly recognize that condition and would not in any way wish to delay the assistance that we are providing for here. I understand what the process will be from here on out.

Mr. JAVITS. I thank the Senator.

The PRESIDING OFFICER. Do Senators yield back their time on this amendment?

Mr. JAVITS. I yield back my time.

Mr. PELL. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kentucky.

(Putting the question.)

The ayes appear to have it. The ayes have it.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I am going to call for a quorum for only 2 minutes to allow the attachés to notify Senators that we are about to vote.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CHURCH. Mr. President, I would like to join in commending our colleagues, the Senator from Tennessee (Mr. SASSER), the Senator from Montana (Mr. BAUCUS), and the Senator from Missouri (Mr. DANFORTH), for making the trip to Cambodia in the midst of a busy Senate schedule and for their fine and illuminating report on the truly horrific conditions in that poor country. Their compassion for the people of Cambodia and their leadership in seeking ways to help prevent hundreds of thousands of deaths is a credit to this body and to the country.

Mr. President, in the last 4 years Cambodia has suffered a death toll exceeding that of any country since the 14th century. In 1975, the population of Cambodia was 8 million. Today it is approximately 4 million. This is a rate of loss more than twice that of the most afflicted country in the Second World War and comparable only to the holocaust that engulfed the Jewish population of Europe.

Mr. President, the surviving population of Cambodia is threatened by famine and the unchecked spread of disease. Our Landsat satellites indicate that no more than one-tenth of the land normally under cultivation is currently being farmed. Without a massive and immediate relief program, between 2.25 and 3.5 million people will die in the next few months.

Mr. President, unless food and medicine reach the people of Cambodia, the inconceivable horror—the virtual depopulation of an entire nation—could become a reality.

The amendment offered by Senators DANFORTH, BAUCUS, and SASSER will complete the U.S. pledge of $69,000,000 to the international relief effort to the people of Cambodia. We, and other Western countries, have responded generously to the needs of the Cambodian people.

The responsibility now shifts to the Phnom Penh authorities and the Vietnamese occupation army who must do their part in facilitating the delivery of the food to the people of Cambodia. While some food is entering Cambodia through the Port of Kompong Som and by air to Phnom Penh, these channels will not be able to handle the requisite 1,000 tons of food a day until December at the earliest. It is, therefore, essential that the Phnom Penh authorities and the Vietnamese reverse their announced position and accept the land bridge from Thailand, along Routes 5 and 6 to Phnom Penh. There can be no excuses for a regime which would willfully tolerate the starvation of its own people.

Mr. President, this amendment is attached to a bill authorizing an additional appropriation for fiscal years 1980 and 1981 of $207,290,000 and $203,610,000, respectively, for Indochina refugees.

These additional sums are required because of the great surge of refugees from Vietnam, Cambodia, and Laos over the past 8 months. Vietnam has expelled hundreds of thousands of citizens of Chinese ethnic origin, and has made life so difficult for its own citizens that many prefer the hazards of an open sea and uncertain welcome abroad to the deprivation, fear, and oppression at home.

From Laos there is the exodus of the Hmong tribesmen, our loyal allies in the war there, and of many lowland Lao. With the focus on the boat people, and now the catastrophe in Cambodia, we also cannot forget that 10 percent of the people of Laos are now exiles from their own land.

The number of refugees in Southeast Asia is, of course, now being swollen by the exodus of starving Cambodians to Thailand.

In confronting the refugee exodus the United States must do several things:

First. We must be prepared to offer a home to the homeless. We are, after all, a nation of immigrants. Newcomers have been a great national asset, and the Indochinese who have come to this country since 1975 have been no exception. While the rest of the world must share the burden of resettlement, I applaud

President Carter's doubling of our monthly Indochina refugee quota from 7,000 to 14,000.

Second. The world must make sure that the refugees fleeing their homelands find a place of asylum with minimum standards of sustenance, shelter, and medical care. The activities of the UNHCR in this regard deserve our support.

Third. Measures must be taken to insure that time spent in the refugee camps is productive, not a time of despair. Many refugees will wait up to 4 years before finding a permanent home. The camps should be used for language, vocational, and cross-cultural training essential for adaptation to a new home.

This bill seeks to accomplish these objectives. While it does not get to the root of the problem—repression, war, and deprivation in Indochina—it does help alleviate the attendant human suffering.

CAMBODIA

Mr. ROBERT C. BYRD. Mr. President, this bill represents a significant response by the American people to one of the most pressing international problems of our time—the plight of the world's refugees. The migration and refugee assistance authorization doubles our country's refugee relief program for the next 2 years.

The Senate has demonstrated a special awareness and concern for the refugees' current problems. Recently, I appointed Senator SASSER and Senator BAUCUS, who along with Senator DANFORTH composed a bipartisan Senate mission to view firsthand the conditions of the Cambodian refugees. The report these three Senators made on their return was a sobering one: nothing less than the fate of the Cambodian people and their civilization is at stake.

But as the three Senators point out, despite the appalling need for relief among the Cambodian people, the Phnom Penh authorities have refused to let large shipments of aid into the country. Among other reasons, these authorities fear that the aid will reach stranded bands of Pol Pot guerrillas still operating in the country.

At the request of Senators SASSER, BAUCUS, and DANFORTH, I met with the Soviet Ambassador to the United States Anatoly Dobrynin, and asked him to deliver to his Government our appeal that the Soviet Government do what it can to convince the Phnom Penh authorities to relax their grip on the lifeline of the Cambodian people. The Soviet Ambassador said he would convey this message to his Government.

The United States had made it clear that we do not seek to intervene in the military or political situation in Cambodia. Our gesture is not a military or political one. Our interest is solely a humanitarian one.

The means by which the aid will reach the Cambodian refugees is not clear. Some feel that, as with the Vietnamese "boat people," the constant focus of world attention on the problems of the refugees will bring relief. Others note that the availability of relief materials at the borders of Cambodia eventually will pierce the political wall that surrounds that country.

But whatever happens, we all must try to contribute to a solution, and the legislation we are dealing with today is a proper step.

I want to thank Senators MCGOVERN and PELL for managing it on the floor and the Senator from New York, Mr. JAVITS, the minority floor manager.

And special commendation goes to Senators BAUCUS, DANFORTH, and SASSER. They carried directly to Southeast Asia the concerns of the American people, and this Senate.

Mr. LEVIN. Mr. President, I rise in support of S. 1668, the migration and refugee assistance authorization, and urge my colleagues in the Senate to join me in voting for a speedy final passage of this most needed humanitarian legislation.

As my colleagues know, this measure provides additional assistance to refugees and international aid organizations made necessary because of the current emergency conditions in Southeast Asia.

Especially noteworthy are the amendments being considered to this bill which would authorize at least $30 million in contributions by the United States to the international relief effort providing critical food and medical supplies to the people of Cambodia.

These funds represent the "second phase" of the $69 million President Carter recently pledged for the United States to this international mercy mission.

In addition, I understand that an amendment will be forthcoming to extend from 2 to 3 years Federal reimbursement to State governments for assisting in the resettlement of Indochinese refugees.

Mr. President, between 1961 and 1973, the United States dropped 6,162,000 tons of bombs on North and South Vietnam. Between 1969 and 1973, we dropped a total of 180,356 tons of explosives on Cambodia, which before the fighting was carried to that nation, was a quiet and beautiful country whose people lived in peace and harmony among themselves and with their neighbors.

Today, sadly, Cambodia is a tragic example of what misguided military and ideological policies, both on the democratic and totalitarian ends of the political spectrum, can wreak on any nation.

No nation which took part, either directly or indirectly, in the struggles in Indochina during the last decade, can be held completely blameless for the destruction and desolation of Cambodia. That is a fact which must be recognized.

And it is in recognition of that fact that the United States must totally mobilize its considerable humanitarian resources to help the starving millions of Cambodia.

The same nation that could rain death down on Cambodians between 1969 and 1973 must assume its rightful leadership role in extending international assistance to their suffering people.

Mr. President, I want to add my voice to those of my colleagues who have been urging that our Government do all that it can to prevent more Cambodians from dying from the appalling famine which grips that country.

As we did in 1975 when we flew an emergency airlift of 400 tons of food each day into Phnom Penh, the United States must now fly an emergency airlift to alleviate the mass suffering and death.

We should, of course, work through the international organizations coordinating this relief effort to Cambodia, and we should use all diplomatic means at our disposal to urge the factions taking part in the civil war there to permit adequate distribution of the needed food and medical supplies.

But in addition I have urged the President to order an airlift to Cambodia and to take action to overcome the logistical and geographic problems with effectively implementing such a plan.

We move ahead with that option while we do all we can to establish a truck route through the countryside to distribute the food and medical aid, a preferable option if and when it becomes available.

I also urged the President to begin such an airlift and to make high-level diplomatic contacts to the Soviet Union and the People's Republic of China to urge them to encourage the factions they are supporting in the Cambodian civil war to accept equitable distribution of the food aid.

I ask unanimous consent to have my letter printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., October 25, 1979.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: As the horrors of famine and civil war in Cambodia become more grave with each passing day, your action to make available $69 million from the United States for the international relief effort is especially welcome. Since no nation which took part, either directly or indirectly, in the conflict in Southeast Asia is blameless for the suffering in Cambodia, it is appropriate that the United States recognize its responsibilities now to do what it can to aid that stricken country.

In that regard, I would like to take this opportunity to urge you to order the Air Force to immediately undertake the planning and implementation of an emergency airlift of food and medical supplies for the people of Cambodia and the refugees from that nation in Thailand. As a member of the Committee on Armed Services, I have been discussing the requirements for such an airlift with the Air Force. I have been informed that an operation to deliver to that region the 1,000 tons of food a day estimated as necessary by UNICEF is within the capabilities of our Military Airlift Command, and that, depending on cargo availabilities, we could reach that delivery rate within 72–96 hours after the "go-ahead" is given. I recognize that such an airlift would be costly and could, under certain conditions, strain our airlift resources as they attempt to accomplish this operation along with their regular military missions. Yet the magnitude of the suffering in Cambodia argues that these burdens should be borne to help relieve conditions in that country. The least we can do, as the nation which rained 180,356 tons of bombs on Cambodia between 1969–1973, is to assist in the delivery of the 150,000 tons of food, a lesser figure, which UNICEF estimates is needed within the next six months.

I also realize that it is not sufficient simply to deliver these supplies, but that they must be distributed fairly to those in need. Thus,

I also request that you begin high-level diplomatic contacts with both the Soviet Union and the Peoples Republic of China to encourage them to urge those parties engaged in the Cambodian civil war to permit proper distribution of the airlifted goods.

The ravages of famine know no political boundaries in Cambodia, and the terrible suffering exists among all the people of that starving nation. The more fortunate nations of the world must mobilize their humanitarian resources to lessen this hardship, and the United States should assume a leadership role in these efforts. We can begin to do so by following the steps I have suggested in this letter.

Thank you for consideration of these suggestions.

Sincerely,

CARL LEVIN.

Mr. LEVIN. Mr. President, the State Department indicates that the People's Republic of China has appeared receptive to our entreaties, but that the Soviet Union has been less so. I hope that the U.S.S.R. will change its position in the near future as world opinion becomes aroused and enraged at the suffering.

In the meantime, we should quickly pass S. 1668 to speed needed aid on its way.

THE POLITICS OF STARVATION

● Mr. BIDEN. Mr. President, I have voted to support, as have all my colleagues, S. 1668 which authorizes additional funds to be channeled to Cambodia. I have voted to support, as have all my colleagues, all additional monies that would provide relief for the people of Cambodia. However, Mr. President, let it be stated for the record that no amount of money of itself is sufficient to prevent the proud and gentle people of Cambodia from dying of starvation, malnutrition and illness unless there is a means found to deliver the assistance which they so desperately need.

And it is no secret, Mr. President, that the present government in Cambodia has refused the plea of three eminent and courageous Senators that a land bridge be established to enable adequate food and medical supplies to reach the Cambodian people. I understand that adequate assistance means 1000 tons a day. The only effective delivery and distribution system is the maximum use of all channels, land, sea, air and river. Regrettably, this cannot be established without permission of the government in Phnom Penh.

The problem, therefore, Mr. President, is not at this moment a matter of money. It is a matter of setting up these delivery systems to Cambodia, and distribution networks within Cambodia. And that, tragically enough, is a matter of politics.

As all of us know, the government that is operational in Phnom Penh is a puppet government of Hanoi. It is a government that is not recognized by the United States. It is a government that UN members refused to seat at the United Nations. It is a government that exists at the bidding of the Vietnamese.

The axis that goes from Phnom Penh to Hanoi does not stop there. Moscow has been asked through unofficial as well as official U.S. channels to use its influence with Hanoi to permit the establishment of an expanded delivery system into Cambodia sufficient to save its people from extinction. Precisely what has transpired is not clear. But an agreement has not yet been reached. The Cambodian people lay victim to the decisions of Hanoi. The politics of starvation is a tragic one.

It has been suggested that a multinational air drop be utilized—that a mass parachute drop be initiated which will blanket Cambodia with packages of food and medical supplies. It is a dramatic gesture. It is not a very efficient one. It does not allow representatives of international agencies such as UNICEF and the International Red Cross as well as the private voluntary organization, to distribute supplies in the most effective way. But if it be the only means to stave off mass starvation of 4 million people, then it must be done.

But there is one last effort being made to prevent the tragedy of the Cambodian people. On Monday Secretary Vance will be attending a special Pledging Conference of the United Nations in New York. The ostensible purpose of this Conference is for each nation to formally pledge funds to UNICEF and the International Committee of the Red Cross to be used for Cambodian relief. The world community will commit itself on Monday to the material necessities to avert this impending disaster. Let us hope that the Governments of Vietnam and Cambodia will allow the Cambodian people to be saved.●

Mr. JAVITS. Mr. President, we have inquired on both sides and we know of no further amendments. We are ready for third reading, and we yield back our time.

Mr. PELL. We yield back our time.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

MIGRATION AND REFUGEE ASSISTANCE

The PRESIDING OFFICER. Under the previous order, the third reading of S. 1668 having occurred, the Senate will proceed to the consideration of H.R. 4955, which the clerk will state by title.

The assistant legislative clerk read as follows:

Calendar 397, H.R. 4955, an act to authorize additional appropriations for migration and refugee assistance for the fiscal years 1980 and 1981 and to authorize humanitarian assistance for the victims of the famine in Cambodia.

The Senate proceeded to consider the bill (H.R. 4955).

The PRESIDING OFFICER. Under the previous order, the text of S. 1668, as amended, will be substituted for the text of the House bill.

The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill, as amended, pass?

(Putting the question).

The bill (H.R. 4955), as amended, was passed.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, S. 1668 is indefinitely postponed.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

(During the call of the roll Mr. LEVIN assumed the chair.)

Mr. STEVENS. Mr. President, let me thank Senator JAVITS, as ranking member of the Foreign Relations Committee, for his handling of this important legislation. The distinguished Senator from New York was instrumental in our achieving a time agreement on this legislation and as a result some of us from the West will now be able to make our flights home.

Senators DANFORTH and HELMS were also very accommodating in working out the time agreement and I thank them as well.

The Senator from New York was careful to assure that all Members were protected in offering amendments to this bill and his courtesy in this regard is most appreciated.

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

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

Mr. MOYNIHAN. Mr. President, I would like to take this opportunity to add my own observations to those of my fellow Senators who have spoken of the extraordinary service done the Senate, the Nation, and the cause of humanity by our colleagues Senator SASSER, Senator DANFORTH, and Senator BAUCUS.

It has been a matter of signal pride, I think, to all of us, to see the dignity, the firmness, and the forthrightness with which these three American Senators looked into the face of totalitarianism and did not blanch nor conceal their horror and yet, at the same time, maintained their equanimity.

It is a wonder that this far into the 20th century we are still capable of surprise at the behavior of totalitarian regimes toward their own people, and still somehow resist the thought that this is systemic, and takes place regardless of the peoples involved, their location or their circumstances. But it does.

The refugee is singularly a phenomenon—an institution, almost—of the 20th century. Invariably, it is associated with totalitarian regimes: First, the Fascist regimes of Germany and Italy, and then the rising currency of the Communist regimes that have succeeded them and have already established themselves in Central Europe, then China and Indochina. Wherever that system of government goes, the refugee appears.

There is nothing more eloquent in the world in this day as a symbol of it than the Berlin Wall that stands. The totalitarian nations have had the most ex-

traordinary experience: They can win adherents in the democracies, but never among their own people.

The totalitarian passion that Jean Francois Pavel has spoken of continues to absorb and fascinate the youth and the intellectuals of the free world, while the totalitarian realities all about them see people risking their lives, in fact giving up their lives, just to escape that reality.

It has, in any event, been a service to us all of the three American Senators, that they went to that part of the world and they said to that regime, "You have only to open your borders and your people will be fed," and they have said, "No."

The New York Times had a dispatch from Bangkok today by Henry Kahn which made very clear the judgment of the Vietnamese in charge of Cambodia, that inasmuch as any aid to the persons starving in that country would likely go, as well, to the people of adherence to Pol Pot, they desired no aid. It is an astonishing cruelty. But only the most recent, only the most vivid at this moment, not in this century, alas, but at this moment, this reality has been brought forth with incomparable dignity, equanimity, and firmness by three American Senators, of whom we are justly proud.

I thank the Chair.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, has there been any morning business today? I ask unanimous consent that there now be a period for the transaction of routine morning business of not to exceed 10 minutes, with Senators permitted to speak therein up to 5 minutes each.

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

THE JUDGE IN THE SMITH BAGLEY TRIAL

Mr. HATCH. Mr. President, as I viewed the Washington Post article entitled "U.S. Prosecutors Criticize Judge for Handling of Smith Bagley Trial," I became very concerned that, if these allegations are true, the appropriate authorities, especially the Justice Department, must fully investigate these most serious allegations. The letter from these two prosecutors is absolutely astounding. No prosecutors would make these criticisms without great consideration and serious reflection.

Coming on the heels of our passage in the Senate of the judicial tenure bill, serious and adequate attention must be given these charges and any rebuttal thereof.

Therefore, having made the effort to obtain a copy of the letter, I ask unanimous consent that both the provocative Post article and the letter dated October 5, 1979, be printed in the RECORD at this point.

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

U.S. PROSECUTORS CRITICIZE JUDGE FOR HANDLING OF SMITH BAGLEY TRIAL

(By Merrill Brown)

Federal prosecutors have accused U.S. District Court Judge Robert Merhige of "outrageous" legal behavior in his handling of the Smith Bagley trial and said the jurist was all too friendly with the defendants.

The charges, leveled by Attorney H. M. Michaux Jr. and Assistant U.S. Attorney Patricia W. Lemley, of Greensboro, N.C., were contained in a letter requested by their superior, Deputy Assistant Attorney General John C. Keeney. A copy of the letter was obtained by The Washington Post.

Bagley, the socialite heir to the R. J. Reynolds fortune, and four others, involved in the bankruptcy of The Washington Group, Inc., a company Bagley once headed, were acquitted of conspiracy and stock manipulation charges by a jury in August. Merhige presided over that trial and was sharply critical of the government's presentation of the case.

Merhige also has been assigned to a variety of civil cases relating to Bagley and the others, stemming from the corporate bankruptcy.

Bagley's lawyers also have asked that a civil case filed by the Securities and Exchange Commission be transferred from federal court in Richmond to a North Carolina location, where Merhige is assigned.

"The antigovernment bias was manifested by Judge Merhige in virtually every phase of the trial," the U.S. attorneys said. "This bias was most clearly reflected in the court's intemperate comments and outrageous jury instructions."

Although the indictment was handed down by a federal grand jury sitting in Winston-Salem, at the request of the defendants the trial was moved to Richmond, Va., where it was heard by Merhige.

According to the letter, after Merhige was assigned to hear the case in North Carolina, the defendants filed motions for a non-jury trial and for the change of venue to Richmond.

"While the significance of these motions may simply lie in defense counsel's skilled advocacy when viewed in light of later events, they suggest that the defense team recognized an all too friendly forum at the outset," they said.

The two U.S. attorneys said that "in overview, the Bagley trial takes on the quality of a 'set up.' "

Individual incidents, which at the time had the appearance of mere intemperance, laid the foundation for jury instructions which had the effect of a direction to the jury to acquit.

"Only at the time of jury instructions did certain of the judge's exclusionary rulings, unsolicited witness cross-examinations and verbal explosions make sense."

The letter dated Oct. 5, was written by Lemley at the request of Keeney and signed by both Lemley and Michaux.

Keeney said last night that he asked for the prosecutors' comments to determine if there were mistakes in the prosecution of the case that could be corrected in the future.

"We do that in cases where the result is different than we expected it to be," Keeney said.

He said the department had no plans to follow up on the letter, although he noted the prosecutors "probably would have used less colorful language if they knew it would be made public."

Attempts to reach Merhige through his secretary were unsuccessful. The secretary said Merhige said he could not talk about the Bagley case.

Lemley, contacted last night, would not comment on the letter. "The words speak for themselves," Lemley said. Michaux could not be reached.

The two charged in their letter that through a series of comments during the trying of the case, Merhige undermined the government's case.

For example, the U.S. attorneys said that Merhige ridiculed a government witness, Wesley Bailey, who purchased Washington Group stock on a "buy-back guarantee."

"The timing of the purchases and the favorableness of the terms underscored the manipulation as charged in the indictment," they wrote.

"Nevertheless, the entire weight of Bailey's testimony was sledge-hammered by judge Merhige off-the-cuff remark. The judge's comments thus had the effect of making the prosecution team appear inept, overbearing and/or erroneous in the jury's eyes."

The letter said Merhige sustained the defense team's objections to the government's introduction of charts in the case, a decision that "again belied his impartiality."

Further, the two attorneys said Merhige "displayed a more than merely solicitous attitude toward the jury." They noted in the letter that Merhige "personally served the panel with coffee and donuts on a daily basis and arranged on at least one occasion for them to lunch at his private club."

In addition, the letter said that the judge's instructions to the jury "were tantamount to a directed verdict.

"Only a thorough reading of these instructions fully reveals the not-guilty bias through their juxtaposition of phrases, concepts and gratuitous comments," they wrote. "The government was never given a chance to present its view of the case and at no time during the trial was the indictment read to the jury."

The prosecutors said that the heart of their case was the allegation that employes of the Washington Group were encouraged to buy stock to inflate its market price.

"The judge took every element of proof such as the encouragement to buy stock and the making and guaranteeing loans for stock purchases, and stated these acts were not unlawful," they wrote.

They also said that the jury could not find the defendants guilty of mail and wire fraud charges, without proving guilt on a manipulation charge. "This ruling is clearly wrong," they wrote.

The letter charged that several of Merhige's instructions to the jury "fail to bear the remotest resemblance to the law."

Merhige is a well-known and controversial figure in the Richmond area for his decision ordering the racial integration in the city's school system.

In addition, Merhige was the presiding judge in the government's case against Allied Chemical Co. and others for their roles in the Kepone contamination of the James River. Merhige fined Allied $8 million, the largest such fine for a pollution case at the time.

U.S. ATTORNEY,
Greensboro, N.C., October 5, 1979.

Mr. JOHN C. KEENEY,
Deputy Assistant Attorney General, Criminal Division, Department of Justice, Washington, D.C.

DEAR MR. KEENEY: This letter is written in confirmation of our recent telephone conversation.

As Mr. Michaux and I related to you, notwithstanding minor factors [1] which may have contributed to the not guilty verdict in the *Bagley* case, the conduct of the trial judge ultimately ensured its outcome. The antigovernment bias was manifested by Judge Merhige in virtually every phase of the trial. This bias was most clearly reflected in the court's intemperate comments and outrageous jury instructions. At times, the courtroom took on a circus-like atmosphere. Additionally, the prosecution team was not sufficiently staffed. This problem was exacerbated by a maniacal trial schedule. Two lawyers and an F.B.I. agent, who was not the case agent, were out-manned by twelve in-court attorneys, supported by unlimited funds, miscellaneous "gophers" and a sub-

Footnotes at end of article.

stantial number of affiliated attorney advisers. We make no apology for the substantive merits of the prosecution or the pre-indictment review process.

In overview, the *Bagley* trial takes on the quality of a "set up." Individual incidents which at the time had the appearance of mere intemperance laid the foundation for jury instructions which had the effect of a direction to the jury to acquit. Only at the time of jury instructions did certain of the judge's exclusionary rulings, unsolicited witness cross-examinations and verbal explosions make sense. An appreciation of the futility of the prosecution once it reached Judge Merhige's hands can only be achieved by gaining an awareness of certain pre-trial matters, and most particularly the court's rulings on motions to dismiss the indictment.

The defendants had argued in a motion to dismiss the indictment that the stock manipulation, Count Two of the indictment, was fatally deficient in that it failed to make specific allegations of "matched orders," "wash sales," fictional quotations and so on, as set forth in Section 9 of the Securities Exchange Act of 1934. It was also argued that stock purchases alleged in the indictment were "real" and hence legal purchases; further, that the government must plead an allegation of a specific intent to defraud.

The government essentially responded to these charges by citing the comprehensive language of Section 10b and Rule 10b–5. We averred that the defendants were improperly attempting to engraft the specific language of Section 9 onto the broad provisions of Section 10 and Rule 10b–5, a proposition which has been rejected by every appellate court which has considered it. We argued that the purchases were made for the express purpose of artificially inflating the price of Washington Group stock, "real" or no.

As to the misapplication charge, brought both substantively and as a goal of the Count One conspiracy, the defendants essentially argued that stock loans could not have been made with the intent to injure or defraud the Northwestern Bank as Smith Bagley's guarantee precluded any potential loss to the Bank. We declined to respond to this evidentiary argument and relied primarily upon *United States* v. *Caldwell*, 544 F. 2d 691 (4th Cir. 1976) which held that although the fruition of a misapplication may be consonant with a bank's financial interests, where bank funds were used to accomplish an illegal purpose, a misapplication would stand. The *Caldwell* case applied directly to *Bagley, et al*, since the indictment charged loans made for the illegal purpose of accomplishing the manipulative and deceptive device by funding the stock purchases themselves. Northwestern Bank was the "key to the piggyback."

Judge Merhige denied the defendants' motions to dismiss in a one-sentence memorandum order.

Another interesting feature of the pre-trial motions was the defendants' motions for jury waiver and change of venue. The indictment in the *Bagley* case was filed in the Middle District of North Carolina. Pre-trial motions, including a motion to dismiss the indictment on pre-trial publicity grounds, were filed before Judge Gordon, Chief Judge, Middle District of North Carolina.

It was only following Judge Gordon's notice to all parties that Judge Merhige was going to hear the case that the defendants filed motions for a non-jury trial and for a change of venue on the same publicity grounds.[2] While the significance of these motions may simply lie in defense counsel's skilled advocacy, when viewed in light of later events, they suggest that the defense team recognized an all too friendly forum at the outset.

Acting in reliance upon the proposition that the judge's rulings constituted the law of the case, we proved our 10b–5 stock manipulation, conspiracy and misapplication case. Over 60 percent of the market demand for Washington Group stock was accounted for by Northwestern Bank loans and the defendants' own purchases. Each defendant was proved to either have made or guaranteed a Washington Group stock loan or have direct knowledge that Northwestern Bank, as guaranteed by a defendant, was the source of the demand for Washington Group stock.

When Washington Group middle level employee purchasing power was not available to account for Washington Group stock demand, the defendants Bagley and Gilley secured other purchases by means of no loss guarantees or guarantees of profit. The timing of controlled purchases and sales were shown to correspond to the inventory of Washington Group stock. The quintessence of the fraud was the utilization of employee profit sharing and stock purchase plan monies to continue the on-going market support activities.

No responsible Washington Group employee was informed of the defendants Bagley and Gilley's decision to sell the entire blue chip stock portfolio of the profit sharing plan and to use the proceeds from this sale to purchase Washington Group stock, thus relieving Bagley and Gilley of certain loan guarantees in the process.

During the trial itself the government was subjected to numerous on- and off-the-record diatribes by Judge Merhige. For example, when we proved that defendant Smith Bagley's R. J. Reynolds money was held in trust out of his direct control and thus, this man of means, so-called by the defense, could not make good on his Washington Group stock loan guarantees, Merhige was provoked to state out of the jury's presence that the government was on a witch hunt and prosecution of the case shocked him. The judge's views that the government had failed after a week of trial to produce a "scintilla" of evidence as to a conspiracy were repeatedly articulated to the jury.

As witnesses testified that they would not have purchased Washington Group stock in the amount and in the manner they had, which was through large loans equal to or greater than their annual salaries, the judge would interrupt direct examination with such questions as "But you bought the stock hoping to make a profit, didn't you?" or "But you knew you were taking a risk, didn't you?" On more than one occasion, Judge Merhige ridiculed the witness or *sua sponte* commented to the jury that he failed to see the relevance of a certain witness' testimony.[3]

One of such comments was unfortunately directed to Wesley Bailey, a friend and an attorney of the defendant James R. Gilley, who on a buyback guarantee made by the defendants Gilley and Bagley bought 5,000 shares of Washington Group stock, sold these into the profit sharing plan two months later, and a month later bought 7,000 more shares under a similar arrangement when the company was in registration in connection with a proposed merger.

In one sense the crux of the case rested with Bailey, as he rebutted any possible assertions that the defendants Bagley and Gilley were simply attempting to assist fellow employees to get in on the ground floor of Washington Group. The timing of the purchases and the favorableness of the terms underscored the manipulation as charged in the indictment. Nevertheless, the entire weight of Bailey's testimony was sledgehammered by Judge Merhige's off-the-cuff remark. The judge's comments thus had the effect of making the prosecution team appear inept, overbearing and/or erroneous in the jury's eyes.

A further means by which the judge shaped the outcome of this case can be found in his ruling regarding Special Agent Zachary Lowe, the supervising case agent. Special Agent Lowe's knowledge of the case and the documents which constituted our proof was instrumental. A week prior to trial pressing problems developed in Special Agent Lowe's personal life. As a result, we requested the court to allow Special Agent Lowe to join us on the third or fourth day of trial. On the grounds that Lowe was a scheduled government witness, the court denied our request. When we then advised the court that we would in no event call Special Agent Lowe to testify, Judge Merhige asked the defense team if they had any objection to allowing the Agent's presence, whereupon counsel for defendant Bagley responded that while they had no present intention to do so, they might call Special Agent Lowe as a defense witness.

Judge Merhige immediately ruled that we could have only one case agent present at trial who was to remain with both prosecution attorneys during all proceedings, unlike the defense attorney second string who came and left the courtroom at will. Special Agent Lowe was barred from the courtroom for the length of the trial. This ruling crippled the prosecution from the outset. In-court and in-chambers arguments failed to loosen Judge Merhige from this ruling.

The judge's ruling regarding the government's introduction of charts, a crucial aspect of our case, again belied his impartiality. Objections to the charts were sustained on two primary grounds. The first chart listed Northwestern Bank stock loans by borrower, amount, date, loan officer (nearly always defendant Chapple), amount of stock purchased and the name of the registered representative (nearly always defendant Thomas). The judge ruled that the repetitious references to the defendants Chapple and Thomas were prejudicial, even though this information came straight from government exhibits already received into evidence.

The second ruling centered around percentage comparisons of defendant-related stock purchases to total Washington Group stock purchases. On a *voir dire* and in argument we presented evidence that the information on these charts came from the trading records of all brokerage firms who acted as market makers or as principals in Washington Group stock. On the grounds that somewhere, at some time or place, some broker may have effected a transaction in Washington Group stock, the judge precluded the use of these charts.

The government was prevented from showing the unfortunate history of the Washington Group stock loans, which evidenced a pattern of renegotiations and personal bankruptcies. Judge Merhige's ruling on this entire area of testimony severely hampered all proof of loss with respect to the Northwestern Bank and thus the defendants' intent to injure or defraud the bank. Revealingly, during the arguments regarding the defendants' motion for judgment of acquittal at the close of the government's case, the judge castigated the government for failing to show any loss by Northwestern Bank. We referred the judge to his own prior rulings.

The judge also prevented any meaningful summary testimony from reaching the jury. For example, an investment banker who as a result of an analysis he had accomplished during the indictment period concluded that the value of Washington Group stock, then being traded at a market price of $19.00 per share, was worth only $7.00. Needless to say, this was a most crucial piece of evidence. Judge Merhige allowed this witness to testify as to his qualifications and conclusion but specifically disallowed our attempt to bring the bases for his conclusion to the jury's attention. He further undercut the probative force of this evidence by giving the standard instruction that the weight to be accorded opinion testimony was affected by the grounds for the given conclusion.

Footnotes at end of article.

The close of the government's case saw the dismissal of the substantive misapplication charges and two mail fraud counts. The mail fraud counts, which were the subject of a blanket, pro-forma motion for judgment of acquittal and which occasioned no argument by either defense or government counsel, were dismissed on the grounds that the mailings were not in furtherance of the fraudulent scheme.[4] These letters concerned arrangements for the sale of blue chip stock in the profit sharing plan, the funds from which were then used to purchase Washington Group stock. The judge's ruling is puzzling and diluted the impact of one of the most outrageous aspects of the charged fraud. The judge predicated his misapplication dismissal upon *United States* v. *Arthur*, 544 F.2d 730 (4th Cir. 1976), stating this case overruled *Caldwell, supra*, in that Section 656 required an attempt to inflict pecuniary injury. The $1 million plus in loans exposed Northwestern Bank to severe pecuniary losses but in any event, if Judge Merhige had desired to rely on *Arthur* rather than *Caldwell* the vehicle should have been clearly appealable granting of the defendants' pre-trial motion to dismiss.[5]

Throughout the course of the trial the judge displayed a more than merely solicitous attitude toward the jury. He personally served the panel with coffee and donuts on a daily basis and arranged on at least one occasion for them to lunch at his private club. The foreman of the jury was quoted in local tableaux as stating the jury had not wanted to let the judge down by its verdict. Judge Merhige is a man of great personal charisma and charm. In this context, the jury stood on the edge of its seat listening to the "law," when given in the instructions. I concluded from my observation of the nodding heads in the jury box that at the close of all arguments at least the defendants Bagley and Gilley had been convicted, if not all five of the defendants; when the jury instructions were given, these same heads were shaking in near disbelief.

It is also worth noting that the final jury argument was given at 10:30 p.m. and jury instructions did not begin until 1:30 p.m. the next day. Even when the not guilty verdict was returned, the jury was somber and reflective, a most unusual feature for a not guilty jury. A juryman was quoted in the newspapers as affirmatively responding to a reporter's question as to whether the case should have been brought by the government.

The judge's instructions were tantamount to a directed verdict. Only a thorough reading of these instructions fully reveals the not guilty bias through their juxtaposition of phrases, concepts and gratuitous comments.[6] The government was never given a chance to present its view of the case as at no time during the trial was the indictment read to the jury.

Count Two, the manipulation charge was read to the jury by the judge only after it had deliberated some seven and one half hours on the case, and upon its complaint that it could not have the charge. The judge accordingly made good his subsequent offer to read both Count Two and the relevant instructions. The jury returned its not guilty verdict in open court 35 minutes later. The jury had previously requested reinstruction on the conspiracy charge an hour and ten minutes after initially retiring.

Another overall feature regarding these instructions is that the government was notified of the substance of the charge only an hour before final argument. We had filed standard instructions two weeks before trial at the judge's request; he had asked the defense at the same time to file any instructions they desired with the court, but if these instructions revealed a defense theory or strategy they need not be disclosed to the government until the defense case commenced.

The charge as given by the judge adopted the request for instructions submitted by defendant Bagley in every material respect; the proposed charge in turn adopted the exact arguments litigated in the initial hearings on the motion to dismiss and disclosed absolutely no new defense theories or views of the case. As you are aware, the defendants introduced no evidence at trial. We had not been notified of the fact that any defense instructions had been filed, much less their substance, although these instructions had indeed been filed prior to trial.

A strenuous objection made in open court not only as advocates but explicitly as officers of the court were of no avail. When the judge asked if there were any objections to the charge after it had been given, I responded an emphatic, "Yes," to which the judge revealingly riposted that the government was not entitled to take exceptions to a jury charge.

In the charge on the conspiracy count, Judge Merhige advised the jury that if the goal of the conspiracy were only to manipulate the market price of Washington Group stock, as opposed to misapplying bank funds, or vice versa, they must find the defendants not guilty. The misapplication counts had been dismissed, which fact the judge noted five times in this conspiracy charge, and while the judge read Section 656, at no time did he describe the elements of a misapplication offense. He also rendered conviction virtually impossible on the conspiracy count by limiting the misapplication objective in the conspiracy to the two loans charged in the substantive counts, which he had dismissed.

The 10b–5 manipulation charge constitutes a miscarriage of justice. Contrary to his earlier rulings on the motion to dismiss, Judge Merhige informed the jury that the government must establish a specific intent to defraud in order to prove its case. A manipulation was defined by the previously rejected "matched order" and "wash sales" language inapplicable to a 10b–5 case. The judge iterated that profit was usually the aim of a stock investment and a shareholder was part owner in the profits and risks of the company, thus harkening back to his own cross examinations; it was against these witness investors the government was required to prove a specific intent to cheat.

The judge took every element of proof, such as the encouragement to buy stock and the making and guaranteeing of loans for stock purchases, and stated these acts were not unlawful. Incredibly, he stated that it was not unlawful to compel, intimidate or pressure employees to buy stock for the purpose of supporting the price of the stock or to engage in buying for the purpose of raising the price of the stock. This was the heart of the case.

The judge erroneously added that even if purchases of stock were undertaken to support the market price, the jury was nevertheless precluded from finding that such purchases were made with manipulative intent if the purchaser also had additional reasons for making the purchase, e.g., an expectation that the price would rise. If the price rose for any other reason in the manipulative conduct, the jury was charged to enter a not guilty verdict.

Once Count Two was effectively emasculated, the entire case, practically speaking, was lost. Count Two impacted on each other Count. Of course, contrary to his earlier expressions articulated in open court, the judge ensured this damaging effect by charging that the jury could not reach the mail and wire fraud counts unless they specifically found guilt on the manipulation count. This ruling is clearly wrong. The judge also advised the jury the mailings and telephone conversations must constitute an "integral" part of the scheme to defraud, an "essential step," and not "routine, intrinsically innocent" communications incumbent to a regular business enterprise. To add insult to injury, the jury was charged that the defendants had to evidence a specific intent to accomplish the mailings and telephone calls themselves, a proposition rejected by the Supreme Court twenty-five years ago. *Pereira* v. *United States*, 347 U.S. 1 (1954). Finally, the judge stated that the jury could not convict the defendants for their mere failure to disclose information but that an affirmative false statement was necessary. These instructions fail to bear the remotest resemblance to the law.

In conclusion, it is hoped these rather cursory thoughts may assist you in analyzing the *Bagley* trial. If we may be of any further assistance, please do not hesitate to call.

Respectfully,

H. M. MICHAUX, JR.,
United States Attorney.
PATRICIA W. LEMLEY,
Assistant United States Attorney.

FOOTNOTES

[1] I refer here, for example, to our decision to oppose the defendant's Jury Waiver Motion, a potential but probably futile failure to make a Motion for Mistrial following the jury instructions, our decision to allow open file discovery, and so on. These factors largely include the type of "why didn't I think of that before" post-mortem mentality that any attorney experiences following an adverse decision.

[2] The jury did not conduct its deliberations unmindful that some cases proceed by jury waiver; they were specifically, and we would submit prejudicially, informed of this fact as part of the instructions.

[3] This pattern of conduct was particularly aggravated regarding testimony of witnesses who had been highlighted in a pre-trial memorandum submitted by the government at the judge's invitation.

[4] This issue had been specifically litigated in pre-trial motion hearings.

[5] In passing, this ruling flies in the face of *United States* v. *Duncan*, 598 F.2d 839 (4th Cir.), *cert. denied*, ——U.S. —— (1979), and was explicitly rejected on August 3, 1979, in *United States* v. *Arthur*, (*Arthur II*), —— F.2d ——, No. 78–1598 (4th Cir.).

[6] For example, twice the judge told the jury that civil remedies were available to any investors. He stated that ignorance of the law could be considered on the issue of specific intent. "Wilfully" was defined as a *specific* intent to do what the law forbids. Where control of stock trading was discussed in the instructions, the judge misdescribed the "float" as constituting the entire number of issued shares.

RICHARD ARRINGTON ELECTED MAYOR OF BIRMINGHAM, ALA.

Mr. HEFLIN. Mr. President, Tuesday, October 30, 1979, marked the beginning of a new era in the history of Birmingham, Ala., for it was on that day that Birmingham elected its first black mayor.

Dr. Richard Arrington, Jr., a 44-year-old native of Sumter County, Ala., and a Birmingham city councilman for 8 years, won the mayor's race with 51 percent of the votes in a runoff with Frank Parsons, a white attorney-businessman. In a city where 44.6 percent of the voting population is black, Dr. Arrington is believed to have received approximately 15 percent of the white vote. I think that this is indicative of both Dr.

Arrington's standing in the community and the fact that attitudes have changed in Birmingham, as elsewhere around my home State.

During the primary election on October 9, 1979, Dr. Arrington led a six-man race with slightly more than 44 percent of the votes cast.

Although the voting in last Tuesday's election was primarily along racial lines, it is clear that without 10 to 15 percent of support from white voters, Dr. Arrington could not have become mayor.

Mr. President, it is ironic that the son of two sharecroppers would become mayor of the largest city in Alabama. It is undisputed that 16 years ago Birmingham was painted as one of the most racist cities in the world—dogs attacking black children, police and firemen using high-pressured water hoses to restrain black demonstrators, a church bombing that killed four black girls, and the multiple jailings of the late civil rights leader, Dr. Martin Luther King, Jr. I hope and believe that Dr. Arrington's election will mark the continuation of a period of harmony between whites and blacks in Birmingham, as each group comes to appreciate the hopes and aspirations of the other. The black community and the white community must continue to meld into the Birmingham community if we are to continue to progress.

Mayor-elect Arrington moved to a suburb of Birmingham—Fairfield, Ala.—at the age of 5 years. He received his elementary and secondary education there.

Dr. Arrington's training in higher education is in the fields of biology and biochemistry. He received an A.B. degree from Miles College in Birmingham, a master's degree from the University of Detroit, and a Ph. D. from the University of Oklahoma. He received additional training at New Mexico Highlands University, State University of Iowa, and Harvard University.

Dr. Arrington has served as professor of biology at Miles College and the University of Alabama in Birmingham. He also served for 4 years as academic dean at Miles College in June 1970. He assumed his present position as executive director of the Alabama Center for Higher Education, an organization of the eight black senior colleges in Alabama, in June 1970.

In November 1971 and 1975, he was elected to 4-year terms on the Birmingham City Council. Dr. Arrington serves on the board of directors of a large number of community service organizations, including the executive board of the Boy Scouts of America, the Salvation Army, the National Goodwill Industry, the Birmingham Urban League, and Positive Maturing (Aging).

Mr. President, as the city of Birmingham faces the rising Sun of a new day, I pledge my cooperation to Mayor-elect Arrington and to the city of Birmingham in making Birmingham a truly model city for all Americans.

Mr. President, I ask unanimous consent that two news articles—one which appeared in the Washington Post on October 31, 1979, entitled "First Black Mayor Narrowly Elected in Birmingham," and the other, which appeared in the New York Times on November 1, 1979, entitled "Birmingham Victor Elated and Determined," be printed in the RECORD.

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

[From the Washington Post, Oct. 31, 1979]

FIRST BLACK MAYOR NARROWLY ELECTED IN BIRMINGHAM

(By Bill Curry)

BIRMINGHAM.—The city of Bull Connor and his dogs, of Martin Luther King Jr. locked up in jail and of a church bombing that killed four black girls—elected a black mayor yesterday.

Richard Arrington, 44-year-old son of a sharecropper, became the Alabama city's first black mayor with 51 percent of the vote in a runoff with a white attorney-businessman, Frank Parsons.

With all 75 polling places reporting, Arrington had 44,798 votes to 42,814 for Parsons.

The triumph of Arrington, following eight years on the city council, is a high point in the evolution of racial accommodation that has followed the violent civil rights struggles that in the 1960s made Birmingham a symbol of racial strife.

Strangely, it was a racial incident last June that forced Arrington into the mayoral campaign. The incident was the erroneous and fatal shooting of an unarmed 20-year-old black woman by a white city policeman.

The 38-year-old Parsons campaigned on a strong law-and-order stance and a pledge to keep the police department under the control of policemen.

In the closing days of the campaign, Parsons supporters ran newspaper ads portraying Atlanta as crime-ridden as a result of electing a black mayor, Maynard Jackson.

But while blacks apparently went to the polls yesterday in greater proportion than did whites, early indications were that Arrington, who was endorsed by both of the city's daily newspapers, received perhaps 20 percent of his support from white voters.

Such support was crucial for Arrington because whites make up more than half of the city's 129,000 registered voters.

"This is a historic occasion for our city," Arrington said last night, "because the majority of voters have tapped one of the sons of color of our city. The decision says more about our city than all the public relations we can do and all the things we can say.

"The voters rejected a campaign based on fear and rejected a campaign based on sneers."

It was only 10 years ago that the Birmingham city council got its first black member. Asked before the election if Birmingham was ready for a black mayor, Arrington said, "I think it is. The transition it represents creates uneasiness—I understand that."

It was widely accepted in Birmingham, and acknowledged by Arrington, that a major task facing the city's new mayor would be to heal the racial wounds left by the shooting of Benita Carter last June.

Neither conservative whites nor chagrined blacks were satisfied with the city's handling of the shooting. Mayor David Vann, whom Arrington helped elect four years ago by bringing together a coalition of blacks and liberal whites, refused to fire the policeman involved but he did set up a citizens' committee to review the incident.

Arrington also will face many of the same problems mayors do in declining northern cities: deteriorated housing, a downtown that has largely been passed over by the so-called Sun Belt prosperity of the 1970s.

Arrington has worked on economic development and finance issues on the city council, and generally receives high marks.

But whatever the problems Birmingham faces in the 1980s, there is not the widespread, racially motivated violence of the 1960s. This is largely because of almost two decades of efforts by business and community leaders to help bring blacks into the mainstream of city life—a change stunningly illustrated by Arrington's election.

First came a change in the city charter, then blacks on the city council, and then the 1975 mayoral race. A coalition of blacks and liberal whites was formed, largely through Arrington's work, and became a dominant force in city politics. It elected Vann, who named a black city attorney, and many saw the coalition as a base for politicians in years to come.

At the same time, the University of Alabama at Birmingham, with its medical schools and research institutes, boomed. The school is, by all accounts, the growth industry that has come to overshadow steel. In 18 years, it has gone from 2,500 to 8,500 employes, and its budget from $10 million to $220 million.

With blacks making up roughly 20 percent of its student body, it has brought them into the classroom with little or no racial problems.

Now that will be Arrington's task in the city at large. "I am a bridge between the races," he says, citing his work on numerous biracial committees. But it will be difficult to please blacks on police conduct while maintaining police support.

Frank Parson, who edged out Vann in an initial mayoral race on Oct. 9 to win a spot in the nonpartisan runoff, said last night, while not yet conceding defeat: "Now we have to unify the city and move forward."

[From the New York Times, Nov. 1, 1979]

BIRMINGHAM VICTOR ELATED AND DETERMINED

(By Howell Raines)

BIRMINGHAM, ALA., October 31.—Since last night, Richard Arrington has spoken twice with President Carter, and Senator Edward M. Kennedy has called four times trying to get through. The Senator's nephew, Robert F. Kennedy Jr., dropped by for a chat yesterday, and Gov. Fob James of Alabama called up this morning to say there's no feeling quite like winning an election.

Mr. Arrington, who took the Governor's call as network camera crews and out-of-town reporters crowded around, agreed happily. For he had just stepped into the heady whirl of national politics—and for that matter, into history—as the first black Mayor of a place that only 16 years ago was regarded by civil rights leaders as the most segregated big city in America.

FINDS PROGRESS IN VOTE

But beyond the congratulatory calls lies a reality of which Mr. Arrington, a 45-year-old educator with a classic up-from-poverty biography, seemed well aware today. He inherits the leadership of a city that has just experienced the most overtly racial political campaign in Alabama since George C. Wallace won the governorship in 1970 by warning that blacks were trying to take over the state with a "bloc vote."

Mr. Arrington hailed his victory in yesterday's runoff election as proof that Birmingham had made "significant progress," but he conceded that the voting was sharply divided along racial lines. That polarization and the tone of the campaign made it clear that he would lead a city with more complex, but by no means more easily solved, racial problems than it faced in the 1960's.

"I'm going to work very hard as Mayor of this city to decrease racial tension," he said. "I think I know something, a little bit, about how to do that. You have to recognize that we're going through a very conservative trend in this country, and that automatically produces some tension."

Such tension, he admitted, led him to cancel a plan to quit politics altogether after two terms on the City Council. Instead, he decided to run for Mayor against a field that originally included a liberal, white incumbent who was his friend and political ally. This happened after a white policeman killed an unarmed black woman last summer by shooting her three times in the back. As a result, he said, "People were coming to me saying, 'We have invested in you. You are the black political leader in this town and we want you to pay off on the investment.'"

CAUTIOUS CAMPAIGN

Mr. Arrington did that by waging a cautious campaign designed not to draw the attention of conservative whites. In the runoff he defeated Frank Parsons, 38, a white lawyer and travel agency owner who warned that election of a black Mayor would lead to increased crime. The vote was 44,798, or 51.1 percent, to 42,814, or 48.9 percent. According to an analysis by The Birmingham Post-Herald, 90 percent of the whites voted for Mr. Parsons and virtually all the blacks voted for Mr. Arrington.

The flight of whites from the city and a controversy-plagued Police Department that is 90 percent white in a half-black city are two of the problems facing Mr. Arrington. He said that only a dozen of the 700 police officers were responsible for the complaints of police brutality that arise regularly from black neighborhoods.

As for white flight, he said he planned housing subsidies for middle-income families.

Richard Ernest Arrington Jr. was born on Oct. 19, 1934, in Sumter County, Ala., of sharecropping parents who later moved here to find work in the steel mills. As a dean at predominantly black Miles College, he played a behind-the-scenes role in the widespread 1963 civil rights protests in this city, writing speeches and public statements for black community leaders. He later earned a doctorate in invertebrate zoology at the University of Oklahoma.

THE TRADE AGREEMENT BETWEEN THE UNITED STATES AND THE PEOPLE'S REPUBLIC OF CHINA

Mr. CRANSTON. Mr. President, earlier this week, the President sent to Congress for approval a detailed trade agreement between the United States and the PRC. The submission of this treaty represents a very important step in the ongoing process of normalizing our political and economic relations with the PRC. Once ratified by Congress, this agreement will provide a sound framework for the rapid expansion of our trade with China.

The benefits of this trade promise to be very significant. If the aims of the proposed agreement are fully realized, we may see the volume of trade between the United States and the PRC grow to nearly $21 billion over the next 5 years, as compared with a total of less than $1.2 billion last year. This potential expansion of trade also promises to aid the serious U.S. balance of trade problem by providing, according to Department of Commerce estimates, a $9 billion surplus in the U.S. balance of trade with the PRC during the first half of the next decade.

The administration has submitted the trade agreement to Congress together with a Presidential waiver of restrictions in section 402 of the 1974 Trade Act which would prohibit extension of credits and investment guarantees to the PRC. The terms of this Presidential waiver are fully consistent with the provisions of the so-called Jackson-Vanik amendment, which places curbs on trade with Communist countries denying emigration rights to their citizens.

I support the President's determination that the PRC should now be made eligible for trade credits and investment guarantees. I am confident that the Congress will review the terms of the trade agreement in a timely fashion and will support its adoption.

I think it appropriate that the administration has decided to proceed with extension of most-favored-nation status to the PRC at this time even though a similar step cannot now be taken with respect to the Soviet Union. But I am concerned about the importance of maintaining equity in U.S. policy toward the U.S.S.R. and the PRC. I had hoped—very much—that most-favored-nation states could be worked out for both countries at the same time.

The United States cannot delay indefinitely a recognition of the progress the Soviet Government has been making in liberalizing its emigration policies. At some point, continued U.S. delay in addressing the question of MFN for the Soviet Union is going to be counterproductive to the very purposes the Congress has sought to achieve in linking trade benefits with emigration policy. As one who is deeply committed to the cause of those in the Soviet Union who seek a new homeland and as one who has worked continuously to aid the victims of restrictions in Soviet emigration practices, I believe we must acknowledge the progress made by the Soviet Union in easing emigration restrictions.

I recognize that the current debate over SALT and the future course of American defense efforts does not afford an opportunity for immediate consideration of MFN for the Soviet Union. And I concur with the decision to proceed with the extension of trade benefits to the PRC so as to continue improving our relations with that nation. But I remain convinced of the necessity for early consideration of similar treatment for the U.S.S.R., once the debate over SALT II has concluded. And I hope Soviet actions now and for the future will warrant the granting of such mutual trade benefits.

Mr. President, it is important to state clearly just what we are doing and what we are not doing when we consider extension of most-favored-nation treatment to a Communist country.

First of all, we are not, by any stretch of the imagination, "rewarding" a country for its domestic policies. Nor are we approving of its system of government. We are simply facilitating a growth of trade and economic intercourse in pursuit of our own political and economic interests. This is why the United States has extended such treatment to virtually every country in the world, except for the most backward of totalitarian dictatorships, such as Albania and North Korea.

Second, in extending MFN, we are not offering benefits which are at all unusual. The term "most-favored-nation" is very misleading. "Nondiscriminatory trade treatment" is more exact. MFN treatment simply makes a nation eligible for those basic tariff reductions which we routinely make available to all our trading partners. Again, the expansion of trade facilitated by such action is to the direct benefit of American workers and American consumers.

Finally, and most importantly, extension of certain trade benefits to countries like the PRC and the U.S.S.R. would not mean that the U.S. Government has in any way reduced its commitment to help those seeking to escape political repression in such nations. Indeed, in the case of the Soviet Union where we have monitored the struggle of Soviet Jewry so closely, it is in the hope of improving the plight of such victims that we consider taking this step. The United States promises to have greater leverage to encourage continued improvement of emigration policies once MFN and trade credits have been granted than we would have in their continued absence. Armed with the existing authority of annual review, and if necessary, of withholding extension of the President's authority to waive trade restrictions, Congress would remain in a position to make known its concerns regarding emigration practices in Communist countries.

On the other hand, were Congress to fail to consider extension of trade credits to the Soviet Union and thus, to ignore the gradual improvement which we have seen in Soviet emigration policy, the first to suffer might well be those whom we seek to help—the Jews and other minorities and dissidents who wish to leave the U.S.S.R.

Mr. President, I welcome the new trade agreement with the PRC. I will be working to gain congressional approval for this agreement and to insure that adequate trade credits and investment guarantees are available to realize its aims. I will also continue to monitor the emigration situation in the Soviet Union very closely in the hope that the Soviet Union may be eligible for similar consideration in the near future.

SALT II: THE NONPROLIFERATION FACTOR

Mr. CRANSTON. Mr. President, yesterday, the distinguished majority leader, Senator BYRD, and the distinguished Senator from New York, Mr. MOYNIHAN, engaged in a brief colloquy on the problem of proliferation of nuclear weapons. I commend each of these eminent Senators for the timeliness and perception of their remarks. I would like to offer my concurrence to their views and to add some observations of my own concerning the ramifications of a failure by this body to ratify the SALT II treaty upon the effort to prevent nuclear proliferation.

By undermining the foundation of all nonproliferation efforts, rejection of SALT II would harm U.S. national security interests in ways which extend far beyond the immediate scope of bilateral relations between the United States and the Soviet Union.

The SALT process and the develop-

ment of a nonproliferation regime have been linked from the outset. Signature of the Nuclear Nonproliferation Treaty (NPT) by the United States and the Soviet Union on July 1, 1968, was a precondition for progress on SALT. Indeed, the NPT signing ceremony was marked by the announcement of the beginning of the SALT discussions.

With promotion of the NPT, the superpowers accepted a balance of mutual responsibilities and obligations. Nonnuclear-weapons-states consented to maintain their supposedly inferior status under the NPT only when provided with the superpowers' pledge to seek reduction of their own nuclear stockpiles. This was spelled out explicitly in the articles of the NPT and provided the basis for development of a nonproliferation regime which involved both technical and political barriers to the further spread of nuclear weapons capability. Nonnuclear-weapons-states will continue to accept such a status only if the United States and the Soviet Union continue to make progress on SALT.

Since ratification of the NPT and initiation of the SALT process by the superpowers in 1968, there has been significant progress. The momentum of the nuclear arms competition between the United States and the U.S.S.R. has been slowed. Cooperation between the two nations in adopting certain confidence building measures has increased. And while 109 nations have formally assented to the compromise represented by the NPT, so far only one nation—India—has been willing to incur the heavy political costs of circumventing the nonproliferation regime.

The immediate U.S. response in the instance of the Indian explosion lacked vigor. But subsequently the United States has succeeded in employing the political leverage provided by the NPT–SALT bargain to turn several nations away from the development of a nuclear weapons capability.

The administration has duly noted the relationship between SALT and nonproliferation efforts. On his return from the Vienna summit last June, President Carter stated that failure by the Senate to ratify SALT II would lead to "vastly increased dangers of nuclear proliferation among other nations of the world who do not presently have nuclear weapons."

Former SALT negotiator Ambassador Gerard Smith has declared that—

> The threat to American security from horizontal proliferation is substantially greater than that represented by the continuing improvements in Soviet forces.

And General Seignious, head of ACDA, recently stated before the Armed Services Committee:

> Ratification of SALT II would reinforce our efforts to maintain and enhance adherence to the Non-Proliferation Treaty and thus help prevent the spread of nuclear weapons. In these efforts we are joined by 109 other nations, including the Soviet Union. *Apart from the collapse of the SALT process itself, the most important casualty of SALT failure could be our vitally important effort to prevent the spread of nuclear weapons.*
>
> As a former strategist for the Joint Chiefs of Staff, I can tell you that *nuclear weapons proliferation would create a security nightmare of grave dimensions.* Terrorism and local conflicts could escalate to threaten the security of every American. Those nations that have forsworn nuclear weapons for themselves by adhering to the Non-Proliferation Treaty are closely watching the two superpowers to see whether we are indeed credible in our own commitment to reduce the level of nuclear weaponry. (Emphasis added) (Armed Services Committee, July 30, 1979)

If unchecked, proliferation could lead to the attainment of nuclear weapons capability by some 20 nations by 1990. In such a multiproliferated world, the nuclear firebreak would be too fragile to prevent the use of nuclear weapons in war. The task of crisis management and conflict containment would become virtually impossible.

The Carter administration has joined with Congress to take a number of steps to combat the proliferation dangers. Under the able, bipartisan leadership of the Senator from Ohio (Mr. GLENN), and the Senator from Illinois (Mr. PERCY), the Senate last year adopted comprehensive nuclear nonproliferation legislation by the overwhelming margin of 88 to 3. The 1979 Nonproliferation Act provided material incentives and technical constraints against the spread of nuclear weapons capability. But perhaps most importantly, it made very clear that the United States remains committed to using all of the political leverage available to combat proliferation.

The United States has sought consensus among fellow nuclear supplier nations to strengthen the NPT regime. Not only our key allies, but the Soviet Union as well, have joined in the adoption of new nuclear guidelines which place greater controls over dissemination of materials which may prove suitable for nuclear weapons production.

Another key U.S. nonproliferation initiative has been the convening of the international nuclear fuel cycle evaluation (INFCE), a 52-nation conference which is pursuing the development of more effective safeguards against the spread of nuclear weapons.

The PT regime must be strengthened, not abandoned. Technical barriers to proliferation have been reduced, and will remain low for some time. But this fact should not be used as an excuse for undermining nonproliferation efforts. With the recent reduction in technical constraints upon nuclear weapons spread, it is more important than ever that the United States maintain its political and moral legitimacy in the nonproliferation field. Continued progress on SALT—no matter how imperfect or incremental—is the key element in this effort.

The principal House sponsor of the Nonproliferation Act, JONATHAN BINGHAM, recently stated before the Senate Foreign Relations Committee that—

> The next two years will be a time of particular danger for our policy of inhibiting the spread of nuclear weapons.

This fact becomes apparent when one considers the imminent dangers of a regional nuclear arms race in Southern Asia and South America, or when one notes that the NPT itself is subject to review by all parties next summer. Other key U.S. objectives which require progress on SALT for success include satisfactory conclusion of INFCE, full implementation of the Nonproliferation Act and the accords among nuclear supplier nations, as well as progress toward a comprehensive test ban treaty.

Rejection by the Senate of SALT II simply because it does not go as far as most have hoped toward reducing nuclear arms stockpiles would be an immensely counterproductive gesture with ill effects sure to be felt far beyond the scope of United States-Soviet relations. Even if one considers only the essential goal of our nuclear nonproliferation policy, the abandonment of SALT II by the Senate would clearly lead as General Seignious recently noted, "not to more security" for the United States, but rather to "greater insecurity for all."

THE NEED TO IMPROVE NUCLEAR ENERGY REGULATION

Mr. CRANSTON. Mr. President, 6 months ago, acting in response to the accident at the Three Mile Island nuclear powerplant, President Carter appointed a distinguished group of citizens under the leadership of John Kemeny, president of Dartmouth College, to investigate the process by which the United States regulates the uses of nuclear energy for peaceful purposes. The report of this independent body was just released.

The Kemeny Commission report analyzes many of the problems in current nuclear regulatory practice and offers some specific and useful suggestions for improvement.

Timid though it may be, the Kemeny report is the strongest criticism to date from an official Government source of an industry and a technology which has serious problems.

I welcome this critique because I believe these problems, and other extremely serious problems, such as waste disposal, must be addressed before we proceed any further with nuclear development.

I continue to believe we need a complete moratorium on new plant licensing while this examination goes on. The Kemeny Commission regrettably stopped short of endorsing a licensing halt.

The suggestions it did make for periodic review of existing operating licenses and for remote siting require immediate implementation as a bare minimum. But, by themselves I doubt that they are enough to create public confidence in the nuclear regulatory process.

In the future, much more will have to be done to upgrade the NRC's regulatory capabilities.

Moreover, I believe that at least one of the Kemeny Commission's suggestions might prove counterproductive. That recommendation is that the Nuclear Regulatory Commission (NRC) be abolished as an independent regulatory agency, and be reconstituted within the executive branch under the control of a single administrator.

While the NRC's regulatory practices to date have been neither free of fault nor confidence inspiring, such a move would do little to improve nuclear reg-

ulation or justify increased public confidence that public health and safety will be adequately protected.

Furthermore, it would completely defeat the purposes of recent congressional efforts, beginning with the Energy Reorganization Act of 1974, to provide an independent regulatory authority to examine all nuclear application for domestic construction and exports.

The Kemeny Commission report correctly suggests we need changes in NRC personnel, changes in NRC procedures and in the attitudes of the regulators at the NRC. But it should not be used as an excuse for a simple shuffling of bureaucratic chairs, which might hurt rather than help the effort to deal with the problems of nuclear fission.

Less than 5 years ago Congress moved to establish the NRC as an independent agency where nuclear regulation could be achieved in an open, unbiased fashion, by majority judgment of the Commissioners.

The Congress acted from the belief that nuclear power is so complex, controversial, and involves so many risks that a diversity of views must be heard in the decisionmaking process.

Congress set up the NRC with an express effort to free the Agency from the political pressures which might compromise the Agency's regulatory mandate.

Any effort to reverse this decision—made with strong congressional support—would subvert the very important effort to improve nuclear safety.

In this regard, I believe it extremely important that the NRC retain an ability to assess independently the conformity of nuclear export license applications with U.S. nuclear proliferation policy.

I believe that any effort to reduce the authority of the NRC to apply legislatively mandated nuclear export standards would be a serious mistake.

I am pleased that the Kemeny commission refused to adopt suggestions to reduce the NRC's authority in this area.

Congress has consistently supported establishment of an independent regulatory authority for nuclear export licensing.

Just last March, the Congress reiterated its concern on this matter by overwhelmingly adopting the comprehensive Nuclear Nonproliferation Act (Public Law 95-242). This legislation, which I cosponsored, strengthened the NRC's authority over export licensing and provided detailed procedures designed to guarantee that U.S. nonproliferation concerns will be reflected in the licensing process.

Recently there have been signs that the administration's commitment to fulfilling the objectives of the Nonproliferation Act has waned. For example, a new study conducted for the National Security Council and other executive agencies by Henry Rowen and Albert Wohlstetter suggests that—

By July of this year, at least, a State Department version of the (nonproliferation) policy was in full retreat. Our spokesmen were almost apologizing for having asserted our national views.

The Wohlstetter-Rowen report was particularly critical of the role of the Department of State and the Department of Energy in undermining the export standards which the NRC applies.

In the face of such in-house criticism of the performance of certain executive branch agencies in implementing U.S. nuclear nonproliferation policy, it seems more important than ever that the NRC retain an independent voice in nuclear export licensing.

Thus, I will oppose any attempt to undermine the NRC's role as an independent licensing body.

Mr. President, the Kemeny commission makes several constructive criticisms of the NRC. I will support any initiatives growing out of this study which serve the purpose of improving our ability to control and make safer the uses of nuclear energy.

But we must guard against the temptation to reorganize the bureaucracy every time a crisis finds our Government procedures wanting.

The NRC deserves a great deal of criticism for its inept response to the Three Mile Island accident and for the inadequate procedures it used to review the plant's license application. Those mistakes must not be repeated.

The goal of such criticism, however, should be to improve the Agency, not to destroy it.

I remain convinced that we require an independent, regulatory body, where all public concerns can be fully aired and will be fully considered, to make the very hard decisions ahead regarding licensing for nuclear activities at home and abroad.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Office laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

PRESIDENTIAL APPROVAL

A message from the President of the United States reported that on November 2, 1979, he had approved and signed the following act:

S. 975. An act to authorize appropriations for fiscal year 1980 for intelligence and intelligence-related activities of the U.S. Government for the Intelligence Community staff, and for the Central Intelligence Agency retirement and disability system, to authorize supplemental appropriations for fiscal year 1979 for the intelligence and intelligence-related activities of the U.S. Government, and for other purposes.

MESSAGES FROM THE HOUSE

At 12:34 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the amendment of the Senate to H.R. 2515, an act to authorize on a temporary basis certain business and agricultural loans, notwithstanding interest limitations in State constitutions or statutes, and for other purposes.

The message also announced that the House agrees on the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to S. 640, an act to authorize appropriations for the fiscal year 1980 for certain maritime programs of the Department of Commerce, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to the amendments of the House to S. 838, an act to amend the Anadromous Fish Conservation Act in order to extend the authorization for appropriations to carry out the purposes of the act, and to initiate an emergency investigation on the striped bass in Atlantic coastal waters.

The message also announced that the House insists upon its amendments to S. 1905, an act to provide for the orderly restructuring of the Milwaukee Railroad, and for other purposes, disagreed to by the Senate; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. STAGGERS, Mr. FLORIO, Ms. MIKULSKI, Mr. BROYHILL, and Mr. MADIGAN were appointed as managers of the conference on the part of the House.

At 2:14 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1905) to provide for the orderly restructuring of the Milwaukee Railroad, and for other purposes.

The message also announced that the House disagrees to the amendments of the Senate to H.R. 4440, an act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1980, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. DUNCAN of Oregon, Mr. STEED, Mr. BENJAMIN, Mr. LEHMAN, Mr. SABO, Mr. STEWART, Mr. BOLAND, Mr. WHITTEN, Mr. CONTE, Mr. EDWARDS of Alabama, Mr. MILLER of Ohio, and Mr. COUGHLIN were appointed as managers of the conference on the part of the House.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DOLE (for himself, Mr. HATCH, Mr. HEINZ, Mr. LAXALT, Mr. SIMPSON, Mr. STEVENS, and Mr. THURMOND):

S. 1969. A bill to amend the Administrative Procedure Act to require Federal agencies to analyze the benefits, costs, and other adverse effects of proposed rules, to provide for judicial review of any such analysis, to increase public participation in agency policy determinations and interpretations, and for other purposes; to the Committee on the Judiciary.

By Mr. WILLIAMS:

S. 1970. A bill to amend section 302(c) of the Labor-Management Relations Act of 1947; to the Committee on Labor and Human Resources.

S. 1971. A bill to amend the Internal Revenue Code of 1954 to exclude from the gross income of employees contributions by employers to certain insurance plans; to the Committee on Finance.

By Mr. SCHMITT:

S. 1972. A bill to authorize the Secretary of the Interior to reimburse certain purchasers of subleases from the Sangre de Cristo Development Corp.; to the Committee on Energy and Natural Resources.

By Mr. BIDEN (for himself, Mr. JAVITS, Mr. HART, and Mr. PERCY):

S. 1973. A bill to provide for uniformity and fairness in the punishment of Federal offenders, and for other purposes; to the Committee on the Judiciary.

By Mr. DURENBERGER:

S. 1974. A bill to amend the Internal Revenue Code to provide for inflation adjustments; to the Committee on Finance.

By Mr. PELL:

S. 1975. A bill to provide grants for the rehabilitation of the part of the Ten Mile River located in Providence, Pawtucket, and Warwick, R.I.; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DURENBERGER:

S. 1976. A bill to amend the Internal Revenue Code of 1954 to extend the one-time exclusion of gain from the sale of a principal residence to disabled individuals; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE (for himself, Mr. HATCH, Mr. HEINZ, Mr. LAXALT, Mr. SIMPSON, Mr. STEVENS, and Mr. THURMOND):

S. 1969. A bill to amend the Administrative Procedure Act to require Federal agencies to analyze the benefits, costs, and other adverse effects of proposed rules, to provide for judicial review of any such analysis, to increase public participation in agency policy determinations and interpretations, and for other purposes; to the Committee on the Judiciary.

(The remarks of Mr. DOLE when he introduced the bill appear elsewhere in todays proceedings.)

By Mr. WILLIAMS:

S. 1970. A bill to amend section 302(c) of the Labor-Management Relations Act of 1947; to the Committee on Labor and Human Resources.

S. 1971. A bill to amend the Internal Revenue Code of 1954 to exclude from the gross income of employees contributions by employers to certain insurance plans; to the Committee on Finance.

JOINTLY ADMINISTERED GROUP AUTO INSURANCE PLANS

● Mr. WILLIAMS. Mr. President, today I am introducing legislation which would permit employers to offer group automobile insurance coverage to their employees as part of a negotiated fringe benefit package.

As we all know, group insurance rates provide substantial cost savings for participating purchasers. One of the most common methods of establishing a group plan is to have employers make contributions to a life or health insurance plan as part of their negotiated fringe benefit package.

Section 302 of the Taft-Hartley Act (29 U.S.C. 186) was designed to preserve the integrity of the labor-management relationship and the collective bargaining process by prohibiting payments by employers to employee representatives. Over the years, this broad prohibition has been modified through the enactment of a series of exceptions which authorize employer payments to certain employee benefit trust funds, including those providing life, health and accident insurance, so long as certain administrative safeguards are established.

This system has gained wide acceptance, and today most collective bargaining agreements provide for such plans. However, present law does not permit coverage of automobile and casualty insurance on such an employer-supported group basis.

The bills which I have introduced today would eliminate this exclusion by permitting employers and employees to make contributions to trust funds established to provide automobile insurance and casualty coverage for their employees and give workers tax relief for making such contributions.

This proposal would benefit employees in several ways. First, it would result in a drastic reduction in sales, administrative and claim handling expenses—about 15 percent of the total cost—which are presently factored into the cost of individual insurance policies.

Second, it would substantially reduce the cost to individual employees—in some cases as much as several hundred dollars a year. The establishment of a group plan generally guarantees coverage and permits the use of composite rating. This means that each eligible employee will be charged the same premium regardless of his age, driving record, place of residence, or whether or not he drives his car to and from work.

These savings associated with group insurance will be particularly valuable to younger workers, especially single workers under 25 years of age, for whom the cost of individual automobile insurance is very high.

Finally, my proposal amends the Internal Revenue Code to permit the exclusion of employer contributions to a plan from an employee's gross income. This measure is in conformity with the code's treatment of employer contributions to group life, health, accident, and prepaid legal service plans, and would assure broad acceptance of the group automobile insurance concept by employees.

I believe that the changes which my bill makes in amending section 302(c) of the Labor-Management Relations Act and the Internal Revenue Code would result in significant economic advantages for the working men and women of America. I welcome the support of labor and business leaders alike for these important amendments. I ask unanimous consent that the text of both bills be printed in the RECORD.

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

S. 1970

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 302(c) of the Labor-Management Relations Act of 1947, (29 U.S.C. 186(c)) is amended by inserting immediately after clause 8 the following: "or (9) with respect to money or other thing of value paid by an employer to a pooled or individual trust fund established by such representative for the purpose of providing or defraying the costs of motor vehicle, homeowners multiple peril, fire, or other insurance benefits for employees, their families and dependents: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds.".

SEC. 2. The amendment made by section 1 shall become effective on the date of enactment of this Act.

S. 1971

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items specifically excluded from gross income) is amended by redesignating section 124 as section 125 and by inserting after section 123 the following new section:

"SEC. 124. EMPLOYER CONTRIBUTIONS TO PLANS PROVIDING PROPERTY AND LIABILITY INSURANCE COVERAGE FOR EMPLOYEES.

"Gross income of an employee does not include amounts contributed by an employer to or under any insurance plan which provides property and liability insurance coverage for his employees.".

(b) The table of sections for such part III is amended by striking out the item relating to section 124 and inserting in lieu thereof the following new items:

"Sec. 124. Employer contributions to plans providing property and liability insurance coverage for employees.

"Sec. 125. Cross references to other Acts.".

SEC. 2. The amendments made by the first section of this Act shall apply to taxable years ending after the date of the enactment of this Act.●

By Mr. SCHMITT:

S. 1972. A bill to authorize the Secretary of the Interior to reimburse certain purchasers of subleases from the Sangre de Cristo Development Corp.; to the Committee on Energy and Natural Resources.

● Mr. SCHMITT. Mr. President, today I am introducing a bill to authorize the

Secretary of the Interior to reimburse certain purchasers of subleases from the Sangre de Cristo Development Corp. in Tesuque Pueblo, N. Mex.

In April of 1970, the Governor of Tesuque Pueblo executed a lease with the Sangre de Cristo Development Corp. for the development of a residential subdivision on a 1,400-acre tract of Pueblo land. The master lease was for a 99-year term and proposed the subdivision of the tract into residential parcels for the sale of subleases. In May of 1970 the Bureau of Indian Affairs approved the lease.

Subsequently, a court suit was entered by those opposed to the development (*Davis* v. *Morton*, 335 F. Supp. 1258) charging that the Department of the Interior was required by the National Environmental Policy Act to prepare an environmental impact statement before approval of the lease. The Court of Appeals for the Tenth Circuit upheld the compliance with the National Environmental Policy Act.

The Department completed the required environmental impact statement in July of 1977. The Tesuque Pueblo Council rescinded its consent to the lease after consideration of all potential impacts on the Pueblo by the development, and the Department withdrew its approval of the lease based on information in the EIS in August 1977.

The Solicitor's Office of the Department of the Interior has advised that the United States is not liable in money damages to any of the parties. However, they also advise that it is unclear whether the disapproval of the master lease may have affected sublease purchasers who, under the law, may be considered bona fide purchasers. Under the law, when rights are vested and are then conveyed to bona fide purchasers for value, in good faith and without notice, any later attempt to cut off the rights of those persons usually fails.

The Department has informed my office that while they are not liable to damages suffered by the sublessees, the sublessees are standing on much firmer equitable grounds than others who suffered losses related to the Tesuque Pueblo lease. Due to this, and in the interest of avoiding future legal problems, the Department recommends legislation to provide reimbursement of the sublessees for their original investment. My staff and representatives of the Department have met and come to an agreement on the language contained in this bill. I am hopeful that this legislation will receive the committee and the Senate's speedy consideration.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 1972

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of the Interior is authorized to reimburse persons who are determined by the Secretary to be bona fide purchasers of subleases from the Sangre de Cristo Development Corporation for subdivision lots on the Pueblo of Tesque Indian Reservation near Santa Fe, New Mexico. The Secretary is authorized to reimburse such persons for the amounts they have expended in the acquisition of a sublease or subleases and upon receipt of such compensation such persons must relinquish all claims or rights, if any, they may have arising from their sublease.

(b) Applications for reimbursement under this Act shall be in such form and contain such information as the Secretary of the Interior, by regulation, shall prescribe. No application for reimbursement shall be considered by the Secretary unless it is submitted on or before the date of expiration of the twenty-four month period following the date of enactment of this Act.

(c) The Secretary shall reimburse those applicants who are determined to be bona fide purchasers of subleases from the Sangre de Cristo Development Corporation, pursuant to its master lease with Tesque Pueblo initially approved May 24, 1970, by the Bureau of Indian Affairs and subsequently disapproved on August 24, 1977. As used in this Act, the term "bona fide purchasers" shall mean anyone who purchased a sublease in an arm's length transaction, for value and without notice.

(d) Within the 180-day period following the date of the enactment of this Act, the Secretary of the Interior shall take such action as may be necessary to inform purchasers of such subleases from the Sangre de Cristo Development Corporation of the fact that the Secretary of the Interior has authority to reimburse any such person determined by the Secretary to be a bona fide purchaser of such sublease for the amounts expended by such purchaser in the acquisition of such sublease. The Secretary shall further inform such purchasers that any application for reimbursement must be submitted on or before the date of expiration of the twenty-four month period following the date of the enactment of this Act.

SEC. 2. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.●

By Mr. BIDEN (for himself, Mr. JAVITS, Mr. HART, and Mr. PERCY):

S. 1973. A bill to provide for uniformitv and fairness in the punishment of Federal offenders, and for other purposes; to the Committee on the Judiciary.

SENTENCING REFORM ACT OF 1979

Mr. BIDEN. Mr. President, Senators JAVITS, HART, and PERCY join me in introducing today the Sentencing Reform Act of 1979.

This legislation represents the latest effort by Congress to address the age-old dilemma of the appropriate punishment for crime. Those of us who join together in this bill adhere to a very simple philosophy of crime control: Punishment for crime must be swift and sure.

Already in this Congress we have taken a major step toward that goal by enacting the Speedy Trial Act Amendments of 1979. As chairman of the Subcommittee on Criminal Justice, I am pleased that the full Senate supports the goal of 100-day trials within the Federal system.

Now we must move on to the much more difficult and elusive goal of assuring that swift punishment is sure and certain. As any of us who have practiced in the criminal justice system know, uncertainty, unfairness, and irrationality characterize our system just as much as the chronic problem of delay.

At the heart of the problem is a deceit which has become institutionalized in the criminal justice system. Although most of the public believes that judges sentence criminals, the real authority to determine how long someone will stay in prison is the parole board's. There are two other actors in the criminal justice system who exercise great power—usually out of the public view—the prosecutor, either by the charge he chooses or the bargain he accepts; and prison officials who control work-release and furlough programs, have a much greater impact on who stays in jail, and how long, than most judges and possibly even the parole board.

There is a remarkable amount of unanimity among the sentencing reformers in the Congress. All of us want to achieve the same basic goal. We want to eliminate the kind of uncertainty and hypocrisy I have described and move toward what is known as a "just deserts" theory of sentencing—if an individual commits a particular kind of crime he will receive a very predictable punishment. We do differ on how to achieve that goal.

Therefore, there has been considerable variety among proposals for reform. In the last Congress, many years of research, analysis and debate culminated in Senate passage of S. 1437, the Criminal Code Reform Act of 1978. Many of us who voted for that legislation believed that its most significant reforms were the changes it made in sentencing procedures. For that reason, the chairman of the Judiciary Committee, Senator KENNEDY, the primary architect of that achievement, deserves primary credit for the recent advances in the sentencing reform debate in Congress.

The House Judiciary Committee also addressed the issue of sentencing reform in context of criminal code reform in the last Congress. During extensive hearings in the House, witnesses questioned some of the sentencing-reform provisions of the Senate-passed bill and recommended a number of changes. The House Criminal Justice Subcommittee introduced legislation, H.R. 13959, which responded to many of the criticisms of the sentencing provisions of S. 1437.

In this Congress, the distinguished chairman of the Senate Judiciary Committee has once again introduced comprehensive criminal code reform legislation, S. 1722 and S. 1723. S. 1722 contains most of the sentencing-reform provisions of S. 1437. The other bill, S. 1723, contains the sentencing-reform provisions proposed in this Congress by the House Subcommittee on Criminal Justice, chaired by Congressman ROBERT DRINAN.

The bill I am introducing today embodies many features of previous reform proposals. In addition, the Sentencing Reform Act of 1979 includes a number of provisions not in previous proposals

which I believe are essential to fair and certain treatment of all offenders.

The Sentencing Reform Act of 1979 and the legislation introduced by Senator KENNEDY have many similar features. For example, each would impose parameters on judicial discretion by identifying Congress' purpose or philosophy of sentencing and by establishing a mechanism for promulgating sentencing guidelines and policies via a sentencing commission. They both authorize review of unjust sentences through parole, appeal or both. And each proposes a means of improving current irrational maximum sentences.

There are subtle but extremely important differences between the proposals. At the heart of the difference between these bills, is a basic presumption about the criminal justice system that the authors of the Sentencing Reform Act of 1979 hold—if there is a way for the system to sabotage a reform it will find a way to do so.

Speedy trial is an excellent case in point. Five years ago we established 100-day trials as a goal for the system to be phased in finally this past July. Much to our surprise, we learned at the very last minute that the courts and the Department of Justice had not made a serious effort to comply with the act and faced the prospect of thousands of dismissals. Much as might be expected, there was a strong tendency in the system to sabotage the goal by, in effect, redefining speedy trial through the exceptions to the requirement. Fortunately, Congress rejected that request and simply delayed our original goal for 1 year.

Those of us who join in this sentencing bill are determined not to be sabotaged in our efforts to achieve a "just-deserts" sentencing scheme in the Federal system. My approach to speedy trial was one of pragmatic purism. We take that same approach to sentencing reform in this bill. I would rather see an effective "just-deserts" scheme established eventually rather than see an ineffective system established immediately—just as I was willing to wait 1 year for 100-day trials rather than have 180-day trials immediately and permanently.

A case in point is the fundamental difference between this proposal and S. 1722 on the sensitive question of whether to abolish the Parole Commission immediately or to phase out the Commission and phase-in flat time sentencing. Both bills preserve the Parole Commission for sentences imposed before the enactment of this act as a matter of constitutionally imposed necessity. However, the proponents of S. 1722 would abolish the Parole Commission immediately while we would sunset the Commission in 3 years.

We join the overwhelming majority of sentencing reform experts who believe that if we abolish parole immediately we will just be fooling ourselves and the American people. If a "just-deserts" sentencing system is imposed too quickly without the possibility of parole, the system will find some way to sabotage the goal. Indeed, what will probably happen is that although judges and parole commissioners will be legislatively deprived of discretion—discretion will simply go underground. Prosecutors will "save" the system through plea bargains and undercharging, and prison officials will relieve increasing prison populations through furlough programs.

Those of us who join in this bill want the new sentencing policy to directly address the question of prosecutorial discretion and prison population. As imperfect as the Parole Commission is, we would prefer to preserve it and phase in a new comprehensive "just-deserts" policy rather than create the illusion of such a policy while discretion gives quietly on as usual.

In the same vein, our bill has advantages over other proposals because:

First, it has what we believe is a "purer" statement of the "just-deserts" philosophy;

Second, it goes beyond other proposals and addresses other factors which undermine the credibility of the sentencing system—the capitol punishment impasse, the setting free of violent and habitual offenders, and the fiction of artificially high maximum sentences;

Third, the Sentencing Commission it establishes is more likely to succeed because it is more representative of the criminal justice system which will implement the sentencing guidelines; and

Fourth, it develops a systematic appellate review of sentencing more likely to pass constitutional muster.

PHILOSOPHY OF SENTENCING

The bill's philosophy of sentencing is perhaps its most notable feature because it establishes a framework for addressing all sentencing concerns.

Under current law, a judge has nearly total discretion in sentencing. In fact, judges may impose a sentence for any reason they choose, or for no reason at all. It is not surprising, then, that judges who are given no direction as to the purposes of sentencing impose widely varying sentences for similar offenders who commit similar crimes. Disparity is inherent in a system which allows a judge who sentences for deterrence or rehabilitation to impose a term of probation, and another judge presented with identical facts to impose a lengthy prison term to achieve purposes such as "incapacitation."

A study conducted in the second circuit illustrates the widely varying sentences that too often occur. The judges were all given exactly the same 30 presentence reports and asked to impose sentences. The range of sentences was remarkable. In one case, the judges sentenced the same defendant to as little as 3 years in prison and as much as 20 years in prison plus a $65,000 fine (the second circuit sentencing study, August 1974). The study clearly indicates the need for a common approach to sentencing.

S. 1722 and S. 1723 take a first step toward establishing a congressional statement of purpose or philosophy of sentencing. They authorize a judge to sentence for deterrence, incapacitation, punishment and rehabilitation.

Unfortunately, such broad categories will not narrow the focus of the judges' consideration enough to substantially reduce sentence disparity. Because judges will be able to choose which purpose applies in a particular case, similar offenses will result in widely different sentences just as they do now.

S. 1722 also identifies factors for the Sentencing Commission to consider in implementing the purposes of sentencing. The factors include the defendant's education, vocational skills, previous employment record and community ties. Although some personal characteristics of the defendant may be relevant for determining appropriate probation conditions, I strongly disagree that a defendant's education, community ties, employment record, and the like, should determine whether he or she goes to prison. Those characteristics classify offenders by social status and background—exactly the sort of distinction sentencing reform is intended to prevent.

The Sentencing Reform Act of 1979 implements a single purpose of sentencing—the so-called "just desserts" theory. "Just desserts" means that a sentence is based upon the gravity of the offense, not the personal characteristics of the offender. This single purpose will result in greater fairness than the multiple philosophy approach because, first, a single clear purpose will necessarily produce greater uniformity in application and, second, defendants will be treated more equitably when personal characteristics relating to social status and background are not relevant sentencing considerations.

PUBLIC DISTRUST IN THE SENTENCING SYSTEM

As I have discussed the sensitive issues of sentencing with my constituents and other members of the public, I have discovered other sources of distrust of the sentencing system beyond the question of disparity among sentences:

First. Most members of the public are concerned about the impasse over capital punishment in the Congress and the thought that because the death penalty cannot be constitutionally imposed, capital offenders may be roaming the streets;

Second. They believe that discretionary sentencing means that violent offenders or habitual criminals can be set free under some form of rehabilitation theory; and

Third. They believe that the sentencing system, as reflected in the statute books, is meaningless, because it sets out maximum sentence lengths that have absolutely nothing to do with actual sentences.

Comprehensive sentencing reform must address the issue of capital punishment. Some 13 offenses in current title 18, United States Code, authorize imposition of the death penalty. However, because there are no constitutional procedures for imposing the death penalty for those offenses the sentencing judge is limited to imposing alternative authorized sentences, which generally means either life imprisonment or imprisonment for a specific number of years. Whatever sentence is imposed, the longest an offender will serve in prison prior to consideration for release on parole is 10 years (18 U.S.C. section 4205). To prevent early release of offenders who com-

mit capital offenses, the Sentencing Reform Act of 1979 proposes a new sentencing alternative—life in prison without the possibility of parole. This sentence of life in prison for a serious offense will mean no less than life in prison.

This sentence should be acceptable to proponents of the death penalty. Mary C. Lawton, Deputy Assistant Attorney General in the Office of Legal Counsel, noted in her testimony before the Senate Judiciary Committee last year that proponents of the death penalty have identified the following justifications: Incapacitation of the defendant, the deterrent effect of the death penalty on others who may be disposed to the crime, and retribution or the expression of moral outrage of the community. Assuming that those justifications are valid, a sentence of life in prison without the possibility of parole would achieve each of them. In addition, it is a clearly constitutional solution to the capital punishment dilemma.

The Sentencing Reform Act of 1979 also states Congress view that two specific circumstances make an offense so serious that a prison term must always be imposed. The first is when serious bodily injury results from the defendant's participation in the offense. Victims as well as the general public are entitled to a guarantee that anyone who causes physical injury will serve time in prison. The second type of offense is one committed by a defendant who was previously convicted of a felony. Regardless of crime committed or penalty imposed for the first felony, a second felony is inherently more serious.

The bill mandates imposition of a prison term for such offenses and gives the Sentencing Commission and the sentencing judge the authority to determine the appropriate length of the term according to the specific circumstance of the offense. Thus, there is sufficient flexibility for the judge or the Sentencing Commission to determine that specific aggravating or mitigating circumstances warrant a very short or a very long prison term.

Mandatory prison terms will result in increased respect for the criminal justice system among law-abiding citizens, especially victims, who believe the present system is too soft on criminals. The certainty of a prison term may also serve as a deterrent for offenders who contemplate a second felony or an offense which may result in bodily injury, particularly offenders who now assume that they will receive a sentence more lenient than prison.

Current statutory maximum sentences are neither meaningful nor rational. Nearly all maximum prison terms are unrealistically high in light of sentences imposed and time actually served.

Unfortunately, a simple solution such as reducing all sentences by a uniform percentage is an overly-simplistic approach which will make sentences shorter but not more rational. We took this approach in the last Congress during markup of S. 1437 because it was the only practical way to amend that bill to reduce sentence length. There are better ways to achieve that goal.

Many current maximum sentences are inconsistent with the view that a sentence should be determined by the gravity of the offense. To implement that philosophy, each offense must be carefully reviewed to determine the appropriate sentence for the degree of harm or seriousness of the offense.

The Sentencing Reform Act of 1979 assigns the U.S. Sentencing Commission the responsibility for reviewing all current sentences and submitting to Congress a proposal for reducing all maximum terms consistent with the gravity of the offense. The Sentencing Commission will be the central clearinghouse for research and analysis of sentencing, as well as for issuing sentencing guidelines and policy statements. It is, therefore, a logical extension of its duties to require the Commission to recommend appropriate statutory maximum sentences.

COMPOSITION OF THE U.S. SENTENCING COMMISSION

The Sentencing Reform Act of 1979 parallels the other sentencing reform proposals by establishing a U.S. Sentencing Commission to promulgate sentencing guidelines and policy statements. It makes an important improvement in the other proposals, however, by requiring that the Commission members represent a variety of backgrounds and experience in the criminal justice system. Thus, it will produce guidelines and policy statements which are fair and effective from more than one point of view, more acceptable to all components of the system and therefore, more likely to succeed. Under the bill the Sentencing Commission will have nine members. The Attorney General or his designate and the chairman of the U.S. Parole Commission will serve as ex officio members. One member must be a Federal judge and one must be a Federal public defender. The remaining five members must represent a variety of backgrounds and have demonstrated participation and interest in the criminal justice process.

In comparison, other sentencing commission proposals do not guarantee such diversity of viewpoints. S. 1722 requires only that the Commission members include four Federal judges and three members "representing a variety of backgrounds and reflecting participation and interest in the criminal justice process." (Proposed 28 U.S.C. section 991(a)). S. 1723 similarly requires that the members of the Committee on Sentencing include four judges and three nonjudges who reflect a variety of backgrounds and participation and interest in the Federal criminal justice system.

APPEAL OF SENTENCE

All three of the sentencing reform proposals authorize defendants to appeal sentences. Thus, there is no question that defendant right to appeal is an essential element of sentencing reform. The bills differ, however, in restrictions on the type of sentence that the defendant can appeal.

S. 1722 authorizes the defendant to appeal sentences for felonies or class A misdemeanors which are above the range established for the offense in the sentencing guidelines. The defendant cannot appeal directly to the circuit court if his sentence is within or below the guidelines. As a result, defendants whose sentences are unjust because the guidelines were improperly applied or because mitigating circumstances require imposition of a sentence of less severity than a sentence already below the guidelines do not have the same right to appeal as defendants whose sentences exceed the guidelines. Defendants are also denied the right to seek review in the court of appeals if they are sentenced under the new penalties of order of restitution, order of criminal forfeiture, and order of notice to victims. These penalties can be unfairly imposed and result in great injustice. All defendants who receive unjust sentences should have the same right to review by the court of appeals.

Consequently, the Sentencing Reform Act of 1979 authorizes defendants to appeal any sentence. The only exception to the right is when the sentence is within the guidelines for a sentence which resulted from a plea agreement. This approach guarantees that every defendant who receives an unjust sentence will have the same opportunity for review by the court of appeals.

Our bill does not authorize Government appeal of sentence. There are strong, and I believe convincing, arguments against Government appeal. First, it is contrary to the constitutional prohibition against double jeopardy. The U.S. Court of Appeals for the Second Circuit recently addressed this issue when the Government for the first time appealed a sentence under the authority of the dangerous special offender statute (18 U.S.C. 3576). The court rejected the argument of the attorney for the Government that the defendant was not placed twice in jeopardy because the district court sentence is merely "tentative." The court concluded that:

> The plain command of the Fifth Amendment is that no "person (shall) be subject for the same offense to be twice put in jeopardy of life or limb." Although the phrase "life or limb" suggests only the most serious of penalties, it has long been established that it encompasses all penalties which may be imposed in criminal proceedings. (U.S. v. DiFrancesco — Fed. 2d — (8/6/79) at 4098) that § 3576 subjects a defendant "merely" to a longer term of imprisonment, not to the actual loss of his life, is a difference of degree not of principle for, the double jeopardy clause applies equally to all criminal penalties" (id. at 4100).

Government appeal of sentence is clearly contrary to interests protected by the constitutional prohibitions against double jeopardy. Those interests include preserving the integrity of final judgments, protecting the individual against government oppression, and protecting the individual against the embarrassment, expense and ordeal of repeated attempts by the government to use its power and resources (id. 4101).

The last interest, protection from embarrassment and hardship, suggests that government appeal should be rejected for reasons apart from the constitutional prohibitions—that it is wholly contrary to fundamental notions of fair play. Once the Government has brought together all of its investigative and prosecutorial resources to achieve its desired

sentence, it should not be entitled to a second chance.

PAROLE

As I have said, the bill proposes a logical, workable compromise between the view that parole should be abolished immediately and the view that it should be retained.

S. 1722 abolishes parole completely when the new sentencing procedures begin. Proponents of S. 1722 argue that parole must be abolished because "vesting the power to review judicially imposed sentences in a parole board would seriously undermine the operation of the new sentencing guidelines, improperly intrude into the judiciary's realm, and perpetuate the preeminence of the discredited rehabilitative model."

As a strong proponent of abolishing parole, I find the rationale for abolition convincing and virtually irrefutable.

At one time, most criminal justice scholars advocated immediate total abolition. However, subsequent analysis of all of the possible practical effects of sentencing reform have led a substantial number of former advocates of immediate abolition to conclude that the Parole Commission should continue its release functions. A recent letter to the chairman of the House Judiciary Criminal Justice Subcommittee, Congressman DRINAN, summarizes the rationale offered by a number of individuals with extensive and distinguished backgrounds in the criminal justice field who favor retention of parole.

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

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

AUGUST 28, 1979.

Hon. ROBERT F. DRINAN,
Chairman, Subcommittee on Criminal Justice, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We note that the Subcommittee on Criminal Justice, in its current deliberations on the Federal Criminal code reform bill, has yet to resolve the status of parole release. The Subcommittee's most recent working draft dated August 24, 1979 poses two options. One is to eliminate parole release and have the judge's sentence determine actual time in confinement. The other is to retain parole release for the present: that is, to continue to have the U.S. Parole Commission issue guidelines on release of offenders from prison, and apply those guidelines in individual cases. As persons who have studied the sentencing process, we strongly support the second option.

The U.S. Parole Commission has taken the lead in this country in developing guidelines for prison term decisions. Its parole release guidelines prescribe specific ranges of confinement, based mainly on the gravity of the defendant's criminal conduct and the extent of his prior criminal history. Most major guideline systems for sentencing and parole throughout the Nation have been substantially influenced by the Commissioner's work. The Commission has also moved toward notifying offenders early of their expected dates of release from prison, thus alleviating much of the suspense and uncertainty that has characterized traditional parole.

Retention of parole release in the Federal sentencing system would not, therefore, involve the wide discretion and rehabilitative ideology that has historically been associated with parole. We ourselves have been critics of that discretion and ideology. Several of us have been active in developing or evaluating guideline systems; others of us have urged a rationale for sentencing that would look chiefly to the blameworthiness of the defendant's criminal conduct, rather than to rehabilitative considerations.

Retention of the U.S. Parole Commission's guideline-setting and releasing functions, for the present time, would have the following advantages.

First, the U.S. Parole Commission now has a working system of guidelines that, however we might debate some of the details, does represent a substantial step toward structuring discretion in decisions about duration of confinement. The proposed new standard-setting mechanism—of having the Judicial Conference write sentencing guidelines—is still untried, and the draft legislation provides few details on what the rationale of those guidelines should be or how they should be structured. Before eliminating the Parole Commission's guideline-issuing power for prison releases, we need to know how well this new mechanism works: whether the Judicial Conference will produce sentencing guidelines that are as specific and carefully structured as the Parole Commission's existing durational guidelines. Retention would allow your committee and the Congress to evaluate the Judicial Conference's performance in writing its initial standards for the unregulated sentencing decsions which judges now make, before authorizing it to take over from the Parole Commission the task of writing standards for duration of actual confinement. Immediate abolition of parole release would be a leap in the dark: we would be eliminating a functioning guidelines system before having any evidence of how well the new proposed mechanism performs.

Second, the Parole Commission now performs a vital time-scaling function. Judges have been accustomed to imposing lengthy sentences which participants in the process do not expect to be carried out, which could not be carried out given the limitations of prison space, and which would be disproportionately severe were they carried out. It has been a practical function of the parole board to set the actual duration of confinement at more manageable levels. Elimination of parole release would necessitate a sudden reduction in sentence duration, to compensate for the fact that offenders could no longer be released before the end of their terms. The impression of a shift to more lenient sentences would be created, even were there no change in actual time in confinement. Eliminating parole, therefore, would involve a formidable task of public education; the Judicial Conference, as the body that writes the sentencing guidelines, would have to convince judges, prosecutors and a skeptical public that the seeming reduction in sentencing time under its guidelines is not necessarily a real reduction. Is this something one reasonably can expect the Judicial Conference to do at the inception of its guideline-writing labors? It will be difficult enough—even without changing the reckoning of sentencing time—for the Judicial Conference to staff and organize its guideline efforts; to draft guidelines for the sentencing decisions which judges now make; and to develop the rapport with the Federal judiciary, prosecution and defense that will be necessary for acceptance of the standards. It would be unwise to load the Judicial Conference at the beginning with the still more ambitious task of changing the reckoning of sentencing time and of explaining that change. Retention of parole release for the present would avoid this sudden shift to seemingly lower sentences.

Third, the Parole Commission is a compact, specialized body that needs to control the discretion only of a few persons: chiefly, the hearing examiners who—as a full time task—apply the guidelines in individual cases. The Judicial Conference, by contrast, will not have authority to enforce its own guidelines: the guidelines will be applied by 550 Federal judges throughout the country, and compliance will be enforced through appeals to already heavily-burdened higher court judges in the eleven circuits. It is an open question how effective this new enforcement technique will be. As no regulatory mechanism has hitherto governed judges' existing sentencing choices, guidelines with even limited enforcement powers over such choices could well be an advance over no guidelines at all. But prison term decisions are different: these already are regulated by the Parole Commission; elimination of Parole Commission authority could mean a weaker mechanism for insuring compliance with guidelines in the determination of prison terms, and thus more rather than less disparity in this critical area. We think, therefore, it is vital for Congress to wait to see how well the Judicial Conference succeeds in getting judges to cooperate with its initial sentencing guidelines, before considering the elimination of parole and the transfer of power over actual duration of confinement from the Commission to the sentencing judge. An immediate transfer would allow no such opportunity for testing.

Retaining parole release in the Federal system would not mean indeterminacy of punishment in the traditional sense. There would, instead, be norms for both the sentencing and parole release stages. The Judicial Conference would supply guidelines at the sentencing stage, aimed at regulating the decisions that now are not regulated at all: judges' choices of whether to impose a custodial or non-custodial sentence, and their choice of the maximum penalty. The Parole Commission would continue, for the time being, to regulate duration of imprisonment through its parole release standards. This preserves a system of checks and balances: one will not be wholly dependent on a single guideline-writing body, especially an untried one. Sharing of guideline-writing authority between the Judicial Conference and the Parole Commission is not, in short, redundant. We believe the Parole Commission can supplement the proposed new devices for regulating sentences: that sentencing guidelines, parole guidelines, and meaningful appellate review of sentences are not competing concepts but can support each other in striving toward equity and justice in sentencing.

We therefore recommend adoption of the second option, set forth in the Subcommittee's August 24th draft at P. 123, lines 23–33. Prisoners should continue to be eligible for parole release consideration during the last half of the sentence imposed. The Parole Commission should continue to have the duty of writing guidelines for its release decisions. The legislation should call upon Congress to review the status of parole in five years to determine at that time whether further structural alterations are needed. This will allow the Judicial Conference to develop and issue guidelines for sentencing judges, and will allow Congress to evaluate the Conference's efforts. By then, there will also be available to Congress the results of now-ongoing studies of the effects of parole abolition in other jurisdictions, such as California and Indiana. In short, it will permit an informed judgment on the future of parole release in the Federal system. In the meantime, to ensure that the Parole Commission and the Judicial Conference adopt guidelines that are consistent, the legislation should require the two bodies to consult with one another.

Yours sincerely,

Andrew von Hirsch, Professor, Graduate School of Criminal Justice, Rutgers University.

Leslie T. Wilkins, Professor of Criminal Justice, School of Criminal Justice, State University of New York at Albany.
Michael Tonry, Associate Professor, University of Maryland Law School.
Peter B. Hoffman, Research Director, U.S. Parole Commission.
David Rothman, Professor of History, Columbia University.
Donald J. Newman, Dean and Professor, School of Criminal Justice, State University of New York at Albany.
Don M. Gottfredson, Dean and Professor, Graduate School of Criminal Justice, Rutgers University.
Sheldon L. Messinger, Professor of Law, University of California, Berkeley.
Marvin Wolfgang, Professor of Sociology and Law, University of Pennsylvania.
Charles Silberman, Author, New York City.
Caleb Foote, Professor of Law, University of California.
Rendell A. Davis, Executive Director, the Pennsylvania Prison Society.
Richard F. Sparks, Professor, School of Criminal Justice, Rutgers University.
Michael D. Maltz, Associate Professor, Department of Criminal Justice, Department of Systems Engineering, University of Illinois.
Kathleen Hanrahan, Research Associate, School of Criminal Justice, Research Center, Rutgers University.
David T. Stanley, Consultant, former senior fellow, Brookings Institution.

Mr. BIDEN. Mr. President, the Sentencing Reform Act of 1979 offers an alternative approach to parole which meets many of the concerns of both proponents of total abolition and proponents of retention. The bill continues the Parole Commission release function until 3 years after the effective date of the guidelines. Thus, for 3 years the Parole Commission can function as a safety valve while new sentencing procedures are implemented. If all of the new procedures are implemented swiftly and easily, the Parole Commission will have little to do during those years. In the alternative, if there is even a small percentage of the difficulties foreseen by the advocates of retaining parole, the Parole Commission will be extremely busy and perform a necessary function. If implementation problems continue beyond 3 years after the effective date of the guidelines and the Parole Commission is the only effective safety valve, the burden will be on the Sentencing Commission to ask Congress for an extension of the 3-year deadline and to provide convincing data supporting that extension. If the Sentencing Commission makes no such request, under my bill, the Parole Commission will be sunsetted.

ONGOING REFORM

All of the sentencing reform bills purport to be comprehensive. Yet, many factors that have tremendous impact on the criminal sentencing are not addressed. Plea bargaining is one such factor. Although the majority of sentences result from a plea, very little is known about the plea-bargaining process or the effect sentencing reform will have on that process. The Sentencing Reform Act of 1979 identifies plea bargaining as a significant issue for future reform by directing the Sentencing Commission to conduct a complete study of the plea-bargaining process.

The size of the prison population is another factor which has tremendous impact on the entire sentencing process. Prison overcrowding has been described as "the most serious problem facing prisons today" (Vonhirsch, "The Question of Parole" p. 39). In addition, some analysts of the sentencing reform provisions of S. 1437, the Criminal Code reform bill of the last Congress, concluded that the new procedures create a significant probability that people will serve longer in prison and that prison populations will consequently increase substantially.

Unquestionably, the size of the prison population is now a significant factor in the judge's sentencing decision and the parole board's release decision. The next between sentencing policy and prison population, combined with the likelihood of increases in prison population after the new sentencing provisions become effective, makes it essential that sentencing reform address the issue of prison population.

S. 1722 directs the Sentencing Commission, in formulating guidelines, to assure that the most appropriate penal, correctional and other facilities are utilized and to assume that available capacities and services are not exceeded (proposed 28 U.S.C. section 994(f)).

The Sentencing Reform Act of 1979 goes one step further. It directs the Sentencing Commission and the Bureau of Prisons to submit to Congress an annual analysis and recommendations concerning maximum utilization of resources to deal effectively with the Federal prison population. The report must be based upon consideration of a variety of alternatives, including modernization of existing facilities, inmate classification and periodic review of such classification for use in placing inmates in the least restrictive facility necessary to insure adequate security, and use of existing Federal facilities, such as those currently within military jurisdiction. This process of careful monitoring and planning is necessary to lessen the impact of the prison population on the sentencing decision. An additional benefit of this analysis and planning will be improved facilities and more careful placement of prisoners in appropriate facilities.

Within the next few months the Judiciary Committee will begin to markup comprehensive criminal code reform legislation. As chairman of the Subcommittee on Criminal Justice, I wholeheartedly support the recodification effort. I particularly urge my colleagues to consider recodification legislation as a vehicle for implementing the provisions and principles of the Sentencing Reform Act of 1979.

I ask unanimous consent that the Sentencing Reform Act of 1979 and a section-by-section analysis of the act be printed at this point in the RECORD.

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

S. 1973

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Sentencing Reform Act of 1979".

AMENDMENTS TO TITLE 18 OF THE UNITED STATES CODE

SEC. 2. (a) Chapter 227 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 3579. General provisions relating to criminal sentencing

"(a)(1) Except as otherwise specifically provided by law, a defendant who has been convicted of an offense shall be sentenced under this section and sections 3580 through 3583 of this title.

"(2) An individual found guilty of an offense may be sentenced—

"(A) to probation under section 3580 of this title, or to imprisonment under section 3583 of this title;

"(B) to a fine under section 3582 of this title; and

"(C) to make restitution under section 3581 of this title.

"(3) An organization found guilty of an offense may be sentenced to probation under section 3580 of this title, to make restitution under section 3581 of this title, and to pay a fine under section 3582 of this title.

"(b) A probation officer appointed by the court shall, pursuant to the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure, make a presentence investigation of a defendant and shall report the results of such investigation to the court before the imposition of sentence. Such report shall include information on noninstitutional sanctions.

"(c)(1) The court, in determining the particular sentence to be imposed, shall consider—

"(A) the nature and circumstances of the offense;

"(B) the defendant's role in the offense, and the presence or absence of aggravating or mitigating circumstances relating to the defendant's role in the offense that are not reflected in the guidelines formulated by the Federal Sentencing Commission under section 3584 of this title;

"(C) the types of sentences, including noninstitutional sanctions as a condition of probation;

"(D) the sentence for the offense for which the defendant is convicted, as recommended in the guidelines issued by the Federal Sentencing Commission under section 3584 of this title and that is in effect on the date the defendant is sentenced;

"(E) any pertinent policy statements issued by the Federal Sentencing Commission under section 3584 of this title that are in effect on the date the defendant is sentenced; and

"(F) the need to have uniform sentencing throughout the United States among defendants who have been found guilty of the same offense.

"(2) The court, at the time of sentencing, shall state in open court and for the record the reasons for its imposition of the particular sentence including its finding regarding the applicable guideline, and—

"(A) if the sentence differs from the sentence for that offense set forth in the guidelines established by the Federal Sentencing Commission, the specific reason for the imposition of such sentence;

"(3) The court shall submit to the Federal Sentencing Commission in connection with each sentence imposed, not more than 10 days following the imposition of sentence, a written report of the sentence imposed, the offense for which it is imposed, the age, race, and sex of the offender, any statement made pursuant to paragraph (2), the presentence report, and such other information as the Commission, the court, or either party finds appropriate.

"(d)(1) A defendant may commence proceedings for an appeal of a final sentence under this subsection by filing a notice of

appeal pursuant to Rule 3(a) of the Federal Rules of Appellate Procedure, unless the sentence was part of any plea agreement which—

"(A) was knowingly and voluntarily agreed to by the defendant in open court and on the record;

"(B) was accepted by the court; and

"(C) included a sentence recommended in the guidelines issued by the Federal Sentencing Commission under section 3584 of this title that is applicable to the offense which was the result of the plea agreement.

"(2) If the defendant appeals any other issue in the case by filing a notice of appeal, then such defendant may petition for joinder of the issue of sentence to such appeal.

"(3) The clerk of the district court shall certify to the court of appeals a transcript of any arraignments, the presentence report and any other documents that were submitted during the sentencing proceeding, the transcript of the sentence proceeding, the findings of the court pursuant to section 3579 (c)(2) of this title, and any additional portions of the record designated by either party or the court of appeals. The court shall permit and may require the Government to file an answer in the appeal.

"(4) Upon review, the court shall determine whether the sentence imposed is clearly unreasonable, considering the following factors:

"(A) The sentence set forth in the guidelines issued by the Federal Sentencing Commission under section 3584 of this title in effect on the date the defendant is sentenced.

"(B) Any pertinent policy statement issued by the Federal Sentencing Commission under section 3584 of this title in effect on the date the defendant is sentenced.

"(C) The disparity between the defendant's sentence and sentences imposed upon other persons convicted of the same offense.

"(D) Whether the provisions of sections 3579 through 3583 of this title have been followed.

"(E) The record or any other documents certified to the court of appeals pursuant to subparagraph (3).

"(5)(A) If the court of appeals determines that the sentence is not clearly unreasonable, the court shall affirm the sentence.

"(B) If the court of appeals determines that the sentence is clearly unreasonable, the court shall either impose a new sentence or remand the case for resentencing or further proceedings in accordance with the court's decision. In any case decided or remanded under this paragraph, the defendant shall not receive a more severe sentence than the sentence reviewed.

"(6) Except as otherwise provided in this subsection, the Federal Rules of Appellate Procedure apply to proceedings under this subsection.

"§ 358. Probation

"(a)(1) A defendant who has been convicted of an offense may be sentenced to a term of probation unless—

"(A) the offense is punishable by life in prison;

"(B) the offense is an offense for which probation is expressly precluded by law;

"(2) The term of probation for a felony, together with any extension thereof, shall not exceed 5 years. The term of probation for a misdemeanor, together with any extension thereof, shall not exceed 2 years.

"(3) In deciding whether to impose a term of probation the court shall consider the factors set forth in section 3579(c)(1) of this title. In imposing conditions of probation the court shall consider the factors set forth in section 3579(c)(1) and any other factors directly related to determining appropriate conditions.

"(b) As a condition of probation, the court may provide that the defendant:

"(1) work in specified community service;

"(2) participate in a program of a residential community treatment center for all or part of the period of probation;

"(3) undergo necessary medical or psychiatric treatment, including treatment for drug or alcohol dependency, if the defendant knowingly consents;

"(4) remain in the custody of the Bureau of Prisons for the lesser of 6 months or the term of imprisonment authorized for the offense during the first year of the term of probation; or

"(5) satisfy any other conditions the court deems appropriate.

"(c) The court may, for good cause shown, modify or reduce, after opportunity for a hearing as described in subsection (d)(7) of this section, the term or conditions of a sentence of probation.

"(d)(1) If the probationer violates a condition of probation before the end of the period of probation, the court may, after opportunity for a hearing under paragraph (7) of this subsection—

"(A) continue the sentence of probation, with or without extending the term or modifying the conditions; or

"(B) revoke the sentence of probation and impose any other sentence that was available at the time of initial sentencing.

"(2) In any case in which the sentence of probation is revoked, any fine paid shall be counted toward the maximum fine authorized by law.

"(3) If there is probable cause to believe that a probationer has violated a condition of probation at any time before the end of the period of probation, the court that imposed the sentence of probation, or, if jurisdiction over the probationer has been transferred to the court of another district, such other court, may issue a summons to the probationer or a warrant for the arrest of the probationer.

"(4) Any summons or warrant issued pursuant to paragraph (3) of this subsection shall provide the probationer with written notice of—

"(A) the conditions of probation alleged to have been violated; and

"(B) the probationer's rights under this chapter and any other provision of law.

"(5)(A) Whenever a probationer is summoned or taken into custody on the ground that there is probable cause to believe that the probationer has violated a condition of probation, the probationer shall be afforded within 48 hours, at or reasonably near the place of the alleged violation, a preliminary hearing before a judge, or before a United States magistrate who has been given authority under section 636(b) of title 28 to conduct such hearings, in order to determine whether there is probable cause to hold the probationer for a revocation hearing. The judge or United States magistrate shall maintain a record of the preliminary hearing.

"(B) If the judge or magistrate finds probable cause to exist, such judge or magistrate shall state for the record the evidence that supports the finding and hold the probationer for a revocation hearing before the appropriate judge or United States magistrate. The probationer may be released in accordance with Rule 46(c) of the Federal Rules of Criminal Procedure pending the revocation hearing.

"(C) If the judge or United States magistrate does not find probable cause, the proceedings shall be terminated and the judge or United States magistrate who issued the warrant shall be so notified.

"(D) A copy of the written report of the hearing shall be transmitted to the district of probation jurisdiction.

"(6) A revocation hearing shall be held before a judge or a United States magistrate at or reasonably near the place of the alleged probation violation or arrest within 30 days of such determination of probable cause.

"(7) A hearing held pursuant to this subsection unless knowingly waived by the probationer shall include—

"(A) reasonably notice to the probationer, including any conditions of probation alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

"(B) opportunity for the probationer to be represented by an attorney retained by the probationer, or if he is financially unable to retain counsel, counsel shall be provided under section 3006A of title 18, United States Code, unless the probationer knowingly and intelligently waives such representation;

"(C) opportunity for the probationer to appear and testify, and present witnesses and relevant evidence on his own behalf; and

"(D) opportunity for the probationer to be apprised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses.

"(8) A decision of a United States magistrate to revoke probation shall be subject to review upon appeal, including all issues of fact, to a judge of the district court. A decision to revoke probation by a judge of the district court or to affirm a magistrate's decision to revoke probation shall be subject to review upon appeal to the United States court of appeals.

"§ 3581. Restitution

"(a) (1) A defendant who has been convicted of an offense causing bodily injury or death, property damage, or other loss may be sentenced to make restitution to the victim of the offense, or any surviving dependents of such victim, in an amount and manner set by the court.

"(2) For the purposes of this section, the term 'victim' means any individual who, as a direct result of the offense for which the defendant is convicted, suffers bodily injury or death, or any individual who owns real or personal property which, as a direct result of such offense, is damaged.

"(b) In determining the amount of restitution for loss that is the result of death caused by the offense, the court may consider—

"(1) all appropriate and reasonable expenses necessarily incurred for funeral and burial expenses; and

"(2) loss of support to any surviving dependent of a victim, not otherwise paid as compensation for personal injury, for such period as the dependency would have existed but for the death of the victim.

"(c) In determining the amount of restitution for loss that is the result of personal injury caused by the offense, the court may consider—

"(1) all appropriate and reasonable expenses necessarily incurred for ambulance, hospital, surgical, nursing, dental, prosthetic, and other medical and related professional services and devices relating to physical or psychiatric care;

"(2) all appropriate and reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation; and

"(3) loss of past and anticipated future earnings.

"(d) In determining the amount of restitution for damage or loss to property, the court may consider the assessed value of such property damage or loss, not to exceed the actual value of the property.

"(e) Restitution shall be paid through the registry of the court in an amount and manner set by the court. The provisions of section 3582 for determining the amount of payment, the time of payment, and the method of payment apply to a sentence to

make restitution as they apply to a sentence to pay a fine.

"(f) Restitution may be considered a condition of probation if warranted and shall take priority for purposes of enforcement over any fine imposed for the same offense.

"§ 3582. Fines

"(a) A defendant who has been convicted of an offense against the United States may be sentenced to pay a fine.

"(b) The court shall consider factors set forth in section 3579(c)(1) of this title in determining whether to impose a fine. In determining the amount of any fine to be imposed, the time for payment, and the method of payment the court shall consider the factors set forth in section 3579(c)(1) of this title and any other factors relating to the offense or the defendant's finances.

"(c) At the time a defendant is sentenced to pay a fine, the court may provide that the payment be made within a specified period of time or in specified installments. If no such provision is made a part of the sentence, payment is due immediately.

"(d) If a defendant is sentenced to pay a fine, the court may not impose an alternative sentence to be served in the event that the fine is not paid.

"(e) If a fine is imposed on an organization, it is the duty of any individual authorized to make disbursement of the assets of the organization to pay the fine from assets of the organization.

"(f) A defendant who has been sentenced to pay a fine, and who has paid part but not all of such fine, may petition the court for an extension of the time for payment, a modification of the method of payment, or a remission of all or part of the unpaid portion.

"(g) If, after the filing of a petition under subsection (f) of this section, the court finds that the circumstances that warranted the amount of the fine imposed or payment by the time or method specified no longer exist, or that it would otherwise be unjust to require payment of the fine in the amount imposed or by the time or method specified, the court may enter an order—

"(1) extending the time for payment;

"(2) modifying the method of payment; or

"(3) remitting all or part of the unpaid portion.

"§ 3583. Imprisonment

"A defendant who has been convicted of an offense may be sentenced to a term of imprisonment.

§ 3584. Federal Sentencing Commission

"(a)(1) There is established as an independent commission in the Judicial Branch of the Government, a Federal Sentencing Commission (hereinafter in this section referred to as the 'Commission'). The Commission shall be composed of the Chairman of the Parole Commission and the Attorney General (or the Attorney General's delegate) as ex officio members, and seven additional members appointed by the President, by and with the advice and consent of the Senate. One member of the Commission shall be appointed from a list of ten Federal judges provided to the President by the Judicial Conference of the United States. One member of the Commission shall be a Federal public defender. The remaining members of the Commission shall represent a variety of backgrounds and shall have demonstrated participation and interest in the criminal justice process.

"(2) The President may remove any member appointed to the Commission for neglect of duty, malfeasance in office or for other good cause shown.

"(3) The term of members appointed by the President under paragraph (1) of this subsection shall be 6 years, except that the President shall designate members initially appointed so that—

"(A) 2 are appointed for a 2-year term;

"(B) 2 are appointed for a 3-year term;

"(C) 1 is appointed for a 4-year term;

"(D) 1 is appointed for a 5-year term; and

"(E) 1 is appointed for a 6-year term.

"(4) No member appointed by the President under paragraph (1) of this subsection may serve for more than two 6-year terms. Any vacancy shall be filled for the remainder of the term with respect to which such vacancy arises.

"(5) Members of the Commission appointed by the President under paragraph (1) of this section shall receive no compensation for their membership but may receive actual and necessary travel and other expenses as provided under section 5703 of title 5, United States Code, for persons serving without pay. Ex officio members shall receive no additional compensation for their duties on the Commission.

"(b) The President shall designate one of the members of the Commission, other than ex officio members, as chair of the Commission. The chair of the Commission shall direct the use of sums made available to the Commission and the preparation of requests for appropriations for the Commission.

"(c)(1) The Commission, by affirmative vote of at least five members of the Commission, shall make and issue to all appropriate courts, to the United States Probation Service, the United States Parole Commission, and any other interested persons—

"(A) guidelines for use of a sentencing court in determining—

"(i) whether to impose a sentence of probation, a fine, restriction, or a term of imprisonment; and

"(ii) the appropriate amount of a fine or restitution, or the appropriate length of a term of probation or term of imprisonment;

"(B) general policy statements regarding the factors and circumstances considered by the Commission in formulating the guidelines, the application of the guidelines, or any other aspect of sentencing, including the appropriate use of the sanctions described in sections 3579 through 3583 of this title;

"(C) data and any other relevant information concerning patterns and practices in the sentencing of persons convicted of offenses; and

"(D) evaluation of the impact of the sentencing guidelines on prosecutorial discretion, plea bargaining, disparities in sentencing, and the use of incarceration.

"(2)(A) The Commission, in establishing guidelines under this subsection, shall consider—

"(i) the nature and circumstances of the offense;

"(ii) the defendant's role in the offense;

"(iii) any aggravating or mitigating circumstances relevant to the gravity of the offense and the defendant's role in the offense;

"(iv) the types of sentences available, including the noninstitutional sanctions;

"(v) the requirements of providing certainly and fairness in sentencing; and

"(vi) reducing disparity in sentences imposed for similar offenses;

"(vii) sentencing and release practices, guidelines issued by the United States Parole Commission and the length of prison terms actually served prior to the creation of the Commission.

"(B) If a sentence specified by the guidelines includes a term of imprisonment, then the guidelines may provide for an increase or decrease of up to 5 percent of the term of imprisonment.

"(C) The Commission, in issuing guidelines relating to a sentence of probation, may only consider the factors set forth in section 3584(c)(2)(A) of this title.

"(D) The guidelines shall include a term of prison whenever:

"(1) serious bodily injury resulted from the defendant's participation in the offense; or

"(2) the offense is a felony and the defendant was previously convicted of a federal, state or local felony, unless a substantial period of time has lapsed since the defendant's previous conviction.

"(3) The Commission, in conjunction with the United States Bureau of Prisons, the United States Parole Commission, and the United States Probation Service, shall establish noninstitutional sanctions, including those set forth in section 3580(b) of this title.

"(4) The Commission shall review and revise, in consideration of comments and data, the guidelines issued under this section. In performing its functions, the Commission shall conduct public hearings with the participation of the general public, and representatives of various aspects of the criminal justice system.

"(5) The Commission shall meet at least once each calendar quarter and shall revise the guidelines at least biannually.

"(6) Proceedings under this section shall be carried out in conformity with chapter 5 of title 5, United States Code, and records maintained by the Commission shall be subject to the provision of sections 552 and 552a of such title.

"(d) The Commission, by vote of a majority of the members, shall—

"(1) deny, revise, or ratify any request for regular, supplemental, or deficiency appropriations before any submission of such request to the Office of Management and Budget by the Chairman;

"(2) monitor the performance of probation officers with regard to sentencing recommendations, including application of Commission guidelines and policy statements;

"(3) issue instructions to probation officers concerning the application of Commission guidelines and policy statements;

"(4) establish a research and development program within the Commission for the purposes of—

"(A) serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices; and

"(B) assisting and serving in a consulting capacity to Federal courts, departments, and agencies in the development, maintenance, and coordination of sentencing practices;

"(5) collect data obtained from empirical studies, research, and the experience of public and private agencies concerning the sentencing process, including the sentences actually imposed and the relationship of such sentences to the factors set forth in section 3579 (c) (1) of this title;

"(6) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in the sentencing field;

"(7) devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process;

"(8) study the feasibility of developing guidelines for the disposition of juvenile delinquents; and

"(9) study the plea bargaining process.

"(e)(1) The Commission, by vote of a majority of the members, shall appoint and fix the salary and duties of the staff director of the Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate payable for grade 18 of the General Schedule of section 5332 of title 5, United States Code.

"(2) The staff director shall supervise the activities of persons employed by the Commission and perform such other duties as are assigned by the Commission.

"(3) The staff director shall, subject to the approval of the Commission, appoint such officers and employees as are necessary in the execution of the functions of the Commission. The officers and employees of the Commission shall be exempt from the provisions of part III of title 5, United States Code, except the following chapters: 81 (compensation for work injuries), 83 (retirement), 85 (unemployment compensation), 87 (life insurance), and 89 (health insurance).

"(f) The Commission, by vote of a majority of the members, may—

"(1) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109 (b) of title 5, United States Code;

"(2) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities, including the Administrative Office of the United States Courts and the Federal Judicial Center, with or without reimbursement;

"(3) without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person;

"(4) accept voluntary and uncompensated services, notwithstanding section 3679 of the Revised Statutes of the United States (31 U.S.C. 655 (b));

"(5) request such information, data, and reports from any Federal agency or judicial officer as the Commission may from time to time require and as may be produced consistent with other law; and

"(6) perform such other functions as are required to permit Federal courts to meet their responsibilities under laws relating to sentencing and to permit others involved in the Federal criminal justice system to meet their related responsibilities.

'(g)(1) The Commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this section, and may delegate to any member or other appropriate person such powers as may be appropriate other than the power to establish general policy statements and guidelines.

"(2) Upon the request of the Commission, each Federal agency is authorized and directed to make available, to the greatest practicable extent, its services, equipment, personnel, facilities, and information to the Commission in the execution of the Commission's functions.

"(3) A majority of the membership serving shall constitute a quorum for the conduct of business.

"(4) Except as otherwise provided by law, the Commission shall maintain and make available for public inspection a record of the final vote of each member of any action taken by the Commission.

"(h)(1) The Commission shall report annually to the United States Judicial Conference, the Congress, and the President on the activities of the Commission. The Commission shall make recommendations to Congress concerning modifications of any law relating to sentencing, penal, and correctional matters that the Commission finds to be necessary to carry out an effective, humane, and rational sentencing policy.

"(2) The Commission, at or after the beginning of each regular session of Congress but not later than the first day of May in each year, shall report to the Congress the guidelines issued under section 3584(c)(1)(A) of this title. The guidelines shall take effect ninety days after the Commission reports them unless the effective date is extended or the guidelines are disapproved or modified by Act of Congress.

"(3) The Commission shall submit to Congress at least annually an analysis of the reports and studies required under this section and any recommendation for legislation that the Commission concludes is warranted by that analysis. Such reports shall not contain any personally identifiable information about any offender.

"(4) The Commission shall submit to Congress within three years of the issuance of guidelines under subsection 7(c) of this Act a proposal for reducing all statutory maximum prison terms consistent with the procedures and purposes of sentencing established by this Act.

"(5) The Commission and the Bureau of Prisons shall submit to Congress an analysis and recommendations concerning maximum utilization of resources to deal effectively with the federal prison population. Such report shall be based upon consideration of a variety of alternatives, including:

"(A) modernization of existing facilities;

"(B) inmate classification and periodic review of such classification for use in placing inmates in the least restrictive facility necessary to ensure adequate security;

"(C) use of existing federal facilities, such as those currently within military jurisdiction.

"§ 3585. Definitions

"For the purposes of sections 3579 through 3584 of this title, the term—

"(a) 'noninstitutional sanction' means a sentence which does not include the confinement of the defendant in—

"(1) a facility for mentally ill persons; or

"(2) a jail, prison, or other correctional facility, or detention facility;

"(b) 'offense' means an act or an omission to act which—

"(1) is prohibited or required by a Federal statute, the violation of which is punishable by a sentence of a fine, a term of imprisonment, restitution, or probation;

"(2) if qualified by the word 'State', 'local', or 'foreign', conduct for which a term of imprisonment or a fine is authorized by such State, local, or foreign law; and

"(3) constitutes the grounds for a seperate count within an indictment or information; and

"(c) 'organization' means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, estate, society, union, club, church, and any other association of persons.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 3. (a)(1) Chapter 227 of title 18, United States Code, is amended by repealing sections 3575 and 3576.

(2) The table of sections for chapter 227 of title 18, United States Code, is amended—

(A) in the item relating to section 3575, by striking out "Increased sentence for dangerous special offenders" and inserting in lieu thereof "Repealed";

(B) in the item relating to section 3576, by striking out "Review of sentence" and inserting in lieu thereof "Repealed"; and

(C) by adding at the end the following new items:

"3579. General provisions relating to criminal sentencing.
"3580. Probation.
"3581. Restitution.
"3582. Fines.
"3583. Imprisonment.
"3584. Federal Sentencing Commission.
"3585. Definitions.".

(b)(1) Chapter 231 of title 18, United States Code, is amended by repealing sections 3651 and 3653.

(2) The table of sections for chapter 231 of title 18, United States Code, is amended—

(A) in the item relating to section 3651, by striking out "Suspension of sentence and probation" and inserting in lieu thereof "Repealed"; and

(B) in the item relating to section 3653, by striking out "Report of probation officer and arrest of probationer" and inserting in lieu thereof "Repealed".

GOOD TIME ALLOWANCES

SEC. 4. (a) Chapter 309 of title 18, United States Code, is amended by adding at the end the following:

"§ 4167. Vesting of good time allowance

"A determination of whether to grant a good time allowance under section 4161 of this title shall be made within two days after the end of each month. Such allowance vests at the time that it is received. An allowance vested may not later be withdrawn and an allowance that is not earned may not later be granted.".

(b) Chapter 309 of title 18, United States Code, is amended by repealing sections 4165 and 4166.

(c) The table of sections for chapter 309 of title 18, United States Code, is amended—

(1) in the item relating to section 4165, by striking out "Forfeiture for offense" and inserting in lieu thereof "Repealed";

(2) in the item relating to section 4166, by striking out "Restoration of forfeited commutation" and inserting in lieu thereof "Repealed"; and

(3) by adding at the end the following new item: "4167. Vesting of good time allowance.".

AMENDMENTS RELATING TO CAPITAL PUNISHMENT

SEC. 5. (a) Section 34 of title 18, United States Code, is amended by deleting "the death penalty" and inserting in lieu thereof "imprisonment for life without the possibility of parole".

(b) Section 351 of title 18, United States Code, is amended—

(1) by deleting "by death" in subsection (b) and inserting in lieu thereof "by imprisonment for life without the possibility of parole"; and

(2) by deleting "by death" in subsection (d) and inserting in lieu thereof "by imprisonment for life without the possibility of parole".

(c) Section 794 of title 18, United States Code, is amended—

(1) by deleting "by death" in subsection (a) and inserting in lieu thereof "by imprisonment for life without the possibility of parole"; and

(2) by deleting "by death" in subsection (b) and inserting in lieu thereof "by imprisonment for life without the possibility of parole".

(d) Section 844 of title 18, United States Code, is amended—

(1) by deleting "the death penalty" in subsection (d) and inserting in lieu thereof "imprisonment for life without the possibility of parole";

(2) by deleting "the death penalty" in subsection (f) and inserting in lieu thereof "imprisonment for life without the possibility of parole"; and

(3) by deleting "the death penalty" in subsection (i) and inserting in lieu thereof "imprisonment for life without the possibility of parole".

(e) section 1111 of title 18, United States Code, is amended by deleting "suffer death unless the jury qualifies its verdict by adding thereto 'without capital punishment', in which event he shall be sentenced to imprisonment" in subsection (b) and inserting in lieu thereof "be imprisoned for life without the possibility of parole or".

(f) Section 1716 of ttile 18, United States Code, is amended by deleting "the death penalty" and inserting in lieu thereof "imprisonment for life without the possibility of parole".

(g) Section 1751 of title 18, United States Code, is amended—

(1) by deleting "by death" in subsection (b) and inserting in lieu thereof "by imprisonment for life without the possibility of parole"; and

(2) by deleting "by death" in subsection (d) and inserting in lieu thereof "by imprisonment for life without the possibility of parole".

(h) Section 1992 of title 18, United States Code, is amended by deleting "the death penalty" and inserting in lieu thereof "imprisonment for life without the possibility of parole".

(i) Section 2031 of title 18, United States Code, is amended by deleting "death" and inserting in lieu thereof "imprisonment for life without the possibility of parole".

(j) Section 2113 of title 18, United States Code, is amended by deleting "death" in subsection (e) and inserting in lieu thereof "imprisonment for life without the possibility of parole".

(k) Section 2381 of title 18, United States Code, is amended by deleting "death" and inserting in lieu thereof "imprisonment for life without the possibility of parole".

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated such sums as may be necessary for the fiscal year ending September 30, 1980, and the fiscal year ending September 30, 1981, to carry out sections 3579 through 3684 of title 18, United States Code, as added by section 2 of this Act.

EFFECTIVE DATE

SEC. 7. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect 60 days after the effective date of the guidelines issued by the Federal Sentencing Commission under subsection (c).

(b) Section 3584 of title 18, United States Code, as added by section 2 of this Act, shall take effect 60 days after the date of the enactment of this Act.

(c) The Federal Sentencing Commission established under section 3584 of title 18, United States Code, is added by section 2 of this Act, shall issue the initial guidelines for sentencing not later than six months after the date of the enactment of this Act.

(d)(1) The following provisions of law in effect on the day before the effective date provided in subsection (a) of this section shall remain in effect for 3 years after such effective date—

(A) chapter 311 of title 18, United States Code;

(B) section 4254 through 4255 of title 18, United States Code;

(C) sections 5041 and 5042 of title 18, United States Code; and

(D) sections 5017 through 5020 of title 18, United States Code.

(2) Notwithstanding the provisions of section 4202 of title 18, United States Code, as in effect on the day before the effective date of this Act, the term of office of a Commissioner who is in office on the effective date is extended to the end of the three year period after the effective date of this Act.

(3) The United States Parole Commission shall continue to be authorized to set a release date, for an individual who will be in its jurisdiction the day before the expiration of three years after the effective date of the guideline. A release date set pursuant to this paragraph shall be set early enough to permit consideration of an appeal of the release date, in accordance with Parole Commission procedures, before the expiration of three years following the effective date of this Act.

(4) Notwithstanding the other provisions of this subsection, all laws in effect on the day before the effective date of this Act pertaining to an individual who is—

(A) released pursuant to a provision listed in paragraph (1); and

(B) (i) subject to supervision on the day before the expiration of the three-year period following the effective date of this Act;

(ii) released on a date set pursuant to paragraph (3); including laws pertaining to terms and conditions of release, revocation of release, provision of counsel, and payment of transportation costs, shall remain in effect as to that individual until the expiration of his sentence.

(5) 180 days prior to the date established in subsection (d)(1), the United States Parole Commission, the Federal Sentencing Commission, and the General Accounting Office shall each report to Congress on the performance of the United States Parole Commission and any recommendations for legislation.

SECTION-BY-SECTION ANALYSIS

Section 1. This section identifies the short title of the Act as the "Sentencing Reform Act of 1979."

Section 2. This section adds seven new sections relating to sentencing to title 18 United States Code (proposed 18 U.S.C. § 3579–85).

Proposed 18 U.S.C. 3579, General Provisions relating to criminal sentencing:

(a) The provisions of this Act relating to sentences of fine, probation, restitution, and imprisonment apply to all federal offenses, except as otherwise specifically provided. A Sentence of fine or restitution may be imposed in addition or as an alternative to any other sentence. An organization may be sentenced to probation, restitution, or to pay a fine.

(b) A probation officer must make a presentence investigation and report the results to the Court. The report must include information on non-institutional sanctions to assist judges in imposing sentences other than prison whenever such sentences are appropriate.

(c)(1) A court must consider specific factors when imposing a sentence: Two of the factors are: (1) the nature and circumstances of the offense, and (2) the defendant's role in the offense and the presence or absence of aggravating or mitigating circumstances relating to the defendant's role in the offense that are not reflected in the guidelines formulated by the Federal Sentencing Commission under section 3584. Thus, the court must consider the gravity of the offense rather than the characteristics of the offender when deciding on an appropriate sentence. The Court must also consider the types of sentences available, including non-institutional sanctions as an appropriate condition of probation; the appropriate Sentencing Guidelines issued under section 3584; appropriate sentencing statement issued under section 3584 and the need for uniformity in sentencing.

(c)(2) At the time of sentencing the judge must state in open court and for the record the reason for imposing the particular sentence and the guideline applied in selecting the sentence. If the sentence differs from the sentence recommended in the guideline, the statement must include the specific reason for imposition of such sentence. The sentencing process by providing the defendant and the public with a rationale for every sentence. Within 10 days following the imposition of sentence, the Court must submit a written report on the sentence to the Federal Sentencing Commission to use in evaluating the sentencing process and monitoring implementation of the guidelines.

(d) A defendant may appeal a sentence by filing a notice of appeal under Rule 3(a) of the Federal Rules of Appellate Procedure unless the sentence was part of a plea agreement which was knowingly and voluntarily agreed to by the defendant in open court and on the record, was accepted by the court, and is the sentence recommended in the guidelines issued under section 3584 that are applicable to the offense which was the result of the plea agreement. The Court of Appeals determines whether the sentence is clearly unreasonable based upon the applicable sentencing guidelines and policy statements, the disparity between the defendant's sentence and sentences imposed upon other defendants convicted of the same offense, whether procedures of the Sentencing Reform Act have been followed, and any document certified by the clerk of the Court of Appeals. If the Court determines that the sentence is not clearly unreasonable the court may either impose a new sentence or remand the case for resentencing or for further proceedings. In any case, the defendant may not receive a more severe sentence than the sentence reviewed since the possibility of an increased sentence would have a serious chilling effect on defendant's exercise of their rights.

Proposed 18 U.S.C. 3580, Probation:

This section establishes procedures for imposition and revocation of a sentence of probation.

(a) As in current law, probation is precluded if the offense is punishable by life imprisonment or if it is an offense for which probation is expressly precluded by law. The maximum term of probation is five years for a felony and two years for a misdemeanor.

(b) The court may impose any conditions of probation it deems best, including work in specified community service, participation in a program of a residential community treatment center and if the defendant knowingly consents, necessary medical or psychiatric treatment including treatment for drug or alcohol dependence. A term of imprisonment of less than six months during the first year of probation may also be ordered.

(c) The court may reduce or modify terms or conditions of probation for good cause shown after opportunity for a hearing.

(d) If the probationer violates a condition of probation the court, after a hearing, may continue the sentence of probation with or without extending the term or modifying the conditions, or revoke the sentence of probation and impose any other sentence that was available at the time of the initial sentencing.

If there is probable cause to believe that a probationer violated a condition of probation at any time before the end of the period of probation the court may issue a summons to the probationer or a warrant for the arrest of the probationer. The summons or warrant must contain the conditions of probation alleged to have been violated, and the probationer's rights concerning the violation. Within 48 hours after the probationer is taken into custody, there must be a preliminary hearing at or reasonably near the place of the alleged violation. At the preliminary hearing a judge or United States magistrate determines whether there is probable cause to hold the probationer for a revocation hearing. There must be a record maintained of the preliminary hearing.

If there is a finding of probable cause, the judge or magistrate states for the record the evidence that supports the finding. The probationer may be released in accordance with Rules 46(c) of the Federal rules of Criminal Procedure pending the revocation hearing.

The bill establishes a number of procedural protections not afforded the probationer under current law. A revocation hearing must be held before a judge or United States magistrate at or reasonably near the place of the alleged probation violation or arrest within 30 days of the determination of probable

cause. Unless knowingly waived by the probationer, a revocation hearing or preliminary hearing must include: (1) reasonable notice to the probationer including conditions of probation alleged to have been violated and the time, place and purposes of the scheduled hearing, (2) opportunity for the porbationer to be represented by an attorney retained by the probationer or, if he is financially unable to retain counsel, counsel will be provided, (3) opportunity for the probationer to appear and testify and present witnesses and relevant evidence on his own behalf and (4) opportunity for the probationer to be appraised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses.

A decision of a United States magistrate to revoke probation is subject to review upon appeal including all issues of fact to a judge of the United States district court. A decision to revoke probation by a judge of the district court or to affirm a magistrate's decision to revoke probation is subject to review upon appeal to the United States Court of Appeals.

Proposed 18 U.S.C. 3581, Restitution:

(a) This section establishes restitution as a separate type of sentence thus increasing the likelihood that it will be imposed than under current law which authorizes restitution only as a condition of probation. Any defendant convicted of an offense causing bodily injury or death, property damage or other loss may be sentenced to make restitution, to the victim or to any surviving dependent of the victim, in an amount and manner set by the court.

(b) The court is directed to consider specific factors in determining the appropriate amount of restitution. The court's consideration is limited to factors directly related to the victim's loss. In determining the amount of restitution for loss resulting from a death the court may consider: (1) funeral and burial expenses and (2) uncompensated loss of support to any surviving dependent.

(c) In determining the amount of restitution for loss resulting from personal injury the court may consider: (1) appropriate and reasonable medical expenses, (2) therapy and rehabilitation expenses, and (3) loss of past and anticipated future earnings.

(d) In determining the amount of restitution for loss resulting from damage or loss to property, the court may consider the assessed value of the property.

Proposed 18 U.S.C. 3582 Fines:

The court after considering the factors set forth in proposed 18 U.S.C. 3579(c)(1) may impose a fine. The court may consider any factor directly related to determining the appropriate amount of fine and in setting the time and method for payment. This section establishes procedure for payment of fine, for changing the time or method of payment and for remitting all or part of the unpaid portion.

Proposed 18 U.S.C. 3583. Imprisonment:

This section authorizes imposition of a sentence of imprisonment.

Proposed 18 U.S.C. 3584. Federal Sentencing Commission:

(a)(1) This section establishes the Federal Sentencing Commission, an independent Commission in the judicial branch. The members of the Sentencing Commission will represent a variety of viewpoints and experiences in the criminal justice system. Members must include the chairman of the Parole Commission and the Attorney General who serve ex officio and 7 members appointed by the President by and with the advice and consent of the Senate: one must be chosen from a list of 10 federal judges provided by the Judicial Conference, one must be a federal public defender, and the remainder must represent a variety of backgrounds and have demonstrated participation and interest in the criminal justice process. The members are appointed for a maximum of two six-year terms. Members may only be removed by the President for neglect of duty, malfeasance in office or for other good cause shown. They receive no compensation but may receive actual and necessary expenses.

(b) The President appoints the Chairman of the Sentencing Commission.

(c)(1) By affirmative vote of five of its members the Sentencing Commission must promulgate guidelines for the use of a sentencing court in determining whether to impose a sentence of probation, fine, restitution, or imprisonment, and the appropriate amount of a fine or restitution or the appropriate length of a term of probation or imprisonment. The Commission must also promulgate policy statements regarding the factors and circumstances considered by the Commission in formulating the guidelines, the application of the guidelines, and any other aspect of sentencing, including the appropriate use of the sanctions. The Commission also serves as a clearinghouse for collection and dissemination of data and other relevant information concerning patterns and practices in the sentencing of persons convicted of offenses. In addition, the Commission must disseminate evaluations of the impact of sentencing guidelines on prosecutorial discretion, plea bargaining, disparities in sentences and the use of incarceration.

(c)(2) When promulgating the guidelines the Commission must consider factors relevant to the gravity of the offense including: the nature and circumstances of the offense, the defendant's role in the offense and any aggravating or mitigating circumstances relevant to the defendant's role in the offense. The court must also consider factors which promote fairness and reduce disparity, including: the types of sentences available including non-institutional sanctions; the requirements for providing certainty and fairness in sentencing; reducing disparity in sentences imposed for similar offenses; and the sentencing release practices, guidelines issued by the Parole Commission and the length of prison terms actually served prior to the creation of the Sentencing Commission.

Guidelines which include a term of imprisonment may provide for a maximum increase or decrease of 5 percent of the term. The Guideline must always provide for a term of imprisonment when serious bodily injury resulted from the defendant's participation in the offense or the conviction is for a second felony. These are not mandatory sentences in the usual sense, since the Sentencing Commission in its guidelines sets the appropriate term for each offense and the Judge may deviate from the guideline whenever there are aggravating or mitigating circumstances.

The Sentencing Commission, together with the United States Bureau of Prisons, the United States Parole Commission, and the United States Probation Service, must establish a system for effective utilization of non-institutional sanctions in appropriate cases. This provision is a recognition of the value of alternatives to incarceration in appropriate cases—to the community which receives services, to the prison system which is received of the responsibility for inappropriate prison placements and to the defendant who is spared the trauma of prison if it is not the proper penalty for the offense.

The Commission is required to meet at least once each year to review and revise the guidelines and it must hold public hearings with participation by the general public and representatives of various aspects of the criminal justice system to assist in performing its functions.

(d) By majority vote, the Commission must deny or approve appropriation requests, and monitor and instruct federal probation officers with regard to implementation of sentencing guidelines. The Commission is also required to assume a research and education function. Specifically, it is directed to study the plea bargaining process and the feasibility of developing guidelines for the disposition of juvenile delinquents. The results of the studies must be reported to Congress. Together, the Sentencing Commission and Congress can use the data to improve these two important elements of the Sentencing process.

(e) The Commission is authorized to employ a staff director to carry out its duties.

(f) To assist in carrying out its duties the Commission is authorized to utilize the services of other agencies including requesting data and reports which may be released consistent with any other law. The Commission may also perform any other duties necessary to assist federal courts and others in fulfilling their responsibilities relating to sentencing.

(g) The Commission must maintain a public record of all final votes.

(h) The Commission must annually report to Congress on the guidelines, studies, and any recommendations for legislation. The guidelines become effective 90 days after the Commission reports to Congress unless the effective date is extended or the guidelines are disapproved or modified by Act by Congress.

The Commission must also report to Congress within three years of the issuance of the guidelines its proposal for reducing all statutory prison terms. The three year interval allows Congress to consider reducing sentences when the Parole Commission ceases its release function. Without parole, sentences must be reduced to reflect current time served. The Sentencing Commission is encouraged to reduce sentences below current time served, provided reduction is consistent with the gravity of the offense.

In cooperation with the Bureau of Prisons the Commission must report to Congress its recommendations for an effective and efficient system for dealing with the federal prison population. The report must consider effective utilization of alternative facilities and provide a system for classifying inmates so they are placed in the least restrictive facility necessary to ensure adequate security. The study and recommendations will also provide a means of monitoring and adjusting to any changes in the size of the prison population which may result from changes in sentencing procedures.

Proposed 18 U.S.C. 3585, Definitions: The terms "non-institutional sanction", "offense", and "organization" are defined.

Section 3: Technical and Conforming Amendments: Title 18, United States Code is amended to implement the provisions of this Act and 18 U.S.C. 3575 and 3576, relating to Dangerous Special Offenders, are repealed.

Section 4: Good Time Allowance: Title 18, United States Code is amended to add section 4167, Vesting of Good Time Allowances.

Under this provision good time is awarded at the end of the month that it is earned. It may not later be withdrawn and good time may not be awarded later than two days after the end of the month in which the prisoner was eligible. Good time will continue to serve as a means of rewarding satisfactory institutional behavior. Vesting good time earned at the end of the month will bring order to the present system which authorizes prison officials to grant and withdraw good time at any time. Prisoners will have a greater incentive to earn good time which cannot be withdrawn at a later date for minor misconduct.

Section 5: Amendments Relating to Capital Punishment: The new sentence of life imprisonment without the possibility of parole is established. It is substituted for the death penalty in offenses in Title 18, United States Code, which authorize a death penalty that cannot be imposed due to Constitutional barriers. It is not a mandatory sentence. Once imposed, however, the prisoner can not be released on parole under any circumstances.

Section 6: Authorization of Appropriations—Appropriation of sums necessary to implement the provisions of the Act is authorized.

Section 7: Effective Date—The Sentencing Commission becomes effective 60 days after enactment of the Act. The Sentencing Commission must issue guidelines within six months of the enactment of the Act and the remaining provisions of the Act become effective 60 days after the effective date of the guidelines.

The sections in Title 18, United States Code, relating to the United States Parole Commisison remain in effect until three years after the effective date of the sentencing guidelines. Laws relating to release on parole remain in effect for persons under parole supervision until expiration of their sentence.

Mr. JAVITS. Mr. President, I am pleased to join my colleague from Delaware (Mr. BIDEN) in introducing the Sentencing Reform Act of 1979. This bill is a further refinement of S. 204, which I cosponsored last Congress.

During consideration of criminal omnibus code revision in the 95th Congress, a consensus emerged on the general principles for reform of the present system for sentencing Federal offenders. Remarkably, both conservatives and liberals in the House and Senate recognized that the current system was unworkable and despite differing views on the precise mechanisms for reform, there was general agreement on the nature of the changes that must be instituted.

Sentencing reform must meet the following criteria: First, we must devise a means for developing consistent standards to guide judicial discretion and help reduce sentencing disparities. Second, we must reduce the emphasis on incarceration as well as excessive sentence lengths. And, finally, we must recognize that the death penalty has not been an effective deterrent to crime and it should be repealed.

These principles of sentencing reform stand in direct contrast to the approach taken by the omnibus code itself. The code continues to divide the Congress, and the disagreement over differing approaches will no doubt continue into this session. It is my judgment that sentencing reform, on which there is general agreement, should be acted upon now, rather than sacrificed in the effort for an omnibus code revision. Therefore, I am cosponsoring the "Sentencing Reform Act of 1979." I would now like briefly to describe the reasons I support this legislation.

First. Rational and consistent sentencing standards.

Sentencing reform must eliminate standards which have been proven ineffective, and replace them with a coherent system for sentencing. There is no substantial evidence that we know how to rehabilitate an offender or how to determine when a person has been rehabilitated. Moreover, there is no evidence that incarceration has worked as a means of achieving deterrence.

In fact, it is clear that the current sentencing standards have led to a system whereby persons convicted of similar crimes committed under similar circumstances are sentenced quite differently. Some of these problems were identified in a recently released GAO report entitled "Reducing Judicial Sentencing and Prosecuting Disparities: A Systemwide Approach Needed." Some States were found to give criminal defendants prison terms, while others did not for identical offenses. Further, among those States imposing prison sentences, there were great discrepancies in the length of those sentences. While there may be valid reasons to explain some of these differences, these gross disparities must be sharply reduced if the system is to be perceived as just. Yet, last year's omnibus bill did little to provide a coherent sentencing rationale.

The Sentencing Reform Act adopts the "just desserts" theory of punishment. No sanction will be imposed greater than that that deserved by the last crime, or series of crimes for which the defendant is being sentenced. Only criteria which clearly relate to the seriousness of the offense and can be measured with some degree of objectivity are used—for example, the nature and degree of harm caused by the offense and the offender's own role in the offense. In other words, the punishment must be tailored to the crime and not to an arbitrary determination of how much rehabilitation the offender needs.

Further, the act will establish a Sentencing Commission which will study plea bargaining, disseminate data on sentencing practices, and promulgate advisory guidelines to assist judges in sentencing. Importantly, sentences will also be subject to appellate review, which should lead to greater consistency. Finally, the Parole Commission will be phased out over 3 years, permitting parole to continue while the new sentencing system is put in place.

Second. Reduced Emphasis on Incarceration.

Perhaps the harshest aspect of the current sentencing system is the indiscriminate and excessive use of incarceration as punishment for Federal offenders. Many experts agree that imprisonment has little, if any success in meeting its goals of promoting rehabilitation and facilitating an offender's successful reentry into society. On the contrary, it is well established that incarceration is physically and psychologically debilitating, retards progress towards rehabilitation, and reduces that chance of reentering society successfully.

The destructive effects of prisons have been recognized by a number of courts. In one landmark decision, Judge Frank Johnson declared the entire Alabama prison system unconstitutional, finding that these prisons necessarily and inevitably made people worse.

In light of these findings, experts now agree that incarceration should be used as a sanction only when there is no other adequate alternative to protect society from an offender's criminal behavior. Fines, restitution, community based treatment facilities, probation, day fines, community service work and study release, and a range of other alternatives are in most cases preferable to imprisonment as a sanction. The obligation to prove the necessity for restricting freedom should always rest with the State.

S. 1437, the Omnibus Criminal Code bill did not require or even encourage the use of sentencing alternatives. On the other hand, H.R. 13959, the House bill of last Congress, provided for a range of alternatives to incarceration. The Sentencing Reform Act is patterned after the House bill and provides for a range of alternatives such as community work service and restitution.

In addition, I would encourage the Senate to consider the recommendations of the National Commission to Reform the Criminal Laws (the Brown Commission) which recommended a presumption in the favor of a sentence of probation. If a judge does impose imprisonment, we should consider requiring him or her to state on the record why other alternatives were rejected.

Third. Excessive sentence lengths.

As mentioned above, incarceration is now a primary means of punishment. In the past four decades, the percentage of offenders sentenced to imprisonment has increased dramatically. At the same time, the actual time served has grown longer.

S. 1437, the omnibus bill, continues the trend of longer sentences of imprisonment. Senator KENNEDY stated during the floor consideration of S. 1437, that he believes that there will be more time served under this scheme.

Based on the deliberate action of the Senate to increase sentence lengths, and the general mood of the Congress, I believe any attempt to shorten sentence lengths at this time would be futile. Therefore, the Sentencing Reform Act does not address sentence lengths directly. I would hope, however, that the provisions for alternatives to incarceration and sentencing guidelines will bring a reduction in time served.

Fourth. Capital punishment.

There has always been great controversy over whether the death penalty actually provides an effective deterrent to murder. The omnibus code leaves the present Federal legislation on this issue untouched. Authoritative studies have shown no significant reduction in the murder rate when capital punishment is employed. That finding, together with the inhumane characteristics of capital punishment, persuade me that it is appropriate to eliminate that penalty now from the Federal criminal code.

Mr. PERCY. Mr. President, in recent years, much legislative attention has been devoted to the reform of the current sentencing system. Despite this attention, disparities in the sentencing of rich and poor, black and white, rural and urban defendants continue to plague our criminal justice system. These dis-

parities undermine the essential notion of equal justice for all. As a result, the criminal justice system has come to be perceived as arbitrary, unjust, and, hence, deserving of little respect.

Many of us agree upon the objectives to be accomplished and the types of changes that need to be instituted in sentencing reform; however, we differ in what we envision as the precise mechanisms for these reforms. It is important that the Congress debate the issue fully, resolve the remaining differences, and adopt a meaningful proposal for sentencing reform. For that reason, I am pleased to join with Senator BIDEN, Senator HART, and Senator JAVITS in introducing the Sentencing Reform Act of 1979. It is my hope that this legislation will stimulate a final phase of Senate discussion of sentencing reform.

The Sentencing Reform Act of 1979 contains many similar provisions to those found in S. 1722, the criminal code reform legislation introduced earlier this year by Senators KENNEDY, THURMOND, DECONCINI, HATCH, and SIMPSON. S. 1722 is a measure hammered out of years of negotiations and compromise between liberal and conservative elements in the Senate. Its immediate predecessor, S. 1437, passed the Senate by a considerable margin during the last Congress. Much credit should go to Senator KENNEDY, Senator THURMOND, the late Senator John McClellan, and others who have put in endless hours to bring about this monumental reform package.

Both the Sentencing Reform Act of 1979 and S. 1722 limit judicial discretion in determining sentences. Both establish a sentencing commission to promulgate guidelines for Federal judges in imposing sentence. Both authorize, for the first time, sentence review through the appellate process for the criminal defendants. Underlying these reforms is the shared objective of implementing "just deserts" sentencing—sentencing based upon the gravity of the offense committed, not the personal characteristics of the defendant or the size of the caseload on any given day.

However, in my view, certain sentencing provisions in the Sentencing Reform Act of 1979 more completely remedy sentencing disparities and further protect basic rights and civil liberties than the comparable measure in S. 1722.

The Sentencing Reform Act of 1979 narrows the factors to be considered in sentencing a defendant. Punishment would be tailored to fit the crime, without regard to personal characteristics which may reflect a built-in cultural or racial bias.

The Sentencing Commission will be more representative of the criminal justice system. Members will include the Attorney General or his designee, the chairman of the U.S. Parole Commission—both will serve as ex officio members—one Federal judge, one Federal public defender, and five persons representing a variety of backgrounds in the criminal justice process. This diverse group, encompassing all perspectives within the criminal justice system, will lend their expertise in the promulgation of sentencing guidelines, and the analysis of future reforms.

As in the criminal code reform package, criminal defendants will be told why they are receiving their specific sentence, and will have the right to appeal these sentences. The sole exception will be sentences resulting from a plea agreement which fall within or below the guidelines. In appealing his sentence, a defendant must meet a "clearly unreasonable" standard of proof which will weed out frivolous claims.

On the other hand, the Sentencing Reform Act of 1979 does not authorize the Government to appeal the defendant's sentence. There will be times when all of us will view a particular sentence meted out by a judge as too lenient. Nevertheless, allowing the Government to appeal is, in my view, contrary to the interests of both the individual and society. It goes against the spirit, and perhaps the substance, of the protection found in the constitutional prohibition on double jeopardy. Furthermore, notions of fair play would be violated if the Government were able to avail itself of its considerable resources in appealing sentences.

Rather than immediate abolition of the Parole Commission, the Sentencing Reform Act of 1979 would sunset the Commission after 3 years. This cautious approach to reform should ease implementation efforts.

Finally, the Sentencing Reform Act of 1979 would replace the death penalty with a sentence of life in prison without possibility of parole.

I am not categorically opposed to the death penalty. In certain extreme instances, such as a person already serving a life sentence who wantonly murders a prison guard, the penalty of death may serve as a deterrent and may be a just punishment. But, beyond those unusual circumstances, I am not convinced that the death penalty serves as such an additional deterrent to crime that our society is justified in imposing this ultimate deprivation on a broad scale. I cannot believe that the death penalty will result in a more humane or more just Nation.

In the light of recent Supreme Court decisions, the entire Nation is reviewing the moral and social consequences of imposition of the death penalty. The proposal for a sentence of life in prison without possibility of parole will not end the constitutionally and morally complex debate of capital punishment. Yet, this is a clearly constitutional solution to the dilemma we now face.

In cosponsoring this legislation, I recognize the need for swift and certain punishment of repeat offenders and those who would commit crimes of violence. We simply cannot tolerate "revolving door justice" that puts violent men and women back on the street, and leads to a total lack of respect by the public for the criminal justice system. The Sentencing Reform Act would put a halt to this by imposing a mandatory prison term, the length of which would be based upon the specific circumstances of the offense, for previously convicted felons and those who cause serious bodily harm.

On the other hand, we must recognize that far too little rehabilitation has gone on in our prisons, which often serve as little more than warehouses where individuals can be shut off from society and forgotten about. This legislation imposes upon the proposed sentencing commission the task of exploring alternatives to incarceration. Sending wrongdoers to "schools for crime," as our prisons so often are, is certainly not the most humane or most efficient way to protect our society. I would hope that the commission would view this as one of its most important responsibilities.

The ultimate goal of sentencing reform is the development of a body of common sentencing principles that will result in similar sentences for those who commit the same crimes under similar circumstances. The Sentencing Reform Act of 1979, which has the strong support of the American Civil Liberties Union, would provide a solid foundation for this development. Sentencing laws which provide for fairness and certainty of punishment will do much to restore public confidence in our criminal justice sytem.

Mr. BENTSEN. Mr. President, the great American poet, John Greenleaf Whittier, wrote that justice should be "the hope of all who suffer; the dread of all who wrong." Today, too often, it is neither.

Our criminal law is in need of reform. The code is outmoded and cumbersome, and our sentencing practices cannot be justified by logic or fairness. Since 1975 I have sponsored, testified for, and strongly supported sentencing reform. I have introduced S. 1218 in the current Congress, and today, Senator BIDEN is introducing legislation that is similar in purpose and practice to my proposals. I believe his bill is an important step in the movement toward reform, and I commend it to my colleagues' attention. As chairman of the Senate Subcommittee on Criminal Justice, and as someone with extensive personal expertise, his is a distinguished voice for change.

Mr. President, I believe that we are seeing the emergence of a new realism in crime control. What is this new realism?

It is a recognition that laws without certainty of punishment are ineffective and laws without fairness of punishment are unjust.

It is an understanding of the need to identify, prosecute, and imprison those career criminals who time and time again commit violent crimes. Courts are clogged, prosecutors strapped, prisons jammed, and the criminals know it as they spin their way through the revolving doors. We can and we must shut those doors and enable the system to work as it was intended to work.

The new realism involves basic fairness and sound management; a promise to society that the guilty will be punished; and that the punishment will fit the crime, no more, no less.

The new realism involves an understanding that inhumane or inadequate prisons serve neither society nor the offender nor the ideals of this Nation.

The new realism rejects the standard cliches of the past, the reliance on rhet-

oric, inflated promises, and exaggerated claims.

The new realism encompasses people of diverse viewpoints engaged in a common pursuit of a safer and more just society.

Senator BIDEN's bill, the provisions of the Criminal Code bill drafted by the chairman of the full committee, Senator KENNEDY, and my proposals are complimentary efforts to improve sentencing laws in line with this new realism.

Current laws provide neither certainty nor fairness of punishment. The current system, indeterminate sentencing, might involve a sentencing statute that provides punishment of "no more than 20 years."

There might be a 20-year sentence, or none at all, or anything in between.

There might be early parole release after a third of the sentence, or no parole at all, or anything in between.

There will be numerous offenders who have committed the same crime, who have similar criminal records, who receive vastly different sentences.

There will be dangerous people who will not be punished at all.

There are so few guidelines that virtually any sentence is possible. This is a system without standards, without guidelines, without uniformity, and as one Federal judge has argued, it is so unstructed that it is virtually lawless in itself.

Judges are left adrift in a sea of discretion so turbulent and unpredictable that the criminal law becomes a game of chance.

Society is left adrift in a sea of uncertainty, unsure that the guilty will be punished, unsure that the punishment will fit the crime, unsure that the law will provide protection.

Sentencing reform is compelled from the point of view of society, the victim, the offender, and the American tradition of fair play.

We should establish a system of presumptive sentencing, where sentences are specified for the normal crime that does not involve aggravating or mitigating circumstances. When such circumstances are present, judges should retain discretion, within clear guidelines, with uniform standards, to adjust the punishment to fit the crime.

Violent criminals should be punished severely, and there should be gradations of punishment to insure that the sentence will vary according to the seriousness of the crime and the criminal history of the offender.

Standards should be established to determine what factors should justify a higher or lower sentence, and such standards should be uniformly applied.

Sentences should rise for repeat offenders, and be lower for first offenders.

Sentences should be subject to appellate review. Senator BIDEN's bill would limit appeals only to defendants; my proposal would allow the prosecution to appeal if the original sentence was not in accordance with the sentencing guidelines.

We must explore alternatives to prison for people who should not be there, there must be something between prison and amnesty for nondangerous offenders, we should explore the use of restitution, victim compensation, community service activity, and other means of noninstitutional punishment.

Mr. President, I want to commend my colleague from Delaware for the legislation he introduces today. I also want to commend the distinguished Senator from Massachusetts, Senator KENNEDY, for his effective and longstanding efforts to reform the Criminal Code, and the ranking Republican on the Judiciary Committee, Senator THURMOND, for his bipartisan leadership in the field.

We have an opportunity to work together in the coming months, to pool our ideas and to exercise creative bipartisan leadership on crime control. Senator BIDEN's proposal is one more important step in this direction.

We can help realize America's promise of justice, making the criminal law more credible and more deserving of credibility, make law enforcement more effective, and at the same time moving closer toward the great ideal: "Equal Justice, under law."

By Mr. DURENBERGER:

S. 1974. A bill to amend the Internal Revenue Code to provide for inflation adjustments; to the Committee on Finance.

TAX INDEXING

● Mr. DURENBERGER. Mr. President, today I am introducing a bill to take inflation out of the Internal Revenue Code for the individual income tax, capital gains tax, corporate income tax brackets, and depreciation.

It is clear that our present tax system must be corrected. The system that has evolved over the years places virtually all the burden of inflation on taxpayers, while Government reaps the benefits. In the current era of double-digit inflation, that burden is breaking the backs of many. We cannot sit back and do nothing. Taxpayers are falling farther and farther behind the cost of living and Government spending, funded in large part by the windfall inflation tax, continues virtually unabated.

The fact that Government is the major beneficiary of inflation was emphasized in an article Monday in the New York Times. The Times reported that revenue in relation to the gross national product will rise from 20.5 percent this fiscal year to 21.3 percent next year and 22 percent in 1982. The 1982 ratio will reach a record high, surpassing the peak set in World War II.

An example will point out Government's inflation windfall. Assuming a cost-of-living wage increase of 10 percent per year during the next 3 fiscal years, Government will reap a windfall profit of $13 billion in 1980, $26 billion in 1981, and a staggering $40 billion in 1982. This undeserved revenue, due directly to inflation, will be at the expense of individual taxpayers.

The massive transfer of purchasing power from consumers to the Government, in an attempt to balance the budget, is a true windfall profit. It is unconscionable that the same folks who have created double-digit inflation and caused the American public to suffer from the ravages of inflation by misguided fiscal and monetary policies are now reaping a windfall profit for such policies.

What are these misguided policies? In recent years, we have increased the demand for goods and services by increasing spending, allegedly cutting taxes, and creating money faster than ever. We have had the largest deficits in history. We assumed that supply would automatically rise to satisfy the demand. This policy has not worked. Output has not responded. Output has not responded because Government has restrained it with higher taxes and higher regulatory costs. Government has increased demand and throttled supply resulting in double-digit inflation.

Inflation pushes people into higher tax brackets. Our so-called tax cuts in recent years have not kept pace with inflation, especially if we include social security taxes. The marginal taxes taken out of each cost-of-living increase have reached amazing levels. Even middle income taxpayers now face tax rates of 40 percent to 50 percent on each additional dollar earned.

The high and rising marginal tax burdens have reduced the rate of return to labor. There has been no increase in real after-tax-spendable-earnings for the average worker since 1965. Extra effort is taxed at record rates. Workers have substituted leisure, early retirement, and nontaxable fringe benefits for added work and added pay. A graphic demonstration of the impact of inflation on wages and taxes was published in a monthly economic letter of Citibank:

Take the example of a family of four that earned $15,000 in 1955 and suppose that its income has kept pace with inflation during the ensuing 21 years; that is, its gross income buys neither more nor less in 1976 than it did in 1955. If, for the moment, we ignore changes in the tax law so we can get a clear picture of the pure effects of inflation, the equivalent of a $15,000 income in 1955 is $32,900 in 1976, an increase of 120 percent. But taxes on those equivalent incomes rise from $1,540 to $6,600, a 330-percent increase. This happens because the family's marginal tax rate—the highest rate at which an extra dollar of its income is taxed—increased from 22 to 36 percent. The combination of inflation and tax progressivity lowered the family's real after-tax income by 11 percent even though real gross income was constant.

Capital gains are another area where the Tax Code levies a tax on illusory gains due to inflation. Capital gains have been eroded by inflation to such an extent that most reported gains are really losses when adjusted for inflation. In a study done for the National Bureau of Economic Reserach by Martin Feldstein and Joel Slemrod which analyzed 1973 tax returns, the authors found that individuals paid taxes on $4.5 billion in nominal capital gains made from the sale of stock. But after adjusting for the in-

creases in the Consumer Price Index since the stock was purchased, the study found that the sellers actually had a real capital loss of nearly $1 billion.

The process by which phantom windfalls transform real capital losses into gain is also strikingly apparent in the purchase and sale of a personal residence. Assuming that we could lower inflation and keep it constant at a 6-percent rate for future years, a family that bought a home in 1977 for $40,000 and kept it for 20 years would have to receive $130,000 upon its sale in 1997 in order to receive back their initial investment. In that event, this family would owe a capital gain tax on $54,000 even though the real property value has not increased.

Even more dramatic is the assumption of an inflation rate of 12.2 percent. The $40,000 house in 1977 would have to be sold in 1997 for $400,000 in order to break even, and the family would face taxes on a capital gain of $216,000. While the family may defer its tax liability by buying another home, the potential tax liability remains.

Mr. President, another study by the National Bureau of Economic Research reported that the effect of inflation with the existing tax law was to raise the 1977 tax burden on corporate income by more than $32 billion. This is an amount equal to 69 percent of the real after-tax income of the nonfinancial corporate sector.

Mr. President, the above examples clearly show the need for legislation to adjust certain portions of the Internal Revenue Code for inflation.

The bill I am introducing has four provisions:

First. Individual rate tables, the personal exemption and the zero bracket amount are adjusted annually to reflect the percentage increase of the Consumer Price Index for the current year ending September 30, to that for the year ended September 30, 1978.

Second. Section 11 of the Internal Revenue Code provides a graduated corporate income tax for small businesses of: 17 percent on the first $25,000 of taxable income; 20 percent on the second $25,000; 30 percent on the third $25,000; 40 percent on the fourth $25,000; and 46 percent on the taxable income over $100,000.

This provision would adjust the corporate tax brackets for small businesses by the percentage by which the GNP deflator for the preceding calendar year exceeds the GNP deflator for calendar year 1978.

Third. For the purposes of determining gain or loss on the sale of capital assets such as stock, tangible personal property, and real estate, the basis of the property is adjusted by the percent increase in the Consumer Price Index from the date of purchase.

Fourth. For purposes of determining the allowance for depreciation, the annual deduction is adjusted for inflation or replacement cost of the asset, whichever is lower.

Mr. President, the continuing problem of inflation and prospects for future inflation requires the above adjustments to the Internal Revenue Code to protect the American people from inflation induced tax increases. Inflation has been defined as a hidden tax because it is a tax that can be imposed without specific legislation. It has been labeled as "truly taxation without representation" but I call it taxation with representation as long as we, the elected representatives of the people, allow it to continue. It is also a true windfall profits tax accruing to the Government at the expense of the taxpayer.

Some opponents have said indexing is a concession of defeat in our battle against inflation. That argument ignores the point and the purpose of indexing. This legislation will assure people that they will be required to pay taxes at no more than the statutory rate.

The bill will also take the Government's profit out of inflation. Indexing will not curb inflation. We must take immediate action toward that end. But, while we are working on a remedy, we cannot allow the patient to die of the disease. Indexing will give taxpayers the relief they need.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1974

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE II—ADJUSTMENTS TO INDIVIDUAL TAX RATES

SEC. 101. (a) GENERAL RULE.—Section of the Internal Revenue Code of 1954 (relating to tax imposed) is amended by adding at the end thereof the following new subsection:

"(f) ADJUSTMENTS IN TAX TABLES SO THAT INFLATION WILL NOT RESULT IN TAX INCREASES.—

"(1) IN GENERAL, FOR THE TAXABLE YEARS AFTER 1979.—Not later than December 15 of each calendar year, beginning in 1978, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed—

"(A) by increasing—

"(i) the maximum dollar amount on which no tax is imposed under such table, and

"(ii) the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table,

by the cost-of-living adjustment for such calendar year,

"(B) by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A)(ii), and

"(C) by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

If any increase determined under subparagraph (A) is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10 (or if such increase is a multiple of $5, such increase shall be increased to the nearest multiple of $10).

"(3) COST-OF-LIVING ADJUSTMENT.—For purposes of paragraph (1), the cost-of-living adjustment for any calendar year, is the percentage (if any) by which—

"(A) the CPI for the preceding calendar year, exceeds

"(B) the CPI for calendar year 1978.

"(4) CPI FOR ANY CALENDAR YEAR.—For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index for the months ending in the 12-month period ending on September 30 of such calendar year.

"(5) CONSUMER PRICE INDEX.—For purposes of paragraph (4), the term 'Consumer Price Index' means the Consumer Price Index for all-urban consumers published by the Department of Labor."

(b) DEFINITION OF ZERO BRACKET AMOUNT.—Subsection (d) of section 63 of such Code (defining zero bracket amount) is amended to read as follows:

"(d) ZERO BRACKET AMOUNT.—For purposes of this subtitle the term 'zero bracket amount' means—

"(1) in the case of an individual to whom subsection (a), (b), (c), or (d) of section 1 applies, the maximum amount of taxable income on which no tax is imposed by the applicable subsection of section 1, or

"(2) zero in any other case."

SEC. 102. COST-OF-LIVING ADJUSTMENTS IN AMOUNT OF PERSONAL EXEMPTIONS.

(a) GENERAL RULE.—Section 151 of the Internal Revenue Code of 1954 (relating to allowance of deductions for personal exemptions) is amended by striking out "$1,000" each place it appears and inserting in lieu thereof "the exemption amount".

(b) EXEMPTION AMOUNT.—Section 151 of such Code is amended by adding at the end thereof the following new subsection:

"(f) EXEMPTION AMOUNT.—For purposes of this section, the term 'exemption amount' means, with respect to any taxable year, $1,000 increased by an amount equal to $1,000 multiplied by the cost-of-living adjustment (as defined in section 1 (f)(3)) for the calendar year in which the taxable year begins. If the amount determined under the preceding sentence is not a multiple of $10, such amount is a multiple of $5, such amount shall be increased to the nearest multiple of $10)."

SEC. 103. ADJUSTMENTS IN WITHHOLDING.

(a) IN GENERAL.—Subsection (a) of section 3402 of the Internal Revenue Code of 1954 (relating to requirement of withholding) is amended by inserting after the third sentence the following new sentence: "The Secretary shall, not later than December 15 of each calendar year before 1983, prescribe tables which shall apply in lieu of the tables prescribed above to wages paid during the succeeding calendar year and which shall be based on the tables prescribed under section 1(f) which apply with respect to taxable years beginning in such succeeding calendar year."

(b) PERCENTAGE METHOD OF WITHHOLDING.—Paragraph (1) of section 3402(b) of such Code (relating to the percentage method of withholding) is amended by adding at the end thereof the following new sentence: "The Secretary shall, not later than December 15 of each calendar year before 1983, prescribe a table which shall apply in lieu of the above table to wages paid during the succeeding calendar year and which shall be based on the exemption amount (as defined in section 151(f) which applies to taxable years beginning in the succeeding calendar year."

(c) WITHHOLDING ALLOWANCES BASED ON ITEMIZED DEDUCTIONS.—Paragraph (1) of section 3402(m) of such Code (relating to withholding allowances based on itemized deductions) is amended—

(1) by striking out "$1,000" and inserting in lieu thereof "the exemption amount (as determined under section 151(f) for the taxable years beginning in the calendar year)"; and

(2) by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) an amount equal to the maximum amount of taxable income for taxable years beginning in the calendar year on which no tax is imposed by section 1(a) (or section 1

(b) in the case of an individual who is not married, within the meanng of secton 143, and who is not a surviving spouse, as defined in section 2(a))."

SEC. 104. RETURN REQUIREMENTS.

(a) Clause (i) of section 6012(a)(1)(A) of the Internal Revenue Code of 1954 is amended by striking out "$3,300" and inserting in lieu thereof "the sums of the exemption amount and the zero bracket amount applicable to such an individual".

(b) Clause (ii) of section 6012(a)(1)(A) of such Code is amended by striking out "$4,400" and inserting in lieu thereof "the sums of the exemption amount plus the zero bracket amount applicable to such an individual".

(c) Clause (iii) of section 6012(a)(1)(A) of such Code is amended by striking out "$5,400" and inserting in lieu thereof "the sum of twice the exemption amount plus the zero bracket amount applicable to a joint return".

(d) Paragraph (1) of section 6012(a) of such Code is amended by striking out "$1,000" each place it appears and inserting in lieu thereof "the exemption amount".

(e) Paragraph (1) of section 6012(a) of such Code is amended by adding at the end thereof the following new subparagraph:

"(D) For purposes of this paragraph—

"(i) The term 'zero bracket amount' has the meaning given to such term by section 63(d).

"(ii) The term 'exemption amount' has the meaning given to such term by section 151(f)."

(f) Subparagraph (A) of section 6013(b)(3) of such Code is amended—

(1) by striking out "$1,000" each place it appears and inserting in lieu thereof "the exemption amount",

(2) by striking out "$2,000" each place it appears and inserting in lieu thereof "twice the exemption amount", and

(3) by adding at the end thereof the following new sentence: "For purposes of this subparagraph, the term 'exemption ambunt' has the meaning given to such term by section 151(f)."

SEC. 105. EFFECTIVE DATES.—

(a) The amendments made by sections 1, 2, and 4 of this Act shall apply to taxable years beginning after December 31, 1979.

(b) The amendments made by section 3 of this Act shall apply to remuneration paid after December 31, 1979.

TITLE II—ADJUSTMENTS TO CORPORATE TAX RATES

SEC. 21 (a) GENERAL RULE.—Section 11 of the Internal Revenue Code of 1954 (relating to tax imposed) is amended by adding at the end thereof the following new subsection:

"(e) ADJUSTMENTS IN CERTAIN DOLLAR AMOUNTS SO THAT INFLATION WILL NOT RESULT IN TAX INCREASES.—

"(1) IN GENERAL, FOR TAXABLE YEARS AFTER 1978.—Not later than December 15 of each calendar year, beginning in 1979, the Secretary shall prescribe dollar amounts which shall apply in lieu of the dollar amounts contained in subsection (b) with respect to taxable years beginning in the succeeding calendar year.

"(2) METHOD OF PRESCRIBING DOLLAR AMOUNTS.—The dollar amounts which under paragraph (1) are to apply in lieu of the dollar amounts contained in subsection (b) with respect to taxable years beginning in any calendar year shall be prescribed—

"(A) by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table, by the gross national product deflator adjustment for such calendar year, and

"(B) by not changing the rate applicable to any rate bracket as adjusted under paragraph (A).

If any increase determined under subparagraph (A) is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10 (or if such increase is a multiple of $5, such increase shall be increased to the nearest multiple of $10).

"(3) GROSS NATIONAL PRODUCT DEFLATOR ADJUSTMENT.—For purposes of paragraph (1), the gross national product deflator adjustment for any calendar year is the percentage (if any) by which—

"(A) the GNP Deflator for the preceding calendar year, exceeds

"(B) the GNP Deflator for calendar year 1978.

"(4) GNP DEFLATOR FOR ANY CALENDAR YEAR.—For purposes of paragraph (3), the GNP Deflator for any calendar year is the average of the Gross National Product Implicit Price Deflator for the quarter ending in the 4-quarter period ending on September 30 of such calendar year.

"(5) GROSS NATIONAL PRODUCE IMPLICIT PRICE DEFLATOR.—For purposes of paragraph (4), the term 'Implicit Price Gross National Product Deflator' means the Gross National Product Implicit Price Deflator published by the Department of Commerce."

SEC. 202. EFFECTIVE DATES.

The amendments made by section 1 of this Act shall apply to taxable years beginning after December 31, 1979.

TITLE III—ADJUSTMENTS TO BASIS OF CAPITAL ASSETS

SEC. 301. (a) IN GENERAL.—Part II of subchapter 0 of chapter 1 relating to basic rules of general application is amended by redesignating section 1024 as section 1025 and by inserting after section 1023 the following new section:

"Indexing of Certain Assets for Purposes of Determining Gain or Loss

"(a) GENERAL RULE.—If an indexed asset is sold or exchanged in a taxable transaction, for purposes of determining gain or loss on the transaction (but for no other purpose) the indexed basis of the asset shall be substituted for its adjusted basis.

"(b) INDEXED ASSET.—

"(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

"(A) stock which is common stock or possesses most of the attributes of common stock,

"(B) tangible personal property, and

"(C) real property,

which has been held for more than 1 year and which is a capital asset of property used in the trade of business (as defined in section 1231(b)).

"(2) CERTAIN PROPERTY EXCLUDED.—

"(A) IN GENERAL.—The term 'indexed asset' does not include stock in—

"(i) an electing small business corporation (within the meaning of section 1371(b)),

"(ii) a regulated investment company within the meaning of section 851(a)),

"(iii) a real estate investment trust (within the meaning of section 856(a)),

"(iv) a foreign corporation, and

"(v) a personal holding company (as defined in section 542).

"(B) COLLAPSIBLE CORPORATION.—In the case of a sale, exchange, or distribution to which section 341(a) (relating to collapsible corporations) applies, such transaction shall not be treated as a sale or exchange of an indexed asset to which subsection (a) applies.

"(c) INDEXED BASIS.—For purposes of this section—

"(1) INDEXED BASIS.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, multiplied by

"(B) the applicable inflation ratio.

"(2) APPLICABLE INFLATION RATIO.—The applicable inflation ratio for any asset is the percentage arrived at by dividing—

"(A) the CPI for the calendar month in which the sale or exchange takes place, by

"(B) the CPI for the calendar month in which the holding period of the asset began.

The applicable inflation ratio shall not be taken into account unless it is greater than 1. The applicable inflation ratio for any asset shall be rounded to the nearest 1/10 of 1 percent.

"(3) CPI FOR CALENDAR MONTH.—The CPI for any calendar month is the Consumer Price Index for All Urban Consumers for such month. In the case of any month for which there is no Consumer Price Index for All Urban Consumers, the Secretary shall, by regulation, prescribe an index which is similar to such Index.

"(d) TAXABLE TRANSACTION.—For purposes of this section, the term 'taxable transaction' means a sale or exchange in which gain or loss is recognized in whole or in part to the person disposing of the asset.

"(e) SPECIAL RULES.—For purposes of this section—

"(1) TREATMENT AS SEPARATE ASSET.—In the case of any asset, the following shall be treated as a separate asset:

"(A) a substantial improvement to property,

"(B) in the case of a corporation, a substantial contribution to capital or a substantial reduction in capital,

"(C) in the case of a transaction in which gain or loss is recognized only in part, that portion of the asset to which the recognized gain or loss is property attributable, and

"(D) any other portion of an asset to the extent that separate treatment of such portion is appropriate to carry out the purposes of this section.

"(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—

"(A) IN GENERAL.—The applicable inflation ratio shall be appropriately reduced for calendar months at any time during which the asset (or the predecessor asset) was not an indexed asset.

"(B) CERTAIN SHORT SALES.—For purposes of applying subparagraph (A), an asset shall be treated as not an indexed asset for any short sale period during which the taxpayer or the taxpayer's spouse sells short property substantially identical to the asset. For purposes of the preceding sentence, the short sale period begins on the day after the substantially identical property is sold and ends on the closing date for the sale.

"(3) SECTION CANNOT INCREASE ORDINARY LOSS UNDER SECTION 1231.—To the extent that (but for this paragraph) this section would create or increase the net ordinary loss to which the second sentence of section 1231(a) applies, such second sentence shall not apply. The taxpayer shall be treated as having a long-term capital loss in an amount equal to the amount of the net ordinary loss to which the preceding sentence applies.

"(f) SALES BETWEEN RELATED PERSONS.—

"(1) IN GENERAL.—This section shall not apply to any sale or exchange between related persons.

"(2) RELATED PERSONS DEFINED.—For purposes of this section, the term 'related persons' means—

"(A) persons bearing a relationship set forth in section 267(b), and

"(B) persons treated as single employer under subsection (b) or (c) of section 414.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

SEC. 302. (a) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of chapter 1 is amended by striking out the item relating to section 1024 and inserting in lieu thereof the following:

"Sec. 1024. Indexing of certain assets for purposes of determining gain or loss.

"Sec. 1025. Cross references."

SEC. 303. (a) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions after December 31, 1979, in taxable years ending after such date.

TITLE IV—ALLOWANCE ONLY OF REPLACEMENT COST STRAIGHT LINE DEPRECIATION AND OTHER CONSISTENT METHODS OF DEPRECIATION

SEC. 401. (a) IN GENERAL.—

(1) USE OF CERTAIN METHODS AND RATES.—Subsection (b) of section 167 (relating to description) is amended to read as follows:

"(b) USE OF CERTAIN METHODS AND RATES.—The term 'reasonable allowance', as used in subsection (a), shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the Secretary, under any of the following methods:

"(1) the replacement cost straight line method, and

"(2) any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed a total of such allowances which would have been used had such allowances been computed under the method described in paragraph (1).

Nothing in this subsection shall be construed to limit or reduce an allowance otherwise allowable under subsection (a).".

(2) LIMITATIONS ON USE OF CERTAIN METHODS AND RATES.—Subsection (c) of section 167 is amended by striking out ", (3), and (4)".

(3) REPEAL OF SPECIAL RULES.—Subsections (f), (i), (j), and (l) of section 167 are hereby repealed and subsections (g), (h), (k), (m), (n), (o), and (p) of such section are redesignated as subsections (f), (g), (h), (i), (j), (k), and (l), respectively.

(4) REPLACEMENT COST STRAIGHT LINE METHOD.—Subsection (e) of section 167 is amended to read as follows:

"(e) REPLACEMENT COST STRAIGHT LINE METHOD.—For purposes of this section, the term 'reasonable allowance' as used in subsection (a), when computed under the replacement cost straight line method for any period, means an allowance for such period equal to—

"(1) a percentage the numerator of which is the number of months in such period and the denominator of which is the number of months in the useful life of the property with respect to which the allowance is claimed, multiplied by—

"(2) the lowest of—

"(A) an amount equal to the basis of such property, adjusted in accordance with an index, under regulations prescribed by the Secretary which reflects any increase from the preceding period in the value of such property by reason of inflation.

"(B) the cost (determined at the end of such period) to the taxpayer of purchasing property identical to such property,

"(C) the cost (determined at the end of such period) to the taxpayer of reproducing such property, or

"(D) the cost (determined at the end of such period) to the taxpayer of purchasing property which performs functions equivalent to the functions provided by the property for which the allowance is claimed."

(5) ADJUSTED BASIS FOR DETERMINING GAIN.—Subsection (f) of section 167 (as redesignated by paragraph (3)) is amended to read as follows:

"(g) ADJUSTED BASIS FOR DETERMINING GAIN.—Notwithstanding any other provision of this subtitle, under regulations prescribed by the Secretary for purposes of determining the gain on the sale for other disposition during the taxable year of property with respect to which the deduction under subsection (a) is allowable for such year, the adjusted basis on such property shall be equal to—

"(1) the amount so allowable with respect to such property for such year, multiplied by

"(2) the number of years of the useful life of such property with respect to the taxpayer for which such deduction was so allowable to the taxpayer.".

SEC. 402. (a) TECHNICAL AMENDMENTS.—

(1) ADDITIONAL FIRST-YEAR DEPRECIATION ALLOWANCE FOR SMALL BUSINESS.—

(A) ESTATES.—Paragraph 5 of section 179 (d) (relating to definitions and special rules) is amended by striking out "167(h)" and inserting in lieu thereof "167(g)".

(B) ADJUSTMENT TO BASIS; WHEN MADE.—Paragraph (9) of section 179(d) is hereby repealed.

(2) AMORTIZATION OF REAL PROPERTY CONSTRUCTION PERIOD INTEREST AND TAXES.—

(A) RESIDENTIAL REAL PROPERTY.—Paragraph (4) of section 189(e) (relating to definitions) is amended by striking out "section 167(j)(2)(B)" and inserting in lieu thereof "paragraph (6)", and by striking out "section 167(k)(3)(C)" and inserting in lieu thereof "section 167(H)(3)(C)".

(B) RESIDENTIAL RENTAL PROPERTY DEFINED.—Subsection (e) of section 189 (relating to amortization of real property construction period interest and taxes) is amended by adding at the end thereof the following new paragraph:

"(6) RESIDENTIAL RENTAL PROPERTY.—The term 'residential rental property' means, with respect to a taxable year, a building or structure if 80 percent or more of the gross rental income from such building or structure for such year is rental income from dwelling units (within the meaning of section 167(h)(3)(C)). For purposes of the preceding sentence if any portion of such building or structure is occupied by the taxpayer the gross rental income from such building or structure shall include the rental value of the portion so occupied."

(3) EFFECT ON EARNINGS AND PROFITS.—Paragraph (2) of section 312(k) (relating to effect of depreciation on earnings and profits) is amended to read as follows:

"(2) EXCEPTION.—If for any taxable year a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a), and which is not a method allowable solely by reason of the application of section 167(b)(2), then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of the replacement cost straight line method).".

(4) CARRYOVER IN CERTAIN CORPORATE ACQUISITIONS.—Paragraph (6) of section 381 (c) (relating to items of the distributor or transferor corporation) is amended by striking out ", (j), and (k)" and inserting in lieu thereof "and (h)".

(5) DEDUCTION FOR CONTRIBUTIONS OF EMPLOYER TO AN EMPLOYEE'S TRUST OF ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN.—

(A) IN GENERAL.—Subparagraph (C) of section 404(a)(1) is amended by striking out "section 167(1)(3)(A)(iii)" and inserting in lieu thereof "subsection (h)".

(B) DEFINITION OF CERTAIN SERVICES.—Section 404 is amended by adding at the end thereof the following new subsection:

"(h) CERTAIN COMMUNICATIONS SERVICES.—For purposes of this section, the services described in this subsection are telephone services, or other communications services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), if the rates for the furnishing or sale of such services, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.".

(6) SPECIAL RULES FOR CREDITS AND DEDUCTIONS.—Subsection (e) of section 642 (relating to special rules for credits and deductions) is amended by striking out "167(h)" and inserting in lieu thereof "167(g)".

(7) GAIN FROM DISPOSITIONS OF CERTAIN DEPRECIATION REALTY.—

(A) APPLICABLE PERCENTAGE FOR ADDITIONAL DEPRECIATION AFTER DECEMBER 31, 1975.—Clause (iii) of section 1250(a)(1)(8) (relating to applicable percentage) is amended by striking out "167(k)" and inserting in lieu thereof "167(h)".

(B) APPLICABLE PERCENTAGE FOR ADDITIONAL DEPRECIATION AFTER DECEMBER 31, 1969, AND BEFORE JANUARY 1, 1976.—Subparagraph (B) of section 125o(a)(2) (relating to additional depreciation after December 31, 1969, and before January 1, 1976) is amended by striking out "167(j)(2(B)" and inserting in lieu thereof "189(e)(6)" and by striking out "167(k)" and inserting in lieu thereof "167(h)".

(C) ADDITIONAL DEPRECIATION ATTRIBUTABLE TO REHABILITATION EXPENDITURES.—Paragraph (4) of section 1250(b) (relating to additional depreciation defined) is amended by striking out "167(k)" each place it appears and inserting in lieu thereof "167(h)".

SEC. 403. (a) EFFECTIVE DATE.—The amendments and the repeals made by this section shall apply to taxable years beginning after the date of the enactment of this Act.●

By Mr. PELL:

S. 1975. A bill to provide grants for the rehabilitation of the part of the Ten Mile River located in Providence, Pawtucket, and Warwick, R.I., to the Committee on Banking, Housing, and Urban Affairs.

● Mr. PELL. Mr. President, one of our greatest urban treasures is the long neglected network of inland waterways which flow through our oldest cities.

For years, our urban rivers have suffered from accumulated pollution, trash, and debris. Flood control, navigational hazards, water quality, river bank erosion, and deteriorated docks and piers are just some of the major problems common to urban rivers. Many neglected historic sites and potential recreational areas abut inland waterways and are in need of assistance before their value is permanently degraded.

Existing Federal programs have been found to be inadequate to deal with the problems of interstate inland waterways. An example of the need for a new approach is the Ten Mile River, which flows through some of the oldest industrial cities in Massachusetts and Rhode Island. The river has been the subject of over 20 years of study by State and Federal agencies, and the Congress has been memorialized by both the Massachusetts and Rhode Island State assemblies to provide a comprehensive solution to the problem.

As a result of discussions with local legislators and my colleague in the House, Representative FERNAND J. ST GERMAIN, a legislative remedy has been developed which has the potential of serving as a model for the rehabilitation of other inland waterway systems. I am today introducing legislation identical to what Congressman ST GERMAIN has already introduced in the House. I look forward to working with the Depart-

ment of Housing and Urban Development and the committees to find a solution to a longstanding problem.

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. 1975

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 "Urban Rivers Rehabilitation Act of 1979".

SEC. 2. (a) The Secretary of Housing and Urban Development may make grants to the State of Rhode Island, and to any political subdivision of such State, to rehabilitate the part of the Ten Mile River which is located in the standard metropolitan statistical area of Providence-Pawtucket-Warwick (as defined by the Office of Management and Budget) so that such part of the Ten Mile River may be used for recreational purposes.

(b) No grant may be made under this section unless the Secretary of Housing and Urban Development determines that—

(1) 15 percent of the estimated cost of such rehabilitation will be provided by either the State of Massachusetts or the State of Rhode Island; and

(2) 15 percent of the estimated cost of such rehabilitation occurring in a city or town will be provided by such city or town.

SEC. 3. There is authorized to be appropriated to the Secretary of Housing and Urban Development for the fiscal year ending on September 30, 1981, the sum of $1,000,000 to carry out this Act.●

By Mr. DURENBERGER:

S. 1976. A bill to amend the Internal Revenue Code of 1954 to extend the one-time exclusion of gain from the sale of a principal residence to disabled individuals; to the Committee on Finance.

● Mr. DURENBERGER. Mr. President, today I am introducing a bill to amend the Internal Revenue Code to provide that individuals with severe disabilities will be entitled to a one-time exclusion of the gain recognized on the sale of a personal residence.

This bill would alleviate the burden placed on many disabled persons who because of a severe impairment are no longer able to maintain their present residence and are thus forced to sell their homes. The hardship of having to realize the entire capital gains treatment on the sale of a personal residence at a time when a severe disability makes it difficult to make ends meet is disruptive to an already difficult lifestyle.

Mr. President, the Internal Revenue Code now provides that an individual who has attained age 55 may exclude from gross income, on a one-time elective basis, up to $100,000 of gain from the sale of a principal residence.

The bill I am introducing would modify this provision in the Code to allow an individual who is totally and permanently disabled to exclude any gain recognized from the sale of a personal residence up to $100,000 from his or her gross income whether or not such individual has attained the age of 55. The effect of this legislation would offer enormous relief to the thousands of disabled persons faced with unending financial uncertainty.

The sale of a home by a disabled person is in many cases an event arising out of desperation—the disability wreaks havoc with one's life making it impossible to be gainfully employed on a long-term basis.

Without income from a job, the maintenance of a house is a virtual impossibility. The home that was previously a haven has become an albatross. The only alternative the disabled individual and his or her family has is to sell their home and either purchase a smaller residence or move to a rental unit.

We have made strides in the recent past to serve the needs of the disabled community. Laws have been passed and implemented to assist the disabled individual's transition into the mainstream of society.

However, much more needs to be done. Although the disabled need and desire to be noticed first as indiviuals with rights and responsibilities like the rest of us, they also face specific and unique obstacles that must be addressed. Allowing disabled persons to realize the gain on the sale of a house without having to undertake an enormous and burdensome payment of taxes is an important step in meeting the needs of the disabled in our society.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1976

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 121 of the Internal Revenue Code of 1954 (relating to one-time exclusion of gain from sale of principal residence by an individual who has attained age 55) is amended—

(1) in paragraph (1) of subsection (a) by inserting "or the taxpayer has not attained the age of 55 before such date but is permanently and totally disabled (within the meaning of section 104(d)(4)) on such date of," after "exchange"; and

(2) in paragraph (1) of subsection (d) by inserting "or disability" after "age" each place it appears.

(b)(1) The heading for such section 121 is amended by inserting "OR IS DISABLED" after "age 55".

(2) The table of sections for Part III of subchapter B of chapter 1 of such Code is amended by inserting "or is disabled" after "age 55" in the item relating to section 121.

(3) Sections 1033(g)(3), 1034(k), 1038(e)(1)(A), 1250(d)(7)(B), and 6012(c) are each amended by inserting "or is disabled" after "age 55".

SEC. 2. The amendments made by the first section of this Act shall apply with respect to taxable years beginning after December 31, 1978.●

ADDITIONAL COSPONSORS

S. 43

At the request of Mr. HATCH, the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 43, the National Ski Patrol System Recognition Act.

S. 1384

At the request of Mr. HATFIELD, the Senator from Michigan (Mr. RIEGLE) was added as a cosponsor of S. 1384, a bill to amend the Internal Revenue Code of 1954 to allow a credit against tax for contributions of certain crops by farmers to certain tax-exempt organizations.

S. 1775

At the request of Mr. TALMADGE, the Senator from Michigan (Mr. LEVIN) and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. 1775, the Agricultural, Forestry, and Rural Energy Act.

S. 1953

At the request of Mr. YOUNG, the Senator from Nevada (Mr. LAXALT) was added as a cosponsor of S. 1953, a bill to authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Louis L'Amour.

NOTICE OF HEARINGS

SUBCOMMITTEE ON NUTRITION

● Mr. McGOVERN. Mr. President, I wish to announce that the Agriculture Subcommittee on Nutrition has scheduled a hearing on the subject of nutrition training for health professionals. The hearing date has been set for Thursday, November 8, beginning at 9 a.m. in room 324, Russell Building. The subcommittee will hear from invited witnesses only, but written statements submitted for the record are welcome. Anyone wishing further information should contact the committee staff at 224-2035.●

SUBCOMMITTEE ON INTERNATIONAL FINANCE

● Mr. STEVENSON. Mr. President, the Subcommittee on International Finance of the Committee on Banking, Housing, and Urban Affairs will hold a series of hearings on trade and technology. The purpose of the hearings is to assess the implications for U.S. trade competitiveness of technological change and international technology transfers, as well as the effects of trade on U.S. technology. The hearings will examine U.S. trade and technological competitiveness in many contexts, including East-West trade, trade with newly industrialized countries, and selected economic sectors: agriculture, steel, electronics, and others.

Earlier this year the subcommittee released its report on U.S. export policy, based on 11 days of hearings on the subject in 1978. The report noted the increased international competition facing the United States in high technology fields where U.S. producers have long been dominant. American agricultural and industrial exports are both technology intensive. Our continued export competitiveness is clearly tied to our comparative advantage in technological innovation and the production of high technology goods.

But as the subcommittee report notes—

We are losing our competitive position in high technology trade, and uncoordinated Federal Government policies make it difficult to remedy the situation.

The subcommittee intends to study thoroughly the interrelationships be-

tween trade and technology. Among the issues to be examined are:

First, the effect of U.S. exports on economic competitiveness, including effects on domestic capital formation and technology development;

Second, the effect on U.S. trade competitiveness of U.S. restrictions on technology transfer;

Third, the effect of U.S. transfer of technology on economic development abroad,

Fourth, the effect of foreign technology subsidies and trade barriers on U.S. competitiveness.

The first hearing in the series will be held on Monday, November 19 in Pittsburgh, Pa. The time and location of the hearing will be announced in the RECORD at a later date. Within the general scope of assessing U.S. trade and technology, the Pittsburgh hearing will focus on the steel industry. The Office of Technology Assessment has released a study which suggests portions of the steel industry may have strong export potential, if current U.S. technological leads are promptly and fully exploited.

Other studies suggest that the steel industry as a whole could dramatically increase its trade competitiveness by adopting new technologies, including some developed abroad. Testimony will also be received on Senate Concurrent Resolution 38, introduced by Senators HEINZ, RANDOLPH, BAYH, GLENN, JAVITS, DOMENICI, METZENBAUM, SCHWEIKER, LUGAR, STEWART, THURMOND, and DURENBERGER on September 20, which calls for consideration in the organization for economic cooperation and development (OECD) of a multilateral agreement to halt predatory Government-subsidized export credits for steel plants and equipment.

The second hearing will be held on Tuesday, November 27, beginning at 10 a.m. in room 5302 of the Dirksen Senate Office Building in Washington, D.C. The hearing will examine trade and technology in the East-West context. A study by the Office of Technology Assessment, entitled "Technology and East-West Trade" will be a focal point for the hearing. Testimony will also be heard on implementation of the recently enacted Export Administration Act of 1979, on policies of the Export-Import Bank, on the effects of barter and countertrade, and on various legislative proposals regarding East-West trade, including S. 339 and Senate Concurrent Resolution 47.

The third hearing in the series will be held Tuesday, January 15, beginning at 10 a.m. in room 5302 of the Dirksen Senate Office Building, Washington, D.C. The hearing will examine trade and technology in the electronics industry. A focal point for the hearing will be the report of the International Trade Commission on its section 332 study of international trade in integrated circuits.

Persons interested in submitting testimony or desiring additional information may contact Robert W. Russell, counsel to the International Finance Subcommittee, (202) 224-0819, or Paul Freedenberg, minority professional staff member, (202) 224-0891.●

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON ARMS CONTROL, OCEANS, INTERNATIONAL OPERATIONS, AND ENVIRONMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Arms Control, Oceans, International Operations, and Environment Subcommittee of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, November 6, 1979, beginning at 2 p.m., to hold a hearing on the Cambodian refugees.

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

SUBCOMMITTEE ON GENERAL PROCUREMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on General Procurement of the Committee on Armed Services be authorized to meet during the session of the Senate today to hold a hearing on the foreign sale of U.S. Navy vessels.

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

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

● Mr. HARRY F. BYRD, JR. Mr. President, the Subcommittee on Taxation and Debt Management of the Committee on Finance will include as part of the hearing on Wednesday, November 7, 1979, S. 1549, dealing with the excise tax on fishing tackle, and S. 873, dealing with residency requirements for deductions and exclusions for individuals living and working abroad, as well as the Technical Corrections Act of 1979.

The hearing will begin at 2:30 p.m. in room 2221 of the Dirksen Senate Office Building.

The subject matter of S. 1549 is included in H.R. 5505, which the House of Representatives passed on October 30, 1979. S. 1549 revises the schedule for payment of the 10-percent excise tax imposed upon the manufacturer's sale of fishing rods, reels, creels and artificial lures, baits and flies. The measure is sponsored by Senators BOREN, BELLMON, DANFORTH, DURENBERGER, NELSON, and PERCY. It has no revenue effect. It will benefit manufacturers of fishing equipment.

S. 873 is sponsored by Senators RIBICOFF, BENTSEN, CHURCH, HAYAKAWA, JAVITS, and TOWER. It would waive the residency requirements for deduction or exclusions of individuals living and working abroad where the individual was forced to return to the United States by circumstances beyond his control in the country in which he is working. The bill would primarily benefit Americans working in Iran who recently were forced to leave. Revenue estimates on this measure are not available at this time.

Witnesses who desire to make oral statements at the hearing should submit a written request to Michael Stern, staff director, Committee on Finance, room 2227 Dirksen Senate Office Building, Washington, D.C. 20510, by no later than the close of business on November 5, 1979.

Written testimony.—Written testimony submitted by witnesses not making oral statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with 5 copies by November 14, 1979, to Michael Stern, staff director, Committee on Finance, room 2227 Dirksen Senate Office Building, Washington, D.C. 20510.●

ADDITIONAL STATEMENTS

THE COMBINED FEDERAL CAMPAIGN

● Mr. MELCHER. Mr. President, on behalf of myself and Senator DANFORTH, as co-vice chairmen of the Combined Federal Campaign effort in the Senate this year, we want to urge our colleagues to do all they can to make the CFC drive a success.

This fine campaign takes place every year at this time. It is the most people-oriented endeavor in which one can participate with the minimum of effort.

All one has to do is contribute money, and this can be made almost painless through the payroll deduction plan.

All of us are from different parts of our wonderful country. But for varying periods in our lives we live in Metropolitan Washington. We have a responsibility to this area and to its citizens, many of whom are very much in need of our help.

It is easy not to get involved. But life is not that simple, and often it is not fair.

There are many human beings in this affluent section of our Nation, which has one of the highest standards of living in the United States, who are desperately in need of our help. They are of all ages, creeds, colors, and backgrounds.

We truly are our brothers' and sisters' keepers. And we can exercise in great part our responsibilities to those less fortunate in our society by contributing of our time, talents, and fortunes to many, many organizations which do humanitarian, lifegiving, and life-inspiring work.

The greatest gift in life is to give of ourselves. A very small portion of your fortune will do much to help ease the burdens and pains of others who are troubled and heavily laden emotionally, physically, psychologically, and financially.

There are almost 200 organizations which are assisted by the Combined Federal Campaign. So our giving is made very easy for us.

We are appealing to our colleagues to assist us in this most worthwhile cause. The question is simply what can you do. First, you can participate yourself. Second, and perhaps even more important, you can encourage and urge your staff members to take part. Your giving will serve as an example to your staffers.

Over the years, the record of giving by Members and staffers of the two branches of Congress has been abysmal. In fact, it has been disgraceful.

Last year, for the first time, there was some minor achievement, when less than $20,000 was raised from almost 5,000 employees of the Senate. In the years before, the annual giving was only several hundreds of dollars.

A goal of $100,000 has been set this year for the Senate. This is a much more realistic figure. The Senate Staff Club

has gotten behind the CFC program. Vice President WALTER F. MONDALE is chairman. We, JOHN MELCHER and JOHN DANFORTH, are honored to have been invited to be co-vice chairmen.

The campaign was supposed to be for the month of October. However, in order to give everyone a chance to participate it has been extended to November 15.

There is still time to make this campaign really move and to try to achieve its goal. This can only be done by massive participation.

Please call upon your staff to join the effort. If your office needs materials or pledge cards, have a call placed to Ray Nelson of the Rules Committee staff, who is Staff Club campaign chairman. His number is 224–0298. Bob Guenette, a loaned executive from the Consumer Products Safety Commission, assigned to work with CFC is also available at 488–2087. He is 1 of 32 doing this noble work this year. In addition, there are about 100 loaned executives from private industry who are assigned to work for the umbrella organization, the United Way.

Contributors have the option of designating their gifts to one or more agencies.

Time is now of the essence. If you or your staff want a speaker to talk to a staff meeting, or to have a movie about CFC shown, just make a phone call. There are CFC volunteers waiting to assist you and your office in any way possible in this noteworthy endeavor.

Let us not have just a handful of Senators' offices carry the load this year. Committee staffs and support services and offices are also urged and invited to take part.●

JUNIOR ACHIEVEMENT WEEK (S.J. RES. 107)

● Mr. DURENBERGER. Mr. President, for 60 years the junior achievement organization has led the way in introducing America's youth to the free enterprise system. The program provides a unique experience for high school students throughout the Nation to learn firsthand the pragmatic skills necessary to survive in an increasingly complex and competitive business environment.

In Minnesota alone there are 110 junior achievement organizations, many of which are extremely profitable. An impressive example is the East Bloomington Trade Association, which paid the original 21 stockholders $40 for every $1 invested—a remarkable 3,999 percent return on investment. But junior achievement is an experience in real world economics, and the lessons learned from an unsuccessful enterprise are every bit as important as those drawn from a profitable one. The important thing is participation, and young men and women across the Nation are participating in record numbers.

The other great benefit of junior achievement is the opportunity it provides for retired businessmen to share their expertise with a new generation of America's industrial leaders. These men and women represent one of the Nation's greatest untapped resources, and the program provides a bridge through which their life experience can be transformed into a foundation for the Nation's future industrial growth.

We all benefit from the activities of junior achievement, and those of us in the Senate have a unique opportunity to honor the people whose efforts have made this program such a remarkable success. I have been privileged to join with my distinguished colleague from Connecticut, Senator RIBICOFF, in sponsoring a resolution to designate the third week of January as "National Junior Achievement Week." That resolution, Senate Resolution 66, would give those involved in junior achievement a small measure of the recognition they deserve, and I urge all of my colleagues to join in sponsoring this significant statement of legislative policy and appreciation.

Mr. President, I ask that an article from the Minneapolis Tribune detailing the success of junior achievement in Minnesota be printed in the RECORD.

The article follows:

JUNIOR ACHIEVERS LEARN AND EARN—A 3,900 PERCENT RETURN ON INVESTMENT

(By Dennis J. McGrath)

The company that probably had the greatest profitability in the Twin Cities dissolved two weeks ago after a year of operation. When the East Bloomington Trade Association closed its books, the 21 original stockholders received a 3,900 percent return on their investments.

It was a small, well-managed, diversified company, which earned most of its money by turning discarded Pillsbury cloth flour sacks into aprons.

But by the beginning of April the company knew it was time to wind down, because many of its officers and stockholders had to graduate from high school.

This was one of 111 Junior Achievement (JA) companies and partnerships in Minnesota that were recognized at an annual awards ceremony at the Radisson South Hotel Thursday night.

While it didn't win any awards, the East Bloomington firm was described by a JA official as "one of the most colorful companies in the state." Its adviser, a manager in Pillsbury Company's research and development department, said the student officers demonstrated a creativity beyond what he expects of his own employees.

However, in the competition for production company of the year, they lost out to a Mankato partnership that set a state sales record by manufacturing and selling more than $10,000 worth of automobile emergency kits stocked with a fire extinguisher, flares, starter cables and a flashlight.

Surveys Unlimited, a partnership of 15 students from Benilde-St. Margaret High School in St. Louis Park and Edina East High School, received top honors as the service company of the year for the $5,000 worth of market research and taste tests it conducted for local firms like Peavey Co. and Minnesota Mining and Manufacturing Co.

The East Bloomington group, one of eight finalists in the best-company race, was formed last October by 21 students at Kennedy High School in Bloomington, and had sales of more than $5,000, according to its president, Catherine Francis, a 17-year-old senior.

Its first project was a sinister-sounding plan to "offer protection" to homeowners and apartment dwellers. Actually it was "Halloween prank insurance," Francis explained.

"If a policyholder's house or apartment was egged or whatever by kids on Halloween, we promised to do the best job we could to clean it up," Francis said during an interview in the library of Kennedy High School. (She wanted to hold the interview in the company's headquarters, she explained, but a class was in session in the electronics laboratory.)

Protection cost only one dollar, and only one of the 103 policyholders filed a claim. Their success, as in any insurance offering, was due to avoiding those in the high risk category—"the most unpopular people on the block, those with teen-aged children and apartment landlords," she said.

With the profits from the insurance offering and the $1 each student paid for stock, the trade association launched its big money-maker. The group's advisers, employees of the Pillsbury Co., which sponsored the company, told the students that there were about 1,000 Pillsbury flour sacks gathering dust in the Pillsbury A Mill. Pillsbury switched to paper sacks about 10 years ago because it was cheaper, explained Scot Rutherford, one of the advisers.

A brainstorming session gave birth to the idea of making aprons out of the flour sacks. At first the students did the washing and sewing themselves, Francis said, but "the production was too slow and the quality wasn't satisfactory."

They solved that problem by contracting out to a senior ciitzens' center in Gilbert, Minn., and paying workers $1.00 for each apron they sewed, 25 cents more than they paid themselves for the work.

"That was a great thing for everyone," Francis said. "The senior citizens could do a better job than we could, they could produce more than we could and they benefited from the money they were making."

The company charged $6.95 an apron and had sales of $5,051. Pillsbury employees bought $1,550 worth, and the students sold the rest (at 10 to 15 percent commissions) door-to-door, to relatives and at trade fairs.

When the trade association liquidated its stock April 16 it paid $844 in taxes to JA, which left profits of $822 to distribute. Each student who had invested $1 received $40 back.

Besides making money, the Achievers, as they call themselves, learned about the business world—sometimes the hard way.

The East Bloomington company, for example, sent off 200 flour sacks to a dry cleaner to be cleaned. They got the sacks back sparkling clean all right, but the problem was that the Pillsbury logo was cleaned off too.

"We thought of suing, but after we calmed down we realized we were as much at fault as the cleaners," Francis said. "We didn't tell them to leave the logo on. The funny part was that the night we got the sacks back, a person from Pillsbury came to speak to us about the value of a trademark—on a night we had no trademark."

The company rebounded from that disaster by selling 100 aprons at $5 apiece to The Friends of the St. Paul Chamber Orchestra with the silk-screened motto: Kitchen Chamber Music.

The entrepreneurs received another lesson when they sold 12 aprons to a store in the Southdale Shopping Center for $5 an apron.

"The store marked them up to $9.99," Francis said. "I think they sold them all."●

RAILROAD CROSSING SAFETY

● Mr. CULVER. Mr. President, a recent article in the Cedar Rapids Gazette presented a chilling picture of the dangers posed by railroad highway grade crossings. Train engineers spoke of many

"close calls" and near accidents at these sites and, in one recent tragic instance, of a fatal collision at a crossing point near Cedar Falls, Iowa.

As the article indicates, many incidents are caused by driver carelessness—an attempt to "beat the train" by driving across the track after the railroad flashings had been tripped. In many other instances, however, collisions between trains and cars have been caused—not by driver recklessness or negligence—but by the absence of modern, automatic safety features at crossing sites.

Since 1973, the Federal Government's railroad crossing safety program has been instrumental in reducing the frequency of death and injuries caused by collisions between motor vehicles and trains. This program provides the States with funds apportioned from the highway trust fund to make safety improvements—including replacing the old railroad "crossbuck" sign with modern flashing lights and swinging gates which more effectively warn motorists of approaching trains.

However, in the past this program has failed to provide optimal safety benefits because of the manner in which safety crossing funds were apportioned among the States. Funding was based upon a State's population area, and mail route mileage. Incredibly enough, however, the formula did not consider the number of crossing sites in a State.

As a result, smaller States with large numbers of crossing sites, with old and inadequate warning signs, received fewer safety funds than larger States with fewer rail crossing sites. The funding formula did not effectively target funds to States with those crossings that needed safety improvements.

The inequities in the old funding formula were significant. Iowa, for example, received an average of $2,700 for each of its 2,500 "on-system" railroad crossings. Other States, with far fewer crossings, averaged as much as $150,000 per crossing.

During consideration of the Surface Transportation Assistance Act by the Senate Committee on Environment and Public Works last year, I successfully offered an amendment to change the railroad-highway crossing safety funding formula to include the number of crossings a State had. This change put the scarce Federal dollars where the rail crossings—and the need for safety improvements—were. Congress gave final approval to my amendment, and the formula change is now law.

As a result of this change, Iowa's apportionment increased from $3.6 million in fiscal year 1978 to $5.3 million in fiscal year 1979. Iowa is using these additional funds to accelerate the replacement of inadequate warning signs with modern, automatic safety signals. The result will be fewer tragic incidences of death and injury on my State's highways and roads.

My change in the Federal railroad crossing safety formula is a graphic example of how Federal dollars can be more effectively allocated without overall increases in the Federal budget or deficit. By reallocating Federal funds more effectively, the railroad crossing safety program can now better accomplish what it was meant to do—to promote the safety and security of our citizens.

Mr. President, I ask that the article from the Cedar Rapids Gazette be printed in the RECORD.

The article follows:

CLOSE CALLS FRIGHTEN TRAINMEN

(By David Avery)

WATERLOO.—Train engineers say they are scared—of motorists.

"If the public only knew how it feels when you go home at night and your stomach feels like glass because you got so many close calls," said Milt Rehlander, a Chicago and North Western Railroad engineer from Oelwein.

Rehlander referred to the number of times his switch engine, which pulls an average 10 to 20 rail cars back and forth between Waterloo and Cedar Falls, comes close to smacking a vehicle at a grade crossing.

The problem of motorists trying to "beat the train" at crossings has led to at least three train-vehicle accidents in about a year in the Waterloo area, said Don Fredbeck, trainmaster for the C&NW in the area. One of the accidents proved fatal.

Police said when a traffic light stopped cars ahead of Diana Marie Kleve, Cedard Falls, Aug. 15 she found herself stalled on the tracks with a switch engine pulling about 20 cars bearing down on her. Police said she attempted to leave the car through the passenger door, but she was too late.

It took the train 143 feet to stop although it was only going about 5 mph and an investigation showed engineer Richard Lee Sanders did everything humanly possible to stop the train before it hit the car.

But the accident has not made believers out of those bent on "beating the train."

A reporter and photographer took a trip on a C&NW switch engine recently and saw the problem first hand. They witnessed as many as 10 motorists driving their vehicles, without stopping, over the grade crossings after the railroad flashers had been tripped.

In one instance they saw a young woman in a red sedan cross the tracks within 25 feet of the switch engine, apparently without noticing the oncoming train.

"We come a lot closer than that," said George Harvey Hill, conductor of the switch engine Rehlander operates.

Hill said school buses and police cars are sometimes the worst offenders.

State law says a school bus driver must stop at all grade crossings, look and listen and only proceed if the crossings can be made safely.

"I looked right down through the window" at the young passengers of one school bus that crossed close to his engine, Rehlander said.

Sometimes conductors and engineers take matters into their own hands. After some close calls, they jot down the license numbers of offending vehicles and fill out forms identifying the vehicles and where they crossed.

The forms are sent to the railroad company's superintendent and letters are sent to the daring drivers warning them to be more cautious.

C&NW Division Manager D. L. Carlisle said education is the only real answer to the "beat-the-train" game.

"The best thing to do is to educate the public. We think the time is right because the statewide problem is bad. It requires attention by all agencies that can do something about it," Carlisle said.●

IMPLICATIONS FOR SALT II OF BREZHNEV'S ARMS CONTROL PROPOSAL

● Mr. GARN. Mr. President, once again the editorial board of the Wall Street Journal has sliced through the murky thinking of U.S. elites with respect to negotiating arms control agreements with the Soviets. Today's Journal editorial, "Brezhnev's Gambit," lays bare the most recent example of insidious Soviet hypocrisy: the offer to marginally reduce its military manpower and hardware in Eastern Europe in return for an agreement by NATO to remain inferior in military power.

Any knowledgeable observer can see that this proposal is aimed at delaying or preventing a positive decision at the NATO ministerial meeting this December to upgrade the alliance's theater nuclear forces. As the Journal accurately notes, "Brezhnev's gambit is indicative of how the Soviets now use arms control negotiations as an offensive weapon to gain real military advantage."

The Soviets have nothing to lose by making this seemingly magnanimous proposal, and everything to gain. A reduction of even 20,000 Soviet troops from East Germany would still leave U.S. troops in the region outnumbered by 80,000. Moreover, the military implications of such a reduction are severely limited given the geographical proximity of the U.S.S.R. Moscow's efforts to upgrade their theater nuclear forces, particularly with the deployment of the SS–20 and the Backfire bomber, are well documented. These systems would be uneffected by the Soviet proposal.

The stark contrast between the theater nuclear capabilities of the Warsaw Pact in comparison with those of NATO are extremely disconcerting. The Soviets now hold a more than 4-to-1 advantage in both theater nuclear vehicles and warheads. And by 1985, the Soviets are expected to increase the number of nuclear warheads on these systems by about 50 percent, from about 2,150 to 3,250 warheads.

It is imperative that NATO approve and move expeditiously to implement the U.S. proposal to modernize its theater nuclear forces by deploying 464 ground-launched cruise missiles and 108 new Pershing–2 ballistic missiles in Western Europe in the early 1980's. Defense/Space Business Daily recently observed that "without the NATO force modernization program, the Soviets will have a warhead advantage that will have increased from about 4 to 1 to about 6 to 1, with a major advancement in the accuracy of the delivery of those warheads."

If we are to be successful in competing with the Soviets in the area of arms control, we need to recognize that Soviet arms control strategy is geared toward undermining Western security. Arms control is a worthy goal to the extent that it is equitable, verifiable, and promotive of international peace and stability.

Thus far, United States-Soviet arms control efforts have been none of these

things. No better example exists of the failure of arms control than the SALT II treaty now under consideration by the Senate.

SALT II is an inequitable, unverifiable agreement masquerading as arms control. The Journal points out that the distinguished minority leader from Tennessee, Senator HOWARD BAKER, has, in the process of the Senate Foreign Relations Committee markup, "compiled a record of the treaty's one-sidedness." Furthermore, the Journal notes that "This is not an accident, but the inevitable result when the U.S. negotiates for arms control and the Soviets negotiate for military advantage."

Mr. President, when the SALT II treaty comes to the floor of the Senate, I hope my colleagues will seriously consider the points raised in this editorial and the grave implications of ratifying SALT II without attaching to it significant amendments.

Mr. President, I ask that the Wall Street Journal editorial, "Brezhnev's Gambit," and the Defense/Space Business Daily article, "Soviet Theater Nuclear Warheads to Increase by 50 percent by 1985," be printed in the RECORD.

The articles follow:

BREZHNEV'S GAMBIT

Early this month, Leonid Brezhnev politely offered to talk about reducing the number of missiles aimed at Western Europe if NATO agrees to abandon plans to modernize its nuclear arsenal. Brezhnev's gambit is indicative of how the Soviets now use arms-control negotiations as an offensive weapon to gain real military advantage.

Moscow is engaged in a vast nuclear build-up against allied forces in Western Europe. It has deployed about 120 SS-20 missiles, which are highly accurate long-range mobile missiles with three independently targeted warheads, and introduced the supersonic Backfire bomber. These weapon systems are not limited by SALT or any other agreement.

By contrast, NATO has almost no offsetting theater-nuclear weapons; only 18 farcical French land-based missiles, an estimated 40 submarine based Poseidons not well adapted to theater warfare, and 156 American F-111 fighter-bombers.

For more than a year, NATO countries have been stuck over what to do in response to the new Soviet SS-20s and Backfires. The U.S. has offered to base 464 ground-launched cruise missiles and 108 new Pershing-2 ballistic missiles in Western Europe in the early 1980s. NATO ministers are slated to make a decision in December on the U.S. proposal.

One thing complicating the decision is the prospect of more negotiations with the Soviets, despite the fact that in the lengthy Mutual and Balanced Force Reduction talks the two sides have been unable to agree even on the actual composition of present forces. At the NATO conference in Belgium in September, Henry Kissinger complained about the idea of delaying our decision to try to negotiate removal of the SS-20s. The former Secretary of State predicted. "If this is our position, all the Soviets have to do is to begin a negotiation to keep us from doing what they are already doing, negotiation or no negotiation."

This is precisely the gambit Mr. Brezhnev played in his Berlin speech. This decision to withdraw 20,000 of the 400,000 Soviet troops stationed in East Germany and to cut its tank force by 1,000 to 6,000 represents only a fractional reduction. It would leave the U.S. troops in the region outnumbered by 80,000, and pulling these Russian soldiers back to the border would still keep them in easy reach of West Germany. The offer to dismantle some older Soviet missiles, whose role is already being taken over by the SS-20 and Backfire, is only a token gesture.

Cracks in the alliance have already appeared over this issue and Mr. Brezhnev's proposition could thus prove to be a harmful wedge. Most observers recognize the phoniness of Mr. Brezhnev's offer, but this is how the Kremlin plays the arms-control game.

What is true of Mr. Brezhnev's gambit has unfortunately become true of arms control generally. In its hearings on SALT-II, the Senate Foreign Relations Committee has been voting down "killer amendments," that is, anything disagreeable to the Soviets. But in the process, Senator Howard Baker has compiled a record of the treaty's one-sidedness: its provision for 308 Soviet heavy missiles not allowed the U.S., its exclusion of the intercontinental-capable Backfire and so on. This is not an accident, but the inevitable result when the U.S. negotiates for arms control and the Soviets negotiate for military advantage.

Harvard Professor Richard Pipes has recently written on the Soviet objectives in SALT for the Committee on the Present Danger. He finds they want four things: To inhibit U.S. response to Soviet long-term strategic programs; to fix the number of U.S. systems and thus facilitate the task of rendering them harmless; to prevent an American technological achievement from suddenly neutralizing their build-up; and to create in the U.S. a political atmosphere obstructive to defense expenditures.

Arms control is well worth pursuing, but genuine arms control can't be achieved if the U.S. allows the Soviets to use the negotiations as an offensive weapon. The way to make the Soviets negotiate seriously is to break the present pattern. Proceeding with theater nuclear forces in Europe is one step toward that end. But an even clearer message would be the outright rejection of the strategic arms agreements.

SOVIET THEATER NUCLEAR WARHEADS TO INCREASE BY 50% BY 1985

The Soviet Union is expected to continue the reduction in numbers of long-range theater nuclear delivery vehicles opposite NATO over the next several years, but the total capability—the number of more accurate warheads, is projected to increase by about 50 percent by 1985.

It is this realization of a continued massive growth in the already threatening Soviet advantage in Europe that highlights the urgency with which the United States and certain NATO leaders view the implementation of the NATO theater nuclear modernization program.

Currently, the Soviet Union has deployed about 1000 long-range theater nuclear force delivery vehicles, down about 100 from the number deployed in 1970, but still more than a 4-to-1 advantage over the NATO nuclear vehicle force level.

Until 1974, the Soviet force was comprised of older systems—the SS-4 Sandal and SS-5 Skean missiles and the Tu-16 Badger and Tu-22 Blinder bombers.

This year, there are, in addition to 390 SS-4 missiles and 80 SS-5 missiles, about 120 SS-20 missiles and about 90 Backfire bombers, plus about 320 Badger and Blinder bombers opposite NATO. The newer SS-20 and Backfire systems now make up about 20 percent of the force.

The SS-4 has a range of 1900 km, the SS-5, 4100 km, as compared with 4400 km for the SS-20. However, the SS-20 has three warheads, while the S-4 and -5 have single warheads, and the SS-20 is 3 times as accurate as the SS-5 and 6 times as accurate as the SS-4.

The Soviet theater nuclear force systems opposite NATO carry about 2150 warheads at the present time, as compared with about 500 warheads for the NATO systems on slightly more than 200 vehicles. This is a Soviet advantage of more than 4-to-1 in both vehicles and warheads.

By 1985, U.S. intelligence estimates that the Soviets will have reduced their total delivery vehicles opposite NATO by about 300, to about 700 vehicles, with almost half of these the newer SS-20 and Backfire systems.

The NATO delivery systems, unless the theater nuclear force modernization plan is implemented, will have dropped slightly and still remain around 200.

Even though the Soviets may have reduced their force numbers by almost a third by 1985, by replacing the older systems with the more advanced ones, the number of warheads on those systems will have been increased by about 50 percent, from about 2,150 to about 3,250 warheads.

Without the NATO force modernization program, the Soviets will have a warhead advantage that will have increased from about 4 to 1 to about 6 to 1, with a major advancement in the accuracy of the delivery of those warheads.

The deployment of about 572 Pershing II and Tomahawk ground launched cruise missiles under the NATO modernization plan would even up the numerical balance between the Warsaw Pact and NATO delivery vehicle force levels and would reduce the Soviet warhead advantage to about 3 to 1.

However, the accuracy advantage would rest with the NATO forces, with the Army/Martin Marietta Pershing II having an accuracy 10–11 times the Soviet SS-20 and even 2–3 times more accurate than the General Dynamics Tomahawk GLCM.

The disadvantage is that the Pershing II is in the over 1000 km range, forcing its deployment in closer to the Warsaw Pact front, while the SS-20 has a 4400 km range that allows it to be deployed in central Russia and the GLCM has an over 2000 km range allowing it to be deployed much farther back, such as in Britain.

All of this is based on intelligence estimates that the Soviets will continue to reduce the number of long-range theater delivery systems through 1985 by as much as one-third. If the Soviets should elect to increase the number of SS-20 and Backfire systems beyond the level estimated, or decide to keep more of the older SS-4, -5, Blinder and Badger systems in service longer to offset the NATO theater modernization program, the improvement of the balance could move much slower.●

SECRETARY OF COMMERCE JUANITA M. KREPS

● Mr. STEVENSON. Mr. President, Dr. Juanita M. Kreps has served as Secretary of Commerce since January 1977. Today Dr. Kreps leaves the Department of Commerce to return to North Carolina to resume her academic career.

Dr. Kreps was a distinguished economist and adviser to business and Government before her appointment as Secretary of Commerce. She now has a distinguished record of public service.

The Department of Commerce encompasses a diverse array of agencies and responsibilities. Many of those responsibilities are critical to the health of our economy: Science, technology, telecommunications, the oceans and atmosphere, exports, productivity, industrial innovation, industrial policy, and economic development.

The country is slowly awakening to the issue of international economic competitiveness, an awakening which owes much to the efforts of Juanita Kreps. Under her leadership the Department of Com-

merce has been marked by initiatives and new experiments. Dr. Kreps was the principal mover in the important beginnings of a national export policy and an innovation policy.

Dr. Kreps has helped to open trade with China. She has administered and enforced the antiboycott law vigorously, and without damaging U.S. interests in the Middle East. She has led the way through two revisions of the Export Administration Act, all of which is service for which the Nation and the Congress is deeply grateful.

Mr. President, I congratulate Dr. Kreps on her record as Secretary of Commerce. I trust she will remain available to counsel the Congress as work continues on many of the initiatives she launched, and I wish her well.●

U.S. POPULATION

● Mr. PACKWOOD. Mr. President, I wish to report that, according to current U.S. Census Bureau approximations, the total population of the United States as of November 1, 1979 is 221,569,382. In spite of widely publicized reductions in our fertility levels, this represents an increase of 1,964,109 since November 1 of last year. It also represents an increase of 173,427, that is, in just the last month.

Over the year, therefore, we have added enough additional people to fill the combined cities of Houston, Tex., and Cleveland, Ohio. In just 1 short month, our population has grown enough to more than fill the city of Spokane, Wash.●

YOUTH AND THE WORKPLACE: RECOMMENDATIONS OF THE NATIONAL COMMISSION FOR EMPLOYMENT POLICY

● Mr. WILLIAMS. Mr. President, the National Commission for Employment Policy released yesterday a set of enlightened and comprehensive recommendations for helping the Nation's youth make the difficult transition from school to work.

Their report, entitled "Expanding Employment Opportunities for Disadvantaged Youth," was presented yesterday to President Carter, and I also had the opportunity to meet with members of the Commission and its chairman, Dr. Eli Ginzberg, to receive the report on behalf of the Committee on Labor and Human Resources.

Mr. President, I regard the Commission's report as one of special importance. It demonstrates the Commission's unusually clear perception of the nature and scope of the problem of unemployment among our youth. And the recommendations chart policy initiatives that are both properly aimed and financially practicable.

I was particularly struck by the uncanny similarity between the Commission's recommendations and the policy directions that were suggested in 2 days of hearings last week by the Committee on Labor and Human Resources on "Youth and the Workplace: The Coming Decade." This similarity strongly suggests that a large degree of consensus is emerging on new directions for youth education and employability development policies for the 1980's.

One of the most important tasks of our committee in the next few months will involve reauthorization of the Youth Employment and Demonstration Projects Act of 1977, now incorporated in title IV of the Comprehensive Employment and Training Act. The revision of these authorities, along with appropriate amendments to the Higher Education Act, the Elementary and Secondary Education Act, and the Vocational Education Act, will afford the committee and the Senate an exceptional opportunity to develop a rational and comprehensive strategy for helping the Nation's youth prepare for a satisfying and rewarding life of work.

Perhaps the most important among the Commission's general recommendations is their admonition that sustained high levels of employment are necessary in the Nation's economy as a whole if sufficient jobs and work-experience positions are to be available for youth. This recommendation underscores a sobering and difficult challenge to the Congress to take all necessary and feasible steps to ward off a recession of significant severity.

The Commission also places a central focus on providing good education and effective training for youth who are most in need, that is, youth who are members of a minority group or of poor families and who have either failed in school or have been failed by their schools.

Among the other most important general recommendations, as I interpret them, are:

State, local, and community leaders should bear a major share of the responsibility and collaborate more closely in planning and implementing the needed efforts.

Racial discrimination and cultural stereotyping, which are a major contributor to workplace difficulties of youth, must be eliminated.

Educational deficiencies of disadvantaged youth must be addressed as a concern of high priority.

Employment and training programs should focus on providing second-chance opportunities for youth who have fallen behind or dropped out.

And new emphasis is needed on moving youth who are ready to work into subsidized private and public jobs in the regular workforce.

Underlying these recommendations is the primary challenge posed by the Commission:

> The President and the Congress should identify the employability and employment problems of disadvantaged youth as a domestic issue of critical importance to the future well-being and security of the nation and pledge that the Federal Government and the Nation will devote the resources and efforts necessary to its amelioration.

To identify the problems, the Congress will have to disabuse ourselves of some mistaken notions about the nature and scope of youth unemployment, adjust our focus to the realities and long-term consequences of the problems, and act accordingly with new understanding and perception.

The resources that will be required will be substantial but not overwhelming. The key to our success will be our ability to bridge natural rivalries; to develop an unprecedented degree of collaboration among educators, State and local elected officials, working Americans, and employers; and to insure that Federal policies are coordinated across the whole spectrum of youth needs as they prepare for a life of work.

Mr. President, I ask that the executive summary and the recommendations of the National Commission for Employment Policy be printed in the RECORD for the information of my colleagues.

The material follows:

EXPANDING EMPLOYMENT OPPORTUNITIES FOR DISADVANTAGED YOUTH

I. EXECUTIVE SUMMARY

Goals

Given high and rising rates of unemployment, especially among minority youth, and the cumulative deficits which are often produced by growing up in a low-income or minority family and community, the Commission recommends that the nation make a new commitment to improving the employment prospects of disadvantaged youth. More specifically:

The President and the Congress should identify the employability and employment problems of disadvantaged youth as a domestic issue of critical importance to the future well-being and security of the nation and pledge that the federal government and the nation will devote the resources and efforts necessary to its amelioration.

While the federal government should take the lead role, state and local governments, business, labor, education, and community based organizations must undertake substantial responsibility for improving the employment prospects of disadvantaged youth. The local leaders of all of these organizations should make a new commitment to work together on ameliorating the problem, and local employers should be fully involved in helping to plan and implement these efforts.

Federal resources should be targeted on youth most in need. While there is no simple way to identify this group, those youth most at risk come from low-income families, are members of a minority group, or live in areas with high concentrations of low-income families.

The major objective of federal education, training, and employment programs for youth should be to improve the long-term employability of these youth; that is, their basic education, work habits, ability to absorb new skills on the job, and other competencies which will permit successful integration into the regular work force.

Elements of a youth policy

The Commission believes that any new set of policies should be based on the following set of principles:

Youth unemployment should be viewed principally as a structural problem and long-term solutions sought. Nevertheless, there is no question that sustained high levels of employment are an important precondition for substantially improving the labor market prospects of disadvantaged youth.

Remedying the educational deficiencies of disadvantaged youth must be high on the nation's agenda. Without basic literacy skills, youth are unable to take advantage of further education or training and will be permanently consigned to the bottom of the economic and social ladder.

Our nation should renew its commitment to eliminate racial discrimination and cultural stereotyping in the labor market. In particular, all of our institutions must be involved in creating a new environment of trust and confidence between those who come from different backgrounds so that access to good

jobs and treatment on the job are based on performance alone.

Youth themselves must be more fully involved in improving their own employability and must make greater efforts to meet the performance standards set by our educational and employing institutions. To encourage disadvantaged youth to do so, these performance standards must be clearly articulated and greater rewards for success in meeting them provided at each stage of the employability development process.

Employment and training programs should be carefully targeted to provide second chance opportunities to those youth who for reasons of family background, poor schooling, or race, are likely to be permanently handicapped in the labor market. These programs should be restructured, where necessary, so as to have a cumulative impact on the long-term employability of participants.

There must be a new emphasis on moving those disadvantaged youth who are ready into unsubsidized private and public sector jobs. While sheltered experiences may be appropriate at various stages in their development, the ultimate goal should be to create opportunities for them in the regular labor market. The federal government should consider using a variety of expenditure, tax, and regulatory powers to achieve this objective.

Specific recommendations

The specific recommendations which the Commission believes would implement these principles follow:

To provide adequate job opportunities:

(1) In the event that the unemployment rate rises substantially, that is, to 7 percent or higher, and more particularly if it stays at such a high level for a sustained period, Congress should expand funding for priority national goals such as energy conservation. In so doing it should stipulate that private firms which obtain contracts to further these goals must hire a percentage of disadvantaged youth and adults who are designated by the Job Service or by CETA prime sponsors as being ready to work.

To improve basic educational competencies:

(2) The President and the Congress should support new funding for compensatory education in the secondary schools. These funds should be used to improve the basic skills of young people from disadvantaged backgrounds, through well-funded, intensive programs involving special tutorial efforts, extra after-school sessions, alternative schooling opportunities, compensatory education linked to occupational training, and in-service training for teachers.

The effectiveness of Title I of the Elementary and Secondary Education Act in the elementary schools must not be jeopardized by a reduction in funding at this level. What is needed is a comparable program at the junior and senior high levels (a) to sustain the positive effects achieved at the elementary level and (b) to provide a second chance for those not adequately served at the elementary level.

(3) To encourage a partnership with other local institutions, a portion of the new compensatory education funds recommended in (2) should be set aside for allocation on the basis of close consultation between the schools and CETA. This would be comparable to the 22 percent set-aside under the Youth Employment and Training Program which should continue to be allocated on the basis of such consultation. The new set-aside would encourage additional joint efforts on behalf of CETA-eligible youth and might lead to the development of more alternative schooling opportunities.

(4) The Secretary of Education should be provided with special funding to collect, integrate and disseminate information about exemplary programs, such as the adopt-a-school programs in Oakland, Baltimore, and Dallas. While schools must retain flexibility to deal with local conditions, what has been learned about effective ways of motivating and assisting disadvantaged youth to acquire the basic skills should be mobilized to promote wider sharing and adoption of the successful models.

To broaden opportunities for minority and female youth:

(5) The EEOC should encourage companies with overall low minority and/or female utilization to improve their utilization by hiring job-ready youth from inner-city schools or those trained through CETA programs.

(6) Education, vocational education, and CETA programs should be implemented in ways that will broaden the occupational opportunities of young women from disadvantaged backgrounds.

(7) Teenage mothers should be treated as a high priority group in both WIN and CETA and their child care and income needs should be fully met, with no diminution of support under AFDC when they participate in an education or training program.

To link performance to rewards:

(8) Schools and prime sponsors should be encouraged or required to establish local performance standards and disadvantaged youth who achieve the standards should be rewarded with entrance into a more generously stipended program or with a job opportunity. Those who fail to meet the standards should be given second chance opportunities, whenever possible.

(9) Prime sponsors should encourage the Private Industry Councils to obtain specifications from employers about the criteria they use in hiring young people, and, to the greatest extent possible, secure commitments from them that young people who meet their requirements will have a job opening when they leave school or a training program.

To improve employment and training programs:

(10) The Administration should request, and Congress should enact, a consolidated youth title under the Comprehensive Employment and Training Act, the principal goal of which should be to improve the employability of economically disadvantaged youth ages 16 through 21.

(11) The Department of Labor should encourage CETA prime sponsors to invest substantial funds in remedial programs for the most disadvantaged, even if this increases costs per individual and results in a smaller number being served.

(12) The Job Corps should be maintained as a separate program, and once current enrollment limits are reached, the program should be further expanded.

(13) The Congress should designate the eligible population under the new consolidated youth title as all youth from families in which income was at or below 70 percent of the Bureau of Labor Statistics lower living standard.

(14) Prime sponsors should be permitted to utilize up to 20 percent of their funds under the youth title to assist youth who do not meet the income requirement but nevertheless face substantial barriers to employment.

(15) The majority of the funds for the consolidated youth title should be distributed by formula to local prime sponsors. However, a sizeable portion should be set aside for supplemental grants to areas with high concentrations of low-income families and another portion should be reserved to the Secretary of Labor to reward superior performance or to fund innovative programs, particularly those of an interdepartmental nature.

(16) Congress should provide for forward funding, a five-year authorization and additional emphasis on staff development under the new youth title.

To move disadvantaged youth into regular jobs:

(17) Short-term, subsidized work experiences in the private sector should be permitted under CETA with safeguards to insure that employers do not misuse the program and that the youth are provided with a carefully structured and supervised learning experience or training opportunity.

(18) The President, with advice from the Office of Personnel Management, should consider making youth who have successfully completed a CETA program involving experience in a federal agency, eligible for conversion to entry level positions in the career service on a noncompetitive basis.

(19) The President should direct the Secretary of Defense to review the experience of Project 100,000 during the late 1960s which was successful in recruiting and providing special training for 246,000 young men who did not meet the regular qualifications.

(20) When the various pieces of legislation that authorize grants-in-aid are being considered for adoption or renewal, the Administration and the Congress should consider writing in provisions that would encourage or require that the grant recipients employ a specified percentage of disadvantaged youth who are referred to them as job ready by either the Job Service or the CETA prime sponsor.

(21) The President should direct the Office of Management and Budget, with the assistance of other appropriate agencies, to determine whether and how the procurement process might be modified so that there would be new incentives for employers to hire structurally unemployed adults and disadvantaged youth.

Finally, to insure long-term cumulative progress in improving the employment prospects of disadvantaged youth, the Commission recommends that:

(22) Congress should review annually the extent to which the gross discrepancies in the employment to population ratios and the unemployment rates for minority youth relative to white youth and adults are narrowed as a result of implementing the foregoing recommendations. In the absence of substantial and continuing progress in narrowing the gaps, the Administration and the Congress should seek to fashion revised and new programs which hold greater potential to ameliorate the present intolerable situation where our society has no regular job opportunities for many young people who come of working age.

II. RECOMMENDATIONS

A. A national commitment to disadvantaged youth

While unemployment rates for youth are very high, most youth make the transition from school to work without serious problems. In fact, among white youth, the proportion successfully entering the labor market over the past decade has increased. Among minority youth, on the other hand, there has been a marked decline in the proportion both seeking and finding work. The consequences of not attending to this situation are serious and include crime, alienation, and reduced social mobility as well as lower incomes and lost output.

Past efforts to deal with the labor market problems of disadvantaged youth have tended to stress the provision of jobs and have not fully come to grips with the cumulative deficits produced by growing up in a low-income or minority family and community. Enhancing the employment prospects of these youth can be achieved only if schools, community based organizations, training institutions, and the job market are more effectively involved in joint efforts to overcome the legacy of poverty and racial discrimination.

Given the seriousness of the problem and the nature of the deficits which must be overcome, the Commission believes that:

The President and the Congress should identify the employability and employment problems of disadvantaged youth as a do-

mestic issue of critical importance to the future well-being and security of the nation and pledge that the federal government and the nation will devote the resources and efforts necessary to its amelioration.

While the federal government should take the lead role, state and local governments, business, labor, education, and community based organizations must undertake substantial responsibility for improving the employment prospects of disadvantaged youth. The local leaders of all of these organizations should make a new commitment to work together on ameliorating the problem, and local employers should be fully involved in helping to plan and implement these efforts.

Federal resources should be targeted on youth most in need. While there is no simple way to identify this group, those youth most at risk come from low-income families, are members of a minority group, or live in areas with high concentrations of low-income families.

The major objective of federal education, training, and employment programs for youth should be to improve the long-term employability of these youth, that is, their basic education, work habits, ability to absorb new skills on the job, and other competencies which will permit successful integration into the regular work force.

B. Elements of a youth policy

The reasons that disadvantaged youth have problems in the labor market are many and these reasons interact. Based on the Commission staff's analysis, the most important causes of their joblessness appear to be the inability of the economy to absorb all those who want to work combined with educational handicaps and discrimination which put disadvantaged, and especially minority, youth at the end of the hiring queue, regardless of the state of the economy. The lack of sufficient job opportunities for these youth, or of opportunities for upward mobility consistent with ther aspirations, has produced a situation in which many of our youth no longer strive for excellence in the classroom or the workplace. Employers, for their part, have turned to other sources of labor, leaving subsidized work experience programs in the public sector as the dominant source of employment for minority youth. While these programs provide income and job opportunities which would not otherwise exist, they appear to have few long-term benefits and a limited ability to integrate youth into the regular labor market.

Based on these findings, the Commission believes that any new set of policies should be based on the following set of principles:

Youth unemployment should be viewed principally as a structural problem and long-term solutions sought. Nevertheless, there is no question that sustained high levels of employment are an important precondition for substantially improving the labor market prospects of disadvantaged youth.

Remedying the educational deficiencies of disadvantaged youth must be high on the nation's agenda. Without basic literacy skills, youth are unable to take advantage of further education or training and will be permanently consigned to the bottom of the economic and social ladder.

Our nation should renew its commitment to eliminate racial discrimination and cultural stereotyping in the labor market. In particular, all of our institutions must be involved in creating a new environment of trust and confidence between those who come from different backgrounds so that access to good jobs and treatment on the job are based on performance alone.

Youth themselves must be more fully involved in improving their own employability and must make greater efforts to meet the performance standards set by our educational and employing institutions. To encourage disadvantaged youth to do so, these performance standards must be clearly articulated and greater rewards for success in meeting them provided at each stage of the employability development process.

Employment and training programs should be carefully targeted to provide second chance opportunities to those youth, who for reasons of family background, poor schooling, or race, are likely to be permanently handicapped in the labor market. These programs should be restructured, where necessary, so as to have a cumulative impact on the long-term employability of participants.

There must be a new emphasis on moving those disadvantaged youth who are ready into unsubsidized private and public sector jobs. While sheltered experiences may be appropriate at various stages in their development, the ultimate goal should be to create opportunities for them in the regular labor market. The federal government should consider using a variety of expenditure, tax, and regulatory powers to achieve this objective.

In the sections that follow, the Commission provides a number of more specific recommendations which it feels would further these objectives.

C. Adequate job opportunities

The Commission believes that the employment problems of disadvantaged youth will be severe no matter what the state of the economy and most of its recommendations are directed to needed structural changes for the longer-term. Nevertheless, it is concerned about the possible impact of a recession on the employment prospects of youth. The evidence is clear that youth employment, and especially minority youth employment, is even more sensitive to the business cycle than adult employment. Moreover, in periods of economic slack, other measures will simply reallocate existing opportunities and will be strongly resisted for this reason. Thus, the Commission recommends that:

(1) In the event that the unemployment rate rises substantially, that is to 7 percent or higher, and more particularly if it stays at such a high level for a sustained period, Congress should expand funding for priority national goals such as energy conservation. In so doing it should stipulate that private firms which obtain contracts to further these goals must hire a percentage of disadvantaged youth and adults who are designated by the Job Service or by CETA prime sponsors as being ready to work.

D. New directions for educational policies

Mastery of basic reading, writing, and computational skills is a prerequisite for other kinds of training, including on-the-job training, with the result that these skills are almost universally demanded by employers. High school dropouts, who are disproportionately black or Hispanic, face a significantly higher probability of becoming unemployed than do high school graduates. Even among those who graduate from high school, especially from inner city schools, the acquisition of basic skills is likely to be deficient. Any serious strategy for improving the labor market prospects of disadvantaged youth must put major emphasis on closing the basic skills gap. If this gap is not closed, the employment prospects of these youth will worsen as unskilled jobs in industry or agriculture continue to decline as a proportion of total job opportunities.

The federal government has made a strong commitment toward providing funds for low-income students who wish to go on to college or other post-secondary training. An equally strong commitment must be made to provide funds for remedial programs to serve low-income youth who are not college-bound but who lack the basic skills.

The schools have been, and should continue to be, the primary institution for providing these basic skills. However, it is critical that a partnership with employers and employment and training programs be forged so that disadvantaged youth will have more learning opportunities outside the regular classroom and greater motivation to acquire the basic skills. Accordingly, the Commission makes the following recommendations:

(2) The President and the Congress should support new funding for compensatory education in the secondary schools. These funds should be used to improve the basic skills of young people from disadvantaged backgrounds, through well-funded, intensive programs involving special tutorial efforts, extra after-school sessions, alternative schooling opportunities, compensatory education linked to occupational training, and in-service training for teachers. The effectiveness of Title I of the Elementary and Secondary Education Act in the elementary schools must not be jeopardized by a reduction in funding at this level. What is needed is a comparable program at the junior and senior high levels (a) to sustain the positive effects achieved at the elementary level and (b) to provide a second chance for those not adequately served at the elementary level.

(3) To encourage a partnership with other local institutions, a portion of the new compensatory education funds recommended in (2) should be set-aside for allocation on the basis of close consultation between the schools and CETA. This would be comparable to the 22 percent set-aside under the Youth Employment and Training Program which should continue to be allocated on the basis of such consultation. The new set-aside would encourage additional joint efforts on behalf of CETA-eligible youth and might lead to the development of more alternative schooling opportunities.

(4) The Secretary of Education should be provided with special funding to collect, integrate and disseminate information about exemplary programs, such as the adopt-a-school programs in Oakland, Baltimore, and Dallas. While schools must retain flexibility to deal with local conditions, what has been learned about effective ways of motivating and assisting disadvantaged youth to acquire the basic skills should be mobilized to promote wider sharing and adoption of the successful models.

E. Broadening opportunities for minority and female youth

The policy of the Equal Employment Opportunity Commission (EEOC) to identify patterns of systemic discrimination against minorities and women and to encourage employers to voluntarily pursue remedial actions that will bring them into compliance with Title VII of the Civil Rights Act of 1964 provides a significant opportunity to increase the number and proportion of minority and female youth who can be placed into regular jobs. The EEOC is in a position to identify by prime sponsor area those employers whose work forces are not representative of the local labor force.

Accordingly, the Commission recommends that:

(5) The EEOC should encourage companies with overall low minority and/or female utilization to improve their utilization by hiring job-ready youth from inner-city schools or those trained through CETA programs.

Improving the employability of disadvantaged young women, the vast majority of whom are going to have family support responsibilities at some point in their lives, requires opening up to them a wider range of occupational choices than those that most working women currently have. All youth-oriented labor market policies have a poten-

tial impact—for better or worse—on future patterns of occupational segregation which currently confine women, and especially minority women, to the lowest paid jobs.

Within the group of disadvantaged young women, teenage mothers have special needs. They not only need income support but also require money for child care services while completing their schooling or training in order to obtain the requisite skills which will enable them to earn an income equal to or above that available to them as welfare recipients.

It is with these needs in mind that the Commission recommends that:

(6) Education, vocational education, and CETA programs should be implemented in ways that will broaden the occupational opportunities of young women from disadvantaged backgrounds.

(7) Teenage mothers should be treated as a high priority group in both WIN and CETA and their child care and income needs should be fully met, with no diminution of support under AFDC when they participate in an education or training program.

F. Linking performance to rewards

Too often, both in our schools and our employment and training programs, performance standards have not established or maintained. The result is that graduation from high school or completion of a CETA program have had less value in helping young people obtain jobs than would be the case if employers had confidence in these credentials and were willing to commit jobs based on them. This lack of standards is one reason why disadvantaged youth themselves have had little incentive to succeed. They need to be convinced that if they take steps to improve their competencies these efforts will be appropriately rewarded in the labor market. Unless they are motivated to improve their own educational competencies or employability, the chances that such programs can be successful are slim. Therefore, the Commission recommends that:

(8) Schools and prime sponsors should be encouraged or required to establish local performance standards and disadvantaged youth who achieve the standards should be rewarded with entrance into a more generously stipended program or with a job opportunity. Those who fail to meet the standards should be given second chance opportunities, whenever possible.

(9) Prime sponsors should encourage the Private Industry Councils to obtain specifications from employers about the criteria they use in hiring young people, and, to the greatest extent possible, secure commitments from them that young people who meet their requirements will have a job opening when they leave school or a training program.

G. New directions for youth employment and training programs

The Youth Employment and Demonstration Projects Act of 1977 was designed to promote a reassessment and redirection of youth employment programs. Through a variety of new program initiatives and a large-scale research and demonstration effort, much has been learned about what works best for whom, and the relationships between schools, employment and training programs, and the private sector have been explored and fostered.

While the results of these efforts are not complete, the Commission believes enough information is available to recommend that:

(10) The Administration should request, and Congress should enact, a consolidated youth title under the Comprehensive Employment and Training Act, the principal goal of which should be to improve the employability of economically disadvantaged youth ages 16 through 21.

The Commission has been reluctant to support separate programs for separate groups under CETA. However, the severity of the employment problems for disadvantaged youth and the importance of establishing collaboration with the school ssytem in serving this age group convinces us that a separate title is needed at this time.

The Youth Title should provide for a new comprehensive program which would replace the Youth Employment and Training Program (YETP), the Youth Community Conservation and Improvement Program (YCCIP), and the Summer Youth Employment Program (SYEP). The present level of funding for these programs must be at least maintained if the desired results of consolidation are to be realized.

Because of severe deprivation, disadvantaged young people need access to a wide range of services including remedial education, skill training, work experience and knowledge of how to look for and get a job. For this reason, the Commission rejects prescribing approaches under the new youth title. However, for youth in need of comprehensive remediation, programs must be of sufficient quality and duration to make a contribution to the youth's employability. Therefore, the Commission recommends that:

(11) The Department of Labor should encourage CETA prime sponsors to invest substantial funds in remedial porgrams for the most disadvantaged, even if this increases costs per individual and results in a smaller number being served.

One of the most successful employment and training programs is the Job Corps, which provides comprehensive services in residential centers to the most seriously disadvantaged youth. Because of its demonstrated record of success in recent years, the Commission recommends that:

(12) The Job Corps should be maintained as a separate program, and once current enrollment limits are reached, the program should be further expanded.

Youth from economically disadvantaged backgrounds are more likely than other youth to be in need of employment and employability development assistance. It is especially important to reach this group—half of whom are nonwhite or Hispanic—at an early age. Accordingly, the Commission recommends that:

(13) The Congress should designate the eligible population under the new consolidated youth title as all youth from families in which income was at or below 70 percent of the Bureau of Labor Statistics lower living standard

This recommendation reconfirms the position taken by the Commission in its *Third Annual Report* that a single set of basic eligibility requirements be used throughout CETA and that youth programs be income-conditioned under the same definitions of income that prevail in other parts of CETA.

To this the Commission would add one variation. The Commission's Youth Task Force heard testimony at its field hearings that a strict income limit may unnecessarily penalize youth from families with incomes slightly above the limit, youth from working poor families and others who are greatly in need of help to succeed in the labor market. Therefore, the Commission recommends that:

(14) Prime sponsors should be permitted to utilize up to 20 percent of their funds under the youth title to assist youth who do not meet the income requirement but nevertheless face substantial barriers to employment

Whether the purposes of a youth title can be achieved and youth most in need served depends on the way in which funds are allocated. If there is poor articulation between the distribution of the population most in need and the distribution of available funds, the employment problems of disadvantaged youth will persist. Moreover, the Commission believes that intensive targeting on areas where there are concentrations of low-income families is needed. Finally, sufficient funds should be reserved to the Secretary of Labor to provide incentives for innovation, coordination and exemplary performance.

Accordingly, the Commission recommends that:

(15) The majority of the funds for the consolidated youth title should be distributed by formula to local prime sponsors. However, a sizable portion should be set-aside for supplemental grants to areas with high concentrations of low-income families and another portion should be reserved to the Secretary of Labor to reward superior performance or to fund innovative programs, particularly those of an interdepartmental nature.

Under the Youth Employment and Demonstration Projects Act, the Secretary of Labor was granted a significant amount of money for research and demonstration. In its *Third Annual Report*, the Commission noted that it recognized the value of such programs, but stated that once these programs have operated long enough to be assessed, the successful ones should be folded into general allocations to the prime sponsors. Now that this large scale effort has been undertaken, the Commission recommends that research and demonstration money under the youth title be reduced. There are, however, two projects the Commission would like the Secretary to pursue under recommendation (15) above. In collaboration with the Secretaries of Education, Commerce, Housing and Urban Development, Health and Human Services, and the Administrator of the Community Services Administration, the Secretary of Labor should support efforts aimed at utilizing funds from various agencies on joint programs and services to improve employability preparation for young people, and to enhance community economic development, particularly in the nation's cities and counties with the largest concentrations of disadvantaged youth. Efforts should be taken to disseminate the findings from the more successful efforts and to modify departmentally-funded programs to reflect the new findings. Second, while all prime sponsors should be expected to achieve their prescribed performance goals, the Secretary should establish an incentive program to reward prime sponsors who do an exceptionally good job at meeting their performance standards.

Crucial to the effective operation of youth employment programs is adequate planning and implementation time, a stable funding and program environment, and dedicated, experienced staff. To accomplish these objectives and promote more effective cooperation among local educational, training and employer communities, the Commission recommends that:

(16) Congress should provide for forward funding, a five-year authorization and additional emphasis on staff development under the new youth title. It should be noted that the major federal education programs already have these components.

H. Moving disadvantaged youth into regular jobs

Federal employment and training programs have failed in the past to adequately involve the private sector in the employability development process. The Youth Employment and Demonstration Projects Act contained several new experiments to encourage the private sector to participate more actively in training and employing young people with labor market handicaps, including up to 100 percent subsidy of their wages. In addition, the Private Industry Councils created under Title VII of CETA have been encouraged to undertake a number of activities to improve the employability of youth. Private Industry Councils, by virtue of their independence and the community standing and experience of their members, are in a unique position to contribute to improving the employability development of youth by insuring that it is related to the skills employers seek and by opening up op-

portunities for training and later employment in the private sector. Finally, the Targeted Jobs Tax Credit, passed as part of the Revenue Act of 1978, provides incentives for employers to hire disadvantaged youth between the ages of 18 and 24.

The Commission has earlier supported all of these initiatives for integrating youth more effectively into the private sector, and believes that such efforts should be carefully monitored and wherever possible expanded. In particular, the current prohibition against private sector work experience under CETA is depriving youth of opportunities to learn more readily transferable skills, to be exposed to a wider variety of work settings, and to acquire valuable contacts and references for future employment. In addition, such experiences could help to break down the resistance of many employers to hiring youth from disadvantaged minority communities. Accordingly, the Commission recommends that:

(17) Short-term, subsidized work experiences in the private sector should be permitted under CETA with safeguards to insure that employers do not misuse the program and that the youth are provided with a carefully structured and supervised learning experience or training opportunity.

While the above efforts to integrate youth into the regular job market are important, they by no means exhaust the leverage of the federal government since the latter accounts, directly or indirectly through its grants to other levels of government and to private contractors, for a substantial proportion of all employment.

With a civilian workforce of 2.8 million and a uniformed military force of 2.1 million, the federal government is the nation's largest employer. Since it believes that the federal government should take the lead in providing opportunities for disadvantaged youth, the Commission recommends that:

(18) The President, with advice from the Office of Personnel Management, should consider making youth who have successfully completed a CETA program involving experience in a federal agency, eligible for conversion to entry level positions in the career service on a noncompetitive basis.

(19) The President should direct the Secretary of Defense to review the experience of Project 100,000 during the late 1960's which was successful in recruiting and providing special training for 246,000 young men who did not meet the regular qualifications.

Federal grants-in-aid to state and local governments are now in the range of $80 billion per year. While a substantial portion of the grant-in-aid funds are used to provide services or benefits to individuals, such as grants for medicaid and income security payments, many of the grants sustain or generate employment. Some movement toward targeting a portion of the employment generated by grant funds has taken place in the recent past. Mandatory approaches were proposed in the Labor Intensive Public Works Act of 1978, and voluntary approaches in the National Public Works and Economic Development Act of 1979. Serious consideration is also being given to the possible use of administrative requirements and incentives to accomplish employment objectives.

The Commission believes these efforts should be extended and recommends that:

(20) When the various pieces of legislation that authorize grants-in-aid are being considered for adoption or renewal, the Administration and the Congress should consider writing in provisions that would encourage or require that the grant recipients employ a specified percentage of disadvantaged youth who are referred to them as job ready by either the Job Service or the CETA prime sponsor.

During fiscal year 1978 the government spent some $95.6 billion through contracts for supplies and equipment; research and development; and construction and other services. About 35 million workers are covered by federal contract compliance regulations under Executive Order 11246. Although the contract procurement mechanism has long been considered a potentially fruitful area for pursuing a targeted employment objective, relatively little is known about the range of employment that is generated through the procurement process. The Commission believes that, as a result of the establishment of a Federal Procurement Data Center under OMB's Office of Federal Procurement Policy, it is now possible to begin to collect data that will help to illuminate the question of whether procurement policy shoud be used to pursue targeted employment goals. Thus, the Commission recommends that:

(21) The President should direct the Office of Management and Budget, with the assistance of other appropriate agencies, to determine whether and how the procurement process might be modified so that there would be new incentives for employers to hire structurally unemployed adults and disadvantaged youth.

I. Monitoring progress

It will not be possible to eliminate the employment problems of disadvantaged youth quickly or cheaply, and the Commission believes that the nation will need to make a sustained commitment over many years if real progress is to occur. This progress must be monitored and changes in programs implemented as more knowledge becomes available. For these reasons, the Commission recommends that:

(22) Congress should review annually the extent to which the gross discrepancies in the employment to population ratios and the unemployment rates for minority youth relative to white youth and adults are narrowed as a result of implementing the foregoing recommendations. In the absence of substantial and continuing progress in narrowing the gaps, the Administration and the Congress should seek to fashion revised and new programs which hold greater potential to ameliorate the present intolerable situation where our society has no regular job opportunities for many young people who come of working age.●

TAXFLATION DOES NOT WAIT

● Mr. DOLE. Mr. President, Treasury Secretary Miller has said that, while he supports recent Federal Reserve efforts to improve control over money and credit availability, he feels the Fed may have acted too soon in implementing its new procedures. Mr. Miller fears that the Fed's new system of controlling reserves may not have as direct and immediate an impact as the Fed expects.

There is no question that the shift in the Fed's operations will require adjustments in financial markets and that bugs in the process will need to be worked out. The Fed will have to learn how best to employ the tools it has available to implement its revised policies. However, these are not arguments against the change: they merely point up the difficulty of achieving the goal of restraining money and credit. We can no longer doubt that such restraint is needed, in light of the inflation rate this year. This is a time when we must all pull together to put a lid on inflation, or we have little hope of success. The administration has said so itself.

That is why Mr. Miller's comments, however intended, are ill-timed and unfortunate. While Mr. Miller may have personal doubts about the effectiveness of the Fed's new approach, he must be aware that the approach cannot succeed without across-the-board support from all levels of Government and from the private sector. As chief economic spokesman for the President, the Secretary of the Treasury must choose his words carefully when discussing a major policy move such as that made by the Federal Reserve. Psychology does matter, and any hint that the administration is backing away from its anti-inflation resolve can only undermine its own efforts. The administration cannot afford to continue to work at cross purposes.

Mr. Miller to the contrary notwithstanding, it appears that the Fed's action cannot have come soon enough. Clearly the battle to control the money supply by regulating interest rates was a losing one. Had Mr. Miller, as Fed chairman, undertaken similar action at an earlier date, we might have avoided the credit crunch that now looms. Inflation could have eased sooner, and we would have avoided hitting taxpayers with such an enormous tax penalty this year.

The tax penalty, or taxflation, is the result of people moving into higher tax brackets as they try to keep pace with inflation. The higher the rate of inflation, the greater the tax penalty. Under the progressive income tax structure, the elasticity of taxes relative to income gains is about 1½ percent. That is, overall tax revenues increase by about $1.50 for every additional dollar in income. This means that an inflation rate of 13 percent, as we have this year, will cost all taxpayers about $19.5 billion if they just keep pace with inflation. This is part of the price we pay for not moving more swiftly and decisively to restrain inflation.

Until inflation is reined in, we cannot expect taxpayers to automatically pump more revenue into the Treasury. I have introduced the Tax Equalization Act, S. 12, which would eliminate the inflation tax penalty. The tax brackets, zero bracket amount, and personal exemption would be adjusted according to the rise in the Consumer Price Index. People would not move into higher tax brackets unless they experienced real income gains. Congress would also have less to gain by allowing inflation to continue.

Mr. President, the Tax Equalization Act has bipartisan support and deserves prompt attention by this Congress. The Secretary of the Treasury should also support S. 12, so long as he feels that haste in battling inflation is unwise. I again urge my colleagues' attention to this matter.●

TELEVISED SPORTS EVENTS

● Mr. SCHMITT. Mr. President, the Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation held lengthy hearings earlier this session on S. 611 and S. 622, bills to amend the Communications Act of 1934. The subcommittee is now deliberating on those amendments.

One area under consideration is the appropriate role of cable television in our national telecommunications system. A particular issue that concerns broadcasters, cable television operators and sports organizations is the regulation of

the distribution of sports events by cable television and pay television including pay cable, subscription television, and direct broadcast satellite.

It is particularly important that this issue be addressed soon because of the recent proposal by the Communications Satellite Corporation to offer pay television by direct broadcast satellite to a substantial percentage of American homes.

Don Kowet has written a provocative column in the latest issue of "TV Guide" that raises serious questions about the future availability on over-the-air broadcasting of popular sports events such as the Super Bowl and the World Series. I request that Mr. Kowet's column be in the RECORD at the conclusion of my remarks.

This column is also quite timely in view of the expiration of the National Football League's (NFL) commitment to refrain from blacking out sold-out games through the 1979 season in accordance with the spirit of Public Law 93-107.

Because of the importance of televised professional sports events to the public legislative language insuring the future availability to local television broadcasters of sold-out home games has been included in a revision of S. 622 that is being circulated by Senator GOLDWATER and myself. I will provide a copy of S. 622 to Pete Rozelle, the commissioner of the NFL and request his comments as well as an indication of the NFL's future plans for distributing NFL games.

The article is as follows:

WITH PAY-TV MOVING IN ON MAJOR SPORTS EVENTS, SECOND-GUESSING THE QUARTERBACK MAY GET EXPENSIVE

(By Don Kowet)

It's kickoff time on Super Bowl Sunday, 1984. You start flicking the TV dial in search of the championship clash—say, the Steelers versus the Cowboys again.

ABC has celluloid football—a repeat doubleheader of "Semi-Tough" and "North Dallas Forty." CBS has college football—a squad of fired up Fighting Irish in ancient leather headgear determined to win one more for "the Gipper." NBC has pro football, Pittsburgh against Dallas all right; a grainy rerun of its 1979 Super Bowl broadcast.

The truth is, this time, for the first time, none of the commercial networks owns the broadcast rights to the Super Bowl. This 1984 Super Bowl is available only to the seven or so million Americans who subscribe to pay-TV.

Farfetched as it may seem, this scenario became possible on March 25, 1977, when the U.S. Court of Appeals overturned Federal Communications Commission rules that had prohibited pay-TV from showing not only first-run movies but first-rate sports events—any big-league championship, play-off or all-star game that had been broadcast on commercial TV during the previous five years.

Suddenly, ABC and CBS and NBC's virtual monopoly over the big-league sports telecasts had ended. Pay-TV was free to become a competitor. But first it had to become widespread, and wealthy.

At the time of that court decision, pay-TV had one million subscribers. And in less than two years, that number of subscribers had climbed to three million, with industry earnings topping $300 million in 1978. Cable analysts are projecting up to seven million pay-TV subscribers by 1981.

"The question isn't whether five years or so down the road you will be paying to see on TV sports that you used to see free, that's inevitable," says one network source. "The question is: which events—second-raters? The Super Bowl?—and when."

Cable systems throughout the country already offer subscribers (for the basic cable fee) a varied menu of sports. UA—Columbia's advertiser-supported cable package includes "games of the week" of the NBA, NHL and major-league baseball, plus events from Madison Square Garden. A half dozen or so actual or would-be "super-stations" (local TV outlets whose satellite signals may be captured by any cable system willing to pay a carrier fee) are following in the wage of yachtsman Ted Turner's WTBS (Atlanta), whose broadcasts of the Hawks and Flames games are currently being delivered to over five million households across the country. And this past September, the Getty Oil-owned Entertainment and Sports Programming Network (ESPN) began filibustering cable systems with a rich diet of sports.

However, the most ominous threat to the network hegemony over big-time sporting events comes not from these basic cable packages (which pay leagues or franchises only nominal rights fees or, in the case of the "superstations", no fees at all), but from pay-TV. Pay-TV, with its potential for pay-per-view, offers the major league the prospects of a brand-new bidder in the auction.

"We see our sports programming, now and in the future, as complementary to the networks, not in competition," says Michael Fuchs, senior vice president for special programming at HBO (the pay-TV titan, with over two million satellite-linked subscribers).

The public modesty of pay-cable moguls isn't surprising. They spent years swearing on a stack of signal converters that they would never—scout's honor, compete against commercial TV. Some of Fuch's executive counterparts at the three commercial networks don't believe him for a second.

HBO broadcasts boxing matches, gymnastics, track-and-field events, all of Wimbledon up to (but not including) the final day, and NFL highlights. Regional pay-TV packagers (as well as a few over-the-air subscription-TV stations) offer local pro teams. PRISM, the Philadelphia-based pay system, shows its 90,000 subscribers the home games of the 76ers, Phillies and Flyers. In the Southwest, Fanfare broadcasts (via satellite) games of the Rockets and Astros. Throughout the country, such regional pay packages are beginning to proliferate.

"I guess what we're really saying," says CBS sports vice president Carl Lindemann, "is that pay can have what the commercial networks don't want."

If, publicly, pay-TV sports programmers profess to be content with feeding off network table scraps, some privately admit that pay-TV, if it is ever to achieve more than mere survival, must reach out for events that are now the property of commercial television. That means pro football—the only major sport that televises all of its games (except those not sold out 72 hours in advance) over commercial TV.

"I think that if anything is going to break the barrier on pay-TV, it's going to be professional football," says NBC's executive producer for sports Don Ohlmeyer. "You are now looking at football, college and pro, that costs about $200 million in rights," he adds. "To break even, you probably have to sell $300 million in advertising. That's on football alone. One-third of the gross of an entire network two years ago. How much money is there in the network marketplace?"

Ohlmeyer envisions a scenario in which the networks get to keep three national NFL games—two on Sunday, one on Monday night. The rest of the NFL schedule is parceled out to pay-TV on a regional basis.

"Let's say in New York you've got 30 per-cent cable-television penetration five years from now—that's about 2.4 million homes. Let's say a third of those, 800,000 are willing to pay $2 a game for a Giants game. Say the Giants are on national TV twice—that leaves 14 Giants games for pay-TV. Multiply 800,000 times $2 times 14. That's almost $23 million, just in New York—and there are 27 other NFL teams!"

The premise, of course, is that pay-TV operators—and their backers—will be willing to invest the sizable capital necessary to endow current pay-channel systems with pay-per-view capabilities. (That is, systems in which viewers pay only for the shows they watch. In most cases, pay and cable subscribers now pay a flat monthly fee, whether they watch the programs or not.) Potential investors are paying close attention to the results of Qube's pay-per-view experiment with Ohio State football in Columbus, Ohio. (ABC—fearful of testing the exclusivity of its NCAA college-football contract in the courts or in Congress—reached a settlement with Warner Cable, which had filed a suit against ABC alleging antitrust violations. As a result, Warner's Qube showed five Ohio State games in 1978 and will show five more in 1979.)

The NFL would have to find a way to bypass Congress's antiblackout provision (which expired as a law before the 1976 season, but which has been voluntarily maintained by the NFL these past three years). In fact, Chip Shootshan, counsel for Rep. Lionel Van Deerlin's House Subcommittee on Communications, does foresee "a gradual erosion of this televising sold-out home-games policy, to the point where home games, at least in major cities like New York and Los Angeles and San Diego, where there's lots of cable, could be carried on pay-TV locally."

Would the FCC stand idly by while the NFL sold part of its schedule to pay-TV? Despite the 1977 court decision, Sen. Ernest Hollings, chairman of the Senate Subcommittee on Communications, says he still thinks that "the FCC has the authority to prevent siphoning of sports if it were to occur."

The problem, says Bill Johnson, chief of the FCC's policy division, is determining when siphoning is occurring. "For example," he says, "a few years ago there was talk about the networks not doing the Army-Navy football game any more. Supposedly, the networks said we're not really interested, so we'll only pay you a little bit. So what if a pay guy comes along and says he wants that game? It's hard to tell whether the networks are just throwing off an event, or whether the pay people are buying it off."

If the FCC didn't take action, would the Congress? A deregulatory fever has been sweeping Capitol Hill. It was in part due to this climate in Congress that ABC felt compelled to compromise with Warner's Qube over the telecasting of Ohio State football games.

"The NFL, today, if it wanted to, could take all of its home games and put them on pay-TV," says Van Deerlin counsel Chip Shooshan. "And I have reason to believe thought is being given to this idea in the NFL right now, for the future—although I don't think they'll admit it. They could certainly take home games that were not sold out 72 hours in advance and put them on, without even violating the spirit of Pete Rozelle's agreement with Congress. As for the major events," he adds, "our feeling is that if the day comes when it looked likely that a Super Bowl or World Series would go over to pay-TV. Congress could, and would, intervene with legislation to prevent that from taking place."

Right now, of course, neither pro football nor baseball is contemplating such blasphemy. Baseball Commissioner Bowie Kuhn sums up not only his philosophy but Pete

Rozelle's too, when he declares: "I can foresee no circumstances where baseball's 'showcase' events, such as the World Series, league championships or All-Star game, would be marketed on a pay-cable or subscription-TV basis."

However, in the real world of broadcasting and the realm of big-league sports, both of which have, in two decades, metamorphosed from comparatively penny-ante pastimes to big businesses, unforeseen circumstances have a habit of what Howard Cosell calls "eventuating." Suppose the baseball and football leagues do decide that the only way to expand their box office is through the parceling out of league schedules among the commercial networks and pay-TV, as NBC's Don Ohlmeyer envisions. Suppose, for that matter, that Pete Rozelle uses the threat of moving the Super Bowl to pay-TV as a stick to beat the networks into meeting his contract demands? Thus provoked, what happens if Congress does enact prohibitive legislation either rescinding the NFL's antitrust immunity or forbidding an NFL shift to pay-TV?

"There certainly are legitimate constitutional questions that are raised any time Government attempts to arbitrarily make decisions in this area," admits Chip Shooshan. "A pro-football game, after all, is a privately owned property."

"And you tell me what constitutional right I have to sit in my living room, in New York, and force the New York Giants to give me their product over commercial TV?" asks NBC's Ohlmeyer.

"In business, as in wrestling," he adds, "a cardinal rule is that you don't take down your opponent till you have a good chance of pinning him. The next time Congress legislates against the NFL, Rozelle may decide that's the time to take Congress to the mat."

The arena for that match would be one far more hallowed than for any Super Bowl: the chamber of the U.S. Supreme Court.●

ELIMINATION OF INTOLERANCE AND DISCRIMINATION

● Mr. JAVITS. Mr. President, this year the United Nations Commission on Human Rights adopted the first three articles of an international declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief. The task of drafting such a declaration has been before this Commission for over 30 years and I believe that its adoption is long overdue.

Dr. Isaac Lewin, a professor of history at Yeshiva University in New York, addressed the United Nations Commission on Human Rights on behalf of the Agudas Israel World Organization, one of the many nongovernmental organizations that have urged the Commission to fulfill its responsibility to the General Assembly and present that body with a draft declaration. I believe that this issue merits the attention of my fellow Senators, and I ask that Dr. Lewin's statement be printed in the RECORD.

The statement follows:

STATEMENT BY DR. ISAAC LEWIN

When we think of the great deal of good which a declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief could achieve just by its inherent moral power and ethical persuasion, we can hardly understand why until now such a a declaration has not yet been proclaimed.

No legal consequences could evolve from such a declaration for any nation. A declaration appeals only to the conscience of mankind.

Like many similar documents in history, a declaration on the elimination of religious intolerance would call on individuals and governments to refrain from certain acts which are inconsistent with the principle that all human beings are created equal. The world, after all, accepted this principle long ago. The Bible extended the principle of equality under law even to a country's strangers, and prohibited doing them wrong. In the 3rd Book of Moses (19:33, it was proclaimed: "If a stranger sojourn with thee in thy land, ye shall not do him wrong. The stranger that sojourns with you shall be unto you as the homeborn among you, and thou shalt love him as thyself."

These words of the Bible expressed the principle of tolerance in a wonderful way. As the great philosopher Hermann Cohen explained: "The alien was to be protected, not because he was a member of one's family, clan, religious community or people, but simply because he was a human being. In the alien, therefore, man discovered the idea of humanity."

What would be more justified for the United Nations than to make a declaration that everyone, citizen and stranger alike, has the right to live in accordance with his beliefs? Taking into consideration the not-so-happy experience with tolerance, or rather intolerance, of the past centuries—the declaration would spell out in a few paragraphs what is meant in our days by tolerance in the field of religion or belief. The world should know the feelings of the community of nations represented by the United Nations, that what cannot be tolerated today is intolerance.

It is a source of great concern that such a declaration encounters opposition. Why should any State disagree with the principle that discrimination between human beings on the ground of religion or belief is an offense to human dignity?

Twenty-three non-governmental organizations in consultative status with the Economic and Social Council urged again this year that the drafting of the Declaration not be further delayed. In their statement (document E/CN.4/NGO/228), they drew the attention of the Commission on Human Rights to the fact that "this matter has been under consideration of United Nations bodies for more than 25 years". They stated that "religious intolerance and discrimination have done, and continue to do, great harm to many people in the world."

The question now before us is: Will the Commission on Human Rights this year again disappoint and disillusion us by reporting to the Economic and Social Council that no draft of a declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief has been prepared? Why should the clear and unequivocal mandate of the General Assembly not be fulfilled?

True, simple matters can become artificially complicated. If we would have to include in the declaration explanations of religious convictions, there would be an unavoidably deep conflict among various groups. Similarly, inclusion of explanations of "belief" might lead to unnecessary complications and even make the whole declaration impossible.

The religious revolution that just recently took place in an important country is a reminder that a solemn declaration on the elimination of religious intolerance is certainly most timely. The declaration would say that the conscience of the world is not asleep, and that the times of persecutions on grounds of religion or belief are over. Such a declaration would possibly even help to eliminate unnecessary misunderstandings and difficulties.

The working group has this year discussed the first three articles of the draft declaration. The adoption of the three articles by the Commission will certainly be a sign that the Commission is at least partly fulfilling the mandate of the General Assembly.

I urge you to adopt the three articles, as proposed by Canada in its draft resolution, and to keep this matter on the agenda for next year.

People suffering from religious intolerance all over the world are waiting impatiently for your action. The General Assembly of the United Nations, which several times adopted resolutions asking the Commission on Human Rights to finalize the drafting of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, is waiting for your action; and history is waiting for your action too.

Let a ray of hope appear from this session of the Commission on Human Rights for our brothers and sisters who suffer from religious intolerance.●

RUSSO-FINNISH WINTER WAR

● Mr. PACKWOOD. Mr. President, November 30, 1979 marks the 40th anniversary of the date that the Russo-Finnish Winter War of 1939–1940 started. The war was begun by an unprovoked attack by the U.S.S.R. across the border of Finland. The courageous fighting of the outnumbered, poorly-equipped Finnish army is one of the most remarkable stories of this century. Against overwhelming odds, the Finnish troops fought courageously to retain their freedom and independence. All Americans can appreciate the efforts of this nation—the only free European nation bordering the Soviet Union today.

The two articles that I am submitting for the RECORD give two perspectives on this war—personal and historical. The author of these articles, Mr. John Virtanen, is currently serving as the honorary consul of Finland for Oregon. In 1976, in recognition of meritorious services, Dr. Urho Kekkonen, the President of Finland, presented Mr. Virtanen with the insignia of the "Knight, First Class of the Order of the White Rose of Finland." Mr. Virtanen's bravery, and the bravery of his countrymen, deserve our special recognition.

The articles follow:

FINLAND'S "DAY OF INFAMY" FORTY YEARS LATER!

It may come as a shock to many that Finland is today self-determined, free nation, ready to celebrate the country's 62nd Anniversary of the Independence, (December 6, 1917) and the 40th Anniversary of the start of the Winter War of 1939–1940.

A border assault on the Finnish Karelian Isthmus that had a profound influence on European affairs occurred on November 30, 1939, forty years ago, which students of warfare may remember but which is unknown by most people throughout the world today. This day marked the unprovoked attack by the U.S.S.R. on the young independent small democracy of Finland in their attempt to bolster its defence perimeter by forcibly grabbing additional territory and at the same time destroying the sovereignty of a relatively defenseless freedom-loving nation. This day began the three and a half months' long Finnish "Thermopylae" that resulted in the slaughter of hundreds of thousands of Russians as the stubbornly heroic Finns resisted with whatever guerrilla tactics they could devise in the most bitter winter fighting seldom experienced in warfare. It was later learned that the Russians did not expect Finnish resistance to a take-over of their nation. Nikita Khrushchev said in his memoirs, "All we had to do was raise our voice a little bit and the Finns would obey," then added that "over million Russians were killed in that campaign."

At dawn on this cold gray day a planned blitzkrieg to conquer Finland in a week began as over 600 Russian field guns opened a thundering barrage. At the border resort town of Terijoki the Finnish ski troops patrol squad blew up the border river railroad bridge and delayed a tank advance for ten hours before retreating. House-to-house fighting occurred in the border villages all along the eastern boundary of eight hundred miles. Finns fought even with knives and quickly set up snipers—"cuckoos" in the trees which took heavy toll of the invaders before running out of ammunition. The innovation of heavy tanks leading advancing infantry was a terrifying opponent to confront with nothing but conventional machine-guns and confiscated old Russian rifles.

On this day the Finnish High Command heatedly debated: Should there be an all-out stubborn stand against an enemy far superior in numbers and armament, or should there be a concentration only on holding the most effective possible defense point as close to the border as possible? Field Marshal Mannerheim's determination to stand firm at all points became decisive even though the scattered defense garrisons, almost in panic, with only out-dated field artillery, mines, rifles and hand grenades, faced monstrous tanks spewing deadly fire against them.

However, with expert use of make-shift weapons, the Finns by December 5 stopped 80 tanks and destroyed many more by mines. Unfortunately, too, Russian bombers and fighters which numbered 3,000 quickly neutralized the Finnish airforce of 162 antiquated biplanes and Fokkers.

The frontier zone was lost before their anti-tank weapon, the "Molotov Cocktail" was fortuitously devised—a crude kerosene, tar and gasoline in a regular fifths, which proved to become a frightening weapon in the minds of the Soviet tank crews, as the Finns ignited their bottles and threw them, aiming at air intakes or opened hatches.

Expecting that the Finnish proletariat would welcome the Red Army as its "liberators," Stalin did not bother with careful preparation for the invasion. Led to believe by his own intelligence he did not want to put first class soldiers as being sacrificed against a Finnish military composed of many barely-trained reservists? Assured of quick victory, Soviet troops, inadequately clothed for a long frigid campaign in the snow, to their detriment, were hastily dispatched into the frozen forests of the north.

Red propaganda effectively convinced their own troops that the "war-mongering bourgeois government" of Finland had deliberately "provoked the fight by shelling the border village of Mainila and intended invading Soviet territory" and that this "fascist" government would quickly fall because the "oppressed Finnish workers would immediately join the Red legions" in driving the hated White Finns out of the country.

This immediate Finnish resistance forced a massive Russian frontal attack to be launched on December 6 along all sectors of the Karelian Isthmus, but hordes of Red infantry, rushing forward, were mowed down in their tracks by the bullets of unseen sharp-shooting, white-gowned Finnish guerrillas hidden in the snow banks and among the snow-covered trees hemming in the narrow roads. And the foolish Red dream of "liberation" quickly came to an end!

Nevertheless, on November 30, there was definite reason for this early Soviet optimism. The Reds outnumbered the Finnish infantry three to one, in some areas at times: fifty to one, and were far superior in essential equipment. So short were the Finns of essential military items that many small groups did not even have radios. When telephone contact was cut by enemy artillery, battalions were unaware of each other's whereabouts. Even in ski popular Finland—and with skis so necessary now—a division near Lake Laatokka was short 10,700 pairs on December 6. The first haphazard gathering of reservists found many of them without proper uniforms and footwear. There was only two months' supply of small-arms munitions and available artillery shells for about three weeks at the beginning of the conflict. Rationing of shells was imperative at all times. Even ancient artillery of an impractical 1887 model was brought in to fill the gap.

The "Suomi" rapid firing submachinegun was the key Finnish weapon in their forest guerrilla engagements—but even these were in short supply, forcing an allotment of only 250 of them to each Finnish division. Against thousands of modern tanks and armored vehicles, the Finns had 28 obsolete Renault tanks and a few Vickers, only 13 of which were armed. Finnish planes, even including open cockpit types, tried to challenge Russian planes readied for the initial onslaught with countless reserves in the rear for other regions. Industrially, the Russians had better than a forty to one advantage in manpower. If necessary, the Russian labor and armed forces could crush its tiny stubborn neighbor by sheer mass of weaponry. But still, on November 30, this frightening disadvantage of theirs did not deter the Finns from bravely facing the enemy!

The only hope remaining for Finland was the intangible one of a totally unified populace, firm in the preservation of their hard won recent independence from Russia. On the same day Moscow announced the fake Kuusinen government of Finland, the Finns formed a national coalition cabinet with the able Social Democrat, Vaino Tanner, as Foreign Minister—indicating that the rightist groups were now solidly behind the liberals in their determination to save the Republic. Even the great majority of Finnish communists readily volunteered their services in the general defense—to the surprise of Stalin.

Perhaps this reaction was more an anti-Russian than an anti-communist feeling. The senseless repressions of Czarist Russia were still very fresh in many memories. Marshal Mannerheim's declaration to the Finnish Army that ". . . our centuries-old enemy has again invaded our country. . . . We are fighting for home, faith, and country . . ." was enough of a reminder to spur Finnish loyalty to fever pitch in the hearts of all, even in the waverers.

As far back as October 5 the Finns knew they were in imminent danger—having witnessed the rapacious takeover by the Reds of the Baltic States. The reserves had been mobilized, evacuation of the danger areas had started, and by November 30 the Finns fatalistically awaited the showdown, though still not fully expecting war over a land-question.

With 100,000 Lotta Svards, the women's auxiliary of the Civil Guard, all active civilian males in this small nation of four million augmented the minuscule field army and recruits. Immediately when attacked, without hesitation, the nation united to defend to the utmost their precious heritage and their right of self-determination as a democratic nation against the unconscionable aggressiveness of authoritarianism.

This November 30 confrontation thus heralded to the world to witness how one small but brave democratic nation faced the bullying of a tyrant dictatorship. And because of this determined resistance, almost foolishly reckless as a practical act, Finland, forty years later, still remains the only sovereign, freedom-enjoying European nation bordering the Soviet Union.

Within the span of 62 years of independence—forty years from the Winter War—the country has achieved everything it has set their goals or hoped for. But, pehaps one thing they could provide as a message for the Free World is to realize and remember as it flounders about fearfully the blustering and threats of Communist Russia that it takes a sisu, determination and firmness to stand for freedom of mankind.

SISU is a Finnish word which means that after giving everything a person has, he still could give and stand more.

REMEMBERING THE WINTER WAR—FINLAND'S PEARL HARBOR

(By John O. Virtanen)

As though it happened yesterday I remember the November 30 of forty years ago as Finland's "Day of Infamy," its "Pearl Harbor." Then, as Corporal John O. Virtanen, I stood watch at a border river post with my squad thinking only that immediately following breakfast I would be relieved of my duty there and could return to our camp less than a mile away when the opening salvo of the bitter Winter War of 1939 exploded right in front of me.

Presaging the thunderous barrage that defied one's imagination, the first shells fell only a few feet from the cabin where my squad had spent the previous few days and nights. It seemed that heaven had been suddenly rent apart and fallen over me—was my first impression.

By the time the armistice was signed three and a half months later, all of Europe had felt the impact of this "White Death," as the war was sometimes called, and world civilization faced the Nazi threat of World War II. Twenty-four thousand Finns were dead, over a million Russians had been killed, and Allied countries were about to face the ruination that war brings in its onslaught. However, the entire world had witnessed a miracle during this brief preliminary period of struggle—though severely bloodied, with many cities in ruins, a little nation had survived honorably, proud of its battle achievements and its negotiation—not of surrender—but of an armistice with its then colossal enemy.

France and England could not comprehend why Finland did not officially ask their help. Sweden felt relieved from being forced to allow military aid to cross their neutral land to Finland, as was the United States in readying itself to fight Hitler with the Russians as an ally.

That morning was gray, cold. The moon still shone in the sparkling sky of stars at 7 A.M. on that critical day of November 30, 1939.

According to Khrushchev, writing in his memoirs, but then a high Politburo member who knew what was to occur on this day: "The Russians expected the Finns to fall on their knees before the assault."

Two of the first eight shells that fell around the cabin were duds. They shook the land violently but did not explode and we feared they might be timed to go off at any moment.

The Russians had gathered their forces along this border area in total secrecy. Working mostly at night, Stalin's labor camp manpower had helped build wide roads leading to the border, amply wide enough to allow heavy armored trucks and tanks to have easy access to the border. The moment the opening salvo was fired, the infantry started following the heavy tank formations, but now in single file on narrow Finnish wilderness roads. They expected to be greeted as "liberators" of the Finnish proletariat from the heartless clutches of Capitalism and to participate in a victory parade in Helsinki within a week or at least ten days!

Only minutes after the first shells exploded all along the 800 mile border between Finland and Russia, Soviet bombers dropped their explosives on most of the cities of Finland. Giant cannons at distant Leningrad opened up barrages to clear the way for the Red forces to come pouring across the river border in the Terijoki vicinity to take the Finnish troops by surprise.

They were confident on their intelligence reports that the Finns would not dare fire back, that the Finnish High Command would panic and withdraw their troops from the military zones.

For the first three days and nights we fought without withdrawing hardly a kilometer or two. We had to fight with old, confiscated Russian-made rifles that the Finns had captured at the end of the Civil War in 1918. Fortunately, we possessed efficient Suomi machine guns, excellent automatic weapons perfectly suited for guerrilla warfare—though we never had enough of them. The antiquated Civil War rifles were clumsy and inaccurate, so much so that a soldier had to allow the enemy to approach within close range to be sure of making a kill.

Snow had already covered the ground, but only about half of the troops had been issued skis for easier maneuvering in the woods. Those who had been trained as sharpshooters used Finnish-made "pystykorva" rifles; their tactic was to hide themselves within the thick branched spruce trees to better spot the advancing enemy and, by being unseen, mowed them down in droves.

Soon afterwards when all the soldiers had been issued white gowns to wrap over their uniforms, the Finns became fearsome invisible foes who brought terror to the floundering Reds in the snow-covered forested trails. We wanted to draw the enemy into the woods, but they did not dare venture into the thick wilderness of trees that provided cover for invisible Finnish snipers.

But tanks continued to roll along the narrow roads like monstrous killer-dragons and we had no weapons to stop them at first. We invented satchel-charges—hand grenades reinforced with sticks of dynamite—which were thrown into the turrents of the tanks if they were open. Effective as a bull's eye hit was, still more tanks kept clattering over the border, seemingly in an endless stream.

We front line defenders had no sleep for the first three days. No one even had time to think of food. Young recruits became "men" in a hurry and, without any advice from the officers, each man knew instantly what he had to do: kill or be killed and lose home and country! For the first time in our lives, most of us sensed our ultimate duty to Finland, realized our responsibility to those whom we loved at home. We felt an overwhelming desire to win, to live in peace, or die honorably fighting on the battlefield.

Then, after a night's rest, we continued once again the grim defensive fight as the enemy advanced with more tanks, weaponry, and an endless stream of soldiers. We just kept killing the driven horde as fast as we could fire. The insensate slaughter never ceased.

One day a member of my squad, a simple farmhand who had never been trained to fire a rifle, was guarding a lake shore entrance to a village. He and his partner had entered a dugout sauna to prevent the frigid wind from further biting their exposed faces. Just after that a Russian tank rolled to the entrance and killed their buddy left on guard. The farmhand became so enraged that he dashed out of the sauna, forgetting his rifle, and threw a lit kerosene lantern at the tank. To his amazement, the grease on the tank caught on fire and was destroyed. Realizing the effectiveness of his act, he ran to tell me about the happening. We quickly got busy filling bottles with gasoline or kerosene and used them as bombs to set fire to the Russian tanks and burn the men who were driving them. This incendiary antitank weapon became known as the Molotov Cocktail—named as an antidote to the Russian Foreign Minister whom we blamed for starting the war.

By the time I was wounded on February 14, 1940, our company had become decimated to a mere handful of men, with no reserves in sight. We had been expecting a withdrawal to the bunkers of the Mannerheim Line—widely acclaimed as a sort of reinforced Finnish "Maginot Line." To our dismay we learned there never was such a "Line." The men lined up fighting at the front actually was this so-called defensive barricade while the "Mannerheim Line" was an invention of the Russians as an alibi for their devastating losses of manpower.

As the war continued, the winter weather became more severe than it had ever been within recent memory, often 55° below zero! This was a foe both sides faced—the killer Frost. Even the hardy Finns, accustomed to this, endured frozen feet, cheeks, and fingers, while thousands upon thousands of Russians froze to death in the snow.

The Russians heavily reinforced their troops during the first part of February. They put their elite soldiers on skis and were now fighting under a new commander. Tremendous shelling went on for days, turning the no-man's land into a barrier of upturned black soil, tearing apart the tree obstructions, hoping to kill anyone found in that area.

Still too clearly and horribly I remember those days of slaughter and the deafening thunder of cannon. As an ordnance officer I distributed ammunition to my group with the added warning not to fire unless one could clearly see the whites of enemy eyes! We were dreadfully short of ammunition. To add to our frustration, replacements in manpower and vital supplies were tediously slow in arriving—if they came at all. I never saw a single foreign volunteer.

It was on that fateful 14th day that I had to leave my relatively secure storage post to go to the front with our last load of ammunition that I had saved for my company. The Russians were firing explosive bullets which scared the hell out of me when they crackled behind me. But when I became a target for one of the tanks and got hit, too, the war ended for me.

I found the hospitals crowded. Every school was a makeshift hospital. Coming from the thinned-out front lines, it seemed that there were more volunteers serving in the hospital than in the front lines. Unluckily, I was assigned to an inexperienced foreign doctor who, perhaps needlessly, placed my shattered right hand in a stretching device and had holes drilled through my fingernails to keep my hand upright with a weight pulling down from the elbow. Needless to say, my five weeks in that trap were the most excruciatingly painful days of my life when all my fingernails were slowly pulled out of the flesh.

March 13, 1940, was a stunningly clear day when an armistice was signed and the fighting ceased. For all Finns this was indeed a sad day as we thought we had lost the war on the negotiating table. However, as it turned out, this attainment of an armistice was the best thing our country could have done under the circumstances.

Had it been otherwise—by that I mean: had the Finnish Foreign Minister, Vaino Tanner, asked officially for Allied military help, rather than relied on volunteers, they, the France and England at that time would have had to declare war against Russia and then, in consequence, been forced to fight side by side with the Nazis. Would the United States then, too, been forced to fight with the Nazis, is the question I do not want to ponder here. But I presume that the entire history of the world would have changed; and who knows what the political situation would be today?

ADM. ROBERT H. WERTHEIM

● Mr. SCHMITT. Mr. President, it is a pleasure for me to bring to the attention of my colleagues an honor that was bestowed on Rear Adm. Robert H. Wertheim, U.S. Navy, for his dedicated service to our country.

Rear Adm. Robert Wertheim, U.S. Navy, a native of Carlsbad, N. Mex., was awarded the Distinguished Service Medal on October 22, 1979, for exceptionally meritorious service to the Government of the United States.

Admiral Wertheim was born in Carlsbad, New Mex., to Joseph (now deceased) and Emma Vorenberg Wertheim on November 9, 1922. He attended public schools in Carlsbad and New Mexico Military Institute at Roswell, N. Mex., prior to entering the U.S. Naval Academy at Annapolis, Md., in June 1942. He was graduated and commissioned an ensign in June 1945. Through subsequent advancements he attained the rank of rear admiral, to rank from November 1972.

Admiral Wertheim is married to the former Barbara Selig of Los Angeles, Calif., and has two sons, Joseph H. and David A. Admiral and Mrs. Wertheim currently reside in the Virginia suburbs of Washington, D.C., but maintain their official residence in Carlsbad, N. Mex.

The citation accompanying the Distinguished Service Medal reads as follows:

The President of the United States takes pleasure in presenting the Distinguished Service Medal to Rear Admiral Robert H. Wertheim, United States Navy for service as set forth in the following

Citation: For exceptionally meritorious service to the Government of the United States in duties of great responsibility as Technical Director and Director, Strategic Systems Projects under the Chief of Naval Material from September 1971 to October 1979.

Rear Admiral Wertheim's superb managerial ability and professionalism were consistently demonstrated over a sustained period of nearly eight years during which he directed the Trident I C-4 Development Program. Under his decisive leadership, the TRIDENT I C-4 Weapon System evolved from a conceptual stage to a fully proven, operational, and deployed strategic force. Simultaneously, Rear Admiral Wertheim directed the technical and logistical support necessary to assure the continued dependability, survivability, and credibility of the operational Polaris and Poseidon Fleets, as well as the support of the British Naval Ballistic Missile Program.

By his distinguished record of performance, dynamic leadership ability, and tenacious dedication to duty, Rear Admiral Wertheim reflected great credit upon himself and upheld the highest tradition of the United States Naval Service.

For the President,

JAMES WOOLSEY,
Secretary of the Navy, Acting.●

U.S. AMBASSADOR KARL RANKIN BELIEVES NEGOTIATORS OF TAIWAN DEFENSE TREATY NEVER ANTICIPATED ITS TERMINATION BY THE PRESIDENT WITHOUT LEGISLATIVE APPROVAL

● Mr. GOLDWATER. Mr. President, an extremely important statement has been given to me by Ambassador Karl Lott Rankin, who was U.S. Ambassador to the Republic of China during the period of negotiating and concluding the Mutual Defense Treaty with that nation. Ambassador Rankin, who was in Taipei, Taiwan, at the time and was active in the negotiations, has informed my office in a personal conversation that it was never anticipated by the negotiators that any

President would attempt to unilaterally terminate the treaty.

Ambassador Rankin said:

To the best of my knowledge, it never dawned on the negotiators that the treaty would be terminated by the President acting alone.

Ambassador Rankin's comment was made in further explanation of a letter which he sent to me on this subject. In view of the important bearing of Ambassador Rankin's views on the issue of whether unilateral abrogation of the treaty by President Carter is illegal, I ask that the complete text of his letter be printed in the RECORD.

The letter follows:

JUNE 12, 1979.

DEAR SENATOR GOLDWATER: I have your letter of May 21, 1979, asking for information which might be instructive and critical to the outcome of the suit filed in the Federal District Court of the District of Columbia asking that the President's decision to terminate the Mutual Defense Treaty with the Republic of China be submitted to the legislative branch as a joint decision.

As you know, the actual negotiations which led to the Treaty were conducted in Washington, between the Department of State and the Chinese Minister of Foreign Affairs, George K. C. Yeh. I was in Taipei at the time, and was active in following developments in Washington, as well as relaying information and explanations to President Chiang, Acting Foreign Minister Shen, and other Chinese officials. However, I recall nothing which would add substance to the already effective legal brief accompanying your letter to me.

Over and above purely legal consideration, I do not see how a mutual defense treaty can be logically or morally terminated other than by mutual agreement between the parties, or by unilateral action if one party openly determines that relations have become so unfriendly that the question of mutual defense is obsolete. Except in the latter case, the question whether a mutual defense treaty is still needed evidently should be subject to mutual agreement.

Sincerely,

KARL L. RANKIN.●

GETTING TO KNOW THE ECONOMIC ENEMY

● Mr. HUMPHREY. Mr. President, Prof. Stanley Rothman of Smith College states in "Capitalism: Sources of Hostility," a recently published collection of papers edited by Ernest van den Haag, that, with respect to demagogic attacks on the free enterprise system, "Our only hope would seem to lie in heightened rationality," that is, in a better popular understanding of the free market and its less-desirable alternatives.

Unfortunately, Mr. President, as Aram Bakshian, Jr., states in his review of the book in the Wall Street Journal, of November 1:

Hysteria rather than reason seems to be on the increase in our crisis-oriented culture where truth, fad and folly are all forced down the public throat, half-digested, by one of the most remarkable captalist creations of them all—modern mass communications.

One organization seeking to inject reason and logic into the national discussion of our critical problems, Mr. President, is the Heritage Foundation, whose director is Edwin Feulner, and under whose auspices the aforementioned book, "Capitalism: Sources of Hostility," was published. I commend Mr. Feulner and the Heritage Foundation for offering our Nation an intellectual alternative to the hysteria and misinformation which too often pervades our news media and request that it be printed in the RECORD.

The article follows:

GETTING TO KNOW THE ECONOMIC ENEMY

(By Aram Bakshian, Jr.)

Great suffering symposia! Of all the spectacles modern American life affords, few are more touching or absurd than one that is re-enacted hundreds of times each year in corporate headquarters and subsidized think-tanks around the country. Here squirming, perspiring audiences of middle-aged executives gather to have their consciousness, consciences and corporate coffers delved into by rented members of the dread intelligentsia.

Like unhappy, overweight society matrons on the analyst's couch, these troubled captains and lieutenants of industry moan the inevitable question, "why doesn't anyone love us?" The scholars usually reply with a "let me count the ways" medley of capitalist sins and socialist misconceptions, do a little fanning of the corporate paranoia (which, like many cases of paranoia, has more than a little basis in fact), try to end on a moderately upbeat note, and then pocket the sort of fees which only large corporations—or unhappy, overweight society matrons—can afford to pay.

All of which helps explain why most of the scholars leave these sessions pleased while the executives often go away more puzzled and troubled than before, numbly clutching arcane reading lists that will further cloud functional minds better suited to action than introspection.

Fortunately, there are occasional exceptions to the dreary symposium rule, and the result of one of them is "Capitalism: Sources of Hostility," a thoughtful collection of papers examining the current social animosity to many aspects of the free market published under the auspices of the Washington-based Heritage Foundation. With its merciful brevity and minimum of academese jargon, this slender, thought-provoking volume deserves the attention of all those interested in preserving economic freedom, not because it is an avid *apologia* for the system, but because it offers solid thinking and informed speculation on the minds, motives and emotions of those who would destroy or cripple it.

Each of the seven contributors to "Capitalism: Sources of Hostility" is a man of stature in his field. Editor Ernest van den Haag is Adjunct Professor of Law at the New York Law School, a practicing psychoanalyst and a prolific writer on a wide range of social issues. Peter Bauer, who provides an insightful essay on causes for anti-capitalist feeling in the less developed nations, is a Cambridge Fellow and Professor at the London School of Economics. Lewis Feuer, Professor of Humanities at the University of Virginia, concentrates on the outbreak of Marxist-revolutionary fever on American campuses during the sixties (a bit Freudian at times, but more convincing than not in his attempt to link student rebellion against "society" with suppressed personal animosities toward parents and inherited class background).

Dale Vree, Executive Editor of the New Oxford Review and a former student Marxist himself, rejoins with a look at his own more cerebral motivations as a "puritanical" revolutionary appalled by the vulgarity and frivolity of the West, who eventually discovered the same crass materialism behind the Iron Curtain, compounded by lack of individual freedom. Harvard sociologist Nathan Glazer and New York Times editorial board member Roger Starr contribute worthwhile short papers and Professor Stanley Rothman of Smith College provides an excellent synthesis of the whole, reminding the reader of what a fragile, fledgling institution the "free market" society really is:

"Once we recognize that we are concerned with liberal capitalism, in other words, a social system based upon private property which relies heavily upon market mechanisms and is closely associated with representative democracy, we must become aware of how short a time, and over how limited a portion of the globe, this system has been dominant or even ascendant. For most of recorded history, most human beings have lived in social and political systems which, while they may have recognized certain rights in property and were willing to allow for some free play of economic forces, considered it entirely right and proper for the major forms of economic activity to be closely controlled by the state or other public agencies. . . ."

Professor Rothman is right as far as he goes, but he could just as easily have reminded us that for most of recorded history most human beings have led a marginally subsistence life, plagued by famine, disease, ignorance and tyranny. What makes capitalism important is not that it is some sort of pre-ordained natural order. Quite the opposite; capitalism linked with the so-called Calvinist work ethic and the evolution of western democratic values, is a delicate, man-made institution which has made it possible for its practitioners to escape from or mitigate the material ills faced by most of the human race most of the time. It has also allowed for a freer play of ideas and inventiveness than any other system, as Soviet physicist and human rights champion Andrei Sakharov, quoted by Professor Feuer, makes clear:

"It is no accident (Sakharov writes from Russia) that for many years, in our country, new and promising scientific trends in biology and cybernetics could not develop normally, while on the surface out-and-out demagogy, ignorance, and charlatanism bloomed like gorgeous flowers. It is no accident that all the great scientific and technological discoveries of recent times—quantum mechanics, new elementary particles, uranium fission, antibiotics, and most of the new, highly effective drugs, transistors, electronic computers, the discovery of other components of the 'Green Revolution,' and the creation of new technologies in agriculture, industry, and construction—all of them happened outside our country."

Yet, as editor van den Haag points out, in the very immensity of the west's material triumph may lie the seeds of its destruction. Primal drives which earlier generations had to direct against nature for survival—staying alive and free of hunger through grueling hard work—now turn inward on ourselves and our society. By constantly generating rising expectations, the free market may also be abetting its own crisis (and its own critics), especially at a time when the traditional props of church, family and local community are rapidly eroding.

"Given the unlikelihood of a revival of traditional western religious sensibilities," Professor Rothman concludes, "our only hope would seem to lie in heightened rationality," i.e., in a better popular understanding of the free market, its alternatives, and some of the irrational prejudices underlying hostility to capitalism. Unfortunately, hysteria rather than reason seems to be on the increase in our crisis-oriented culture where truth, fad and folly are all forced down the public throat, half-digested, by one of the most remarkable capitalist creations of them all—modern mass communications.●

MIDDLE EAST PEACE TALKS

● Mr. PACKWOOD. Mr. President, today I am submitting for the RECORD an article by the distinguished scholar, Irv-

ing Kristol. This article, which appeared recently in the Washington Post, offers a realistic appraisal of the obstacles that are facing the negotiators in the discussions on the future of the West Bank.

Mr. Kristol clears up the picture on some of the political questions that the participants in the Middle East negotiators must address. Moreover, this essay convincingly states the case in regard to the economic realities that exist on the West Bank. Prime Minister Begin and President Sadat know the economic situation and the impact that this situation has on the issue of the creation of a state on the West Bank. Progress has been slow, but that is because the participants are keenly aware of the depth of the problems.

As Mr. Kristol points out, it is absurd for the United States to view the participants in these talks as "unreasonable" and to view U.S. proposals for a comprehensive settlement as reasonable. It is presumptive and arrogant for the United States to say it knows what is best for Israel's security and what is the best way to deal with the Palestinian refugee question.

I ask that the article be printed in the RECORD.

The article follows:

WHAT A PALESTINE SOLUTION WON'T SOLVE

Public discussion of our Middle East policy is being increasingly bedeviled by two common fallacies. The first is that a solution to the Palestinian refugees problem, in the form of a Palestinian state on the West Bank, is a precondition for any overall Israeli-Arab settlement. The second is that the achievement of such a settlement will result in a significant improvement in the terms of trade between the United States and OPEC, thereby ameliorating our energy crisis.

The establishment of a Palestinian state on the West Bank will not—because it cannot—solve the refugee problem. This is quite evident to Anwar Sadat, to Menachem Begin and to Yasser Arafat, and explains much about their respective foreign policies. It seems less evident to our State Department or to John Connally.

The West Bank is a relatively arid territory one-fourth the size of Massachusetts, with some 700,000 inhabitants, a high birth rate and a limited economic potential. Even now, some 50,000 West Bank Arabs—approximately one-third of the labor force—commute daily to Israel for their jobs. How on earth is this territory going to absorb close to 1 million new immigrants—a figure that assumes that most of the Palestinians now living in Jordan will stay there?

Even with the most generous foreign aid, economic development of this territory will be slow and incremental. Its inadequate water supply by itself guarantees that. Indeed, there exists no plan of economic development that can get much ahead of the growth of the present population, to say nothing of hundreds of thousands of new immigrants—and to say nothing, either, of the natural increase in the refugee population, which also has a high birth rate, in the years ahead.

Is it any wonder that, in the period 1948–1967, when Jordan occupied the West Bank, the idea of this area representing a solution to the refugee problem seems not to have occurred to anyone?

A Palestinian state on the West Bank could not help being irredentist, seeing its future in the repossession of Israeli territory. This explains why Arafat will not recognize the territorial integrity of Israel, why Begin resists the idea of a Palestinian state and why Sadat is trying to finesse the whole issue by focusing on "autonomy" rather than sovereignty. These are all rational men who define their interests in terms of Middle Eastern realities. The notion that they are simply "unreasonable," while Americans are uniquely in a position to design a reasonable and comprehensive settlement, is absurd.

If the notion that the West Bank offers a solution to the Palestinian refugee problem is absurd, the idea that the high price of OPEC oil can be reduced by any alleviation of Arab-Israeli tensions is preposterous.

OPEC is primarily an economic organism. Many important members of OPEC—e.g., Nigeria and Indonesia—are neither Arab nor Middle Eastern. And all members of OPEC have a much keener interest in higher oil prices than in the Israeli-Arab quarrel. How quickly we seem to have forgotten that one of the architects of OPEC was none other than the shah of Iran, who was no political enemy of either Israel or the United States.

Moreover, to the degree that politics does enter the picture, many of the key Arab and Islamic members of OPEC are at least as much anti-America and anti-West as they are anti-Israel. These include Libya, Algeria, Iraq and—today—Iran. Even Saudi Arabia was duly represented at the recent "Third World conference in Havana—a conference that paid relatively little attention to Israel and directed its hostility mainly toward the United States. When and if these nations are inclined to use their oil as an instrument of foreign policy, they will do so, Israel or no Israel.

The problems posed for American foreign policy by the Arab-Israeli conflict and the existence of OPEC are as complex as they are critical. This would hardly seem to be the moment to take flight from these problems by embracing "solutions" so illusory as to be more accurately labeled "panaceas."●

ONE HUNDRED AND FORTIETH ANNIVERSARY OF CENTRAL SYNAGOGUE OF NEW YORK

● Mr. JAVITS. Mr. President, I rise in celebration of the 140th anniversary of the Central Synagogue, the oldest Jewish Reform Congregation in the State of New York. The contributions of its dedicated membership throughout the years to the Nation's pursuit of peace and brotherhood stand as eloquent testimony of the faith and purpose of its founders.

Through its services, classes, schools, and its "Message of Israel" broadcast service, the synagogue has conveyed the reverence and heritage of Judaism not only to the New York community but to the reaches of the continent and beyond.

Its beginnings can be traced to the chartering of the Congregation Shaar Hashomayim in 1839, later to be incorporated into the Central Synagogue, founded in 1846. From their first meetings on Ludlow Street, in the Lower East Side of New York City, 18 men who had recently fled the ghettos of the Old World forged a new community dedicated to the nobility of their faith and to the love of charity and mercy.

In 1870, work began on the building that was later to be distinguished as a landmark of New York City. The cornerstone of the present Sanctuary of Central Synagogue was laid in 1870 by Dr. Isaac Wise, organizer of the Union of American Hebrew Congregations. The oldest synagogue building in continuous use in the city, this twin-spired structure has provided shelter and inspiration to the congregation in its pursuit of the welfare of the community.

Mr. President, the work of the synagogue's leaders exemplifies the kind of dedication and concern that is the hallmark of this institution. Dr. Adolph Huebsch, rabbi from 1865 to 1885, led his congregation in consecrating Judaism to the American scene. Rabbi Alexander Kohut carried on the ideals maintained by Rabbi Huebsch, and his monumental work, the Concordance, established his leadership in Judaic scholarship and devotion.

Rabbi David Davidson expanded the liturgy of the congregation and his prayer and hymn book became known throughout America's Jewish communities. Rabbi Jonah B. Wise, who exercised valuable influence over the overseas relief program of the Joint Distribution Committee in the 1930's, was national chairman of the United Jewish Appeal and founded the United Jewish Laymen's Committee which helped sponsor the "Message of Israel" radio programs. Rabbi David Seligson distinguished the synagogue by scholarship and many contributions to the Jewish community.

The work of the synagogue continues through its services, fine schools, and unfailing leadership. Blessed with rabbis of distinction and congregations of courage and compassion, the synagogue has touched the city and its Nation with the spirit of peace, charity, and love. All New Yorkers, all Americans, owe the Central Synagogue a profound debt of gratitude for its many accomplishments and for the community of brotherhood it has fostered in New York City.●

JUDGE JUAN BURCIAGA

● Mr. SCHMITT. Mr. President, it gives me great pleasure to announce that Juan Burciaga was confirmed on October 31, 1979 by the U.S. Senate for the position of U.S. District Judge for the State of New York.

There are two reasons why I am particularly delighted with this nomination.

First, Mr. Burciaga was recommended to Senator DOMENICI and myself by the New Mexico Federal Judicial Selection Commission. Established in September of 1977, this nine-member bipartisan commission advises us on qualified nominees to fill vacancies for the U.S. District Court, U.S. Attorney, and U.S. Marshal positions in our State. This selection process is designed both to create a merit system for these critical judicial and law-enforcement posts and allow continuation of the prerogative of such selection by the President. Twice, since 1977, this process has resulted in excellent appointments in my home State of New Mexico and the nomination of Juan Burciaga to the position of U.S. District Judge for the District of New Mexico continues this tradition.

Second, Juan's background and personal data are very impressive. I applaud the wisdom of our Selection Commission's recommendation, the President's acceptance of this recommendation, and the Senate confirmation on Wednesday.

Juan's education—University of Colorado, West Point graduate, University of New Mexico law graduate—and 16 years

legal practice with its emphasis on general civil law and trial litigation qualifies him for this important position. To this post, he will also bring a history of personal involvement in his community and Bar Association activities. It is particularly noteworthy, given New Mexico's historic ties to the people of Mexico, that Juan has also given a good deal of his free time to the problems of legal representation for Mexican nationals present in our country without the necessary legal documents to live or work here.

Mr. President, Juan is a loving father of five, a fine attorney, an active participant in his community and professional affairs, and a compassionate human being. I am confident that he will reflect great credit upon our judicial branch of the Federal Government and the people of New Mexico.●

FULBRIGHT PROFESSOR OF LAW ARGUES PRESIDENT CARTER VIOLATED HUMAN RIGHTS AND SELF-DETERMINATION OF THE PEOPLE OF TAIWAN

● Mr. GOLDWATER. Mr. President, in their desperate attempt to find some justification for President Carter's attempted unilateral repeal of the Mutual Defense Treaty with Taiwan, the President's lawyers have claimed that he can do anything at all if it is connected with his act of recognizing another government. First and foremost, this claim has absolutely no relevance to the Taiwan treaty because Congress on the face of a public statute has specifically preserved the life of the defense treaty. In the Taiwan Relations Act, signed into law by President Carter on April 10 of this year, Congress not only continues the existence of the defense treaty and all other treaties with Taiwan, but provides that, for all purposes of the laws of the United States, Taiwan shall be considered to be an independent, sovereign nation.

Whatever merit the recognition argument might have under other circumstances, it is shot down by the impressive line of reasoning developed by Jordan J. Paust, Fulbright Professor of Law at the Institute for Human Rights and International Public Law of the University of Salzburg, Austria. Professor Paust has presented me with arguments, which under international law, prove convincingly that President Carter is in violation of the human rights and self-determination of the people of Taiwan by agreeing with the Peoples Republic of China that Taiwan belongs to China.

Professor Paust believes it can be argued not only that President Carter is in violation of international law, but also that the President has violated the U.S. Constitution by acting contrary to the obligations imposed on the United States under the U.N. Charter, which is itself part of the supreme law of the land.

Mr. President, Professor Paust's letter to me on the subject is self-explanatory and I ask that it be printed in the RECORD.

The letter follows:

MARCH 7, 1979.

DEAR SENATOR GOLDWATER: Thank you for your letter of February 26th. I am still waiting for a copy of your arguments concerning the powers of the President "to unilaterally deem the people of Taiwan . . . suddenly under the . . . sovereignty of the communist regime." However, I have thought of an additional line of argument that incorporates both the international law of self-determination argument and the constitutional restraints on Presidential power in the area of foreign affairs argument mentioned earlier in my letter of Dec. 26th.

It could be argued that under the United States Constitution the President of the United States is bound by international law (see my letter of Dec. 26th, annex, first part, quoting 18 Harv. I.L.J. 19, at 42–44 (1977)), citing cases). There should be no question about the propriety of this first point. Second, one can argue that the most significant indicia of relevant international law in this circumstance is the United Nations Charter (for some evidence of this point, see U.N. Charter, art 103 and the next point). The idea behind Article 103 is that the U.N. Charter is an unusual type of treaty—no ordinary treaty—and a primary, continuing sort of treaty. Third, no other international agreement, treaty or otherwise, that the President may enter into can be valid to the extent that it is inconsistent with the major purposes of the United Nations Charter (see U.N. Charter, art. 103—directly on point). Fourth, the U.N. Charter recognizes the right of peoples to self-determination (see U.N. Charter, art. 1, part 2, as supplemented by the unanimous U.N. Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation adopted in 1970 (references to these will be in Chen, Suzuki, etc. as cited in my first letter); and the U.N. Charter recognizes the right of all persons to human rights (see U.N. Charter, arts. 1, para. 3, and 55, para. c, and 56; as supplemented by the above 1970 Declaration on Principles of International Law, i.e., state "duty"). These are also major purposes of the U.N. Charter (see id., art. 1). At this point, one can argue that the agreement with the P.R.C. is inconsistent with the major purposes of the Charter and is thus void to that extent. Further, the President has no power to enter into such an agreement under U.S. Constitutional law, since the U.N. Charter is itself part of the Supreme Law of the Land under the U.S. Constitution and Article 103 of the Charter, as argued above, forbids the type of agreement that the President has entered into at least to the extent that the agreement is inconsistent with the right of peoples to self-determination and or persons to fundamental human rights.

An additional aspect of the above argument might proceed thusly. Fifth, the U.N. Charter contains an obligation of the United States under Articles 55(c) and 56 to take joint and separate action toward the implementation of a universal respect for and observance of human rights and fundamental freedoms for all persons. Thus, such an obligation is binding on the President of the United States (because of points one and two above). For this reason, the President must take no action that would thwart the United States obligation to take joint and seprate action toward implementation of human rights and fundamental freedoms even though it is recognized that the President has discretion in choosing from among different approaches toward implementation of those rights. The President has discretion to take different measures of affirmative action, but the President cannot take any action that would thwart Articles 1, 55(c) and 56 of the U.N. Charter in such a way as to violate U.S. obligations under the Charter and thus international law and the Supreme Law of the Land.

Nothing in U.S. case law would seem to prevent U.S. courts from stopping the President from violating basic treaty obligations (see Paust, 18 Harv. I.L.J., supra, and 60 Cornell L. Rev. at 235–237; see also 53 Indiana L.J. at 668–670). There is a difference between prohibiting a violation of law by the Executive and dictating to the Executive which sort of affirmative, lawful and law-serving approach to foreign policy the Executive should follow. Even the most far-reaching language of the Curtiss-Wright Export case was conditioned by the Court's recognition that the President is bound by the U.S. Constitution—further, that case involved a factual circumstance of joint Congressional involvement).

For these reasons, it can be argued, the President of the United States cannot destroy the right of the people of Taiwan to self-determination (here I assume, from Chen, Suzuki, et al that such a people has such a right). Indeed, to be consistent with the U.S. foreign policy and interests in long-term developments, the President should affirmatively act in order to implement more fully a right of the people of Taiwan. Our country should stand, if for anything, for democratic principles that are mirrored in the U.N. Charter recognitions of self-determination, freely determined, for all peoples. In fact, Congressional legislation already points toward such an affirmative stance—see, e.g., 22 U.S.C. 2304.

JORDAN J. PAUST,
Fulbright Professor of Law.●

AUTHORITY TO RECEIVE MESSAGES DURING THE RECESS OF THE SENATE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to receive all messages, and that they may be appropriately referred, between the recess of the Senate today and the hour of convening of the Senate on Monday.

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

AUTHORITY TO SIGN DULY ENROLLED BILLS AND JOINT RESOLUTIONS DURING THE RECESS OF THE SENATE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Vice President of the United States, the President pro tempore of the Senate, or the Acting President pro tempore of the Senate be authorized to sign all duly enrolled bills and joint resolutions between the time of the recess of the Senate today and the convening hour on Monday.

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

Mr. ROBERT C. BYRD. Mr. President, should the Vice President of the United States, the President pro tempore, or the Acting President, pro tempore not be available to sign duly enrolled bills and joint resolutions on tomorrow, I ask unanimous consent that I may be authorized to do that.

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

The Senator from Louisiana.

Mr. STEVENS. Will the Senator yield for one moment?

Mr. LONG. I yield.

THANKSGIVING RECESS

Mr. STEVENS. Mr. President, would the Senator from West Virginia think about exploring a means by which we could make some plans for Thanksgiv-

ing? I have just been informed about the sizable number of planes which have been canceled for those of us who must travel long distances to the West. It appears to me that it is going to be most difficult for some of us to be able to get to where we want to spend Thanksgiving if we cannot contemplate leaving on Wednesday.

I wonder if the Senator might consider, and I am not asking for any commitment now, that we might have a Saturday session on the 17th and a commitment to really get our work done as efficiently as possible, with the possibility expressed that if we can do that we could terminate our business on Tuesday evening and leave to go home for Thanksgiving on Wednesday morning.

Mr. ROBERT C. BYRD. Yes; by having a Saturday session on the 17th, which we will probably have to have in any event, and if we can work toward agreements that will assure action on Saturday, so that the workday will be beneficial, and if we can assure progress on Monday and Tuesday, the 19th and 20th, I would be very agreeable to have the Thankgiving holiday begin at the close of business on Tuesday. But I want to be sure we can get some kind of agreement. Otherwise, if some Senators feel we are not going to be in on Wednesday, Thursday, and Friday of that week, we will not get anything done on Monday and Tuesday so they might take those days off, too. So if we can get agreements to be sure that we will be making progress, I will be happy to do that.

I believe the Senator is raising an important point and one that should be considered. I will be glad to try to work that out.

Mr. STEVENS. We will be very happy to work with the majority leader to achieve that. I think the decreasing availability for aircraft for us as we leave here has to be taken into consideration, and I believe Members on both sides will cooperate with the majority leader to bring about a very meaningful Saturday session, if we are sure we can leave on Tuesday evening.

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

Mr. STEVENS. I thank the majority leader.

The PRESIDING OFFICER. The Senator from Louisiana.

WINDFALL PROFITS TAX

Mr. LONG. Mr. President, as the distinguished majority leader knows, I had indicated to him that I had hoped that we would have passed the so-called windfall profits tax already. That bill entails a great deal more than the House of Representatives sent us. It was the view of the Finance Committee that we should consider not only the tax, as the House considered the tax, but we should also consider the various credits to try to bring on additional conservation and alternative uses of energy, and, in addition to that, we ought to try to consider measures to help the low-income and middle-income people with the high energy bills they would have as a result of the rising cost of energy throughout the world.

We have finished our work. The staff work has been done. As of 1:02 p.m., 2 minutes after 1, today the committee report was available to all Members of the Senate. It is my understanding that the bill and the report are now available. If the leader wants to call up that bill as early as Wednesday afternoon, provided it does not interfere with other plans and other commitments which have been made, that bill could be laid before the Senate. As chairman of the Committee on Finance, I would be pleased to start discussing and explaining that bill and making our plans, if the majority leader wants to bring the bill up that soon.

I know he has been anxious to have this bill before us. He has discussed it with me several times. I just want to say to him here on the floor and for the RECORD that the bill is here and it is available. As far as the Senator from Louisiana is concerned I share the view of the Senator from West Virginia that we should act upon it as early as we can. I hope he will make his plans to schedule it just as soon as that can be done.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Louisiana. I will be happy to discuss this matter with him and with other Senators. There is presently scheduled for Monday the legislation that came out of the Energy Committee, the omnibus energy bill. Of course, along with that bill we will also be discussing the bill that came out of the Banking Committee. I assure the distinguished chairman of the Finance Committee that I have his suggestion in mind and I will be discussing it with him next week.

Mr. LONG. I thank the distinguished majority leader. I intend to cooperate with him to see that this bill is enacted just as soon as the Senate can give it the consideration to which it is entitled. Of course, I know we are not going to vote it through the first day we call it up. I know it will require a considerable amount of debate and a lot of votes. But I am pleased to report to the Senator that at least we are ready to go ahead with the bill. I wish it could have been here sooner but at least it is here now.

Mr. ROBERT C. BYRD. I thank the chairman and I thank him for the time and effort he has put into the hearings and to the markup of the bill, and reporting it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

CAMPECHE OIL SPILL

Mr. WEICKER. Mr. President, I would like to bring to the attention of my colleagues again today a matter which I raised yesterday afternoon and also describe some difficulty I am having in resolving what I think is a rather major problem both to this Nation and to the world as a whole in the sense of the oil spill in the Gulf of Mexico at the Bay of Campeche.

I have been trying to get a sense of the Senate resolution on this floor to be acted upon by the U.S. Senate prior to the leasing of 128 tracts in the Georges Bank area, which is to take place next Tuesday.

The reason that I felt that the sense of the Senate resolution was necessary was that with that resolution in hand the lease sale might at least be postponed until we have an evaluation of what damage has been done in the Gulf of Mexico by that oil spill.

I have to repeat again here today that regardless of the assurances of the Mexican Government, and the silence of our own Government, I can give firsthand knowledge to my colleagues, and that accumulated by a member of my staff who flew over the site last Thursday, that that spill continues, and that the oil is still flowing into the Gulf of Mexico.

I realize that we are all hungry for energy, and I do not want to offend anybody's feelings. I might add that I speak as one who has advocated drilling off the northeast coast. But we are moving into the richest fishing grounds possessed by this Nation. I think we at least ought to know what it is that has happened in the Gulf of Mexico before we subject our own fishing grounds directly to the type of threat posed by the Campeche oil spill.

Mr. President, on Tuesday, the Department of the Interior is scheduled to lease 128 tracts, comprising 728,728 acres of the prime fishing ground on Georges Bank. Here we have one of the greatest of all manmade disasters still continuing, with absolutely no concept as to what the consequences are. The way the law is written, we are supposed to have a national response team give us an evaluation but, the way the law is written, the national response team does not come into being or commence its report until the oil spill is over. This oil spill could go on for another 2 years and we neither have the information as to exactly what has happened in the sense of ecological and environmental damage, nor do we have an answer as to how spills can be prevented in the future.

I suggest that, for the leasing of these lands to go forth—and I have been an advocate of their leasing in the past—for that to go forward in the light of what is going on in the Gulf of Mexico makes absolutely no sense. It is the reason I requested that a sense of the Senate resolution be brought before this body in order to assist in blocking Tuesday's activities.

I am not an environmental nut. I repeat, I have advocated offshore drilling and off the northeastern part of the United States. We need that kind of energy. But I cannot tell, and I think my staff and I have specialized in this area—I cannot in any way explain to the distinguished Senator from Louisiana, who is on the floor, what it is or what has been affected in the sense of the fishing grounds of the southwestern or southern coast of the United States due to the spill. I do not care about the beaches in Texas. That does not bother me at all. That is a pain in the backside and we shall all live with it one way or another. What bothers me and what I think bothers the scientists in that area and the NOAA people in that area is what is going to happen to shrimp beds. That, they have no answer to.

What has happened as far as the food chain is concerned in that area of the ocean is, I repeat, what has not been written about: The oil spill continues. We are now talking about hundreds of miles of ocean—I cannot say laid waste,

because I do not know and my Government does not know. But we are going to go pellmell into the leasing and drilling of our richest fishing grounds without getting the answer.

The sense of the Senate resolution which I drafted merely asked that we get an explanation of Campeche, its consequences, before the sale continues. It does not bear on the sale. I have not made it a broad resolution saying to find out what the general result of oil spills is, et cetera, et cetera. It is a very specific, narrow sense of the Senate resolution. It deserves to be passed. The sale deserves to be postponed or, indeed, now, are we so hungry for energy that we are willing to give up one of our prime sources of food?

Once destroyed, the delicate balance that exists in the oceans and especially on those fishing grounds, and it is the reason why they are the richest in the world—once destroyed, it will never come back in our lifetime.

Mr. LONG. Will the Senator yield?

Mr. WEICKER. I yield to the distinguished Senator from Louisiana.

Mr. LONG. Mr. President, I appreciate the Senator's concern, but let me say to the Senator that we in Louisiana have some of the richest marine breeding grounds in the world.

Mr. WEICKER. Absolutely.

Mr. LONG. I would not be surprised if most of the shrimp that are harvested in the Gulf of Mexico or even out in the Atlantic are bred in Louisiana or spawned there.

Mr. WEICKER. I agree.

Mr. LONG. I know I have been just out fishing from time to time and gone past school of shrimp larvae moving out to sea, and I have no doubt that there are enough larvae in those schools that if all of them grew to maturity, there would be enough shrimp so that we could almost walk across from Key West to Cuba on all the shrimp that would be there. Of course, that is thinned out by nature. The bonito and others gorge on all those larvae and fish a great deal larger than that consume those shrimp larvae by the tens of millions. Therefore, there are not nearly as many shrimp left for human consumption.

We also produce a great many oysters. Now, we have had the problem of oil spills in Louisiana in the very areas where the marine life is being spawned, both in the marshlands and also in areas like Barataria Bay, Atchafalaya Bay, you name it—the whole area.

Our experience is that, although we have some temporary damage when we suffer a spill, it has not caused us to have lasting damage. I think the same thing will be true with regard to the Mexican spill. It is a big bother in the short run but, in the long run, I gain the impression that that oil, over a period of time, breaks down in the general chemical composition of the ocean and, over a period of time, the marine life and all the rest are just as good as ever.

For example, in the Louisiana area, we have seen ads on television, and I think they are correct, that fishing is great. We still produce a tremendous amount of oysters and other marine life. As a matter of fact, I was dismayed to find the other day, when I tried to buy some very good crab meat that someone brought up from south Louisiana, that it seems I cannot buy it out of Louisiana because we have a contract to deliver all that up to Maryland, and they call it Maryland crab meat when they sell it in the expensive restaurants up here. Even though it is harvested and picked from the shell right there in Louisiana, it is hauled up to our friends in Maryland, and they advertise it as Maryland crab meat.

So much as I know the Senator is concerned about the matter and I can fully appreciate the feeling when you see that black oil oozing out on that beautiful blue water, over a period of time, it corrects itself.

Mr. WEICKER. Mr. President, the only way of responding is as follows: First, I think the general impression, in this country and throughout the world, is that the Mexicans capped that spill. That was the last word. That is the first point I am making. It is not capped. It is not capped.

Second, Mr. Robert Wicklund of my staff, who, I think, is generally highly respected in the area of ocean science, was the staff member that I sent down there. As he said, he ate some of the Senator's shrimp, or some of the shrimp from that area. This was off the Texas coast. And everybody agreed it tasted like diesel fuel. That is what the shrimp tasted like.

I am not going to stand here and say that the shrimp beds off of the Senator's State are permanently destroyed. I am not in a position to say that. But I do know this: new research indicates that oil, after a time, breaks down into some of the most poisonous toxins known to man. If that gets into the food chain, it eventually is going to end up as a matter for human consumption.

Again, I have to repeat my position in this matter. I have advocated offshore drilling. I understand our energy needs. It is also true that, for the past several years, I have tried to acquire some kind of expertise insofar as the oceans are concerned. I cannot give an answer as to what the results are going to be on what is happening out there.

But I know we have never had anything like it in the history of man, nothing like it in our lifetime.

Before we go pell mell into the other area, I will concede the great, rich fishing grounds off the Senator's State. I do not mean to take away from that. They are all that.

But now, they are going into the other area, the Georges Banks area. The actual figure is that the Georges Banks supplies 17 percent of the seafood to this country, without even ascertaining or evaluating what it is out in any other place.

Now we will go into the Georges Banks area. I think we are playing with fire on this.

Unfortunately, damage done is damage we are not going to be able to retrieve in our lifetimes, and, indeed, much of the results, I suppose, will not show up within our lifetimes.

Would I object if our country admitted it was not capped, had our scientists down there, had onsite investigations?

Mexico will not allow us to do that. And when the President of Mexico comes here, we are afraid to ask for reparations to clean up his mess. That is how sensitive it is. I think it has gone too far the other way.

I do not think anybody can accuse me of being overly concerned in an environmental sense when we have absolutely no impact statement whatsoever, but we will do the whole thing over again in this area of the Georges Banks.

The Senator and I will not argue. He has been out in front on the issue of energy. He is for decontrol, deregulation. We both are. We know we have to look offshore. We have to go deeper. There is no argument on those points.

But I think we should not say that we are just going to accept what is happening, without its evaluation.

I could be as confident as the Senator is that everything will get back to normal. I am not that confident. I think, along with the Senator, I share some knowledge of the oceans, and neither I nor the most brilliant scientific minds in the area can guarantee we have not possibly destroyed, even now, a large part of the fishing grounds in the Gulf of Mexico. I do not want to see the same thing happen off the New England coast.

Mr. LONG. I am sure the Senator knows the reason the ocean is saline is that there have been chlorines and hydrocarbons finding their way into that ocean for eons of time.

For example, it is theorized by some people who have been trying to find oil and gas out in the Atlantic that one reason they have had so little fortune in trying to find something out there is that perhaps over the millions of years in the history of this Earth that the petrochemicals that were formed beneath the Atlantic Ocean, because of cracks and faults in the Earth, might have worked their way out into the ocean over the millions of years of this Earth's history.

The chemical composition of the ocean itself contains just a huge amount of oil that has found its way, not by manmade activity, but just by nature, just cracks in the Earth's surface, into the surface, and some of it in the ocean and some on the land, which has found its way down to the ocean by means of being washed in.

So that as bad as the oil spill is, and it is the worst in the history of the world, I agree with the Senator, it is a matter of real concern, at the same time, I believe the overwhelming view of people who study these matters is that the ocean will absorb it, just as it has the other chemicals that have found their way into it.

Mr. WEICKER. Let me just give two examples. Even though I am not a scientist, this man at my right taught me a lot, having spent his life in the oceans. He is a great expert.

We have seen what happens to wild fowl when oil gets over it. It dies.

The ocean down there is no different from that up here, that something special will not happen there.

Let me give an example to prove my point. Because of the popularity of the Caribbean and the islands down there, we have Americans trooping down there, building houses on all these various islands. Many of these islands have coral reefs around them. Those reefs are dead today, within a matter of a few years. The reason why they are dead is that as

the houses are built on these islands, the trees and the grass is removed and we get a silting action of just dirt—just dirt—washing into the sea.

That dirt washes in, covers over the coral, suffocates it, and it is gone. It is dead in a matter of years.

I think I am correct, roughly, in layman's terms, in what I have described here. It dies. It is gone. And that is the same as the ocean. That is exactly the same to the ocean as a forest fire is to land. We eliminate the habitat for the wildlife.

I cannot believe, when we take the amount of oil that is spilling in the Gulf of Mexico today, it is not suffocating everything that lives below it.

It is one thing to go ahead and contain it in a matter of days or weeks to a narrow area, but this has now spread hundreds and hundreds of miles and continues to do so.

If we do not do anything else, I think, at least, let me have the Government admit it is not capped, let me have the Government of Mexico admit it is not capped, and then proceed from there.

Mr. LONG. Will the Senator yield for a question at that point?

Mr. WEICKER. Yes.

Mr. LONG. All I know about this is what I read in the newspapers. But I believe I read that those who are trying to bring this thing under control have managed to put something over it, I think they call it a bonnet, or something.

Mr. WEICKER. A sombrero.

Mr. LONG. I guess that is what I had in mind.

What it amounts to is something like a very large funnel, so that the oil coming up from the bottom would find itself at a central point where, hopefully, it could be gathered.

Mr. WEICKER. Right.

Mr. LONG. I believe they stated that perhaps 90 percent, or something, approximately that amount, was being captured now and being saved from spilling in the ocean.

Does the Senator have some late information on that?

Mr. WEICKER. The answer is that the sombrero is in place. But it might be assumed they would then be able to pump it from the funnel into tankers.

That is not taking place. It is still going over the surface, and they estimate they are capturing 60 percent off the surface. But it is still there.

As I say, I would assume, when I first heard about this arrangement, that they would be able to take the funnel and start pumping it up. That is not the case. By their own admission, it is 60 percent, and none of the American team down there, the Coast Guard, knows or believes that is the case. But 60 percent of what is gushing out is still an enormous spill.

Mr. LONG. A huge amount, of course.

Mr. WEICKER. A last point, which my aide raises, the natural occurrences which I think the Senator quite correctly alluded to that took place in the Atlantic Ocean, took place over such a long period of time that nature can correct itself.

But what is being man-made here, just comes barreling in on the ecosystems. That is why the ocean cannot clean itself as it did over thousands and millions of years. That is the problem.

Believe me, I know that the Senator's concerns are the same as mine. Next to oil, I am sure fishing is one of the great industries of his State—I know it is.

What I hope to gain here on the floor today—and I will try to introduce my resolution on Monday—is to at least let us have the facts known and not have my Government bury them in the sense of offending a neighbor to the south.

The Mexicans kicked everybody out of there. We have no observers there. They said, "It's capped; everybody out."

I am sorry, I do not believe it. I do not believe them.

The overflight that took place last Thursday by Bob Wilken was at 1,000 feet. Gas is burning off and the oil is gushing out. I do not think that is a satisfactory situation, and certainly it is not a satisfactory prelude to barreling into Georges Bank to do the same thing.

I yield the floor.

Mr. LONG. Mr. President, if the Senator will yield for a moment, my impression is that those are American contractors down there trying to drill these offset wells, to try to bring this well under control. I believe that Red Adair, from Houston, Tex., who is famous for fighting these blowout wells, is the principal contractor. If that is the case, I should think that this Government should be able to get very good information about the matter, simply by asking the American contractors who are drilling those offset wells in an effort to relieve the pressure and to bring this well under control.

Mr. WEICKER. It is my understanding that one relief well definitely has been abandoned and that the other relief well is thought also to be abandoned; that the equipment was leased to the Mexicans, and it is under their operation, not under ours.

The Senator from Louisiana and I are operating from the information we were given a couple of weeks ago. That apparently, however, is not what is occurring on the site at this time.

Mr. LONG. I hope this Government will view the matter with the same gravity as the Senator from Connecticut does, because it is a matter of serious concern.

We do not want to offend the pride of other people, but the fact is that the Americans are far more knowledgeable when it comes to drilling in the ocean than are the Mexicans. The Americans have had a great deal more experience.

One good sign is that when this thing was out of control, the Mexicans did turn to the American experts, who happened to be the best in the world at trying to bring a blown-out well under control. I would be surprised if it were not the case that the experts who brings such a thing under control are on the scene now. Unfortunately, the way that disaster occurred down there was under circumstances that make it one of the most difficult to try to bring under control. I am sure the Senator has discussed with his advisers, and I believe he is familiar with some of the technical aspects of it.

With such a well blowout, after the casing has been set, to try to bring it under control, when you try to plug it up from the bottom, you have to get down to about 10,000 feet under the surface. It means it is like drilling a hole 2 miles deep, to try to intersect something beneath the sea at that distance. It is not easy.

I would think this Nation would use its best efforts to see that everything that could be done would be done to control that spill, because it is a matter of very serious environmental concern, as the Senator has indicated.

Mr. WEICKER. It is not going to do us much good to heat our homes and drive our automobiles if everybody is going to be starving to death. This is the tradeoff which is now taking place. There may be tradeoffs, but I do not think this is a tradeoff we should be making.

I hope my comments today will have some impact. If not, I will be back at the same old stand next week.

It is my understanding that lawsuits are proceeding on behalf of several New England States, to try to block those leases. I wish them all the success in the world. In any event, I hope my words will reach the ears of the judge and that he might investigate for himself.

(Mr. LONG assumed the chair.)

ORDER FOR RECESS TODAY UNTIL 10 A.M. MONDAY, NOVEMBER 5, 1979

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in recess until the hour of 10 o'clock on Monday morning.

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

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, immediately after the two leaders have been recognized under the standing order on Monday, there be a period for the transaction of routine morning business not to exceed 15 minutes and that Senators may speak therein up to 5 minutes each.

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

ENERGY LEGISLATION MONDAY

Mr. ROBERT C. BYRD. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. ROBERT C. BYRD. Has it not already been ordered that on Monday, following morning business, the Senate will proceed to the consideration of energy legislation?

The PRESIDING OFFICER. The Senator is correct.

COMMITTEE MEETING DURING SENATE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Com-

mittee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, November 6, beginning at 2 p.m., to hold a markup session on the SALT II treaty.

Mr. WEICKER. I respectfully object.

The PRESIDING OFFICER. The objection is heard.

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

Mr. WEICKER. I thank the distinguished majority leader.

RECESS UNTIL 10 A.M., MONDAY, NOVEMBER 5, 1979

Mr. LEVIN Mr. President, I move, in accordance with the previous order, that the Senate stand in recess until 10 a.m. on Monday next.

The motion was agreed to; and at 3:55 p.m. the Senate recessed until Monday, November 5, 1979, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate November 2, 1979:

DEPARTMENT OF STATE

Angier Biddle Duke, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Morocco.

COUNCIL ON ENVIRONMENTAL QUALITY

Robert H. Harris, of Maryland, to be a member of the Council on Environmental Quality, vice Charles Hugh Warren, resigned.

HOUSE OF REPRESENTATIVES—*Friday, November 2, 1979*

The House met at 9 a.m. and was called to order by the Speaker pro tempore (Mr. BRADEMAS).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

NOVEMBER 1, 1979.

I hereby designate the Honorable JOHN BRADEMAS to act as Speaker pro tempore on Friday, November 2, 1979.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Gracious Lord, giver of Your eternal word, speak to us in Your still, small voice that we may hear the words of life and redemption. May we be open to Your truth and power and not so involved in necessary activity that we do not hear the beauty of Your promises. Enable us to grow in faith and in trust one with another as we listen to the words of hope that You have given. May this moment of prayer be for us an opportunity to reflect on Your goodness to us and an occasion to give thanks for this new day in which we live and serve. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. SENSENBRENNER. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Chair's approval of the Journal.

The SPEAKER pro tempore. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 269, nays 10, answered "present" 3, not voting 151, as follows:

[Roll No. 627]

YEAS—269

Abdnor	Deckard	Hinson
Akaka	Derrick	Hollenbeck
Albosta	Devine	Holt
Anderson, Calif.	Donnelly	Holtzman
Annunzio	Dornan	Hopkins
Anthony	Downey	Howard
Archer	Drinan	Hubbard
Ashley	Duncan, Oreg.	Hughes
Aspin	Duncan, Tenn.	Hutto
Atkinson	Early	Hyde
AuCoin	Eckhardt	Ireland
Bafalis	Edwards, Ala.	Jeffords
Bailey	Edwards, Calif.	Jeffries
Baldus	Emery	Jenkins
Barnard	English	Johnson, Calif.
Barnes	Erdahl	Jones, Tenn.
Bauman	Erlenborn	Kastenmeier
Beard, R.I.	Ertel	Kazen
Bellenson	Evans, Ind.	Kildee
Benjamin	Fary	Kindness
Bennett	Fazio	Kogovsek
Bereuter	Fenwick	LaFalce
Bethune	Findley	Lagomarsino
Bevill	Fish	Latta
Boland	Fithian	Leach, Iowa
Bonior	Flippo	Leath, Tex.
Bonker	Florio	Lederer
Bouquard	Foley	Lee
Bowen	Ford, Mich.	Lehman
Brademas	Frenzel	Leland
Breaux	Frost	Levitas
Brinkley	Fuqua	Long, Md.
Brodhead	Gaydos	Lott
Brooks	Gibbons	Lowry
Brown, Ohio	Gilman	Lujan
Broyhill	Gingrich	Luken
Buchanan	Ginn	Lungren
Burgener	Glickman	McClory
Burlison	Goldwater	McCloskey
Burton, Phillip	Gonzalez	McCormack
Butler	Gore	McHugh
Byron	Gramm	McKay
Campbell	Grassley	Maguire
Carney	Gray	Marks
Carter	Green	Marlenee
Cavanaugh	Grisham	Martin
Chappell	Guarini	Matsui
Clay	Gudger	Mazzoli
Coelho	Guyer	Mica
Coleman	Hagedorn	Michel
Collins, Tex.	Hall, Ohio	Mikulski
Conable	Hall, Tex.	Miller, Ohio
Conte	Hamilton	Minish
Corcoran	Hammer-schmidt	Mitchell, N.Y.
Courter	Hance	Moakley
Crane, Daniel	Hanley	Montgomery
Daniel, Dan	Hansen	Moorhead, Calif.
Daniel, R. W.	Hawkins	Moorhead, Pa.
Danielson	Heckler	Motti
Dannemeyer	Hefner	Murphy, N.Y.
Davis, Mich.	Hightower	Murphy, Pa.
Murtha	Robinson	Studds
Myers, Ind.	Rose	Stump
Myers, Pa.	Rostenkowski	Swift
Natcher	Roth	Synar
Nedzi	Royer	Tauke
Nolan	Rudd	Taylor
Nowak	Sabo	Thomas
O'Brien	Satterfield	Thompson
Oakar	Sawyer	Traxler
Oberstar	Scheuer	Udall
Obey	Schulze	Vento
Panetta	Sebelius	Volkmer
Paul	Sensenbrenner	Walgren
Pease	Sharp	Watkins
Perkins	Shuster	Weaver
Petri	Simon	Weiss
Peyser	Skelton	White
Pickle	Slack	Whitehurst
Preyer	Smith, Nebr.	Whittaker
Price	Snowe	Whitten
Pursell	Snyder	Williams, Mont.
Quillen	Solarz	Wolpe
Rahall	Solomon	Wyatt
Rangel	Spence	Wydler
Ratchford	Stangeland	Wylie
Regula	Stanton	Yates
Reuss	Stenholm	Young, Fla.
Ritter	Stewart	Zeferetti
Roberts	Stockman	

NAYS—10

Coughlin	Harkin	Walker
Derwinski	Hillis	Wilson, Bob
Dickinson	Lloyd	
Goodling	Schroeder	

ANSWERED "PRESENT"—3

Forsythe	Miller, Calif.	Neal

NOT VOTING—151

Addabbo	Dellums	Kostmayer
Alexander	Dicks	Kramer
Ambro	Diggs	Leach, La.
Anderson, Ill.	Dingell	Lent
Andrews, N.C.	Dixon	Lewis
Andrews, N. Dak.	Dodd	Livingston
Applegate	Dougherty	Loeffler
Ashbrook	Edgar	Long, La.
Badham	Edwards, Okla.	Lundine
Beard, Tenn.	Evans, Del.	McDade
Bedell	Evans, Ga.	McDonald
Biaggi	Fascell	McEwen
Bingham	Ferraro	McKinney
Blanchard	Fisher	Madigan
Boggs	Flood	Markey
Bolling	Ford, Tenn.	Marriott
Boner	Fountain	Mathis
Broomfield	Fowler	Mattox
Brown, Calif.	Garcia	Mavroules
Burton, John	Gephardt	Mineta
Carr	Glaimo	Mitchell, Md.
Cheney	Gradison	Moffett
Chisholm	Harris	Mollohan
Clausen	Harsha	Moore
Cleveland	Heftel	Murphy, Ill.
Clinger	Holland	Nelson
Collins, Ill.	Horton	Nichols
Conyers	Huckaby	Ottinger
Corman	Ichord	Pashayan
Cotter	Jacobs	Patten
Crane, Philip	Jenrette	Patterson
D'Amours	Johnson, Colo.	Pepper
Daschle	Jones, N.C.	Pritchard
Davis, S.C.	Jones, Okla.	Quayle
de la Garza	Kelly	Railsback
	Kemp	Rhodes

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.

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