SENATE—*Wednesday, January 30, 1980*

(Legislative day of Thursday, January 3, 1980)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. WENDELL H. FORD, a Senator from the State of Kentucky.

PRAYER

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

Let us pray.

"Lord, as we go to our work this day, help us to take pleasure therein. Show us clearly what our duty is, help us to be faithful in doing it. May all we do be well done, fit for Thine eye to see. Give us enthusiasm to attempt things, patience to perform. When we cannot love our work, may we think of it as Thy task, and make what is unlovely beautiful through loving service, for Thy name's sake." Amen.

—George Dawson, 1821–76.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., January 30, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WENDELL H. FORD, a Senator from the State of Kentucky, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized for not to exceed 2 minutes.

CANADA AND OTHER FRIENDS

Mr. ROBERT C. BYRD. Mr. President, all Americans are grateful this morning for the news that six American Embassy personnel who fled the U.S. Embassy in Tehran when it was seized nearly 3 months ago have escaped from Iran with the assistance of the Canadian Government. In giving refuge to these Americans, the Canadians risked their own lives; to get these Americans out of the country, the Canadians had to close their own Embassy. The Canadian Government has set a magnificent example of courage and sacrifice and humanity. Canadians can be very proud. Americans are very grateful.

Canada has shown once again the validity of the adage that when the chips are down, one learns who his true friends are. Canadians, our English and French speaking neighbors to the North, have demonstrated in this difficult situation that they are friends indeed.

Other nations have shown that they too are friends in these troubled times. The British Embassy gave refuge to Americans fleeing the burning Embassy in Islamabad, Pakistan, several weeks ago. And through the last few months, Mrs. Thatcher's government has demonstrated that it is one of our staunchest supporters. European governments—especially the West German Government—and others around the world such as the Australian Government have sought to show that they support efforts to win the release of the hostages in Tehran and that they oppose Soviet aggression in Afghanistan.

Japan is one of our most important Pacific allies and trading partners. Initially, the Japanese seemed slow to respond to the crisis in Iran and I criticized the activities of Japanese banks that seemed to undercut U.S. efforts at applying economic pressures on Iran. But Japanese official policy has emerged in strong support of the kind of efforts that the United States is seeking to mobilize against Iran and Soviet aggression.

Prime Minister Ohira has made a strong, clear policy statement in a speech delivered to the Japanese Parliament on January 25, 1980. In this speech, Prime Minister Ohira reaffirms Japanese-American cooperation. He condemns the Soviet intervention in Afghanistan and the seizure of the American hostages in Tehran. And he commits his government to study and implement measures in response to these acts, "even if they may involve sacrifices" on Japan's part.

We need and welcome Japan's help just as we need and welcome the help of Canada and others of our friends. The interests of us all are at stake—preservation of a civilized international system and resistance to aggression. There is growing evidence that in these troubled times, the United States does not stand alone.

Mr. President, I ask unanimous consent that key passages on Iran and Afghanistan excerpted from the policy speech of January 25, 1980, before the Diet by Prime Minister Ohira be printed in the RECORD.

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

KEY PASSAGES ON IRAN AND AFGHANISTAN

The fundamental aim of our foreign policy is to strengthen the solidarity with the countries of the free world, and on the basis of such solidarity, to expand the rings of friendship and cooperation throughout the world. The unfaltering relation of mutual confidence between Japan and the U.S. based upon the Japan-U.S. security arrangements is, needless to say, the cornerstone of our foreign policy. In order to solidify this cornerstone even further the government of Japan intends to continue its sustained efforts for the enhancement of the Japan-U.S. cooperation in the political, economic and cultural fields. At the same time, the government of Japan intends to strengthen the cooperative relations with other countries of the free world including those of Western Europe.

I believe that everyone on this globe eagerly desires peace. The fact, however, that certain countries still attempt to impose their positions on others by resorting to the use of force and thus threaten the peace and stability of the world, is truly deplorable.

The military intervention into Afghanistan by the Soviet Union cannot be justified on any account. The internal affairs of Afghanistan must be left in the hands of Afghanistan itself. Japan urges the immediate withdrawal of the Soviet forces and strongly supports the resolution adopted for this end at the emergency special session of the U.N. General Assembly.

The government of Japan will continue to make efforts befitting our country in order to contribute to the resolution of this serious situation on the basis of our solidarity with the United States and in cooperation with other friendly countries in Europe and in other parts of the world. Japan has demonstrated its stand on the issue through the activities in the U.N. and in the area of exchange of personnel with the Soviet Union. We shall continue to study and implement, as the situation develops, appropriate measures including the tightening of the export control in Cocom, taking into consideration the public opinions both at home and abroad. I believe that we must not shun these measures even if they may involve sacrifices on our part.

I also wish to make it clear that Japan has no intention to engage itself in any activities which may undermine the measures taken by other friendly countries or to lessen their effects.

For the purpose of maintaining the stability of neighboring countries in the area, particularly Pakistan, we would like to give positive consideration, in cooperation with the U.S. and western European countries, to the requests from those countries for cooperation in the economic field.

The seizure of the U.S. Embassy in Tehran is an unlawful act that threatens the basic order of the international community, and the taking of the hostages is unacceptable also from the humanitarian viewpoint. I strongly hope that the hostages are released without loss of time and that the situation is resolved in a peaceful manner. To this end, Japan will continue to support actively the international efforts including that of the U.N. Also, as the situation requires, Japan will act appropriately, in cooperation with the United States as well as European and other countries regarding ways to achieve an early release of the hostages.

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

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RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the minority leader is recognized for not to exceed 2 minutes.

Mr. STEVENS. Mr. President, I yield the time that was allotted to me to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I thank the Senator and appreciate very much his yielding to me.

GENOCIDE IS NO DOMESTIC MATTER

Mr. PROXMIRE. Mr. President, some opponents of the Genocide Convention charge that genocide is not a proper subject for treatymaking. I take this opportunity to dispose of this groundless objection once and for all.

The allegation is that genocide is not an international matter because treatment by a state of its nationals is only of domestic concern. This suggests that any international action in response to genocide would violate the sovereignty of a state committing the crime within its borders. This objection to the Genocide Convention falls short of the truth in three ways.

First, if members of the international community decide the very depravity of genocide is serious enough to cross borders, then genocide stops being simply a domestic matter. International law defines what is an international crime. And international consensus is the creative force behind international law. That consensus most certainly exists today—83 nations have ratified the Genocide Convention—including most of our NATO allies. And that consensus makes legitimate the placing of international sanctions on the perpetrators of the most heinous crime: Genocide.

Second, putting aside the sheer baseness of genocide, the crime warrants international status because it threatens the stability of the international order. As an enemy of peace both within and without a country, genocide raises justifiable concern among countries both next door and far away.

Third, genocide, by definition, transcends state boundaries. The crime is defined as an act committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such. Throughout the course of history, racial groups and religious faiths have migrated across continents, traversed oceans, and split into subgroups. Much of this process has ignored national boundaries, leaving many races represented all over the world. Therefore a crime against a race in one country will be resented by members of that race everywhere, and construed as an international crime.

The importance of international outrage, the desire for peace, and the dispersion of those of common heritage combine to refute the charge that genocide is a domestic matter. I urge my colleagues in the Senate to ratify the Genocide Convention.

I thank my good friend from Alaska once again for graciously yielding me his time.

RECOGNITION OF SENATOR DOLE

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

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business without prejudice to the orders; and that Senators may speak therein; and that the period not extend beyond 10 minutes.

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

The Senator from Mississippi.

Mr. STENNIS. Mr. President, I thank the leader very much.

OUR PETROLEUM SUPPLY LINES

Mr. STENNIS. Mr. President, whatever else we may have to do to meet the developments of Afghanistan, we are faced with a fast-developing hazard to our petroleum supply lines in the Persian Gulf-Indian Ocean area. The Russian invasion, which is certainly leading to a conquest of Afghanistan, is clearly carried forward by Russia for the serious purpose of making highly gainful advances there for themselves. While they may have some immediate interests in securing Afghanistan, their most threatening goal is gaining absolute control of the petroleum resources of that area and the oil lines leading out of the area. This would give them the power to cut off and terminate as they see fit the shipping routes that supply us and much of the remainder of the free world with oil that is at present indispensable to our economy and the economies of Western Europe, Japan, and other allies.

Having and controlling an all-weather warm water port and thus having for the first time a year-round access to the ocean lanes of the world would greatly further these Russian goals. This would be a far-reaching development of the gravest kind, and there is no time for us to lose in improving our position to counter that possibility.

Fortunately, there is time for us to react and protect ourselves. The President should move vigorously to acquire facilities in this part of the world. We should not delay now to fully negotiate with all others interested in joining a plan for facilities in this area. Facilities should be acquired now and designed for operating on a joint basis with others for the benefit of all so that we can unite our efforts with Western European and Pacific powers and with regional friends who want to join us in these efforts which benefit them as well.

Like it or not, we must do what is necessary to protect ourselves and our interests in the area. This includes, as I see it, the overwhelming necessity of establishing forthwith facilities in that area to be used as naval ports and airfields to serve the necessary seapower, as well as other necessary military power which could include land based air power, troops, and supplies.

We are some 10,000 miles from the oil reserve area. The facilities in the Indian Ocean at Diego Garcia are absolutely essential, will soon be improved and are available to us. But Diego Garcia is over 2,000 miles away from the crucial area of the Persian Sea. Alone, it is inadequate to serve all of our demanding needs. Military supplies of virtually all kinds, even including food, will not be available but will have to be supplied from America. Airfields are needed to permit operations close to this indispensable area.

President Carter has carefully and actually drawn the line in his speech and says that we will protect this Persian Sea area as a source of our essential energy supply. This calls for prompt action to back up our position. Furthermore, to select the sites, which is an executive function, and proceed promptly to build facilities, will show most convincingly that we are preparing to act on this policy. This is by far the best proof that we really intend to establish and back this policy without fail. Short of such action will, of course, create doubt as to our purposes.

The first tangible result of our action on military facilities will be a deterring effect on Russia. They will know, we will know, and our friends will know the United States can get there in time and with enough to protect its interests. The second will be a protection for the source of oil supply for us and the remainder of the free world. A semi-permanent U.S. position in that "oil area" will buy the necessary time to solve our own problems of creating an independence of supply sources for the essential petroleum needs of our own vast economy.

We are confronted with many added demands in our military program. I have never advocated the reckless expenditures of funds for military purposes. We cannot shore up the entire world, nor can we meet every demand. But the need and demand for facilities that demonstrate U.S. commitment, interest, and capability is for our own direct protection. In view of these situations, I trust that President Carter will proceed with all due speed in meeting this essential need.

Let me add, Mr. President, this is no quick thought with me. This is a deliberate conclusion of what I think is of major importance, that it is indispensable. It by all means holds a great possibility of benefit to our side, so to speak, through the deterrent effect that it is

bound to have on the Soviets. It closes the door totally to any doubt they may have to as whether or not we are going to proceed with actual quick preparation of purpose in this area.

I thank the leadership, each side, very much for arranging for me to have this time at this point.

The ACTING PRESIDENT pro tempore. Is there further morning business?

Mr. STEVENS. Mr. President, is there time left for morning business?

The ACTING PRESIDENT pro tempore. There is time.

AMERICAN PERSONNEL IN IRAN

Mr. STEVENS. Mr. President, over a month ago at meetings arranged by the majority leader, representatives of the administration conveyed information concerning the American personnel in Iran which was of a highly sensitive nature.

I do not wish to confirm or deny the total information that appears in the press this morning concerning those six Americans who are now back from Iran, but I just want to point out that there were four Senators who were involved in and had knowledge of the situation concerning those Americans, the majority leader, the chairman of the Committee on Foreign Relations, the ranking Republican on the Committee on Foreign Relations, and myself as acting minority leader.

I point this out in order to demonstrate for the record that the Senate as an institution is capable of respecting highly classified and sensitive information.

I hope Members of the Senate and members of the executive branch who deal with this type of information will realize as a result of this specific incident, and there are others, that the Senate is highly conscious of the need to maintain and respect the necessity to classify information in the age in which we are living today.

ORDER OF BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that the time for Senator DOLE commence after Senator WALLOP has made his comments under the order, if the majority leader has no objection.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, I have no objection. I would simply suggest that Senators who have orders may have them in such sequence—that the sequence as set forth yesterday not necessarily mean that they may not be recognized at any time—that Mr. WARNER may go now or Mr. DOLE may go now and other Senators may proceed, but I hope Senators will be here and ready to be recognized under the orders so as not to delay the Senate.

The ACTING PRESIDENT pro tempore. Does the Senator from Alaska withdraw his request?

Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

RECOGNITION OF SENATOR WALLOP

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

Mr. WALLOP. Mr. President, I thank the Chair and I thank the majority leader for confusing me with the distinguished fully haired Senator from Virginia. Both of us have one thing in common: we both have beautiful wives. Mine is less famous. But he, for sure, has more on top of his head than I have, although both may have the same inside.

Mr. ROBERT C. BYRD. May I say both have a good sense of humor also.

Mr. WALLOP. I thank the distinguished majority leader.

THE PHASEOUT PROVISION OF THE WINDFALL PROFIT TAX

Mr. WALLOP. Mr. President, we asked for time this morning to talk a little bit about the conference on windfall profits.

There are some rather wild statements being flung about in the press by various members of the administration and various parties to and various parties outside of the conference. One of the problems that exists is something that the Senate had as part of its agreement when it passed the windfall profit tax. It is an agreement that was hammered out, as everyone well remembers, with a good deal of give-and-take on the part of everybody, and which has reference to the so-called phaseout provision.

The Senate, by a rather handsome margin, decided that it was in favor of a phaseout and it settled on a figure that is virtually the same as the compromise figure that the two Houses have now reached as a trigger point at which time the tax would begin to phase out. It was the position of the Senate that this was not a windfall or a windfall could not be construed as something that would exist interminably without review. The Senate concluded that it is an impossibility, in fact a contradiction in terms, that a circumstance called windfall would exist ad infinitum, and we agreed that we would have a phaseout provision.

The House had taken a position that this should be a permanent tax, and they have now been offered what would appear to be a very fair compromise to their position. The Senate's position is that we want to phase the tax out once the revenue requirements have been reached. Senator DOLE should be commended for the cooperative approach he has taken in the conference.

The compromise offered by the Senator from Kansas (Mr. DOLE) is that the tax on the incentive categories of oil, newly discovered, tertiary, and heavy oil, would be phased out once the revenue target of $227 billion is reached. The remaining categories of oil would remain under the windfall profits tax until the end of 1991, when the tax itself would begin to phase out. Senator DOLE is interested in producing more domestic energy.

The House conferees seemed to be more interested in the production arguments surrounding newly discovered, heavy, and tertiary oil when they were trying to extract part of the tax money from the independent producers. We all heard stories of how the House wanted to tax independent producers so that they could lower the tax rate on the incentive categories of oil. The phaseout compromise offered by Senator DOLE promises an era when full incentives can be given to newly discovered, heavy, and tertiary oil. But suddenly the House conferees are no longer interested in the production arguments associated with these categories. They want a tax on all categories of oil extending to 1991, and then to stop. And of all of the preposterous arguments in the world is to create a cliff where everything stops. If you want a real disincentive to production, that has got to be it.

The conferees have maintained single-minded attention to revenues, not energy. With the tax mechanism in place, the House conferees seem reluctant to allow any kind of meaningful phaseout of the tax at all.

A sad but true testimony to how this legislation has departed from the energy bill we sought last year is provided in the final revenue target reached by the conferees. There was nearly $100 billion difference in the revenue projections in the House and Senate bills. The Senate had exempted independent producers and tried to maintain as low a tax as possible on newly discovered oil, tertiary oil and heavy oil. Suddenly, out of the blue, the House insisted on splitting the difference between the two bills. The conferees were faced with raising a tax of $227 billion, regardless of how the added tax burden would affect domestic energy production.

Mr. President, splitting the difference between one onerous tax and another does not make a rational energy policy. Forcing the independents to pay an additional $23 billion in tax liability over the next decade does not help this Nation find more oil. I will admit that I am pleased that the conferees chose to lessen the tax burden for the independent producers, but by taxing the independents we still tie them to same burdensome system of base prices and regulations that we were trying to avoid through decontrol.

Mr. President, we have not ended decontrol, we have enmeshed the problems of price controls into the tax system. We have not taken a step toward lessening our dependence on OPEC. This tax will only continue the circumstance that makes it more profitable to produce, refine and broker oil than it is to address our domestic energy problems.

Mr. President, there are still some unresolved questions facing the windfall conference committee which I hope will be addressed with true concern for equity and fairness. The conferees have yet to decide how they will treat severance taxes imposed by State governments on oil. The House conferees have indicated that they want severance tax increases to be nondeductable from the windfall tax, while the Senate maintains that future severance tax increases, if they are applied on the entire barrel of oil, should be deductible.

Mr. President, the Senate provision provides adequate guarantees that a State government will not be able to raise its severance tax at the sole expense of the U.S. Treasury. If a severance tax increase is applied across the board, on the full value of the barrel of oil, deductibility will not cause State legislatures to rush headlong into a severance tax increase binge. In my State of Wyoming, legislators are debating whether they wish to increase severance taxes. The same process is going on in New Mexico, Michigan, and other oil producing States. These men realize how any tax increase can damage the energy producing industries in their State, and they make changes in their estate taxes only with the greatest caution.

There are many Senators who feel comfortable with their States severance tax. I believe Texas has a 12.5 percent severance tax on oil, and the severance tax in Louisiana and Alaska is even higher. Is it fair to tell other States that they cannot increase their severance taxes, even when doubling their tax rates would leave them with severance taxes less than Alaska's or Louisiana's? I submit that the Federal Government should not get into the business of disrupting the State's traditional power to tax the mineral extraction activities within its boundaries.

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

Mr. WALLOP. I am happy to yield to the distinguished chairman.

Mr. LONG. Mr. President, the windfall profit tax in many respects does resemble a severance tax. I agree with the Senator that it is very inappropriate for the Federal Government to try to tell the States that they cannot pass a severance tax. I find it rather amusing that the Federal Government for 200 years never sought to raise any revenue in this fashion. The States have been at it—in Louisiana, we have been at it for 70 years.

Now, at long last, the Federal Government decides to get into this type of taxation. What is the first thing they want to do? Muscle the States out of there.

The States were not telling the Federal Government that the Federal Government cannot tax. The States are willing to share revenues with the Federal Government, as they do in other taxes, sales taxes, income taxes, inheritance taxes, and whatever.

But for the Federal Government, at this late date, to decide that it wants to have a tax of this sort and then proceed to tell the States that they cannot have one, in my judgment, is not only ridiculous, it is outrageous.

Mr. WALLOP. Mr. President, it is and has all the traits of the caricature that sometimes one sees in the newspapers of Uncle Sam as a real money grubber.

Mr. LONG. Yes.

Mr. WALLOP. And it is a lack of equity in conscience and a lack of justice that propels them into this. I think it is unbecoming of the Federal Government to get into that position, and I hope that they would see fit to back off. Because there is money enough, as the chairman well knows—and the leadership he has provided in this thing has been exemplary, as far as this Senator is concerned—but there is money enough. After all, the President still has only identified $142 billion worth of need out of the $227 billion they want to raise. And I doubt seriously if any State is going to go on a severance tax binge. But they are going to have to do something to produce energy and that creates impact which creates requirements on their tax bases.

Mr. LONG. Mr. President, I hope the Senator has no objection to the type of thing the Senate Finance Committee is doing.

Mr. WALLOP. No. If the States want to tax, they have to tax across the board. That is exactly right. What we did was design a way so the States could not be as inequitable in their approach as the Federal Government seeks to be in its approach.

Mr. LONG. I thank the Senator.

Mr. WALLOP. I thank the chairman very much.

There is one other tax that has yet to be addressed by the conferees, and that is the status of the Indian tribal lands. The House had no provision on Indian lands, but the Senate chose to follow a long line of tax precedents and exempt Indian tribal lands from the windfall tax. The conference has decided justly to exempt State-owned lands and certain charities. Any Federal taxation on Indian trust resources would be an intrusion into the relationship between the Federal Government and its Indian wards. Taxation would be contrary to congressionally established and judicially enforced Indian policy, antithetic to Federal programs of tribal self-determination and economic development and would discriminate against federally sanctioned Indian tribal governments. Mr. President, I hope sincerely that the windfall conferees will recognize the long standing tax exempt status of Indian tribes and see that they are exempt from the windfall profit tax.

Mr. President, I see that the Senator from New Mexico (Mr. SCHMITT) is here, and I also see that the ranking member of the Finance Committee is here for their participation in this debate.

I only hope that the rest of the windfall conferees would not get down into the sole aspect of revenue-raising bill and would keep one eye on America's energy security future.

I yield the floor.

Mr. SCHMITT addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico is not recognized under an order.

The order is for the Senator from Kansas (Mr. DOLE).

Mr. SCHMITT. Mr. President, I ask unanimous consent that the Senator from New Mexico be recognized until the Senator from Kansas is in the Chamber.

Mr. ROBERT C. BYRD. Mr. President, I object. I am sorry to have to object, but we have orders for the recognition of four Senators. If they want to yield their time, fine. I would have been glad to have gotten an order for the distinguished Senator from New Mexico.

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

Mr. DOLE. Mr. President, last Friday 39 Republican Senators sent me a letter urging that the windfall profit tax conferees hold firm against a combined administration-House assault on the termination mechanism in the Senate bill. These Senators, along with several Democrat Senators, have indicated that the triggered phaseout is the "single most important provision in the bill." They further stated that they would find it difficult to support the conference report if it did not contain a triggered phaseout.

The Senate bill, as all in this Chamber realize, provides that when 90 percent of the estimated revenue of the bill is raised, the tax begins to phase out at the rate of 3 percent per month. By contrast, the House tax is permanent, except for the provisions applying to new and tertiary oil.

This attempt to bolster the Senate position was criticized by the distinguished Senate majority leader as well as by the White House. Apparently the Senators that signed the letter realize something that has not gotten through to the White House. There is no ground swell of support for this tax on the part of Americans around the country.

Those citizens to whom the Senator from Kansas has spoken understand that the so-called windfall profit tax is nothing more than another tax on consumers.

I might say that the Senator from Kansas addressed a number of people who are not in the oil business at all. The American consumers are convinced, and probably correctly so, that whatever tax we impose on the oil industry will sooner or later be passed on to them in the form of higher prices or in some other

way that the American taxpayers, the American consumers, will pay the tax which President Carter and other administration leaders keep indicating is a windfall profit tax affecting only the oil industry. Let us not try to kid the American consumer.

It is preposterous to believe that this massive tax will only affect the oil industry. Every business in this country considers taxes—by all levels of government—merely as costs of doing business that are passed along to consumers. Once this is realized it becomes clear that rather than "recapturing profits" the Carter tax will only add to the costs of petroleum-based products in this country.

Mr. President, this question of who will pay for the windfall profit tax is an interesting one that deserves further illumination. From the beginning this administration has told the Congress and the American people that the tax would not be passed on to consumers. Rather, it would be paid out of corporate profits. Those of us with some sense of economics questioned this assumption that a basic law of business was being repealed. Surely, we said, the oil companies will merely add this tax on to the price of their products. No, the administration responded, the price of petroleum products is dictated by OPEC not the domestic industry. The tax could not be "passed on" because the domestic industry does not have the market power to set prices.

In opposition to the Senate passed triggered phaseout, however, this same administration chooses to argue the contrary, the triggered phaseout is bad, we are told, because the domestic oil industry will raise its prices to more quickly phaseout the tax.

Mr. President, how can the industry raise prices to more quickly phaseout the tax if they lack the market power to raise prices?

I think that is the question we are now addressing in the conference.

On the other hand, if the industry has this market power to raise prices, why will this tax not be passed on to consumers. The administration cannot have it both ways.

I find the administration cozying up to big oil, which seems to be contrary to the public statements expressed by President Carter and others. We find it showing up time after time in the conference, the administration supporting the efforts and the appetite of so-called big oil in America.

This Senator believes that the tax will be passed on to consumers. I support the triggered phaseout precisely because the tax will be passed on to consumers. The only thing worse than a $227.3 billion tax on American consumers is a permanent tax on these same consumers.

There is no support for another tax in this country. We can call it a windfall tax or a value-added tax or any other new idea, but the American consumers have had just about all the taxes they can stand. To indicate in one breath we are going to tax the industry and not the consumer is pretty hard for the consumer to understand because they are very sophisticated.

Mr. WALLOP. Will the Senator yield for a question?

Mr. DOLE. Yes.

Mr. WALLOP. Has anybody ever tried to explain to the Senator or to the conferences to justify arriving at a figure of $227 billion and then saying it is a permanent tax and has no consequences?

Mr. DOLE. No. In fact, it occurred to the Senator from Kansas it may not even be in conference. We argued for weeks on this floor over $1 billion or $2 billion. In the second meeting of the conference, the majority gave away $50 billion. This action increased taxes $50 billion on American consumers, over my objection and the objection of a few others.

Mr. WALLOP. But having settled on that, what significance does it have if it does not phaseout?

Mr. DOLE. It does not have any.

Mr. WALLOP. It has none. It is a fraud to even say that that is what the tax is.

Mr. DOLE. Now we are talking about $300 or $350 billion and then maybe phasing it out. As far as this Senator is concerned what the Senator from Wyoming suggested was the best possible way to start the phaseout. I understand they will not buy that, however.

Now they are talking about no phaseout, a permanent tax. The Senator is absolutely correct, it makes no sense at all.

Mr. WALLOP. It is typical of the inconsistency and the sort of manipulation of facts to deal with their own preconceived ideas which has characterized this debate since we first got into it. Those of us who were trying to make it an energy debate and who sought to have production responses, to do something responsibly, have obviously failed in that, or even to persuade the members of the press or anybody else.

Mr. DOLE. I think from the start we have had the media focusing on the dollars. Who cares about energy, just tax the oil companies. That makes good headlines. Most of the newspapers that the American people read, and on the TV, say that it is great, that the price of gasoline is too high. But the higher the tax, the higher that price will be.

I think one of the White House attacks on the phaseout deserves mention.

Mr. President, when the so-called windfall profit tax was reported out of the Finance Committee it would have raised $138 billion in 11 years. At this level, the tax was bad energy policy and an unreasonable burden on American consumers. After 6 weeks on the Senate floor the tax grew to $178 billion. At this rate it would extract about $800 from every American over the period and force the abandonment of thousands of barrels of domestic oil. The Senate bill did, however, have the triggered phaseout provision which assured that the tax would slowly die as the revenue target was met.

In the first 2 days of conference the amount of the tax was raised to $227.3 billion, over the objection of this Senator. This is a staggeringly large figure—almost $90 billion more than the amount agreed to by the Finance Committee.

Now the House is balking at the Senate provision that would phase the tax out when this enormous amount of revenue is collected. The House and the administration believe that this tax should be saddled on our consumers for at least 11 years, no matter how much money is raised. Mr. President, at this point we must draw the line. The damage to the domestic energy industry and the burden on American consumers is already too large. We must insist that this tax phaseout when the projected revenues have been raised.

One other part of the White House attack on the phaseout deserves mention. A Presidential spokesman suggested that it is ironic that Republican Senators would urge that the triggered phaseout be retained at the same time that the major oil companies reported historic annual profits. The true irony in these events is that the administration would even mention the large profits of big oil. It is, after all, the administration and the House that tied up the windfall conference for days while they argued that big oil should pay less of the tax and that small independent producers should pay more taxes. After such activity it can not now tar us with the big oil brush. It is the administration that has espoused the cause of the major oil companies in this conference, not the Republican Senators.

We spent 4 or 5 days arguing about making the little independent companies pay more than the major oil companies. It is hard to understand the administration's tactics.

I say to my colleagues that I am not so certain that there will be a windfall tax this year unless there is some reality, some realistic approach, because I believe the conferees for the most part do not represent oil-producing States. They do not fully understand the difficulty we had in the Senate to pass what is now in conference. They want more taxes and more taxes and more taxes. The Senator from Kansas has tried to make this point, and I am hopeful that those who have an interest in seeing something done will read the RECORD and read that there is opposition to what is being done in the conference.

I yield to the Senator from Alaska.

Mr. STEVENS. Mr. President, I understand the Senator from Wyoming has some time left. How much time does the Senator have remaining?

The PRESIDING OFFICER (Mr. PRYOR). The Senator has 3 minutes remaining.

Mr. STEVENS. And the Senator from Kansas has some time remaining?

The PRESIDING OFFICER. The Senator from Kansas has 7 minutes remaining.

Mr. STEVENS. I ask that the time of the Senator from Wyoming be added to the time of the Senator from Kansas.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. I would like to yield half of my time to the distinguished Senator from Texas, if there is no objection, and then the other half of that time to Senator DOMENICI.

Mr. DOMENICI. I just need 2 minutes, Mr. President.

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

Mr. DOLE. The Senator from Kansas is prepared to yield the floor. I yield 5 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. TOWER. Mr. President, I thank the distinguished Senator from Kansas.

I have vigorously opposed this ill-conceived and misnamed oil windfall profit tax from its inception, Mr. President, and I shall vote against final approval of the conference report on this incredible destructive tax.

I frankly still find it almost impossible to believe that Congress, and the Senate in particular, would permit itself to be stampeded into passage of a tax bill so lacking in economic justification and so destructive of our national interest in energy security.

It is a demonstrable fact that oil company profits cannot fairly be considered excessive by any reasonable standard of measurement, and oil decontrol is not likely to alter that basic fact. For evidence of that, the Senate need look no farther than the Department of Energy, where Government financial analysts have reached that conclusion time after time in recent years.

In November of last year—after I threatened to sue the agency—the Department of Energy finally made available to me an unpublished analysis of oil company profitability and future capital requirements which, among other things, summarizes key financial data for approximately 40 major oil companies for the 12-year period from 1967 to 1978.

That internal DOE study found that oil company profitability, measured as rate of return on investment, is about the same as that for some 1,500 nonoil manufacturing companies. For the years 1976 through 1978, in fact, the oil company rate of return progressively lessened compared with the nonoil group.

The DOE study also found that for 3 out of the last 4 years studied, oil company profits have increased at less than the rate of inflation. The 1978 rate of profit increases was less than one-half the inflation rate.

According to the DOE study, oil company profit and cash flow increases over the past several years have essentially paralleled increases to capital and exploratory expenditures. For instance, oil company capital and exploratory expenditures in 1978 increased at a rate nearly 1 percent above the inflation rate and 2.4 times as much as profits increased.

Mr. President, this DOE study does not stand alone in its conclusion that oil companies are generally no more profitable than other companies. The evidence of that fact is overwhelming.

In view of that widely known fact and in view of the fact that the health and vitality of the oil industry is crucial to our energy future, I still find it difficult to understand how Congress can possibly justify serious consideration, let alone approval, of this counterproductive single-industry tax.

The truth, of course, Mr. President, is that the drive to enact this tax is fueled by nothing more than short-term political considerations and a desire to increase Government spending and further expand the scope of Government domination of private industry. It is just that simple, Mr. President, and we ought to acknowledge it openly.

It seems at this time inevitable that this pernicious, production-inhibiting oil tax will soon become law, and that there will be dancing in the streets of the OPEC capital cities on the day of its signing.

If enactment of this tax now seems unavoidable, that makes it all the more critical that the tax be phased out completely when the tax has produced the revenues it is targeted to produce. A phaseout based on achievement of a specified revenue goal will allow the Government to make plans on the basis of assured tax receipts while also giving oil producers and investors some reasonable expectation that the tax eventually be phased out.

If there is ever to be any prospect of the United States breaking its dangerous dependence on foreign energy, it is critical that this oil tax be phased out at the earliest possible date.

I urge my Senate colleagues on the conference committee to maintain the position of the Senate on this issue. If we are to have this destructive tax on oil, then, at the very least, it must be phased out when it has raised the targeted revenues.

Mr. President, I think that this is the most squalidly political act indulged in by Congress in the 19 years that I have been privileged to serve in the Senate.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. Has the Senator from Kansas yielded time to the Senator from New Mexico?

The PRESIDING OFFICER. He has.

Mr. DOMENICI. How much time did he yield?

The PRESIDING OFFICER. He yielded 10 minutes.

Mr. DOMENICI. I yield myself 3 minutes of that 10 minutes.

Mr. President, I come to the floor today to lend my support to the Senate conferees, urging that they insist on the Senate position with reference to the phaseout of the windfall profits tax.

A number of times in the past, even since the oil embargo, various people in Government and various legislators have proposed that we put a tax on gasoline in this country and the hue and cry from the American people and from fellow legislators has been incredible: How can we add a tax burden to the American consumer on a product like gasoline? We cannot even add a penny to the trust fund to maintain the highways we have built with the trust fund without everybody talking about what a disgrace it is to tax this product that is already so expensive.

I think we who are here talking about this phaseout are here because the American consumers, who are going to be buying the products of crude oil, petroleum and others, are going to be paying an enormous tax and they do not even understand that they are and we are here talking as if it were not going to fall on the American consumers.

Well, a 30-percent windfall tax—and it is not a windfall, it is 30 percent of the price of a barrel of new oil, tertiary oil, and heavy oil, the cost of which we do not even know—is going eventually, pure and simple, to add 30 percent to the cost of gasoline by way of taxes to our Federal Government and the American people are the victims of a hoax. They do not even know that 4, 5, or 6 years out, when the actual cost of producing this new oil, heavy oil, tertiary oil—and, I repeat, we do not even know what that cost is—is purely and simply a 30-percent excise tax, just as if we were putting a tax on a gallon of gasoline. In fact, it is far more than the 1, 2, 3, or 4 cents a gallon that we do not even want to consider because of its tremendous impact on the American consumers, including those who are poor and live in areas where they have to travel a long way.

How many times have we heard that here, in the Senate, from those who are concerned about the high price of gasoline and petroleum products? Those who think that 30-percent excise tax on these kinds of expensive future energy sources that will produce gasoline, those who assume that is not going to be a tax on the shoulders of the American automobile driver, truck driver, those who use any kind of petroleum product, are just absolutely failing to tell the American people the truth.

Can you imagine, if we converted that 30 percent into a new per-gallon tax on gasoline, to come in 7 years from now, can you imagine the hue and cry in America? No, but they are saying it is not a tax on the people. How can we do anything other than adopt the Senate position that, at some time in our history, in the predictable future, when we had taken out of this marketplace over $200 billion in taxes, when most of the new oil will be new, heavy and tertiary, expensive, the cost of which we do not even know—how can we not take it off the shoulders of the American people?

I repeat, the American people—not the energy companies. By that point in time, the old oil arguments of excess profits because the cartel has raised the price an inordinate amount are all gone. The 30 percent, if carried on in perpetuity, as contemplated by some of the conferees, will be purely and simply a huge tax on gasoline and cause us not to produce the energy we need to produce. It seems absolutely incredible to me that the Senate is not filled with Senators

who are concerned about placing an enormous new tax on the American people, who have to use their automobiles, who have to use this kind of fuel to heat their homes, trucks that have to travel with it. And we are all saying it is just a tax on the big oil companies—purely and utterly impossible, untrue, and a fantastic hoax on the American people.

Mr. SCHMITT. Will the Senator yield?

Mr. DOMENICI. I am pleased to yield whatever time I have to my colleague from New Mexico.

Mr. SCHMITT. Mr. President, my distinguished senior colleague is entirely correct. This is a hoax. It is a tax to be paid by the consumer.

I am also of a persuasion that I hope the administration and the majority persist in their efforts to do all the wrong things because then I think we can kill this bill on the floor of the Senate. I would like to have that opportunity. If they do persist without a phaseout, if they persist in this, bringing under the umbrella of taxation not only the independent oil and gas industry, the domestic oil and gas industry, but the American consumer, to the extent described by the Senator from New Mexico, then I think we will kill this bill here, and they better realize that.

This is one of the final nails in our coffin, a coffin which has been progressively nailed shut since 1954 when the U.S. Supreme Court imposed price controls on domestic natural gas, which held that price below the cost of finding new gas.

Mr. DOMENICI. If the Senator will yield, when he said "the final nail in our coffin," he is not speaking as the Senator representing only New Mexico, and he means the American people, the economy?

Mr. SCHMITT. There is absolutely no question that I mean the American people and the American economy.

It is not a New Mexico issue, a Wyoming issue, a Kansas issue, a Colorado issue, or a Louisiana issue. It is an issue that is destroying this country, a country with the strongest economy in the world, because it has been a free enterprise system up until recently.

But in 1954, we almost unconsciously decided that we would begin to manage the energy economy—we, being the Federal Government—and we do not know how to manage that economy any more than we know how to manage any other part of the economy.

But in 1954, with the artificial pricing of natural gas, we began that long process of encouraging domestic consumption, discouraging efforts to find new gas supplies, and forced U.S. oil investments to move abroad to compete in the energy market.

The result. In 1954 there were 20,000 independent explorers and producers in the petroleum industry. Traditionally, these independents have found over 80 percent of new domestic oil and gas. Today, there are only 12,000 such independents, and their number is dwindling daily.

In 1966 the Federal Government suspended the leasing of Federal lands for oil and gas exploration and production. This action was the beginning of a systematic Federal policy of restricting or denying access to potential domestic energy supplies under federally managed lands. In spite of our peril, this policy continues in effect today not only with respect to oil and gas, but also for coal, uranium, and geothermal energy, and this administration talks about alternative forms as a substitute for oil and gas.

The result. Instead of being self-sufficient in energy, we import nearly 50 percent of our oil requirements at prices 2 to 3 times what they would be if produced domestically; we import an increasing amount of natural gas at prices 3 to 4 times domestic costs; we cannot convert from imported oil to abundant domestic coal for the production of electricity because not enough coal can be mined; there has not been a new mine opened in New Mexico since 1968, and the administration calls for conversion to coal; and we face the prospect of being dependent on imports of uranium to fuel as much as 25 percent of our nuclear power production at the end of the century.

Where is our commonsense in that kind of policy?

In 1968 for the first time, domestic consumption of crude oil exceeded domestic production; an event that only geologists seem to notice and weep about.

In 1970 passage of the National Environmental Policy Act whose national interest perspective began a decade of activities that prevented even rational domestic energy development.

The result. The act and its regulations and court interpretations still serve to obstruct offshore and onshore drilling, refinery and powerplant siting, pipeline construction, coal mining and coal conversion, and many other activities necessary to energy independence and national survival.

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

The Senator from Colorado (Mr. ARMSTRONG) does have 15 minutes.

Mr. SCHMITT. Will the Senator from Colorado yield 5 minutes of his time to me?

Mr. ARMSTRONG. Mr. President, I am pleased to yield to the Senator from New Mexico.

Mr. SCHMITT. Mr. President, 1971, another milestone, price controls were imposed on domestically produced crude oil serving to reinforce the adverse effects of the earlier controls on domestic natural gas prices. As the costs of finding and producing new oil exceeded the price that could be charged, U.S. oil investments accelerated their movement abroad where costs were much lower.

The result. By the end of 1971, U.S. drilling had dropped to 27,300 wells from a high of over 58,000 in 1956. By 1973, the United States had become dependent on imports for one-third of its crude oil needs.

Mr. President, the significance of these signals is that there has not been a lack of oil and gas available to domestic drilling, it has been Government controls that prevented that drilling.

King Hubbard's analysis was entirely correct that the number of feet of drilling has been drifting off, but not because there was none to search for, it has been dropping off because of improper management of the energy economy by the Federal Government.

In 1973, the first OPEC oil embargo. OPEC's control of production and our dependency on imports reached the point where OPEC could control both world energy prices and world economic policy.

In 1974, the much heralded "Project Independence" was begun including, unbelievably, the continuation of price controls on domestically produced oil and gas.

The result. Finally, disaster. The decline in the search for new domestic oil and gas accelerated. By the end of 1976, the United States was importing 40 percent of its oil needs.

In 1977, we all remember that Jimmy Carter declared war on energy. His "moral equivalent of war" has been more regulation and taxation, which we are discussing here again today, neither of which contains any promise of victory through domestic production.

The result. By the end of 1979, the United States was importing over 45 percent of its oil needs at a cost to the consumer of about $65 billion, that is $65 billion not reinvested in the U.S. economy.

Mr. President, in spite of this record of disastrous milestones I have just summarized, we are here today again discussing another milestone of disaster commonly known as the windfall profit tax. As my colleagues have indicated so clearly, it is not a windfall profit tax, it is an excise tax, a tax on production that the consumers will pay.

It is a hoax. It is the biggest hoax I have been party to since my arrival in the Senate 3 years ago.

I am sorry to say to my constituents that I have been unable to derail this effort to raise their cost in the present and in the future, and to begin the further process of destroying the domestic oil and gas industry and, particularly, that part of the industry, the independents, which have found so much of our domestic energy supplies.

This Senator finds it incomprehensible that the administration and the majority supporting this measure would advocate such a gross tax on the American people at a time of high inflation and at a time when that tax will discourage our ever achieving energy independence. It is no longer a tax that is directed to penalize the oil industry. It is a tax to raise revenue.

More and more, as the Senator from Kansas has indicated, we see the administration working hand-in-hand with the major oil companies, at the expense of the exploration and discovery of new domestic oil by the independents.

I hate to see any part of our market system managed by the Federal Government, but I certainly hate to see the part managed that is the most productive part. That is what the administration is trying to do, and that apparently is what the majority of the conference

committee is trying to do; and this Senator is more opposed to that process today than when he argued against that in the first place.

I thank the Senator from Colorado for yielding.

Mr. President, I look forward to the remarks of the Senator from Colorado. I yield to the Senator from Colorado the remainder of my time.

Mr. ARMSTRONG. Mr. President, I appreciate the Senator's remarks. But before commenting on this bill, I inquire if the Senator from New Mexico is raising the possibility that if this bill continues to get worse in conference, that he might be one of those who would be disposed to consider a filibuster on the conference report?

Mr. SCHMITT. The Senator from New Mexico, along with a number of other Senators that he has discussed this possibility with, is very much of that mind, not only because of the resistance to a phaseout position, which has been so well discussed by the senior Senator from Wyoming, but also because of the general concept that seems to now be behind the so-called windfall profit tax.

The proponents of this bill had better realize that they are facing defeat on the floor of the U.S. Senate if they do not shape up. I am not sure that they will not be defeated no matter what they do because it is such a lousy bill. If they do not do what the Senator from Kansas and the Senator from Wyoming and others are advocating, they are in serious trouble.

Mr. ARMSTRONG. Mr. President, the Senator from New Mexico has explained the situation in terms of unmistakable clarity. I compliment him for his statement and associate myself with the direction of his thinking.

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

The PRESIDING OFFICER. The Senator from Colorado has approximately 9 minutes remaining.

Mr. ARMSTRONG. Mr. President, I shall make a brief observation about the bill itself, and then I will ask the Senator from Kansas if he can help clarify a couple of issues that I think need to be brought to the attention of the Senate.

It was evident that as the bill left the Senate, it would result in a less productive energy economy. It would result in less production of domestic fuel at a time when we need more, not less, oil and natural gas produced in this country. It is obvious that this will result, even as the bill left the Senate, in transferring some $170 billion from the private sector to the Government sector, with all the consequences other Senators have pointed out. But at least the bill, as it left the Senate, did contain a provision to phase out the tax at a certain date.

I say to the Senator from Kansas that I understand that the conference committee has agreed, at least tentatively, to delete from the bill that phaseout provision. It is my recollection that that phaseout provision was adopted by the Senate by a margin of about 2½ to 1. It was obviously a provision which was considered with great care by the Senate and after much debate, after a vigorous discussion on both sides of the issue.

I am curious to know what considerations prompted the conference committee to withdraw from the Senate position. Am I correct in assuming that this is still up for consideration, or has the decision been reached?

Mr. DOLE. So far as this Senator knows, no decision has been reached on the phaseout; but I suggest that I know that the White House and the administration, long since, have forgotten about any energy policy. This is a tax bill. They want to make it a permanent tax bill. How much can we extract from the industry to pass on to the American consumer?

The Senator from Kansas was bewildered at the second meeting of the conference when we added $50 billion to that, after we had struggled here for 4, 5, or 6 days, arguing about $1 billion or $2 billion.

Mr. ARMSTRONG. That is exactly what prompts my concern about the phaseout. We had 5 weeks of debate in the Senate on that bill and reached the agonizing decision that involved dozens of hours of debate on the floor, as the Senator from Kansas knows, as well as dozens of hours of backstage meetings, meetings in the cloakroom, negotiations to arrive at a very delicately balanced package of $170 billion. That was the figure that represented the best judgment of the Senate. I would have anticipated that our conferees would go into that conference to fight like tigers for the Senate's position. Yet, I understand that our conferees gave that up the first day.

Mr. DOLE. The second day. We did not meet long the first day, or we would have given it up then.

Mr. ARMSTRONG. Was the decision to go from $170 billion to more than $220 billion reached on the basis of a vote taken by the conferees of the Senate?

Mr. DOLE. I think it was unofficially a sort of head count. The Senator from Kansas did not agree with that action, but the majority did. I think there was a feeling that we should do something for Christmas; that before we all left for Christmas, we should drop $50 billion more into the pot. So we did that, in my view, on the theory that the American people would know Congress was doing its best, to increase their taxes before we left.

Mr. ARMSTRONG. In this head count, how many of the Senate conferees were counted as being in favor of this $50 billion increase and how many were counted against it?

Mr. DOLE. Not many. I know one for certain who was against it. I see another one leaning. I would guess that on the Senate side there were very few, because a lot of pressure was being applied.

There was a feeling that if we could just decide on how much the tax should be, the rest would be easy. We have found out since that it is not that easy. The White House has gotten a taste of the tax and wants more of it. They do not want it to phase out.

I have heard figures of $300 billion or $350 billion before we start a phaseout. I am not even certain that that is in conference. It seems to me that we are talking about something that is not even in conference. We already split the difference between the House bill and the Senate bill and reached $227.3 billion.

It is my hope that this exchange this morning will indicate, particularly to the House conferees of both parties, that there are some Senators who are not happy about what is happening in the conference.

Mr. ARMSTRONG. I do not want to press the Senator from Kansas unduly, but I am under the impression that it is the tradition in this body that Senate conferees go into conference with some kind of obligation to fight for the Senate position.

Maybe this $50 billion already has been given away; maybe it is irrevoable. Now I am concerned about the phaseout, and it is my recollection that the phaseout provision was adopted by a vote of 58 to 26 in this body. I am not a conferee. I ask the Senator from Kansas: If our conferees give up on that kind of provision and come back and say, "We have given up on $50 billion; we have given up on the phaseout," have they really fulfilled their obligation as conferees to represent the Senate position?

Mr. DOLE. We have had some victories for the Senate, so far as depletion allowance and things of that kind are concerned; but I hope there is a clear message and a clear signal going to all the conferees, including the Senator from Kansas, that there are Senators here, in both parties, who are very concerned about the phaseout. The White House should know and the administration should know that we are very concerned about the phaseout.

This bill is a long way from becoming law if there is not some accommodation of those interests. It is not that we are opposed to the tax. I voted for it.

Mr. ARMSTRONG. I ask the Chair or the Senator from Kansas a procedural question.

I think this phaseout is one of the critical issues in the whole windfall tax package. My question is this: First, would it be in order to move to instruct conferees? Second, as an alternative to that, if a conference report comes back which does not contain the phaseout provision, may I obtain a separate vote on that issue by moving to refer the bill to conference with instructions, if that should be my desire at that time?

In other words, will the world know how Senators really stand on the phaseout question?

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

The PRESIDING OFFICER. Does the Senator propose that as a parliamentary inquiry?

Mr. ARMSTRONG. Yes.

The PRESIDING OFFICER. As to the first question, there is precedent as to instructing conferees by resolution, after the conference has begun.

As to the second question posed by the Senator from Colorado, if the Senate is the first body to act on the conference report, a motion to recommit with instructions is in order.

Mr. ARMSTRONG. I thank the Chair.

I make no such motion today. But I just want to indicate to my distinguished colleague from Kansas, the ranking Republican member of the conference, and the distinguished chairman of the Finance Committee, who I note is now on the floor, that there are Senators who are very much concerned about this issue and who would be ready to go the last mile in order to prevent that phaseout provision from being knocked out of the bill.

Before I yield the remainder of my time to whoever wishes it—I will yield to the Senator from Louisiana—I point out that a rumor has reached my ears that some House conferees are trying to hang on a bill having to do with tax exempt revenue bonds, and I recall that that bill has not passed in either House. That is the same kind of tactic—this business of adding in conference legislation not considered by either House——

Mr. WALLOP. Mr. President, will the Senator let me respond to that?

Mr. ARMSTRONG. I will be glad to.

Mr. WALLOP. There is a fervent rumor about that the chairman of the House Ways and Means Committee, Mr. ULLMAN, seeks to attach his bill, the tax-exempt mortgage bond bill.

That is the same way we got the beautiful thing called carryover basis which we are now trying 4 years later to dispose of.

The PRESIDING OFFICER. All of the time of the Senator from Colorado has expired.

Mr. DOLE. Mr. President, I ask unanimous consent that we may proceed for an additional 5 minutes.

Mr. LONG. Mr. President, reserving the right to object, I believe I will have to object on behalf of the majority leader, since I have been so requested. I personally would have no objection, but I am afraid it has to be cleared with the majority leader.

Mr. DOLE. I withdraw the request.

The PRESIDING OFFICER. The request is withdrawn.

(The following statement was made later and is printed at this point in the RECORD by unanimous consent.)

Mr. LONG. I yield myself 3 minutes, Mr. President, to comment on the colloquy that occurred before the pending business was laid before us.

Mr. President, I personally have no intention whatever of yielding on the so-called phaseout proposal.

I assume that, with the significance that amendment involves and the tremendous interest that there is in it on both sides of the Capitol Building, we will have to make some kind of a compromise. But the Senator from Louisiana will insist that the compromise that we have be a meaningful compromise and that it be something that would gain a substantial amount for the Senate position.

This Senator did vote and a majority of the Senate conferees did vote for a compromise to more or less split the difference between the House figures and the Senate figures.

The Senator from Louisiana took the lead in doing that. One of the reasons that he did was because he is convinced if we do not pass the windfall profit tax bill the President is going to withdraw his deregulation order and we will be back in the same mess that we were in from 1973 up to 1978 where the Federal law, controls, and tax policies inhibit and impede the exploration and the development of new sources of energy.

On one aspect of that matter, when the bill was in the Senate the Senator from Kansas (Mr. DOLE) made a valiant fight against raising the tax here in the Chamber and then in debate and in negotiations that took place we fought for a matter of a week and finally compromised it over the matter of $1 billion in that tax.

Let us examine the time factor, if we made progress at that rate in the conference. Keep in mind, Mr. President, that is a conference of 11 Senators and 15 House Members, a total of 26 people all of whom are subject to making a speech every time we get to some controversial point. This has a potential of even more oratory than we experienced here in the Senate while that bill was before us for 6 weeks out here.

The bill has been in conference since it passed on December 17. If we take the rate of progress on the matter that the Senator from Kansas (Mr. DOLE) so valiantly fought—and I supported him in that—over the $1 billion as it was at that rate and if we took the same period of time to resolve the $100 billion in controversy between the two Houses, at that rate it would take us 2 years to complete the conference; in other words, the bill at that rate would be in conference between now and the year 1982.

So we simply had to find some ways to accommodate one another, and what we did was to split the difference on the figures.

There is nothing new about that. That is par for the course. In trying to get conferees together, when two sets of conferees are at loggerheads, sometimes the only way they can ever manage to resolve their difference is just to split the difference. In many of these cases, that is what conferees have done. They told me with regard to the Chrysler bill they did that. I heard one of the conferees explain that in order to reach an agreement that is all they could do because there was so much of a difference between the two bills.

Mr. President, that is the kind of thing we did when we just agreed to split the difference on the total raised by the tax.

I fully appreciate the arguments against the tax. They were very well made and they were all heard here, and I appreciate them. But I am convinced, if we do not pass that windfall profit tax, the companies will be denied the profits that they otherwise would make and, therefore, there will not be any profits to tax, so that the industry would be better off to pay a tax than it would be if it were held to the price controls that existed prior to the President's deregulation order.

It is only for that reason that I support the agreements that have been thus far made and that I support the bill itself.

But the Senator from Colorado, the Senator from Kansas, and all those Senators can rest assured that the Senator from Louisiana is going to continue to support the phaseout because he believes in it. I think it is right, and I believe it is just a matter of time before the House conferees as well as the administration will realize that the Senate is in earnest about this matter, and when they do I think they will agree with something that we can recommend to the Senate.

● Mr. GARN. Mr. President, I am happy to join my colleagues this morning, in discussing the windfall profit tax bill. As I am sure my colleagues know, I have a great aversion to legislation of this kind. This legislation is punitive; it is discriminatory; it is, basically, mendacious.

To begin with, it is not a windfall profit tax bill. It was not a windfall bill in the beginning, and it still is not. It was an excise tax bill, and an excise tax bill it remains.

Second, this bill is discriminatory. It discriminates against one specific industry. It is, essentially, a violation of the Constitution to do what we do in this bill. We say to a specific industry: "You are huge; you take in enormous gross profits; we could use some of those profits to help us fund our pet social programs; it would be a good idea to balance the budget. Therefore, we will take away some of those profits."

We do not tax all industries that make large profits. The auto industry makes large profits. We do not even tax all industries that make a high percentage of profit. The publishing and broadcasting industries do that. We just tax the oil industry, because for the moment, people hate the oil companies, so we can get away with it. That is what I mean by discriminatory and unconstitutional.

The Senator from Texas offered an amendment that would have taxed all industries that make excess profits. But that amendment did not go anywhere, because that is not what the majority of the Senate was interested in doing. They wanted to raise money the easiest way they knew how: Tax the oil industry. The Senator from Maine stood right here on the Senate floor and admitted that this bill had nothing to do with energy: "We have to raise as much money as we can to pay for all the programs we have already enacted. Of course, we were not counting on this windfall profit tax money when we enacted the programs, and I do not know how we were going to pay for them if this had not come along, but we have to have this money now." I am paraphrasing, of course, but let me quote the Senator from Maine exactly:

> My immediate objective is to set aside a sizable portion of the revenues to be generated by the pending bill to balance the budget.

That ought to dispell any notion that this was an energy bill. We were raising revenue, in as painless a way as possible. Of course, the people of America will pay this tax, just as they do any other tax, and precious little they will get for it, either.

Third, this bill punishes one of the most efficient industries in America. I have plenty of criticisms of the oil industry. Sometimes I think they work overtime to make themselves look bad. But whatever the appearance, they have done a marvelous job of providing energy to the people of this country, at remarkably low prices. Even during the years after the first Arab oil embargo, from 1973 through 1978, real prices for the products people use declined. If we ever got rid of the regulatory structure in Washington, we might see that same thing happen again.

This is a bad bill. It was bad when the House passed it; it was bad when the Finance Committee reported it; it was bad when the Senate passed it; it is worse now. This bill contains provisions that are so bad, in terms of what we all know we should be doing in energy policy in America, that it is almost beyond belief.

We should be encouraging the production of every drop of oil we know about in this country. We all know that. Even the proponents of this bill know it. Instead, we lay a tax on tertiary recovery. We lay a tax on heavy oil. We know where that oil is, and we tax it. We tax old oil at punitive rates. The proponents of this bill say that the oil will be produced anyway, and they point happily to a study by the Congressional Budget Office to make their case.

Well I say to my colleagues, that these taxes will discourage heavy oil production; they will keep old oil in the ground; they will discourage the investment needed to produce tertiary oil. I don't care how many CBO studies there are that say differently. I know oilmen, and I know people, and I am here to tell you that if you tax this stuff, you will get less of it; a lot less.

We want to encourage the discovery of more oil. Everyone knows that. Even the proponents of this bill will admit it. And yet this bill lays a tax on oil that has not even been discovered yet. What on earth for? Is that a "windfall"? Of course not. There cannot be an inventory profit on something that is not even in the inventory. We will discourage the production of new oil just as sure as God put the stuff in the ground. The OPEC countries must be laughing up their sleeves to see the contortions we go through to maintain their monopoly on oil production. They could not write a better script themselves.

And now they are trying to extend the duration of this "windfall" tax. What a joke. Everyone knows that even the worst hurricane stops sometime, and that the windfall has to come to an end. But I heard talk on the floor of this Senate about making this a permanent tax. And why not? People will go right on hating the oil companies. They will go on making large gross profits. Never mind that their net profit per gallon is about 2 cents. Never mind that they are investing more in exploration than they are making. They will be a good source of revenue for our social programs for as long as we can see into the future. But at the least we can count on enormous revenues, billions and billions of dollars that we can get the oil companies to collect our revenues for us.

What a break that is for us. We may have found the perfect system. We can spend all we want to on our pet projects. And we will not even have to levy any taxes on the people. We can just tax the oil companies, and the companies can raise our taxes for us. Of course, it is the people that will pay, in either case, but they will not know that. They will blame it all on the oil companies, and we can go our merry way.

Mr. President, this tax ought to be revealed for what it is: An obscene tax. It is a travesty of justice, a violation of the Constitution, and a violation of elementary principles of accountability. I promise to vote against it.●

VITIATION OF SENATOR BENTSEN'S SPECIAL ORDER

The PRESIDING OFFICER. The Senator from Texas (Mr. BENTSEN) not being present in the Chamber his request for special order is vitiated.

SOCIAL SECURITY DISABILITY AMENDMENTS OF 1979

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 3236, which the clerk will state by title.

The second assistant legislative clerk read as follows:

A bill (H.R. 3236) to amend title II of the Social Security Act to provide better work incentives and improved accountability in the disability insurance program, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 731

The PRESIDING OFFICER. The pending amendment is amendment No. 731.

The Senator from Louisiana is recognized.

Mr. LONG. Mr. President, under the unanimous-consent agreement, the Senator from Louisiana has control of 53 of the remaining minutes and the Senator from Kansas (Mr. DOLE) has control of 41 of the remaining minutes.

Mr. SCHMITT. Mr. President, will the Senator from Kansas yield time on the bill before us for a discussion of an amendment that I intend to offer later in the morning on that bill?

Mr. DOLE. Mr. President, I yield 5 minutes to the Senator.

Mr. SCHMITT. Five minutes are more than enough.

Mr. President, I say to both of the distinguished managers of this disability insurance measure that in my pursuit of an issue in the last session of this Congress, namely, the issue of the IRS becoming a small debt collector for the Federal Government, I discovered that they were already a small debt collector for the Federal Government in at least one area. There may be others. But this is the only one that I have been able to discover, and has to do with the collection of debts owed under the aid for dependent children program. This measure before us would attempt to extend that debt-collection authority to collect child support payments for the State to non-AFDC families.

As I argued some time ago on an appropriations bill dealing with student loans, I do not think this is an appropriate function for the IRS. Later in the morning or early afternoon I will be offering an amendment that will delete the provision in this bill to expand IRS authority as a small debt collector.

This movement, or incipient movement, and it has not succeeded, fortunately, so far, to have the IRS as a tax collecting agency, can very seriously undermine the IRS as a tax collecting agency and possibly harm the voluntary nature of the system. In fact, that has been the judgment of the commissioner of the IRS.

It would increase the cost of collecting taxes by changing withholding patterns. It would play into the hands of many of the previous abuses that we know of in the IRS system and probably goes counter to the Tax Reform Act of 1976, which provides for privacy of records, and that would pose problems for any collection activity undertaken by the IRS.

As the Senators, I am sure, recall, we created the inspectors general in the agencies to look into matters such as the collection and the efficacy of the collection mechanisms of the various agencies, and I think we owe it to ourselves, if not to the agencies, to see if the inspectors general mechanism can work in this and other regards.

There is, of course, just the basic question of what are the rights of individuals, the legal rights of individuals, to due process in questions of debts owed or potentially owed to the Federal Government.

When we put the IRS in a position that we can subtract from a tax refund the Government's idea of what is owed to the Government, or to a State government in the instant case, then we are clearly moving away from providing due process.

I bring this up at this point just to alert the managers of the bill that an amendment will be offered, and we will have copies of the amendment to them very shortly, and I hope the colleagues who are listening to this discussion will begin to look at this issue very carefully. There have been "Dear Colleague" letters provided and other information will be available shortly.

Mr. President, I yield back to the managers. I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. DOLE. I suggest it be charged equally.

The PRESIDING OFFICER. Is there objection?

Mr. LONG. Mr. President, we really should be debating and discussing the pending amendment, the Percy amendment, which is the pending business. So I suggest that the time be charged equally to Senator PERCY and to the manager of the bill. I have 22 minutes and he has 20 minutes.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. DOLE. 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. DOLE. Mr. President, I ask unanimous consent that Linda McMahon, Sheila Burke, Bob Lighthizer, and Rod DeArment be granted floor privileges during the consideration of this measure.

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

Mr. LONG. Mr. President, I ask unanimous consent that—I yield myself 30 seconds—David Koitz and Margaret Malone of the Congressional Research Service be permitted privileges of the floor during the consideration of this measure.

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

Does the Senator from Illinois seek recognition?

Mr. PERCY. Yes.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, as I understand it, the pending business is amendment No. 731?

The PRESIDING OFFICER. The Senator is correct.

Mr. PERCY. First, Mr. President, I ask unanimous consent that two members of the Governmental Affairs staff, Tim Jenkins and Charles Berk, and a member of my personal staff, Barbara Block, be permitted on the floor during consideration of H.R. 3236 and any votes thereon.

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

Mr. PERCY. Mr. President, I rise to continue my remarks of December 5, 1979, concerning my amendment No. 731, designed to curb certain abuses of the supplemental security income program by newly arrived aliens. This amendment was originally contained in S. 1070, which I introduced on May 3, 1979, and is being introduced as an amendment to H.R. 3236, an act designed to remove certain work disincentives for the disabled from the supplementary security income program (SSI). Another portion of S. 1070 has already been added as an amendment to H.R. 3236.

Over 2 years ago, I discovered that a loophole in this Nation's immigration and social security laws was costing the American taxpayer many millions of dollars annually in SSI benefits to newly arrived aliens.

Here is how the loophole works:

The immigration law requires as a condition of entry for certain categories of aliens that they have a sponsor, often a close relative or friend, who is a citizen or permanent resident of the United States. As a condition for granting an immigration visa to the alien, the sponsor promises the Government that the immigrant will not become a public charge. Without this presumed commitment the alien would not be permitted to come to the United States.

It is perfectly clear that unless a commitment is given, and a sponsor signs that he will be responsible for the immigrant, and indicates that the immigrant will not become a public charge, there would be no chance for that immigrant to come into the country. If they had not signed on that way, and had not demonstrated their financial ability to provide support for the immigrant, there would have been no chance for the alien to come in.

That is the theory behind it. The commitment is there, and is in writing, and it certainly is the strongest kind of a moral obligation.

The privilege of coming into this country is sought by literally millions of people. To grant that privilege to a relatively few people each year, has to be, and is, based by law on the certification of the sponsor that the alien will not become a public charge. As far as I can see it is all theory. There is no factual evidence supporting it.

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

Mr. PERCY. I would be happy to yield.

Mr. DOLE. The Senator from Kansas certainly supports the concept.

Mr. President, this amendment, in conjunction with the provision in the bill which requires aliens to reside in the United States for 3 years before becoming eligible for SSI benefits, will correct a situation which has outraged the American public for several years. It assures that the financial responsibility for the alien remains on the shoulders of the sponsor where it belongs rather than being allowed to be transferred to the backs of the taxpayers.

There is no reason for American taxpayers to have to provide a tax-free, 100 percent Government-funded pension to aliens who have been in this country for only 30 days and contributed little or nothing to the economy. The burden of Government programs, in terms of inflation and taxation, on our own citizens is nearing the unbearable. So, if we are going to spend these dollars, they should not be spent on short-term aliens. Better still, we should save these dollars and give our taxpayers a break.

There are ample protections provided in the amendment for aliens and sponsors alike to preclude undue hardships, and I urge my colleagues to support the amendment.

The only question we would have would be on the matter of jurisdiction, whether we would have jurisdiction or whether the Judiciary Committee would have jurisdiction. I am a member of the Judiciary Committee. I understand the Senator from Illinois may have worked out any jurisdictional problems and, if so, then both managers of the bill would be prepared to accept the amendment.

We are trying to check on our side of the Judiciary Committee to see if there are any objections to the amendment. I cannot understand why there would be any objections because I think it is an outstanding effort by the Senator from Illinois.

So the Senator from Kansas supports the effort. I hope we might avoid a rollcall, but if that is not possible, maybe we could have it a little later on after we have had another amendment or two.

Mr. PERCY. I think it has been worked out. There might be some questions in some Senator's minds about the way it has been done, but I will be very happy to describe what has been worked out for the guidance and reaction of the floor managers of the bill.

The law, however, also permits a new immigrant to apply for and receive supplemental security income (SSI) benefits 30 days after arrival in the country. To round out the loophole, the courts have ruled that the sponsor's promise to support the immigrant is nothing but a "moral obligation."

As a result, responsibility for financial support of the immigrant is shifted from the immigrant and his sponsor to the taxpayers. In effect, the immigrant gets a gift from the Government—an instant pension.

The GAO determined that during 1977, in five States alone—those with the largest number of aliens—about 37,500 newly arrived aliens received close to $72 million in SSI benefits. About $16 million of this amount was paid to refugees. The GAO further found that of the total alien population receiving SSI an estimated 63 percent had enrolled in the program during their first year of residency in this country. All told, 96 percent of those aliens receiving SSI had resided in the United States for 3 years or less at the time they first began receiving benefits.

In numerous cases, sponsors who have reneged on their promises of support had the full financial capability to support the newly arrived alien but instead chose to take advantage of the loophole. A May 7, 1979 article in the Los Angeles Times provides some choice examples:

> A 65-year-old man in Sunnyvale, California, * * * entered the country under the sponsorship of his daughter, who earns over $25,000 and lists assets worth over $130,000. He applied for and received welfare benefits within four months of his arrival.
>
> Three months after entering the United States, a couple from San Francisco began receiving monthly benefits of $338, despite the fact that their son-in-law had signed an affidavit guaranteeing that they would not become public charges. Once they got on welfare, he discontinued all assistance, whereupon the couple's benefits were increased to $522 per month.
>
> One elderly woman, whose entry was sponsored by her daughter in Illinois, actually applied for welfare two months before she arrived in America. The payments began 15 days after she joined her daughter.

Similar instances of abuse have also been fully documented by the GAO.

The amendment for which I speak today would make the sponsor's affidavit of support a legally enforceable contract. This measure has received strong bipartisan support. Senator CRANSTON is its principal consponsor and 23 other Members of the Senate have signed on as cosponsors.

On October 26, 1979, during Finance Committee consideration of H.R. 3236, Senator ROTH offered as an amendment that portion of S. 1070 requiring all aliens, with the exception of refugees, to meet a 3-year residency requirement for participation in the SSI program. The committee unanimously approved the amendment which is now included in section 504(a) of H.R. 3236.

Today, in voting on this amendment which is specifically concerned with the affidavit of support, we have an opportunity to eliminate this intolerable loophole.

While a 3-year residency requirement for participation in the SSI program is undoubtedly an important step in curbing the abuses now under discussion, a residency requirement alone will not prevent sponsors from reneging on their promises of support to newly arrived aliens. However, with the added deterrent of a binding affidavit of support, few would treat their obligations lightly. If the sponsor chooses not to live up to his obligation of support, he may be subject to civil suit in either Federal or State court.

I would like to make it very clear that this amendment does not penalize the honest and well-intentioned sponsor. The sponsor can be relieved from his obligation of support if he is able to affirmatively demonstrate that his financial resources subsequent to the execution of the affidavit have diminished for reasons beyond his control and that he is financially incapable of supporting the alien. If such a determination is made, the alien who has lost his means of support would be eligible for SSI assistance.

In order to best effect the amendment's cost-saving purpose, an enforceable affidavit of support is essential to eliminate the loophole. The time has now come for the responsibility of an alien's support to be squarely placed on the shoulders of the sponsor who promises to do so, and not the American public. We have before us a real opportunity to enact cost-saving legislation that can be implemented quickly and efficiently. We, the 96th Congress, committed to vigorous oversight, have promised our constituents a close scrutiny of Federal spending and have promised to cut costs wherever it can be achieved and justified. Clearly, this amendment will fulfill that mandate. I would, therefore, urge my colleagues to accept the amendment and make the sponsor's affidavit of support a legally binding and enforceable agreement.

Mr. President, I would also like to add modifying language to my amendment. The modifying language provides that in the event the immigration sponsor does not live up to the terms of his support agreement, the Attorney General or the affected alien can bring civil suit against the sponsor in the U.S. district court for the district in which the immigration sponsor resides or in which such alien resides, without regard to the amount in controversy. This modification would give the Federal courts exclusive jurisdiction to enforce a sponsorship agreement when no State or local public assistance funds have been paid to the alien.

In the event that local or State public assistance funds are paid to the alien because the sponsor has not lived up to the terms of his support agreement, State or local authorities may bring civil suit against the immigration sponsor. The suit may be brought in the State courts for the State in which the immigration sponsor resides or in which such alien resides without regard to the amount in controversy. If the amount in controversy is $10,000 or more, civil suit may be brought by the State or local authorities, in the U.S. district court for the district in which the immigration sponsor resides or in which the alien resides.

Additional modifying language also clarifies the liability of a sponsor who, without just cause, fails to comply with the terms of his support agreement. In such a case, the Federal Government would be expected to seek vigorous enforcement of the support agreement on behalf of the alien who has lost his means of support. While the Government is seeking enforcement of the support agreement, the newly arrived alien would be eligible to receive SSI benefits. Of course, the sponsor would, at a minimum, be held liable by the Federal Government for full reimbursement of SSI benefits paid to the abandoned alien.

I ask unanimous consent that the above-described modifying language be added to my amendment No. 731.

The PRESIDING OFFICER (Mr. CULVER). Will the Senator also send to the desk——

Mr. PERCY. Mr. President, I ask unanimous consent that my distinguished colleague, the Senator from Washington (Mr. JACKSON) be added as a cosponsor to my amendment No. 731.

Mr. LONG. Mr. President, will the Senator explain what the modification of the amendment is?

The PRESIDING OFFICER. Does the Senator reserve the right to object?

Mr. LONG. Yes, I do, Mr. President. I would like to find out what the modification is.

Mr. PERCY. Mr. President, the modification would provide that suit could be brought against a sponsor; that he could be held legally liable. There is now a moral obligation; there is not a legal liability. And that is the gaping loophole that we discovered had been taken advantage of. Word of mouth through the community—I know in Chicago, alone—indicates that, well, all you do is bring them over, sign the slip, say you are going to be morally obligated, and you will be a public charge but you can take them right down and get a supplementary income.

Mr. LONG. Is that the amendment or the modification?

Mr. PERCY. That is the modification of the amendment.

Mr. LONG. I thank the Senator. I have no objection.

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

The amendment (No. 731), as modified, is as follows:

On page 106, after line 24, insert the following:

TITLE VI—A PROVISION RELATING TO THE IMMIGRATION AND NATIONALITY ACT

"SUPPORT OF ALIENS

SEC. 601(a) Chapter 2 of title II of the Immigration and Nationality Act is amended by adding at the end thereof the following new section:

"SEC. 216(a) No alien shall be admitted to the United States for permanent residence unless (1) at the time of application for admission an agreement described in subsection (b) with respect to such alien has been submitted to, and approved by, the Attorney General (in the case of an alien applying while in the United States) or the Secretary of State (in the case of an alien applying while outside the United States), or (2) such alien presents evidence to the satisfaction of the Attorney General or Secretary of State (as may be appropriate) that he has other means to provide the rate of support described in subsection (b). The provisions of this section shall not apply to any alien who is admitted as a refugee under section 203 (a)(7), paroled as a refugee under section 212(d)(5), or granted political asylum by the Attorney General.

"(b) The agreement referred to in subsection (a) shall be signed by a person (hereinafter in this section referred to as the 'immigration sponsor') who presents evidence to the satisfaction of the Attorney General or Secretary of State (as may be appropriate) that he will provide to the alien the financial support required by this subsection, and such agreement shall constitute a contract between the United States and the immigration sponsor. Such agreement shall be in such form and contain such information as the Attorney General or Secretary of State (as may be appropriate) may require. In such agreement the immigration sponsor shall agree to provide as a condition for the admission of the alien, for the full three-year period beginning on the date of the alien's admission, such financial support (or equivalent in kind support) as is necessary to maintain the alien's income at a dollar amount equal to the amount such alien would receive in benefits under title XVI of the Social Security Act, including State supplementary benefits payable in the State in which such alien resides under section 1616 of such Act and section 212 of the Act of July 9, 1973 (Public Law 93-66), if such alien were an 'aged, blind, or disabled individual' as defined in section 1614(a) of the Social Security Act. A copy of such agreement shall be filed with the Attorney General and shall be available upon request by any party authorized to enforce such agreement under subsection (c).

"(c)(1) Subject to paragraphs (3) and (4), the agreement described in subsection (b) may be enforced with respect to an alien against his immigration sponsor in a civil action brought by the Attorney General or by the alien. Such action shall be brought in the United States District Court for the district in which the immigration sponsor resides or in which such alien resides, without regard to the amount in controversy.

"(2) Subject to paragraph (4), for the purpose of assuring the efficient use of funds available for public welfare, the agreement described in subsection (b) may be enforced

with respect to an alien against his immigration sponsor in a civil action brought by any State (or the Northern Mariana Islands), or political subdivision thereof, which is making payments to, or on behalf of such alien under any program based on need. Such action may be brought in the United States District Court for the district in which the immigration sponsor resides or in which such alien resides, if the amount in controversy is $10,000 or more (or without regard to the amount in controversy if the action cannot be brought in any State court), or in the State courts for the State in which the immigration sponsor resides or in which such alien resides, without regard to the amount in controversy.

"(3) The right granted to an alien under Paragraph (1) to bring a civil action to enforce an agreement described in subsection (b) shall terminate upon the commencement of a civil action to enforce such agreement brought by the Attorney General under paragraph (1) or by a State (or political subdivision thereof) under paragraph (2).

"(4) The agreement described in subsection (b) shall be excused and unenforceable against the immigration sponsor or his estate if—

"(A) the immigration sponsor dies or is adjudicated as bankrupt under the Bankruptcy Act,

"(B) the alien is blind or disabled from causes arising after the date of admission for permanent residence (as determined under section 1614(a) of the Social Security Act),

"(C) the sponsor affirmatively demonstrates to the satisfaction of the Attorney General that his financial resources subsequent to the date of entering into the support agreement have diminished for reasons beyond his control and that he is financially incapable of supporting the alien, or

"(D) judgment cannot be obtained in court because circumstances unforseeable to the alien at the time of the agreement.

"(d)(1) If an agreement under subsection (b) becomes excused and unenforceable under the provisions of subsection (c)(4)(C) on account of the sponsor's inability to financially support the alien, such agreement shall remain excused and unenforceable only for so long as such sponsor remains unable to support the alien (as determined by the Attorney General, but in no case shall the agreement be enforceable after the expiration of the three-year period designated in the agreement. The sponsor shall not be responsible for support of the alien for the time during which the agreement was excused and unenforceable, except as provided in paragraph (2).

"(2)(A) If the Attorney General determines that a sponsor intentionally reduced his income or assets for the purpose of excusing a support agreement, and such agreement was excused as a result of such reduction, the sponsor shall be responsible for the support of the alien in the same manner as if such agreement had not been excused, and shall be responsible for repayment of any public assistance provided to such alien during the time such agreement was so excused.

"(B) For purposes of this paragraph the term 'public assistance' means cash benefits based on need, or food stamps.".

(b) The table of contents for chapter 2 of title II of the Immigration and Nationality Act is amended by adding at the end thereof the following new section:

"SEC. 216. SUPPORT OF ALIENS."

(c) Section 212(a)(15) of the Immigration and Nationality Act is amended by inserting before the semicolon the following: ", or who fail to meet the requirements of section 216".

(d) The amendments made by this section shall apply with respect to aliens applying for immigrant visas or adjustment of status to permanent resident on or after the first day of the fourth month following the date of the enactment of this Act.

On page 99, line 23, strike out "or (II)" and insert in lieu thereof the following: "(II) the support agreement with respect to such alien under section 216 of the Immigration and Nationality Act is excused and unenforceable pursuant to subsection (c) of such section, (III) the sponsor of such alien (as defined in section 216 of the Immigration and Nationality Act) fails to provide support for such alien under the terms of the support agreement as required under such section 216, and such alien affirmatively demonstrates to the satisfaction of the Attorney General that he did not participate in any fraud, collusion, or misrepresentation on the part of the sponsor, that he believed in good faith that the sponsor had adequate financial resources to support him, and that he could not have reasonably foreseen the refusal or inability of the sponsor to comply with the support agreement (providing that the three-year residency requirement shall not apply only for the period during which such sponsor fails to provide support under such agreement), or (IV)".

On page 33, amend the table of contents by adding at the end thereof the following items:

TITLE VI—A PROVISION RELATING TO THE IMMIGRATION AND NATIONALITY ACT

SEC. 601. SUPPORT OF ALIENS.

Mr. LONG. Mr. President, I yield myself 3 minutes.

Mr. President, the Senator from Louisiana and, so far as I know, other members of the Finance Committee, have no objection to this amendment. We think the amendment is meritorious. As far as this Senator is concerned, he would have no objection if the Senate saw fit to agree to it.

The problem is, from our point of view, that we do not have jurisdiction over the matter. It is not a Finance Committee matter. It is properly within the jurisdiction of the Committee on the Judiciary. It may very well be that someone on the Judiciary Committee might object to the amendment, and we had some indication previously that there might be such an objection.

The Senator from Louisiana would be happy to yield his time to anyone who cares to oppose the amendment. As far as this Senator is concerned, it is a matter beyond the Finance Committee's jurisdiction, but anyone has a right to offer an amendment, as the Senator has done.

As far as the Senator from Louisiana is concerned, it is purely a matter of asking the Senate and if the Senate wants to agree to the amendment, more power to them. They can go right ahead. Otherwise, the Senate may prefer to await action by the Judiciary Committee. If the Senate so wishes, then the chairman of the committee would be perfectly content to await the recommendation of that committee. I have no objection to the amendment.

Mr. PERCY. Mr. President, what I have suggested to the distinguished minority manager of the bill (Mr. DOLE), and I ask the judgment of the floor manager of the bill (Mr. LONG), because this has been a subject of jurisdictional controversy, and because the Senator from Illinois wants to alert every member of the Judiciary Committee that this is going to be voted on, I would not want Members of the Senate to leave their committees just for this amendment.

I feel the best way to work it out would be to ask unanimous consent that whenever the next rollcall occurs on any other amendment or on final passage, that the amendment of the Senator from Illinois, amendment No. 731, be voted on at that particular time, just before the other amendment.

Mr. LONG. Mr. President, I join the Senator in making that request, that immediately after the next rollcall vote we call the roll on the Percy amendment.

The PRESIDING OFFICER. The Chair understood the proposed unanimous-consent request to suggest that the Percy amendment would be considered prior to the next amendment and the Senator from Louisiana is suggesting afterwards. What is the form of the unanimous-consent request?

Mr. PERCY. Mr. President, it is immaterial to the Senator from Illinois, if there are other amendments to be voted on, whether it is the next amendment or whether it will be immediately following. I would suggest immediately following the next amendment, back to back.

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

Mr. LEVIN. Mr. President, I would like to take this moment to thank Senator PERCY for his cooperation and assistance in working to iron out a concern I had with the language in his original amendment relating to the support agreement.

The amendment as modified by Senator PERCY today will add one more exception to the 3-year residency requirement which is contained in H.R. 3236, by allowing the legal alien to demonstrate to the satisfaction of the Attorney General that he had no prior knowledge of the sponsor's refusal or inability to provide support and that he believed in good faith that the sponsor had adequate financial resources to support him. Should the Attorney General be convinced of the legal alien's lack of knowledge or participation in the sponsor's failure to provide support, the residency requirement would be dropped and the legal alien would be eligible for SSI benefits. The additional exception in section III of section 504 of H.R. 3236 was needed because the original amendment made no exception for the legal alien eligible for SSI, who through no fault of his or her own was left without any means of support.

Mr. President, I support the requirement that a sponsor sign a legally binding contract to provide support before a legal alien is granted permanent residency in the United States. In fact, it is difficult for me to believe that this loophole was not closed by the Congress at an earlier date. Should the sponsor break his commitment of support for reasons other than those which are considered to be excusable such as death or bankruptcy however, I believe that the Federal Government has a responsibility to provide for an innocent legal alien until such time as the Attorney General can

force the sponsor to carry out his commitments.

I believe that under the new law very few, if any sponsors will sign an affidavit of support in bad faith. Sponsors will be aware of their liability and will not be inclined to sign an agreement unless they fully intend to provide support for at least 3 years. While I believe instances of the sponsors failure to provide support should be few and far between, it is still unfair to require the States to pick up the cost of supporting the legal alien in those hopefully few cases when a sponsor without just cause, fails to meet the terms of his support agreement. I would add that it is important to consider that the legal aliens we are referring to who are eligible for SSI benefits, are either blind, disabled, or over the age of 65. The primary intent of the Percy amendment is to provide the Federal Government with the mechanism necessary to enforce a sponsor's affidavit of support agreement. It is not to penalize legal aliens who enter the country with the good faith understanding that they will be provided for by their sponsor.

Mr. President, the amendment as modified by Senator PERCY today will strengthen our immigration policies and at the same time keep intact the sense of humanity upon which our supplemental security income laws were written.

Mr. PERCY. Mr. President, I ask unanimous consent that Donna Maddox of my staff be permitted access to the floor on this bill and on all subsequent votes.

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

Mr. DOLE. Mr. President, it is my understanding that the Senator from New Mexico (Mr. SCHMITT) is on his way to propose an amendment. I would suggest the absence of a quorum, awaiting his arrival.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RIBICOFF. 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. RIBICOFF. Mr. President, I would like to have the attention of the manager of the bill.

The PRESIDING OFFICER. The Senate will be in order.

Mr. RIBICOFF. Mr. President, I am concerned with a very narrow issue which arises out of the report language which appears on page 10 of the Senate report concerning demonstration projects. In this bill we have given the Secretary the authority to establish demonstration projects under the disability insurance program and the supplemental security income program.

The bill and the report are rather specific as to the types of demonstration projects to be carried out under the Disability Insurance program. For example, specific mention is made to encourage "greater use of private contractors, employers, and others to develop, perform or otherwise stimulate new forms of rehabilitation.

In regard to the supplemental security income program's demonstration projects, however, the report merely instructs the Secretary to conduct demonstration projects that "are likely to promote the objectives of * * * of the SSI program."

My concern is that I would like to see the results of demonstration projects that make greater use of the private sector in stimulating the rehabilitation of SSI beneficiaries as well as the results of projects which stimulate the rehabilitation of disability insurance beneficiaries. To this end, I assume that the use of the private sector in demonstration projects to stimulate the rehabilitation of SSI recipients is clearly within and consistent with the "objectives of the SSI program"?

Mr. LONG. The Senator is correct.

Mr. RIBICOFF. And am I correct that our intent here today is that the Secretary should make use of the private sector as well as the public sector in the establishment of both disability insurance and supplemental security income demonstration projects to stimulate rehabilitation?

Mr. LONG. Yes, that is correct.

Mr. RIBICOFF. I thank the distinguished chairman.

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

The PRESIDING OFFICER. On whose time?

Mr. RIBICOFF. On my time, I guess.

The PRESIDING OFFICER. The Senator has no time. The time will be equally divided.

Mr. LONG. Mr. President, I yield myself 1 minute.

May I ask if the Senator from Wisconsin is ready to call up his amendment? I understand he has an amendment he intends to offer.

AMENDMENT NO. 745

Mr. NELSON. Mr. President, I call up printed amendment No. 745, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON), for himself and Mr. HUDDLESTON, proposes an amendment numbered 745.

Mr. NELSON. Mr. President, I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

On page 56, line 11, after the comma insert the following: "and after he has complied with the requirements of paragraph (3),".

On page 56, line 19, before the period insert the following: ", or (if later) until the Secretary has complied with the requirements of paragraph (3)".

On page 56, line 20, strike out the quotation marks and the second period.

On page 56, between lines 20 and 21, insert the following:

"(3)(A) The Secretary shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Secretary of the disability determination function from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process for the Secretary shall, notwithstanding any other provision of law, have a preference over any other individual in filling an appropriate employment position with the Secretary (subject to any system established by the Secretary for determining hiring priority among such employees of the State agency).

"(B) The Secretary shall not undertake such assumption of the disability determination function until such time as the Secretary determines that, with respect to employees of such State agency who will be displaced from their employment on account of such assumption by the Secretary and who will not be hired by the Secretary to perform duties in the disability determination process, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include, without being limited to, such provisions as are provided under all for (1) the preservation of rights, privileges, applicable Federal, State, and local statutes and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (2) the continuation of collective-bargaining rights; (3) the assignment of affected employees to other jobs or to retraining programs; (4) the protection of individual employees against a worsening of their positions with respect to their employment; (5) the protection of health benefits and other fringe benefits; and (6) the provision of severance pay, as may be necessary. In determining that the State has made fair and equitable arrangements as provided for in the preceding sentence, the Secretary shall consult with the Secretary of Labor.".

On page 59, line 19, before the period insert the following: ", and how he intends to meet the requirements of section 221(b)(3) of the Social Security Act".

Mr. NELSON. Mr. President, I send to the desk a modification, which has technical changes, and ask for its consideration.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

On page 56, line 11, after the comma insert the following: "and after he has complied with the requirements of paragraph (3),".

On page 56, line 19, before the period insert the following: ", or (if later) until the Secretary has complied with the requirements of paragraph (3)".

On page 56, line 20, strike out the quotation marks and the second period.

On page 56, between lines 20 and 21, insert the following: "(3)(A) The Secretary shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Secretary of the disability determination function from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process for the Secretary shall, notwithstanding any other provision of law, have a preference over any other individual in filling an appropriate employment position with the Secretary (subject to any system established by the Secretary for determining hiring priority among such employees of the State agency).

"(B) The Secretary shall not make such assumption of the disability determination function until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of such assumption by the Secretary and who will not be hired by the Secretary to perform duties in the disability determination process, the State has made fair and equitable ar-

rangements to protect the interests of employees so displaced. Such protective arrangements shall include [without being limited to, such] *only those* provisions *which* are provided under all applicable Federal, State and local statutes *including, but not limited to,* (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (2) the continuation of collective-bargaining rights; (3) the assignment of affected employees to other jobs or to retraining programs; (4) the protection of individual employees against a worsening of their positions with respect to their employment; (5) the protection of health benefits and other fringe benefits; and (6) the provision of severance pay, as may be necessary.

On page 59, line 19, before the period insert the following: ", and how he intends to meet the requirements of section 221(b)(3) of the Social Security Act".

Mr. NELSON. Mr. President, I raised this issue in the Committee on Finance, but did not have prepared, at that time, an amendment. I advised the committee at the time that I would have an amendment to meet the problem we are concerned with here, when the bill was taken up on the floor of the Senate.

Mr. President, the Senator from Kentucky (Mr. HUDDLESTON) and I introduced this amendment for printing on Wednesday, December 5, and placed the text of the amendment and a memorandum explaining it in the CONGRESSIONAL RECORD, pp. 34699–34700.

I discussed this amendment during the Finance Committee's consideration of the disability bill, at which time, there was general agreement on the substance of the amendment we are offering today. My staff has consulted with the staff of the floor managers from both the majority and minority side, and I believe that there is no objection to the amendment.

The amendment provides employment protections for State employees who now administer the disability insurance (DI) program. The reason any such provisions are necessary is that, under H.R. 3236, as approved by the House of Representatives and by the Senate Committee on Finance, there is an increased likelihood, however small, that the Federal Government will take over, in any given State, the administration of the DI program. In the event of such an occurrence, this amendment provides that affected State employees will be given preference in any positions created by the Federal Government and protects the existing rights of the State employees under all applicable Federal, State, and local laws who are displaced by the Federal takeover.

BACKGROUND

H.R. 3236, as approved by the House and by the Finance Committee, would eliminate the provision in present law which provides for disability determinations to be performed by State agencies under an agreement negotiated by the State and the Secretary of HEW. Instead of these agreements, the bill would provide for standards and criteria contained in regulations or other written guidelines of the Secretary. It would require the Secretary to issue regulations specifying performance standards and administrative requirements and procedures to be followed in performing the disability function in order to assure effective and uniform administration of the disability insurance program throughout the United States.

The bill also provides that if the Secretary finds that a State agency is substantially failing to make disability determinations consistent with the Department's regulations, the Secretary shall, not earlier than 180 days following his finding, terminate State administration and make the determinations himself. In addition to providing for termination by the Secretary, the bill also provides for the termination of the disability insurance program by the State. Under H.R. 3236, the State is required to continue to make disability determinations for 180 days after notifying the Secretary of its intent to terminate. Thereafter, the Secretary would be required to make the determinations.

IMPACT OF H.R. 3236 ON STATE AGENCIES AND STATE EMPLOYEES

In the Ways and Means Committee report accompanying H.R. 3236, it was acknowledged that if the bill is enacted,

There is more likelihood that some States may decide not to participate under the program or the Secretary may determine that a State is not complying with the regulation requirements promulgated under this legislation.

In the past, certain States have seriously considered withdrawing from the program, and several States and State employee unions believe that H.R. 3236 will make such an option even more attractive for many States. In Wisconsin, for example, the State government has indicated it will terminate the administration of the program beginning this year.

If the Federal Government does indeed take over State disability determination agencies, the employment status of many States employees will be uncertain. Because there are no assurances in H.R. 3236 that these State employees will be reemployed by the Federal Government, many of these State employees could lose their jobs as DI employees permanently, even though it is generally recognized that State agencies have the "greatest reservoir of talent in the disability program."

NELSON-HUDDLESTON AMENDMENT

The Nelson-Huddleston amendment provides that first, whenever a State chooses to terminate its administration of the disability program or second, whenever the Secretary of HEW terminates the administration of the disability program by a given State, a specific plan must be developed, and all appropriate procedures initiated to implement the plan, before the Federal Government can assume the responsibilities of the State disability determination unit. The plan must provide a procedure to insure that affected State employees will be given preference in any positions created by the Federal Government and to protect the existing rights of State employees under all applicable Federal, State, and local laws.

More specifically, the amendment requires the Secretary of HEW to establish a procedure to give employees of the affected State agency who are "capable of performing duties" in the disability determination process for the Federal Government a "preference" over any other individual in filling an appropriate employment position with the Federal Government. In order to accomplish this objective, the Secretary would have to establish a hiring priority procedure among the employees of the State agency.

For those persons who choose not to be employed by the Federal Government, or for whom Federal Government employment is not offered, the Secretary of Labor is required to insure that the State has made fair and equitable arrangements to protect the interests of employees who are displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State, and local statutes including, but not limited to: First, the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; second, the continuation of collective-bargaining rights; third, the assignment of affected employees to other jobs or to retraining programs; fourth, the protection of individual employees against a worsening of their positions with respect to their employment; fifth, the protection of health benefits and other fringe benefits; and sixth, the provision of severance pay, as may be necessary.

Mr. President, the intent of this amendment is to insure that the Federal Government does not in any instance come into any State capitol in the Uinted States, take over the administration of the disability insurance program, and hire a whole new set of employees to work for the Federal Government without first utilizing and considering those State employees who administered the disability insurance program for the State. The amendment does not prohibit the Secretary of HEW from taking over the administration of the State program, nor does it hinder any State's ability to terminate its administration of the disability insurance program.

Rather, the amendment simply places an additional requirement in the law concerning the status of State employees before any action can be taken that could damage the employment situation of these employees.

Finally, the amendment requires the Secretary of HEW to file a detailed plan by July 1, 1980, on how the Department intends to implement the provisions of this amendment. Included in that plan should be a detailed analysis of how the Secretary intends to protect the pension rights and all other employee benefit rights of those persons who leave State government to assume Federal employment.

Mr. President, since the Senator from Kentucky and I introduced amendment No. 745, the Department of Health, Education, and Welfare, the American Federation of State, County, and Mu-

nicipal Employees, and the National Association of Disability Examiners have carefully reviewed the language of our amendment and made several helpful suggestions to improve it. I have sent these modifications to the desk.

I urge adoption of amendment No. 745, as modified.

Mr. President, what this really means is that the State employees are now administering the program, funded by the Federal Government. If, under the rare circumstance—and they will be rare circumstances—the administration of that program is taken over by the Federal Government, those who currently hold the jobs administering the programs will simply be given preference for any of those positions when they are taken over by the Federal Government.

Mr. LONG. Mr. President, I yield myself 3 minutes.

The Senator's amendment provides that if a State—and I assume he has the great State of Wisconsin in mind—wants to withdraw from making disability determinations under the disability program, the Federal Government has to hire its employees. Obviously, Mr. President, the people over in HEW do not want to have those employees dumped on their doorstep and I do not think anyone in a responsible position would like to be denied the right to hire whoever he or she finds qualified to do a job in the event that they are required to do it. This is not a situation, Mr. President, where the Federal Government is proposing to oust the States from their jurisdiction. As long as the State is administering this program under the law, they have the decision on whom they want to hire.

We are not arguing about that. But if the State just wants to get rid of the responsibility, vacate the premises, it is difficult to see why the Federal Government ought to be required to hire all those State employees. As I understand it, HEW opposes the amendment. The administration is opposed to it for the very logical reason that they ought to say whom they are going to hire.

Mr. NELSON. I am advised by staff that HEW does not oppose the amendment. We were assured this morning—my staff was assured this morning—by Mr. Welch of HEW that they do not oppose the amendment.

Mr. LONG. If the Department supports the amendment, Mr. President, it will have to advise me. My impression was that the Department had been consulted and advised the Senator with regard to the language of the amendment, but I have not been advised that the administration favors the amendment. Perhaps we can find out and confirm the matter one way or the other before we vote on it.

I have not discussed the matter with them personally, but that is my advice from staff, that the administration does not favor the amendment. Perhaps we can get the matter ironed out and find out more about it during the next half hour or so.

Mr. NELSON. Mr. President, let me say to the Senator, so it will follow at this place in the RECORD, under the law, if the State is not administering the disability law pursuant to the rules and guidelines in the statute, the Secretary may—may—take over the administration of the program.

No. 2, a State may turn the administration over to the Secretary of HEW. So those are the two circumstances.

All this amendment proposes is that if the Federal Government should take over the administration of the program because the State was not complying with the law, which is unlikely to happen but might, or if a State decides to yield the administration of the law to the Federal Government, which might happen in a circumstance or two or three, those employees who occupy those jobs now being paid for by the Federal Government anyway, sitting at their desks, in their offices, may continue to administer the program. There has been no change at all, really, except an exchange someplace, putting in HEW in place of the State. It is the same program, same employees, same everything.

This amendment simply says that, if that happens, the affected employee should not suddenly be without a job; that if he were qualified to administer it under the State government, if he is still qualified to do it, then he ought to be able to have that job unless the Federal Government decides, well, we are going to cut 10 percent of the employees.

They can do that if they can reduce the number. But if they are going to retain the spot, that person who already has it ought to have the preference to get the job.

I am certain the Senator from Louisiana is not arguing that they ought to be able, willy-nilly, just to fire a good, hard-working employee who has 10 or 20 years in, just because they change the title of the government that is administering the program. That is all this amendment does.

Mr. LONG. Mr. President, the Senator has been provided with some information at variance with the information provided to the manager of the bill. I hope that we are able to obtain some better advice before we vote on the amendment. I hope the Senator will withhold his amendment. If we cannot do any better, we can suggest the absence of a quorum.

Mr. NELSON. I am agreeable to laying the amendment aside temporarily and proceeding to whatever other business there is and, at such time as that question is resolved to everybody's satisfaction, we can take it up again. Is that the way the Senator wishes to do it?

Mr. LONG. I think that would be a good idea.

Mr. DOLE. Will the Senator from Wisconsin yield?

Mr. NELSON. Yes, I yield.

Mr. DOLE. Mr. President, I am sympathetic to the problem the Senator from Wisconsin has. I hope we can put our heads together and work out some solution, but I hope in the process, we do not slow down the disability determination process. I think that is one reservation some of us may have, but I am willing to work with the Senator from Wisconsin on it.

Mr. NELSON. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

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

AMENDMENT NO. 749

(Purpose: To provide that the waiting period for disability benefits shall not be applicable in the case of a disabled individual suffering from a terminal illness, in lieu of providing a demonstration project relating to the terminally ill)

Mr. BAYH. Mr. President, I call up my amendment No. 749.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Indiana (Mr. BAYH) proposes an amendment numbered 749.

Mr. BAYH. 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:

On page 39, between lines 11 and 12, insert the following new section:

"ELIMINATION OF WAITING PERIOD FOR TERMINALLY ILL INDIVIDUAL

"SEC. 105. (a) The first sentence of section 223(a)(1) of the Social Security Act is amended, in clause (ii) thereof—

"(1) by inserting '(I)' immediately after 'but only if', and

"(2) by inserting 'or (II) he has a terminal illness (as defined in subsection (e)),' immediately after 'the first month in which he is under such disability,'.

"(b) Section 223 of such Act is further amended by adding at the end thereof the following new subsection:

" 'Definition of Terminal Illness

" '(e) As used in this section, the term "terminal illness" means, in the case of any individual, a medically determinable physical impairment which is expected to result in the death of such individual within the next 12 months.'.

"(c) The amendments made by this section shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act filed—

"(1) in or after the month in which this Act is enacted, or

"(2) before the month in which this Act is enacted if—

"(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month, or

"(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly benefits under title II of the Social Security Act shall be payable by reason of the amendments made by this section for any month before October 1980.".

On page 101, strike out lines 1 through 17. Redesignate sections 506 and 507 as sections 505 and 506, respectively.

On page 32, amend the table of contents by adding at the end of title I the following item:

"Sec. 105. Elimination of waiting period for terminally ill individual.".

On page 33, amend the table of contents by striking out the item relating to section 505, and redesignating sections 506 and 507 as sections 505 and 506, respectively.

Mr. BAYH. Mr. President. I rise today to offer amendment No. 749, a substitute

amendment to the demonstration project in H.R. 3236. My amendment would eliminate the waiting period for the collection of disability insurance for the terminally ill.

Currently social security disability benefits do not begin to accrue until 5 months after a claim is filed with the Social Security Administration. For the terminally ill, this waiting period often means they will not be able to collect those disability benefits at all, the only social security benefits they will ever be personally able to collect.

We have all received heart rending correspondence from constituents who have not been able to receive such benefits. They are usually in desperate financial situations after long and costly illnesses and are looking for some means of relief. They do not want to collect welfare. For many of them to be put on the welfare rolls at the end of their lives is the final and ultimate humiliation.

Yet even when some of them finally resort to the collection of welfare, they run into obstacles. I would like to read a couple of sentences from a letter from one of my constituents whose son-in-law was dying of a brain tumor:

My son-in-law was operated on for a brain tumor on October 11, 1978. The physician gave him 3, probably 6 months to live. They have used up what money they had and their insurance had not been in force long enough as he had just changed jobs . . . I have paid some of their rent but, since I am a widow I can not pay much on a second household . . . His regular social security checks will not start until March 3 . . . His welfare will not start until April, the end of his 6 month period . . . He is taking medicine that costs about $90 a month.

This young man died on February 24, his wife destitute, several weeks before he could collect his disability insurance check. I submit this correspondence for the RECORD.

There are those who would say this amendment costs too much money. I agree that $100 million is a lot of money. However, we must continue to be the humanitarian Nation we have always been. We must not, in my opinion, sacrifice the pride and comfort of our citizens in our efforts to save.

Almost 400,000 people will die of cancer this year. Millions will be afflicted. These people who want to receive these benefits are not asking for charity, not asking for welfare benefits, they are asking for social security benefits, benefits they have earned.

The high cost of dying of a terminal illness is something that many of us will unfortunately be acquainted with. One in four of us will either have cancer or have a relative who has cancer, not to mention other fatal illnesses. At this time in a person's life when they are spending enormous amounts of money to prolong life for an additional month or just to relieve the pain of dying how can we say the terminally ill are not special, not worthy of some additional consideration, not worth the estimated $100 million next year. I for one cannot.

I have, however, made the effective date the next fiscal year in order to expedite the budget process this year.

There are those who would say these people can collect welfare benefits. The correspondence from my constituent speaks eloquently of that problem. But, in addition, can any of us here say that if we were dying we would feel comfortable having to collect welfare benefits. If there is recourse available to these people to collect money they can feel they have earned, are we not adding to the burden of dying by saying if you have a problem you can collect welfare, become dependent upon the State in your final months even though you have worked proudly all of the rest of your life.

There are those who have said the terminally ill are not special in terms of disability. I submit they are for two reasons. First, the terminally ill are usually at the end of a long and costly illness not at the beginning of a disability. Second, these people will never collect any other disability insurance personally. They will never collect old age benefits. Two years hence they will not be collecting SSI benefits. For most of these people, according to the American Cancer Society estimates, well over 90 percent of them, the 5 months we are talking about is the only 5 months they will ever receive benefits. That alone distinguishes them.

I understand there is a possibility we may be ruled nongermane. While I do not totally understand the fine points of germaneness and would never question the technical accuracy of such a ruling I feel very strongly that on a practical level this amendment should be considered germane. It, like all the other amendments in the bill, amends the disability insurance benefit provision. It is a substitute to a demonstration project on terminal illness and section 303(b) of the bill amends the same section of the law we are amending. So, on a practical level, I do not believe it is a new subject for this bill.

I would hope that my colleagues will join me in supporting this amendment to help alleviate some small portion of the monumental financial difficulties involved in terminal illness through a means that helps maintain the dignity of the recipient because the money is earned benefits, not welfare, not charity.

The correspondence follows:

FEBRUARY 28, 1979.

DEAR VIVIANA: I wrote you about my daughter's husband.

They returned the paper giving you authority to check his records about Welfare and SSI. Well, they delayed the Social Security and Welfare checks long enough so they did not receive any. I believe they received two SSI checks. They did have a medicaid card for medicine and they got food stamps.

He passed away on February 24th.

Thanks for trying to help them.

Yours truly,

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FEBRUARY 12, 1979.

DEAR MR. BAYH: I would like to have some information and possibly, some additional help for my daughter.

My son-in-law was operated on for a brain tumor on Oct. 11, 1978. The physician gave him 3 and probably 6 months as he could not remove all of the tumor.

They have used up what money they had and their insurance had not been in force long enough as he had just changed jobs. They are both 39 years old.

I have paid some of their rent but, since I am a widow, I can not pay much on a second household. My apartment is not large enough for 2 families.

My daughter was working part time at 2 places. They were getting some Social Security Supplement. Then the SS said she made too much and they reduced the Supplement $100.00. His regular SS checks will start 3-3-79.

His welfare will not start until April, which will be the end of his 6-month period. He is taking medicine that costs about $90 a month.

Would you please let me know if this is the best help that they can get. Why can't his SS start earlier and, also, why does it take 6 months before the welfare can pay. What is the maximum that my daughter can earn? She has her application in at General Motors plants in Anderson.

If there is something you can do to help, please let me know. At that time, I will let you know their names.

Thank you.

Yours truly,

_____

To summarize very briefly, this amendment is the result of some very personal experiences that were brought to the attention of the Senator from Indiana, which I think are similar to experiences that have been shared by every colleague because we all deal with constituents who are confronted with terminal illness, basically cancer.

The problem is this. We are all familiar with the fact that we have a significant waiting period after one becomes disabled, before he or she can draw disability provisions. The basic reason is to prohibit fraud, to prevent or limit the incidence of fraud, and, as a result of keeping people off disability, to cut down the cost of the program.

One who loses a leg or is otherwise disabled does qualify at the end of 5 months and can then draw disability payments, theoretically, for the rest of his life, or her life, or through the period of the disability.

In the event one is disabled because of terminal illness and is required to wait the 5-month period, the statistics, as brutal as they are, point out that more than half of all those people do not live the 5 months. So they never qualify for disability payments.

What I would do in this amendment is, upon certification of terminal illness, permit the person to start drawing disability payments.

I point out that at a time someone has been declared terminally ill, there is a dramatic need to provide assistance. There is all the increased cost, the loss of income, and the indescribable emotional circumstances that surround a family confronted with that kind of situation.

It seems to me that is a time the Government should be compassionate and should say, if a person has been declared terminally ill, that we are not going to quibble about whether he will live 5 months or 6 months or 7 months, that we are going to permit him to qualify for disability.

Mr. President, I ask unanimous consent to place in the RECORD data relative to the cost of the program before us.

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

From: Harry C. Ballantyne

Subject: Eliminate the Waiting Period for Disabled Persons Who Are Terminally Ill—Information

The attached draft bill would eliminate the waiting period for persons with "a medically determinable physical impairment which is expected to result in the death of such individual within the next 12 months." For the purpose of the cost estimates shown below, it was assumed that this meant death within 12 months after the onset of disability.

In preparing the estimates, it was assumed that payments for the months in the waiting period would be made to disabled persons who are diagnosed as terminally ill, but who nevertheless live for 12 or more months after onset of disability, and that there would be no requirement to return these payments. On the other hand, if an illness which is not diagnosed as a terminal illness does nevertheless result in death within 12 months, a retroactive payment would be made for the waiting period. Thus, the cost of the proposal is higher than it would be if all payments were made retroactively in only those cases in which death actually occurs within 12 months of onset, but it is difficult to estimate how much higher.

As a rather arbitrary assumption, we assumed the cost of the proposal is about 50 percent more than it would be if all payments for the waiting period were made retroactively after the occurrence of death within 12 months. The resulting estimates of additional benefit payments in fiscal years 1980–84 are shown in the following table.

Additional benefit payments

(In millions)

Fiscal year	Proposal as drafted	Retroactive payment of benefits after death within 12 months
1980	$150	$100
1981	180	120
1982	200	130
1983	225	145
1984	250	160

It is estimated that about 100,000 disabled workers would be affected in the first full year under the bill as drafted. (If all payments were made retroactively, the number would be about 75,000.)

The above estimates are based on the assumption that the draft bill is enacted in August 1979, making the proposal effective for final determinations made in August 1979 and later. The estimates are also based on the intermediate assumptions in the 1979 Trustees Report.

HARRY C. BALLANTYNE,
Acting Deputy Chief Actuary.

Mr. BAYH. I yield to the Senator from Washington.

Mr. MAGNUSON. Mr. President, the Senate is currently considering an amendment which would eliminate the 5-month waiting period for social security disability benefits for terminally ill persons. This amendment will help the terminally ill and their families meet their medical expenses.

It is estimated that as many as 1,000 cancer patients die daily in the United States.

I am now directing myself not to persons with disabilities, such as the loss of a leg, which are also serious, but to cancer patients that have been told by their doctors they just have to sit and wait until they die.

The family's shock on learning of the disease and the emotional toll on the family during the course of disease cannot be measured. Nothing we do here today can change that.

However, we can help the patient and their families meet some of the overwhelming expenses incurred during this traumatic period. We will not be doing this as any kind of special favor.

Since we introduced the bill which this amendment is patterned after, S. 1203, I have—as well as many other Members of the Senate—received many letters from cancer victims and their families supporting the repeal of the waiting period.

A common theme is noted in these letters—a loved one is ill with terminal disease and cannot get social security benefits for 5 long months. Sometimes they must wait longer than that for the benefits to be processed.

The loved one may be dead before the 5-month waiting period is up. The family has worked for years and always paid into social security. They have paid their dues.

I am then asked if the current law is fair to these people. While I could mention the need to preserve the fiscal integrity of the social security program, I do not think this response would be of much comfort to them.

It is unfair to deny social security benefits to persons who have paid for them. It is even more unfair to deny these benefits to a person and his or her family at a time when they are badly needed, before a loved one dies. By repealing the 5-month waiting period for the terminally ill we are remedying this inequity.

There are many, many thousands of cases where a doctor informs a person he has got cancer and has a short period to live. They often die before they get a chance to use the social security benefits they paid for all those years.

Mr. President, I would like to take a moment to recognize one man's contribution to our awareness of this issue—Mr. Howard Dalton, of Everett, Wash.

Mr. Dalton learned that he had terminal cancer late last year. He learned shortly thereafter that the law required he wait 5 months for social security benefits. His doctor did not think he would live long enough for him or his family to receive any benefits.

Since learning of this law, Mr. Dalton has been vigorously battling his own illness and also working on behalf of many others who suffer from terminal illnesses to acquaint the public and this Congress with the inequity in social security law. Our consideration of this amendment today owes much to his efforts.

I believe he presented some very vivid testimony before the Finance Committee in support of this amendment.

The Senate today has an opportunity to insure that duly earned social security benefits be given to the terminally ill and their families when they most need economic assistance, at the time they first learn of their illness. I hope the Senate will support this amendment to repeal the 5-month waiting period for social security disability benefits.

A Seattle Times editorial succinctly summarizes the need for this legislation. Mr. President, I ask unanimous consent that the Seattle Times editorial, "Cruel Irony Mars Social Security Law" be printed in the RECORD.

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

[From the Seattle Times, Jan. 31, 1979]

CRUEL IRONY MARS SOCIAL SECURITY LAW

Disabled by a cancer that doctors say will take his life within the next few months, an Everett man has been told he is fully eligible for Social Security disability benefits.

But there is a cruel irony in the case of Howard Dalton: He may not live long enough to receive any payments.

Dalton and countless other clients of the Social Security system—individuals who have shared with their employers the costs of financing it—cannot receive prompt benefits resulting from a medical impairment that can be expected to last 12 months or to end in death.

That is because the law says benefits cannot begin until a worker has been totally disabled throughout a waiting period of five months. The first month's benefit is for the sixth full month of disability and is payable early in the seventh month.

When Congress enacted the disability phase of the Social Security program more than 20 years ago (with a waiting period even longer than it is now), the objective of delaying benefit payments was to keep program costs down.

The legislation plainly ignored the plight of people like Dalton, who has been told that the most optimistic medical forecast is that "I would last 8 to 10 months as of last Thankgiving."

Dalton is more fortunate than many, in that he has sufficient private resources to pay his bills. The government provides early supplementary income aid in certain circumstances, but eligibility is confined to those with very low earnings.

Local Social Security officials say they cannot make exceptions. The law is unequivocal regardless of special circumstances. Worse, even when the waiting period is over, there are no provisions for retroactivity.

An administration spokesman says abolition or modification of the waiting period would add significantly to Social Security tax payments for workers and employers—as much as 1.25 per cent of the taxable payroll.

All of which provides a fresh argument for relieving the Social Security system of disability and Medicare obligations, shifting them to the general tax fund instead.

Meantime, the case is strong for amending the law to allow a measure of flexibility in handling claims by the terminally ill and others in unusual circumstances.

A caring and conscientious congressman would move quickly to seek just such an amendment.

Mr. MAGNUSON. Mr. President, I know that this amendment may cost the Treasury some money. If a person who pays into social security is terminally ill and dies within the 5-month waiting period, the Treasury makes some money.

That is a devil of a way to collect money, is it not?

I hope the committee will accept this amendment. It applies only to those people who have been declared terminally ill and are likely to die within a 12-month period.

Sometimes it takes 6, 7, or 8 months by the time they are through making out the papers and everything else.

I speak for the cancer victims. The Senator from Indiana talks about other disabled people. It is a shame.

I do not think any government wants to collect money because someone has the misfortune to have cancer and dies before they have a chance to use some of the money, some of the benefits of their social security funds, which is all they have.

The Treasury might make a little money, too, if they die within 2 or 3 months. Then they do not have to pay for the entire 5-month period.

This is very unfair. It is a dickens of a way for the Treasury to collect money.

Mr. HAYAKAWA addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. I yield myself such time as I may require.

Mr. President, a parliamentary inquiry.

In due course, I expect to make a point of order that the pending amendment is not germane. However, I do not desire to prevent Senators from expressing their views on the subject, in view of the fact that the amendment is pending. I inquire of the Chair if it in any wise prejudices the rights of the manager of the bill to make that point of order if he waits long enough for someone to offer an amendment to the amendment?

The PRESIDING OFFICER. The Senator has an opportunity to make his point of order at the time of the completion of the allotted time for consideration of the amendment.

The Senator, at the same time, would not lose his right to make that point of order in the event of an intervening amendment to that amendment.

Mr. LONG. I believe the Senator from California wishes to offer an amendment.

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

Mr. LONG. I yield.

Mr. MAGNUSON. I know there are several Senators—who are not in the Chamber at this time—who want to speak on this amendment, including my colleague from the State of Washington, Senator JACKSON. I am sure the Senator from Indiana is not through, either.

Is the Senator from California going to speak to this amendment?

Mr. DOLE. No.

Mr. MAGNUSON. Could we set aside this amendment temporarily?

Mr. LONG. Mr. President, I believe I should speak to the amendment for a few minutes, because it will be my reluctant duty to oppose the amendment, and I think I should explain my reasons.

The disability program has cost the Treasury far, far more than anyone ever estimated. It was the privilege of the Senator from Louisiana to support the disability program when it first became law. At that time, we represented to the Senate—those of us who were sponsoring the amendment—that this was going to cost about one-half of 1 percent of payroll. This program now is costing us about 2 percent of payroll. It is costing us about $15.6 billion.

That is the case because of an element of compassion that exists in almost every human being which tends to cause one's sympathy to go out to a person who is partially disabled, even though that person may not be totally and permanently disabled as required by the law.

Because of that, when people take appeals from the decisions in the Department of Health, Education, and Welfare, or before the examiners at the State level, who are not known as people with hearts of stone, about 50 percent of the time the appeal is successful. In the event it is not successful, and they go to court with it, about 50 percent of the time they win the lawsuit.

If we were required to waive the waiting period, the additional cost to the program would be about $3 billion a year, or almost another one-half of 1 percent of payroll; and that would have to be paid in addition to the social security tax increase which everyone in Congress is worried about at this point. Of course, that is not being proposed in this amendment.

This amendment is estimated to cost $850 million over the 1980–84 period, and $165 million in the next year.

Mr. MAGNUSON. Is that for a 3-year period?

Mr. LONG. $165 million in 1981.

Mr. MAGNUSON. I wish the Senator would say the annual cost.

Mr. BAYH. They are not the figures I got from Social Security.

Mr. LONG. I understand.

Mr. President, let us discuss the case of cancer, for a moment or two.

I have known a lot of people who have had cancer and who have had terminal illnesses. In my experience, I am not familiar with any of those people being fired from their jobs or ousted from their positions because they had cancer.

I know of a lot of brave people, many of whom were friends, who carried on courageously until the very end, until they were bedridden and simply could not perform.

I recall one good example of a very fine man who was a good friend of mine. He was working for the Federal Government. This person had terminal cancer. He was determined to carry on and did so, bravely.

I was discussing his situation at one time with the President of the United States, at the White House, and the President insisted on giving the man a telephone call and congratulating him for the fine job the man was doing for his country, and the man appreciated it very much.

In due course, we found that some of his fellow employees wanted this man to retire. Under the Federal law, as a Federal employee, he could have taken retirement partly because of his illness. This person was outraged about it. It turned out that his fellow employees felt that they would be promoted. About four or five people on the ladder would move up one step if this man stepped aside. So his fellow employees would have liked him to retire so that they could have a promotion.

What usually happens in cases in which a person has a terminal illness—cancer, in particular—is that his fellow workers share some of his burdens so that that person can do the job to a greater extent that he would otherwise.

We can find no more obvious example than that of Hubert Humphrey, one of the great Senators of all time, who served with distinction right until the last couple of weeks before the good Lord called him home.

I recall Dr. Schuler, on the "Hour of Power," tell about how Hubert Humphrey's family called Dr. Schuler and urged him to talk to Senator Humphrey; and the doctor urged him to go back to the U.S. Senate because the Senator was not doing anything by being at home and suffering the pains that accompany cancer.

The Senator returned; and I am sure that everyone who was here to witness his return regarded it as one of the most impressive things they have seen in the U.S. Senate—the magnificent speech that courageous man made, and the inspiration he gave to every Member of this body while he was suffering from cancer, until nearing the end.

I recall sitting with that great Senator in one of the rooms just off the Senate Chamber and hearing him say that he was not going to go quietly; that he was going to go out with a whoop; that he was going to stand here until the end and advocate things in which he believed.

But, if someone had to get out of bed late at night to come down here and make a quorum we would not have demanded that Hubert Humphrey do that. That is something the rest of us could do. Likewise, on some of the tedious work that need be done, other Senators would be perfectly content, and glad to share the burden, because one of their Members was ill. That is usually what happens.

Just this morning, coming to work, I was discussing this very fact with a lawyer who, in my judgment, is a very great lawyer, a very talented, able man. I mentioned the fact that, to my knowledge, I know of no one who has been fired from his job because he had cancer. This particular lawyer said that, in his firm, they had four lawyers with cancer. One of them just got through negotiating a renewal of his contract with the firm, and they gave him a pay raise.

Just because you have cancer does not mean that your brain is not functioning. It does not mean that you cannot do anything.

Mr. President, when we tell people with cancer, "You are going to die, you are disabled, you cannot do anything," it tends to make those people give up. They should be encouraged to try and live as long as they can and make the best contribution that they can.

We had a very impressive witness come before the committee, and he was well known to the Senators from the great State of Washington, testifying for the amendment. It turns out that the witness himself was one of the best examples of why the amendment should not be agreed to. That was a man, himself, who had such a problem, making a very noble and fine contribution. He was a useful citizen of this society and he was continuing to make a substantial contribution.

If we are going to waive the waiting period for people who have cancer, well knowing that those people can make a contribution, they are not totally and permanently disabled, they can still make a very useful contribution, then how do we justify not waiving the waiting period for those who actually are disabled and cannot do anything, nothing whatever?

In other words, far more than one who has cancer but who can make a useful contribution and can do his job and, in fact, can do it, how do we justify not waiving it for those people who are, in fact, disabled and, in terms of the statute, let us read that language there. Here is what the statute says. Let me read the exact words. I will ask the staff to find those words. Let me read:

> The term "disability" means (a) the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of time not less than 12 months.

Then it goes on.

Mr. President, the key words here are "inability to engage in any substantial gainful activity."

The reason that the program is costing four times the estimate, the reason it is costing $14 billion rather than $4 billion is that of the compassion of people to find ways to declare a person unable to engage in any substantial gainful activity when in fact that person is able to engage in a substantial gainful activity.

Mr. President, under our present budget we are confronted with a situation where there is more money being spent on social welfare programs than there is on the defense of the Nation. The defense of our Nation has had a smaller and smaller share of the budget to the extent that if we were required to go to war with the greatest military power in the world we would have to put our young men in the air to attack that great military power in airplanes that are 30 years old.

Who would like to have his son take off to attack the greatest military power in the world in 30-year-old airplanes? I would hate to try to get somewhere in a 30-year-old automobile, much less in a 30-year-old airplane. But we would be confronted with that.

We have old ships that are not adequate for the needs of a modern-day Navy. We do not have the tanks, and we certainly do not have the modern tanks we should have for the fulfillment of our defense commitments. We need far more than just a 5-percent or even a 10- or 12-percent increase in our purchase of hardware. We should have a 100-percent increase.

We are not providing adequately for things that are vital to the survival of this Nation. And we go ahead, Mr. President, spending more and more money on social services where it is not absolutely necessary.

I have struggled in the vineyards of economy from time to time, and it is the impression of this Senator that what wrecks our budget is not the outright waste, it is not the case where someone is stealing money, or spending money that has no justification for it, but it is the case of marginal spending, spending on things that are not absolutely necessary.

Mr. President, in the social welfare areas we have a great number of examples. Just to give one, no one ever thought when we started the unemployment insurance program that it was to be a guaranteed vacation with pay program and yet, in many cases, it has become one.

For example, one of this Senator's friends retired recently from Exxon in Baton Rouge, La. He had earned a good retirement and he took advantage of it. I was shocked when I heard that someone told him he should go down and apply at the unemployment office because he could get a year of unemployment benefits to supplement his retirement benefits—under a very fine retirement program in and of itself, supplemented by the social security payments.

The man at the time said it looked to him like that would be just stealing to go down and take this unemployment money in addition to the social security pension, and in addition to the private pension that was available to him.

But the people said, "Look, all the rest of them do it, and you ought to do it too."

Then, Mr. President, I looked into the matter and found that in some States legislation has been passed not only to implement this approach, that a person who has earned a generous retirement would be paid the unemployment insurance money as well, but I learned that in some States they have actually passed laws through the legislature to require the employer to advise that employee that when he retires he can have unemployment benefits as well as having a private pension and as well as having a social security payment.

That is just one example of areas where we are spending just a lot of money.

It is the judgment of some Senators on the Committee on Finance that in the unemployment area alone there is at least $3 billion a year of unnecessary spending. This is not to say that this benefit for retirees might not be helpful, it might not be comfortable, or it might not be justified under certain circumstances. This is merely to say that we could get by without having a program that would pay people unemployment benefits when they have actually retired and are not available to take a job somewhere.

Now, this case, Mr. President, of course, has a lot of sympathy, to support it. All I can advise the Senate is that the more we get into this thing, the more it costs, and the more it will cost. The more you do this sort of thing, the more you will do. The more precedents you set like this, the more precedents you will have to set. The more you extend these programs, the more you will be required to extend them in the future.

How can we tell these people who are not actually disabled to the extent that they can have gainful employment that they must have no waiting period when we have other people who are truly disabled who would be required to have the waiting period?

Yes, I have complete sympathy with those people. But, Mr. President, if I should be taken down with cancer tomorrow, I would not resign from the U.S. Senate. I would continue to carry on, and I would somewhat resent anyone suggesting that I should declare myself disabled because I had cancer.

I would hope, Mr. President, that we would recognize that as much as we like to do some of these things there is a limit to the capability of the taxpayers to pay for all of that, and this program is far beyond its estimate already, and should not be drastically expanded with a floor amendment of this sort.

Now, in due course, I will make a point of order, Mr. President, because I believe the amendment is not in order. But I did feel it was my duty to display my reasons why, on the merits, I do not believe the amendment should be voted by the Senate.

Mr. MAGNUSON. Mr. President, will the Senator yield for a question?

Mr. LONG. Yes.

Mr. MAGNUSON. I have figures, and I think the Senator from Indiana has figures, from social security that this will cost approximately $100 million a year. I agree with the Senator. I have to struggle with these appropriations all the time.

The Senator, however, mentions all of these abuses of unemployment insurance. Well, let us take $100 million out of there, or $200 million, or $300 million, or $400 million, and put it someplace where it is a question of whether this is fair or not. It is not a question of whether you have cancer. It is a question of when you are declared terminally ill and are going to die, a certain period of time, maybe 1 month, maybe 2 months, maybe 3 months, and you have to wait, you paid in social security all your life, and I just do not see the comparison between some of the ways the Senator points out in social security and what we adequately trim in order to take care of a situation that is obviously unfair to people who have paid in social security.

I have a figure that it costs about $100 million a year.

Mr. LONG. Mr. President, just permit me to say this: We are going to have to cut back on social security.

Mr. MAGNUSON. You can cut back on all kinds of things.

Mr. LONG. Not to finance other things—we will have to cut back just to stay within the budget resolution. I will have to do it. It was my painful duty to

do that. We voted for the budget process, and when the Senate passes a budget resolution we have to provide for that.

Mr. MAGNUSON. You are revising social security, on which you have done a good job, but this is being very unfair. We cut back about $6 billion in social security—I mean social needs in the Appropriations Committee.

Mr. LONG. Let me just make a point, Mr. President.

Mr. MAGNUSON. Last year we cut cut back, I might say to the Senate, $8 billion, $8.1 billion.

Mr. LONG. Mr. President, it might shock some people to hear this, but every person within the sound of my voice is going to die. Every last one of us will die. It is just a matter of when.

The question of whether we are going to pay these disability benefits out depends really under the law upon the extent to which a person is disabled. We have a waiting period. Here is just one good example—here is a Mr. Dalton, a very fine, impressive witness, testifying before our committee for this amendment.

He said he was told by the doctors in November 1978 that he had 6 or 8 months to live.

When he was testifying before the committee, that was 12 months later, and the man showed no signs of being in extremis at that point.

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

Mr. LONG. Yes.

Mr. BAYH. I think, with all respect—I know how compassionate the Senator from Louisiana is, and I know how sensitive he is to spending money—but I have to say that the Dalton example and the Humphrey example argue for the point expressed by the Senator from Indiana and the Senator from Washington that those people would not qualify for for disability. Those people would not be covered under this.

What we are after is not somebody who is going to be fired because he has cancer, because most cancer patients want to work as long as they can. But when the good Lord gets ready to grab hold of you, and you are in that bed, and you cannot work, what we are saying is you ought to have a chance to get some of that social security you paid into the social security system to pay for the groceries and for your children. That is all we are saying.

I appreciate the Senator's yielding.

Mr. LONG. Mr. President, we have a program that is costing $15 billion a year. By current standards it was supposed to be costing us $4 billion a year. How do you account for the fact that it is costing four times what we estimated? Well, the reason, Mr. President, is when someone comes in with a compassionate situation the people in the Department who see that are inclined to go along with him because they feel sorry for him, and I do not blame them. I would tend to be the same way if I had that job.

Likewise when they appeal it. Then the person who hears it on appeal is inclined to allow benefits.

Then, if they lose their appeal, they take the case to court. What does the judge do? He looks at that person and sees there a person who, for all we know, might be on a job right then, might be working on the job, but the person makes a pitiful case before the judge, and what does the judge do? He decides the person is disabled and he puts him on the rolls. He knows he fudged on the law, but he goes back home and sleeps well that night. He knows, although the person was not totally disabled, he felt like he did a good deed like he did.

Mr. President, I have done things like that in one respect or another and felt proud about it.

I recall one time a young man went over the hill and was gone for a long time. I reviewed that court-martial and found an excuse to throw it out on a technicality. I recall that my superior in the Navy asked me how could I do that on that technicality. I was saying that a muster roll that was certified by Randall Jacobs, the head of personnel of the U.S. Navy, was not a muster roll. That was a technicality because it was only an excerpt from a muster roll. I said, "Randall Jacobs will never challenge this. This will be the kind of case that will make you shed a tear when you see what happens with that young man, and there will not be any argument from Randall Jacobs or anybody else," because nobody would dare challenge what I was suggesting, or what was actually happening in that pitiful case.

So when people see people who are not totally and permanently disabled as the law requires, but who are sick, who are ill, who are going to die, their compassion reaches out and they will say they are disabled even though they know those people can still make a contribution, they can still be useful. Many times they are doing it at the time they are making that application.

To waive the waiting period, Mr. President, because the man is about to die—well, there is no better excuse for doing it in that case than it is for doing it in a case where a person is totally disabled and cannot do anything at all.

Mr. BAYH. Mr. President, I yield 5 minutes to the Senator from Washington (Mr. JACKSON).

Mr. JACKSON. Mr. President, I am pleased to join with Senators BAYH and MAGNUSON, and 28 other Members of the Senate, in sponsoring this amendment to H.R. 3236—the social security disability bill which is now before the Senate. Our amendment will provide immediate disability insurance benefits to terminally ill persons—benefits they often desperately need. Under current law, all disabled persons are required to wait 5 months before receiving disability benefits, regardless of the immediacy of their needs or prospects for recovery. This creates an inequitable situation whereby terminally ill patients receive no help from social security during the first 5 months of their disability, and will, in fact, never receive assistance from the fund if they die during that period. Social security benefits are not paid retroactively, and therefore, an individual afflicted with a terminal illness may be without means to meet the high costs of medical attention and care so often needed during the last months of their lives. Quite simply, at a time when these persons most need assistance, and after they have paid into the system for insurance against this very type of tragic occurrence, they cannot obtain it.

Mr. President, this is a situation that begs for remedial action by Congress, and I believe that the amendment we are offering today to the social security disability bill offers the sort of relief that is warranted for those who are suffering from a terminal illness and are incapable of work.

Thousands of Americans each year discover that they are afflicted with a terminal illness and then must face the prospect of dealing with a Government agency which to them appears uncaring and unmindful of their desperate needs. In this regard, the Senate Finance Committee has itself recognized the needs of the terminally ill by including within the disability bill authorization for the Social Security Administration to participate in a demonstration project conducted by the Department of Health, Education, and Welfare. This project would study the impact of current provisions of the disability program on the terminally ill to determine how best to provide benefits to these people through Social Security Administration programs. The committee has recommended that $2 million be appropriated for participation in this demonstration project.

Mr. President, I believe that this provision in the bill indicates that the Finance Committee recognizes the terminally ill as a distinct class of benefit recipients who deserve special attention, and recognizes there is a difference between one who is dying and one who is suffering a long term disability. But the fact is, we do not need to spend millions for studying their plight. We know that the terminally ill need social security benefits immediately upon determination that they are completely disabled and that death is impending. Their need is buttressed by the fact that they have quite often exhausted their own financial resources by the time that it is determined that they can no longer work, and the fact that most terminally ill individuals die within the five month waiting period after they have been determined by the Social Security Administration to be totally disabled. The consequence is that most terminally ill patients never receive social security disability insurance benefits.

Mr. President, I have become personally aware of the needs of the terminally ill over the past few months as a tremendous number of my own constituents have written in support of the measure we are offering today. Their plight has been championed by a man from my own home town of Everett, Washington, who is himself plagued with virulent lung cancer and has been told that he must put his affairs in order and prepare to die. His name is Howard Dalton, and he

has valiantly fought to see that the law we are considering today is amended to take care of those who most need assistance. I believe that their needs and his efforts should not go unrecognized as their cause is both just and reasonable.

Mr. President, my own investigation into this problem leads me to believe that the amendment we offer today is adequate to meet the needs of the terminally ill, and is well tailored to meet the fiscally conservative standards which we have set for ourselves when considering programs which will add additional, and potentially costly, benefits to the social security program. In this regard, it is my understanding that the Social Security Administration estimates that the program will cost an additional $100,000,000 if implemented for an entire year, and will cost much less if implemented during this fiscal year. This is not an exorbitant amount when it is considered that it will help thousands of Americans to meet the financial crisis which often accompanies terminal illness. I would hope, therefore, that the Senate will give serious consideration to our measure and amend the Social Security Act to provide disability benefits for the terminally ill.

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

Mr. BAYH. Mr. President, I deeply appreciate the concern expressed by both Senators from Washington. I think what we are trying to do does not create wasteful programs, but we are trying to deal with very unique problems of pain and suffering.

I yield 5 minutes to the Senator from Tennessee (Mr. SASSER), who is, unfortunately, in a uniquely qualified position to speak with personal experience on this matter.

Mr. SASSER. Mr. President, I thank the distinguished Senator from Indiana for yielding.

Mr. President, today I rise in support of the amendment offered by my friend from Indiana (Mr. BAYH). I want to commend the Senator on his initiative and timeliness in introducing this proposal to eliminate the 5-month waiting period for terminally ill disability applicants.

Mr. President, it is appropriate that the Senate take this action today. The elimination of the 5-month waiting period will help remove an onerous financial burden from terminally ill workers and their families, who are already carrying burden enough.

The 5-month waiting period translates into a 6-month process, Mr. President. Benefits are paid only for the first full month after the waiting period, meaning the applicant's first benefit check arrives during the seventh month. Prior to 1972, the waiting period was 6 months; benefits were not received until the beginning of the eighth month. And despite the financial hardships faced by the terminally ill worker, the law requires a waiting period to reduce all doubt of possible recovery. Tragically, the worker may never survive the waiting period.

The law thus denies timely benefits to terminal patients who have contributed to the disability trust fund. The contributions were made in good faith, with reasonable assurance that the worker would be able to reap some limited benefits from his contribution. And a technicality, Mr. President, a mere technicality denies terminally ill disabled workers from receiving benefits when they are of critical importance.

Let me quote the words of Justice Cardozo, in *Helvering* v. *Davis* (301 U.S. 619):

> Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the times. . . The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near. . .

The 6-month waiting period, as well as the present 5-month process, were established at a time when medical diagnosis techniques were imperfect. Terminal cases could not be diagnosed with certainty. Due to improvements in education and technology, diagnosis techniques are more sophisticated. Little doubt usually exists over the terminal or nonterminal nature of an illness.

Terminal patients often suffer from mental anguish as well as a physical impairment, due to worries over financial matters. This fact can be seen in a letter I received from the wife of a disabled constituent:

> I am writing to thank you for getting my husband his disability, which will start in May if he is still living. . . . that really helped him to know that we could look forward to some sort of income.

Unfortunately, this constituent died in March, exactly 5 months after his application for disability benefits.

Objections have been raised to the amendment based on its cost. It is true that it will require some $82 million in new money. The Social Security Administration, however, predicts that on the average, only 2½ months of the 5-month period would be used. This could translate into a cost savings for social security as funds are distributed more efficiently over a relatively short time span.

The average benefit available under this amendment is only $320 a month; $320 a month, Mr. President, for medical costs that averaged $19,054 in 1972, according to a study done by Cancer Care, Inc. That is roughly $25,000 in 1979 figures.

Ideally, we would now be considering the elimination of the waiting period for all disability applicants. The case of the terminally ill worker is urgent, however. Medical costs continue to increase, and the specialized care needed by the terminal patient repidly exhausts any available funds.

I see this amendment as a new beginning, Mr. President—one step toward making Government programs more responsive to the needs of the people they are supposed to serve. As Justice Cardoza said, "What is critical or urgent changes with the times." The time for action is overdue.

I urge the Senate's approval of the proposal.

I thank my colleague from Indiana.

Mr. BAYH. Mr. President, may I ask how much time I have remaining?

The PRESIDING OFFICER (Mr. STEVENSON). The Senator from Indiana has just under 11 minutes.

Mr. BAYH. Mr. President, I point out that I have always found and have known the Senator from Louisiana to be a very compassionate individual who likes to help people. And it is only because of the extreme urgency of this particular question and the fact that if we do not attach it to this particular bill the ball game is over for the rest of the session. This is why the Senator from Indiana would resort to this particular procedure.

I also point out that the measure which is being added to this particular bill at this time has been in the Finance Committee for some period of time. It is not something on which we are catching anyone by surprise. I just want to alert my colleagues in the Senate of that.

We are talking about individuals who qualify for disability insurance. Someone who meets the criteria described very graphically and dramatically by the Senator from Louisiana would not be qualified under this amendment.

Hubert Humphrey for example, worked right down to his last breath. The worker who is helped by his coworker so he can continue to draw a check, by definition, does not qualify as disabled.

What we are talking about here is not someone who is qualified to be gainfully employed but someone who is not.

It was mentioned that nobody has been fired because they had cancer. That may or may not be the case. But the fact of the matter is that cancer has a very devastating impact on human beings. I suggest that it is going to be very difficult to find anybody, an auto worker for example, who cannot check in at that clock every morning will remain on the payroll because if he or she is not working, if they are not turning the nuts and bolts on that production line, they are not being paid.

We are talking about someone who, because of physical disability, created by a terminal illness, cannot work, cannot maintain any substantial employment, in accordance with the specific wording in the law already referred to by my good friend and chairman of the Finance Committee.

I must say we are talking about a rather unique kind of individual. I think the Senator from Louisiana pointed out that for most people who have cancer, who have a terminal illness, the therapy is to make each day count, to make it as productive as they possibly can. They try to ignore the fact that their time is limited and create as much opportunity for themselves and their family as they possibly can, as long as they have the strength to do so.

Because of the very nature of cancer as a disease, most of the patients I have had the experience to know will put off as long as they possibly can succumbing to disability and therefore resorting to using this provision.

I suggest when the time comes when they cannot lift up their hand or their head, then it seems to me it is time for the Government to say, "We are going to help provide for you and your

family during the last years of your life with money from a source into which you have been making contributions all your working life."

Now, I want to talk about the cost, because we are all very cost conscious. I have to confess to my colleagues that the real fact is that social security cannot give us good information on cost. However, I refer my colleagues to the estimates we received from the distinguished acting deputy chief actuary which I have already placed in the RECORD, who points out that, as drafted, this will have a total cost, in talking about a whole year for all citizens, of $150 million. Interestingly enough, if they had it paid retroactively, it would only cost $100 million. Mr. Ballentine then says that it is "a rather arbitrary assumption" because they really do not know.

The reason I think the retroactive level is probably more accurate is that the very nature of cancer and the very nature of terminal illness makes it almost impossible to defraud the system. So I think we are not going to have that extra amount that is mentioned in the advance payments assessment but rather will come closer to what social security said would be retroactive payment.

It is going to cost more than that next year. Social security said as a retroactive payment, if they use that figure, it is $120 million, and if it is paid in advance it is $180 million. Somewhere in that ballpark is probably what it is going to cost.

I would like to suggest I do not know of a better way to try to deal with the inequities that exist in the system than to pass his amendment. I cannot think of anything more inequitable than the system which presently exists, where a person can pay into social security all their life, and if they lose an arm or a leg and live for another 10 years they can receive disability payments. But we are not dealing with that situation.

The Senators from Washington, Tennessee, and Indiana are dealing with a situation where that person pays in all their life, gets cancer or some terminal illness, with a doctor certifying that they are terminally ill, and the statistics showing that they will probably not live the 5 months necessary to qualify. They cannot even get their social security money out of their account to help pay for their family expenses while they are dying. I do not want to be overly dramatic, but that is what we are asking.

Someone who has statistics to show that other disabled people they will not live long enough to cash checks on their own social security fund should be permitted to do so.

Mr. LONG. Mr. President, the Department of Health, Education, and Welfare is opposed to the amendment even though those in that department understand the problem. They point out that because of the uncertainties involved in these matters, there is no way of really knowing that a person is going to die within 12 months. Some people will live longer than that and some people will not live that long.

I point out, Mr. President, that it is difficult to see why we should deny one person who is totally disabled the benefit accorded to someone else. This would put pressure on doctors to certify that they think people are going to die in 12 months when the doctors do not really know.

As I say, Mr. President, if we extend this principle, that these totally disabled people should have the waiting period waived in compassionate cases—generally, every meritorious case is a compassionate case—I do not see for the life of me how we could decline on subsequent bills from extending this further.

The cost of extending the provision to all the disabled will be $3 billion a year. The pending amendment, of course, is a compassionate amendment. But, Mr. President, that extension is a matter we must eventually confront.

Mr. President, I must make the point of order that there is nothing in this bill which has to do with the waiting period. This amendment is to waive the waiting period and, as such, Mr. President, the amendment is not germane to this bill. When the time expires, I will have to make the point of order that the amendment is not germane. Under the unanimous-consent agreement, the amendment cannot be considered.

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

Mr. BAYH. Mr. President, unless there are others who want to talk on this, I do not want to appear at a disadvantage, although I have found that RUSSELL LONG's arguments can be made succinctly and no matter what you say afterwards it is pretty hard to keep up with them.

May I not prevail on the Senator from Louisiana, though he has made a good case—not to the Senator from Indiana—could we not let this rise or fall on the basis of a vote and not have the question about whether it is germane or not?

Mr. LONG. Mr. President, I will have to make the point of order. I will withhold the point of order until Senators have made their statements.

Mr. DOLE. Is there any time remaining?

Mr. BAYH. I am happy to yield whatever time I have remaining to the Senator from Kansas.

Mr. DOLE. Mr. President, the Senator from Kansas has listened to the debate and I was present when the constituent of the Senator from Washington testified before the Finance Committee with very moving testimony. This is one of the issues we do not really like to confront. As the Senator from Louisiana pointed out, there are inequities in it. I believe there are others who are totally disabled, with spinal injuries and other injuries, who perhaps should be included. If we start that, I guess the cost goes up to $3 billion.

I have discussed this with a lot of people in my State of Kansas who feel very strongly about eliminating the waiting period. I assume that, to some, it is heartless if we do not do that.

The Senator from Kansas prepared two statements, one in favor of the amendment and one against the amendment. That is how flexible this Senator is on the issue, because it is a tough issue. We discussed it in the Finance Committee and we decided to include money in the bill for a demonstration project to test various means of aiding the terminally ill in lieu of eliminating the waiting period at this time.

I certainly sympathize with these individuals and their families. Certainly, there are some on this floor who have had personal contact with the tragedy of cancer. But the issue just does not exist in a vacuum. If we eliminate the waiting period for individuals who expect to die within 12 months, what are we going to do for those who are going to die in 12½ months or 13 months or 14 months? That is one of the points that troubles the Senator from Kansas.

Do we let the family doctor make the determination of terminal illness or do we require at least two doctors' opinions? What do we do with people who will live for a number of years with an expensive disability and have considerable medical bills?

Mr. BAYH. Mr. President, if the Senator will yield, would the Senator feel more comfortable with this if we required two doctors to attest to this terminal illness?

Mr. DOLE. That is one of the suggestions the Senator from Kansas is going to make at the appropriate time.

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

Mr. LONG. Mr. President, I yield myself 1 minute on the bill to make the point of order that the amendment is not germane to the bill.

Mr. BAYH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. Is it possible for the Senator from Indiana to modify his amendment to require two doctors' opinions instead of one? I want to be absolutely certain that anyone who is concerned about the fraud question of this issue will have his mind relieved.

The PRESIDING OFFICER. The Senator does have the right to modify his amendment.

Mr. BAYH. I offer such a modification and ask that it be inserted in the proper place, that two doctors be required to testify to the terminal illness of the patient.

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

The amendment, as modified, is as follows:

On page 39, between lines 11 and 12, insert the following new section:

"ELIMINATION OF WAITING PERIOD FOR TERMINALLY ILL INDIVIDUAL

"SEC. 105. (a) The first sentence of section 223(a)(1) of the Social Security Act is amended, in clause (ii) thereof—

"(1) by inserting '(I)' immediately after 'but only if', and

"(2) by inserting 'or (II) he has a terminal illness (as defined in subsection (e)),' immediately after 'the first month in which he is under such disability,'.

"(b) Section 223 of such Act is further amended by adding at the end thereof the following new subsection:

"'Definition of Terminal Illness

"'(e) As used in this section, the term "terminal illness" means, in the case of any

individual, a medically determinable physical impairment which is expected to result in the death of such individual within the next 12 months and which has been confirmed by two physicians in accordance with the appropriate regulations of title XX.'.

"(c) The amendments made by this section shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act filed—

"(1) in or after the month in which this Act is enacted, or

"(2) before the month in which this Act is enacted if—

"(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month, or

"(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly benefits under title II of the Social Security Act shall be payable by reason of the amendments made by this section for any month before October 1980.".

On page 101, strike out lines 1 through 17.

Redesignate sections 506 and 507 as sections 505 and 506, respectively.

On page 32, amend the table of contents by adding at the end of title I the following item:

"Sec. 105. Elimination of waiting period for terminally ill individual.".

On page 33, amend the table of contents by striking out the item relating to section 505, and redesignating sections 506 and 507 as sections 505 and 506, respectively.

Mr. METZENBAUM. Will the Senator from Indiana yield so I may ask to be added as a cosponsor?

The PRESIDING OFFICER. The Senator from Indiana has no time.

Mr. BAYH. Mr. President, I ask unanimous consent that the Senator from Ohio be added as a cosponsor.

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

The point of order having been made that the amendment is not germane and the bill is being considered under an agreement which reqiures that amendments be germane, the Chair sustains the point of order on the grounds that the amendment does inject a new subject matter.

Mr. BAYH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. Parliamentary, may the Senator from Indiana, having consulted with the two Senators from Washington, the Senator from Tennessee, and others, now, in order to get this issue joined, appeal the ruling of the Chair?

The PRESIDING OFFICER. The Senator may do so.

Mr. BAYH. Mr. President, with all deference and respect to my good friend, the Senator from Louisiana, who has a very difficult burden to bear, and with great respect for the present Presiding Officer, who is put in a rather difficult position at this moment, I must, in order to join this issue, respectfully appeal the ruling of the Chair and ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. There are 20 minutes on the appeal, equally divided.

Who yields time?

Mr. LONG. Mr. President, I yield myself such time as I require.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, when the Senate votes cloture and when the Senate enters into a unanimous-consent agreement, that is a compact among Senators to abide by their agreement. For the Senate to overrule the Chair in a situation of this sort is to stultify itself and to break our agreement when we entered into a unanimous-consent agreement. The advice of this Senator, every step of the way, has been that this amendment is not germane to the bill. There is nothing in this bill about the waiting period. This adds a totally new issue to the bill, it is not germane to the bill, and it does not fall within the unanimous-consent agreement.

Mr. President, Senators ought to stop this kind of thing, coming in here after they have made a unanimous-consent agreement and asking Senators to stultify themselves by saying something is germane when, under the rules, it is clearly not germane. This amendment is not germane to the bill.

To say we want to vote on the issue and, therefore, we want to ask the Senate to stultify itself and break a gentleman's agreement among Senators that we are going to bring this amendment up, it will be considered, and then to seek, by a majority vote, to break an agreement that is entered into by unanimous consent, Mr. President, is something that the Senate should not do.

Mr. President, the Senator should withdraw his appeal. I plead with him to do that. If he does not do it, of course, it shall be my duty to vote to sustain the Chair because the Chair has done his duty. Quite apart from the merits of the amendment, the Chair has done what any conscientious Presiding Officer, advised by the Parliamentarian, would be required to do under the circumstances.

I hope we are not going to try to set these precedents, bring up an amendment and when one in advised that the amendment is not germane to the bill and when we have had a ruling that the amendment is not germane, then insist on forcing Senators to vote on a motion to overrule the Chair, or ask Senators to overrule the Chair, to try to say it is germane when it clearly is not. The Parliamentarian, I must add, has clearly advised that that is so.

Mr. MAGNUSON. Mr. President, section 505 of the bill states:

The Secretary of Health, Education, and Welfare is authorized to provide for the participation, by the Social Security Administration, in a demonstration project relating to the terminally ill which is currently being conducted within the Department of Health, Education, and Welfare. The purpose of such participation shall be to study the impact on the terminally ill of provisions of the disability programs administered by the Social Security Administration.

It seems to me that this amendment is germane to that section of the bill. It mentions terminally ill. It mentions the program. It mentions the administration of the program and a study of the impact of the terminally ill provisions, specifically the terminally ill provisions, of the disability programs mentioned in the act.

I cannot see why it is not germane to that section of the bill. It mentions the terminally ill, specifically we are suggesting that the law be changed to carry out section 505 in a way that delivers services to the terminally ill.

Is that not what this amendment is all about? I suggest that the appeal from the Chair is well taken.

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

Mr. MAGNUSON. Yes, I yield.

Mr. BAYH. Mr. President, I must say that I think the assessment of our distinguished chairman of the Committee on Appropriations is very relevant here. Not only is he the chairman of the HEW Subcommittee on Appropriations and has a pretty good idea of what is relevant and germane in HEW and what is not, but he is also chairman of that committee that appropriates all the money and understands the critical nature of the expenditure, the importance of examining carefully where we spend dollars.

I suggest that it is very difficult—in fact, it is impossible—for the Senator from Indiana to see, if we are talking about germaneness—not the rightness of a provision, how the effort that we are making to say that if you have terminal illness, you should qualify for disability payments, can be nongermane to the language—and I quote as the Senator from Washington did—"to study the impact on the terminally ill of provisions of the disability programs administered," and so on.

Now, I do not know of a more germane issue. I do not know how anything can be germane if this is not germane.

I say this to both my distinguished colleagues, who play such an important role in the Finance Committee and are so ably managing this bill. I say this not in criticism, but so the record will be clear for those who have not studied this measure as closely as some of us who have been personally involved.

As far as the compact is concerned, as far as trying to avoid slipping something over that is unexpected is concerned, this amendment has been resting in the Finance Committee for some time. It has been clearly understood that we were trying to get an amendment to this bill for some time. It was heard in the committee because of the courtesy of the chairman. It was fully understood, I thought, that this measure was going to be presented on the floor at the time it was on the floor. But for circumstances which I still cannot fully understand, the unanimous-consent agreement was entered into without the Senator from Indiana knowing about it.

I take the blame for that. I am not

suggesting anything was tried to be slipped over on the Senator from Indiana. I hope none of my colleagues feel that we are trying to violate some compact by slipping something unexpected or unforeseen on them at this time.

I know at least 50 Members of the Senate who are cosponsors, or said they would support this measure, who fully expected a chance to vote on the merits of this measure at this time.

I regret, because of the parliamentary situation, we have to present the question on the point of order instead of on the merits.

Mr. LONG. Mr. President, section 505 of this bill, to which reference has been made, authorizes appropriations from general revenues for the Social Security Administration to participate in a demonstration project to study the impact of the present program on the terminally ill and how best to provide services to help them. The Bayh amendment provides an entitlement to benefits payable from the Social Security trust funds to terminally ill persons.

It is an entirely different program.

Mr. President, the mere fact that the bill says something about the terminally ill in the course of the bill does not authorize any new benefit for the terminally ill. A study is not a vast new entitlement program. It is an entirely different matter.

Everyone knows, Mr. President, that the cloture rule and the unanimous-consent rules on germaneness are a very narrow proposition in the Senate.

If the Senator had an amendment that would seek to expand the appropriation authorization in the bill, that might be different; to expand the authorized study in the bill might be germane. But here we have a whole new program that would cost, over the first 5 years, over $1 billion.

The Senator is saying that his amendment is germane because we have something in the bill that authorizes an appropriation—not an entitlement, but an appropriation—to have an experimental study with regard to a demonstration project on the terminally ill.

Mr. President, this Senator has been advised from the very beginning that this amendment was not germane to the bill. He looked into it, studied it, and the Parliamentarian did likewise.

Mr. President, the Chair should be upheld.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, who has time?

Mr. LONG. How much time does the Senator desire?

Mr. DOLE. Two or three minutes.

Mr. LONG. I yield 3 minutes to the Senator.

Mr. DOLE. Mr. President, I want to check first with the Senator from Indiana.

Was the amendment made to provide for a statement of two doctors?

Mr. BAYH. That is accurate. It is now part of the bill, part of the amendment.

Mr. DOLE. That has been added?

Mr. BAYH. Yes.

Mr. LONG. Mr. President, I make the point of order that is also new material in the bill.

Mr. BAYH addressed the Chair.

Mr. LONG. It is not germane.

The PRESIDING OFFICER. The question now is on the appeal from the ruling of the Chair.

Mr. DOLE. Mr. President, I point out that it seems to me we all want to do the same thing, and I hope we can reach some compromise to allow us to accomplish our goals.

In the Senate Finance Committee, we are working on coverage for catastrophic illness, will probably report a bill on that, which would certainly cover the very point the Senator from Washington, the Senator from Indiana, and other Senators, including the Senator from Kansas and the Senator from Louisiana, are concerned about. It is our proposal. It seems to me that might be a more appropriate place to address this issue.

Beyond that, I am wondering and asking myself the question of whether or not it is reasonable to divide the disabled into those with life expectancies of less than 12 months and those with life expectancies of more than 12 months.

It seems to me we will not be doing equity in this case. I certainly understand the emotional involvement, not only in the amendment, but in the outcome of the amendment.

The Senator from Kansas does not have any solution, but we are in the process now of marking up a bill dealing with catastrophic illness, and if there is anything more catastrophic than cancer, this Senator is not aware of it.

It would seem to me we might be given the opportunity, those of us who support the concept presented by the distinguished Senator from Indiana and the distinguished Senators from Washington (Mr. MAGNUSON and Mr. JACKSON), to address this problem in that legislation.

I cannot speak for the Senator from Louisiana, the chairman, but I suggest that might be a possibility as we prepare to report that bill sometime this year—I would hope early this year.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, I would like to again point out that the Senator from Indiana has been knocking around legislative halls quite a long while. I understand that although in this body all of us are equal, there are some who are a little more equal than others.

This applies in particular situations in certain committees involving certain legislation.

I know that the Senator from Lousiana and the Senator from Kansas have tremendous influence as regards legislation in the area in which we are now dealing. I only point this out, not at the risk of self-serving flattery, but the real facts of life.

Given those real facts of life, the Senator from Indiana would normally not resort to this kind of strategy because it does convey a certain degree of lack of respect for those who have significant responsibilities—I hope the Senators know I do not have a lack of respect for them.

But I point out that this particular measure was introduced some time ago in the last session, reintroduced in this session, and it is in the committee.

The same reasons that the chairman has, which I am sure he feels very strongly about, I do not know anybody more humane than Senator LONG, but those same feelings with which I respectfully disagree, which now cause him to oppose this amendment, also cause him to oppose the bill presently in his committee.

I think that is remarkable consistency.

So it seems to me the only way we have of addressing this question is on the floor as an amendment.

Although the 12-month period has been used so far as terminal illness is concerned, and it was used because of the general description within the medical community, I reemphasize that of those who are declared terminally ill—in other words, who would not be expected to live more than 12 months—do not usually live 5 months. That is the issue.

When you have a significant category of citizens who have paid into the social security system and who are confronted with dire emergencies prior to death, the issue is whether they should be given the opportunity to dig into their own probably depleted resources to cover those expenses.

That is why the Senator from Indiana is compelled to follow this recourse—not because of his refusal to recognize reality and the strength of the chairman and the ranking Republican member.

Mr. LONG. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 3 minutes and 14 seconds.

Mr. LONG. Mr. President, any Senator in this body can ask the Parliamentarian, before he votes on cloture, or can consult with the manager of the bill, before he agrees to a unanimous-consent request, or he can raise the issue when the matter comes up, as Mr. PERCY did, and say, "Is my amendment germane?" If he is advised that his amendment is not germane or it is likely to be ruled not germane, he can say, "I am not going to agree to a unanimous-consent request unless you agree that I may offer my amendment."

The Senator from Indiana can offer his amendment on any other revenue bill to come before the Senate, and there will be a lot of other revenue bills before the Senate during the remainder of this session.

The Senator did not have an agreement that the amendment would be regarded as germane on this bill. It is not germane. The Chair has done his duty, and the ruling of the Chair should be upheld.

The Senator can offer the amendment on some other bill, and I cheerfully invite him to do that. It is not germane on this bill, and the agreement among Senators should be respected by the Senators who agreed to the unanimous-consent request.

Mr. BAYH. I doubt whether the Senator from Louisiana knows this—he has no reason to know it—but when the staff of the Senator from Indiana consulted with the Parliamentarian, the advice the latter gave was that this measure would be germane. I am sure that, upon re-

flection and study, the Parliamentarian, on grounds that were good to him——

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. BAYH. I yield.

Mr. LONG. When was the Senator advised of that?

Mr. BAYH. When was that?

Mr. LONG. Yes.

Mr. BAYH. I cannot tell the Senator the exact date.

Mr. LONG. Was that before we entered intc the unanimous-consent agreement or after?

Mr. BAYH. I am advised that it was after.

Mr. LONG. If it was after, it would not make any difference, because both sides have a right to explain why they think an amendment is germane or not. When both sides have been heard, the Parliamentarian should advise the Chair, and the Chair should rule.

This unanimous-consent agreement was made on November 20, 1979.

Mr. MAGNUSON. On this bill?

Mr. BAYH. The only reason the Senator from Indiana brings this up is to show that at least at one time in the discussion of this matter, it was a close question and that the Parliamentarian came down on the other side of it.

It is a question of great significance, as to whether we are going to help people who have cancer and other terminal illnesses to provide for themselves and their families in their last hours.

The Senator from Indiana comes down very strongly on the position enunciated first by the Senator from Washington, that a study about terminal illness certainly gives sufficient germaneness. But if we have different opinions on that, certainly a matter of such significant consequences, of life and death, should not be decided by the Senate on a point of order.

Mr. LONG. Mr. President, the Senator can raise this issue on any other bill.

I have a memorandum which was prepared with the help of our staff, and I ask unanimous consent to have it printed in the RECORD.

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

BAYH AMENDMENT ON TERMINALLY ILL

Under the time limitation agreement, no amendment not specified in the agreement may be considered unless it is germane to the bill. The Bayh amendment introduces new matter not dealt with in the House bill or the Committee amendment. It is therefore not germane and should be considered not in order.

It might be argued that the provision is germane because the bill contains a section dealing with the terminally ill. This argument is invalid for these reasons:

(1) Section 505 of the bill authorizes appropriations from general revenues for the Social Security Administration to participate in a demonstration project to study the impact of the present program on the terminally ill and how best to provide services to help them. The Bayh amendment provides an entitlement to benefits payable from the Social Security Trust Funds to terminally ill persons.

(2) Section 505 of the bill is free standing legislation. The Bayh amendment permanently amends the Social Security Act.

(3) Section 505 of the bill would permit appropriations totalling ten million dollars or less over the next five years. The Bayh amendment would directly result in expenditures totalling more than one billion dollars over the same period.

Neither the House bill nor the Committee amendment substantively modify the provision of present law (section 223(a) of the Social Security Act) which would be changed by the Bayh amendment. Present law provides that disabled individuals may not receive disability benefits during the first five full months of disability unless they were previously entitled to disability under the program and the prior disability ended within the previous 5 years. This rule would be unchanged by the bill as reported. (Other aspects of the bill change the rules as to when a disability terminates and the Committee bill does make a conforming amendment to section 223(a) to reflect the new provisions relating to benefit termination. However, that change, unlike the Bayh amendment, does not eliminate the waiting period for a category of individuals who are now subject to it.)

Mr. LONG. Mr. President, the Senator from Indiana is not prejudiced in any way; because, according to his own representation, he did not raise the question prior to the time the unanimous-consent agreement was entered into. Subsequent to that time, when the point came up, the Parliamentarian, of course, should consider the authorities that can be suggested by both sides.

The Senator could offer his amendment on any other bill, and he would be within the rules, and he would not be asking Senators to go contrary to the agreement they made in November of last year.

Mr. BAYH. Mr. President, I do not want to quibble on that point——

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

The Senator from Louisiana has 1 minute.

Mr. LONG. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is, "Shall the ruling of the Chair stand as the judgment of the Senate?"

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), and the Senator from Massachusetts (Mr. KENNEDY) are absent on official business.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from North Carolina (Mr. HELMS), the Senator from New Hampshire (Mr. HUMPHREY), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

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

The PRESIDING OFFICER (Mr. BOREN). Are there other Senators in the Chamber desiring to vote?

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

[Rollcall Vote No. 18 Leg.]

YEAS—37

Armstrong	Exon	Nunn
Bellmon	Garn	Percy
Bentsen	Hart	Pressler
Boschwitz	Hatch	Proxmire
Byrd, Harry F., Jr.	Heflin	Ribicoff
Byrd, Robert C.	Hollings	Roth
Chafee	Inouye	Simpson
Chiles	Jepsen	Stafford
Cranston	Johnston	Stevens
Danforth	Laxalt	Talmadge
Dole	Long	Tower
Domenici	Matsunaga	Wallop
	Muskie	

NAYS—55

Baucus	Heinz	Pryor
Bayh	Huddleston	Randolph
Biden	Jackson	Riegle
Boren	Javits	Sarbanes
Bradley	Kassebaum	Sasser
Bumpers	Leahy	Schmitt
Burdick	Levin	Schweiker
Cannon	Lugar	Stennis
Church	Magnuson	Stevenson
Cochran	Mathias	Stewart
Cohen	McClure	Stone
Culver	McGovern	Thurmond
DeConcini	Melcher	Tsongas
Durenberger	Metzenbaum	Warner
Eagleton	Morgan	Weicker
Ford	Moynihan	Williams
Glenn	Nelson	Zorinsky
Hatfield	Packwood	
Hayakawa	Pell	

NOT VOTING—8

Baker	Gravel	Kennedy
Durkin	Helms	Young
Goldwater	Humphrey	

So the ruling of the Chair was not sustained as the judgment of the Senate.

The PRESIDING OFFICER. The question recurs on agreeing to the amendment of the Senator from Indiana.

Mr. LONG. Mr. President, I yield time on the bill to the Senator from Maine. How much time does the Senator from Maine require?

Mr. MUSKIE. Not more than 5 minutes.

Mr. LONG. I yield the Senator 5 minutes.

Mr. MUSKIE. Mr. President, I am sorry I was not on the floor when this amendment was brought up in the course of the debate. I was tied up in Budget Committee hearings. We are having hearings on the administration's budget proposal.

Mr. ROBERT C. BYRD. Mr. President, may we have order? Senators should hear what the Senator from Maine is about to say.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Maine.

Mr. MUSKIE. This amendment arose as we were bringing those hearings to a close. Since I do have some responsibility for bringing to the attention of the Senate matters that impact seriously on the budget. I think I have an obligation to do so in this case even though it is clear from the vote that has alrady been taken what the will of the majority of the Senate is.

I am not sure whether or not the relevant points, which I think ought to be a part of the record, were raised in the earlier debate.

I know the distinguished floor manager of the bill undoubtedly is expressing his

point of view with his customary thoroughness and eloquence, but I do want to make it clear to the Senate that this amendment has serious budget implications not just for a single year but for the long run. In addition, the implications for further change are inherent in the amendment.

I just cannot believe that the Bayh formulation—and I say this with all respect to my good friend from Indiana—will stand as the ultimate policy because it would generate inequities that some future Senate will be motivated to react to in the way that the Senate has reacted to this case. So, without unduly delaying the Senate, I would like to make my points.

First, as I understand the amendment, it provides that persons medically determined to be terminally ill—that is, expected to live 12 months or less—would not be required to wait 7 months from the onset of their disability before receiving social security benefits.

Because the amendment is effective in 1981, and the 1981 budget resolution has not yet been agreed to—we just began consideration of it today—under section 303 of the Budget Act the legislation is subject to a point of order until the Congress has acted on the first budget resolution. But I do not want to emphasize that. I want to emphasize the policy problem.

With respect to this amendment, outlays would be increased as follows: Fiscal year 1980 by $120 million; fiscal year 1981 by $132 million; fiscal year 1982 by $143 million; fiscal year 1983 by $153 million; fiscal year 1984 by $163 million; and the 5-year impact totals $711 million.

The argument for this amendment is put most succinctly, and I find the amendment as appealing as any Senator in this Chamber. The argument for the amendment is that some totally disabled people never receive social security disability insurance benefits because they die before the 5-month waiting period has expired. That simple statement will prompt every Senator to vote yea and do so as visibly and as clearly and as loudly as he can. Certainly, that is my instinct.

But what is the other side of the story? First, there is no evidence that the terminally ill have a greater need for benefits during the first 5 months of disability than do other disabled beneficiaries.

The amendment, in effect, says that those who are medically determined to be terminally ill and expected to live 12 months or less should not be subject to the 5-month waiting period, but those who are going to die in 2 years will get no benefit during that 5-month waiting period. They will still have to wait.

If you were to buy the logic behind this, then you would eliminate the 5-month waiting period altogether, so as not to create any inequity.

The second point is it would be difficult to administer and would create anomalies because it is frequently difficult to determine medically if a person is terminally ill and can be expected to die within 12 months. One of our colleagues told me—and I will not name him—that his grandmother was declared terminally ill and lived for 14 years after the determination.

The third point is that in some cases people could be found to be terminally ill, as I just described, and yet could live more than 12 months or even recover. It would be unfair to other disabled beneficiaries that such people would get 5 additional months of benefits.

The fourth point is that in still other cases, people not found to be terminally ill could die within 12 months of becoming disabled. Their survivors could claim that they were treated unfairly because they did not get 5 additional months of benefits.

The fifth point is that physicians would be placed in the difficult position of determining whether to state a person is terminally ill so that he can receive 5 months' extra benefits or to withhold the information on the grounds that it would be harmful to the patient and his family.

With cancer victims, for example, doctors often make the judgment that a given cancer patient—because of his mental condition or emotional state—ought not to be advised that he is terminally ill or that the doctor should not predict a date of death within 12 months. What do you do in that case?

The next point, Mr. President, is the problems and anomalies caused by the amendment could lead to pressures to shorten or eliminate the waiting period altogether which would substantially increase the cost of the disability program.

With respect to the budget itself, given action to date in the Senate—including the reported version of the pending legislation—the Finance Committee is over its fiscal year 1980 outlay crosswalk by $1 billion, over its fiscal year 1981 outlay crosswalk by $1.3 billion, and over its fiscal year 1982 outlay crosswalk by $1.2 billion. These significant overages reduce the spending available to other committees in each year under the ceilings in the second budget resolution.

Mr. President, I have stated the perspective of the chairman of the Budget Committee on this amendment as succinctly as I can. I do not take pleasure in it and I did not take pleasure in voting to support the motion to table.

May I ask the Parliamentarian whether he has had an opportunity to study the question of the point of order under the Budget Act?

The PRESIDING OFFICER. It is out of order.

Mr. MUSKIE. It is out of order? So it is subject to the point of order.

The PRESIDING OFFICER. The Chair has the question under advisement at this time.

Mr. MUSKIE. I see. I will withhold that.

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

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, I am happy to yield to the distinguished Senator from Washington.

Mr. MAGNUSON. Mr. President, the Senator has not made up the first budget resolution, has he?

Mr. MUSKIE. Of course not.

Mr. MAGNUSON. And if Congress votes something before you make it up, you just have to accommodate what Congress voted, do you not?

Mr. MUSKIE. The Senator is exactly right.

Mr. MAGNUSON. All right. We voted this thing, or we are going to vote it.

Mr. MUSKIE. Mr. President, that is the Senator's prerogative. But it is also my prerogative to tell the Senate——

Mr. MAGNUSON. Wait a minute. If it is an extra cost, I ask the question, then, does it have to be accommodated by the budget?

Mr. MUSKIE. Of course. But what the Senator seems to be implying is that if I think the proposal is out of order, I should not raise the question because it is the Senate's will to do what it wants to. Of course, it is the Senate's will. But, the whole thesis of the Budget Act is that the Senate ought to have all of the information that is possible to bring to bear on the issue before it votes, so that it can make an intelligent vote. I understand that the Senator can disagree with what I said.

Mr. MAGNUSON. Mr. President, I will say to the Senator from Maine that this is an amendment that has been around for months.

Mr. MUSKIE. I do not challenge that.

Mr. BAYH. Years.

Mr. MAGNUSON. Years.

Mr. MUSKIE. There may be a reason why it has been around for years and not adopted. There may be a good reason, and I may have touched upon some of those reasons.

The Senator from Washington knows better than to suggest that I have the power to deter the Senate from doing what the Senate wants. The Senate could increase the deficit for fiscal year 1980 to $60 billion, if it wishes. I cannot stop it.

But when I see a proposition like this—one which has problems that the Senate ought to take into account, it is my job to lay it out for the record. I am sorry if that is inconvenient and embarrassing. But that is the fact.

Mr. BAYH addressed the Chair.

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

Mr. BAYH. Mr. President, I appreciate the fact that the Senator from Maine has brought to the attention of the Senate these matters.

I will say that most of those have been raised very eloquently by the Senator from Louisiana, which certainly does not preclude the Senator's right as chairman of the Budget Committee to bring them up again.

The PRESIDING OFFICER. Who yields time to the Senator from Indiana?

Mr. BAYH. Mr. President, the question I wanted to raise goes directly to the Senator from Maine and he and the Parliamentarian are now involved in a discussion to determine whether the subject is under a point of order.

The PRESIDING OFFICER. The time is under control. Does anyone yield time?

Mr. DOLE. Mr. President, I yield to the Senator from Indiana 5 minutes off the bill.

Mr. BAYH. Mr. President, I point out to both the Parliamentarian and the Senator from Maine that, at least from the standpoint of the point of order, the Senator from Indiana—both Senators from Washington, and the Senator from Tennessee—thought we would escape any immediate point of order by pointing out that none of these funds are applicable in this fiscal year. It does not take effect until the next fiscal year.

Mr. MUSKIE. Mr. President, section 303 applies to the legislation that would impact upon a fiscal year before the first concurrent budget resolution for the year has been adopted.

In other words, this amendment changes the law applicable for 1981, and the fiscal year budget which we have just begun to consider. The Parliamentarian has not yet determined whether section 303 applies to the amendment. I do not have any parliamentary bias against the amendment of the Senator, but section 303 does impact upon legislation that first increases outlays in 1981. Whether it does so in a way that does violence to section 303 the Parliamentarian is now considering.

Mr. BAYH. Would the Senator feel more comfortable if we made it applicable to this fiscal year? I am not quibbling.

Mr. MUSKIE. May I say I am not comfortable about the whole amendment. I thought I went out of my way to indicate that. Does the Senator think it is easy for me to stand here and make a case against an amendment of this kind? Of course I am not comfortable. Does the Senator think I can be more comfortable because he changes the effective date? No, I cannot be more comfortable. The basic point is that I have to stand here in opposition to an amendment which clearly the majority of the Senate wants to pass, is emotionally inclined to pass. No, I am not comfortable. That change will not make me any more or less comfortable.

I would say to the Senator that, by making that change, it might avoid a point of order. I would not object to his doing that.

Mr. BAYH. The Senator from Indiana is not unaware of the difficulty of dealing with the cost of this. That is why in the early debate on this, the Senator from Indiana and others tried to point out the unique characteristics of the kinds of citizens we are dealing with here. To suggest that someone who has been declared by two doctors as terminally ill present the same question as someone who has lost a leg, I think is to ignore the reality of the situation.

The reason we are confining it to those who are terminally ill, and the reason I think we have a compelling case for this, is that if a person loses a leg and is disabled, upon living beyond 5 months he can then start drawing out of his social security disability fund.

The tragic but real fact of life is if someone has been declared terminally ill as a cancer patient and he is the average patient, he does not live beyond 5 months. In fact, he probably does not live beyond 2½ to 3 months.

What we are suggesting is that this fact presents a compelling reason to let someone draw from that security fund into which he has contributed without a 5-month waiting period.

I must say that the statement made by the Senator from Maine, in which he suggests that it does not make any difference whether one is dying from cancer or is disabled in some other way, seems to me to show a lack of familiarity with the problems suffered by those who have cancer.

Mr. MUSKIE. I do not think I made any such suggestion.

Mr. BAYH. If this Senator may continue with his comments, I think the Senator from Maine did say there was no reason to treat the terminally ill any differently than other disabled and thus he was concerned—I understand his concern—that this would be setting a precedent for other kinds of disability.

Mr. MUSKIE. I did not suggest that.

I have friends with cancer, some of whom have been ill for less than 5 months, some whom have been ill for more than 5 months, some for more than 12 months, and I find it difficult to understand why, when one of these friends dies 13 months after becoming ill, he or she should not get this exemption, but one who dies within 6 months does.

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

Mr. BAYH. This Senator yields himself 2 minutes.

The PRESIDING OFFICER. There is no time remaining.

Mr. DOLE. Mr. President, how much time remains on the bill?

The PRESIDING OFFICER. Twenty-four minutes remain on the bill.

Mr. DOLE. I yield 2 minutes to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. BAYH. I hope we are having this debate without suggesting that any of our colleagues who may be concerned about the costs are not compassionate and concerned about people who have cancer. That is not what the Senator from Indiana is suggesting. What he is suggesting is that the fact is that those who are covered must be declared terminally ill by two doctors.

There is a definition, a certain standard, a certain criterion, that has to be met under social security regulations to show that this is a very serious determination. Having given that determination, the majority of those who are thus classified live less than 5 months. Some of them may live 13 months and thus would be covered and be able to draw. There is no question about that. But the vast majority of them would not.

I suggest to the Members there is a uniqueness about the circumstances surrounding a family where there is someone who is unable to work, who is dying from cancer, that does not exist in the families of others who are disabled because of other reasons.

Mr. MUSKIE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, I guess it is unavoidable——

The PRESIDING OFFICER. Who yields time?

Mr. RIBICOFF. I yield 5 minutes to the Senator from Maine.

Mr. MAGNUSON. Will the Senator yield for me to ask for the yeas and nays?

Mr. MUSKIE. Yes.

Mr. MAGNUSON. 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. MUSKIE. I might say I am not concerned primarily with cost, Mr. President——

Mr. BAYH. If the Senator will permit me to interject, as he tried to correct my inferences, I thought I had made it very clear that the Senator is not objecting on the basis of cost.

Mr. MUSKIE. I understood the Senator to say that, but he also said something else. I just want to make it clear in my own words. It is not cost, principally. I understand that budgets are more than costs and deficits. Budgets are people as well. I know that. I fight for them all the time in that Budget Committee. If Senators have any question about that, I invite them to attend the markup sessions.

I cannot fight for unlimited funds for every human cause and still discharge my responsibilities as chairman of the Budget Committee. If the only way I can be compassionate is to raise all limits on people programs, then we might as well drop the budget process.

Secondly, I am not making a distinction on the basis of a disease. I made the distinction very succinctly; it was in writing and will go into the RECORD exactly as written.

Mr. President, this amendment is subject to a point of order under the Budget Act. I am not going to raise the point of order. There has already been one point of order and the Senate has voted on it. So I think the Senate ought to vote up or down on the amendment. I have made my case. It is subject to a point of order and I hope Senators will bear that in mind. My not raising it today does not mean that I unilaterally repeal section 303 of the Budget Act.

I think there is no reason why Senators should not vote on the merits as they see them and, whatever the Senate votes, the Senate is my boss, as Senator Mansfield used to say.

I say just one word in closing: I am asked constantly why we cannot balance the budget. It is these kinds of things, with a deep emotional appeal, that have as much to do with the growth of Federal spending as anything else in the budget. Just look at the charts in the new budget on where the budget growth has been in the last 10 or 15 years. It has been in this area of payments to individuals, and it is so easy for us to act on them. Then, having written them into law as entitlements, the Appropriations Committee

will say to us, "Well, we cannot control them, because they are entitlements; it has already been written into the law," and they are right.

Mr. MAGNUSON. I agree this is an entitlement.

Mr. MUSKIE. It is an entitlement, of course.

Mr. MAGNUSON. Not subject to appropriations.

Mr. MUSKIE. That is exactly what I am saying. The only place to apply a budgetary judgment on it is now; we cannot do it any other time.

UP AMENDMENT NO. 933

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 933 to amendment numbered 749:

On page 2, line 7, change the "12" to "6."

Mr. DOLE. Mr. President, I hope the Senator from Kansas is being constructive, as I suggested to the Senator from Indiana earlier, when we tried to satisfy some of the concerns by requiring a second opinion. I think, in line with what the Senator from Indiana stated several times on the floor, that since most of the people affected die within the 5-month waiting period, it would be more in line with the purpose of the Senator from Indiana and the Senator from Washington and others if we change it so it would read to certify that the individual is terminally ill and is expected to die within 6 months instead of 12 months.

The people who will live beyond 5 months will get benefits after that waiting period. It seems to me that with this minor change we can still meet the needs of those who are expected to die during the waiting period while keeping the cost down somewhat.

I share some of the agony expressed by the distinguished chairman of the Committee on the Budget that anyone who suggests any tampering with the amendment might be suspect in the eyes of some. But it seems to this Senator that there is a cost problem.

I hope that if, in fact, this amendment is passed, my modification will help to assure that it survives the conference. I hope the Senator from Indiana might be willing to accept that modification.

Mr. BAYH. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. Does the Senator from Indiana have time?

The PRESIDING OFFICER. The Senator does not have time. The time is under the control of the Senator from Connecticut and the Senator from Kansas.

Mr. RIBICOFF. May I ask how much time the Senator from Indiana desires?

Mr. BAYH. Five minutes.

Mr. RIBICOFF. Mr. President, I yield 5 minutes to the Senator.

Mr. BAYH. I thank the Senator from Connecticut.

Mr. President, my reluctance to accept the amendment of the Senator from Kansas, which I know is offered in good faith, is based on the fact that the 12-month period was arrived at after consulting with a number of physicians who deal on a daily basis with terminal illness, and terminal illness, as a term of art, is used in the frame of reference of someone who is not expected to live more than 12 months.

I point out that being categorized as terminally ill and thus being assessed by two doctors as having a longevity of less than 12 months does not automatically qualify someone to start drawing disability payments. One has to have that assessment, plus one also has to meet the other criteria which are established under title XX for disability as not being able to maintain any substantial means of gainful employment.

In other words, those cancer patients who live on for 14 years are not qualified—and everybody who has cancer would not meet the criterion of being terminally ill in that 12-month period. Many of them—in fact, most cancer patients—work right down to the last physical capability of doing that. That is a unique quality, I think, of cancer patients. Those people really want to hang in there, and want to be active as long as possible.

There is a specific description, a legal description, as to what criteria and what definition would be applied under medical terms if one were declared terminally ill after discovery of breast cancer. It includes the turning over of actual medical records and hospital records which indicate that the perimeters of the carcinoma go beyond the area of radical excision of the tumor and surrounding lymph nodes. The records must include biopsies, information on the location of the tumor, information on the extent of metastasis and voluminous additional objective medical information.

One would have to conform to that general description as established by the social security rules and guidelines, would have to not be able to maintain any substantial employment—as well as meet the terminal illness definition which is extremely strict. So I do not see the necessites of the amendment of the Senator from Kansas.

What it potentially does is get a number of people who might die just before they got to the 5-month period and still not qualify. It increases the number who would not qualify but who died before they could reach the point. If, indeed, the people who are judged terminally ill are not expected to live more than 6 months we may be creating unsolvable problems for physicians and we are going to have people who are going to be suffering. I do not think the Senator from Kansas wants that.

Mr. DOLE. That is not the intent of my amendment. I wanted to tighten it up, obviously, so we might satisfy some of those budgetary concerns. There is no way of knowing how much it is tightened up, but it seems to me it is a position where, if you live beyond the 6-month period, you are receiving benefits; if you are certified that you cannot live beyond 6 months, there is no waiting period. It seems to me it is a compromise that ought to be acceptable and that many of us would support.

Mr. MAGNUSON. Will the Senator yield in the meantime?

Mr. DOLE. Yes, I yield.

Mr. MAGNUSON. I hope the Senator will withdraw his amendment, because, if and when this amendment passes, we are going to go to conference anyway. It is not in the House bill. I am hoping we can work something out on this amendment by which the Senator can withdraw it, because the matter will be up in conference. Then we can work out whether it is a 5-month period or a year and get more information on the facts involved and it will be somewhere within that period.

Of course, 5 months is a little deceiving, anyway, because you cannot shut it off when somebody is going to die.

Second, it takes, sometimes, 8 or 9 months to get through the paperwork. The regulations and paperwork with HEW and social security are horrendous.

Some of these people actually get the doctors to certify. It takes months sometimes, weeks at least. So the time element, to set a time date, is a little unusual.

Mr. DOLE. I thank my distinguished colleague.

Mr. President, it would seem to me that most physicians could look at someone and after the examination probably determine very easily if that person might survive 3, 4, or 5 months. It might be difficult to make a judgment on 12, 15, or 18 months.

But, in any event, it seems to me there is a consensus being reached.

We understand the problem. We hope we can deal responsibly with the problem so we do not do violence to the social security system, or any part thereof.

Mr. MAGNUSON. The Senator's amendment has 6 months?

Mr. DOLE. Six months.

It seems to me a physician, or two physicians, can determine after examination if someone is very critically ill and will not survive 6 months more easily than that he will not survive 9 months, 12 months, or 15 months.

So it would seem to me the one way to properly address that and make certain we are looking at those extreme cases and reduce it from 12 to 6 months.

Mr. BAYH. Will the Senator yield?

Mr. DOLE. Yes.

Mr. BAYH. I apologize for interrupting.

Mr. President, I know exactly what the Senator is trying to accomplish. I know of his compassion and concern for this problem. We do not want to allow someone, who either intentionally or unintentionally, is taking advantage of this special provision designed to meet a certain unique health problem.

The Senator from Indiana is concerned because in discussing with doctors the description of terminal, the 1-year frame of reference is usually used.

As I pointed out, in the case of cancer, most of those folks do not live 5 months.

But I am concerned that by cutting it back to 6 months, we may be giving those in the profession who are asked to attest or to swear to this particular criteria a burden they do not feel they can meet. They could say that they think someone would live for 1 year, but they would not want to swear to only 6 months.

I know of the Senator's concern. I ask the Senator if he would consider withdrawing this amendment with the understanding we would go together and talk to professionals in the field to see if this would cause a problem. If not, I would support any efforts he and others might make in conference to do what we all want to accomplish.

Mr. DOLE. Mr. President, I commend the Senator from Indiana. He, more than anyone on this floor, understands the problem.

I also want to commend the distinguished senior Senator from Washington (Mr. MAGNUSON), who brought this witness to our committee, along with Senator JACKSON.

The Senator from Kansas will be a conferee. I think this debate has been helpful in the right sense. There are some problems with the amendment, but there is no question about anyone's motives in this Chamber.

Mr. President, I ask that the amendment be withdrawn and that we do work on this between now and the time of the conference.

There is nothing in the House bill on this issue, so it is going to depend on persuasion on the Senate side.

As to those of us who are conferees, it is my hope we can come up with something we can sell the conference and still be responsible in light of the very sound arguments made by the distinguished Senator from Maine (Mr. MUSKIE).

The PRESIDING OFFICER. The amendment is withdrawn.

● Mr. CHILES. Mr. President, I would like to explain my concern about the amendment to eliminate the waiting period for disability benefits for terminally ill individuals.

Certainly, none of us here likes to be debating the pros and cons of an issue like this. Human life and death, which each of us faces sooner or later, is not something to put in dollars and cents or cost-benefit analyses. But neither is life and death a precise science, where we can exactly predict how long a person will or will not live. I have heard my colleagues here today present case examples to support or refute arguments about this amendment. We all know of individuals who have been told they have only a few months or few years to live that are alive today and may outlive us all. We also know that terminal illness cannot and should not be equated with total and permanent disability to engage in substantial gainful activity.

The problem in eliminating the waiting period for one group of individuals, depending on a set of variables that are beyond human ability to precisely measure, is that we are unable to know what impact this will have on the stability of the trust funds, or how the administrative difficulties will be solved. If I were a physician treating a patient with an incurable disease, and knowing of the mental anguish that individual was facing with medical costs, I would find it terribly hard not to find that person eligible for disability and qualified for this exemption from the waiting period. When we consider the wide variance in the cost estimates for this amendment, the discrepancies in the error rate to be expected, and the largest "unknown"—how many applicants will be determined eligible for humane reasons whether they are disabled or not, or expected to die within a year or not—I do not feel we can approve this exception to the waiting period without looking at the fairness of the waiting period for all disability applicants.

I would like to express one additional concern. When we talk about the mental anguish seriously ill individuals face, we know that one of the major factors is financial worry about the cost of catastrophic illness. And I wonder with national health insurance proposals before the Congress and the Finance Committee planning to resume active consideration of catastrophic coverage shortly, if this bill is the appropriate vehicle to debate the amendment. I believe that the subject matter of the amendment, regarding the waiting period and the issues of the cost of catastrophic illness, cannot be given adequate consideration on the Senate floor during debate on the pending legislation.●

The PRESIDING OFFICER. The question recurs on the amendment (No. 749), as modified, of the Senator from Indiana. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. DURKIN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from North Carolina (Mr. HELMS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona (Mr. GOLDWATER) would vote "yea."

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

The result was announced—yeas 70, nays 23, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—70

Armstrong	Bumpers	Cohen
Baucus	Burdick	Cranston
Bayh	Byrd, Robert C.	Culver
Biden	Cannon	DeConcini
Boren	Church	Dole
Bradley	Cochran	Durenberger
Eagleton	Magnuson	Schmitt
Ford	Mathias	Schweiker
Garn	Matsunaga	Stafford
Glenn	McClure	Stennis
Hatch	McGovern	Stevens
Hatfield	Melcher	Stevenson
Heflin	Metzenbaum	Stewart
Heinz	Morgan	Stone
Hollings	Moynihan	Talmadge
Huddleston	Nelson	Thurmond
Jackson	Packwood	Tsongas
Javits	Pell	Wallop
Jepsen	Pryor	Warner
Kassebaum	Randolph	Weicker
Laxalt	Ribicoff	Williams
Leahy	Riegle	Zorinsky
Levin	Sarbanes	
Lugar	Sasser	

NAYS—23

Bellmon	Domenici	Muskie
Bentsen	Exon	Nunn
Boschwitz	Hart	Percy
Byrd, Harry F., Jr.	Hayakawa	Pressler
Chafee	Humphrey	Proxmire
Chiles	Inouye	Roth
Danforth	Johnston	Simpson
	Long	Tower

NOT VOTING—7

Baker	Gravel	Young
Durkin	Helms	
Goldwater	Kennedy	

So Mr. BAYH's amendment (No. 749), as modified, was agreed to.

AMENDMENT NO. 731, AS MODIFIED

The PRESIDING OFFICER. The question recurs on amendment No. 731, as modified. The yeas and nays have been ordered.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. DOLE. 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. DECONCINI. Mr. President, will the Senator yield for a statement without losing his right to the floor?

The PRESIDING OFFICER. There is no time for debate.

Mr. DECONCINI. Mr. President, I ask unanimous consent that I may have 30 seconds for a statement.

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

Mr. DECONCINI. Mr. President, I appreciate the remarks of the distinguished Senator from Illinois (Mr. PERCY), and for his effort to work with the staff of the Judiciary Committee in clarifying certain aspects of the pending amendment.

At the request of the chairman of the Judiciary Committee, Senator KENNEDY, I wish to submit for the RECORD a statement he would have made today regarding the pending amendment—and to add my voice in support of his concerns.

As a member of the Juiciary Committee—and as a member of the Select Commission on Immigration and Refugee Policy, charged with reviewing all aspects of our immigration laws—I simply want to stress that I believe the measure before us today is only an interim step, pending the findings of the Select Commission and the work of the Judiciary

Committee, in whose jurisdiction this question falls.

As the Senate knows, the Select Commission is now at work, attempting to overhaul our Nation's immigration laws and policies—including the requirements sponsors and immigrants alike must meet when petitioning to enter the United States. It is a complex issue, and one which has not been sufficiently studied either by the administration or the Congress.

So pending this larger review, I think we should state clearly that we are attempting today to simply clarify certain aspects of the sponsorship requirements under the Immigration Act. And we are doing so without prejudice to either the jurisdiction of the Judiciary Committee, or to the work of the Select Commission on Immigration and Refugee Policy.

Mr. President, I ask unanimous consent that Senator KENNEDY's statement be printed in the RECORD.

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

STATEMENT OF SENATOR KENNEDY

Despite many deep concerns I have over the pending amendment offered by Senator Percy and Senator Cranston relative to affidavits of support required of sponsors of immigrant petitions under provisions of the Immigration and Nationality Act—and despite jurisdictional questions—I will not oppose it today.

Although members of the Judiciary Committee staff have been consulted by the sponsors of the amendment—and I appreciate the effort to reach a consensus on what, if anything, should be done regarding this question—I am nonetheless concerned over precipitous action without the benefit of hearings by the Judiciary Committee or any real Congressional study of this issue.

This has been my concern for some time, since Senator Percy first proposed a version of this amendment late last year—which I strongly opposed. There has been a tendency to sound the alarm over alleged abuses of affidavits of support by sponsors, without any real data supporting such alarm—except for one very narrow, and questionable, study undertaken in San Francisco by the General Accounting Office.

Furthermore, there have not been open hearings by Congressional committees, nor an adequate review of this issue by the Administration.

As a result, I have been concerned that we are rushing to judgment on a complex issue without sufficient facts, and without soliciting views from the public in formal hearings. There is the danger we are using a sledgehammer to swat at an uncertain abuse of the immigration law.

As Chairman of the Judiciary Committee I share the view that there is a long overdue need for immigration reform—including reform of the procedures we follow in admitting, and processing, legal immigrants to our country. To move towards this overall reform, last year I expedited consideration in the Senate of a bill to create a Select Commission on Immigration and Refugee Policy—to review all aspects of our immigration law and practice—including the question of affidavits of support.

This Commission is now functioning, and in some of its hearings and deliberations thus far, it has already focused on the question of what requirements immigrants and their American citizen sponsors should meet prior to entry.

So my concern today is that we not prejudge the Commission's work, nor preclude efforts later to make substantial modifications in the provisions of the amendment now pending before the Senate.

More importantly, I think it is crucial that we monitor closely how the provisions of this amendment are, in fact, implemented—to determine whether they are administered fairly, or contrary to the spirit of our immigration law and the principle of family reunion. We all know from past experience that administrative interpretations of complex regulations—such as those established in this amendment—can easily be distorted through administrative regulation.

With this understanding—that this amendment is seen as an interim measure, to be reviewed in light of the findings and recommendations of the Select Commission, and that the sole jurisdiction of the Judiciary Committee is acknowledged—I will not oppose this amendment today.

I ask that a letter from the voluntary agencies on this amendment be printed in the RECORD.

The letter follows:

AMERICAN COUNCIL FOR NATIONALITIES SERVICE,
Washington, D.C., December 12, 1979.

Hon. EDWARD M. KENNEDY,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: This letter is in regard to section 504(a) of H.R. 3236 and amendment number 731. The former provision would impose a three-year residency requirement before aliens legally admitted for permanent residence, with the exception of refugees, could qualify for SSI. The latter provision would make the sponsor's affidavit of support enforceable by means of a civil suit which could be brought by the alien, the Attorney General, or a state which furnished assistance to the alien. The undersigned groups are opposed to these provisions because they make dramatic changes in our immigration laws without ever having been considered by the congressional committees specifically responsible for these laws. Our opposition is specially strenuous because H.R. 4904, the welfare reform bill, contains provisions which adequately address congressional concern over alleged alien abuse of SSI and yet are fairer, more flexible, and do not radically change the Immigration and Nationality Act.

If enacted, the Senate proposals would create unfair hardships for many thousands of lawfully admitted permanent resident aliens and to their U.S. citizen relatives who have contributed significantly to our society. As a result, they raise serious questions of law and policy, such as the financial and administrative burdens of enforcement, the effect on family reunification—a cornerstone of our immigration policy, and possible violation of the Final Act of the Helsinki Conference. Similar proposals have been made in the past, yet none has ever been studied by the House immigration subcommittee or by the Senate Judiciary Committee.

Not only have these proposals not been reviewed by the most knowledgeable congressional committees, but they are based primarily on one GAO report. On October 11, 1978 critique of this report revealed serious flaws in the study. It was distributed to every Senator by the Washington Lawyers' Committee for Civil Rights Under Law and the Mexican American Legal Defense and Educational Fund.

In view of the insufficient and inadequate data on which these proposals are based, the availability of fairer and more flexible provisions, and the thorough review of all our immigration laws currently being conducted by the Select Committee for Immigration and Refugee Policy, we urge you not to support section 504 (a) of H.R. 3236 or amendment number 731.

Sincerely,

Aliens Right Law Project/Washington Lawyers' Committee for Civil Rights Under Law; American Council for Nationalities Service; American Immigration and Citizenship Conference; Association of Immigration and Nationality Lawyers; Migrant Legal Action Program; Mexican American Legal Defense and Educational Fund; National Council of La Raza; and United States Catholic Conference/Migration and Refugee Services.

● Mr. ROTH. Mr. President, I am pleased to cosponsor the amendment offered by the distinguished Senator from Illinois. As my colleague from Illinois has explained, the amendment was originally contained in S. 1070 which I also cosponsored. S. 1070 was essentially a two-pronged attempt to curb alien abuse of the supplemental security income program. The major provisions of the bill would have established a 3-year residency requirement in order to be eligible for SSI benefits and would have made the affidavit of support signed by the alien's sponsor legally enforceable.

The need for this legislation was pointed out in a GAO report issued in February, 1978 entitled "Number of Newly Arrived Aliens Who Receive Supplemental Security Income Needs To Be Reduced." This report stated that in the five States with the largest alien population, approximately $72 million in SSI payments was received by 37,500 newly arrived aliens. Sixty-three percent of the aliens receiving SSI enrolled during the first year in the United States and 96 percent of the recipients enrolled during the first 3 years of residency.

During the Finance Committee's consideration of H.R. 3236, I offered as an amendment that part of S. 1070 which establishes a 3-year residency requirement in order to become eligible for SSI benefits. The amendment, which was accepted unanimously by the committee is the first step toward eliminating alien abuse of our Nation's welfare programs.

The amendment being offered today by the distinguished Senator from Illinois goes one step closer to reaching that goal. Specifically, it provides for making the affidavit of support legally enforceable. Presently, an alien entering the United States must prove that he or she will not become a public charge. In order to accomplish this, an alien often is sponsored by a relative or close friend. Prior to entry into the country, the sponsor signs an affidavit of support which states he will accept financial responsibility for the alien. The large percentages of aliens receiving SSI in the first 3 years of entry, as stated in the GAO report, indicates many sponsors are not living up to this obligation.

In fact, the court has ruled the affidavit of support is not now legally enforceable. Rather, it is only a moral obligation on the part of the sponsor. The end result is the pledge of support is really nothing more than a "paper tiger." By adopting this amendment, we would reinforce our immigration and naturalization laws which state that an

alien may not enter this country if he will be a public charge. We will insure tax dollars will not be spent on benefits which violate the intent of that law.

This amendment is not intended as a punitive measure toward the sponsor who attempts to meet the requirements in good faith. It provides that if the financial situation of the sponsor changes for reasons beyond his control, he will be relieved of the pledge of support and the alien would then be eligible to receive SSI even if he has not met the 3-year residency requirement.

I believe this amendment is consistent with our efforts to reduce Federal spending and I urge my colleagues to adopt this amendment to make the affidavit of support legally enforceable.●

● Mr. HAYAKAWA. Mr. President, as you know, I am a cosponsor of the amendment concerning legal alien abuse of the social security system which was offered by the distinguished Senator from Illinois.

I am very, very troubled that we here in Congress are willing to recognize a serious problem but are unwilling to act to rectify it. For far too long now aliens have been encouraged to come to this country to live off the good will and free hand of the American taxpayer. How can we continue to justify this spending? I am sure each of you have received letters from constituents in your home State asking this same question.

While studying this issue over the past year and a half, I found that although laws appear to preclude aliens from receiving public assistance in their first 5 years of residency, a loophole actually exists which permits an alien to apply for and receive any number of benefits without breaking the law. Those loopholes have been pointed out by the courts, by Guy Wright, a noted columnist who has pursued this problem from his column in the San Francisco Chronicle, and the General Accounting Office. Both Senator PERCY and I introduced legislation in the 95th Congress aimed at closing this loophole, however neither bill was considered before the end of the Congress.

Again, early in the 96th Congress, we each introduced legislation addressing this problem. The Finance Committee included a provision in H.R. 3236, the bill we are now debating, to establish a 3-year residency requirement before an alien may be able to apply for Federal assistance. This requirement was part of the legislation proposed by both Senator PERCY and myself. It is indeed, a beginning, but certainly not a solution to this bureaucratic "Catch 22." The situation remains where an alien comes to this country under the auspices of a sponsor. If it becomes necessary for the alien to seek financial assistance but for one reason or another the sponsor fails to provide the assistance guaranteed by signing the "affidavit of support," the alien then applies for benefits despite a residency requirement in the Immigration and Nationality Act. However, because there is no residency requirement in the Social Security Act the requirement stipulated by the Immigration and Nationality Act is nullified.

As I mentioned before, the Finance Committee has taken the initiative and moved to close part of the loophole by putting a requirement into the Social Security Act that specifies that an alien must be a resident of this country for at least 3 years before applying for Federal financial assistance. There is no recourse available to the U.S. Government when a sponsor fails to live up to his commitment, however. The affidavit of support signed by both an alien and his sponsor pledging financial support for the alien is not legally enforceable in a court of law.

Senator PERCY's amendment to legalize the affidavit of support is an action to correct the inconsistency in the existing law. Senator BAYH pointed out during previous discussion of this matter that simply changing the affidavit of support will not totally close the loophole which is necessary to stop the abuse of our public assistance programs.

The Immigration and Nationality Act states that an alien likely to require public assistance will be denied admission to the United States, unless a sponsor in the United States signs an affidavit agreeing to sponsor that alien for 5 years. My wife and I have had the opportunity to provide that security to aliens, both relatives and acquaintances, wishing to enter this country on several occasions. Each time Marge and I discussed the responsibility associated with signing that document. We made plans in the event that, for some unforeseen reason, the person could not provide for himself. We always considered the signing of that affidavit to be a very serious act of citizenship.

It was not until I began to read in Guy Wright's columns about the terrible abuses of this responsibility of sponsoring an immigrant that I learned of the void in our laws. My research has not only confirmed the void, but lead me to what I believe is the key to locking that loophole. The law now states that if an alien becomes a "public charge" within 5 years of entry, he or she is subject to deportation. The law does not, however, define what constitutes a public charge. Mr. President, the absence of this definition has allowed thousands of aliens to collect benefits totaling millions of dollars each year, after residing in this country for as little as 30 days.

If it is the intent of Congress to stop this abuse of public funds, it is imperative that a definition of "public charge" be included in the law. I am aware that the ultimate effect of such a definition would subject aliens to deportation if they had to go on public assistance. It should go without saying that it is not my intention, or do I feel it is the intention of any Member of Congress, to call for the deportation of any alien who finds after arriving in the United States he cannot support himself. Rather, the intent is that careful consideration be given to requests for the admittance of aliens under affidavits of support.

I do not believe that this is more or less harsh than the original intent of our social security and immigration laws. Consequently, hearings should be held on the issue of what is a public charge. Under the current law, there is absolutely no recourse to the flagrant disregard of the intent of the law.

I also urge my colleagues to vote for amendment No. 731 to strengthen the social security and immigration and nationality laws by making the affidavit of support legally binding. A person seeking to enter this country should consider what are his responsibilities—not only how much he can get.●

Mr. CRANSTON. Mr. President, the amendment I have cosponsored with Senator PERCY will complete action taken by the Finance Committee to close a loophole in the supplemental security income program which costs Federal taxpayers some $70 million annually in SSI-related payments to newly arrived immigrants.

The Immigration and Nationality Act requires as a condition of entry for certain categories of aliens that they have a sponsor, often a close relative or friend, who is a citizen or permanent resident of the United States. This sponsor promises, as a condition of granting an entry visa to the immigrant, that the new immigrant will not become a public charge.

Under the Immigration and Nationality Act, an immigrant who becomes a public charge within 5 years of entry is subject to deportation.

The Social Security Act, however, permits a new immigrant to apply for and receive supplemental security income (SSI) benefits 30 days after arrival on American shores.

To round out the loophole, the courts—partly in response to the harsh deportation penalty provided in the immigration statute—have ruled that receipt of SSI benefits does not constitute becoming a public charge and, furthermore, that the sponsor's promise of support is nothing but a "moral obligation."

As a result, the sponsor by disavowing his support agreement can shift responsibility for financial support of the immigrant to the taxpayers. In effect, the immigrant gets an "instant pension."

This situation is an affront to taxpayers. Nor is the situation fair to conscientious sponsors who live up to the letter and spirit of their promises of support. And, it is certainly unfair to all immigrants who have worked hard to support themselves and their families as substantial contributing members of communities in every State.

In fact, columnist Guy Wright of the San Francisco Examiner writes that—

> Some of my bitterest mail on this subject has been from readers who came to this country as immigrants and resent being ripped off.

The amendment Senator PERCY and I are offering to the committee bill assures that those immigrants sponsored by individuals who are financially able will in fact be supported by their well-to-do sponsors.

The amendment also assures—and has been modified to spell out that assurance—that no one who is truly needy and has been abandoned by his or her sponsor will go without assistance. Instead, the Government will pursue the defaulting sponsor while the immigrant receives necessary assistance.

The bottom line is the needy immigrant will receive SSI assistance regard-

less. But the financially able sponsor will not be able to hand off his obligation to his neighbors. And all sponsors of new immigrants in the future will understand clearly the import of the promise of support.

I urge Senate approval of this sensible and humane approach to a volatile problem.

Mr. PERCY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. PERCY. What is the pending business?

The PRESIDING OFFICER. The amendment of the Senator from Illinois.

The question is on agreeing to the amendment of the Senator from Illinois, as modified.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. MATSUNAGA. Mr. President, I rise in support of the Percy amendment, which would make a sponsor's affidavit of support in behalf of an immigrant an enforceable agreement. Under existing law a sponsor's affidavit is meaningless if the affidant refuses to support a destitute immigrant for any reason whatsoever. To give meaning to the affidavit an immigrants sponsor should be required to keep those promises upon the strength of which the immigrant was admitted to the United States. It is wrong for a U.S. citizen to promise to support an immigrant and then renege, leaving the immigrant homeless and penniless in a strange land. The Percy amendment would provide the legal enforcement of support affidavits. But the amendment also provides that the affidavit of support will be excused and be rendered unenforceable in the event that the sponsor dies or cannot provide support because of circumstances which were unforeseeable when the immigrant was admitted.

The amendment is intended to prevent the perpetration of fraud upon the American taxpayer by forcing him to support a newly arrived immigrant by way of public welfare assistance while the sponsor is capable of providing the promised support. The amendment would not cause any undue hardship on either the immigrant or the sponsor.

There is no better way to provide for the poor and needy, citizens and aliens alike, than to make sure that persons who do not require assistance do not receive it. This approach is consistent with the efforts of Congress and the administration to reduce fraud and abuse and to make sure that only those who are most in need of public assistance receive such benefits.

As a matter of sound policy, not the innocent taxpayer but those sponsors who promised to support an immigrant and who are capable of doing so should be required to provide that support. The Percy amendment would bring about this result for a 3-year period after the immigrant's admission, while protecting any alien whose sponsor encounters unforeseen circumstances.

I urge adoption of the Percy amendment.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. DURKIN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Maine (Mr. COHEN), the Senator from Arizona (Mr. GOLDWATER), the Senator from North Carolina (Mr. HELMS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

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

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS—92

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

NOT VOTING—8

Baker	Goldwater	Kennedy
Cohen	Gravel	Young
Durkin	Helms	

So Mr. PERCY's amendment (No. 731, as modified) was agreed to.

Mr. PERCY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment numbered 745 by the Senator from Wisconsin (Mr. NELSON).

Mr. SCHMITT addressed the Chair.

The PRESIDING OFFICER. The time is controlled by the Senator from Wisconsin (Mr. NELSON) and the Senator from Louisiana (Mr. LONG).

Mr. SCHMITT. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

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

The PRESIDING OFFICER. The amendment offered by the Senator from Wisconsin (Mr. NELSON), amendment No. 745.

Mr. DOLE. Mr. President, I ask unanimous consent that that amendment be temporarily laid aside.

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

The Chair recognizes the Senator from New Mexico.

UP AMENDMENT NO. 934

(Purpose: To strike out section 403 of the bill relating to use of Internal Revenue Service to collect child support for non-AFDC families)

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

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

The Senator from New Mexico (Mr. SCHMITT), for himself, Mr. DOMENICI, Mr. LAXALT, and Mr. WEICKER, proposes an unprinted amendment numbered 934.

Mr. SCHMITT. 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:

On page 73, strike out lines 15 through 22.

Redesignate sections 404 through 409 as sections 403 through 408 respectively.

On page 32, amend the table of contents by striking out "Sec. 403. Use of Internal Revenue Service to collect child support for non-AFDC families." and redesignate sections 404 through 409 as sections 403 through 408 respectively.

Mr. SCHMITT. Mr. President, I have been informed that the Senator from Ohio (Mr. METZENBAUM) has an urgent need for recognition. I ask unanimous consent that my amendment be set aside, and that I be recognized at the conclusion of the activity of the Senator from Ohio to bring the amendment up again.

Mr. METZENBAUM. I appreciate the consideration of the Senator from New Mexico, but I certainly do not wish to impose upon his efforts. I am prepared to go forward, but the Senator was recognized before me. I respect him and I am perfectly willing to await my turn. I am willing to go forward. However the Senator from New Mexico wishes to proceed, I certainly will agree to. I do not mean to suggest that I have an urgent personal problem, as we sometimes do. I am not in that situation. I certainly appreciate the offer of the Senator from New Mexico.

Mr. SCHMITT. I thank the Senator. I do not believe this amendment will take a great deal of time.

Mr. METZENBAUM. I appreciate the Senator's offer.

Mr. SCHMITT. I do think it will pass overwhelmingly. Therefore, if I could proceed, I will try to limit the time that I use.

Mr. METZENBAUM. I thank the Senator.

Mr. SCHMITT. Mr. President, this amendment, introduced on behalf of myself, Senator DOMENICI, Senator LAXALT, and Senator WEICKER, would, very simply, delete section 403 of the bill, entitled

"Use of Internal Revenue Service To Collect Child Support of Non-AFDC Families."

Under present law, enacted in 1975, States are authorized to use the Federal income tax mechanism for collecting child support payments for families receiving aid to families with dependent children, AFDC payments. This provision of the bill would expand that authority to include non-AFDC child support enforcement cases brought within the jurisdictions of the States.

Let me first state that I support the efforts of State and Federal agencies in collecting delinquent child support payments and other delinquent, truly delinquent payments owed to the Federal Government.

In the instant case, the problem of runaway spouses is a serious one which requires much more attention by the affected agencies and States. I think that the committee and I agree that the seriousness of the problem is real and that there is a need to do something about it. We do not, however, based on the bill before us, agree on how to handle the problem.

It seems that every time an agency or department these days encounters any problems with collections of debts, the solution proposed is to let the Internal Revenue Service collect the debts for them, in spite of the institution by Congress of the Office of Inspector General and other potential remedies.

This past September, I am sure my colleagues remember, we debated about a proposal in an appropriations bill to have the IRS collect delinquent veteran and/or student loan accounts. The Senate, in its wisdom, struck that proposal from the Treasury, Postal Service appropriations bill by a vote of 52 to 38.

This year, the proposal before us is to expand an already dangerous precedent, of which at that time I was unaware, that deals with the collection of AFDC debts. In particular, child support payments.

The Comptroller General, an advocate of the use of IRS for collection of delinquent debts, has stated that Federal departments and agencies "have not been aggressive in pursuing collection (of debts)," and recommended steps which could be implemented in the agencies to increase collection deficiencies.

These recommendations have, for the most part, not been implemented and Congress has not asked various agencies why they have not been implemented. We are, however, quick to propose the IRS to collect debts.

In 1978, Congress enacted Public Law 95–452 which created the Office of Inspector General in various departments and agencies whose function is "to promote the efficiency and economy of and to prevent and detect fraud and abuse in the programs administered by each agency." It appears that it is within both the jurisdiction and responsibility of Inspectors General to follow up on the recommendations of the GAO with respect to debt collection and to make certain that debts owed to that particular department or agency are being effectively collected.

It is my impression, at least at this early date in the use of Inspectors General, that little or no effort has been undertaken by the Congress to adequately direct the Inspectors Generals to tighten debt collection procedures in their respective agencies.

We have heard so much around here about the money owed to the Federal Government and the failure of agencies to collect some of the debts to the Government. The figures are disturbing, but we should be very careful in looking at what the agencies are actually doing about trying to collect delinquent debts, before we look to a panacea, and particularly the siren song of IRS. It makes a great deal more sense to use existing mechanisms which are available to us and to the agencies than to, at this time, bring the IRS more massively into debt collection rather than tax collection.

Mr. President, the Congress also has the option to allow agencies to turn to commercial debt collection agencies. On the Senate Calendar right now is a bill, S. 1518, which would allow the Veterans' Administration to utilize a consumer reporting agency for certain debt collection purposes. It is my understanding that some agencies already have this authority and that it has worked out very well.

The issue before us is of a somewhat different nature. First of all, we are not dealing with any money owed to the Federal Government. We are talking about money owed to an individual by another individual, established under court action. Because child support payments are ordered by the court and in their absence the taxpayers will be forced to supply assistance, the Government is indirectly involved. It seems that there is an appropriate concern for the Government but not in the manner which we are proposing here in this bill.

Second, it has been argued that this provision in the bill is simply an extension of existing law which permits the IRS to add the debt as a tax liability. It is further argued that there is really no distinction between AFDC and non-AFDC recipients. That, however, is not the point. The opinion of this Senator is that we made a serious mistake in 1975 and we should not continue that mistake by expanding this program. What the Congress should do is consider the repeal of the 1975 provision. However, let us at least prevent its expansion under this amendment.

Mr. President, the Internal Revenue Service was created as a tax-collecting agency and not a debt-collecting agency. To expand this role is fraught with danger, as the debate last year indicated when dealing with IRS debt collection of delinquent student loans.

To begin with, it may become a very expensive experiment. The IRS collects about 90 percent of Federal revenues. Taxpayers voluntarily determine that they owe more than 97 percent of this total and pay it, largely through withholding, without any direct IRS enforcement action. The withholding system makes it possible for the IRS to collect tax revenue at the inexpensive cost of about 50 cents per $100 collected.

In a letter to me in September, Commissioner Jerome Kurtz of the IRS stated:

> If taxpayers react to the idea of IRS becoming the Nation's small debt collector by adjusting their tax withholding as much as 1 percent, the initial loss of Federal taxes voluntarily paid would be $4 or $5 billion. We are seriously concerned about the risks to which a National non-tax debt collection program would expose the withholding system.

Mr. President, I think we would ignore Commissioner Kurtz' remarks at our peril.

The proponents of this provision in the bill will argue that this loss of tax revenue has not occurred since enactment of the program. The fact is, one, it is too soon to see the effects, and two, according to the committee report: "This provision for using the IRS in child support collections has been used very sparingly by the States."

In fact, Mr. President, according to my research, the IRS acted on only 17 cases in 6 States, for a total collection of $15,000.

The provision in the committee bill would bring all persons subject to child support payments under the reach of this IRS authority whether they were, in fact, economically destitute or not.

When the provision as in the bill becomes more visible through increased use, I think we shall start seeing the effects of tax collection on increased withholding by the American people.

The major concern of this Senator is the threat to the rights privacy of individuals. Again, even the IRS has concerns about the privacy of individuals. In that same letter, Commissioner Kurtz wrote that serious questions are raised by the use of tax information and the tax administration system for nontax purposes. Any controversy between the taxpayer and the agency would put the IRS "in an awkward position. To maintain taxpayer privacy and to prevent unauthorized disclosure of tax information, IRS would be burdened with dealing with the taxpayer in attempting to resolve the controversy between the taxpayer and the agency owed the debt—without the authority to resolve the matter."

Commissioner Kurtz went on to write:

> Additionally, we question whether the inter-agency use of personal financial data on citizens would adequately recognize concerns about citizen privacy in the use of data processing technology.

The Tax Reform Act of 1976 specifically dealt with eliminating the abuses of the IRS and their authority, especially under political pressure. Now we are turning the clock back and telling the IRS to divulge information to various agencies that need it for debt collection. This is the bottom line. Not only is this opening the door to abuse but it will surely undermine the confidence of our citizens in the confidentiality of any information provided to the IRS.

Mr. President, we have all heard horror stories of IRS agents abusing their

authority. Unfortunately, many are true. Hardly a year passes without some congressional act limiting some activity of the IRS which is in direct opposition to congressional intent. Last year it was the taxing of private schools. At other times, it took report language to remind the IRS that taxpayers have certain rights and are entitled to due process.

Here we are, proposing now to extend the authority and the power of the IRS in an area in which they just do not belong. It does not make any sense to this Senator and I hope it does not make any sense to the Senate.

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

Mr. TALMADGE. Mr. President, I yield myself such time as I may take.

Mr. President, this amendment was unanimously approved by the Committee on Finance. The Finance Committee has been concerned for many, many years about the fact that many people who father children abandon them, leave them, flee. The children become recipients of welfare and the taxpayers have to support them. The Finance Committee tried to correct this problem and they did take action to correct it.

We provided that when an individual abandoned his family, abandoned his children, fled the State, concealed himself—hid—the State could file a procedure and ask the Internal Revenue Service to help locate him and help collect the money owed for support. That program, Mr. President, is working exceedingly well. Welfare rolls have been going down and people have been required to support their children.

Many articles have appeared endorsing it. It has saved a great deal of money for the taxpayers of this country. Welfare rolls have declined.

The Finance Committee took another step. We decided that, in addition to trying to prevent people from fleeing and forcing their children to go on welfare, we would try to keep them off welfare. My amendment is the next logical step. It also would permit States—not individuals, States—to come in and ask the Internal Revenue Service to help locate a parent that had abandoned his family and is not supporting his wife, not supporting his children. Then the IRS will come to the aid of the State in collecting delinquent payments that had been ordered by a State court but which the State was unable to collect.

Mr. President, that is all there is to it. It does not have a single thing to do with the secrecy of tax returns; it does not have a single thing to do with using IRS as a collection agency for private debt. Private debt is not involved here. The action of a State is involved here, and if States cannot get the cooperation of the Federal Government in enforcing their decrees, something is basically wrong with our Federal Establishment.

Ours is supposed to be a nation where States and the Federal Government work together for the benefit of each other. This amendment, Mr. President, is sorely needed, because if we are going to try to keep our families together we need to run down and catch these people who sire these children, father them, abandon them, and neglect them, who hide; and now, when the State comes in and requests the IRS to do something about it, we want the cooperation of the Federal Government—to wit, IRS—in trying to do something about it.

Mr. President, the Department of the Treasury is not opposed to this amendment. I hold in my hand a communication from a highly respected individual, Dr. Larry Woodworth, whom all of us in the Senate knew. Unfortunately, he has passed on. He was Assistant Secretary of the Department of the Treasury and before that chief counsel on the staff of the Joint Committee on Taxation. I read from his letter dated December 7, 1977:

> We have no objection to extending the section 6305 collection authority in non-AFDC cases.

I repeat, Mr. President, this is not a private debt collection matter. This is to aid the States, under due process of State law, to enforce a decree against a man who has fled and abandoned his wife, abandoned his children, and left them as objects of charity or for the taxpayers to pay for when they go on the AFDC rolls.

Mr. LONG. Will the Senator yield?

Mr. TALMADGE. I yield to my distinguished chairman.

Mr. LONG. Mr. President, is it not true that we have managed to prevail upon the IRS to cooperate in a program that is now bringing in about $500 million to reduce welfare by making runaway fathers contribute something to their children right now, and that the IRS was very reluctant to go along with that, and the committee had to persevere through the years to get that program enacted?

Mr. TALMADGE. My distinguished chairman is entirely correct. When this was first proposed, IRS was opposed to it. But since 1975, the States have collected $3.9 billion in AFDC and non-AFDC child support. It has saved billions of dollars to the taxpayers of this country.

Mr. LONG. Is it not true that the provision we are discussing here is not a situation where a private litigant can call upon the IRS? It would be a case where a State government is doing what it can to help some mother look after her child, and that father, for all we know, might be in the 70-percent tax bracket, remarried to someone who might be making as much money as he is making. He refused to pay for his children, then moved somewhere where they have some local influence, perhaps on his side, perhaps on her side, and the State cannot get the local district attorney to do anything about it.

If they abandon a child—say, for example, in Maryland—and the wife does not want to apply for welfare, she wants to do something for her children and does not want to suffer in silence, when the State of Maryland, for example, tries to help that little mother get something for her children, why should not the IRS cooperate?

Mr. TALMADGE. The Senator is correct and I agree with him enthusiastically and wholeheartedly.

Mr. LONG. The Senator well knows that when Uncle Sam is owed some money, IRS has more capability than anybody on Earth to get that money. That is one thing the Federal Government is best at, extracting money from people. When you have these little children whose mother does not want to go on welfare, and does not belong on welfare, the father is well able to support those children, why should not IRS cooperate?

Mr. TALMADGE. Particularly when the State comes in to aid this abandoned mother and her abandoned children and takes up that matter and asks for Federal action, because IRS cannot get involved until the State comes along. The State has to be involved. When the State comes to the aid of that welfare mother, then only, and not until then, can IRS get involved.

Mr. LONG. Mr. President, I think the Senator has made a very fine suggestion. The committee agreed with him unanimously about this matter. There is no doubt in my mind that we shall save the taxpayers billions of dollars once we get this thing on the basis that it is just the thing to do to support your children if you are able to do so. What costs this Government tens of millions of dollars, actually many billions of dollars, is these braggarts going around the barrooms or places where men congregate, bragging how they escape doing their duty to their children and the mother of those children. It makes people think they can get away with it. What the Senator is seeking to do is say that, when the State has done everything it can to help that mother and her children, the Federal Government must cooperate.

Mr. TALMADGE. Exactly.

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

The PRESIDING OFFICER. Who yields time?

Mr. SCHMITT. Mr. President, I have listened with great interest to the eloquence of the two Senators, one from Louisiana and one from Georgia, in describing the problem. I agree completely with their analysis of the problem. What I do not agree with is their proposed solution. There are other solutions.

I think both Senators would admit that the IRS is not the only solution to every problem faced by this Government in the collection of money. They collect money very well, perhaps too well. I agree with the distinguished Senator from Louisiana: They are an excellent agency in collecting money. In my opinion, we give them too much authority to collect money. The question is, do we, philosophically, want the IRS to move progressively into being a debt collection agency as well as a tax collection agency? It is my philosophical position that we should not. We should find an alternative means to collect these debts.

They should be collected. I agree with all the statements made about the position that mothers find themselves in. But do not put the IRS any farther into this thing than they are already.

Mr. TALMADGE. Will the Senator yield?

Mr. SCHMITT. Yes, I yield.

Mr. TALMADGE. Mr. President, did I understand the Senator to say that he is

in favor of the existing law that IRS would be used when the State is requesting action when the fugitive father has children on the State AFDC rolls?

Mr. SCHMITT. No. I am not in favor of the IRS being a debt collection agency.

I am not trying at this time to amend the basic law, just to try to prevent its expansion.

I agree with the Senator's analysis of the problem, but not the solution.

Mr. TALMADGE. Is the Senator opposed to existing law where the IRS can help the State collect money from a fugitive father when they are on the welfare rolls?

Mr. SCHMITT. Yes. I think there are other solutions. Not to collecting it, but to the IRS becoming a debt collection agency.

Mr. TALMADGE. Opposed to the existing law as well as the amendment?

Mr. SCHMITT. Yes. The Senator has analyzed my position correctly.

Mr. LONG. Will the Senator from Georgia yield?

Mr. TALMADGE. The Senator from New Mexico has the floor and he yielded to me.

Mr. SCHMITT. I am happy to yield to the Senator from Louisiana.

Mr. LONG. Mr. President, we are collecting right now $500 million a year where the family is on welfare. Does the Senator oppose that?

Mr. SCHMITT. I think I have made myself very clear. My opposition is philosophical to the IRS being a debt collection agency.

I am not asking at this point, I may never ask, that we roll back the law. I am not sure it is possible. But I certainly think it is possible, based on last September's vote in the Senate and, hopefully, on this vote, to prevent an expansion of the IRS into a debt-collection agency.

They have had second thoughts about it. They said last September very specifically they did not want to get into small debt collection with respect to student loans, or anything else.

It is my clear impression that could be extended into this kind of debt collection. It just is not appropriate for us to impose the IRS on the citizenry for any kind of debt collection, and it is not appropriate for us to jeopardize the voluntary nature of our tax structure by a debt collection activity.

As soon as there is a significant amount of IRS debt collection activity, the potential debtors almost certainly will begin to voluntarily withhold more of their taxes, and that would be a very serious consequence in what should be a voluntary tax situation.

Mr. LONG. If the Senator will yield, it seems to me those who are opposed to using the IRS to obtain the information and participate in an effort to make fathers contribute to their children have, over a period of time, pretty well thrown in the towel and agreed that this is a good program, to make fathers contribute something to their children.

We were not getting anywhere until we made the Federal Government participate. At first, the IRS did not want to tell us where the fathers were. We had to pass a special law to make them do that.

So by making those in the Federal Government participate and cooperate, we made a lot of headway in making the fathers do something for their children rather than leave them suffering, or on welfare, or needing to go on welfare.

Mr. SCHMITT. I think the Senator agrees that everything we did in the past might not have been right.

In this case, I think we could have found, and may someday find, a better solution to the problem.

My concern is the integrity of the tax system. It is bad enough that people have to pay as much as they do. But it is clear we must have a system based on voluntary compliance.

What we are headed toward, because of efforts like this and the overwhelming burden of taxes in this country, is a nonvoluntary tax system. That, I think, is something this country can ill afford to have, a nonvoluntary tax system. A negotiated tax system is already creeping into major parts of our economy.

It will cost us an extraordinary amount of money in revenue if we end up in that position.

This is just a further push in the direction of a nonvoluntary tax system, a negotiated tax system, and I do not think we need that position.

Mr. President, the real issue before the Senate on this amendment is the role of the IRS. Is it a tax collector or a debt collector?

If we need a debt collection agency, let us talk about it. But let us not jeopardize the voluntary system of tax payments in this country by having the IRS become a debt collector.

We should face that question directly and not through the back door as is now being done with the AFDC provisions and would be further expanded under the provisions in the bill.

In a sense, the nose of the IRS camel is under the tent and the camel is trying to get in. I would like to bat that nose a bit with a 2 by 4.

I hope we can agree we should keep it out of debt collection, but we should also commit ourselves to finding ways in which debts can be collected.

As a matter of fact, I think that was one of the principal forces behind the passage of the legislation that created the inspectors general. That is what they should be doing, creating within the agencies the kind of environment in which these debts are collected, without resorting to the IRS.

It is a very dangerous area, without adequate philosophical debate, and that is what I hope my colleagues will recognize, also.

Mr. President, I would be happy to yield back the remainder of my time if my colleagues are finished.

Mr. TALMADGE. Does the Senator from Kansas desire time?

Mr. DOLE. Just long enough to make a statement in opposition to my distinguished colleague from New Mexico.

Mr. President, I appreciate the concern of the Senator from New Mexico that the Internal Revenue Service should not be turned into a debt-collection agency with freewheeling powers which threaten the rights of individuals. However, I do not believe the very limited but effective use of the IRS to collect child support payments should be halted.

It is true that the Department of the Treasury opposed this duty originally, but the Senate Finance Committee spent a great deal of time drafting legislation to meet the concerns of the Department when this program was originally put in place. The IRS has not been used to collect child support payments very often, but the authority to use the IRS when necessary is very important.

This program has already been extended to non-AFDC families in the past, but the authority has not been made permanent. The non-AFDC authority was not allowed to lapse because of the objections of the Treasury Department or anyone else, however, but only because the press of legislative business at the end of the last Congress caused a lack of action on a number of provisions relating to the child support, AFDC and social services programs. It is my understanding that the Treasury Department has specifically stated that it has no objection to extending the child support collection authority to non-AFDC cases.

While it is true that the first and most important duty of the Internal Revenue Service is to collect taxes, there does not appear to be a more appropriate agency to collect other debts owed to society which can help ease the tax burden of those who do meet their obligations willingly. Therefore, I oppose the amendment and hope my colleagues will oppose it as well.

(Mr. BAUCUS assumed the chair.)

Mr. TALMADGE. Mr. President, I yield such time as I may need.

Mr. President, I reiterate that the IRS has already done exactly this. The IRS is cooperating with the States to help them run down a man who abandons his wife and his children and, when requested by the State, to collect support payments when the children are on welfare.

All this committee bill would do would be to extend that to help the States enforce decrees that have become State judgments, when the man has fled the jurisdiction of the State, concealed himself, and refused to comply with the court order and the State law.

If we cannot have the Federal Government working in cooperation with the States tc enforce decrees, I do not know what we ought to do, Mr. President.

If I remember my constitutional law, the Constitution of the United States says that all States shall give full force and credit to the judgments of the courts of every other State.

If the Constitution means what it says in giving full force and credit to the judgments of the courts of the States, why should the IRS not come in, when a State says, "Well, Mr. IRS, help us locate this man and collect the support from him."

The man has fled, concealed himself, and will not pay a judgment of the State

of New Mexico, or Louisiana, or Georgia, or Kansas. Why not help the States track him down and make him support the wife he abandoned, the children be abandoned, in order that that wife and children will not become recipients of welfare, rather than force the taxpayers of New Mexico, Louisiana, Georgia, or Kansas to have to step in his shoes and support that family.

Now, what is wrong with that? That is what my amendment does.

Mr. SCHMITT. If the Senator will yield, I will tell him what is wrong with it.

It ignores the basic problem the Senator from New Mexico is raising. The problem is whether the IRS ought to do this, or some other agency.

The IRS is a tax collection agency. It has to stay that or we are going to lose the benefits of a voluntary system. That is the fear of the Senator from New Mexico. The Senate agreed with me last fall, in September, and I hope it will agree with me today.

Mr. LONG. I yield myself 1 minute.

Mr. President, the Senator's argument is based on the theory that the IRS is not a debt-collecting agency. Any time someone fails to pay his taxes, he owes a debt to the United States. At that point, it is the business of the IRS to collect the debt, and they are very good at it. They will put you in the penitentiary, if necessary, in order to make you pay that money. They are so good at it that they should help this woman and her children. Make poppa pay for their support. The IRS knows where to find him.

Mr. President, we are not asking that the IRS initiate the charge. All we are saying is that when a State does everything it can to help that mother and those children so that they can be supported in dignity, as they have a right to be supported by the parent, at that point the Federal Government should cooperate and help. It seems reasonable to this Senator.

Mr. SCHMITT. Mr. President, those little women and little children will have the Government's help in finding the spouses and collecting the money from them, and the agencies are in place to do that, and it does not have to be the IRS. The Senator from Louisiana has to agree with that. It just does not have to be the IRS.

The IRS, in spite of the Senator's semantics, is a tax collection agency. If there is nonpayment of taxes, it is still a tax. You can call it a debt, if you wish. Call it a debt, as the distinguished majority leader once gave us the benefit of. You can call it anything you want, but it is still a tax; it is not a debt.

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

Mr. SCHMITT. I am happy to yield.

Mr. STEWART. I have listened to the debate with great interest, and I have heard the Senator from New Mexico mention from time to time an alternative agency or an alternative method he has in mind for the collection of these moneys. Will he tell me where he would suggest placing this?

Mr. SCHMITT. First, the basic responsibility will be with the agency under which the program is administered.

The inspectors general were created in order to see that agencies carried out their functions, to minimize fraud and abuse of their programs. This is a form of fraud and abuse of their programs.

First, I would like to see us insist that the inspectors general who are within the given agency do the job they are supposed to be doing. Or, as a supplement, as I indicated, the Veterans Administration is now working at this, and there is a bill before the Senate to give it the authority to use private collection agencies as part of this function.

There are other possibilities, besides the IRS. My concern has to do with the IRS becoming something other than a tax-collecting agency and beginning to erode the voluntary nature of our tax system.

In addition, there are real questions about the Privacy Act and the IRS providing agencies with information they would have. There are real questions as to due process in some instances of this kind. I do not think the IRS should be a collection agency.

I am not at all arguing with the distinguished Senators that we must do a better job than we have done. I am raising the philosophical issue of what the function of the IRS is in this Nation and what the value is of the voluntary tax system, not that we should not try to collect the money.

Mr. STEWART. When the Senator talks about using a private collection agency, is he making that suggestion to enforce a State court decree? Is he talking about that?

Mr. SCHMITT. Excuse me?

Mr. STEWART. Is the Senator talking about using a private collection agency in aiding or assisting a State court decree?

Mr. SCHMITT. This is now being examined by the Veterans Administration as a potential way of collecting debts owed to it. It is under contract to the Federal agency.

It is not my understanding that there would be anything illegal about private debt-collection agencies, under contract, collecting funds for either the States or the agencies under which they fall. Obviously, that is something that will have to be examined.

My point is that we have not looked at the alternatives to the IRS. We immediately turn to the IRS as a collection agency. I do not think that is right. It is one of the fundamental aspects of our tax system.

Mr. STEWART. I thank the Senator.

Mr. SCHMITT. Mr. President, I will be happy to yield back the remainder of my time.

Mr. LONG. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from New Mexico has 5 minutes remaining, and the Senator from Louisiana has 14 minutes remaining.

Mr. LONG. Let me read this:

No amount may be certified for collection under this subsection except the amount of the delinquency under a court order for support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms, and upon an agreement that the State will reimburse—

The State will pay for the Federal Government to do it—

the United States for any costs involved in making the collection.

Mr. President, it is costing us billions of dollars that we must assess on taxpayers to support these little children, where the father walks off and leaves them. Some of these families, to be sure, are not on welfare. Those we are talking about right now are not, and we do not want them to go on welfare. We do not want to force an honorable, decent woman to go in and apply for welfare when that father is well able to support those children. She should not even be eligible for welfare, because she should be able to obtain support to provide adequately for her children.

Down through the years, we had to fight to make the IRS even tell where those fathers were, when the IRS had the information and knew where to find them. We managed to win that. Then one agency and another did not want to be bothered. We had to overcome that, and in doing so, we are saving the Government about $500 million a year in unnecessary welfare costs. That is just a beginning.

We can save this Government billions of dollars by fixing it so that people cannot escape their duty to their children. Why should not the IRS, which has the information, tell the State where the fellow is? Why should not the IRS, when the State has done everything it can to try to collect support for the children, cooperate and help to collect that money?

We are doing that with regard to the welfare cases. If you want it to work, you will fix it so that it is the thing to do to support your children.

When people thumb their noses at their own children and at the mothers of those children, and when the local and State governments are trying to help those families, we should not require those mothers and little children to suffer in silence. When the State wants to help them, the Federal Government should cooperate.

Mr. SCHMITT. Mr. President, I remind my colleagues that the existing debt-collection efforts relative to AFDC recipients are not particularly overwhelming. In 1978, as I indicated, there were 17 cases, and the total amount involved was $15,000.

I also remind my colleagues that where the IRS creates voluntary compliance through fear—fear of an audit, fear of being caught and not paying your taxes—this debt collection would operate in reverse. The fear would be that the IRS would begin to attach any resources, and withholding would decrease. That is the concern of the IRS.

We would begin to see, if we continued to erode this system by putting more debt collection in the hands of the IRS, an erosion of the voluntary system. As I indicated, a 1-percent decrease in voluntary withholding would result in $4, $5, or $6 billion less revenue to the Federal Government, which would have to be collected in other ways.

I hope my colleagues realize that the vote on this amendment is not a vote relative to whether we should collect the payments or not but whether the IRS should be put further into the business of collecting debts for the Federal Government. There are other and better ways to do it. We must be willing to examine those ways and to put them into place, without violating the tax system of this country or violating the rights to due process of the people of the United States.

Mr. TALMADGE. Mr. President, I will take about 30 seconds.

Every provision of privacy and due process in the code is preserved by this amendment.

It will not add one additional Federal employee to IRS. All it does is call on IRS to carry out the constitutional provision that full faith and credit will be granted to the decree of every State in this Union.

Mr. President, I am prepared to yield back the remainder of my time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

Mr. SCHMITT. 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 New Mexico.

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

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. GRAVEL), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Maine (Mr. COHEN), the Senator from Arizona (Mr. GOLDWATER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

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

The result was announced—yeas 28, nays 66, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—28

Armstrong	Hayakawa	Riegle
Bayh	Humphrey	Schmitt
Biden	Jepsen	Stafford
Bradley	Kassebaum	Stevens
Danforth	Laxalt	Stevenson
Domenici	Leahy	Wallop
Durenberger	Lugar	Warner
Garn	Mathias	Weicker
Hatch	McClure	
Hatfield	Pryor	

NAYS—66

Baucus	Cannon	Eagleton
Bellmon	Chafee	Exon
Bentsen	Chiles	Ford
Boren	Church	Glenn
Boschwitz	Cochran	Hart
Bumpers	Cranston	Heflin
Burdick	Culver	Heinz
Byrd, Harry F., Jr.	DeConcini	Helms
Byrd, Robert C.	Dole	Hollings
	Durkin	Huddleston
Inouye	Muskie	Schweiker
Jackson	Nelson	Simpson
Javits	Nunn	Stennis
Johnston	Packwood	Stewart
Levin	Pell	Stone
Long	Percy	Talmadge
Magnuson	Pressler	Thurmond
Matsunaga	Proxmire	Tower
McGovern	Randolph	Tsongas
Melcher	Ribicoff	Williams
Metzenbaum	Roth	Zorinsky
Morgan	Sarbanes	
Moynihan	Sasser	

NOT VOTING—6

Baker	Goldwater	Kennedy
Cohen	Gravel	Young

So Mr. SCHMITT's amendment (UP No. 934) was rejected.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 745, AS MODIFIED

The PRESIDING OFFICER. The question now recurs on the amendment of the Senator from Wisconsin (Mr. NELSON).

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON), for himself and Mr. HUDDLESTON, proposes an amendment numbered 745, as modified.

Mr. DOLE. Mr. President, I ask unanimous consent that the amendment be temporarily laid aside.

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

AMENDMENT NO. 935

(Purpose: To amend the maximum level of family benefits)

Mr. METZENBAUM. Mr. President, I call up an amendment, which is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM), for himself, Mr. GOLDWATER, Mr. CRANSTON, Mr. MAGNUSON, Mr. KENNEDY, Mr. WILLIAMS, Mr. MCGOVERN, Mr. DURKIN, Mr. WEICKER, and Mr. EAGLETON, proposes an amendment numbered 935.

The amendment is as follows:

On page 34, strike lines 4 through 11 (inclusive) and insert in lieu thereof the following:

"Any reduction in this subsection which would otherwise be applicable, shall be reduced or further reduced (before the application of section 224) so as not to exceed 100 percent of such individual's average indexed monthly earnings (or 100 percent of his primary insurance amount, if larger)."

Mr. METZENBAUM. Mr. President, I ask unanimous consent that I be permitted to yield the floor to the Senator from South Carolina (Mr. THURMOND) for a period not to exceed 5 minutes and that the 5 minutes not be charged against the consideration of this amendment, either against the proponents or opponents.

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

Mr. THURMOND. Mr. President, I wonder if the Senator would be kind enough to make it about 8 minutes, in view of replies that others may make.

Mr. METZENBAUM. Mr. President, I have no objection.

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

THE NEED FOR REMEDIAL LEGISLATION TO CLARIFY PROBLEMS WITH THE SOCIAL SECURITY "EARNINGS TEST"

Mr. THURMOND. Mr. President, while the Senate has under consideration the pending social security disability legislation (H.R. 3236), I would like to address the need for prompt Senate action on legislation to remedy certain unanticipated and unintended problems that have arisen from application of the changes made in the social security earnings test by the 1977 Social Security Act Amendments. As a result of unforeseen effects of the 1977 amendments, thousands of retired persons have suffered a loss or drastic reduction in social security benefits, and many others who are planning to retire in the near future also face the possibility of substantially lower retirement incomes, if corrective legislative action is not soon forthcoming.

One of the unintentional ramifications of the 1977 Amendments that has greatly concerned me and many of my constituents is the treatment of income earned for services rendered by self-employed persons prior to retirement, but actually received by them after they retire and apply for old age insurance benefits. For example, many self-employed insurance agents receive renewal commissions during their retirement years on policies sold by them before retirement; farmers often are paid, after the time when they began drawing social security, for crops and livestock raised prior to retirement; members of partnerships, including attorneys, accountants, and other professionals, customarily are paid after retirement for services rendered before retirement and for capital contributed to the partnership.

Before the 1977 amendments to the social security earnings test, the receipt of such deferred income after retirement by formerly self-employed persons did not affect their social security benefits, because the recipients were not performing substantial services.

They were, in fact, retired. However, when the law was changed to eliminate the "substantial services" and "monthly earnings" tests, these deferred income payments were counted as "earned income," which causes a reduction in social security benefits if it exceeds the annual earnings limitation amount. It is now clear that Congress never intended this to be the result of the 1977 amendments, and that remedial action is warranted.

In an effort to expedite Senate action on this matter, I introduced S. 2083 on December 5, 1979, and I am pleased that the distinguished ranking member of the Finance Committee, Senator DOLE, joined with me then as an original cosponsor. Several other Senators have introduced related legislation, including Senators DURENBERGER, MATSUNAGA, and DURKIN, and I understand Senator DOLE

also earlier authored a bill to remedy the problem as it relates to farmers. I believe that the distinguished chairman of the Finance Committee, Senator LONG, shares these concerns, inasmuch as he offered an amendment in 1978 with Senator CURTIS to correct some of these inequities. Unfortunately, that legislation was not enacted.

Mr. President, I am prepared to offer an amendment at this time to the pending bill. This amendment would clarify application of the earnings test as it relates to retired, formerly self-employed persons who are receiving deferred payments for preretirement services. However, I have been advised that, although the pending bill relates to social security, this amendment would be considered nongermane. Furthermore, since I introduced S. 2083, the House has passed legislation (H.R. 5295) to take care of this matter and several closely related problems involving application of the new social security earnings test. I believe there is substantial sentiment and good reason to address all of these related problems in one package.

In view of these considerations, Mr. President, I do not intend to offer this amendment at this time. However, I would like to elicit some assurances from the managers of the bill that prompt action will be forthcoming by the Finance Committee to rectify these inequities, which are causing severe hardships for thousands of retired persons. I wonder if the distinguished chairman and ranking member of the Finance Committee would see fit to comment on the prospects for early Senate action on the House-passed bill, H.R. 5295, the bill Senator DOLE and I introduced, S. 2083, or other legislation which might be reported to address these serious problems.

I also hope that the chairman of the Social Security Subcommittee, Senator NELSON, could give us some assurance of prompt attention to this matter by his subcommittee.

Mr. DOLE. Will the Senator yield?

Mr. THURMOND. I am pleased to yield to the distinguished Senator from Kansas.

Mr. DOLE. Mr. President, let me assure the distinguished Senator from South Carolina that I share his concern about this situation. As the Senator stated, the Senator from Kansas did cosponsor legislation with him. The Senator also correctly noted that the distinguished former Senator from Nebraska, Senator Curtis, and the chairman of the committee (Mr. LONG) made certain changes.

I do believe the Finance Committee should act promptly on this issue, and I plan to bring it up at the earliest opportunity this year. We need to look at the total problem of the committee before deciding on how to proceed.

I think the Senator has suggested maybe some kind of a package arrangement. But I hope that we are in a position—at least this Senator is, speaking on behalf of Republicans on the committee—to make some commitments for early action and hearings on this proposal.

Mr. THURMOND. Mr. President, I wish to thank the able and distinguished Senator from Kansas and express my appreciation for his interest.

Mr. President, I yield to the able and acting chairman of the committee (Mr. TALMADGE).

Mr. TALMADGE. Mr. President, the distinguished chairman of the committee has been called out of the Chamber briefly. He will return. I am sure our committee will look favorably upon this matter, if budget limitations permit.

As you know, we are engaged right now in a conference with the House on the windfall profits tax bill, and that will take some time to conclude. We also have other matters that will expire this year.

But I hope that we could get early action of the committee. I am sure I speak for the chairman when I say that the committee will give it urgent consideration.

Mr. THURMOND. Mr. President, I thank the distinguished Senator from Georgia, the acting chairman of the committee, for his consideration of this matter. I yield to the distinguished Senator from Wisconsin.

Mr. NELSON. Mr. President, I wish to say to the distinguished Senator that I can see no problem in the Finance Committee since about 2 years ago the Finance Committee passed legislation addressing itself to precisely the issues which have been raised here as a consequence of the change in the 1977 amendments. We passed the legislation which addressed this problem with regard to farmers, salesmen, teachers, and students in the Senate and it went to the House.

The House has now passed a bill covering all of these problems. I believe they passed it 360 to 0. That bill is now pending in the Finance Committee. So far as I know, there is no controversy about it. At the earliest opportunity I would expect the Finance Committee to act unanimously on this question as it did 2 years ago, and that it would then come to the floor and pass here again. Since we will be passing the House bill, that will resolve the matter.

Mr. THURMOND. Mr. President, I thank the able Senator from Wisconsin, the chairman of the Social Security Subcommittee of the Finance Committee, for his interest in this matter and his commitment, if you will, to try to have hearings as soon as possible. Again, I want to say that the bill the House passed is a package, as the able Senator referred to it, and if we can get action on it soon, it will remedy this situation and will certainly prevent inconvenience to a lot of people.

I thank all Senators.

I thank the able Senator from Ohio for his kindness.

UP AMENDMENT NO. 935

Mr. METZENBAUM. Mr. President, the social security disability amendments which the Senate is considering today contain both progressive and regressive measures.

Although the bill is praiseworthy for its thoughtful efforts to assist disabled workers to return to the work force, we cannot overlook a major provision of the bill which, if enacted, would have deeper and more severe repercussions, than could ever be offset by the total of the bill's progressive components.

Our amendment offered today is cosponsored by Senators GOLDWATER, CRANSTON, MAGNUSON, KENNEDY, WILLIAMS, MCGOVERN, DURKIN, EAGLETON, and WEICKER.

It would modify the cutbacks contained in section 101. I believe they are ill conceived and so harsh that they are punitive. They represent an unwarranted and precedent-shattering cutback of existing social security program benefits.

Section 101 would, if enacted into law, break a solemn agreement between the Congress and the people, a promise which lies at the foundation of the social security contributory insurance system.

It would break the promise we have made to America's 100 million workers, that if and when they need their social security benefits, those benefits will be there for them.

Section 101 is entitled "Limitation of Total Family Benefits in Disability Cases." The title sounds inocuous, but let us look at the effects on a typical American family if it is enacted.

In this family the wage-earner is age 40 with a spouse and two children. If the wage-earner's average weekly wages were $250, and if he is disabled in an accident today, then under the current law, he, his wife and two children would be entitled to a weekly disability benefit of about $184. This constitutes a pretty tight budget for four persons, especially with two growing children.

But, under the bill before us today, that already meager benefit level would be cut down to about $161 a week. This is a loss of $23 a week; we would be breaking our promise to the average American family to the tune of $100 a month.

We would be going back on our word by about 13 percent. In total, this is a $1.5 billion social security benefit cut.

What is most ironic, is that the Congress would be breaking its word to this average family with the worker's own money because the disability insurance program, like the entire social security title II program, is a mandatory contributory program.

I do not believe that we should break our promise to the worker who has put in 20 years of social security taxes. But today's bill presents us with a sweeping average 10- to 15-percent reduction.

The cutbacks mandated in this bill have drawn criticism from respected social security experts and concerned organizations throughout the country. Among those most critical of the philosophy and impact of sections 101 and 102 are six men who are intimately familiar with the social security disability program:

John J. Corson, former Director under President Roosevelt, of the Bureau of Old Age and Survivors Insurance.

Charles Schottland, Social Security Director in the Eisenhower administration.

William Mitchell, Commissioner of Social Security for Presidents Eisenhower and Kennedy.

Robert Ball, the Commissioner of Social Security under Presidents Kennedy, Johnson, and Nixon.

Samuel Crouch, former Director of the Bureau of Disability Insurance under Presidents Eisenhower, Kennedy, Johnson, Nixon, Ford, and Carter; and Wilbur J. Cohen, a distinguished former Secretary of the Department of Health, Education, and Welfare.

And they are joined in their opposition by a spectrum of national organizations, including the National Council of Senior Citizens, the American Association of Retired Persons-National Retired Teachers Association, the Disabled American Veterans, the National Association for Retired Citizens, and the National Association of Catholic Charities, just to name a few.

Well, then, who supports sections 101 and 102? The Finance Committee report argues that the disability program has grown too rapidly, that some disabled beneficiaries receive windfall benefits, and that the general benefit level acts as a disincentive to rehabilitation and to getting the worker back into the work force.

If all these arguments were true, then we would have a compelling reason to move quickly to reassess and adjust the administration of this program.

But the fact is that these arguments are inaccurate and outdated. So I would like to respond briefly to each of these supposed justifications for this unprecedented social security cutback.

Concerns that rapid, unanticipated growth would bankrupt the disability trust fund began in the early 1970's, but are not well founded today. The number of disability applications peaked in 1975, and there has been a strong and steady downturn since then, both in the number of awards of benefits, and in the number of awards per 1,000 insured workers. The Finance Committee's own report notes that there were 94,289 fewer disability awards in 1978 than in 1975, and that the 1978 rate of 5.2 awards per 1,000 insured workers is much lower than the 1975 rate of 7.1 awards per 1,000 insured workers.

The Finance Committee report also notes that—

> In the first 5 months of 1979 this trend continued, with awards in that period about 13 percent lower than for the same five month period in 1978.

So the program has seen a 23-percent decrease in new participation between 1975 and 1978 and is looking at a decrease that could amount to 13 percent fewer awards this year than last year.

Further proof that the disability program is totally under control comes from reading the most recent disability insurance program statistics.

First, there are actually fewer people receiving benefits now than there were a year ago. The program has 13,000 fewer beneficiaries, a reduction of one-half of 1 percent.

Second, the number of disabled workers entering the program over the last 3 months was the lowest of any 3-month total since 1971.

We are actually looking at a program that is growing smaller, not larger, which proves that the administrative remedies have taken hold.

It is very hard to argue that we have a runaway program on our hands.

Next we should look at the assertion that some program beneficiaries receive more in benefits than they had in predisability earnings. This is an assertion that is extremely misleading. The fact of the matter is that the term "previous earnings" means an average from a lifetime of covered earnings.

It is not an accurate representation of total earnings, including fringe benefits, immediately prior to the onset of disability.

But in order to clarify the point and to make it explicitly clear, our amendment, in unequivocally clear language, would make it clear that no person would receive more in security disability benefits than he or she received in average wages during their working years, or than they are entitled to through their primary insurance amount.

This amendment differs from the amendment that I described in my "Dear Colleague letter," in that this amendment answers the one question that I have heard most frequently in discussions of this bill. This amendment sets a firm cap on family benefits, and that cap makes it completely impossible for any worker to get a benefit check that is more than his or her average monthly wages.

This should lay to rest the concerns of those who believe that the disability program has become, not an income replacement program, but a welfare program.

This amendment allows us to maintain the integrity of the trust funds, at the same time that it permits us to return to disabled persons a fair and equitable benefit.

The Finance Committee bill cuts an average of 15 percent off everybody's benefits to get at a few benficiaries whose benefits have been placed in question. This is too high a price to pay, and too precipitate an action to take. It is against the integrity of the social security program.

Mr. President, I believe that these facts argue persuasively against the wholesale benefit cuts which this bill imposes on disabled workers.

At this point, Mr. President, I ask unanimous consent to have printed in the RECORD the specific language of the total disability.

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

> Section 223(d)(2)(A) of the Social Security Act.
>
> The legal definition of disability: "(A person) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work."

Mr. METZENBAUM. Mr. President, it is total disability that throws a family into turmoil. It leaves a once productive and healthy worker to a life at home or in the hospital.

It does not become us in the Senate to say to the newly disabled worker, whose own mandatory contributions have gone to build this trust fund. "Sorry, friend. The Senate has decided to break its word to you and your children. We want $60 or $80 or $100 a month back in the trust fund."

Mr. President, we can afford the good provisions of this bill without paying for them through the savings we would realize by enacting the bad provisions.

We can keep our promise to social security contributors and beneficiaries alike. We can eliminate unfair benefits. We can keep an actuarially sound plan, and we can even improve the administration of this vitally important program, if we join to support our amendment to modify the benefit cuts proposed in this bill.

Mr. President, I yield to the Senator from California. How much time does the Senator need?

Mr. CRANSTON. Mr. President, I need about 3 minutes.

Mr. METZENBAUM. Mr. President, how much time does the Senator from Ohio have remaining?

The PRESIDING OFFICER (Mr. TSONGAS). The Senator has 13½ minutes.

Mr. METZENBAUM. I yield 3 minutes to the Senator from California.

Mr. CRANSTON. I thank the Senator.

Mr. President, I am a cosponsor of the amendment offered by the Senator from Ohio. This amendment would refine section 101 of H.R. 3236. This section proposes to place a limit on family disability benefits for individuals becoming entitled to benefits on or after January 1, 1980, based on disabilities that began after calendar year 1978.

It is extremely important that the full story on this issue this section addresses be aired before we come to a vote on this amendment. The Finance Committee report on H.R. 3236 lists several concerns which it says necessitate the severe changes in the family benefit structure. I wish to speak to each of the concerns listed by the Finance Committee in order to place this debate in proper perspective.

The Finance Committee says the benefit formula must be changed because there are several situations where the payment of disability benefits to an individual from a number of public disability pension systems results in aggregate benefits which exceed the individual's predisability earnings. I do not contend that this problem does not exist to some degree, but rather wish to point out that some important questions are left unanswered by the Finance Committee and that the committee report's statement of this problem is incomplete—although I am sure not deliberately so. I am sure, Mr. President, that the report tries to make the best case possible for the committee's action—not to mislead anyone.

Let us first seek to determine how large a population is receiving this so-called windfall. We are told in the committee report that approximately 6 percent of all DI beneficiaries receive benefits exceeding predisability net earnings.

First, it should be made clear that the 6 percent figure is purely conjecture by the Social Security Administration. According to the SSA, it conducted a random sample of 10,000 DI recipients—note that this was prior to the 1977 Social Security Amendments—and used the benefit levels of these 10,000 beneficiaries to estimate average predisability earnings. Even if we assume that the resultant figure is correct, how does the estimate translate into numbers of families and individuals?

Some useful statistics appear in the October 1979 issue of the Social Security Bulletin published by the SSA. In 1978, there were 457,451 disabled workers receiving DI benefits, 6 percent of that number is approximately 27,000 individuals or families, nationwide, who may be receiving various small amounts over their predisability earnings.

Who are those families? The SSA tells us that about 3 in 4 of the estimated 6 percent were earning salaries below the poverty level—$4,000—before they became disabled and that they are still below the poverty level with their DI benefit.

What are other characteristics of these families? In many cases, their "higher than 100-percent disability payment" is caused by the DI supplement for dependents. That means families in this category tend to be young, with dependents, and, because eligibility for workers age 45 and younger is determined solely on the basis of a strict definition of disability—no consideration is given to social or vocational limitations—these young beneficiaries must be severely disabled in order to be eligible.

Most other so-called abusers of this program are from two-earner families. The Finance Committee paints a shocking picture of these cases on page 70 of their October 1979 Finance Committee publication (Committee Print 96-23), but I ask my colleagues to study this chart carefully. The earnings figures are all hypotheticals—and faulty ones at that. First, the Finance Committee chose to suppose high family earnings for its hypothetical cases.

Second, contrary to widespread public knowledge and data, the committee depicts female spouses as earning amounts equal to their male partners.

Third, the committee report ignores two important facts in its post-disability figures: It does not deduct the typical large expenses which accompany disability, and it takes no account of the fact that the spouse of a disabled worker is often forced to stop working or diminish work hours in order to care for the disabled spouse.

Fourth, after assuming a high amount of predisability earnings, it assumes a high average lifetime earnings for the couple in order to hypothesize a post-disability benefit amount. These assumptions make the situation look far more disparate than it really is.

Without better answers to these questions and concerns, it seems that the Finance Committee is proposing drastic measures, affecting all post-1968 DI claimants after January 1, 1980, in order to cure a very small problem. Is this not rather like attempting to kill an ant with a steamroller?

The Finance Committee report further states that public and private actuarial studies show that high levels of benefits, benefits which replace over 80 percent of a worker's predisability earnings, may constitute an incentive for impaired workers to join the benefit rolls, and a disincentive for disabled beneficiaries to attempt to return to the work force.

This supposition must also be examined carefully. With regard to the public actuarial studies, the SSA's own reports fail to support Finance Committee contentions that "high" benefits have kept recipients from returning to work. In order for high benefits to be a disincentive to return to work, the recipient must be able to return to work. The social security DI program is not an easy one to get on. Former SSA Commissioner Ross presented material during Finance Committee hearings showing that over 70 percent of those who consider themselves disabled and apply for benefits are turned away. An April 1979 social security bulletin stated:

> For most disabled workers whose claims were allocated because they were unable to work recovery is not possible and program incentives to foster recovery are likely to have little effect.

The same Social Security Bulletin says:

> It is not possible to determine . . . the direct effect of receipt of benefits on incentives to remain on the rolls.

On page 17, the same April 1979 Social Security Bulletin points out that age and primary diagnosis explain more of the variance in recovery rates than other factors.

The Finance Commitee report cites on page 40 a private sector actuary who said:

> Claim costs increase dramatically when replacement ratios exceed 70 percent of gross earnings.

Not cited was the testimony of Merton Bernstein, professor of labor law at Washington University Law School and author of a prizewinning book entitled "The Future of Private Pensions." Mr. Bernstein submitted testimony to the Finance Committee arguing that comparing private pension plans to the DI program is like comparing grapes to grapefruit for several reasons.

First, the 70-percent replacement level about which the private sector actuary is speaking applies to a percent of total lifetime earnings. In the public DI program, we are talking about a percent of average lifetime earnings—a very different, smaller amount.

Second, private disability plans are generally found only in higher paying jobs where the replacement rate—70 percent—of lifetime earnings may accurately reflect what a family could actually live on. In fact, according to Professor Bernstein, most private plans are designed to facilitate the removal of active disabled workers, and so are intended to offer very high incentives in order to stop work. When the incentive is far lower, there seems to be no basis for assuming the same cause and effect.

Finally, the Finance Committee, throughout its report, alludes to its concern over the rapid growth of public disability programs. However, my colleagues must note carefully two important points made in the committee report itself: First, experts cannot agree what caused the tremendous growth of the program in years past. Second, and most important, the program stopped growing in 1978. Alice Rivlin, Director of the Congressional Budget Office, wrote to Congressman GIAIMO, chairman of the House Budget Committee, in July of 1979 saying that, while the old age and survivors insurance fund is in trouble, the disability insurance trust fund is strong.

Mr. President, it is of utmost importance that my colleagues consider all these points before voting on this amendment, or on final passage to this bill. We must know and understand fully what the problem is before we decide what medicine to prescribe. Then, in choosing the cure, we must also proceed with caution. One does not amputate an arm to cure a broken finger.

In my view, section 101 of the committee bill would merely result in a transfer of problems to another area, and the hardships this section would cause would overshadow by far the supposed immediate savings it would produce.

For these reasons, I urge the Senate to adopt Senator METZENBAUM's amendment to H.R. 3236.

Mr. METZENBAUM. Mr. President, I am grateful for the support of the distinguished majority whip.

I ask unanimous consent to have added the name of Senator JENNINGS RANDOLPH as one of the cosponsors.

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

Mr. METZENBAUM. I yield to the Senator from Connecticut 5 minutes.

Mr. RIBICOFF. Mr. President, I rise in support of the amendment offered by the distinguished Senator from Ohio. Senator METZENBAUM's amendment modifies section 101. Section 101 of this bill unreasonably reduce family benefit levels.

In the Finance Committee, I opposed the formulas adopted by the committee concerning these two sections. I continue to oppose them.

It is easy for us in the U.S. Senate to talk in terms of "caps," "formulas" and "budgetary savings," but that is not the real issue before us. The issue is people—disabled, crippled, and paralyzed people. People who can no longer earn a living; people whose whole day may be spent merely trying to sit up in bed; people who cannot bathe themselves; and people who need attendants to feed them. But most important, Mr. President, these are people who at one time were working in the mainstream of the U.S. economy; paying their income taxes and their social security taxes, and now, because of their disabilities, they are unable to work.

If you talk with the people receiving disability insurance, practically all of them would give up all of their benefits just to be healthy and working again.

WORK DISINCENTIVE

Proponents of the committee's reduced "cap" on family benefits argue that these severe cuts in family benefits are necessary to strengthen work incentives and improve recovery rates. Listen to them and you will hear them assert that

"high" benefits deter a recipient from returning to work. This contention is unfounded in theory and fact since it assumes that these disabled people are even capable of returning to work. For the vast majority, this is simply not possible. A look at the criteria used for determining if a person is disabled in the first place makes this obvious.

Under current law, an applicant for disability insurance must be unable because of his or her impairment, to do any work that exists in the national economy regardless of whether or not:

Such work exists in the immediate area in which he or she lives;

There is a specific job vacancy; and

The person would be hired if he or she applied for the job.

Second, given the fact that most disabilities are degenerative in nature, once a person is determined to be disabled, a return to work is highly unlikely. To cut family benefits in the name of work incentives is to ignore reality.

Moreover, Mr. President, the Social Security Administration's own studies fail to support the arguments that "high" benefits have kept recipients from returning to work. The April 1979 study states:

> If a simple disincentive effect in high benefit levels leads to greater benefit dependency, it might be expected that those with the highest benefits would have the lowest recovery experience. The data in this study, however, shows higher recovery rates for those with the highest benefits.

In order for high benefits to be a disincentive to return to work, the recipient must be able to return to work. Most on the program simply cannot work. Moreover, data in the Social Security Administration's own study indicates that those with high benefits return to work in greater numbers.

REPLACEMENT RATES

During the committee's deliberation, there was much discussion about the so-called high replacement rates. That is, social security family benefits replace too much of the beneficiary's predisability earnings. This is simply not true.

The average social security disability insurance benefit replaces only 58 percent of the beneficiary's average lifetime earnings. Furthermore, unlike most private sector insurance plans which attempt to replace income earned immediately prior to disability, social security benefits are based on average lifetime earnings. Therefore, as compared with the private sector, social security replacement rates are lower because a beneficiary's early years of low earnings have to be averaged against his later years of higher earnings which immediately preceded his disability.

Additionally, in regard to replacement rates, the committee focused attention upon the 6 percent of the disabled social security population who receive in excess of their average lifetime earnings. This 6 percent has to be put into perspective. These are people with the lowest predisability earnings. The overwhelming majority of this 6 percent had average annual earnings below $4,000; $4,000 is below the poverty level. Nevertheless, the Metzenbaum amendment effectively reduces the benefits of this 6 percent by providing that no family benefit exceed 100 percent of the worker's average monthly earnings.

Because of their low income, these disabled poor are eligible for benefits under other Federal programs such as SSI and food stamps. But the disabled poor recipient does not get a "windfall." SSI benefits are disregarded dollar for dollar against social security and veterans benefits. And as Senator WALLOP has brought to our attention, disability benefits are offset by workers compensation benefits.

The replacement rates and the benefit levels will be severely reduced by the Senate bill. Under current law, a person with dependents who had average lifetime monthly earnings of $887 receives $724 in family benefits. This is an 82-percent replacement rate.

The Senate bill reduces that $724 benefit level to $635. This constitutes a 72-percent replacement rate and a reduction from current law of 10 percent. This is simply too severe and an intolerable reduction in benefits.

TRUST FUND

In committee the argument was made that greater savings must be achieved and that cuts in family benefits are necessary in the name of fiscal austerity. To this end we are asked to drastically reduce the benefits for disabled, crippled and paralyzed people.

The bitter irony is that the disability insurance trust fund is in no danger of bankruptcy at all.

Furthermore, the annual growth rate of the number of beneficiaries on the rolls is the lowest since the beginning of the program. In fact for the first time ever, the disability insurance program is manifesting a negative annual growth rate and an actual reduction in the number of beneficiaries on the rolls.

Mr. President, I ask unanimous consent to have printed in the RECORD a table to this effect.

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

Disabled worker beneficiaries in current payment status

	Number of workers (thousands)	Percentage change year-to-year
Beginning of:		
1960	344	40.7
1961	455	36.2
1962	618	35.7
1963	741	19.9
1964	827	11.6
1965	894	8.1
1966	988	10.5
1967	1,097	11.0
1968	1,193	8.7
1969	1,295	8.6
1970	1,394	7.6
1971	1,493	7.1
1972	1,648	10.4
1973	1,833	11.2
1974	2,017	10.0
1975	2,237	10.9
1976	2,489	11.3
1977	2,670	7.3
1978	2,834	6.1
1979	2,880	1.6
1980	2,870	−0.3

Mr. RIBICOFF. Mr. President, in fact, the most recent data available from the Social Security Administration is extremely optimistic and pertinent. The total number of disabled workers receiving benefits for the 3-month period ending with January 1980 is the lowest since the 3-month period ending in January 1971.

Mr. President, I ask unanimous consent to have printed in the RECORD a memorandum from the Social Security Administration.

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

SOCIAL SECURITY ADMINISTRATION,
January 25, 1980.

To Senator Ribicoff's Office.
From Bruce Schobel, Actuary.
Subject: Recent Social Security Experience—Workers Receiving Disability Insurance Benefits.

Social Security program data for the month of January, 1980, became available this week. The number of disabled workers receiving benefits from the DI program at the end of January is 2,866,387. This figure represents a decline of 0.4 percent from January 1979, when there were 2,879,020 workers receiving benefits.

The number of disabled workers awarded benefits in January, 1980 is 28,572. Monthly award data is subject to considerable variation due to accounting periods and other factors. Therefore, a single month's awards should not be considered significant. However, the total of 92,014 for the three-month period ending with January, 1980 is the lowest since the three-month period ending with January, 1971, when the total was 90,557.

BRUCE SCHOBEL.

Mr. RIBICOFF. Mr. President, the Monday, December 10, 1979, issue of the Wall Street Journal reported that the Social Security Advisory Council indicated that the current social security system is financially sound, and that the often voiced fears about the system's failure are unfounded.

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

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

SOCIAL SECURITY SYSTEM SHOULD BE FUNDED IN PART BY GENERAL REVENUES, PANEL SAYS

WASHINGTON.—A government advisory panel urged broad reforms in the Social Security system to assure its solvency for the next 75 years.

The Advisory Council on Social Security recommended that part of the system be funded by general revenue derived from income taxes, rather than by payroll taxes.

The council said its proposed financing change would reduce the present 6.13 percent payroll tax rate for workers and employers to 5.6 percent next year. And a payroll tax boost could be put off until the year 2005, Council Chairman Henry Aaron told a news conference.

"The structure of financing Social Security would be improved and made more reliable" if the system relied less on payroll taxes, said Mr. Aaron, a Brookings Institution senior fellow. "The overall structure of the tax system (also) would be improved."

The 13-member council, made up of academic experts and representatives from labor, government and business, also recommended to Congress:

Reducing slightly the maximum portion of workers' wages subject to Social Security taxes;

Gradually phasing into the Social Security system all employes of government and nonprofit organizations;

Improving benefits for divorced women, widows and workers at the low and high ends of the wage spectrum;

Eventually increasing to 68 from 65 the age at which a person is eligible for maximum Social Security retirement benefits;

Shoring up Social Security trust funds during periods of high unemployment by tapping general revenues, and,

Subjecting one-half of all Social Security benefits to income taxes.

In a 400-page report to Congress, the advisory council suggested that the switch from payroll to income-tax financing begin next year in the Medicare hospital-insurance program. Part of the current Medicare payroll tax would be used to finance Social Security's largest trust fund, which pays benefits to the elderly and the survivors of a deceased breadwinner.

The council found that the current Social Security system was financially sound, stating that present low levels of the three trust funds are temporary and have "little bearing on the long-run financial strength" of the system. "Fears so often voiced about the security of Social Security are unfounded," Mr. Aaron told the news conference.

The group stopped short of recommending extension of benefits in certain areas, such as for short-term disability. It also refused to endorse the "full-scale shared earnings" idea, under which wives who don't work could receive benefits based on one-half of a couple's combined earnings.

Appointed every four years to assess the Social Security system, the council has seen many of its past recommendations approved by Congress. But Congress has so far ignored previous councils' recommendations to finance part of Social Security by general revenues.

There is considerable political pressure on Congress to roll back current scheduled increases that will boost the payroll tax rate to 6.65 percent by 1981. Some expert groups, such as the Congressional Budget Office, have said such a rollback might be unsound because the elderly trust fund may face cashflow problems as soon as late 1983.

Mr. RIBICOFF. Mr. President, the disability insurance trust fund crisis has passed. Today, however, we are faced with the prospect of a more devastating crisis: further crippling an already disabled population.

CONCLUSION

I am not one who believes that social security benefits can never be cut. That is not the question here. The question before this body is whether section 101 of the Finance Committee bill constitute a fair and reasonable reduction. I do not think so and I urge my colleagues to recognize this and vote for the Metzenbaum amendment.

Mr. President, I praise to the highest extent the distinguished Senator from Ohio for taking the lead in this most important and fair amendment.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Will the Senator from Louisiana yield 5 minutes?

Mr. LONG. Yes.

Mr. DOLE. Mr. President, I certainly appreciate the efforts of the Senator from Ohio.

Again, it is one of these situations where we have mixed feelings. I took the same position in the committee that the Senator from Ohio is taking here. I offered pretty much the same proposal, but I did not succeed. We got into the question of, how can we compromise, how can we not do violence to the program and still have some concern about expenditures?

I say at the outset that my sympathies are certainly with Senator METZENBAUM, but I believe the solution we came up with in the Finance Committee is a fair compromise and I continue to support it.

We debated this issue for some time and we compromised at the figures in the bill.

I guess there are Senators on the Finance Committee, and others on the floor, who would like to loosen the cap, and there are probably just as many who would like to tighten it.

It is my understanding the distinguished Senator from Oklahoma, the ranking Republican member of the Budget Committee, will offer an amendment to, in effect, tighten the program.

So I think the case is made for the committee position. We have on the one hand the Senator from Ohio who seeks to loosen the cap—and I certainly do not question his motives, I can understand the fine support he has. Then, on the other hand, we have someone else who would move in the other direction, who has just as much concern for the disabled and the program, but also understanding the need for some restraint.

When the Finance Committee discussed the family benefit cap, we had the House formula in front of us, and we had other formulas in front of us. Some of the formulas would have achieved more savings than we eventually approved, and others would have achieved less savings. There was concern from individuals on both sides of the issue that we were not proceeding correctly. On the one hand, some members felt that we were not going far enough to limit benefits. On the other hand, some felt that we were going too far in that direction.

Those of us who were concerned that the proposed benefit cuts would unduly harm the disabled—particularly those who will never be able to work again and yet who are still young and have families to support—wanted a much less stringent formula for the family benefit cap than the one passed by the House of Representatives. We suggested that family benefits be limited to 90 percent of an individual's earnings averaged over the 5-year period of highest earnings.

Those who were most concerned about effecting savings to the trust fund wanted a formula more stringent than the House formula, such as 80 percent of average indexed monthly earnings (AIME) or 130 percent of the individual's primary insurance amount (PIA). Because a case could be made for both points of view, and because there was strong sentiment on both sides, we reached a compromise somewhere in the middle as indicated previously.

To move the issue, I offered a formula of 90 percent of AIME or 175 percent of PIA. The chairman suggested that we meet halfway between that formula and the formula in the House bill at 85 percent of AIME or 160 percent of PIA. The committee accepted the chairman's suggestion in the spirit of compromise and with the hope that we could report a balanced bill which included work incentives and administrative improvements but met the budget goals set by the chairman to report no bill from the Finance Committee with a net cost.

I suggest that if this amendment is adopted, and particularly since we have adopted that of the Senator from Indiana (Mr. BAYH), there will not be any net savings.

Let me point out to both sides that we have included in the bill a mandate for the Secretary of Health, Education, and Welfare to monitor very carefully the impact of the family benefit limit and to report to the Congress on its effects. If we find that we should change the cap—either loosen or tighten it—we will have that opportunity after we have more information on the effect of the limit.

The PRESIDING OFFICER. The Chair advises the Senator from Kansas the time has expired.

Mr. DOLE. One additional minute?

Mr. LONG. Yes.

Mr. DOLE. So, Mr. President, I suggest a good-faith effort was made. A lot of time was devoted to this particular issue.

Those of us on the committee who felt, as the Senator from Ohio felt, did not have the votes. Those of us who felt as the Senator from Oklahoma may feel did not have the votes. It was not a clear cut decision. We agreed on a compromise.

The Senator from Kansas accepted that. It seems to me, if we want any bill at all passed today or tomorrow, whenever we finish this bill, we ought to stick to that compromise.

I thank the chairman for letting me proceed.

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

The PRESIDING OFFICER. They have not.

Mr. LONG. I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. LONG. Mr. President, the disability program is costing far more than anyone ever anticipated. It was estimated in the beginning that this program was going to cost us about one-half of 1 percent of payroll over the long run.

By those standards, Mr. President, the program at this time would be costing us about $4 billion, if we had been able to hold the disability program to what we intended when we got into it.

The distinguished Senator from Georgia at that time, the Honorable Walter George, made the speech on behalf of the minority on the committee who were supporting the amendment and he made a very persuasive statement that the cost could be contained. I have no doubt he was completely sincere in that.

I am sure that great statesman would be very disappointed if he were with us today to look and see how this cost is running four times the estimate. The long-range cost is running almost 2 percent of payroll, and in 1979 it cost about $14.3 billion.

The reason it has run so high is because when the benefits are so generous for people who are declared to be disabled, it provides an incentive for people to contend they are disabled, to convince themselves they are disabled, and to convince other people they are disabled.

When they undertake to do that, it is very difficult to prove that they are not, in many situations, and many of these cases have a lot of compassion to them.

When people have a disability, they have a limitation. But they are not totally and permanently disabled as this bill and this law contemplates. As a matter of responsibility, we on the Committee on Finance, as did our colleagues in the House of Representatives, sought to contain the cost of this program.

Mr. President, the House sent us a bill that would have saved, over a 5-year period, $2.664 billion. They recognized the problems we are speaking to here. We on the Finance Committee tried to do our best to discharge our responsibilities to the taxpayers, and we proposed a bill that would have saved, overall, about $914 million over that 5-year period. In effect, we would have tightened up on the loose ends and loosened up on the tight ends, so that the program would make better sense, as we see it, to take care of meritorious programs more generously and at the same time cut back on some things where we felt the program had gotten out of hand.

The Bayh amendment, as agreed to by the Senate, would reduce that $914 million saving over the 5-year period down to $74 million. If this amendment is agreed to, the noble efforts of the House committee and the House of Representatives to save us $2.664 billion—I confess, not as well achieved in the Senate Finance Committee on the economy part, but still a statesmanlike effort to save us $914 million—will have descended to where the cost of the program will be increased by $731 million over the 5-year period.

So, what started out to be a courageous effort to trim the cost of a program that is out of hand would be reversed, and the bill would bring about a big increase in cost rather than a reduction. I challenge whether we would be justified in doing it.

Let us take one simple case. The people who came here to speak for insurance companies said it is foolhardy to pay for disability more than 60 percent of what the person had been making prior to his disability. They said it is not a good insurable risk if you pay more than 60 percent, because of the great temptation to claim the benefits when he does not have to work. Beneficiaries do not have to pay taxes on these benefits. Furthermore, they have no work expense. They do not have to take transportation to and from work. They do not have to launder their clothes as often. They can stay home.

When we take that into account, Mr. President, and assure someone who has succeeded in having himself put on those rolls as disabled that he is going to get 100 percent of what he was making before, in terms of dollars that means he is really getting something like 120 percent or 130 percent. For sitting around the house, he is getting 130 percent of what he was earning, because he has no work expenses and no taxes to pay.

Mr. President, it is rather foolhardy and it conflicts with all experiences and all insurance principles to make it so generous that people make more money by being disabled or being declared disabled than when they are working on a job.

The committee discussed this. We talked about being more generous and less generous. In looking at the House bill, which would have fixed the rate at about 80 percent, it was proposed to go as high as 90 percent. After considering the various considerations involved, we decided that we would compromise on 85 percent. But that 85 percent of predisability earnings, when we take taxes and expenses into consideration, could result in more net income than the person had when he was working, and that does not make too much sense.

The House had the overall basic benefit set at 150 percent. We set it at 160 percent.

Mr. President, this amendment would cost an additional $805 million over the next 5 years. It would turn a bill that started out to be one to bring the runaway cost of a program under control into one that would accelerate the runaway cost of the program.

Just as a matter of responsibility and duty, to try to protect the taxpayer and to see that his money is spent wisely, that we are not taxing him needlessly, I cannot support the amendment, and I hope very much that the Senate will not agree to it.

I know that the administration was opposed to the Bayh amendment and that the administration will be concerned about this. I think everyone will agree that there are a lot of good provisions in this measure. I fear and I believe that to adopt the amendment would mean that the Senate and the committee would have done its work for naught, that the whole thing would wind up going down the drain.

If it did get as far as the President's desk, I fear the President would feel compelled to veto the bill. I would hate to see that. We have worked hard on the bill, and it contains many provisions that should be enacted. If we upset the apple cart and engage in fiscal irresponsibility, it seems to me that the bill will not become law; and all our good intentions and our desire to benefit workers and their dependents will have failed.

Mr. President, I will read one paragraph of a letter from the Commissioner of Social Security, William J. Driver:

The bill represents a balanced policy to improve protection and opportunities for those entitled to disability benefits while strengthening the insurance principles of the disability insurance program. I hope you will keep these points in mind as you consider H.R. 3236, and oppose any significant amendments designed to breach the balance the Finance Committee has reached in their legislation.

Mr. President, I ask unanimous consent to have the letter printed in the RECORD.

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

THE COMMISSIONER
OF SOCIAL SECURITY,
Washington, D.C., January 29, 1980.

DEAR SENATOR: The Senate will shortly consider legislation that would make significant improvements in the social security disability program. The bill, H.R. 3236, was approved without objection by the Finance Committee on November 8.

The bill contains provisions which expand benefits in the disability insurance and the supplemental security income programs and alleviate some of the risks faced by the disabled who want to try to return to work. The legislation would extend Medicare protection for an additional 3 years after a disabled person returns to work. It would permit the disabled to deduct impairment-related work expenses in determining whether they meet the disability earnings test. And, it would permit automatic reinstatement of benefits to those disabled beneficiaries who are unsuccessful in their work attempt. These work incentive features of the bill are consistent with what the handicapped groups have advocated for the program.

This legislation also makes administrative improvements that will result in a fairer, more efficient claims process.

You are no doubt aware that there is opposition to H.R. 3236 because of two provisions that would adjust benefits for some future beneficiaries. One would adjust benefits to workers with dependents so that disability payments would not exceed the earnings on which they are based. A second provision would equalize the way benefits are computed for younger workers so that they are not treated more favorably than older disabled workers.

While the benefit reductions in the bill before the Senate would be less than those in the House passed bill, H.R. 3236 would still save some $600 million by 1984. Whichever version of these provisions is finally enacted, both provisions would improve the equity of the social security disability insurance program and are essential features of the bill.

In the legislation before the Senate:

No current beneficiary would be adversely affected.

The worker's own benefit would not be subject to a cap.

The elderly and the retired would not be affected.

Eligibility requirements for benefits would not be changed.

This legislation is the result of careful study by the Administration and the Congress of the disability program. Examination of the program leads to the conclusion that the program treats some workers more generously than others by providing benefits that exceed pre-disability earnings. These benefits are not consonant with sound social insurance principles. Other features of the present law are clearly disincentives for those disabled beneficiaries who want to return to work.

The bill represents a balanced policy to improve protection and opportunities for those entitled to disability benefits while strengthening the insurance principles of the disability insurance program. I hope you will keep these points in mind as you consider H.R. 3236, and oppose any significant amendments designed to breach the bal-

ance the Finance Committee has reached in their legislation.

Sincerely,

WILLIAM J. DRIVER.

Mr. LONG. Mr. President, the letter is not directed at this particular amendment; but it seems to me that this amendment does clearly breach the balance that Mr. Driver referred to in his letter.

Mr. MOYNIHAN. Mr. President, will the Senator from Ohio yield me 5 minutes?

Mr. METZENBAUM. I yield 5 minutes to the Senator from New York.

Mr. MOYNIHAN. Mr. President, I support my esteemed colleague, the distinguished Senator from the State of Ohio. I concur with his eloquent argument that it would be wrong to place a cap on disability benefits. I voted against such a cap in the Committee on Finance, and I will vote against it today. I would just like to add a few additional comments on the difficult and unfortunate situation we face.

The Social Security Act, the mainsail of our domestic and social policy, has been virtually untrammeled since its inception in 1935. We have, over four decades, strengthened, not weakened, its provisions. What we see before us today is a direct and dangerous assault on the integrity and realiability of our social security entitlements. It is an attack not on disability insurance alone, but on the system as a whole. For by opening up one program to reductions, we set a precedent for future cutbacks in all our entitlement programs.

Just a few short months ago, I stood here arguing the importance of supporting these entitlements. The context then was the Labor-HEW appropriations bill. As we considered slashing that appropriation in the name of eliminating waste, fraud, and abuse from our AFDC and medicaid programs, I warned that next we would be considering cutting the entitlements to pensions for the elderly, the disabled, and the retired. I did not think that that day would arrive so soon, however, and the development does not please me.

Disability benefits, like old-age benefits, are financed through the payroll tax. It is a contributing system from the standpoint of a future beneficiary, in one's long-term financial security. Until now, no one would have thought to slash these benefits, and imperil that security. But now we stand here and are told to put an artificial cap on benefits for the disabled, for people who have contributed throughout their working lives.

It is cruel and it is unfair. We are considering this benefits cap, and this reduction in "drop out years" in the name of saving money. But think about how we are going to save money. We will be cutting costs by hurting those most dependent on Federal help—the disabled, those who cannot work. It is these dependent people that we choose to burden with our impulsive parsimony.

The proponents of the bill would not have us view matters that way. They assert that the costs of disability insurance have skyrocketed, that the rolls have swollen with people undeserving of benefits. The only way to reduce the expense, they suspect, is to cap benefits and try to push people off the social security rolls, presumably by forcing them to return to work.

But will this be the effect? People will not return to work if they are unable to. Instead, they will be forced to accept SSI, welfare, or home relief. We will simply be shifting some of the burden of helping the disabled onto our programs of public assistance. Cutting benefits will not produce a reduction in costs; it will just reallocate some of the expenses from one program to another—and from one tax to another.

Is this the intent of the legislation? Is this how we want to reduce Federal spending? Our priorities seem rather confused. Are we not, by cutting these benefits, penalizing those who will in the future become disabled because of past growth of the program? It seems to me that this is the case, and it seems to me unfair. Not least because we seem to be fighting the last war. We know that the tremendous growth of the disability program has slowed over the past few years. From 1960 to 1978, for example, the number of persons receiving disability benefits grew from just under 700,000 to almost 4.9 million. However, this rate of growth has slowed, and the total number of persons receiving payments seems to have leveled off, at slightly less than 4.9 million, since the last quarter of 1977. In 1979, the rate has declined still more. Secondly, although there has been a slight decrease in the absolute numbers of people receiving disability insurance benefits there may still be some on the rolls who should not be. In any complex national program paying individual benefits to millions of people there is certain to be some confusion, inefficiency, and waste. We have learned much about these phenomena in hearings that I recently held. But we also learned that the problems of needless expenditure result much more from agency waste than from client fraud. And if this is so, then we should be attacking the waste, from the administrative end, rather than slashing the entitlements to the poor and the disabled. We cannot penalize the needy for the sins of the bureaucracy.

There is yet another—and far more fundamental—matter at issue here. The legislation before us is not the result of a disposition in the Finance Committee to take money away from the disabled. The impulse originated elsewhere. Five years ago, Congress passed the Congressional Budget and Impoundment Control Act of 1974. This was thought to be a progressive reform of our budgetary processes and a necessary defense of cherished programs against the executive branch's increasing inclination not to spend the funds appropriated for them. As such, it was supported by many liberal Congressmen and interest groups at the time. They favored a means of insuring congressional control over budgetary decisions.

But as is painfully obvious today, the Budget Act has had some results of quite a different character. Instead of protecting valuable programs, it has become a means of attacking them, and of doing so in a particularly insidious way. Those who prepare the annual budget resolutions—and as a member of the Committee on the Budget I know this process well—never have to take responsibility for the concrete results of their actions. The budget resolution simply directs the other committees, in this instance the Committee on Finance, to cut a certain amount of money somewhere. It is suggested that a portion of this come out of the "income security function." And then it is left to the Finance Committee to decide whose benefits to cut. We are free to slash the benefits of dependent women with children, of indigent hospital patients, of retired persons who worked 40 years for their social security "pensions," of able-bodied persons who were thrown out of work by the closing of a factory, or of disabled persons who cannot work. It matters not that these are entitlement programs. It matters not that persons have come to rely on them. It matters not that reducing these entitlements is harsh. It matters not that in an important sense it is irresponsible.

Those who crafted the budget resolutions that precipitated the "savings" in the bill before us today are free to say "We did not mean for you to cut disability benefits!" They could say that no matter what particular set of entitlements were under the legislation knife.

When the Budget Act was new, I was a professor of political science with a graduate student who was thinking of dissertation topics. I suggested that he might undertake to forecast the events that would result from the Budget Act. And even as a fledgling observer of national affairs, he accurately predicted the sequence of events that we are now living through. He anticipated, 5 years ago, that the new budget procedures would yield "super committees" which, in the name of fiscal responsibility, could command the most irresponsible of social policies without ever having to be held responsible for them.

It is a particular irony that those who today are most upset about the reductions in disability benefits contained in H.R. 3236 include many of the same liberal-minded individuals and groups who were most enthusiastic about the Budget Act in 1974.

I point no fingers and mean to imply no blame. We are living with the consequences of the Budget Act. Some of them are laudable and necessary. Others are—there is no other word—cruel.

Those of us who believe that an entitlement program authorized by the Social Security Act represents a solemn commitment by the Federal Government to the citizens of the United States are now forced into the role of "budget busters." It is not, if I may say, a pleasant position to be in. Nor are we apt to win many battles. But we must do our best, and we will.

Congress does not have to cut entitlement programs that provide the most—and often the most meager—sustenance for some of the least fortunate persons in the land. We must not allow ourselves to be coerced by the

Budget Act into accepting such cuts. I do not accept the cuts embodied in sections 101 and 102 of the bill before us, and I hope that the Senate will demonstrate that it does not by embracing the amendment of the Senator from Ohio.

Mr. President, I point out a matter which is of some concern to me, and I think it may be of concern to others.

The Committee on Finance, of which I am a member, is responding here today not basically to any concerns which arose within our committee with respect to this program but, rather, to a directive we received from the Budget Committee to reduce expenditures for income maintenance.

I do not in the least argue that the Budget Committee has faced difficult decisions this past year, when this decision and directive were made. I am a member of that committee. Even so, I believe that the way in which a working majority of the Budget Committee, through no fault whatever of the chairman, is opposed to so many social enactments of the past generation is having an ominous effect.

We are simply told, "Cut those programs." We are not told which programs, we are not told how to cut them. Those who give that directive are not thereafter responsible for any specific result and can disclaim the intent that it should have been this particular program. Yet, they have nonetheless required that it be one of a very narrow range of programs, all of them in the field of social welfare.

It has become a baleful fact that those who have other uses for Federal moneys—and there always are those, and a majority of the Budget Committee certainly has no special use for this function of the budget, as it is called—it has come to the point where it has simply directed that the "income security function" be cut, and the Federal Government begins to take away what have been understood as entitlements at law when they were enacted.

It was not but about 4 months ago that I stood on this floor with respect to a not dissimilar matter in the social security area and said if we can take away from women and children, which was the question then in the AFDC program, what was considered their entitlements, then the day will not be far when we can take away entitlements from the retired, the sick, and the disabled. Indeed that day has not been far coming.

We have a responsibility to the social security program as a right provided by law; a right not to be diminished in the name of a budgetary action.

If Congress should wish to diminish it by statute, directly addressing the results of the action of such cuts, then this would be another matter. But this is not such a case and it is a very unhappy precedent.

I congratulate the Senator from Ohio for carrying on this battle. It is not over, but we are today doing something that was never thought would be done by this Congress, and we are doing it in response to an act which was one of the favored enactments of the progressives in this Chamber when it took place 5 years ago. It has not taken long for it to become an instrument of certainly anything but progressive social actions.

I am sorry this is happening. I hope this amendment will be approved.

I thank the Chair.

Mr. METZENBAUM. Mr. President, I thank the support of the distinguished Senator from New York.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I simply wish to clarify two points very briefly.

One, there is no effort in this bill to break the cap, as has been suggested by the distinguished minority Member of the minority handling this measure.

As a matter of fact, what is happening is that the cap is being broken by the Finance Committee bill because it is pushing the cap down on a negative basis.

The second thing I wish to point out is that the very distinguished manager of the bill, my good friend from Louisiana, mentioned that there was a threat of a veto. The best information that I have is that there is no such threat of a veto if this amendment is adopted. And if the Senator from Louisiana knows of information to that effect he knows more than I do because we have been advised, at least by the White House, that this is not the case, but if I am misinformed then I stand to be corrected.

Am I correct on that? Is there some specific threat of a veto if the amendment is adopted?

Mr. LONG. What I said is that if this amendment is agreed to in addition to what we already have, and if we lay on the President's desk a bill that is going to lose $731 billion it certainly violates the objectives Mr. Driver set forth in his letter, and I think because of the cost of the bill and the burden on the budget the President would necessarily have to seriously consider vetoing the matter.

Mr. METZENBAUM. I appreciate the clarification. That is the Senator's thought.

Mr. LONG. But I would not want to say to the Senator that I have been told that the bill will be vetoed. I have not been told that. But I think what I said speaks for itself and I will leave it.

Mr. METZENBAUM. I appreciate the clarification and thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, the Senator from Oklahoma wishes to offer an amendment to the amendment, as I understand it. That being the case, as far as the Senator from Louisiana is concerned, in order that that might be achieved, I should think it would be appropriate that I yield back the remainder of my time and perhaps the Senator might yield back the remainder of his time. Then I will be glad to see that he has at least half the time to speak on the amendment to be offered by the Senator from Oklahoma because I am very sure he will be opposed to it.

Mr. METZENBAUM. With that understanding, I certainly have no objection and yield back the remainder of my time.

Mr. LONG. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

The Senator from Oklahoma.

UP AMENDMENT NO. 936

(Purpose: Substitute amendment to Metzenbaum UP Amendment No. 935, to amend the maximum level of benefits)

Mr. BELLMON. Mr. President, I send to the desk a substitute amendment for the Metzenbaum amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oklahoma (Mr. BELLMON) proposes an unprinted amendment numbered 936 to the unprinted amendment of the Senator from Ohio (Mr. METZENBAUM) numbered 935.

In lieu of the language proposed to be inserted, insert the following UP amendment 935:

any reduction under this subsection which would otherwise be applicable, shall be, reduced or further reduced, (before the application of section 224) to the smaller of—

"(A) 80 percent of such individual's average indexed monthly earnings (or 100 percent of his primary insurance amount, if larger), or

"(B) 130 percent of such individual's primary insurance amount.".

Mr. BELLMON. Mr. President, I yield myself such time as I may require.

This substitute amendment has the same effect as the amendment that had originally been filed and printed as amendment No. 741.

What the amendment does is to provide for a lower family benefit cap than is proposed in the reported bill. It would limit monthly disability insurance benefits for future beneficiaries—I underline the word "future"—for future beneficiaries and their families to the lesser of 80 percent of the worker's averaged index monthly earnings or 130 percent of his or her primary insurance amount.

This amendment will save about $2 billion in Federal funds over the next 5 years. This may sound like a huge cut in the program, but it amounts actually to less than 6 percent of the $35 billion cumulative growth which will take place in the social security disability program costs over the next 5 years under the Finance Committee amendment.

The combination of this amendment and the changes recommended by the Finance Committee will reduce the growth—now I am not talking about reducing the program; we are talking about reducing the growth in costs of the program by about 10 percent over the next 5 years. In other words, even with my amendment there will still be a very considerable amount of growth in this program.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a table showing the effect of this amendment compared with current law and the Finance Committee's amendment.

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

TABLE 1.—ESTIMATED OUTLAYS FOR SOCIAL SECURITY DISABILITY INSURANCE BENEFITS

[Based on projections by Congressional Budget Office; in billions of dollars]

Fiscal year	Current law	H.R. 3236 as reported			Amendment No. 741 (Bellmon)		
		Amount saved	Net outlays	Growth over 1979	Additional amount saved	Net outlays	Growth over 1979
1979	14.0						
1980	16.1	0.043	16.0	2.0	0.066	16.0	2.0
1981	18.5	.135	18.4	4.3	.231	18.1	4.1
1982	21.9	.275	21.6	7.6	.419	21.2	7.2
1983	24.0	.467	23.5	9.5	.586	22.9	8.9
1984	26.7	.693	25.8	11.8	.737	25.1	11.1
1980–84 total	107.2	[1] 1.590	105.3	35.2	2.039	103.3	33.3

[1] Increases in administrative costs and changes in other programs cause the overall net 5-yr. savings in the Finance Committee's version of H.R. 3236 to be only $914,000,000.

Note: Totals may not add due to rounding.

Mr. LONG. Mr. President, will the Senator yield to me one moment?

Mr. BELLMON. I yield.

Mr. LONG. Mr. President, I ask unanimous consent that the time in opposition to the Bellmon amendment be assigned to the Senator from Ohio (Mr. METZENBAUM).

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

Mr. BELLMON. Mr. President, I also wish to stress that this amendment does not cut benefits to any person already drawing these benefits. It applies prospectively to persons who will be coming onto the rolls in the future.

This amendment was offered in the House Ways and Means Committee by Representative GEPHARDT and was rejected on the House side by only two votes.

Mr. President, increases in the disability rolls must be a concern to all of us.

Mr. President, I ask unanimous consent that tables showing the growth of disability enrollments in the social security and supplemental security programs be printed in the RECORD at this point.

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

TABLE 2.—GROWTH IN THE DISABILITY INSURANCE PROGRAM

Year	Number of insured workers (in millions) [1]	Applications		Disabled-worker benefits in current payment status		Disability termination rates (rate per 1,000 average beneficiaries on the roll)
		Number received (in thousands)	Rate per 1,000 insured workers	Number (in thousands)	Rate per 1,000 insured workers	
1968	70.1	719.8	10	1,295.3	18	109
1969	72.4	725.2	10	1,394.3	19	108
1970	74.5	869.8	12	1,492.7	20	100
1971	76.1	924.0	12	1,647.7	22	96
1972	77.8	947.5	12	1,832.9	24	84
1973	80.4	1,067.5	13	2,016.6	25	84
1974	83.3	1,331.2	16	2,236.9	27	81
1975	85.3	1,284.3	15	2,488.8	29	75
1976	[2] 87.0	1,233.3	14	2,670.2	31	68
1977	[2] 88.8	1,235.3	14	2,834.4	32	72
1978	[3] 90.6	1,184.7	13	2,879.8	32	

[1] As of Jan. 1 of following year.
[2] Based on preliminary data.
[3] Projection by the Office of the Actuary, Social Security Administration.

TABLE 3.—GROWTH IN THE SSI—DISABILITY PROGRAM

I. FORMER STATE-RUN PROGRAMS FOR AGED, BLIND, AND DISABLED

Year	Number of beneficiaries			Blind and disabled as percent of total
	Total	Old age assistance	Aid to blind and disabled	
1968	2,809,700	2,027,000	782,700	27.8
1969	2,957,600	2,074,000	883,600	29.9
1970	3,098,000	2,082,000	1,016,000	32.8
1971	3,172,300	2,024,000	1,148,300	36.2
1972	3,181,800	1,933,000	1,248,800	39.2
1973	3,172,900	1,820,000	1,352,900	42.6

II. SUPPLEMENTAL SECURITY INCOME PROGRAM (SSI)

1974	3,996,064	2,285,909	1,710,155	42.8
1975	4,314,275	2,307,105	2,007,170	46.5
1976	4,155,939	2,147,697	2,088,242	50.2
1977	4,237,692	2,050,921	2,186,771	51.6
1978	4,216,925	1,967,900	2,249,025	53.3

Mr. BELLMON. Mr. President, I wish to comment briefly on these two tables. In December 1968 about 1.3 million disabled workers were drawing social security benefits. Ten years later, in December 1978, the number drawing benefits had grown to 2.9 million, an increase of 123 percent.

It is important to keep in mind that there were no significant changes in the definition of disability during the 10-year period. During those 10 years the incidence of disability rose from 18 workers per thousand to 32 workers per thousand, almost double.

Even these figures on the social security disability insurance program only tell part of the story. In 1974 the Federal Government took over from the States the welfare programs for the aged, blind, and disabled. The disabled portion of that new program, called the supplemental security income program, SSI, has also grown rapidly. Indeed, the number of disabled persons receiving SSI now exceeds the number of aged recipients in that program, something that was never dreamed of when the program began.

Mr. President, let me repeat that for emphasis. The number of disabled persons receiving SSI now exceeds the number of aged recipients, which is not something any of us expected when we voted for SSI.

In December 1978 approximately 2.2 million persons received disability benefits under the SSI program. This is a growth of 175 percent over the 800,000 receiving disability aid under the predecessor State programs in December of 1968.

So again, Mr. President, let me point out what happened after the Federal Government instituted the SSI program. In December of 1978 there were 2.2 million persons who received disability benefits under that program. That is 175 percent more people than were receiving benefits 10 years earlier under the State programs which SSI replaced.

If we add up those totals, Mr. President, and if we adjust the totals for people who receive both SSI and social security disability insurance, we find that the combined enrollments in the two programs have ballooned from about 2.1 million in 1968 to about 4.3 million in 1978, a growth of 105 percent in 10 years.

While many of the people receiving these benefits unquestionably need and deserve them, we must ask whether these numbers suggest that we have been either too generous with benefit levels or too lax in screening people or, perhaps, we have been negligent in both.

The average social security disability monthly benefit payment has increased from $118 to $328 from 1969 to 1978.

This is a 178 percent increase during the period when the cost of living rose by about 80 percent.

Even more significant is the fact pointed out by the Finance Committee report that in 1976 a newly retired worker with dependents who had median earnings got disability benefits equal to 90 percent of his predisability earnings, up from a 60 percent replacement ratio in 1967. Part of this is due to the overindexing of benefits under the automatic increase provisions enacted in 1972. This problem was partly corrected by the 1977 amendments which revised the benefit formula, although benefit levels will still rise faster than inflation under the law as it now stands. Higher benefit levels have undoubtedly been an important factor in the increase in the disability incidence rate that has occurred between 1968 and 1974.

At the same time that there have been sharp increases in the disability incidence rate, there have been decreases in termination rates. Those rates have decreased from 109 per 1,000 beneficiaries on the roll in 1968 to about 72 per 1,000 in 1977. Benefit terminations result from both deaths and recoveries. While it is encouraging that the rate of terminations because of death have been dropping, we must be concerned that the rate of terminations because of recovery has also been dropping. This has occurred despite a large investment in rehabilitation services and despite the trend toward younger recipients coming on the rolls. Again we must ask whether the higher benefits have caused people to find ways of staying on the rolls once they get on them.

Mr. President, I would like now to comment a little further on the matter of increased benefit levels. When disability benefit levels approach or exceed predisability earnings, there is a work disincentive. Earlier this year the Secretary of HEW stated that 6 percent of DI beneficiaries receive more through their DI benefits than their net earnings while working and that 16 percent have benefits which exceed 80 percent of their net prior earnings. High replacement rates are an incentive for an impaired worker to file for disability benefits and for those already on the rolls to be dissuaded from returning to work. If we do not change the law these high replacement rates will clearly become even more of a problem. As I have already said, the worker with median earnings when qualified for benefits in 1976 received disability benefits equal to 90 percent of his predisability earnings.

In discussing this problem, the Finance Committee report on H.R. 3236 stated the following:

> Disability income dollars are, in general, much more valuable and have much more purchasing power than earned dollars. The DI benefits are fully tax exempt, as are insured benefits except for employer-provided benefits in excess of $100 a week. For a worker with a spouse and a child, paying an average state income tax, 50 percent of salary in the form of disability benefits may well equal 65 percent or more of gross earnings after tax. In addition, the disabled individual is relieved on many expenses incidental to employment such as travel, lunches, special clothing, union or professional dues, . . . (Page 39, Report No. 96-408)

Furthermore, Mr. President, the income lost due to disability does not create hardships for many of the families affected to the extent one might think. Again, the Finance Committee's report is perceptive on this point:

> Analysis done by the Congressional Budget Office further indicates that it is not correct to assume that a typical disabled worker family is dependent entirely or almost entirely on social security benefits. Disabled workers in families with children derive on average only about 40 percent of their total cash income from social security benefits. The analysis indicates that very few worker families have more than a 10 percent reduction in disposable income as a result of disability. (Page 40, Report Number 96-408)

Now, Mr. President, I am not suggesting that many families are not hurt economically by having the breadwinner disabled. Quite the contrary. We need to provide disability benefits to those who are truly disabled. But we must also take care not to encourage people to file for disability—or to stay on the rolls after they once have been determined disabled, by giving them an economic incentive to do so. My amendment would provide for a family benefit cap equal to 80 percent of the individual's averaged indexed monthly earnings (AIME) or 130 percent of his or her primary insurance amount (PIA) whichever is lower. The 80 percent of AIME is the same as the House-passed provision, while the Senate Finance Committee has recommended 85 percent. The 130 percent of PIA alternative ceiling was rejected in the House Ways and Means Committee by only two votes, with the House eventually adopting a 150-percent ceiling. The Finance Committee on the other hand has recommended a ceiling of 160 percent of PIA.

I believe that the cap proposed by my amendment will adequately provide for a worker and his or her family, while still providing the worker with an incentive to return to work. We must remember, Mr. President, that the cap is 80 percent of the average gross income which results in 100 percent replacement of income after taxes and work expenses for the typical case. A disabled worker does not pay any state, Federal or payroll taxes, work expenses, union dues, etc. The 130 percent limitation affects those recipients at the higher end of the income scale, not those who have lower preretirement incomes.

The 80/130 cap on family benefits is fair and adequate. Private insurance companies generally limit benefits to no more than two-thirds of predisability gross earnings to assure that beneficiaries are not financially better off than when they were working. My amendment does not propose a two-thirds limitation of predisability earnings, but rather an 80 percent level.

I ask unanimous consent that a table be included in the RECORD at this point showing the various family benefit caps in the Finance Committee's bill, the House bill, and my proposed amendment.

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

TABLE 4.—ALTERNATE SOCIAL SECURITY MAXIMUM BENEFIT LIMITATION PROVISIONS FOR FAMILIES OF DISABLED WORKERS[1]—H.R. 3236

	Present law	Finance Committee bill	House-passed bill	Bellmon amendment[2]
Description of provision	Family disability benefits range from 150 percent to 188 percent of the worker's benefits—depending on the benefit level. In about 1/5 of all cases, benefits exceed 80 percent of a worker's average predisability earnings.	Family disability benefits may not exceed 85 percent of the worker's average predisability earnings or 160 percent of the worker's benefit, whichever is less.	Family disability benefits may not exceed 80 percent of the worker's average predisability earnings or 150 percent of the worker's benefit whichever is less.	Family disability benefits may not exceed 80 percent of the worker's average predisability earnings or 130 percent of the worker's benefit, whichever is less.
Savings to the social security disability program (millions of dollars, fiscal years.)	Not applicable	FY 1980—$41, FY 1981—$138, FY 1982—$247, FY 1983—$338, FY 1984—$415, total—$1,169.	FY 1980—$62, FY 1981—$207, FY 1982—$371, FY 1983—$507, FY 1984—$623, total—$1,770	FY 1980—$109, FY 1981—$369, FY 1982—$666, FY 1983—$924, FY 1984—$1, 152, total—$3,220.
Monthly family benefit amounts:[3]				
Low earner	$262	$175	$175	$175.
Average earner	$721	$632	$592	$513.
Maximum earner	$992	$907	$850	$737.
Number of people affected (1st full year).	Not applicable	120,000 families; 355,000 beneficiaries.	123,000 families; 358,000 beneficiaries.	150,000 families; 385,000 beneficiaries.

[1] Provision applies only to people becoming newly entitled to benefits after 1979.

[2] Amendment offered by Representative Gephardt during the Ways and Means markup on the bill but defeated by a narrow margin.

[3] Average monthly earings for low earner are $194, for average earner—$882; for maximum earner—$1,700.

Mr. BELLMON. Mr. President, some will question whether or not the amounts shown on this table are an adequate level of income. Mr. President, this is a very legitimate concern, and it raises a point that is very important. Disability insurance was never intended to be a welfare program. It is not, and should not be operated on a basis of whether a benefit is "adequate." By saying that a benefit level is too low and ought to be higher, we are taking the program away from its insurance principles and turning it into a welfare program. In the social security programs, benefits are based not on what an individual ought to have, but on what he or she is entitled to according to his or her work and earnings history.

If a person's benefit is "too low" there are other assistance programs available

to help that individual such as supplemental security income, medicaid, food stamps, AFDC, social services, housing subsidies, and the like. Many of the low earners shown on the table most likely qualify for public assistance, and well they should, as they need other income to provide them with an adequate means of support. We must be wary of using a program such as disability insurance for welfare purposes. It was not meant for that. It was meant to replace part of the earnings of an individual based largely on his contributions to the system, not on what his "needs" are.

That is the welfare responsibility.

This is a very important point Mr. President, especially in light of the fact that we will soon be considering social security legislation, presumably to avoid or moderate large payroll tax increases now scheduled for 1981. That being the case, we must face the benefit issue head on. My amendment gives the Senate the opportunity to take a needed first step.

Lest any Senators be misled by the $2 billion my amendment would save over the next 5 years, I again want to put those savings in perspective. I refer again to the table I previously included in the RECORD showing the projected growth in the social security disability insurance program over the next 5 years with and without my amendment.

This table shows, Mr. President, that under the Finance Committee bill, growth in the disability insurance program will cost the Federal Government about $35.2 billion more over the next 5 years than it would cost if the program could be operated at the 1979 level over that period. If this amendment is approved, the cumulative growth—and I am talking now about growth, not costs—if this amendment is adopted, the cumulative growth over the next 5 years will be $33.3 billion. That is a reduction of about $2 billion. That is the amount of reduction in program growth that this amendment, in addition to the savings already recommended by the Finance Committee will achieve. As I said before, this is equal to about 6 percent of the estimated growth in the program.

So Mr. President, any suggestion that this amendment would wreck the disability insurance program is totally false. This is a modest, reasonable amendment.

In closing, I want to give one example which illustrates why a tighter benefit cap than the Finance Committee proposal is needed. This example is taken from page 64 of the House Ways and Means Committee's report on H.R. 3236.

If a man and wife who have one child each earn $12,000 their total net income will be about $16,600, assuming average deductions. If one of them becomes disabled and the other continues to work, under current law their net income will be about $16,700—actually an increase over what they took home prior to the disability. The committee bill would impact very little on this disincentive to return to work. My amendment would give a family of this type coming on the rolls in the future a $15,700 net income with an incentive to return to work of $1,000. I want to stress again that my amendment would not change benefits for people already on the rolls.

I feel, Mr. President, that we cannot allow the present benefit structure to continue if we are to insure the integrity of the disability insurance program. It should not be a welfare program and it should not contain work disincentives. It simply comes down to providing benefits based primarily on earnings histories, and insuring that recipients do not have greater net earnings from being disabled than they had from predisability income. The amendment I offer will make a major step toward resolution of these problems. I urge its adoption.

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

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

The yeas and nays were ordered.

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

The PRESIDING OFFICER. Who yields time?

The Chair recognizes the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I have tremendous respect for the distinguished Senator from Oklahoma, but I am in total disagreement with him in connection with this amendment.

Let me first point out that, as far as the welfare programs in this country are concerned, I think if you adopt the Bellmon amendment you may have a mirage of thinking that you are saving $2 billion by cutting back on disability insurance from a fund that is sufficiently strong at the moment that the President of the United States is talking about borrowing from that fund for social security purposes at a later point in the year.

But the net result would be, if you adopted the Bellmon amendment, that more people would be drawing down welfare checks in this country in order to supplement their meager income from disability insurance.

The Senator from Oklahoma gave an example—and I will come back to that in a moment. But I would like to first talk about an individual who is earning the minimum wage and his average monthly earnings are $479. The benefit under the present law would be $419. The benefit under the Finance Committee bill would be $407. The Senator from Ohio's amendment would restore the munificent sum of $12 to bring it back to $419. But the Bellmon amendment would cut that figure down to $346.

I submit to the Members of the Senate, assuming this man is a normal married man and has a wife and two children, I cannot, for the life of me, understand, in the times in which we live, how that individual can get by with $479 as a living wage. He cannot. It is impossible.

But now you are going to say to him: "You are totally disabled." And the definition of totally disabled is not a figment of somebody's imagination. It has already been talked about by the Senator from Ohio and the Senator from Connecticut, and pointed out that you not only have to be disabled in your opinion, but you have to be disabled in such a manner that you cannot find a job, not only in your own community, but that you cannot work in any other field and you cannot even work in some other part of the country.

What we are saying to that person is: "We are cutting you from $479 in average monthly earnings, from the $419 that you could get under the present law, to $346." That, Members of the Senate, just is totally unreasonable.

The Senator from Oklahoma said that if a married couple were earning $24,000 and if one of them became totally disabled, and they each were earning $12,000, that somehow their income would rise to $16,700 under the disability provision of this law.

Well, frankly, I do not understand that. I will be happy to have the Senator from Oklahoma explain that in further detail to the Members of this body.

Mr. BELLMON. Will the Senator yield?

Mr. METZENBAUM. On the time of the Senator from Oklahoma, yes.

Mr. BELLMON. Mr. President, it is a very simple calculation. The workers with $12,000 incomes obviously pay taxes. They have certain costs of holding down jobs. When one of the workers becomes disabled and begins to receive these benefits, their combined take-home pay actually goes up by $100, under the terms of the committee bill.

Mr. METZENBAUM. Mr. President, the Senator has to submit a little more to me than that, because I do not accept those figures as being realistic. Each one makes $12,000. One goes off of the $12,000. How does that one now wind up bringing more money in?

Mr. BELLMON. If the Senator will allow me, if a man and wife with one child each earn $12,000, their net income, after taxes, will be about $16,600. That should not be too hard to understand. That is the way tax laws are written.

If one becomes disabled and the other continues to work, under current law their net income will rise to about $16,700, because one of them will be taking home disability insurance payments which are tax free.

It is for this reason that we feel the present law is a disincentive for this person to return to work. The person who goes off disability insurance and goes back to work will actually have less real income than they were getting when one of the two partners was disabled and not working.

Mr. METZENBAUM. Mr. President, I would like to point out to the Senator from Oklahoma that, under the present law, if each is making $12,000, then that would be $1,000 a month and the individual would only receive 77 percent of what their average monthly earnings had been.

I do not understand how—and the income tax rate would not make up that difference. Therefore, I have difficulty, still, in following the point.

But I will continue on with my discussion, because I want to make it clear to the Senator from Oklahoma, who mentioned something about getting more money——

Mr. MUSKIE. Will the Senator yield to clarify a point? The Senator said under present law the benefit would be 77 percent.

Mr. METZENBAUM. Yes. I will yield on that point, because that is correct.

Mr. MUSKIE. I do not carry these tables around in my head, but I know the size of benefits depends upon the size of income—the lower the income, the higher percentage of benefits. It also depends upon the size of a family.

You have to take into account all of those variables in comparing one illustration with another.

I sat here and suddenly heard the Senator say that under the present law the example used by Senator BELLMON would be 77 percent. It may be, but I do not know the basis for that.

Mr. METZENBAUM. The maximum you can get under the present law with a full size family is 77 percent of your average monthly earnings if you are making $1,000 a month.

Mr. MUSKIE. What is a full size family, 14, 20, 5?

Mr. METZENBAUM. Four. I think the maximum family benefit would be 77 percent.

Mr. MUSKIE. And Senator BELLMON had two parents working in his example.

Mr. BELLMON. That is right.

Mr. METZENBAUM. Therefore, the disability benefit would be something less than 77 percent. I cannot say what it would be.

Mr. MUSKIE. I have a paper which shows that in 1976 the average newly entitled disability beneficiary family got 90 percent of the predisability earnings. That is before the Finance Committee bill, before the Bellmon amendment, before the amendment of the Senator from Ohio. I have not made the analysis that underlies this figure, but as I understand it, the figure is valid.

Mr. METZENBAUM. I have to say I know of no one for whom I have more respect than the distinguished chairman of the Budget Committee.

Mr. MUSKIE. May I say to the Senator, respect for me personally has nothing to do with this figure because I did not generate it and I cannot vouch for it.

Mr. METZENBAUM. I have before me a chart showing that at a $400 average monthly income, it would be 90 percent; at $477 it would be 88 percent; at $1,000 it would be 77 percent; at $1,500 it would be 63 percent; and continuing down.

Mr. MUSKIE. The difference is that the Senator is talking about income at $1,000 a month.

Mr. METZENBAUM. That is correct.

Mr. MUSKIE. This figure represents an average of all beneficiaries. Well, $1,000 is not too high in today's terms.

Mr. METZENBAUM. It is pretty low.

I do not have the figure the Senator referred to. At this point, I have never heard the figure that the average beneficiary under disability insurance gets 90 percent. If I am wrong, I would like to be corrected. But at this moment I do not know that to be the fact and, therefore, I do not want to proceed on that assumption. I do not think it is the fact, but if I am wrong I will be prepared to recognize that fact.

Let me further point out to my friend from Oklahoma that at the very beginning of his remarks he talked about persons who are on SSI who get disability.

I just want to say that as I understand it, that is a totally different program than that with which we are dealing here on the floor of the Senate today.

Mr. MUSKIE. Will the Senator yield?

Mr. METZENBAUM. Yes.

Mr. MUSKIE. I would like to give the source for the figure I gave earlier, which is on pages 38 and 39 of the committee report:

> An analysis by the social security actuaries has indicated: The average replacement ratio of newly entitled disabled workers with median earnings and who have qualifying dependents increased from about 60 percent in 1967 to over 90 percent in 1976.

Mr. METZENBAUM. The Senator is reading from what?

Mr. MUSKIE. The bottom of page 38 and the top of page 39 of the committee report. It is not my figure; it is out of the committee report.

(Mr. MATSUNAGA assumed the chair.)

Mr. METZENBAUM. I am frank to say I recognize the language but I do not know what the language refers to as far as "newly entitled disabled workers with median earnings who have qualifying dependents."

I will accept the language of the report, however. The figures I have, which I am sure come from credible sources, indicate that depending upon what your earnings are, your ratio of benefits goes down to the point so indicated by the figures that I gave previously.

The Senator from Oklahoma talked about the fact that some persons might receive more under disability benefits for not working than for working. I want to point out to him—and I mentioned it in my earlier remarks—that that is in the law as it is at the present time, but the fact is that my amendment would provide a limitation on that and specifically prohibit receiving anything in excess, as disabilty benefits, over and above the average monthly earnings.

The Senator also commented on the fact that the disabled do not have to pay other expenses.

I would like to point out to him that the disabled do have their special kinds of problems. In the average family, if the family goes to work, if everyone leaves the home and both members of the family go to work, they turn down the heat and save some money. They do not have to have anybody staying with the disabled worker, if that worker has to stay at home alone. Those are expenses that must be recognized as a reality of life if they are totally disabled individuals.

Furthermore, I want to point out that there are expenses which have to do with that which are not covered by medicare or medicaid, and the totally disabled worker has that problem to contend with.

The Senator from Oklahoma says that this is not a welfare program, and I could not agree with him more. This is a program that the Congress enacted. They made a contract with the people who paid into the fund. Would anyone realistically suggest that if we bought an insurance policy 5, 10, or 15 years ago, and that insurance policy provided for a certain amount of disability benefits at a certain point in our life if we should become disabled, that under those circumstances the insurance company could cut back the amount of those benefits?

That is what we are talking about doing here. The Finance Committee is talking about cutting them back substantially, $1.5 billion. The Senator from Oklahoma is talking about cutting them $3.5 billion. The Senator from Ohio is attempting to restore $900 million of the $1.5 billion of the cut of the Finance Committee.

There is not any logic, reason, fairness, or equity to say to people, "You have paid in for a number of years and now we are changing the amount of disability benefits for some reasons that have to do with the procedures that the Congress has decided upon."

Once we make a contract and say that we are going to pay a certain amount of dollars, we ought to live up to that contract.

I think in simple terms that is what this issue is all about. It is not a question of whether you believe in welfare or are opposed to welfare. We can all say we would like to get everybody off of welfare. But this is a contractual relationship. This is a relationship where the people have paid their money in and they have a right to expect to be paid when they become totally disabled. That is the issue as I see it which is before the Senate.

I think the Finance Committee bill is bad, very bad. I think the amendment proposed by the Senator from Oklahoma would just exacerbate the problem.

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

Mr. MUSKIE. Mr. President, will the Senator from Oklahoma yield me some time?

Mr. BELLMON. Mr. President, I yield as much time as he needs to the Senator from Maine.

Mr. MUSKIE. I thank the Senator.

Mr. President, for the purpose of making clear in the RECORD the purpose of the Finance Committee bill and the Bellmon amendment, I ask unanimous consent that there be printed at this point in the RECORD the lower third of page 38 of the committee report, all of page 39, all of page 40, and the top of page 41 of the committee report.

Mr. METZENBAUM. Not wishing to object, Mr. President, I shall object only for one purpose. I now note that at the top of page 38, it is indicated that the average replacement rate percentage is 58 percent; using the high 5-year indexed earnings in the last 10, it is 49 percent. I have no objection if the entire page 38 is printed.

Mr. MUSKIE. I have no objection to the entire page being printed.

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

TABLE 15.—DI REPLACEMENT RATES COMPUTED FROM 2 DIFFERENT MEASURES OF DR DISABILITY EARNINGS

Replacement rates [2] (1979 PIA) levels	Awards at each level of earnings replacement [1]			
	Using AIME		Using high 5 yr of indexed earnings in last 10	
	Number of cases	Percent of total	Number of cases	Percent of total
Under 30 percent	0	0	268	3
30 to 39 percent	79	1	2,930	31
40 to 49 percent	3,669	38	2,168	23
50 to 59 percent	1,456	15	1,184	12
60 to 69 percent	947	10	1,353	14
70 to 79 percent	1,215	13	771	8
80 to 89 percent	1,477	15	526	5
90 to 99 percent	181	2	148	2
100 percent and over	561	6	237	2
Total sample	9,585	100	9,585	100
Average replacement rate (percent)	58		49	

[1] These awards include both individual and family benefits where applicable. The actual awards were made before a "decoupled" system was put into effect. However, the awards were recomputed for sample purposes as if a decoupled system existed to give some sense of the longer-range direction of DI replacement rates.

[2] Represents replacement of gross earnings.

Both approaches to measuring replacement—i.e., either long or recent periods of a worker's earnings history—show that there are a substantial number of DI awards which by themselves result in replacement rates in excess of predisability earnings. Using 80 percent of gross predisability earnings as an approximation of predisability disposable earnings, about 23 percent of the awards in the sample were above that level using AIME as the base period for measurement, and approximately 10 percent of the awards in the sample were above that level using the high 5 years of indexed earnings during the 10-year period prior to the onset of disability as the base period for measurement. Approximately two-thirds of these cases involved the payment of dependents benefits in addition to those of the worker.

Actuarial studies in both the public and private sector have indicated that high replacement rates may constitute an incentive for impaired workers to attempt to join the benefit rolls, and a disincentive for disabled beneficiaries to attempt rehabilitation or return to the work force. An analysis by the social security actuaries has indicated:

"The average replacement ratio of newly entitled disabled workers with median earnings and who have qualifying dependents increased from about 60 percent in 1967 to over 90 percent in 1976, an increase of about 50 percent. During this time the gross recovery rate decreased to only one-half of what it was in 1967. High benefits are a formidable incentive to maintain beneficiary status especially when the value of medicare and other benefits are considered. We believe that the incentive to return to permanent self-supporting work provided by the trial work period provision has been largely negated by the prospect of losing the high benefits."

("Experience of Disabled Workers Benefits Under OASDI, 1972–1976," actuarial study No. 75, June 1978.)

An actuarial consultant's report to the Committee on Ways and Means also concludes:

"* * * disability income dollars are, in general, much more valuable and have much more purchasing power than earned dollars. The DI benefits are fully tax exempt, as are insured benefits except for employer provided benefits in excess of $100 per week. For a worker with a spouse and a child, paying an average State income tax, 50 percent of salary in the from of disability benefits may well equal 65 percent or more of gross earnings after tax. In addition, the disabled individual is relieved of many expenses incidental to employment such as travel, lunches, special clothing, union or professional dues, and the like."

It is a cause for deep concern that gross ratios of 0.600 or more apply to all young childless workers at median or lower salaries and to nearly all workers with a spouse and minor child for earnings up to the earnings base. In other words, all workers entitled to maximum family benefits are overinsured except older workers whose earnings approach the earnings base, middle-aged workers who earn not more than the earnings base, and young workers except those earning substantially more than the earnings base.

Although these excessive replacement ratios have not been in effect long enough to have been fully reflected in the disability experience, overly liberal benefits may have played some part in the 47 percent increase, between 1968 and 1974, in the average rate of becoming disabled. Other than the indexing provisions, statutory changes during this period could have had no great effect. There is no evidence that the health of the nation has deteriorated. Rising unemployment has clearly been a factor, but the increasing attractiveness of the benefits must also be an important influence.

(U.S. Congress, House, Subcommittee on Social Security of the Committee on Ways and Means, Report of Consultants on Actuarial and Definitional Aspects of Social Security Disability Insurance, 94th Congress, 2d Session, 1976.)

Testimony heard by the Finance Committee from a private actuary on behalf of a number of insurance companies includes similar observations. This actuary states the following about private disability insurance experience:

"* * * claim costs increase dramatically when replacement ratios exceed 70 percent of gross earnings, and are unsatisfactory when replacement ratios exceed 60 percent of gross earnings . . . Expected claims is the level of claim costs that is assumed in determining premiums, so a ratio of 100 percent would be what a company would expect to achieve when it sets rates . . . large exposures show claims at 87 percent of expected when the replacement ratio was 50 percent, 93 percent of expected when the replacement ratio was 50 percent to 60 percent, 106 percent when the replacement ratio was between 60 percent and 70 percent, and a jump in the ratio of actual to expected claims of 219 percent—more than double what the premium allowed—when the replacement ratio exceeded 70 percent of gross earnings."

(U.S. Congress, Senate, Committee on Finance, testimony of Gerald S. Parker on H.R. 3236, Social Security Disability Legislation, October 10, 1979.)

Analysis by the Congressional Budget Office further indicates that it is not correct to assume that a typical disabled worker family is dependent entirely or almost entirely on social security benefits. Disabled workers in families with children derive on average only about 40 percent of their total cash income from social security benefits. The analysis indicates that very few worker families have more than a 10 percent reduction in disposable income as a result of disability.

In summary, this analysis shows that the combined impact of high social security disability insurance replacement rates and substantial other sources of family income is to insulate disabled worker families, as a group, from any major reduction in income as a result of their disability.

Committee bill.—The committee is concerned about the impact these high benefit levels and replacement rates have had on the growth of the program, in that they may have caused both incentives for impaired workers to stop working and apply for benefits, and disincentives for DI beneficiaries to leave the benefit rolls. The Committee further is concerned about the inappropriateness of having situations where benefits exceed predisability earnings in a program intended primarily to replace lost earnings.

The Committee bill would address these concerns through a provision which limits total DI family benefits to an amount equal to the smaller of 85 percent of the worker's AIME or 160 percent of the worker's PIA. Under the provision no family benefit would be reduced below 100 percent of the worker's primary benefit. The limitation would be effective only with respect to individuals becoming entitled to benefits on or after January 1, 1980, based on disabilities that began after calendar year 1978. The limitation would not apply to individuals who join the benefit roll after the effective date of the provision who were on the rolls (or had a period of disability) at another time prior to calendar year 1980. This will preclude the new limit on family benefits from applying to anyone who was on the roll in the past. Approximately 120,000 family units, encompassing 355,000 beneficiaries, will be affected by the limitation in the first full year after enactment.

The Secretary would be required to report to the Congress by January 1, 1985 on the effect of the limitation on benefits and of other provisions of the bill.

The committee further is concerned about situations where the payment of disability benefits to an individual from a number of public disability pension or like systems results in aggregate benefits which exceed the individuals' predisability earnings. While coordination exists between the DI program and State worker's compensation programs for the purpose of keeping the two forms of disability benefits at an aggregate level no higher than the worker's net predisability earnings, there are numerous other Federal and State programs providing disability benefits or compensation which are not coordinated at all with the DI program. The General Accounting Office has already undertaken a study of the relationship between social security and workers' compensation under the existing provision. The Committee requests the General Accounting Office to also study the prevalence of multiple receipt of disability benefits from DI and other programs (in addition to worker's compensation), as well as various approaches to better coordinate the overall benefits provided to an individual for the purpose of precluding them from exceeding the worker's predisability earnings. This report and the recommendations of the General Accounting Office will be the subject of hearings which the committee intends shall be held next year by its subcommittee on social security.

Mr. MUSKIE. Mr. President, I find myself at a disadvantage by not being familiar, in a statistical way, with the very complicated problem of analyzing the benefit structure and the benefit distribution, but a point very clearly stated over and over again in those pages of the report is found in these words.

Actuarial studies in both the public and private sector have indicated that high replacement rates may constitute an incentive for impaired workers to attempt to join the benefit rolls, and a disincentive for disabled beneficiaries to attempt rehabilitation or return to the work force.

If that is the effect of the present benefit levels of the program, then, clearly, we have a program that increases costs to the disadvantage of the taxpayers and also reduces resources available for other worthwhile purposes. So we have to look at the effectiveness and efficiency of many of these programs.

Mr. President, I support Senator BELLMON's amendment to Senator METZENBAUM's amendment.

A major purpose of the Finance Committee bill is to limit social security disability benefits to assure that a family will not have higher income than before the worker became disabled. The effect of the amendment offered by Senator METZENBAUM is to defeat this purpose of the bill and to virtually wipe out the savings that the bill achieves.

The Senate has already adopted the amendment proposed by Senator BAYH to eliminate the waiting period for the terminally ill. If the Metzenbaum amendment is also adopted, the bill will be changed from one saving $0.9 billion over the first 5 years to a measure costing $0.6 billion over the 5-year period.

The Bellmon amendment would accomplish an important objective—reducing the incentives for people to file for disability benefits and to stay on the benefit rolls. The present high level of benefits acts as a work disincentive—one-fifth of disability beneficiary families get benefits that exceed 80 percent of the worker's predisability earnings. Also, disability benefits are tax free, as the Senator from Oklahoma has emphasized, and disabled beneficiaries get medicare protection after 2 years, creating a further disincentive to work.

It is interesting to know what average medicare benefits amount to. In 1979, actual average medicare benefits for the disabled were $1,346 per year; in 1980, an estimated $1,538; in 1981, an estimated $1,749.

I have no figures estimating the value of the tax-free nature of these benefits but obviously, this ought to be taken into consideration. Obviously, on the record, there is now some work disincentive. There is no disagreement here. Even Senator METZENBAUM, in his setting his benefits at no higher than 100 percent of predisability earnings, acknowledges that anything above that figure operates as a disincentive. So what operates as a disincentive? Or what is the appropriate level of disability benefits—when added to the tax-free advantages, when added to the medicare advantages and other benefits, whatever they may be? We have to take all of this into account in making a judgment as to whether or not we have created work disincentives that add to the cost of the disability program.

The level of disability benefits has been rising in recent years. In 1967, on the average, as I have said already, newly entitled disability beneficiaries with families got benefits equal to 60 percent of their predisability earnings. That percentage grew to 90 percent by 1976.

Mr. President, the President has been criticized for not balancing his fiscal year 1980 budget. He was criticized this morning in the Budget Committee hearings and has been criticized in the press and by others. But responsibility for budget balancing, Mr. President, is not the President's alone. We must demonstrate by our actions today that we intend to move toward bringing this budget into balance.

We have had two votes now and are about to have a third inside of a week which show the same trend—demonstrating the attractiveness of converting social programs from spending programs under control of the Congress to entitlement programs that are beyond our control unless we change the law.

That is the reason why every chart—in the newspapers analyzing the budget, in the budget documents, and in the magazines next week displaying charts showing where budget growth has taken place—will show the growth has taken place in the entitlement field.

The President's representatives this morning were specifically criticized for not offering proposals to reduce uncontrollables by controlling entitlements. The administration said, "Well, quite frankly, we see no disposition on the part of Congress to control entitlements." We in Congress and the Budget Committee saw it last year. We adopted a reconciliation instruction in this Chamber, which was directed in part at achieving savings in entitlement programs. It is dead—dead in both Houses, getting nowhere.

A number of Senators who have been voting for these entitlement programs in the last 2 weeks have been coming before the Budget Committee in support of budget-balancing amendments to demonstrate their commitment to balanced budgets. Mr. President, how are we going to balance budgets when these entitlement programs are described as contracts with the people, as sacrosanct and, once enacted, not to be tampered with? Mr. President, there is no way of doing it.

According to the President's Budget, uncontrollable programs will increase, in 2 years, from a total cost of $366.1 billion in fiscal year 1979—74.2 percent of the budget—to $471.6 billion in fiscal year 1981—76.6 percent of the budget.

If that trend continues, they will amount to over 80 percent of the budget in this decade, and early in this decade. Then I am asked by Senators to sit there, presiding over these balanced budget amendments, and to take seriously their assertions that those amendments would help us control these programs. Nothing could be more ridiculous in the face of the record that this Congress has set in the last 2 years.

If that is the will of the Congress, if that is the will of the Senate, I accept it. But I think it is time that the American people, through their press, through our actions, at least see where the problem is.

We all get letters and respond to them in a reassuring way—"Balance the budget." "Oh, yes, we will." Then we all find a way to blame something; a lot of us have been blaming uncontrollables.

I can see the letters going out now. I heard the chairman of the Appropriations Committee say that we cannot touch entitlements. They are contracts, matters of law. So we blame entitlements, but refuse to do anything about them.

Mr. President, it is for that reason, more than this particular amendment—although I think the merits of this amendment are very clear—that I am making this statement. The Senate must confront that issue: Once we have written entitlements in the law, are they forever sacrosanct, beyond any claim to budget perfections, ever immune from budget balancing? Are they priorities ever set in concrete, never to yield to programs better suited to meet the problems of those who are its beneficiaries?

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

The Senator from Ohio has 16 minutes left.

Mr. METZENBAUM. Mr. President, I am frank to say to the Senate that when my good friend, the Senator from Maine, referred to a paragraph on page 39, saying: "The average replacement ratio of newly entitled disabled workers with median earnings and who have qualifying dependents increased from about 60 percent in 1967 to over 90 percent in 1976, an increase of about 50 percent," the Senator from Ohio was totally amazed by those figures and at this moment cannot fully understand them, because when we look at page 38 of that same report and get the breakdown of what the actual benefits are that are being paid, we find totally different figures. They are not close, just totally different figures.

The chart is called "Disability Insurance Replacement Rates Computed From Two Different Measures of DR Disability Earnings," and they use two different charts.

The first one uses the average indexed monthly earnings, and they talk about the replacement rates, and they talk about the number of cases and the percentage of the total.

Now, the replacement rates, meaning what percentage of the gross earnings is received by the disabled, we find 39 percent, or below the 49 percent level.

In other words, 39 percent of all the people receiving disability insurance are receiving less than 49 percent of their total earnings, of their average monthly earnings.

If we go over and take the highest 5 years of their indexed earnings in the last 10, we find that 57 percent of the total are receiving less than 49 percent of their disability insurance.

If we move that figure on up and go from 50 percent to 59 percent of their disability insurance, we add another 15 percent of the total.

If we go from 60 to 69 percent, we add another 10 percent. If we go from 70 to 79 percent, we find another 13 percent.

We have a total of 92 percent receiving less than 89 percent, but the great majority of those are at the lower portion.

If we look at the figures, using the highest 5 years of the indexed earnings in the last 10, we will find 57 percent, as I previously mentioned, are receiving less than 49 percent of their indexed earnings averaged out on a basis of the highest 5 years of the last 10.

Then if we go to the 59 percent of disability insurance figures, we add another 12 percent, another 14 percent if we go to 69 percent, another 8 percent if we go to 79 percent, or 91 percent of the total receipts, something less than 79 percent of their average earnings based on the top 5 years of the last 10.

When we look at the average, the average replacement rate for the average indexed monthly earnings is 58 percent, and if we use the highest 5 year basis, it is 49 percent.

Mr. President, I think it is easy to be misleading on an issue of this kind. I am frank to say that when I saw the 90 percent figure on the average, I did not know what it meant, and I still do not know what it means.

I do know what the specific breakdown means. I do know what the figures are that have heretofore been submitted. That is that people on disability are receiving but a shadow of what they were receiving if they worked.

There is no incentive to be disabled. Anyone who comes to the Senate and suggests there is a great incentive to lie on one's back and to be unable to do anything and not go back to work is not reporting the facts to the Senate in accordance with the reality of what is taking place.

We made a commitment, a commitment to the people who were paying into the disability insurance fund, that the levels would be at a certain point, and almost with no exception the Congresses in the past have seen fit to increase those levels, not to decrease them.

This is the first impact. This is the first invasion of the disability insurance funds.

I believe we have a right to be proud of the fact that there is that much money still in the disability funds that the President is talking about borrowing from them. But I do not think we ought to be finding any argument to cutting an additional $2 billion from those disability benefits in addition to the $1.5 billion the Senate Finance Committee is wanting to take away from them.

I hope the Senate sees fit to reject the Bellmon amendment. I hope the Senate sees fit to keep the cap at the present level, not to increase it, but to keep it at the present level, with the proviso that in no instance shall any particular individual receive in excess of 100 percent of the average of monthly earnings, and that would only be applicable in the extremely low levels of people earning less than $300 to $400 a month.

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

The PRESIDING OFFICER. The Senator from Georgia.

Mr. TALMADGE. Mr. President, I yield such time as I may need on the bill.

Mr. President, this is a very complex and a very controversial issue. It is difficult to understand without understanding every formula and every table involved.

The House sent to the Finance Committee a bill on this issue that would save over a 5-year period approximately $2.664 billion.

The Senate Finance Committee, after mature deliberation, devised a bill that was a give-and-take compromise, and over a 5-year period the Senate Finance Committee would save approximately $914 million.

The amendment offered by the distinguished Senator from Ohio would negate virtually, if not all, the savings of the Senate Finance Committee, reducing it to virtually zero.

The Bellmon amendment, if agreed to, would save over a 5-year period approximately $3.644 billion.

We think the result of the Senate Finance Committee is a fair compromise. I hope the Senate will reject the amendment of the distinguished Senator from Oklahoma, reject the amendment proposed by the distinguished Senator from Ohio, and approve the bill as submitted by the Senate Finance Committee.

Mr. President, 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 Oklahoma to the amendment of the Senator from Ohio. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

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

The PRESIDING OFFICER. Is there any Senator in the Chamber who has not voted and who wishes to do so?

The result was announced—yeas 24, nays 70, as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—24

Armstrong	Helms	Schweiker
Bellmon	Hollings	Simpson
Byrd, Harry F., Jr.	Humphrey	Stevens
Exon	Laxalt	Thurmond
Garn	Lugar	Tower
Hart	McClure	Wallop
Hatch	Muskie	Zorinsky
Hayakawa	Proxmire	
	Schmitt	

NAYS—70

Baucus	Eagleton	Nelson
Bayh	Ford	Nunn
Bentsen	Glenn	Packwood
Biden	Hatfield	Pell
Boren	Heflin	Percy
Boschwitz	Heinz	Pressler
Bradley	Huddleston	Pryor
Bumpers	Inouye	Randolph
Burdick	Jackson	Ribicoff
Byrd, Robert C.	Javits	Riegle
Cannon	Jepsen	Roth
Chafee	Johnston	Sarbanes
Chiles	Kassebaum	Sasser
Church	Leahy	Stafford
Cochran	Levin	Stevenson
Cohen	Long	Stewart
Cranston	McGovern	Stone
Culver	Magnuson	Talmadge
Danforth	Mathias	Tsongas
DeConcini	Matsunaga	Warner
Dole	Melcher	Weicker
Domenici	Metzenbaum	Williams
Durenberger	Morgan	
Durkin	Moynihan	

NOT VOTING—6

Baker	Gravel	Stennis
Goldwater	Kennedy	Young

So Mr. BELLMON's amendment (UP No. 936) to Mr. METZENBAUM's amendment (UP No. 935) was rejected.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

● Mr. CHILES. Mr. President, I have given a great deal of thought to the various amendments to change the provisions of this bill.

Early last year, we faced the need to make some reforms in the social security program. That is never a popular thing to do because it involves changing the way we are doing things so we can improve the system. Improvements are definitely needed. Inflation is out of hand and is hitting the fixed income population—primarily the elderly—the hardest. The long-range solvency of social security may be threatened.

As we look at the total social security and disability insurance program, we see how population and economic trends have changed in the 45 years since the program began. It is time we dropped outmoded provisions to insure the long-range stability of the social security system.

Social security started as a social insurance program of basic benefits for Americans in their old age and survivors of deceased workers. Over the years we have added very worthwhile income protection for disabled workers and health insurance for the aged and disabled. We have periodically increased benefits and added cost-of-living increases. Some of the benefits we have added—such as student financial aid for survivors who attend postsecondary schools are not need-based and duplicate other parts of the budget, where we are providing billions in grants, loans, and work-study assistance. Other provisions such as allowing certain disabled workers to receive benefits of more than 90 percent or 100 percent of their average earnings or letting younger workers drop a much higher proportion of earnings in computing their benefits, create an unintended "windfall" and an inequity in the program.

The Finance Committee bill provides an important work incentive by extending medicare benefits to disabled workers who return to the job, allowing deductions of extraordinary work-related expenses and eliminating the waiting period for those who are not successful in their work attempt and must return to the rolls.

These provisions are sound, beneficial, and like a lot of good ideas, they cost money. On the other hand, the steady increase in benefits under the disability program is creating a disincentive, as well as unjustified cost to the program. We have seen applications and awards of disability grow at an alarming rate in the last 10 years, and we have seen an even more alarming drop in the number of individuals on disability returning to work. This trend is particularly evident during recession periods.

I believe a strong, secure social security program is based on an equitable structure of basic benefits to the elderly, survivors, and the disabled. If a retiree has only social security to live on and is in a poverty situation, he must seek supplemental assistance in the form of food stamps and other aid from programs funded by general revenues. I believe that it is only fair that we not drain the social security trust funds by providing benefits of a welfare nature when there are programs funded by general revenues to which those who need more help can apply.

The bill would not cap the benefits or change the drop years for individuals already on disability, but the work incentives would be available for all. I have heard from a number of older Americans who are concerned about the implications of any kind of benefit cap or computation change for newly disabled workers, even though the elderly would not be directly affected. I have heard from many, many more who are concerned about the impact inflation is having on their fixed incomes, who call for the budget to be balanced, and who are vitally concerned about the long-term stability of the social security trust funds. Most elderly folks I talk to understand basic economics—that you do not get something for nothing. When you increase benefits, you pay one way or the other—either in higher taxes or a bigger deficit and inflation.

As chairman of the Special Committee on Aging, I firmly believe that we must offer older Americans and those who are permanently disabled a solid income of basic benefits. But we cannot improve the system unless we make some reforms that will be in tune with people's concerns and the times.●

UP AMENDMENT NO. 935

The PRESIDING OFFICER. The question now occurs on agreeing to the amendment of the Senator from Ohio. The yeas and nays having been previously ordered, the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona (Mr. GOLDWATER) would vote "yea."

The PRESIDING OFFICER (Mr. LEVIN). Are there any other Senators wishing to vote?

The result was announced—yeas 47, nays 47, as follows:

[Rollcall Vote No. 23 Leg.]

YEAS—47

Bayh	Heinz	Pell
Biden	Huddleston	Pressler
Bradley	Inouye	Pryor
Bumpers	Jackson	Randolph
Burdick	Javits	Ribicoff
Byrd, Robert C.	Leahy	Riegle
Church	Levin	Sarbanes
Cranston	McGovern	Sasser
Culver	Magnuson	Stafford
DeConcini	Mathias	Stevenson
Durkin	Matsunaga	Stewart
Eagleton	Melcher	Stone
Ford	Metzenbaum	Tsongas
Glenn	Morgan	Weicker
Hatfield	Moynihan	Williams
Heflin	Nelson	

NAYS—47

Armstrong	Durenberger	Muskie
Baucus	Exon	Nunn
Bellmon	Garn	Packwood
Bentsen	Hart	Percy
Boren	Hatch	Proxmire
Boschwitz	Hayakawa	Roth
Byrd,	Helms	Schmitt
Harry F., Jr.	Hollings	Schweiker
Cannon	Humphrey	Simpson
Chafee	Jepsen	Stevens
Chiles	Johnston	Talmadge
Cochran	Kassebaum	Thurmond
Cohen	Laxalt	Tower
Danforth	Long	Wallop
Dole	Lugar	Warner
Domenici	McClure	Zorinsky

NOT VOTING—6

Baker	Gravel	Stennis
Goldwater	Kennedy	Young

So Mr. METZENBAUM's amendment (UP No. 935) was rejected.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. LONG. Mr. President, point of order. The Senator has to vote with the prevailing side in order to move to reconsider.

The PRESIDING OFFICER. The Senator from Louisiana is correct. The point of order is well taken.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The question now recurs on the amendment of the Senator from Wisconsin (Mr. NELSON).

Several Senators addressed the Chair.

Mr. JAVITS. Mr. President, have I been recognized?

The PRESIDING OFFICER. I did indeed recognize the Senator, but there was a prior matter I had to dispose of first.

Mr. ROBERT C. BYRD. Mr. President, will the Chair recognize the Senator from New York? He has been seeking recognition.

The PRESIDING OFFICER. Does the Senate wish to set aside this amendment further? The Nelson amendment is the pending matter.

Mr. JAVITS. Mr. President, I do not know what the majority leader's desire is. I have an amendment.

Mr. LONG. Mr. President, there is a pending amendment. Point of order, Mr. President. Is not the Nelson amendment pending?

AMENDMENT NO. 745

The PRESIDING OFFICER. The question now recurs on the Nelson amendment. There are 52 minutes remaining on the Nelson amendment.

Mr. LONG. Mr. President, at the time the Nelson amendment was called up, I was under the impression the administration did not favor the Nelson amendment.

I now have a letter from the Assistant Secretary for Legislation of HEW. The letter states:

> With regard to HEW's current position on Senator Nelson's revised amendment to H.R. 3236 designed to protect state employees, the Department of HEW can support the concept of this amendment. There are still some limited technical questions that remain unresolved, however, if the Senate adopts the amendment we would submit those at the time of a Senate-House Conference.

In view of the fact the administration would now be willing to accept the amendment, I am willing to accept the Nelson amendment.

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

Mr. LONG. Yes.

Mr. DOLE. The Senator from Kansas is aware of the letter. I have discussed it with Senator NELSON. We are prepared to accept the amendment, and that will take care of it.

The PRESIDING OFFICER. Is all time yielded back?

Mr. LONG. Mr. President, I am willing to yield back the remainder of my time.

● Mr. HUDDLESTON. Mr. President, I commend my distinguished colleague, the Senator from Wisconsin, for his efforts in support of employees of State disability determination units, and I am pleased to join him in offering this amendment.

Mr. President, since May of this year, I have been concerned about the fate of State career employees in disability determination units should Federal takeover occur. I believe that without adequate job security provided for State employees, orderly transition from State to Federal control would be next to impossible. Thousands of disability applicants would unfairly bear the burden of an unorganized disability operation through program disruption and delays in claims adjudication. Still thousands more State employees would be left not knowing whether the new Federal operation of the program would provide jobs for them or simply ignore what amounts to, in some cases, an entire career of service to the disability program.

The amendment that I join Senator NELSON in offering today would go a long way in guarding the jobs of some 9,000

experienced and faithful State disability examiners in this country. Our amendment would, in the event of a Federal takeover of a State disability unit, provide that the administrating agency give preference to these qualified State disability examiners in filling Federal positions. It would insure the Federal Government's reliance upon and utilization of those individuals representing our greatest reservoir of talent in the disability program.

With the tightening of Federal controls on State disability operations provided for in H.R. 3236, it is imperative that there be a balancing effect for State employees if a State can no longer manage the program under Federal guidelines. Any legislation which increases the likelihood of a Federal takeover of the disability insurance program should, in turn, provide strong job protection rights for State employees. We must protect these employees who stand to lose from the increased Federal authority and decreased State authority outlined in this bill.

I realize that it would not be reasonable, Mr. President, to guarantee a job to every State employee should a disability program federalize in their State. We are not in a position to anticipate what Federal job availability will be at such a time, and even if we were, each situation in each State will demand a slightly different approach. What I am proposing, however, is that we recognize the legitimate concerns of thousands of State employees, and attempt to deal constructively with a prospective nationwide problem before it occurs.

In my contact with Kentucky State disability examiners, several of whom are on the national board of the National Association of Disability Examiners (NADE), I have developed a great sympathy for and commitment to their cause. I urge my colleagues to pay heed to the unfortunate experience of the State disability determination unit in Senator NELSON's home State of Wisconsin. Even aside from the loss of 161 skilled disability examiners employed in his State, the disruption of over 35,000 Wisconsin claimants more than sufficiently supports our argument that a detailed plan for system takeover from State to Federal is imperative. I urge my colleagues to join us in this effort by supporting this amendment.●

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Wisconsin (Mr. NELSON).

The amendment, as modified, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, for the information of Senators, there will be no more rollcall votes tonight. I understand Mr. BAUCUS has an amendment he wishes to call up, which may be acceptable. Mr. JAVITS has an amendment he would like to call up and we can make it the pending question, perhaps, for tomorrow. Mr. CHILES has a resolution on a matter that he will call up for a voice vote. I think it will be unanimously voted up. Mr. BAUCUS has an amendment.

I understand from the manager and ranking minority member that the Senate might be in a position to resume consideration of this bill at 10 a.m. tomorrow.

Mr. DOLE. Yes.

Mr. FORD. Will the majority leader yield?

The PRESIDING OFFICER. The Chair recognizes the Senator from New York (Mr. JAVITS).

UP AMENDMENT NO. 937

(Subsequently numbered Amendment No. 1646)

(Purpose: Relating to limitation on total family benefits in disability cases)

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

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes an unprinted amendment numbered 937.

Mr. JAVITS. 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:

Beginning on page 33, line 15, strike out all through page 34, line 11, and insert in lieu thereof the following:

"(6)(A) Notwithstanding any of the preceding provisions of this subsection other than paragraphs (3)(A), (3)(C), and (5) (but subject to section 215(i)(2)(A)(ii)), the total monthly benefits to which beneficiaries may be entitled under sections 202 and 223 for any month on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits, whether or not such total benefits are otherwise subject to reduction under this subsection but after any reduction under this subsection which would otherwise be applicable, shall be reduced or further reduced (before the application of section 224) as necessary so as not to exceed 100 percent of such individual's primary insurance amount, or (if greater) the sum of the following:

"(i) 85 percent of such individual's average indexed monthly earnings to the extent that such earnings do not exceed the amount established for purposes of this clause by subparagraph (B), plus

"(ii) 70 percent of such individual's average indexed monthly earnings to the extent that such earnings exceed the amount established with respect to clause (i) but do not exceed the amount established with respect to this clause by subparagraph (B), plus

"(iii) 38 percent of such individual's average indexed monthly earnings to the extent that such earnings exceed the amount established with respect to clause (ii) but do not exceed the amount established with respect to this clause by subparagraph (B), plus

"(iv) 24 percent of such individual's average indexed monthly earnings to the extent that such earnings exceed the amount established with respect to clause (iii) by subparagraph (B).

Any such amount that is not a multiple of $0.10 shall be increased to the next higher multiple of $0.10.

"(B)(i) For individuals who initially became eligible for disability insurance benefits in the calendar year 1979, the amounts established with respect to clauses (i), (ii), and (iii) of subparagraph (A) shall be $493, $737, and $1,085, respectively.

"(ii) For individuals who initially become eligible for disability insurance benefits in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established for the calendar year 1979 by clause (i) of this subparagraph and the quotient obtained under subparagraph (B)(ii) of section 215(a)(1), with such product being rounded in the manner prescribed by section 215(a)(1)(B)(iii).

"(iii) For purposes of this paragraph, eligibility of an individual for disability insurance benefits shall be determined under sections 215(a)(3)(B) and 215(a)(2)(A) as applied for this purpose.".

The PRESIDING OFFICER. May we have order in the Chamber, please?

The Senator from New York.

Mr. JAVITS. Mr. President, my amendment is intended to deal with what I consider to be a real inequity in the bill. The committee bill hits unusually hard those individuals with AIME levels of between $700 to $1,000 and reduces their income replacement rates twice as much as the rates on all other categories except for the very low-income people, who would get 90 percent, 88 percent, and 85 percent of their AIME under the bill.

I do not think that is fair, Mr. President, and I shall debate that tomorrow. I might say, so we have a concept of the figures, that over the 5-year period which has been the criterion here, the people in these categories, if they were restored to the same kind of proportion which the other income categories have in this bill other than the very lowest, it would cost $153 million over a 5-year period.

It seems to me, Mr. President, that I have not heard and I have not seen any justification that these middle-income recipients of disability should take twice the beating everybody else does. Therefore, Mr. President, I think that ought to be corrected. The cost is not all that high, especially in view of the fact that Members have already indicated a sympathy for doing something about the very heavy cuts in this bill. It seems to me that this is an inequity that richly deserves correction.

Mr. President, I ask unanimous consent that my prepared statement as well as a table which will show clearly that this inequity is being perpetrated, may be printed in the RECORD at this point.

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

STATEMENT

Mr. President, a majority of my colleagues did not agree with the Metzenbaum amendment. Apparently, concerns about balancing the budget and assuring that post-disability benefits do not exceed pre-disability earnings carried the day. In an attempt to accommodate the financial concerns of my colleagues and yet remedy a clear injustice in the Committee bill, I am offering an amendment which would partially restore the maximum family benefits of lower-middle income beneficiaries whose family benefits would be disproportionately reduced without adequate justification. My amendment would raise the family cap in the Committee bill for beneficiaries with average prior earnings (AIME) ranging from approximately $600 per month to $1,000 per month so that the reduction in the replacement percentage of

their average prior earnings (AIME) is roughly proportional to such reductions for most other income groups.

For example, for a worker who had average prior earnings (AIME) of $800 per month and who became disabled and entitled to benefits in 1980, the Committee bill would reduce the present maximum family benefit of $685.50/month to $589.80/month. This represents a 12 percent reduction in the replacement rate for the average prior earnings (AIME), namely, from 86 percent of the AIME to 74 percent of the AIME. Such a percentage reduction is twice that of a beneficiary who had average prior earnings (AIME) of $600/month or $1,200/month. I do not think that such a severe, disproportionate reduction for this AIME group is justifiable. Mr. President, I have included in the Record a table prepared by the Social Security Administration's Office of the Actuary showing the maximum family benefits and related replacement ratios for differing AIME levels under present law, the Committee bill, and my amendment.

The Office of the Actuary has also prepared estimates of the amount of reduction in DI benefit payments that would result from the cap in the Committee bill and the cap in my proposal. The short-term numbers are as follows:

ESTIMATED AMOUNT OF REDUCTION IN DI BENEFIT PAYMENTS

[In millions]

Fiscal year	Cap in Finance Committee bill	Cap in Javits' amendment	Difference
1980	$25	$21	$4
1981	97	81	16
1982	175	146	29
1983	262	217	45
1984	350	291	59
Total	909	756	153

Over the next 75 years, average expenditures, as a percentage of taxable payroll, would be reduced by an estimated .06 percent under the Committee bill and by .05 percent under my proposal.

My amendment would raise the maximum family benefit for beneficiaries who became disabled in 1979 and who had average prior earnings (AIME) around the average wage figure of $882/month and would yet retain the Committee-proposed reductions for other AIME groups by means of the following cap:

Total Family benefits=Sum of: 85 percent of the first $493 of the worker's average indexed monthly earnings (AIME) plus 70 percent of AIME in excess of $493 but not in excess of $737 plus 38 percent of AIME in excess of $737 but not in excess of $1,085 plus 24 percent of AIME in excess of $1,085.

As under the Committee bill, total family benefits would not be limited to an amount less than the worker's primary insurance amount. I should add that the bend points in the above formula ($493, 737, 1,085) would be indexed by average wages to obtain the corresponding bend points for workers becoming disabled in any year after 1979. The 1980 bend points would be $532, $796, and $1,171. The formula I propose can be viewed as a modification of the Committee's 85 percent AIME/160 percent PIA formula through the striking of the 160 percent PIA factor and the replacing of the 85 percent AIME figure with four AIME percentages starting at 85 percent and declining as the corresponding AIME dollar levels increase.

Mr. President, my amendment would partially restore disproportunately large and injustifiable reductions in the maximum family benefits for average income beneficiaries and yet not make the bill unacceptable to those who are concerned about cutting costs. The amendment I propose is a compromise between those who want to reduce benefits and those who do not. I commend my proposal to this Body for close consideration and approval.

MAXIMUM FAMILY BENEFIT AMOUNT (FBA) FOR WORKERS WHO BECOME DISABLED AND ENTITLED TO BENEFITS IN 1980, UNDER PRESENT LAW AND UNDER 2 ALTERNATIVE PROPOSALS TO REDUCE MAXIMUM FAMILY BENEFITS, FOR ILLUSTRATIVE AMOUNTS OF AVERAGE INDEXED MONTHLY EARNINGS (AIME)

AIME	FBA under present law		FBA under Senate Finance Committee bill[1]			FBA under proposed alternative[2]		
	Amount	As percent of AIME	Amount	As percent of AIME	Difference from present law (percent)[3]	Amount	As percent of AIME	Difference from present law (percent)
$135	$183.00	136	$122.00	90	45	$122.00	90	45
$200	264.90	132	176.60	88	44	176.60	88	44
$300	312.90	104	255.00	85	19	255.00	85	19
$400	360.90	90	340.00	85	5	340.00	85	5
$477[4]	418.80	88	405.50	85	3	405.50	85	3
$500	439.00	88	425.00	85	3	425.00	85	3
$600	526.00	88	487.40	81	6	499.80	83	4
$700	613.00	88	538.60	77	11	569.80	81	6
$800	685.50	86	589.80	74	12	638.60	80	6
$882[5]	720.60	82	631.70	72	10	669.70	76	6
$900	728.30	81	641.00	71	10	676.60	75	6
$1,000	771.20	77	692.20	69	8	714.60	71	6
$1,100	814.10	74	743.40	68	6	752.60	68	6
$1,200	860.40	72	786.60	66	6	786.50	66	6
$1,300	886.60	68	810.60	62	6	810.50	62	6
$1,400	912.90	65	834.60	60	6	834.50	60	6
$1,500	939.10	63	858.60	57	5	858.50	57	5
$1,600	965.40	60	882.60	55	5	882.50	55	5
$1,700	991.60	58	906.60	53	5	906.50	53	5

[1] Total family benefits would be limited to the smaller of 85 percent of the worker's AIME (or 100 percent of his primary insurance amount (PIA), if larger) or 160 percent of the worker's PIA.

[2] See covering memorandum for description of proposal.

[3] Represents difference in FBA under present law and under the proposal, as a percent of AIME, and therefore may not equal the difference of the percentages because of rounding.

[4] Represents estimated AIME for worker with wages equal to the Federal minimum wage in each year through 1979.

[5] Represents estimated AIME for worker with wages equal to the average wage in each year through 1979.

Note: The information in the above table is based on the average wage amount that has been established for 1978 and the benefit formulas that have been determined for 1980. The effect of the June 1980 benefit increase is excluded.

Source: Social Security Administration, Office of the Actuary, Dec. 12, 1979.

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

The PRESIDING OFFICER. Is there a sufficient second?

Mr. LONG. I am willing to have the yeas and nays on tomorrow.

Mr. JAVITS. I realize that.

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

The yeas and nays were ordered.

Mr. JAVITS. I thank the Chair.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I do not believe the amendment should be agreed to.

The committee bill and the Javits amendment both have the effect of limiting family disability benefits as compared with present law. Both would have approximately the same impact at lower benefit levels and at higher benefit levels. However, in the middle range of benefit levels, the Javits amendment would reduce benefits by a somewhat smaller amount than the committee bill. For example, at an $880 AIME level, the present law benefit is about $720. The House bill would reduce this to $595, the committee bill would reduce it to $630, and the Javits amendment would reduce it to $670. The net impact of the Javits amendment would be to reduce the savings of the committee bill by $4 million in fiscal year 1980 and by a total of $153 million over the 5-year period 1980–84.

Mr. President, with regard to this proposal, HEW has submitted this statement:

HEW opposed this proposal and favors the House provision. The proposal is more liberal than either the House or the Senate Finance Committee caps on these benefits, and compared to the House cap it would cut the first 5-year savings nearly in half. Furthermore, a cap at middle and upper levels that is based on a uniform percentage of primary insurance amount, that is, 150 percent of the primary insurance amount, as in the House bill, does not seem unreasonable and would enhance public understanding of the cap.

That is the position, Mr. President, of the Department of HEW, which really would prefer the House position, which is an even more strict limitation than the position of the Senate Finance Committee.

Mr. President, I believe the committee has been generous and has gone beyond what the administration has recommended. I believe we have done enough for people in the middle-income area in this instance, and I hope the committee

position will be sustained. We will have the opportunity to debate this tomorrow.

Mr. President, in view of the fact that we will take up this matter tomorrow, I ask unanimous consent that this matter be temporarily laid aside and that we proceed with it tomorrow.

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

UP AMENDMENT NO. 938

(Purpose: To provide for voluntary certification of medicare supplemental health insurance policies)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Montana (Mr. BAUCUS) proposes an unprinted amendment numbered 938.

Mr. BAUCUS. 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:

Strike out section 508 of the bill and insert in lieu thereof the following:

VOLUNTARY CERTIFICATION OF MEDICARE SUPPLEMENTAL HEALTH INSURANCE POLICIES

SEC. 508. (a) Title XVIII of the Social Security Act is amended by adding at the end thereof the following new section:

"VOLUNTARY CERTIFICATION OF MEDICARE SUPPLEMENTAL HEALTH INSURANCE POLICIES

"SEC. 1882. (a) The Secretary shall establish a procedure whereby medicare supplemental policies (as defined in subsection (g)) may be certified by the Secretary as meeting minimum standards set forth in subsection (c). Such procedure shall provide an opportunity for any insurer to submit any such policy, and such additional data as the Secretary finds necessary, to the Secretary for his examination and for his certification thereof as meeting the standards set forth in subsection (c). Such certification shall remain in effect, if the insurer files a statement with the Secretary no later than December 31 of each year stating that the policy continues to meet the standards set forth in subsection (c), and if the insurer submits such additional data as the Secretary finds necessary to independently verify the accuracy of such notarized statement. Where the Secretary determines such a policy meets (or continues to meet) the required standards, he shall authorize the insurer to have printed on such policy an emblem which the Secretary shall cause to be designed for use as an indication that a policy has received the Secretary's certification. The Secretary shall provide each State insurance commissioner with a list of all the policies which have received his certification.

"(b) Any medicare supplemental policy issued in any State which has established under State law a regulatory program providing for the application of minimum standards with respect to such policies equal to or more stringent than the standards provided for under subsection (c) shall be deemed (for so long as the Secretary finds such State program continues to require compliance with such standards) to meet the standards set forth in subsection (c).

"(c) The Secretary shall not certify under this section any medicare supplemental policy for any period, nor continue a certification for any period, unless he finds that for such period such policy—

"(1) meets standards set forth by the Secretary with respect to adequacy of coverage (either in a single policy or, in the case of nonprofit hospital and medical service associations, in one or more policies issued in conjunction with one another), but such standards shall not require coverage in excess of coverage of the part A medicare deductible and the following coverage required under section 7 (I) (2) of the 'NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act', adopted by the National Association of Insurance Commissioners on June 6, 1979:

"(A) coverage of part A medicare eligible expenss for hospitalization to the extent not covered under part A from the 61st day through the 90th day in any medicare benefit period;

"(B) coverage of part A medicare eligible expenses incurred as daily hospital charges during use of medicare's lifetime hospital inpatient reserve days:

"(C) upon exhaustion of all medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 90 percent of all medicare part A eligible expenses for hospitalization not covered by medicare, subject to a lifetime maximum benefit of an additional 365 days; and

"(D) coverage of 20 percent of the amount of medicare eligible expenses under part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of $200 of such expenses and to a maximum benefit of at least $5,000 per calendar year;

"(2) is written in simplified language, and in a form, which can be easily understood by purchasers;

"(3) does not limit or preclude liability under the policy for a period longer than six months because of a health condition existing before the policy is effective;

"(4) contains a prominently displayed 'no loss cancellation clause' enabling the insured to return the policy within 30 days of the date of receipt of the policy (or the certificate issued thereunder) with return in full of any premium paid;

"(5) can be expected (as estimated for such period, not to exceed one year, to the maximum extent appropriate, on the basis of actual claims experience and premiums for such policy and in accordance with accepted actuarial principles and practices) to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies, and at least 60 percent of the aggregate amount of premiums collected in the case of individual policies; and

"(6) contains a written statement, in such form as the Secretary may prescribe, for prospective purchasers of such information as the Secretary shall prescribe relating to (A) the policy's premium, coverage in relation to the coverage and exclusions under medicare, and renewability provisions, and (B) the identification of the insurer and its agents.

"(d)(1) Whoever knowingly or willfully makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact with respect to the compliance of any policy with the standards set forth in subsection (c) or in regulations promulgated pursuant to such subsection, or with respect to the use of the emblem designed by the Secretary under subsection (a), shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

"(2) Whoever falsely assumes or pretends to be acting, or misrepresents in any way that he is acting under the authority of or in association with, the program of health insurance established by this title, or any Federal agency, for the purpose of selling or attempting to sell insurance, or in such pretended character demands, or obtains money, paper, documents, or anything of value, shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

"(3)(A) Whoever knowingly sells a health insurance policy to an individual entitled to benefits under part A or enrolled under part B of this title, with knowledge that such policy substantially duplicates health benefits to which such individual is otherwise entitled, other than benefits to which he is entitled under a requirement of State or Federal law (other than this title), shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned not more than five years, or both.

"(B) For purposes of this paragraph, benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual, shall not be considered as duplicative.

"(C) This paragraph shall not apply with respect to the selling of a group policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or members or former members (or combination thereof) of the labor organizations.

"(4)(A) Whoever knowingly, directly or through his agent, mails or causes to be mailed any matter for a prohibited purpose (as determined under subparagraph (B)) shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

"(B) A prohibited purpose means the advertising, solicitation, or offer for sale of a medicare supplemental policy (or a certificate issued thereunder), or the delivery of such a policy (or a certificate issued thereunder), into any State in which such policy or certificate has not been approved by the State commissioner or superintendent of insurance. For purposes of this paragraph any medicare supplemental policy (or a certificate issued thereunder) shall be deemed to be approved by the State commissioner or superintendent of insurance of such State if (i) it has been approved by the commissioners or superintendents of insurance in the States in which more than 30 percent of such policies or certificates are sold, or (ii) such State has in effect a law which the commissioner or superintendent of insurance has determined gives him the authority to review, and to approve, or effectively bar from sale in the State, such policy or certificate; except that such a policy or certificate shall not be deemed to be approved by a State commissioner or superintendent of insurance if such State requests to the Secretary that such policy or certificate be subject to such State's approval.

"(C) This paragraph shall not apply in the case of a person who mails or causes to be mailed a medicare supplemental policy (or certificate issued thereunder) into a State if such person has ascertained that the party insured under such policy to whom (or on whose behalf) such policy or certificate is mailed is located in such State on a temporary basis.

"(D) This paragraph shall not apply in the case of a person who mails or causes to be mailed a duplicate copy of a medicare supplemental policy (or of a certificate issued thereunder) previously issued to the party to whom (or on whose behalf) such dupli-

cate copy is mailed, if such policy or certificate expires not more than twelve months after the date on which the duplicate copy is mailed.

"(e) The Secretary shall provide to all individuals entitled to benefits under this title (and to the extent feasible, individuals about to become so entitled) such information as will permit such individuals to evaluate the value of medicare supplemental policies to them and the relationship of any such policies to benefits provided under this title.

"(f)(1)(A) The Secretary shall, in consultation with Federal and State regulatory agencies, the National Association of Insurance Commissioners, private insurers, and organizations representing consumers and the aged, conduct a comprehensive study and evaluation of the comparative effectiveness of various State approaches to the regulation of medicare supplemental policies in (i) limiting marketing and agent abuse, (ii) assuring the disemination of such information to individuals entitled to benefits under this title (and to other consumers) as is necessary to permit informed choice, (iii) promoting policies which provide reasonable economic benefits for such individuals, (iv) reducing the purchase of unnecessary duplicative coverage, and (v) improving price competition.

"(B) Such study shall also address the need for standards or certification of health insurance policies sold to individuals eligible for benefits under this title, other than medicare supplemental policies.

"(C) The Secretary shall, no later than July 1, 1981, submit a report to the Congress on the results of such study and evaluation, accompanied by such recommendations as the Secretary finds warranted by such results with respect to the need for legislative or administrative changes to accomplish the objectives set forth in subparagraphs (A) and (B), including the need for a mandatory Federal regulatory program to assure the marketing of appropriate types of medicare supplemental policies, and such other means as he finds may be appropriate to enhance effective State regulation of such policies.

"(2) The Secretary shall submit to the Congress on January 1, 1982 and periodically as may be appropriate thereafter (but not less often than once every two years), a report evaluating the effectiveness of the certification procedure and the criminal penalties established under this section, and shall include in such reports an analysis of—

"(A) the impact of such procedure and penalties on the types, market share, value, and cost to individuals entitled to benefits under this title of medicare supplemental policies which have been certified by the Secretary;

"(B) the need for any changes in the certification procedure to improve its administration or effectiveness; and

"(C) whether the certification program and criminal penalties should be continued.

"(g) For purposes of this section, a medicare supplemental policy is a health insurance policy or other health benefit plan offered by a private entity to individuals who are entitled to have payment made under this title, which provides reimbursement for expenses incurred for services and items for which payment may be made under this title but which are not reimbursable by reason of the applicability of deductibles, coinsurance amounts, or other limitations imposed pursuant to this title; but does not include any such policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or members or former members (or combination thereof) of the labor organizations.

"(h) The Secretary shall prescribe such regulations as may be necessary for the effective, efficient, and equitable administration of the certification procedure established under this section.".

(b) The amendment made by this section shall become effective on the date of the enactment of this Act, except that the provisions of paragraph (4) of section 1882(d) of the Social Security Act (as added by this section) shall become effective on January 1, 1982.

(c) The Secretary of Health, Education, and Welfare shall issue final regulations to implement the certification procedure established under section 1882(a) of the Social Security Act not later than October 1, 1980. No policy shall be certified and no policy may be issued bearing the emblem authorized by the Secretary under such section, until January 1, 1982. On and after January 1, 1982, policies certified by the Secretary may bear such emblem, including policies which were issued prior to January 1, 1982, and were subsequently certified, and insurers may notify holders of such certified policies issued prior to January 1, 1982, using such emblem in the notification.

Mr. BAUCUS. Mr. President, this amendment substitutes a new section 508 in lieu of the current section dealing with voluntary certification of medicare supplemental health insurance policies in States that do not have adequate programs of their own.

This provision is favored by many senior citizens and consumer organizations. The General Accounting Office and the administration have gone on record in strong support of enactment of a voluntary certification program.

A number of my colleagues have been especially helpful in developing this substitute amendment. I want to thank Senators CHILES, CULVER, and METZENBAUM, for their efforts and commitment to providing needed protection to the elderly.

While I believe that the committee modification as originally adopted on December 5 is a good one, the amendment I am offering today makes a number of technical changes and clarifications which will significantly improve the proposed certification program. Let me stress that this is a fine tuning of a previously adopted amendment and it does not depart from the original intent.

Section 508 is necessary because the medicare program places certain limitations on the kinds of health services which are covered. In addition, there are deductibles and coinsurance amounts for which the beneficiary is liable.

In order to supplement their medicare coverage, nearly two-thirds of the aged population purchases private supplemental health insurance—the so-called MediGap policy. Detailed hearings held by the Senate and House Aging Committees, the House Interstate and Foreign Commerce Committee, and other investigations have identified numerous and widespread abuses in the sale of MediGap policies.

The difficulty has been, Mr. President, that in the last decade, to say the least, too many rotten apples have spoiled the barrel. That is, too many insurance agents and insurance companies have taken advantage of senior citizens, widows, widowers. These individuals often cannot read the fine print in the policy or for whatever reason purchase policies that in many cases are duplicative and does not provide the coverage they think is being given.

To assist beneficiaries and to avoid exploitation, the Senate adopted without objection a Finance Committee modification of the disability bill on December 5. The provision would require the Secretary of Health, Education, and Welfare to establish a voluntary program for certification of MediGap policies which meet certain minimum standards in States that do not apply equivalent or higher standards.

Let me stress the urgency in adopting and beginning to implement this important program. The earliest disclosures of the problem date back to 1971 when the Senate Antitrust and Monopoly Subcommittee held hearings. Roughly 19 reports, investigations, and congressional hearings have been released which further identify and document abuses in the sale of MediGap policies to the elderly.

Indeed, the House Select Committee on Aging estimates the loss to senior citizens to be $1 billion a year.

Senior citizens, like most Americans, are uninformed about insurance. An insurance policy is a "blind item"—senior citizens have no way of judging the value of what they are purchasing. They have to accept the representation of agents. They fail to understand the effect of small print commonly contained in such policies which say that in the case where a senior has more than one such policy, only one policy will pay. Senior citizens need some guidance as to what is an acceptable policy.

A Federal voluntary certification program represents a sensible approach to eliminating these problems. The Federal Government created many of these problems through the enactment of medicare and is therefore obligated and responsible to do something about it.

It has been suggested that Congress defer taking positive action on a voluntary certification program to give State legislatures an opportunity to enact the standards adopted by the National Association of Insurance Commissioners.

I commend the NAIC for adopting model minimum standards for medicare supplementary health insurance policies.

But there is no reasonable justification for delaying implementation of this program in spite of the NAIC's standards.

The senior citizens of the Nation cannot wait. They need help now. In 1971, the Senate Anti-Trust and Monopoly Subcommittee detailed significant abuses in the mail order sale of medicare supplementary health insurance policies. The next year, the National Association of Insurance Commissioners adopted model minimum standards for mail order insurance.

In 1979—some 8 years later—less than half of the States had adopted model standards for mail order policies. Moreover, even the ones that had enacted the regulations have found them inadequate and have asked Congress to step in.

The purpose of the study in section 508 is not to determine the need for a voluntary certification program, but rather

whether States have identified approaches that might be useful in making the Federal program more effective.

In delaying implementation of the certification procedure, we would be doing a grave disservice to the senior citizens of our Nation.

It is our effort here, Mr. President, to try to find some way to encourage the States to remedy the problem. My bill represents a reasonable way to light a fire under the States to encourage them to take care of the problem in their own backyards.

Under the procedure in my amendment, companies could submit their policies to the Secretary of HEW for certification that the policy meets prescribed standards. The company could then display an emblem of certification on its policy.

To be certified, a policy would have to meet standards with respect to coverage drawn primarily from the National Association of Insurance Commissioners model regulations; be written in simplified language and in a form which can be easily understood; not limit benefits for more than an initial 6-month period because of a health condition existing before the policy was effective; prominently display a "no-loss cancellation clause" enabling the insured to return a policy within 30 days without financial loss; be expected to return to policyholders in the form of aggregate benefits at least 75 percent of the amount of premiums collected in the case of group policies, and at least 60 percent in the case of individual policies; and contain information that prospective purchasers would need to make an informed evaluation of the policy.

In addition, the Secretary would make readily available to medicare beneficiaries such information as will assist them in evaluating MediGap policies.

As I have said, policies issued in any State which has implemented a regulatory program that requires compliance with minimum standards that are equal to or higher than the Federal standards would be deemed to be certified. A key standard in the voluntary certification program is the minimum loss ratio. The purpose of this provision is to insure the policyholders receive reasonable financial return for their health insurance premium dollar.

In the area of medicare supplementary insurance, it is common for companies to return as little as 20 or 30 percent on the premium dollar while Blue Cross and Blue Shield, by contrast, return over 90 percent on the premium dollar. The average loss ratio for all health insurance within the insurance industry is 80 percent.

It is unconscionable to let companies return only 20 or 30 cents on the premium dollar, retaining the rest in profits and administrative expenses.

In order to guarantee that every purchaser of a certified policy receives full and fair value, the bill provides that the Secretary will compare actual incurred losses and earned premiums each year for every certified policy form in order to determine whether it can be expected to return to the policyholder an acceptable level of payment.

If the actual data shows a payout lower than 60 percent of premiums for individual policies or 70 percent for group, certification would be withdrawn. Exceptions could be granted where the policy is in its early years and lacks credible loss experience, or where the operation of permitted preexisting-disability exclusions might create temporary aberations in a policy's benefit payment experience.

I want to stress that the standards to be applied is the loss ratio actually experienced on a yearly basis, not a loss ratio which might be anticipated over a longer period of time.

For example, take an individual policy which showed an actual loss ratio of 50 percent on its current experience, but which was anticipated to have a lifetime loss ratio over 20 years greater than 60 percent. This policy should not be certified until its current loss ratio increased to at least 60 percent.

There is no good reason why persons who buy a policy form in the first several years following its issuance should receive a poorer value than those who buy later. And there can be no assurance that a company's estimates of its long-term premium income and payout will actually occur.

For example, a company may argue that its present loss ratio of 30 percent will increase to 70 percent as the policy ages—thus producing an average loss ratio of, say, 60 percent over the next 10 years. One of the problems with such estimates is that the company may simply raise its premiums to offset increases in the payout—thus effectively keeping the loss ratio from increasing as predicted. Moreover, experience with our public health care programs shows dramatically how difficult it is to predict health care costs.

Under the provisions, penalties would be provided for engaging in certain fraudulent activities: For furnishing false or misleading information for the purpose of obtaining certification; for misrepresentation as an agent of the Federal Government for the purpose of selling insurance to supplement medicare; and for knowingly selling insurance policies whose benefits would be reduced or denied because they duplicate benefits under another policy held by the purchaser; and for knowingly advertising, soliciting, or offering mail-order policies in a State contrary to the desire of the State insurance commissioners.

Under the bill, selling MediGap policies by mail would be a felony unless approved by the State in to which it is mailed, or by another State in which over 30 percent of such policies are sold, or if the State has laws which permits the commissioner to review, approve, or bar these mail-order policies.

The purpose of this provision is to assure that a State insurance commissioner will have Federal sanctions available to help him protect the residents of his State against shoddy policies mailed in by out-of-State companies. The various exemptions are designed to make it unnecessary for the State and out-of-State companies to initiate any special review and approval procedure where the State chooses not to do so.

Upon conviction of any one of these four offenses, which will be classified as felonies, an individual would be subject to a fine of up to $25,000 or imprisonment for up to 5 years, or both.

Certification will assure medicare beneficiaries that the policy they purchase will provide adequate, fairly priced protection against health care expenses that are not covered by medicare. Certification, together with the provisions for full disclosure, will create a climate of consumer understanding that will foster healthy competition with a competitive advantage for the best plans.

Under the bill, the Secretary will also make available to all medicare beneficiaries information which permits them to evaluate the value of supplemental policies. This provision too will promote enhanced consumer information.

A decade of abuse and problems in the sale of MediGap policies to the elderly have been documented by investigations, reports, and congressional hearings conducted by House and Senate Select Committees on Aging.

What do these disclosures show?

Senior citizens receive confusing information about the scope and extent of coverage provided.

Unethical sales practices result in tragic situations where older Americans purchase 2, 3, 4, and in 1 case as many as 90 duplicative and worthless policies in supplementation of medicare.

Restrictive benefit clauses often make the policies financially unattractive or even worthless.

Complex policy language makes it difficult, if not virtually impossible, for these consumers to make informed and intelligent choices about the policies they wish to purchase.

By acting now to establish a program of voluntary certification, the Congress can send a strong message to those who market poor quality plans and to those who prey upon the elderly and the infirm.

I believe that we have already waited far too long to combat and eliminate the documented abuses and confusion in the medicare supplementary field.

Mr. President, in the intervening weeks since we first considered the social security disability legislation, there have been many comments on section 508. Many representatives of the health insurance industry and State regulators have contacted me indicating their views with respect to a voluntary certification program. I want to thank especially Harp Cote and Jay Jenks for their suggestions and thoughtful comments.

I have met with these individuals and spoken with countless others over the phone. I have tried to accommodate many of the concerns of the insurance industry and State regulators. I have made every effort to compromise and revise in response to legitimate comments.

My amendment incorporates many of the sound recommendations received over the past several weeks.

Let me briefly explain some of the changes reflected in the pending substitute. Some are perfecting amendments. Others are designed to clarify certain provisions of the program.

The substitute for section 508 is being

offered in the expectation that it will significantly improve this program. The substitute in no way undermines or violates the essence of the program—which is to establish a procedure whereby medicare supplemental policies can be certified as meeting minimum standards.

Under the amendment, the scope of the proposed program has been limited so that it now focuses exclusively on areas of demonstrated abuses.

This has been accomplished by excluding from the definition of affected policies, group contracts established by an employer or labor organization. No case has been made that the MediGap abuses apply to employer-based and union-sponsored group policies sold to the elderly.

The amendment makes it clear that these policies will not come within the ambit of the voluntary certification program or the felony provision dealing with duplication of benefits and mail order policies.

The scope of the amendment has also been clarified with respect to State and Federal laws which provide health benefits. Concern was expressed that the penalty provision for selling duplicative policies would inadvertently interfere with State laws such as veterans' programs, workmens compensation, and no-fault auto insurance. The provision has been amended so that the duplication penalty would not apply where individuals purchased benefits which might overlap with benefits which they might become entitled to under requirements of State or Federal law (other than under title 18).

The pending amendment responds to the concern over broad secretarial discretion in setting regulations to implement and administer the voluntary certification program. In the original provision, for example, the Secretary had discretion in establishing the reasonableness of the premium charge. This discretion has been eliminated altogether since it is not the intent of the bill's sponsor to have the Secretary engage in rate-setting of insurance premiums.

Clarifications have also been made to stress that minimum standards will largely be drawn from the insurance commissioners themselves. I do not intend for the Secretary to arbitrarily impose unreasonable standards on MediGap policies for the purposes of receiving certification. In setting standards, therefore, with respect to adequacy of coverage, the Secretary will use as a guideline, the NAIC model regulations to implement the Individual Accident and Sickness Insurance Minimum Standards Act. This is another example of how the scope of the provision has been limited.

The amendment eliminates potential abuse by unscrupulous agents of the Federal seal of approval for the purpose of twisting or replacing good policies. Representatives of the insurance industry and State officials have stated that they fear that unethical agents will use the "good housekeeping seal" to encourage senior citizens to replace good policies that are not yet certified because they were issued before the voluntary certification program became effective.

The substitute eliminates this possibility by amending the effective dates of the program to occur in two stages. First, the Secretary of HEW will issue final regulations to announce the certification procedure by October 1, 1980; 15 months will elapse, however, before the Secretary may actually certify a policy and issue an emblem stating that fact.

The delay in the issuance of the certification seal will allow all companies which market MediGap policies to adjust those policies to conform with Federal standards so that the seal can be provided for policies already in force when the program takes effect as well as for policies issued after that date.

The enormous concern shown by these individuals over the possible misuse of a well-intentioned program represents the best evidence of the extent of agent abuses. It provides a compelling argument in support of establishing these critical protections for elderly Americans.

The amendment will not require nor promote excessive regulations by State commissioners on the issue of mail order insurance.

State insurance commissioners who are normally wary of Federal intervention have asked the Federal Government to help them regulate mail order insurance sold to the elderly in supplementation of medicare. At the present time, it is possible for an insurance company licensed in any one of the States to offer its policies for sale in each of the other States without having these policies approved by the insurance commissioner of the States into which policies are mailed. What this means is that mail order firms escape regulation. They have the competitive advantage by being allowed to market policies which do not conform to State standards.

In response to a questionnaire on whether the States would support the mail order provision, many State regulators answered emphatically in the affirmative.

One commissioner maintained that "too much of the so-called MediGap supplemental insurance market is being solicited through the mails, insulated from State regulations."

Another commissioner indicated his full "*** support of Federal legislation designed to regulate all mail order insurance policies at the State level including those policies purportedly sold to supplement medicare coverage, whether sold on an individual or group basis. I am in complete agreement with the superintendent of insurance of the State of New York with respect to his concern about phony trusts, especially when created by insurance companies, whose only purpose is to circumvent State insurance laws which define 'group insurance' and do not include fictitious groups, such as 'trusts' whose members have nothing in common except their common interest in the purchase of insurance."

A commissioner of a large Southern State responded:

> I strongly support your suggestion to bar the sale through the mails of any policy which has not been approved by the State insurance commissioner of the State into which the policies are mailed.

Consistent attempts have been made throughout the entire bill to draw upon the recommendations of the National Association of Insurance Commissioners. The NAIC, in fact, endorses the mail order provision, I quote:

> The NAIC supports efforts to deter market abuses by imposing federal criminal sanctions for certain types of market conduct. This support was recently expressed in the number of affirmative responses to a questionnaire * * * Most insurance regulators would agree that properly drafted criminal penalties for medicare supplemental insurance abuses are an excellent example of how federal legislation can complement existing state regulation by reinforcing rather than undercutting state regulatory activities.

My amendment makes it a felony to knowingly mail any medicare supplemental policy into a State where the policy has not been approved by the State insurance commissioner. In order to avoid placing an unfair burden on State commissioners and insurers, however, the amendment permits the commissioner to deem a MediGap policy approved in his State: If it has been approved by commissioners in the State where more than 30 percent of those policies are sold, or if the State officials believes he already has sufficient authority to monitor the sale of mail orders policies in his State. In effect, the Federal sanction will be available only to the extent that the State insurance commissioner wishes to subject a policy to his own approval.

The original provision providing for the establishment of a voluntary certification program of MediGap policies sold to the elderly is a good one. The substitute amendment makes the program a better one. The focus of the legislation has been limited, concerns over broad secretarial discretion have been addressed, and potential abuses of the Federal seal have been eliminated.

The certification program will result in no significant additional Government expenditures. It will create no new Federal bureaucracy. The Secretary of HEW will not have wide powers to promulgate a raft of new regulations. Consumer groups, senior citizens organizations, the administration, and the General Accounting Office are on record in strong support of this approach.

Congress can take a giant step toward reducing the abuses in MediGap practices by enacting this program. It will provide assurance to older Americans that the insurance policy they purchase meets basic standards for coverage and benefits. Senior citizens have waited too long for these minimum assurances. They should not be forced to wait any longer.

With that in mind, the Senator from Kansas, I understand, is going to offer an amendment to this amendment which, in effect, delays the implementation date of the HEW volunteer certification process and modifies it in a way so that the Secretary of HEW will not implement the voluntary certification process unless the Secretary of HEW finds, within a year and a half, that certain States, on a State-by-State basis, have not established standards equal to or stronger than those outlined in the bill. Mr. President, I shall accept that amendment in pursuit of finding a beginning so we can take the first step and remedy the problem.

I compliment the Senator from Kansas. I think he has been very wise in suggesting the amendment. I do not mean to steal his thunder in describing it, but he also provides in the amendment that Congress will have 60 days to review the findings of the Secretary.

I think that is a good compromise. It is a good beginning. And it is my hope, Mr. President—in fact, it is my understanding—that all the principal actors in this amendment agree to it.

I thank all those parties for their very fine efforts.

Mr. President, I ask unanimous consent that a list of some of the abuses we are covering, as well as a table listing some of the studies of abuses, be printed in the RECORD at this point.

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

CASE HISTORIES

There is a veritable litany of case histories where senior citizens are easy prey for aggressive and unscrupulous insurance agents.

Item: A 76-year-old Illinois woman was sold some 71 life and hospitalization policies since she was widowed in 1976. Some 42 of the policies are currently in effect. It was reported she had to mortgage her farm to keep up with the premiums which in one year amounted to $15,000.

Item: An 80-year-old Pennsylvania woman spent over $50,000 on 31 policies over a three-year period. She took out a $3,000 loan from a bank to make insurance payments.

Item: A Pennsylvania widow also near 80 was spending $100 of her $109 old age pension on insurance. She said she sold baked goods and dipped into her small savings to survive.

Item: An 87-year-old Wisconsin woman purchased 19 different policies from 6 agents representing 9 companies and costing $4,000. As in these other cases, the policies were largely worthless because of duplication.

Item: A Florida couple, age 82 and 78, delayed repairing their refrigerator, television or stove because they were trying to keep up with $2,882 yearly premium on 19 separate insurance policies.

Item: An Ohio woman bought 13 different policies over a two-year period, costing her more than $9,000 or 68 percent of her income.

Item: An 84-year-old Texas woman paid over $15,303 for 23 health policies. Investigation revealed that several of the items she thought were insurance policies were worthless vehicle warranty contracts and a deed to worthless, unwanted Texas land.

Item: A 94-year-old Kansas man was sold 26 accident and health policies in the past three years.

Question 1: Should the enactment of a program of voluntary certification and other reforms in the Baucus amendment be postponed until further study can be made?

Answer. No. Senior citizens cannot afford to wait. They need help immediately. An insurance policy is very much a "blind item"—consumers cannot judge the worth of the policy themselves and must rely upon the representations of agents. There have been 19 major studies of this issue going back as far as 1971. These studies are listed below. They confirm the nationwide scope of the problem and the fact that few States have taken action to prevent senior citizens from being sold multiple, duplicate and essentially worthless insurance policies.

December 1979. Study of Medigap Insurance by George Washington University's Intergovernmental Health Policy Project (soon to be released).

November 1979. Study by American University on "Medicare Supplements and their value and control under grant No. 90-a-1677 from the Administration on Aging (HEW).

June 1979. Hearings by the House Interstate and Foreign Commerce Committee.

June 1979. Study by the U.S. General Accounting Office for the House Committee on Aging.

June 1979. Hearings by the Massachusetts Legislature.

November 1978. Hearings by the House Select Committee on Aging and a report "Abuses in the Sale of Health Insurance to the Elderly in Supplementation of Medicare: A National Scandal."

September 1978. Study of Medigap Insurance by the Chicago Tribune.

July 1978. Study of Medigap Insurance by the Federal Trade Commission.

July 1978. Study by the Kansas Insurance Commissioners.

May–June 1978. Hearings by the Senate Committee on Aging.

March 1978. Exposé of Medigap Insurance Abuses by the Newark Star Ledger.

December 1977. Investigation by the Wisconsin Insurance Commissioner.

July 1976. Investigation by the State of Oregon.

January 1976. Study by Consumer Reports magazine.

September 1974. Study by the State of Pennsylvania Department of Insurance.

December 1974. Report on Medigap Insurance by the Senate Committee on Aging.

May 1973. Consumer Reports magazine.

January 1973. Investigation by the Pennsylvania Department of Insurance.

May 1972. Hearings by the Senate Judiciary Committee, Subcommittee on Anti-Trust and Monopoly.

Mr. BRADLEY. Mr. President, as a member of both the Finance Committee and the Special Committee on Aging, I would like to join Senator BAUCUS today in reaffirming support of the MediGap amendment added to H.R. 3236 by the Finance Committee last November.

The enactment of medicare in 1965 provided long awaited relief to those of our Nation's elderly burdened with high medical expenses and little, if any, insurance coverage. Now, 15 years later, we are coming to terms with the fact that medicare is not a comprehensive program. Many of the medical services used by the elderly are not covered under medicare. Furthermore, the growing financial strain associated with these gaps in coverage has eroded some of the early achievements of this insurance plan. The aged pay more out-of-pocket for medical services today than they did in 1965. Only 38 percent of all medical bills faced by the elderly are paid by medicare; the remainder are paid out-of-pocket, or through medical assistance or private insurance.

The growing financial burden of these uncovered services has created a new market—the medicare supplemental or MediGap insurance industry. A vast array of private insurance companies, from the most respectable to the less reputable, have entered the marketplace. Over 50 percent of people over 65, or 12.6 million, have at least one such policy, spending between $500 million and $1 billion annually on premiums. The supplemental policies that call themselves MediGap are of very different types, with very different benefits and degrees of supplementation of medicare. While many MediGap insurers deal in an honest way with their elderly clientele, some insurers have exploited this new market, preying on the real fears of the elderly over rising health care costs.

In 1978 the Special Committee on Aging held hearings which detailed numerous horror stories about unscrupulous marketing tactics for MediGap policies. Postdating, forgery and misrepresentation are all too common, and consumers are often knowingly sold plans with duplicative coverage, believing that each policy fills a different gap. For example, testimony revealed that one 87-year-old woman was sold 19 separate MediGap policies in a single year.

Abuses such as fraud, highlighted in the Senate hearings, are only part of the problem. Confusion about what is and what is not covered by medicare is widespread among beneficiaries. Hence the need for supplementation in specific areas is not always understood. Moreover, consumers are generally not well informed about health insurance and can misinterpret the usefulness of various policy provisions and exclusions. Another critical cause of misunderstanding derives from the lack of standardization of MediGap policies. With no two policies exactly alike, it is difficult, if not impossible, for the consumer to evaluate the relative cost or merits of different MediGap policies.

Because the insurance industry is regulated by the States, regulation of the MediGap market has been very uneven. In most States interest in the MediGap insurance area has developed only gradually. Most State efforts have focused on requiring insurers to provide information and disclosure about their policies. Some States have mandatory standardization and minimum loss ratio requirements. Some States provide medicare beneficiaries with information on how to make good choices among various MediGap alternatives through booklets with descriptions and warnings.

Some States have gone further, requiring insurers to provide consumers with disclosure forms describing medicare benefits, the supplemental policy's benefits and major areas that neither medicare nor the MediGap policy covers.

Sometimes insurers are required to reveal the plan's estimated loss ratio, that is, the percentage of the premium dollar returned in benefits; a number of States have mandated minimum loss ratios by all health insurers. And some States have done virtually nothing. The picture, in short, is very much a patchwork. Abuses and confusion continue.

Such is the backdrop for the MediGap provision approved by the Senate Finance Committee last November. The committee's amendment is intended to remedy the major problems in the MediGap marketplace by providing for voluntary certification of medicare supplemental health insurance policies. The Secretary of HEW, in consultation with the National Association of Insurance Commissioners, would establish minimum standards for MediGap policies. Private insurance companies could then submit their policies for certification. Policies is-

sued in any State which has its own program requiring compliance with minimum standards comparable to those included in the Federal certification program would also be considered certified and would bear the HEW "seal of approval."

Policies certified would be required to contain a written statement of the policy's premiums, coverage, renewability, and coinsurance features. They would also have to be written in simplified language which can be understood by the purchasers. Finally, HEW would undertake a major program of providing information to medicare beneficiaries about medicare coverage, the gaps in coverage, and the value of supplementary policies. The result of this program of voluntary certification and consumer education should be to assure more informed choices by those purchasing MediGap insurance and thereby to reduce the abuses and confusion which currently characterize the medicare supplemental insurance field.

Some have proposed that we delay enactment of this voluntary certification program. I do not believe that further delay is either necessary or reasonable. Nineteen major reports issued since 1972 have documented the serious problems associated with the patchwork of so-called MediGap insurance. Senior citizens and their families should not be required to wait for yet more evidence of abuse. At the present time they have no way of identifying good policies. They must rely on the representations of agents. This modest proposal for voluntary certification is much needed and long overdue. I strongly urge its enactment.

● Mr. METZENBAUM. Mr. President, I rise in support of the Baucus amendment to establish a voluntary certification program for medicare supplemental policies sold to the elderly. Recent investigations by both the House and Senate Select Committees on Aging have documented abuses in the sale of this insurance which are so extensive they constitute a national scandal. I commend Senator BAUCUS for his excellent work on this issue.

I have been deeply concerned about this issue for some time. The Subcommittee on Antitrust and Monopoly has been conducting an extensive examination of the insurance industry under the McCarran-Ferguson Act. Over the past 2 years I have chaired six major hearings on issues ranging from unfair discrimination in property and auto insurance to excessive rates and marketing abuses in credit insurance. I am, therefore, especially pleased to support this amendment, a proposal which addresses an extremely urgent problem in the insurance business. My staff has worked closely with Senator BAUCUS and the Finance Committee on this amendment.

The voluntary certification program is an important step forward. Presently, few States regulate this type of insurance effectively. Widespread and systematic abuses of senior citizens have been documented in thorough congressional hearings and reports. Many companies routinely return as benefits only 30 or 40 cents out of every premium dollar. Numerous agents, as shown by extensive testimony, misrepresent the scope of coverage, and overload unknowing senior citizens with duplicative coverage. Many companies sell by mail in order to use jurisdictional limitations to avoid regulation by States in which they sell.

Examples of flagrant maltreatment abound. An 88-year-old woman in Florida was sold more than $10,400 of health insurance in a year. A blind, 94-year-old man in Kansas was sold nearly 26 accident and health policies in 3 years. In Pennsylvania, a truly shocking case involved the sale of 31 policies costing $50,574 to an 80-year-old woman over a 3-year period. Every policy lapsed, but not until the woman's entire life savings had been wiped out.

The list is endless; I could recite cases like these all day. Hearings held by the House and Senate Select Committees on Aging, as well as by a number of State commissioners, document a national scandal of awesome proportions. Low pay-outs, high-pressure sales tactics, and duplicative coverage are typical of many insurers operating in many States. The exhaustive record compiled leaves no room for the theory that the problems documented can be explained by an occasional unscrupulous agent or misunderstanding by a policyholder.

Former insurance commissioner William J. Sheppard of Pennsylvania described the problem as "the disgraceful exploitation of the senior citizens of Pennsylvania through the sale of health insurance." Former insurance commissioner Harold Wilde of Wisconsin characterized the "medi-scare insurance racket, as a multimillion-dollar rip-off of our senior citizens" and stated that it has "swindled tens of thousands of Wisconsinites over the past few years." Executive director William R. Hutton of the National Council of Senior Citizens recently stated that the sooner we reach a national standard for MediGap insurance, the quicker we can wipe out "the disgrace of these horrors." The recent staff study of the House Select Committee on Aging concluded that there are widespread abuses with respect to MediGap insurance and that there has been a failure to aggressively regulate such abuses by many State insurance commissioners.

Most MediGap insurance is sold by small specialty companies. The House Select Committee on Aging reported that all but one major company, to which it has sent questionnaires, agreed that the current concern about abuses in the sale of medicare supplementary insurance is justified.

The elderly are easy victims for unscrupulous insurance sellers. Senior citizens often fear no one will sell them health insurance because of their age. Terrified by the crushing costs of medical care, they tend to buy policies indiscriminately in an effort to purchase security. At the same time, they are frequently ignorant about insurance matters, and not always able to look out for their own bests interests. As a result, they are easy marks.

Medicare, of course, is a Federal program. Since MediGap insurance is expressly designed to cover what medicare does not, it is especially appropriate that Federal standards govern this type of insurance.

I would prefer mandatory standards. I believe that the record of chronic abuses and inaction by the majority of States clearly supports the imposition of compulsory minimum standards. But a voluntary program is a start. And with tough but fair standards, a good start. Voluntary certification would allow the better policies the opportunity to earn the "Good Housekeeping" seal of approval. Consumers could then be assured of a fair deal whenever they bought a policy certified by the U.S. Government.

But for such a system to work, it is imperative that the standards set be both high and rigorous. It would be a cruel hoax indeed if a policy officially certified by the Federal Government turned out, after all the experience came in, to be a ripoff.

I believe that certification by the U.S. Government should be a mark of excellence. I support this program only on the assumption that no MediGap policies will be certified by the Secretary of HEW unless they are of truly first-rate quality. It is imperative that the standards applied be both high and rigorous.

A key provision is the minimum loss ratio. This standard will insure that at least 60 percent of premiums paid are returned to individual policyholders as benefits. While much lower than the standard generally achieved by Blue Cross/Blue Shield plans, this measure is a guarantee of minimum economic value. In administering this program, I expect the Secretary to make sure that policies remain certified only if actual data, checked on a yearly basis, show that the loss ratio standard is actually being met.

As I understand the amendment, long-term anticipated loss ratios, based on estimates of future losses, will not be relied on. Without reference to actual loss and premium experience on a current basis, it would be extremely difficult to monitor compliance with the standard.

Other key provisions in the amendment are the disclosure requirements. Senior citizens must be informed not only what a policy covers, but what it does not. This is key to avoiding pie-in-the-sky sales presentations which often conceal glaring deficiencies in coverage. Also of great importance are penalties provided for selling duplicative coverage, pretending to act under the authority of a Federal agency, or selling policies through the mail in States where they have not been approved.

The voluntary certification program is an important step forward. It is a moderate and balanced program. The problems congressional hearings have documented in the sale of health insurance to the elderly are of the utmost severity and urgency. Little effective action has been taken by the States to date. It is imperative that Congress act quickly and decisively to protect the Nation's elderly from insurance ripoffs.●

Mr. BAUCUS. Mr. President, I ask unanimous consent that Senator CULVER, Senator METZENBAUM, and Senator LEVIN be added as cosponsors of the amendment.

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

SENIOR CITIZEN HEALTH INSURANCE REFORM

● Mr. CULVER. Mr. President, in the 1st session of the 96th Congress, Senator BAUCUS and I introduced the Senior Citizen Health Insurance Reform Act of 1979. This legislation would establish a voluntary certification program for companies selling insurance policies intended to supplement medicare coverage, and stiffen the penalties for unethical sales practices. As such, it would provide much-needed consumer protection to the millions of older Americans who purchase such health insurance policies. The major provisions of the Senior Citizen Health Insurance Reform Act have been included in the Social Security Disability Amendments of 1979, which are now before the Senate.

Many people under age 65 do not realize that medicare covers only a modest and declining portion of the elderly's health-care expenses. To offset the skyrocketing costs of health care and the potentially bankrupting effect of a catastrophic illness, 15 million out of 23 million, or two-thirds, older Americans have turned to private health insurance policies to fill the gaps in their medicare coverage.

Numerous investigations and detailed hearings, by both House and Senate Committees on Aging, have documented widespread abuses in the sale of these medicare supplemental, or so-called MediGap, policies. Instead of bolstering medicare benefits, many policies sold to the elderly merely duplicate coverage already held and return as little as 20 cents in benefits for every dollar paid in premiums. A Federal Trade Commission study released in July 1978, noted that fully one-quarter of our senior citizens who attempt to purchase extra insurance to supplement medicare are actually sold unnecessary, costly, and overlapping coverage. The multiple abuses uncovered in the supplemental insurance area may well constitute a $1-billion-a-year fraud against older Americans.

Mr. President, it may not be possible to guarantee that no older person is sold an unneeded health insurance policy, or one that fails to provide all the needed benefits, but it is possible to reduce substantially the current fraud and abuse in this area. Many people are persuaded to buy unnecessary or duplicative policies because they lack the information needed to evaluate the value of various insurance plans. Few understand the implications of various escape clauses that exclude coverage of preexisting health conditions for lengthy waiting periods, or specify that only one policy will pay in the event of an illness. The fine print, technical provisions, and complex language contained in many policies often confuse the elderly. Moreover, older consumers have little or no protection against unscrupulous tactics by companies and agencies selling Medi-Gap policies.

The supplemental medicare insurance legislation included in the social security disability amendments would address these problems of abuse and fraud against the elderly in several ways. This bill would direct the Secretary of Health, Education, and Welfare to establish Federal minimum standards for "Medi-Gap" insurance. Companies providing such policies could then voluntarily submit their policies to the Secretary for certification. Policies meeting minimum standards for value and clarity would receive a uniform seal of approval which then would give the elderly purchaser some standard by which to judge the policy and some assurance that the policy is not deceptive. The Federal minimum standards outlined in this legislation are based on model standards adopted by the National Association of Insurance Commissioners (NAIC).

To address the problem of unethical sales practices, this bill would institute Federal criminal penalties for those who knowingly sell to a person eligible for Federal health insurance programs such as medicare, a policy which substantially duplicates protection already owned. It would also be a felony for any insurance salesman to pretend to be a representative of medicare as a tactic to pressure the elderly to purchase a policy.

Mr. President, not all senior citizens are touched by the documented abuses in the supplemental medicare insurance field, nor are most insurance companies or agents guilty of perpetrating those abuses. But the problems faced by this Nation's elderly, in attempting to insure their financial security against the rising costs of health care, cannot be ignored. I urge my colleagues to support this provision of the disability amendments and the protection it provides.●

Mr. DOMENICI. Mr. President, will the Senator yield me 3 minutes?

Mr. BAUCUS. I yield.

Mr. DOMENICI. As I understand it, the Dole substitute which the Senator has addressed in his remarks as a compromise has not yet been introduced, but will be shortly, is that correct?

Mr. BAUCUS. That is correct.

Mr. DOMENICI. I am a cosponsor of it and I rise in support of it. The senior Senator from Florida and I as the ranking Senator on the Aging Committee, undertook hearings in that committee on this issue of fraud with reference to so-called MediGap insurance. I am sure it exists. I am sure that population of senior citizens that are concerned about whether or not they are going to be able to take care of the expenses that accompany sickness and ailments of aging are among our poorer population and many of them have been misled. Many of them have been victims of agents that have almost been malicious in their intent to defraud and cheat them.

While all this investigation has been occurring, the States in the Nation have begun to respond with statutes and regulations that will protect the citizens in their respective States. It is this Senator's opinion that this amendment will say to the States, "Unless you want the Federal Government to get involved, you had better clean up your own house; you had better pass at least a minimal disclosure and substantive requirements proposed by your own industry and reiterated in this amendment." They will be given a clear opportunity, under the Dole modification, to do that. If they do not, and it is found that they do not, or they are not ready within the time prescribed in this amendment, then the U.S. Government, through the Secretary of HEW, will so find and will inform the committees of jurisdiction in both bodies and we shall be free to act.

I think, on the State-by-State basis, it is obviously the intent of this amendment that it will be clearly visible to all which States are really desirous of protecting the senior citizens within their States. We shall find out, in short order, whether the States are really capable of doing that and, if they are not, they and the insurance industry will have to take the medicine of having, on a State-by-State basis, the National Government certify which policies meet minimum standards and which do not.

I hope they will all enact legislation so they can police the industry and protect their citizens. It will be a far better approach.

Having said that, I commend the Senator from Montana for the interest and effort he has engaged in this issue. I am confident we must do something. I am hopeful that the industry and the States will do it for themselves and we shall not have to breach the long-standing commitment of our National Government to stay out of the regulation of insurance. I wholeheartedly concur that something must be done. I hope this is enough. I hope the Dole compromise, which I want to be a cosponsor of, will pass tonight and become the law of the land.

I thank the Senator from Montana for yielding.

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

Mr. CHILES. Will the Senator yield me a second?

Mr. DOLE. I yield to the Senator from Florida.

Mr. CHILES. Mr. President, I support the Senator from Montana in his amendment. The Committee on Aging, almost 2 years ago, held hearings on the MediGap insurance abuses and I think what we are doing here today is an attempt to correct that.

NO DELAY ON MEDIGAP INSURANCE AMENDMENT

Mr. President, I rise in support of the MediGap amendment, section 508 of the bill before us, which the Senate unanimously agreed to consider as part of this bill on December 5, 1979. We have considered this matter long enough, and I believe any further delay would send an unmistakable message to the millions of older Americans who are waiting for Congress to take action against the blatant abuses which have been uncovered in the sale of MediGap insurance policies.

Mr. President, as chairman of the Committee on Aging, I sat through 2 days of eye-opening testimony from elderly

people who had been swindled—from State insurance commissioners who verified that these problems had been around for a long time—and from State law enforcement officials who told us how hard it was to control MediGap abuses. That was in 1978. And the Committee on Aging also had hearings on MediGap abuses, and issued a report, in 1974.

The House Subcommittee on Health and the Environment has held 2 days of hearings. The House Select Committee on Aging has held hearings. The Finance Committee and the Ways and Means Committee have studied MediGap problems, and both of these committees have taken decisive action. The Ways and Means Committee has already reported an amendment very similar to the one before us now. I call attention to the statement made by members of the Ways and Means Committee in their committee report: That a "consensus has emerged about the critical need to act" on MediGap abuses.

This amendment is solidly supported by older Americans, by consumer groups, by the Department of Health, Education, and Welfare, and by the White House. They have all given this issue study, and they are all urging that there be no further delays.

There is some pretty strong support right here in the Senate too. Just before the Christmas recess, Senator DOLE, Senator BAUCUS, and I and 20 other Senators circulated a letter urging all Members to support this amendment and give it quick action.

The first time severe problems in marketing MediGap insurance policies were given Federal attention was in 1971. There have already been 20 major studies of this issue.

I think that is enough study, and we have waited long enough. Older Americans should not be asked to wait even longer. They have already lost millions of dollars. Granting further study would only mean further losses.

Mr. President, some health insurance companies and State insurance departments raised objections to portions of the amendment before us because they thought some of the language was too vague and needed more clarification. They were afraid there would be some unintended consequences once the voluntary certification program was implemented.

I point out that Senator BAUCUS and Senator DOLE and the Finance Committee staff have listened to these concerns. Senator BAUCUS has made a number of technical changes and clarifications to this amendment in response to these concerns. I think they are all good changes and will strengthen the amendment.

I do not think anyone quarrels with the minimum standards for MediGap insurance policies proposed in the amendment. These standards come from recommendations made by the National Association of Insurance Commissioners and members of the Health Insurance Association of America.

What some do not like, however, is the provision for HEW certification of policies which meet these standards.

Mr. President, I remind my colleagues once more that this would be a purely voluntary program. No insurance company in any State would be required to participate. The amendment simply says that those policies which meet the minimum standards outlined in the bill—minimum standards which the industry and the National Association of Insurance Commissioners have agreed upon—could carry a claim to that effect.

Further, the provision for a voluntary certification program supports and encourages State regulation. It in no way preempts State regulation. Policies sold in any State which regulates MediGap insurance sales in a comprehensive manner would automatically be certified. In this way, any State which finds a better way than what we are proposing now would in no way be penalized.

I know that a number of States have already made some good faith efforts to strengthen their protections against MediGap sales abuses, and I hope that additional States will do so. I am afraid, however, that if we backtrack on this legislation now, the progress we have been seeing at the State level will slow down considerably.

Forty-three percent of all State insurance departments have classified MediGap marketing abuses as a "major" problem. Most of the rest of the States indicated that MediGap problems were serious, if not "major." Very few States, however, have conducted an investigation of MediGap problems, and 75 percent of all States do not think that additional State legislation is needed to control abuses.

By the end of 1979, only a few States had taken truly comprehensive action to combat MediGap abuses. Wisconsin and California have been leaders in this area, and now Massachusetts and New Jersey are in the process of adopting comprehensive new regulations.

Even though a large number of States, somewhere between 20 and 30, have given some attention to MediGap abuses recently, most of the actions have been quite limited. For instance, somewhere around 20 States have produced, or plan to produce, a consumer information pamphlet on MediGap. But only two States—Wisconsin and Michigan—require that it even be used at the time of sale of delivery of a MediGap insurance policy. Of the nine States which are developing information disclosure procedures, Wisconsin is the only State which mandates the delivery of a disclosure form at the time of sale, as suggested by the National Association of Insurance Commissioners.

Only eight States have set, or are proposing, minimum loss ratios for MediGap insurance policies.

Mr. President, I think these are all encouraging actions, but I point out that half the States have yet to take any action and that much more comprehensive action is needed even in most of those States which have taken some action since so much publicity has been given to MediGap insurance abuses.

I, for one, would be very happy if this happened, and we no longer had a need for any kind of voluntary certification program. But I do not think we have arrived at that point yet.

I am fearful, therefore, Mr. President, that any signal from the U.S. Senate that we are not serious about continuing to monitor this situation would mean the end of any of the progress we have made so far.

MODIFICATIONS TO MEDIGAP AMENDMENT

Mr. President, Senator BAUCUS and Senator DOLE and the Finance Committee staff have spent considerable time going over the language of section 508 of the bill before us—the MediGap amendment which the Senate has agreed to consider as part of the disability bill. Senator BAUCUS is proposing a number of technical and clarifying changes which I support.

I would like to point out that these changes have been made partially in response to some fears expressed by a few health insurance companies and State insurance commissioners who felt that portions of the language were not defined clearly enough. This has been a good faith effort to make sure that there are not unintended consequences once the amendment's provision for a voluntary certification program of medigap policies is implemented, and I think these changes are good ones and will strengthen the amendment.

Mr. President, these changes should make it easy for us to act now. It has been almost 2 years since I first chaired hearings which revealed startling abuses in the sale of MediGap insurance policies to the elderly. There have been additional hearings and numerous studies since that time which have shown clearly that this market is full of instances of overselling low-value insurance policies and tricking elderly people into squandering their life savings on dozens of insurance policies which will provide them little or no return.

I would hate to be the one to say that we think we need further study before we act.

It appears that the New York State insurance department had feared that the amendment would preempt their no-fault auto insurance rules. The amendment would in no way preempt any State law or regulations, but his has been further clarified.

Some insurance companies were fearful that the provision for State approval of mailorder insurance sales would have acted as a disincentive for employer/employee and labor organization group MediGap plans. This was never intended by the amendment. As a matter of fact, we all recognize that these are often the best MediGap insurance plans available to retired workers. Further clarification of this fact has also been made.

Other technical changes have been made to make sure there are no misunderstandings about the Secretary's authority to determine voluntary loss ratio standards and information disclosure forms for use in the voluntary certification program.

UP AMENDMENT NO. 939

(Purpose: To require a finding by the Secretary that State programs are inadequate before he implements the certification program)

Mr. DOLE. Mr. President, I send an amendment to the Baucus amendment

to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Until the time of the first degree amendment has been used or yielded back, the amendment is not in order.

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

The PRESIDING OFFICER. Does the Senator from Louisiana yield back?

Mr. LONG. I yield back my time, Mr. President.

The PRESIDING OFFICER. All time having been yielded back, the clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) for himself Mr. HAYAKAWA, and M. DOMENICI, proposes an unprinted amendment numbered 939 to the amendment proposed by Mr. BAUCUS numbered 938.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

At the end of the unprinted amendment numbered 938 add the following:

At the end of section 508(c) insert the following:

(2)(A) The Secretary of Health, Education, and Welfare shall not implement the certification program established under section 1882(a) of the Social Security Act with respect to any State unless he makes a finding, based on the study carried out under section 1882(f)(1)(A)(vi) of such Act and information submitted by such State, that such State cannot be expected to have established, by January 1, 1982, a program meeting the requirements of section 1882(c) of the Social Security Act. If the Secretary makes such a finding, and such finding is not disapproved under subparagraph (B), he shall implement such program under section 1882(a) with respect to medicare supplemental policies sold in such State, until such time as such State meets the requirements of section 1882(b) of such Act.

(B)(i) Any finding by the Secretary under subparagraph (A) shall be transmitted in writing to the Senate Committee on Finance and the House of Representatives Committees on Interstate and Foreign Commerce and Ways and Means.

(ii) The findings of the Secretary shall not become effective until 60 days after transmittal of the report to the Congress. In counting such days, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

Amend section 508(a) by amending the text of section 1882(f)(1)(A) of the Social Security Act (as added by section 508(a)) by striking out "and (v) improving price competition" and inserting "(v) improving price competition, and (vi) establishing effective State programs as described in subsection (b)".

Mr. DOLE. Mr. President, I wish to begin by commending my fellow colleagues, the Senator from Florida (Mr. CHILES), the Senator from New Mexico (Mr. DOMENICI) and also the Senator from Montana (Mr. BAUCUS), for the work they have done in bringing the abuses in the sale of medicare supplemental policies to light. I also thank the distinguished Senator from Nebraska (Mr. EXON) for his efforts. He has assisted us in working out a compromise and we appreciate his efforts.

Senator CHILES chaired hearings of the Special Committee on Aging some 18 months ago, during which time the shocking behavior of some unscrupulous agents and insurance companies was cited. Hearings by the House Select Committee on Aging followed shortly thereafter uncovering similar examples of abuse. We heard stories about individuals who were sold 3, 4 and sometimes as many as 10 policies. The media became enchanted with agents in ski masks and hoods who hand mended their "twisting" ways.

A legislative remedy was proposed and is now a part of the social security disability bill before the Senate. That remedy proposes there be a voluntary certification program for medicare supplementary policies; criminal sanctions for agents or companies who misrepresent themselves as an agent of the government or who knowingly sell a duplicate policy, penalties to limit certain mail order sales; and also requires the Secretary of HEW to conduct a comprehensive study of health insurance purchased by the elderly.

I agree with my colleagues completely on the seriousness of this problem. The behavior of some agents and companies is indeed shocking and should be dealt with.

The original amendment agreed to by the Finance Committee, was an attempt to deal with many of the problems identified in these hearings and investigations.

Over the last month countless meetings have been held with representatives of the insurance industry in an attempt to refine the provision agreed upon earlier, and accomodate, to the extent possible, their concerns. The amendment offered today by the Senator from Montana reflects many of the changes recommended and is an improvement over our previous efforts. However, my amendment represents a further attempt to encourage State activity and avoid unnecessary Federal activity.

I suggest that this issue is a matter that certainly deserves attention. It has had the attention of the Senate and the attention of the Finance Committee, and certainly the Special Committee on Aging under the leadership of Senator CHILES and Senator DOMENICI.

We believe we have worked out a compromise that will help control some of the abuses and, at the same time, permit some flexibility.

It is the purpose of my amendment to require that before the Secretary implements the certification program in a State, as outlined in the proposal pending before us, he must make a finding that the State has failed, to establish a program by law or resolution, to regulate medicare supplemental policies.

The Secretary must additionally report his findings to the Congress, which is then given 60 days to review these findings which are based on a study to be completed by July 1, 1981.

I further outline what we mean by 60 days. It is not 60 legislative days. That could be forever. But it is 60 days in session. We used some boilerplate language suggested by the Parliamentarian to further spell that out.

The amendment, as proposed, leaves the rest of the program and time schedule in place.

In offering this amendment, the Senator from Kansas, in no way, wishes to place in doubt his continued belief in the need for stronger regulation of this form of insurance and in no way is this an attempt to unnecessarily stall or otherwise delay activity in this area.

In conversations with a number of insurance commissioners, the desire on the part of many states to resolve these problems through State actions, has become apparent. The Senator from Kansas believes it is in the best interest of this program, and of the medicare beneficiary, to encourage these efforts. My amendment, though placing an emphasis on the State programs, still retains the ability of the Federal Government to proceed if the States fail to meet this goal and thus the medicare beneficiary is assured of action being taken.

UNITED STATES

The Senator from Kansas does not believe all the solutions will fall solely within the appropriate jurisdiction of the Federal Government, nor the insurance industry, nor of the State insurance commissioners. The responsibility for solving the problems with medicare supplementary health insurance must be shared by us all.

The insurance industry itself has begun to address these problems, and they are to be commended for their efforts. Many State insurance commissioners are contributing their thoughts and expertise in helping solve the question of how to prevent abuses in the system while still providing for and encouraging the availability of rational and responsive medicare supplementary health insurance.

My amendment is built upon my belief in this need for a united front.

After countless conversations and meetings of Members of the Senate and, certainly, the staff of Senator BAUCUS, my staff and others, who deserve considerable accolades for their efforts, believe this proposal represents a fair compromise.

CONCLUSION

We, each of us, have a responsibility to the elderly in our communities to protect them against the type of abusive practices that have come to light with respect to the sale of medicare supplementary health insurance. The Senator from Kansas is hopeful that the final legislation agreed upon will assist us in these efforts.

Mr. HAYAKAWA. Mr. President, I too, have been most interested in this amendment and am happy that the distinguished Senator from Kansas (Mr. DOLE) has been able to work this out with the junior Senator from Montana.

I believe this is a good compromise of the two respective positions and it appears that this will resolve the issue satisfactorily. I cannot emphasize enough my concern over the Government's at-

tempt to interfere in the prerogatives and responsibilities of the States. Yet I am concerned too with the protection of consumers from irregular practices. I believe that the compromise worked out by the Senator from Kansas and the junior Senator from Montana adequately meets both my concerns.

I thank the distinguished ranking minority member of the committee for his contribution to this important question.

Mr. President, I am prepared to yield back the remainder of my time on my amendment.

Mr. BAUCUS. Mr. President, I rise to state my agreement with the Senator from Kansas, and to say that I was remiss in not stating earlier that the Senator from Florida (Mr. CHILES), the Senator from Iowa (Mr. CULVER), and the Senator from Kansas were really pioneers here. I am a latecomer to the effort to solve this problem.

I wanted to make sure that those in earshot and those who read the RECORD know that Senator CHILES is one of the foremost pioneers. I thank the Senator for his efforts.

The PRESIDING OFFICER. Is all time yielded back?

Mr. LONG. I yield back my time.

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

The amendment (UP No. 939) was agreed to.

Mr. LONG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Montana, as amended.

The amendment (No. 938) was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that Senator EXON be added as a cosponsor to the Dole amendment.

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

COMMENDATION OF THE GOVERNMENT OF CANADA FOR ITS ACTIONS WITH RESPECT TO CERTAIN U.S. HOSTAGES IN IRAN

Mr. CHILES. Mr. President, I call up Senate Resolution 344 and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated.

The legislative clerk read as follows:

A resolution (S. Res. 344) commending the Government of Canada for its actions with respect to certain United States citizens in Iran:

Whereas six Americans sought refuge in Tehran after the takeover of the United States Embassy in November 1979;

Whereas the Americans were given refuge by the Canadian Embassy for twelve weeks;

Whereas the whereabouts of these Americans was kept a secret in order to protect the lives of those Americans held at the United States Embassy;

Whereas this action was taken despite the threat this posed to the lives of Canadian Embassy officials;

Whereas Canadian Ambassador Kenneth Taylor acted with particular courage and compassion in seeking the eventual departure of the Americans from Iran; and

Whereas the six Americans have now safely left Iran:

Resolved, That the Senate, on behalf of all Americans, hereby commends the Government of Canada for its actions in protecting certain United States citizens and arranging for their departure from Iran.

Sec. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President with the request that he transmit such copy to the Government of Canada.

Mr. CHILES. Mr. President, this resolution has been cleared. The Committee on Foreign Relations has reported it out of committee, and in a moment I will move for its immediate consideration.

I think I speak for all Americans today when I say a special "thank you" to our neighbor to the north. The decisions that they made and the actions that they took saved the lives of six Americans. The decisions and actions of the Canadian Embassy staff in Iran were taken at great risk to their own lives and safety.

The announcement that the six Americans had managed to leave Iran safely with the aid of the Canadian staff is news of a kind we do not seem to hear much of these days. We are always talking about countries that sort of kick the United States at times. It is very pleasant to see our neighbor take this kind of risk and come to our aid.

I know all Americans are proud of that today and the common heritage we share with our neighbors in Canada, their great love for freedom, their great love for law, their great love for people, being able to decide their own fate in a free and democratic way.

I wanted to take this opportunity to have the Government of the United States express to Canada and to each of the members of the Embassy in Tehran that took this courageous action, our "thank you."

Mr. President, I ask unanimous consent that the following Senators be made cosponsors of the resolution: Messrs. CHURCH, PELL, MCGOVERN, BIDEN, STONE, SARBANES, ZORINSKY, JAVITS, PERCY, HAYAKAWA, GLENN, NUNN, WILLIAMS, EXON, DOMENICI, MATHIAS, ROBERT C. BYRD, STEVENS, ROTH, and DOLE.

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

Mr. DOMENICI. Mr. President, will the Senator yield to the Senator from New Mexico?

Mr. CHILES. I yield.

Mr. DOMENICI. Mr. President, I am privileged to be a cosponsor of this resolution. I commend the distinguished Senator from Florida for submitting it and for bringing it to the floor this evening.

A friend in a time of need is a friend indeed. That is an old saying that we do not use frequently any more, but it certainly is applicable to Canada today. It certainly is appropriate that the U.S. Senate indicate to the people of Canada our heartfelt appreciation.

The United States—at least, in the recent past—is not quite sure who its friends are or who its enemies are. We help a great many people, and we are not sure where they stand when we are in a time of need. That has been the case for the last couple of months.

There never has been any doubt where Canada stood. Obviously, for much of that time, when they have stood with us on the Iranian issue, the Afghanistan issue, and others, they also, without any of us knowing, were taking a great risk to do a genuine act of mercy and kindness and decency, directed at our people and particularly the six hostages.

I thank them, as a Senator of the United States. I hope they understand that we genuinely appreciate what they have done with respect to these hostages, as the Senator from Florida has described, and their very significant contributions to our position with reference to the illegal acts that have occurred and the great threats that are occurring in the Middle East.

I thank the Senator from Florida for the privilege of cosponsoring the resolution, and I commend him once again for bringing it to the attention of the Senate and the American people.

Mr. CHILES. I thank the Senator.

Mr. President, I yield to the Senator from Maryland.

Mr. MATHIAS. I thank the Senator from Florida for yielding.

GALLANTRY THAT SHALL NOT BE FORGOTTEN

Mr. President, the gallant and selfless action of Kenneth Taylor, Canadian Ambassador to Iran, and his three colleagues in helping six trapped American diplomats escape from Iran will not soon be forgotten by this Nation.

As the mother of one of the rescued Americans has said: "I'm going to be indebted to Canada for the rest of my life." So shall we all be. This resolution recognizes that debt and should be adopted unanimously.

The Canadian diplomatic service, through these individuals, has made a statement about human dignity and human worth that will reverberate around the globe. It has set an example of courage and discretion that commands the respect and admiration of all those who believe, with the great Persian poet Sa'adi, that:

All Adam's sons are scions of one another.
Each of the same composition as others;
So, while one encounters pain and grief,
The others will find no relief.
You, who are indifferent to another's pain,
Should not be worthy to claim Adam's name.

I am indebted for this translation to Dr. Ibrahim Pourhadi.

I think the words of Sa'adi describe appropriately the gallantry that shall not be forgotten.

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

Mr. CHILES. I yield to the distinguished Senator from Kansas.

COURAGEOUS CANADIANS

Mr. DOLE. Mr. President, the world has just learned of the courageous actions taken by the Canadian Government and its people through their Embassy officials in Tehran. At considerable risk to themselves, Ambassador Taylor and the other Canadian Embassy officials provided refuge to six officials of the U.S. Embassy escaping the seizure of our Embassy. Though the danger of reprisal—both from the terrorist elements of Iranian society and from the governing authorities in Tehran—was constantly present, these brave people of Canada hid our officials during these past tumultuous weeks.

Then, in a daring ruse and causing great personal danger to themselves, these Canadian officials helped our citizens to escape from Iran using false Canadian passports. Seldom in the annals of recent history has it been more dangerous to be a friend to the United States. Yet, our fellow Americans from across the border acted without hesitation and in disregard for the harmful consequences to themselves in securing the safety and escape of our diplomats.

This great act of courage and friendship inspires the deep appreciation and gratitude of all the people of the United States. Mr. President, the Senator from Kansas believes this resolution, expressing such appreciation, is a timely and appropriate means of extending our thanks to the Government and people of Canada, and in particular to Ambassador Taylor and the officials of the Canadian Embassy in Iran.

Mr. President, we have had some eloquent statements. The Senator from Kansas and all other Senators appreciate the courageous actions taken by the Canadian Government and its people through their embassy officials in Tehran. For that, as the distinguished Senator from Maryland just indicated, they shall not be forgotten.

It indicates again the strength of the friendship that exists, and it is a demonstration that is more than symbolism of the concern of Canadians for human rights. I especially pay tribute to Ambassador Taylor and others directly involved.

I thank the Senator from Florida for his efforts and for permitting me to be a cosponsor of the resolution.

Mr. CHILES. I thank the Senator from Kansas.

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

Mr. CHILES. I yield to the distinguished Senator from Massachusetts.

Mr. TSONGAS. Mr. President, I commend the Senator from Florida for bringing this resolution before the Senate.

One need only look back over the last couple of years and the issues that have been facing this country, and he can see a systematic withdrawal of our allies from any kind of meaningful support, especially as it reflects upon the lack of support by our "allies" in Europe. This is one of the few instances, beyond what Mrs. Thatcher has done in England, which indicates that there is really a Western alliance that means something.

I commend the Government of Canada; and as an individual, I express my support for what they have done. It makes me proud that I spent my honeymoon in Canada.

Mr. CHILES. I thank the Senator.

Mr. President, I yield to the Senator from Delaware.

Mr. ROTH. I thank the distinguished Senator from Florida.

Mr. President, I, too, commend the Senator from Florida for submitting a Resolution of Appreciation to the Government and people of our great friend to the north, Canada, for having given sanctuary to six American diplomats who had escaped from the occupied American Embassy in Tehran, and for having arranged for their dangerous exit from Iran and return to safety in the United States.

The relations between the United States and Canada have from the births of our two countries been as close and friendly as any in the world. We have the longest undefended common border in the world. We share a common tradition and history. We have gone to war together, shoulder to shoulder against common enemies.

But, Mr. President, nothing has dramatized the closeness of the relationship more than the decision taken unhesitatingly by a special session of the Canadian Cabinet to grant the American diplomats refuge in the Canadian Embasy in Tehran and to spirit them out of the country at the first opportunity.

The decision to protect and rescue the Americans placed at great risk the lives of Canadian diplomats in Tehran and made inevitable the closing of the Canadian Embassy there.

For weeks, the staff of the Canadian Embassy lived in fear that the presence of the Americans would be discovered by Iranian authorities and that retribution would certainly ensue. The men and women of the Canadian Embassy exhibited courage and steadfastness that deserves our highest admiration and gratitude.

We owe a special debt of gratitude to the Canadian Ambassador, Mr. Kenneth Taylor, who actively participated in a number of efforts to free our hostages in the American Embassy while all the time harboring U.S. diplomats in his own Embassy. Ambassador Taylor's courage and nerveless performance is in the highest tradition of diplomatic service. We are indeed fortunate to have such a friend.

Mr. President, the Iranian Foreign Minister has had the gall to accuse the Canadian Government of lawlessness in rescuing our citizens. In aiding and abetting the terrorist occupation of the American Embassy in Tehran, the so-called Government of Iran placed itself beyond the pale of civilized behavior. Having itself placed our chargé d'affaires, Bruce Laingen, under arrest despite his diplomatic immunity, the Iranian authorities are in no position to demand adherence to international law.

Having seen no evidence that the self-proclaimed Government of Iran was prepared to adhere to international norms, the Canadian Government courageously and wisely decided that the safety of human beings took precedence over the desires of the Iranian authorities. We thank them deeply for that decision.

Should the Iranian authorities want to use the escape of the Americans from the Canadian Embassy as an excuse to punish the hostages for alleged spy activities, they should reconsider now. They should be under no illusion that the American Government and people will sit by twiddling their thumbs while our fellow citizens are harmed.

If on the other hand, the newly elected Government in Iran is sincere in its desire to resolve whatever disputes or complaints it has against us, it should begin by releasing immediately the remaining hostages in Tehran. There can be no justification for their continued incarceration.

Once the hostages are released, we would be prepared to seek ways to resolve whatever differences there may be between us.

The choice is theirs. We sincerely hope that it will be the right one.

Mr. WILLIAMS. Mr. President, I am sure my colleagues were as deeply moved as I last night to discover that six American diplomats were able to escape from Iran with the help of our good friends and allies in the Canadian Embassy in Tehran.

By now the news of their escape from the besieged American Embassy is well known and the accounts of their 3-month refuge in the Canadian Embassy well publicized.

At a time like this I find it hard to express the warm gratitude and deep emotion which this event has sparked. I can only imagine how the families of those six Americans feel today. As the news about the Canadian-American effort spread across the country last night there was a spontaneous outpouring of appreciation, not only from U.S. officials but from people all over the Nation. This appreciation is, I believe, heightened by the sense of isolation and concern we have all felt in recent days over the difficulty we have faced as a Nation in obtaining agreement and support from our allies to counter the ongoing hostage situation in Iran and the Soviet aggression in Afghanistan. With our country under this kind of pressure the heroic support of Canadian officials and the Canadian Government, which would have been spectacular under any circumstances, has become an even greater symbol of cooperation and support.

Last night's news of the Americans' escape was brought home to me when I learned that one of the people to safely arrive in Canada was Cora Amburn Lijeck, whose parents live in New Jersey. I know the Amburn family has been most anxious about their daughter's safe return, and I share their sense of relief that she is home at last.

Our faith in our traditional alliance and our mutual values have been af-

firmed many times over today because of the Canadian success in protecting the lives of our citizens. I am sure I speak for my colleagues in the Senate when I express our deep and abiding gratitude for the brave efforts of the Canadian officials who risked their lives to help bring those six Americans home.

Therefore, Mr. President, I am most honored to join in sponsoring the resolution before the Senate commending Canada for the valiant actions of its officials to save our citizens in Iran.

Mr. CHURCH. Mr. President, the Senate Foreign Relations Committee this morning approved a resolution, introduced in the Senate by the distinguished Senator from Florida, Mr. CHILES, commending the Government of Canada for its heroic actions in behalf of our diplomatic personnel in Iran.

At considerable personal risk to himself and his staff, the Canadian Ambassador in Tehran, Kenneth Taylor, gave sanctuary to six Americans who managed to slip away from the American Embassy compound as it was being seized by student militants on November 4.

With the approval and cooperation of the Canadian Government, Ambassador Taylor ultimately aided these six Americans to make good their escape from Iran even though his action required the Government of Canada to close down its diplomatic mission in the Iranian capital.

Few actions in recent history demonstrate the underlying friendship and goodwill which characterize relations between the United States and our Canadian neighbors. In this instance, Canada has taken a stand which not only reinforces the long-standing affection between our two countries but stands as a shining example to the entire world of civilized courtesy and human decency in the face of flagrant breaches of international law.

This resolution was approved by the Senate Foreign Relations Committee by a vote of 12 to 1 and I urge its speedy passage by the Senate.

Mr. CHILES. Mr. President, I note in the newspapers today a statement by the Foreign Minister of Iran expressing his great disapproval of the act taken by the Canadians. In fact, he told Canada that "It will pay." I believe that by this resolution, we are telling Canada, "We owe you." We are delighted because of the courage of Ambassador Taylor and his entire staff.

Mr. President, I ask for the immediate consideration of the resolution.

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to, and the preamble is agreed to.

DISPUTE RESOLUTION ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 423.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 423) entitled "An Act to promote commerce by establishing a national goal for the development and maintenance of effective, fair, inexpensive, and expeditious mechanisms for the resolution of consumer controversies, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SHORT TITLE

SECTION 1. This act may be cited as the "Dispute Resolution Act".

SEC. 2. (a) The Congress finds and declares that—

(1) for the majority of Americans, mechanisms for the resolution of minor disputes are largely unavailable, inaccessible, ineffective, expensive, or unfair;

(2) the inadequacies of dispute resolution mechanisms in the United States have resulted in dissatisfaction and many types of inadequately resolved grievances and disputes;

(3) each individual dispute, such as that between neighbors, a consumer and seller, and a landlord and tenant, for which adequate resolution mechanisms do not exist may be of relatively small social or economic magnitude, but taken collectively such disputes are of enormous social and economic consequence;

(4) there is a lack of necessary resources or expertise in many areas of the Nation to develop new or improved consumer dispute resolution mechanisms, neighborhood dispute resolution mechanisms, and other necessary dispute resolution mechanisms;

(5) the inadequacy of dispute resolution mechanisms throughout the United States is contrary to the general welfare of the people;

(6) neighborhood, local, or community based dispute resolution mechanisms can provide and promote expeditious, inexpensive, equitable, and voluntary resolution of disputes, as well as serve as models for other dispute resolution mechanisms; and

(7) the utilization of neighborhood, local, or community resources, including volunteers (and particularly senior citizens) and available building space such as space in public facilities, can provide for accessible, cost-effective resolution of minor disputes.

(b) It is the purpose of this Act to assist the States and other interested parties in providing to all persons convenient access to dispute resolution mechanisms which are effective, fair, inexpensive, and expeditious.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term "Advisory Board" means the Dispute Resolution Advisory Board established under section 7(a);

(2) the term "Attorney General" means the Attorney General of the United States (or the designee of the Attorney General of the United States);

(3) the term "Center" means the Dispute Resolution Resource Center established under section 6(a);

(4) the term "dispute resolution mechanism" means—

(A) a court with jurisdiction over minor disputes;

(B) a forum which provides for arbitration, mediation, conciliation, or a similar procedure, which is available to resolve a minor dispute; or

(C) a governmental agency or mechanism with the objective of resolving minor disputes;

(5) the term "grant recipient" means any State or local government, any State or local governmental agency, and any nonprofit organization which receives a grant under section 8;

(6) the term "local" means of or pertaining to any political subdivision of a State; and

(7) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

CRITERIA FOR DISPUTE RESOLUTION MECHANISMS

SEC. 4. Any grant recipient which desires to use any financial assistance received under this Act in connection with establishing or maintaining a dispute resolution mechanism shall provide satisfactory assurances to the Attorney General that the dispute resolution mechanism will provide for—

(1) assistance to persons using the dispute resolution mechanism;

(2) the resolution of disputes at times and locations which are convenient to persons the dispute resolution mechanism is intended to serve;

(3) adequate arrangements for participation by persons who are limited by language barriers or other disabilities;

(4) reasonable, fair, and readily understandable forms, rules, and procedures, which shall include, where appropriate, those which would—

(A) ensure that all parties to a dispute are directly involved in the resolution of the dispute, and that the resolution is adequately implemented;

(B) promote, where feasible, the voluntary resolution of disputes (including the resolution of disputes by the parties before resorting to the dispute resolution mechanism established by the grant recipient);

(C) promote the resolution of disputes by persons not ordinarily involved in the judicial system;

(D) provide an easy way for any person to determine the proper name in which, and the proper procedure by which, any person may be made a party to a dispute resolution proceding;

(E) permit the use of dispute resolution mechanisms by the business community if State law so permits; and

(F) ensure reasonable privacy protection for individuals involved in the dispute resolution process;

(5) the dissemination of information relating to the availability, location, and use of other redress mechanisms in the event that dispute resolution efforts fail or the dispute involved does not come within the jurisdiction of the dispute resolution mechanism;

(6) consultation and cooperation with the community and with governmental agencies; and

(7) the establishment of programs or procedures for effectively, economically, and appropriately communicating to disputants the availability and location of the dispute resolution mechanism.

DEVELOPMENT OF DISPUTE RESOLUTION MECHANISMS BY STATES

SEC. 5. Each State is hereby encouraged to develop—

(1) sufficient numbers and types of readily available dispute resolution mechanisms which meet the criteria established in section 4; and

(2) a public information program which effectively communicates to potential users the availability and location of such dispute resolution mechanisms.

ESTABLISHMENT OF PROGRAM; DISPUTE RESOLUTION RESOURCE CENTER

SEC. 6. (a) The Attorney General shall establish a Dispute Resolution Program in the Department of Justice. Such program shall include establishment of a Dispute Resolution Resource Center and a Dispute Resolution Advisory Board and the provision of financial assistance uner section 8.

(b) The Center—

(1) shall serve as a national clearinghouse for the exchange of information concerning the improvement of existing dispute resolu-

tion mechanisms and the establishment of new dispute resolution mechanisms;

(2) shall provide technical assistance to State and local governments and to grant recipients to improve existing dispute resolution mechanisms and to establish new dispute resolution mechanisms;

(3) shall conduct research relating to the improvement of existing dispute resolution mechanisms and to the establishment of new dispute resolution mechanisms, and shall encourage the development of new dispute resolution mechanisms;

(4) shall undertake comprehensive surveys of the various State and local governmental dispute resolution mechanisms and major privately operated dispute resolution mechanisms in the States, which shall determine—

(A) the nature, number, and location of dispute resolution mechanisms in each State;

(B) the annual expenditure and operating authority for each such mechanism;

(C) the existence of any program for informing the potential users of the availability of each such mechanism;

(D) an assessment of the present use of, and projected demand for, the services offered by each such mechanism; and

(E) other relevant data relating to the types of disputes addressed by each such mechanism including the average cost and time expended in resolving various types of disputes;

(5) shall identify, after consultation with the Advisory Board, those dispute resolution mechanisms or aspects thereof which—

(A) are most fair, expeditious, and inexpensive to all parties in the resolution of disputes; and

(B) are suitable for general adoption;

(6) shall make recommendations, after consultation with the Advisory Board, regarding the need for new or improved dispute resolution mechanisms and similar mechanisms;

(7) shall identify, after consultation with the Advisory Board, the types of minor disputes which are most amenable to resolution through specific dispute resolution techniques, in order to assist the Attorney General in determining the types of projects which shall receive financial assistance under section 8;

(8) shall, as soon as practicable after the date of the enactment of this Act, undertake an information program to advise potential grant recipients, and the chief executive officer, attorney general, and chief judicial officer of each State, of the availability of funds, and eligibility requirements, under this Act;

(9) may make grants to, or enter into contracts with, to the extent or in such amounts as are provided in appropriation Acts, public agencies, institutions of higher education, and qualified persons to conduct research, demonstrations, or special projects designed to carry out the provisions of paragraphs (1) through (7); and

(10) in awarding such grants and entering into such contracts, shall have as one of its major priorities dispute resolution mechanisms that resolve consumer disputes.

(c) Upon request of the Center, the Community Relations Service of the Department of Justice and the Federal Mediation and Conciliation Service are authorized to assist the Center in performing its functions under this section.

(d) Upon the request of the Attorney General, not more than a total of ten Federal employees from the various executive agencies (as defined in section 105 of title 5, United States Code) may be detailed to the Center to assist the Center to perform its functions under this Act. The head of any such agency, with the consent of the employee concerned, may enter into an agreement with the Attorney General to provide for the detail of any employee of his agency for a period of not more than five years, notwithstanding the time limitation contained in section 3341 of title 5, United States Code. An employee detailed under this section is considered, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed. Such employee is entitled to pay, allowances, and other benefits from funds availabe to the agency from which such employee is detailed, except that the Department of Justice shall pay to such employee all travel expenses and allowances payable for services performed during the detail.

DISPUTE RESOLUTION ADVISORY BOARD

SEC. 7. (a) The Attorney General shall establish a Dispute Resolution Advisory Board in the Department of Justice.

(b) The Advisory Board shall—

(1) advise the Attorney General with respect to the administration of the Center under section 6 and the administration of the financial assistance program under section 8;

(2) consult with the Center in accordance with the provisions of section 6(b)(5), section 6(b)(6), and section 6(b)(7); and

(3) consult with the Attorney General in accordance with the provisions of sections 8(b)(4) and 9(d).

(c)(1) The Advisory Board shall consist of nine members appointed by the Attorney General, and shall be composed of persons from State governments, local governments, business organizations, the academic or research community, neighborhood organizations, community organizations, consumer organizations, the legal profession, and State courts.

(2) A vacancy in the Advisory Board shall be filled in the same manner as the original appointment.

(3)(A) Except as provided in subparagraph (B), members of the Advisory Board shall be appointed for terms which expire at the end of September 30, 1984.

(B) Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of the term.

(d) While away from their homes or regular places of business in the performance of services for the Advisory Board, members of the Advisory Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Federal Government service are allowed expenses under section 5703 of title 5, United States Code. The members of the Advisory Board shall receive no compensation for their services except as provided in this subsection.

(e) The Chairman of the Federal Trade Commission may advise and consult with the Attorney General, and may consult with the Center, regarding matters within its jurisdiction.

FINANCIAL ASSISTANCE

SEC. 8. (a) The Attorney General may provide financial assistance in the form of grants to applicants who have submitted, in accordance with subsection (c), applications for the purpose of improving existing dispute resolution mechanisms or establishing new dispute resolution mechanisms.

(b) As soon as practicable after the date of the enactment of this Act, the Attorney General shall prescribe—

(1) the form and content of applications for financial assistance to be submitted in accordance with subsection (c);

(2) the time schedule for submission of such applications;

(3) the procedures for approval of such applications, and for notification to each State of financial assistance awarded to applicants in the State for any fiscal year;

(4) after consultation with the Advisory Board, the specific criteria for awarding grants to applicants under this section, which shall—

(A) be consistent with the criteria established in section 4;

(B) take into account—

(i) the population and population density of the States in which applicants for financial assistance available under this section are located;

(ii) the financial need of States and localities in which such applicants are located;

(iii) the need in the State or locality involved for the type of dispute resolution mechanism proposed;

(iv) the national need for experience with the type of dispute resolution mechanism proposed; and

(v) the need for obtaining experience in each region of the Nation with dispute resolution mechanisms in a diversity of situations, including rural, suburban, and urban situations; and

(C) provide that one of the major priorities of the Attorney General shall be the funding of dispute resolution mechanisms that resolve consumer disputes;

(5)(A) the form and content of such reports to be filed under this section as may be reasonably necessary to monitor compliance with the requirements of this Act and to evaluate the effectiveness of projects funded under this Act; and

(B) the procedures to be followed by the Attorney General in reviewing such reports;

(6) the manner in which financial assistance received under this section may be used, consistent with the purposes specified in subsection (e); and

(7) procedures for publishing in the Federal Register a notice and summary of approved applications.

(c) Any State or local government, State or local governmental agency, or nonprofit organization shall be eligible to receive a grant for financial assistance under this section. Any such entity which desires to receive a grant under this section may submit an application to the Attorney General in accordance with the specific criteria established by the Attorney General under subsection (b)(4). Such application shall—

(1) set forth a proposed plan demonstrating the manner in which the financial assistance will be used—

(A) to establish a new dispute resolution mechanism which satisfies the criteria specified in section 4; or

(B) to improve an existing dispute resolution mechanism in order to bring such mechanism into compliance with such criteria;

(2) set forth the types of disputes to be resolved by the dispute resolution mechanism;

(3) identify the person responsible for administering the project set forth in the application;

(4) include an estimate of the cost of the proposed project;

(5) provide for the establishment of fiscal controls and fund accounting of Federal financial assistance received under this Act;

(6) provide for the submission of reports in such form and containing such information as the Attorney General may require under subsection (b)(5)(A);

(7) set forth the nature and extent of participation of interested parties, including representatives of those individuals whose disputes are to be resolved by the mechanism, in the development of the application; and

(8) describe the qualifications, period of service, and duties of persons who will be charged with resolving or assisting in the resolution of disputes.

(d) The Attorney General, in determining whether to approve any application for financial assistance to carry out a project under this section, shall give special consid-

eration to projects which are likely to continue in operation after expiration of the grant made by the Attorney General.

(e) (1) Financial assistance available under this section may be used only for the following purposes—

(A) compensation of personnel engaged in the administration, adjudication, conciliation, or settlement of minor disputes, including personnel whose function is to assist in the preparation and resolution of claims and the collection of judgments;

(B) recruiting, organizing, training, and educating personnel described in subparagraph (A);

(C) improvement or leasing of buildings, rooms, and other facilities and equipment and leasing or purchase of vehicles needed to improve the settlement of minor disputes;

(D) continuing monitoring and study of the mechanisms and settlement procedures employed in the resolution of minor disputes in a State;

(E) research and development of effective fair, inexpensive, and expeditious mechanisms and procedures for the resolution of minor disputes;

(F) sponsoring programs of nonprofit organizations to carry out any of the provisions of this paragraph; and

(G) other necessary expenditures directly related to the operation of new or improved dispute resolution mechanisms.

(2) Financial assistance available under this section may not be used for the compensation of attorneys for the representation of disputants or claimants or for otherwise providing assistance in any adversary capacity.

(f) (1) In the case of an application for financial assistance under this section submitted by a local government or governmental agency, the Attorney General shall furnish notice of such application to the chief executive officer, attorney general, and chief judicial officer of the State in which such applicant is located at least thirty days before the approval of such application. The chief executive officer, attorney general, and chief judicial officer of the State shall be given an opportunity to submit written comments to the Attorney General regarding such application and the Attorney General shall take such comments into consideration in determining whether to approve such application.

(2) In the case of an application for financial assistance under this section submitted by a nonprofit organization, the Attorney General shall furnish notice of such application to the chief executive officer, attorney general, and chief judicial officer of the State in which the applicant is located and to the chief executive officers of the units of general local government in which such applicant is located at least thirty days before the approval of such application. The chief executive officer, attorney general, and chief judicial officer of the State, and the chief executive officers of the units of general local government shall be given an opportunity to submit written comments to the Attorney General regarding such application and the Attorney General shall take such comments into consideration in determining whether to approve such application.

(g) (1) Upon the approval of an application by the Attorney General under this section, the Attorney General shall disburse to the grant recipient involved such portion of the estimated cost of the approved project as the Attorney General considers appropriate, except that the amount of such disbursement shall be subject to the provisions of paragraph (2).

(2) The Federal share of the estimated cost of any project approved under this section shall not exceed—

(A) 100 per centum of the estimated cost of the project, for the first and second fiscal years for which funds are available for grants under this section;

(B) 75 per centum of the estimated cost of the project, for the third fiscal year for which funds are available for such grants; and

(C) 60 per centum of the estimated cost of the project, for the fourth fiscal year for which funds are available for such grants.

(3) Payments made under this subsection may be made in installments, in advance, or by way of reimbursement, with necessary adjudgments on account of underpayment or overpayment. Such payments shall not be used to compensate for any administrative expense incurred in submitting an application for a grant under this section.

(4) In the case of any State or local government, or State or local governmental agency, which desires to receive financial assistance under this section, such government or agency may not receive any such financial assistance for any fiscal year if its expenditure of non-Federal funds for other than nonrecurrent expenditures for the establishment and administration of dispute resolution mechanisms will be less than its expenditure for such purposes in the preceding fiscal year, unless the Attorney General determines that a reduction in expenditures is reasonable.

(h) Whenever the Attorney General, after giving reasonable notice and opportunity for hearing to any grant recipient, finds that the project for which such grant was received no longer complies with the provisions of this Act, or with the relevant application as approved by the Attorney General, the Attorney General shall notify such grant recipient of such findings and no further payments may be made to such grant recipient by the Attorney General until the Attorney General is satisfied that such noncompliance has been, or promptly will be, corrected. The Attorney General may authorize the continuance of payments with respect to any program pursuant to this Act which is being carried out by such grant recipient and which is not involved in the noncompliance.

(i) The Attorney General, to the extent or in such amounts as are provided in appropriation Acts shall enter into a contract for an independent study of the Dispute Resolution Program. The study shall evaluate the performance of such program and determine its effectiveness in carrying out the purpose of this Act. The study shall contain such recommendations for additional legislation as may be appropriate, and shall include recommendations concerning the continuation or termination of the Dispute Resolution Program. Not later than April 1, 1984, the Attorney General shall make public and submit to each House of the Congress a report of the results of the study.

(j) No funds for assistance available under this section shall be expended until one year after the date of the enactment of this Act.

RECORDS; AUDIT; ANNUAL REPORT

SEC. 9. (a) Each grant recipient shall keep such records as the Attorney General shall require, including records which fully disclose the amount and disposition by such grant recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the project or undertaking supplied by other sources, and such other sources, and such other records as will assist in effective financial and performance audits.

(b) The Attorney General shall have access for purposes of audit and examination to any relevant books, documents, papers, and records of grant recipients. The authority of the Attorney General under this subsection is restricted to compiling information necessary to the filing of the annual report required under this section. No information revealed to the Attorney General pursuant to such audit and examination about an individual or business which has utilized the dispute resolution mechanism of a grant recipient may be used in, or disclosed for, any administrative, civil, or criminal action or investigation against the individual or business except in an action or investigation arising out of and directly related to the program being audited and examined.

(c) The Comptroller General of the United States, or any duly authorized representatives of the Comptroller General, shall have access to any relevant books, documents, papers, and records of grant recipients until the expiration of three years after the final year of the recipient of any financial assistance under this Act, for the purpose of financial and performance audits and examination.

(d) The Attorney General, in consultation with the Advisory Board shall submit to the President and the Congress not later than one year after the date of the enactment of this Act, and on or before February 1 of each succeeding year, a report relating to the administration of this Act during the preceding fiscal year. Such report shall include—

(1) a list of all grants awarded;

(2) a summary of any actions undertaken in accordance with section 8(h);

(3) a listing of the projects undertaken during such fiscal year and the types of other dispute resolution mechanisms which are being created, and, to the extent feasible, a statement as to the success of all mechanisms in achieving the purpose of this Act;

(4) the results of financial and performance audits conducted under this section; and

(5) an evaluation of the effectiveness of the Center in implementing this Act, including a detailed analysis of the extent to which the purpose of this Act has been achieved, together with recommendations with respect to whether and when the program should be terminated and any recommendations for additional legislation or other action.

AUTHORIZATION OF APPROPRIATIONS

SEC. 10. (a) To carry out the provisions of section 6 and section 7, there is authorized, to be appropriated to the Attorney General $1,000,000 for each of the fiscal years 1980, 1981, 1982, 1983, and 1984.

(b) To carry out the provisions of section 8, there is authorized to be appropriated to the Attorney General $10,000,000 for each of the fiscal years, 1981, 1982, 1983, and 1984.

(c) Sums appropriated under this section are authorized to remain available until expended.

Amend the title so as to read: "An Act to provide financial assistance for the development and maintenance of effective, fair, inexpensive, and expeditious mechanisms for the resolution of minor disputes.".

Mr. FORD. Mr. President, on February 9, 1979, I introduced S. 423, the Dispute Resolution Act. This legislation, which was cosponsored by Senators KENNEDY, DANFORTH, BAYH, and METZENBAUM, was unanimously accepted in the Senate in April and had passed the Senate in the last two Congresses as well. Therefore, I am pleased that the House has adopted S. 423 in substantially the same form as was passed by this body last April.

As chairman of the Consumer Subcommittee, I have been deeply concerned by the numerous serious problems that consumers have brought to my attention which too often cannot be appropriately resolved due to the lack of adequate

dispute-resolution mechanisms. The hearings that were held by the Senate Committee on Commerce, Science, and Transportation on similar legislation have demonstrated the need for alternative forms for the resolution of consumer disputes. Throughout the course of deliberations on this measure, we have seen that frustration and alienation is prevalent among citizens whose legitimate grievances go unresolved for want of readily available means, other than formal legal processes, for their adjudication. Through enactment of the Dispute Resolution Act the Congress will provide a well-reasoned response to this national problem.

The value of this legislation lies in its recognition that dispute resolution is a dynamic process which must be fashioned according to the needs and desires of grant recipients rather than in response to strict federally imposed guidelines. There can be little doubt that the creation of a national clearinghouse for technical information and assistance, coupled with a meaningful grant funding program, will spur State and local governments and nonprofit organizations to improve existing programs and experiment with new ideas to address the problem of resolving minor disputes.

The genesis of this legislation was the various studies of small claims courts undertaken early in this decade. In particular, the 1973 study of the National Institute for Consumer Justice documented the inadequacies of many existing procedures for resolving disputes arising out of consumer transactions. Although this legislation has undergone substantial transformation since it was originally introduced, I am very pleased that the House-adopted version contains a provision requiring that a major funding priority be mechanisms designed for the resolution of consumer disputes. There can be no doubt that the frequency and severity of consumer complaints fully justifies particular attention being directed to their resolution. Furthermore, I am confident that businesses will support this most appropriate focus of concern since unresolved disputes are most often reflected in a loss of subsequent business from the consumer.

The measure has received widespread support from the administration and diverse organizations which represent the States' judiciary, the legal profession, the business community, consumers and other segments of society.

The Dispute Resolution Act is most worthy of our favorable consideration. Attainment of the goal of increasing access to and the quality of justice for all citizens is, at least in part, at hand through the enactment of this measure. The need is great and the burdens for all affected by the legislation are minimal. I, therefore, urge support for S. 423, as amended.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement on the Dispute Resolution Act by Senator KENNEDY.

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

STATEMENT BY SENATOR KENNEDY

I am pleased that Congress has passed the Dispute Resolution Act of 1979, which I cosponsored earlier this year with my distinguished colleague from Kentucky, Senator Ford.

Enactment of this legislation by the Congress marks the culmination of years of effort and commitment by this body as well as outside private and public interest groups to provide a vehicle to relieve the American people of the Hobson's choice between forfeiting their rights or bringing their minor disputes to overburdened courts for interminable litigation.

Our colleagues, who have ensured the passage of the Dispute Resolution Act, should be proud of this achievement. We should also acknowledge our debt to former Attorney General Bell, Daniel Meador, and others at the Department of Justice, the American Bar Association, and the Chamber of Commerce all of whom strongly supported and assisted in the passage of this legislation.

Our action today is, most importantly, an achievement for the American people for whom securing justice has become an arduous effort which taxes their patience, their hope, and their finances. Complex procedures, disproportionate expenses, and long delays have chilled the expression of a fundamental right of all our citizens—the right of access to justice to resolve their disputes. Nothing is more spirit-breaking than having a dispute ripe for airing and consistently meeting only frustration when seeking a forum. Our action today is a signal to the American people that the doors of justice shall no longer be closed and that their faith and hope for an equitable resolution to their disputes may be renewed.

S. 423, is a recognition by the Congress of the inabilities of the present judicial system to provide justice for a majority of the American people. It is a recognition that, while no wrong should be without a remedy, not all cases need judges, not all disputes need courtrooms, and not all disputants need lawyers. It is a recognition of our responsibility to assist States, localities, and groups in designing innovative mechanisms that meet their special needs and which will make access to justice a reality rather than a hollow promise. The act will encourage groups, individuals, local court systems, and State agencies to experiment with the idea that alternatives to litigation are at times better suited for resolving daily disputes among citizens.

This act will establish the dispute resolution resource center which will provide a centralized administrative and research facility for the establishment of alternatives to traditional courtroom methods of resolving controversies. The resource center will be a national clearinghouse for valuable information and technical expertise for those who wish to establish alternatives to courtroom litigation. The greatest benefit of the clearinghouse will be that it is an in-place source to be called upon. It will not undermine existing programs, but will encourage the establishment of these important alternatives to litigation across the country.

10 million dollars will be provided to States, localities, and non-profit organizations through the Dispute Resolution Act, to improve existing programs and to establish new ones. This grant program will not replace State funding, but rather it will serve as an incentive for experimentation and improvement of dispute resolution mechanisms at the State and local level. The Dispute Resolution Act specifically provides for a gradual decrease in Federal funding and the States, ultimately, will be responsible for ensuring that only successful projects are continued.

Our action today in passing the Dispute Resolution Act sounds a new beginning. Through the commitment of my colleagues, on both sides of the aisle, meaningful justice provided in a fair, efficient, inexpensive, and expeditious manner will be a reality for all Americans. The demonstrated need of the American people for this act has been so central and so critical, and our action today ensures that they will not now have to settle for less.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendments.

Mr. HAYAKAWA. There is no objection.

Mr. FORD. Mr. President, we had checked with the minority, and they had no objection. I should have made that statement at the beginning. The members of the Committee on the Judiciary and the Committee on Commerce agreed to this unanimous-consent request.

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

The motion was agreed to.

WHO HAS TIME TO THINK?

Mr. MATHIAS. Mr. President, when I first came to Congress some years ago, my wife and I continued to live on our farm near Frederick, Md. That entailed a trip every day of 50 miles, which took somewhat over an hour each way.

From time to time, people would say, "Well, how can you spend more than 2 hours a day commuting?" Members of my staff would wince visibly when I would reply to that question by saying, "It is the only time during the day I have to think. It is the only time during the day that I think."

Now that I no longer live at that distance and have less time to commute, I often miss that quiet period in the early morning, when the Sun was bright and the Earth was fresh and my mind was clear, in which to meditate on the duties that the day would bring as soon as I had arrived on Capitol Hill.

This was recalled to my memory by an article that I wish to bring to my colleagues' attention in the November/December 1979 Public Administration Review, an article entitled "The Limitations of Muddling Through: Does Anyone in Washington Really Think Anymore?"

It addresses intelligently and sympathetically the problem we all face: Not having time to think.

We all put in 12 to 18 hour days that leave us panting. Whatever creativity and wisdom we have is fragmented by the incessant demands made upon our time—all legitimate perhaps individually, but, taken together, devastating and debilitating. This is not good for us and certainly not good for the people we represent.

This article speaks to our condition. We ought all take time to close out the cacaphony of Washington for a moment and read it. And then to ask ourselves: Is this the best way to serve the Nation?

Mr. President, I ask unanimous consent that the text of this thoughtful

article by Bruce Adams be printed in the RECORD.

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

THE LIMITATIONS OF MUDDLING THROUGH: DOES ANYONE IN WASHINGTON REALLY THINK ANYMORE?

Twenty years ago, Charles E. Lindblom made a major contribution to the public administration literature by describing a common sense, incremental approach to problem solving. By making a virtue of what he determined to be a necessity, Lindblom recognized some of the very real limitations in policy formulation and relieved the collective conscience of a generation of policy analysts and political decision makers.

While much of what Lindblom wrote continues to be valuable today, the limitations of his thesis (which he conceded to be many but failed to delineate at any length) deserve serious attention. The primary danger, of course, is that the legitimate process that he described will be misused by those who are not fully aware of its limitations. Lindblom's incremental approach is appropriate for certain people in various circumstances but not for everyone always. The purpose of this article is to consider the nature of the political decision-making process in Washington in 1979, 20 years after the publication of Lindblom's classic article, with special attention on the limitations of muddling through in an increasingly complex political environment.

WHAT IS THE LIFE OF A TOP OFFICIAL LIKE?

Washington in 1979 is much like the world of the Red Queen in Lewis Carroll's Through the Looking Glass. As the Queen explained to Alice: "Now, here, you see, it takes all the running you can do, to keep in the same place. If you want to get somewhere else, you must run at least twice as fast as that!"

Members of Congress, Cabinet officers, assistant secretaries, White House staff, and special assistants spend most of their days racing from one meeting to the next as their in-boxes and phone messages pile up.

Just recently, we have as evidence Elizabeth Drew's Senator. In March, The New York Times Magazine chronicled a routine day in the life of Secretary of State Cyrus Vance—up at 5 a.m., in the office before 7, over 40 meetings and phone calls before departing for home at 7:16 p.m. In February, The Washington Monthly described a "hypothetical but realistic" schedule for a secretary of a major domestic department. The secretary's three-by-five schedule card had 15 entries, beginning with a breakfast meeting and ending with an embassy cocktail party. There is, of course, some hype to these stories, both on the part of the subjects and the authors, but there is no denying the essential accuracy of the portrait of busyness that they paint.

There is usually one thing missing from the three-by-five schedule cards that rule the lives of these busy people. There is no time to think very deeply or broadly about anything. The busy work drives out the time for reflection. The ability to take time to identify priorities and develop coherent strategies to carry them out is limited. Former HEW Secretary Joseph Califano had a poster on his office wall with a quotation from Thoreau: "It is not enough to be busy . . . the question is: what are we busy about?" It is a question that our top government officials have all too little time to ponder.

In 1977, a special House commission chaired by Representative David Obey (D.-Wisc.) reported that: "Rarely do Members have sufficient blocks of time when they are free from the frenetic pace of the Washington 'treadmill' to think about the implications of various public politics." The Obey Commission found that in an average 11-hour day, a House member has only 11 minutes to read. Eileen Shanahan, an HEW assistant secretary for the first two and one half years of the Carter administration, says, "I used to make people at HEW laugh out loud by saying that I longed for the orderly pace and intellectual depth of daily journalism. Only I meant it!"

When Alfred Kahn was named chief inflation fighter he shocked the Washington press corps by announcing that he wanted "to reverse the Washington pressures that I've been receiving—the pressures to act now and think later." The Washington Post ran a headline that could only have seemed notable in Washington: "Kahn to Think Over Inflation Issue." Months later, when asked if he has been successful at reversing the Washington pressures, Kahn flaty responds: "No, of course not."

WHY DOES IT HAPPEN?

In Washington, the urgent drives out the important. The short term demands on the top policy maker are staggering. In a very real sense, our top public officials in Congress and the exclusive branch become the prisoners of others. Their calendars are controlled by someone else, and their days are dominated by the demands of others—people fill their in-boxes with paper and phone messages, their calendars are clogged with meetings ceremonial and otherwise.

This is especially bad for those who administer agencies or who deal frequently with Congress. According to Patricia Wald, who recently left her position as assistant attorney general for legislative affairs to become a federal appeals judge: "It is not possible to set your own schedule. You can try, but you have to be ready to junk your whole schedule and go to whatever the crisis is. I literally come in in the morning with a list of things to do and the whole day goes off in a different direction."

It is tempting to believe that most of this is merely people acting self important, but most of the busyness is genuine. The large majority of the claims on the top official's time are at least somewhat legitimate when looked at on a case-by-case basis. All of them are important to somebody. And there is usually a political price to pay for each request that is denied. But the tyranny of the clock is real, and the cumulative impact of the demands is intolerable.

It should not be surprising that the time demands on government officials are so numerous and come from so many sources. It is that way by design in our democracy with its carefully established system of checks and balances where power is shared by numerous institutions. In addition to the demands of running a major bureaucracy, a Cabinet secretary, for example, has to respond to the Congress, the White House, the press, interest groups, and other agencies and governments.

The sheer size of government causes enormous management and ceremonial demands. There are more programs at HEW, for example, than there are days in the year. It takes time to ensure internal agency communication and due process, but they are essential to maintaining staff morale and effectiveness. Real crises do occur and must be dealt with. Public policy development is much tougher in an era of rapid change in technology and society than it once was. The press—which can make officials appear better or worse than they are—wants hard answers on short deadlines. The substantive and ceremonial demands of other officials and groups that can help or hurt an official's program must be taken seriously.

And Herbert Kaufman of The Brookings Institution points out that "buried in the details and seeming triviality are matters with real policy implications." For top officials, "life consists of watching the smallest details as well as the largest," according to Stanley Surrey, an assistant secretary for tax policy at Treasury during the Kennedy and Johnson years.

While the legitimate work demands are large, there is a significant degree of foolishness involved as well. Unfortunately, because power in Washington often has as much to do with symbols and appearance as with substance and reality, much of the foolishness is necessary as a means of enhancing or maintaining power. Protocol often prefers a high ranking official to an informed one. Washington is a town where assistant secretaries have been known to cancel meetings when a peer has the audacity to send a deputy. It is a town where people usually do not sign what they write and do not write what they sign. The worst workaholic sets the pace in each office. Those who work less or fail to attend Saturday meetings lose influence.

Secretary of State Vance is a good example of a victim of the protocol trap. Vance said that he would not travel as much as Kissinger, but, of course, he is constantly on the move. Why? Other countries pay serious attention to the level of representation they receive. If Vance sends a deputy to a NATO conference, for example, rumors fly through Europe and around the world that the U.S. has downgraded NATO.

Congressional committee chairmen want Cabinet secretaries to testify even when assistant secretaries may be better informed on the subject of the hearing. Why? The Cabinet secretaries tend to attract media attention and they satisfy the chairmen's feelings of being part of a co-equal branch of government. The congressional demand might not always be reasonable, but the price of refusing is often too high.

But these top officials are not just the prisoners of others, many of them are also prisoners of their own egos and senses of responsibility. The official reads that peers in other agencies are working long hours, and he or she comes to like the image of being busy and exercising real authority.

Staying on the move and working long hours give the official a sense of self-importance and often a sense of indispensability. Getting VIP treatment for giving a speech in Las Vegas or holding a press conference in Washington provides ego gratifications that serious reflection can not match for many. Solving short term crises can be exhilarating, fulfilling the childhood desire to play fireman. "Part of the evil of the thing is that it's all so fascinating," according to Senator Charles Mathias (R.-Md.).

A large part of the problem relates to what Joseph Bower of the Harvard Business School calls the "myth of the good manager," the person who knows everything and does everything. The conscientious government official is reluctant to delegate, to let go of anything that might be of some importance. This is especially true because of the initial lack of familiarity that political appointees have with most of their colleagues and the career civil servants. Just about the time a comfortable relationship has developed, the political executive is often getting ready to return to private life.

Alan Campbell, Director of the Office of Personnel Management (OPM), points to the "fishbowl character of what you do and therefore the need to really be careful that you are not signing off on something which could be on the front page of The Post or The Times the next morning." Former HEW Secretary Califano was skewered in the press for signing a job description for a cook that was less than forthcoming about the duties of the job. At the time, he felt it was not worth the 30 minutes to rewrite it. He felt differently soon after

To the official, the in-box and the calen-

dar become escapes, the paths of least resistance. When frustrated with tough, long term problems, the official, consciously or not, can turn to the immediate and achieve some gratification. The permanent bureaucracy is perfectly willing to add to the foolishness by clogging he official's in-box and calendar with items of border-line significance so that the official has no time to take any serious action that might threaten the status quo.

In time, the official can lose track of priorities. And this is where a conscientious official could be lulled into complacency by Lindblom's theory of incrementalism. Contrary to Thoreau's sage advice, it often seems that in Washington it is enough to be busy. It does not always matter much what you are busy about. In jobs where it is difficult to measure the quality of output, the quantity of input can become a substitute. The very first question on newly installed White House Chief of Staff Hamilton Jordan's ill-conceived evaluation form for top Carter administration officials asked when the person being evaluated arrived at and left work. While it is easy to be busy, it is much more difficult to be productive.

Campbell suggests that the business "may have more to do with early toilet training than it has to do with the objective situation in the job." Perhaps HEW Secretary Patricia Harris said it best when asked to account for the frantic pace of some of her Cabinet colleagues: "there is something about the male machismo that says that you have to work 20 hours a day." And Carter's macho appointees are not all male.

DOES IT MATTER?

Lindblom and his fellow theorists of incrementalism have made a virtue of muddling through, but there are serious drawbacks to the reactive style of management that buries officials with the immediate to the exclusion of the important. A passage from Lewis Carroll's "Alice's Adventures in Wonderland" makes the point:

"Would you tell me, please, which way I ought to go from here?" [asked Alice]

"That depends a good deal on where you want to get to," said the Cat.

"I don't much care where . . .", said Alice.

"Then it doesn't matter which way you go," said the Cat.

It is widely accepted that the political dialogue of the day is intellectually bankrupt. The political consensus of the New Deal is shattered. Nothing has replaced it. The forces of negativism have progressive forces on the defensive. The country is in transition, but it is, like Alice, not sure where it is going. It needs a new articulation of national purpose and the appropriate role of government. As HEW Secretary Harris has pointed out, the intellectual community, as the traditional idea initiator in our society, bears a heavy burden for this paucity of positive new approaches. The country needs thinkers in government as well.

As long as our ablest public officials are tied up with the bureaucratic red tape and overwhelmed by their in-boxes and their three-by-five schedule cards, there is little hope that government will provide the visionary and creative leadership that our nation so desperately needs. The present system draws all of the best people, even those in policy and planning jobs, into matters of day-to-day strategy and tactics. The price we pay for an excessive focus on the muddling through aspects of governing is large. Government's failure to anticipate problems—the energy and inflation issues are the most obvious—and its seemingly endless reactive and inadequate crisis management have helped to fuel the growing lack of public confidence in government and the growing belief that government cannot deal with our problems. Lindblom points out that long-run considerations need not be omitted in this process, but it is a point that he gives little attention to.

The opportunity for creative reflection is minimal in the present system. Representative Abner Mikva (D-Ill.), one of the most thoughtful and creative members of Congress, is leaving after five terms to become a federal appeals judge. Mikva says he is "looking forward to having the capacity to think about what I am doing before I do it and not just running onto the House floor with my voting card in my hand wondering whether to vote aye or nay."

When we pressed, people in government express a common frustration. "I will try to take an issue like energy, for example, and try to evaluate it and talk about more than just whether we can get gas to a service station dealer in the district," says Representative Leon Panetta (D.-Calif.). "I try to talk about the overall issue and where we are heading and what needs to be done in terms of the country. That is the kind of thing that we should be spending more time on, but we really don't." Arnold Packer, the assistant secretary for policy at Labor, has expressed a similar feeling: "I have this conceptual idea about international economics and U.S. productivity. But there just isn't the creative time to do it, partially because you are just too busy and even if you could put aside the time you are too fatigued."

"Nobody really has a handle on how we move into the future," according to Panetta. What are the issues that in five or ten years we will wish we looked at today? What are the ultimate implications of our move from an industrial society to a service economy? Who is looking at the long term social effects of the telecommunications revolution and other similar aspects of our rapidly changing society?

The fault lies partially with the public and the press. Talking in public about new, untested responses to difficult, long range problems can be dangerous politically. Joseph Duffey, chairman of the National Endowment for the Humanities warns that: "It is hard to think out loud and express your ambivalence too clearly because everything you say has a certain symbolic attachment to it." One who spoke forthrightly about energy policy a few years ago, for example, might not be around today.

Some of the most thoughtful public officials admit that they have no time to develop new ideas but say they are working off intellectual capital built before coming into government. This is hardly comforting. In addition to the fact that not everyone can retire to a tenured position in an ivory tower, new problems arise that demand new solutions. Today's remedies are out of date tomorrow. Constant innovation is needed to avoid constant crisis. Henry Kissinger might have brought a world view into government, but it became increasingly difficult to understand what principles guided him in later years. As new problems arose, Kissinger's answers seemed sloppier and sloppier.

A system that runs people ragged for 12 to 18 hours a day shortens their perspectives and squeezes out their creativity and imagination. They reach the point of diminishing returns. They become stale and lose their receptivity to new ideas and insights. They mouth yesterday's truths and lose touch with their goals and values. They often face the choice between being an effective public servant and leading a sane family life. "Public life in this country has gotten to the point where people who are engaged in it are driven," according to Senator Mathias. "And I think that's bad. I think the public will pay in the quality of service they get."

When everything is instinctive, officials lose their ability to think broadly and deeply about fundamental national problems. They work longer and longer and think worse and worse. The question before them is not: "what is the best policy for the nation?," but rather: "what is the best policy I can come up with by Tuesday that Congress would take seriously?" When pressed for time, they seek out the easiest information available, the first historical analogy that comes to mind, the most obvious alternatives. There is little time for hard critical analysis and little opportunity to think about the long term consequences and the potential for implementation of the ideas they do come up with. They burn out and leave, or, worse, they burn out and stay.

The problem appears to be that while most of the demands on the time of these officials are at least somewhat legitimate, the cumulative impact is intolerable. If this is so, the problem will not be solved until the officials take one step back from the frantic pace of everyday life to look at the whole of their lives and think through a few basic questions:

What is this doing to me as a human being?

What are my relevant goals and value?

What three things do I really want to accomplish?

Where should government be in this area in five years?

While Lindblom is correct in pointing out that one cannot always maximize one's values and inquire deeply and broadly into everything, thinking about questions like these occasionally is not frivolous. Unless the officials have some idea of the answers to them, as the Cat told Alice, it really does not matter what they do in the short term.

This does not mean that the top 100 government officials should be detailed to Walden Pond to commune with the ghost of Thoreau. It does not even mean that they should block out periods of time during the week just for "thinking great thoughts." Pity the poor secretary who would have to answer the phone with: "I am sorry, Mr. President, he is thinking today." Admittedly, inspirations and insights often come in flashes, and one can get them as easily in the shower or while jogging as in meditation.

Public officials can and must build into their lives time to think through their goals, time to work on their priorities, and time for themselves and their families. Compared to these higher needs, much of what top officials do is trivial. Without a system of fairly rigid rules built into their everday life, however, officials will have a difficult time saying "no" to even the most marginal demands on their time. Officials need rules and incentives that force priority issues and long range thought into their in-boxes and onto their three-by-five schedule cards. This will force them to make harder choices among the day-to-day routine requests that now dominate their lives. Obviously, these rules must not be so rigid and comprehensive that they choke off spontaneity.

It takes self-confidence, judgment, and discipline to say that what is important to you is more important than what the world brings you in your in-box. Yet, it is this strong sense of purpose that is the essence of leadership. One has to understand the importance of this and have the will and discipline to do it.

Elliot Richardson, who has held four Cabinet posts, says that "perhaps the most valuable single thing that a person can have to protect himself from being overwhelmed by detail is what you might call a sense of the terrain or what the map as a whole looks like. And even though you may get stuck for a while in some impassible swamp, there is no reason that you should come to believe that the swamp is all there is." Richardson says that he never has learned to say "no" to demands on his time very well but that

"the first thing you have to learn is the necessity of it."

Obviously, different people have different temperaments and different job responsibilities. Some are pure incrementalists with no inclination for priority setting or long range thought. Others are intellectuals from the academic world who thrive on reflection. Some are good in face-to-face give and take; others work better alone and with memoranda. Of course, a Cabinet secretary has more control over his or her life than a special assistant. An assistant secretary for policy has more time for long range thought than the head of a line agency or a congressional relations office. With top government officials who span the spectrum, no single set of techniques apply to all. People who are not inclined to be reflective, will not be; but for those who want to fight the system, a shopping list of strategies—what Stephen Hess of The Brookings Institution calls "survival techniques"—from which different people can select different items seems like the most useful approach. Some are comprehensive approaches. Others are small games that people play on themselves that may seem trivial to others. They are for the most part neither spectacular nor glamorous; many would fit well in a book of techniques for muddling through. Each is helping or has helped someone fight the Washington pressures against reflection. Hopefully, they could help others.

People who have spent time around Elliot Richardson describe a role they identify as the "strategic thinker," a disciplined manager of time who periodically takes the time to decide priorities, to think through strategy, and to make his or her calendar reflect these priorities. This person recognizes that there are only a small number of major changes that one can accomplish in the limited time one is in government. The strategic thinker devotes time to identifying and implementing those changes and thinking about how the various parts of the operation relate to the overall goals.

"Leadership," according to Richardson, "is a function of the establishment of goals which in turn necessitate the sacrifice of alternatives." So the strategic thinker does not fall victim to the "myth of the good manager." He or she does not try to know everything and do everything. This requires a self-confidence that recognizes that no one is indispensable and a humility that recognizes the limitations of what any single individual can do. Benjamin Heineman, assistant secretary for planning at HEW, says that "you have to have a sense of what you want to leave because an awful lot of it is ephemeral. . . . I would rather do five things reasonably well than be at every meeting or be involved in every issue." The way a top official uses time is the most important signal to others of what he or she really thinks is important.

This, of course, is exactly the ground on which James Fallows, in his *Atlantic* articles, criticizes President Carter, the ultimate clean desk man. "Carter's problem is not that he doesn't think," according to another Carter appointee. "His problem is that he doesn't choose."

Federal Trade Commission Chairman Michael Pertschuk quickly learned the danger of trying to do too much with limited resources. Pertschuk explains that in his early months at the FTC "staff were always coming up with cases and rule proposals and everyone of them had some merit. Suddenly I realized that if I kept voting for all of these complaints and rules, none of them would get done. . . . So I got to be, in effect, part of the conservative majority of the commission in terms of saying 'no' to things that are valid." According to Pertschuk this requires "some modest sense of institutional humility that is not characteristic of liberals."

In addition to recognizing the need not to overburden staff, it is important to reverse the pressure to siphon off all of the best people on short term, hot issues. HEW's Heineman points out that: "What you have to do in a planning office is build in a capability for people to do some longer range thinking even if someone sitting in this particular job has a hard time doing it." The head person must establish the appropriate incentives as well as the capacity for long range thought and careful attention to priority issues. However, while high quality staff is an essential element in solving the problems of time, it can have the opposite effect as well. Senator Daniel Moynihan (D.-N.Y.) recently observed that, after a point, "increased assistance begins to defeat its purposes by consuming the very time and energy it was supposed to free up."

Even with a good sense of priorities, the daily demands on top officials are such that "it is not ordinarily possible to do serious, original, conceptual, long term work in government," according to Richard Darman, an assistant secretary for policy at Commerce during the Ford administration. The task, according to Darman and others, is, in the words of Simon Lazarus of President Carter's Domestic Policy Staff, "to plug into the best thinking that there is in the private world and try to put it into effect." The best recent example of this, according to Lazarus, is the Carter administration's development of its civil service reform package. Under the supervision of Alan Campbell, hundreds of experts and interested parties were involved in a highly publicized process of task forces that helped develop and build support for the reform package. The effort was notable for its success and also for the administration's inability to use it as successfully on other high priority issues.

In a town where the in-box rules, the trick is to get out ahead of issues so that the in-box is filled with issues the official cares about. Former HEW Secretary John Gardner consciously used "a policy of self entrapment." When he wanted to think deeply and broadly about a subject, he would make a commitment to give a speech or write an article on the topic. As the due date would draw near, with his credibility on the line, he would demand time to work on it. The marginal and the trivial would have to stand aside.

The Carter administration uses the Presidential Review Memorandum (PRM) in an effort to get policy development into the in-box. The memoranda package views and recommendations of various agencies on important domestic and foreign policy issues. One participant in the PRM process admits that "not a hell of a lot of new thought" has resulted but points out that it has "some value by focusing you on where you are going."

Elliot Richardson established a new management system at HEW in the early 1970s designed to allow him to focus his time on policy making in priority issues rather than in reacting to a series of small issues raised by others. The heart of the process was a master calendar that coordinated planning and program activities with the budget process, a refinement of management techniques that had been tried before in Washington. Richardson conveyed his priorities at the beginning of the process and received an orderly flow of information that reflected those priorities.

Other less ambitious but highly useful priority setting devices can be used. Former Treasury Assistant Secretary Stanley Surrey would set aside a weekend at the start of each year to sketch out an agenda for the upcoming year. Former Commerce Assistant Secretary Darman had a chart of over 100 issues with 10 or 20 marked as top priority issues. He would review and update it each week. These may not sound like revolutionary ideas; they are not meant to. But they did provide their authors with a counterforce to the sky-is-falling mentality that raises daily trivial affairs to the status of legitimate crises.

FTC Chairman Pertschuk takes his senior staff on a weekend retreat every six months to discuss commission priorities. Joseph Nye, deputy undersecretary of State for nonproliferation during the first two years of the Carter administration, scheduled small, informal planning sessions every few weeks. They would give him an excuse to prepare a short memorandum for the discussion which would usually involve a series of items that did not have to be dealt with immediately.

Robert Kennedy would open his office to a broad range of people outside normal channels as a way of seeking out different points of view. Inflation fighter Kahn likens himself to a "blotter," constantly reaching out to new people and for new ideas, recording the ideas in a notebook, and occasionally taking the time to go through the notebook to compose a memorandum of opportunities for the president.

Carter deserves credit for adding former Time editor-in-chief Hedley Donovan to his senior staff as a means of providing him with contacts with the world of ideas. Hopefully, Donovan will keep the president well supplied with people (and ideas) off of the Washington path who will challenge him in ways that Hamilton Jordan and Jody Powell cannot be expected to.

Samuel Huntington, a former top aide to National Security Advisor Zbigniew Brzezinski, says that for anyone advising the president, it is not only important but possible to "set aside several hours a week for study and reflection to think hard about issues and to gain a deeper understanding." It simply must be done. John McNaughton, as assistant secretary of Defense under Robert McNamara, used a small traffic light to protect this kind of time for himself. A green light meant that he could be disturbed; an orange light meant that he was working on something important but could be disturbed for something urgent; and a red light meant that he did not want to be disturbed unless he had summoned the person. While at HUD, HEW Secretary Harris got to work early and insisted on being left alone to work at her desk for an hour and one half each morning when she is fresh. Harris admits that "most of the rest of the time I am fighting" the clock.

In Washington, however, the unorthodox is usually the first to go when the schedule gets tight. Assistant Attorney General Philip Heyman recently brought a number of academics to Washington to spend the day with him and his staff to discuss organized crime. Heyman says this type of session is rare because "the evidence is that it gets pushed out of the way by the immense number of middle level matters" that his criminal division must deal with. As he spoke, Heyman had five documents red tagged "urgent and important" on his desk and a constantly ringing phone.

To counter the tendency to cut out the unorthodox, officials would be well served by adopting strict decision rules that scheduled periodic retreats well staffed in advance, monthly long range staff planning sessions, or lunches with creative people they do not have to talk with in their normal routine. These sessions should be made priorities over all other than genuine emergencies.

Congress is easily one of the heaviest time eaters of the political executive's daily schedule, but Congress can also be part of the solution. Timely oversight or foresight hearings on high priority issues can help put those issues in the in-box and on the schedule card.

Congress's own use of time could be much

improved. At present, as former Representative Michael Harrington (D-Mass.) has pointed out, "the rewards all run to the reactive." Creativity and thought are undertaken at one's political peril. By ridding themselves of much of what Harrington calls the "nonessential garbage" that clutters the congressional calendar—the routine annual authorizations and frequent quorum calls—members of Congress could free time for serious attention to long term, high priority issues.

Former Representative Ned Pattison (D.-N.Y.) proposed a three-month moratorium on legislative activity at the end of the first year of each Congress. Pattison proposed that the period be used for concentrated oversight and foresight to educate members in areas of fundamental national concern. Undoubtedly, media cynics would play it as a three-month holiday, political cartoonists would have a field day, and members in marginal districts would rush home to campaign, but the need for something like this is clear. A less dramatic approach proposed by Pattison would be to devote one Wednesday each month to the effort, banning legislative activity on the floor and in committees. In recent years, Harvard's Institute of Politics has hosted newly-elected members of Congress for a series of seminars. There is no reason to believe that more senior members would not profit from some of the same.

Nevertheless, thinking great thoughts and heading off potential crises are not the be-all and end-all of life. As President Carter wrote in a memorandum to top officials at the start of his Administration: "I'm concerned about the family lives of all of you. I want you to spend an adequate amount of time with your husbands, wives, and children . . . you will be more valuable to me and to the country with rest and a stable home life."

When they have the time, Carter officials have been known to sit around and laugh about that memo . . . and moan a little as well. Even though he has not done much to follow up, the president was absolutely correct. The most elementary psychology text can tell you that stress is only good to a point and that at some point after that performance and attitudes, not to speak of marriages, go to hell. When the tobacco industry, upset with former HEW Secretary Califano's anti-smoking drive, printed "Califano Is Dangerous to My Health" bumper stickers, several of his top aides promptly put them on their office walls.

People must block out time to preserve their human dignity and their relations with their families. Time out of the office and out of Washington doing things unrelated to work is the key to avoid being ruined by the system. Here again, rigid rules can help the official battle against the trivial. Former State Department official Nye made a simple but important pledge when he went into government: he would eat dinner with his wife and children every night. It made for some late family dinners and often four meals a day for the children, but it established an important counter pressure that helped him decide to go home rather than prepare one more marginal cable.

Senator Mathias somewhat longingly tells about former Senator William Borah (R-Idaho) who rode horseback in Rock Creek Park every morning until 11:00. "Think about what a good thing that was," says Mathias. "Not only for Senator Borah and for his horse but for the country. There is no time better to think out complex problems than when you are doing something like riding a horse or walking or some exercise that has your blood moving through your brain and at the same time is not occupying all of your attention." Senator Mathias has no illusions about a return to the days of Senator Borah's morning rides, but he does argue eloquently for the need for government officials to get away from their daily grind and find time for exercise and relaxation.

In the hothouse atmosphere of Washington, even so basic a form of relaxation and stimulation as reading is often ignored. Reading is the way many get insights and perspectives. It should not be suspended upon entrance into the federal government although it often is. FTC Chairman Pertschuk is an exception. He takes off the entire month of August each year for reading, reflection, and relaxation. In 1977, he worked his way through a heavy program of anti-trust literature. In 1978, he read more broadly. The reading of history, economics, literature, and philosophy when combined with experience in the real world can help the government official bring broad humanistic values to bear on matters of public policy.

The problem with taking time for one's self and family is, of course, that one might have to forego a measure of short term influence or effectiveness. To his or her peers, the persons might appear to be lazy or, perhaps worse, a dilettante. But the cost of being a follower, of going along with the peer pressure to grind one's self into the ground is ultimately much greater. The truly self confident, creative person does not need to be in every meeting and involved in every issue. A modicum of none-conformity in this regard would pay large dividends.

WHY ISN'T SOMEONE WORRYING ABOUT THIS?

We have come a long way since the time when President Coolidge napped afternoons in the White House and Senator Borah rode horseback in Rock Creek Park. The complexity of public problems has increased exponentially. Life in the top positions of government is going to be rough for any conscientious public servant. At a minimum, it is going to be a long string of 10 and 12 hour days. There is no way to change that.

It is demonstrably true, however, that too many of our best public officials are chewing up their lives and those of their families on matters that will seem trivial just weeks or months or years from now, on what former Solicitor General and Watergate Special Prosecutor Archibald Cox calls "pressures of the here and now that are of a very small and unimportant realm." Locked into a patterned routine, these officials are not doing themselves any good, and they are not doing their government all that much good either. By running themselves ragged on a series of marginal, short run issues and problems, they are failing to anticipate potential problems, design creative approaches, and help define a new vision for America.

The problem, of course, is not limited to government. Those in the top of our major private institutions suffer from many of the same difficulties. Nor, apparently, is it either ideological or uniquely American. This summer, *The Economist* wrote of the new Tory ministers in Britain that "the thorny problems in some in-trays are tempting some to rush their fences."

So why isn't someone worried about this? The press does not take it very seriously—limiting attention to day-in-the-life-of-X stories and telling us about the marriages Joe Califano was crushing at HEW. These stories are always either funny or tragic, but they seldom provide serious analysis of the problem. Public policy schools have not done enough to focus attention on the problem or to train prospective government officials in ways to cope with it, admits Graham Allison, dean of the Kennedy School of Government at Harvard. Alan Campbell is the president's personnel director and one of the brightest stars of the Carter administration, but he does not see this problem as a responsibility of his office. "That doesn't mean I shouldn't," says Campbell. "But we really haven't spent any time on it. We worry about alcoholism and things like that." The 20th anniversary of Lindblom's important article marks an appropriate time for renewed interest on the part of leading public administrators both inside and outside of government on the strengths and limitations of various techniques of policy-making.

ADDRESS BY SENATOR EDWARD M. KENNEDY

Mr. TSONGAS. Mr. President, on Monday the senior Senator from Massachusetts, Senator KENNEDY, spoke at Georgetown University.

I ask unanimous consent that the address by Senator Kennedy at that time be printed in the RECORD.

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

ADDRESS OF SENATOR EDWARD M. KENNEDY

Five days ago President Carter announced a doctrine—a doctrine that would define the area of the Persian Gulf as an American vital interest and that could commit the American people to military intervention in defense of this area.

The question that requires careful consideration is what does this Carter Doctrine mean for the world—and for our own country.

Many Americans feel that once the President of the United States has made an assessment and set a course, the rest of us should stand silent in the ranks even if we have a different view of the national interest. That is not the lesson of our liberty—or the heritage of our history.

Forty years ago, when the Nazis swept across the Low Countries and France, a far more urgent threat to our security, there was no suspension of the public debate—or the presidential campaign. If we could discuss foreign policy frankly when Hitler's panzers were poised at the English Channel, surely we can discuss foreign policy when the Soviet Union has crossed the border of Afghanistan.

If the Vietnam war taught us anything, it is precisely that when we do not debate our foreign policy, we may drift into deeper trouble. If a President's policy is right, debate will strengthen the national consensus. If it is wrong, debate may save the country from catastrophe.

So I make no apology for raising questions about the Carter Doctrine. The exercise of dissent is the essence of democracy. Whether we are citizens or candidates, we have not only the right but the obligation to deal with issues that may shape—or shatter—our future.

All of us condemn the brutal Soviet invasion of Afghanistan. This wanton act of aggression has aroused the conscience of America—and of all the world. It must be met with an appropriate response by the United States and all our allies.

But is this really the gravest threat to peace since World War II? Is it a graver threat than the Berlin Blockade, the Korean War, the Soviet march into Hungary and Czechoslovakia, the Berlin Wall, the Cuban Missile Crisis, or Vietnam? Exaggeration and hyperbole are the enemies of sensible foreign policy.

In fact, the Russians have dominated Afghanistan not for four weeks, but for 22 months. Years ago, Afghanistan passed under Soviet influence. It passed behind the Iron Curtain, not in 1980, but in 1978, with hardly a word of regret from the Carter Administration. When two Marxist regimes in Kabul failed to put down Afghan resistance,

the Russians decided to install a third regime and to put down the insurgency themselves. Afghanistan, as they saw it, was slipping away.

President Carter confessed that he was "surprised" by their action. For many months, the Administration had ignored the warning signals. The American Ambassador to Afghanistan was killed in Kabul last February while Soviet military advisers looked on. We were aware well in advance that the Russians were massing their forces. But the Administration said virtually nothing until after the invasion, when they drew a line in the dust that was already rising from the tread of Soviet tanks.

The Carter Doctrine offers defense contractors a bright future of expansion and profit. But the middle class, the blue-collar workers, minorities, and every victim of discrimination by race or sex or age—they all face the bleak prospect of higher taxes, higher interest rates and higher inflation. The young will pay a further cost in registering for the draft. And, as the President's budget makes clear, programs of social benefit and justice will once again be postponed. If the principle of sacrifice is to prevail, let it apply as well to the oil companies and all the other elements of the military—industrial complex.

Last week, we heard a State of the Union message that left behind the problems this President was elected to resolve. The Administration, but not the nation, has turned away from those problems and from the people who live with them every day—people out of work or about to lose their jobs, families who cannot buy a home, parents who cannot send sons and daughters to college, the sick who cannot pay their bills for health and the elderly who must now choose between heat in their apartments and food on their tables.

When the unity of our present fear fades, when the crowds stop cheering and the bands stop playing, someone has to speak for all the Americans who were ignored in the state of the Union address.

It is their Union too—and the state of their lives deserves to be addressed.

If my candidacy means anything, it means a commitment to stand and speak for them. So let me tell you what we did not hear from the President last week: Inflation will continue. Unemployment will go up. Energy prices will rise to even higher levels. The cost of home heating oil has soared to 95 cents a gallon; and now we discover that Exxon has registered the first four billion dollar profit in the entire history of industrial corporations.

And these domestic concerns are not merely matters of social justice; they are also at the center of our foreign crisis. Iran and Afghanistan demonstrate a fundamental truth of the American condition. We are perilously dependent on OPEC oil.

A house weakened in its own foundation cannot stand. Unless we put our energy house in order, our strength and credibility will continue to fall; the world will grow steadily more dangerous for our country and our interests.

The Carter Administration has accepted our petroleum paralysis. They talk of sacrifice—but it is an unequal sacrifice founded on unfair prices that bring hardship to our people. The President's decision to decontrol the price of oil will cost the average family a thousand dollars each year throughout the decade of the 1980's. We all remember the Democratic presidential candidate in 1972, whose campaign was assailed because he proposed assistance of a thousand dollars a year for every person in poverty. How then are we to regard a Democratic President in 1980, who wants to do the opposite, who wants to take a thousand dollars a year from every family and transfer it to the oil conglomerates?

We must cure our addiction to foreign oil.

Not only does the administration claim we face the gravest crisis since World War II, they also claim they are making hard decisions to meet that crisis. Long before Afghanistan, they proposed a stand-by gasoline rationing plan—and that all they propose today. The time for a stand-by plan is over. The time for a stand-up plan is now.

We must adopt a system of gasoline rationing without delay—not rationing by price, as the Administration has decreed, but rationing by supply in a way that demands a fair sacrifice from all Americans.

I am certain that Americans in every city, town, and village of this country are prepared to sacrifice for energy security. President Carter may take us to the edge of war in the Persian Gulf. But he will not ask us to end our dependence on oil from the Persian Gulf. I am sure that every American would prefer to sacrifice a little gasoline rather than shedding American blood to defend OPEC pipelines in the Middle East.

America should be not only a powerful military force, but a continuing force for arms control. We should not hesitate to stand for human rights, including the most basic of all human rights—the right to survive and to live in peace, free from the fear of nuclear war.

Nor does a regional crisis justifiy a reflex decision to spend many billions more on defense systems that have no relevance. Afghanistan highlights the necessity for improving our conventional forces and increasing our military readiness, but it is hardly an excuse for haste on nuclear weapons like the M-X missile. Needless weapons drain the resources to pay for needed ones.

Above all else, we must realize that symbols are no substitute for strength. And in the State of the Union message President Carter offered a new symbol. He requested funds for computer runs to register young Americans for the draft. He said this step could "meet future mobilization needs rapidly, if they arise." But draftees, who take six months to train, would be a very slow deployment force. Registration now would save only 13 days in the event of mobilization. If registration and the draft were essential in a real emergency, there would be no dissent from me or most Americans. But I oppose registration when it only means reams of computer print-outs that would be a paper curtain against Soviet troops. If the President wants a peacetime draft, he should say so. But I oppose the peacetime draft—and I also oppose the President's plan for registration—which is the first step in that direction. We should not have taken this step across the threshold of Cold War II. We should not be moving toward the brink of sending another generation of the young to die for the failures of the old in foreign policy.

Exaggerated dangers and empty symbols will not resolve a foreign crisis. It is less than a year since the Vienna Summit, when President Carter kissed President Brehznev on the cheek. We cannot afford a foreign policy based on the pangs of unrequited love.

In the same spirit of realism, we must deal with the crisis in Iran. It is now 86 days since our diplomats and our embassy were seized. We cannot afford a policy that seems headed for a situation of permanent hostages. The time has come to speak the truth again: This is a crisis that never should have happened. In the clearest terms, the Administration was warned that the admission of the Shah would provoke retaliation in Tehran. President Carter considered those warnings and rejected them in secret. He accepted the dubious medical judgment of one doctor that the Shah could be treated only in the United States. Had he made different decisions, the Shah would doubtless still be in Mexico, and our diplomats would still be going about their business in Tehran.

The Administration continues to call for economic sanctions. I oppose them. They will only propel Iran toward the Soviet orbit. They will do nothing to free the hostages. Eighty-six days is enough. It is time to bring the hostages home. The Administration should now support a United Nations commission to investigate Iranian grievances, similar to earlier commissions on other countries. The commission on Iran should be established immediately, but it should begin its work only after every American hostage has come back safely to our shores. Let no one doubt that America will never yield to blackmail, and that harm to even a single hostage will bring swift retaliation. But let no one doubt that America is ready for a negotiated solution to this impasse.

The 1980 election should not be a plebiscite on the Ayatollah or Afghanistan. The real question is whether America can risk four more years of uncertain policy and certain crisis—of an Administration that tells us to rally around their failures—of an inconsistent non-policy that may confront us with a stark choice between retreat and war. These issues must be debated in this campaign.

The silence that has descended across foreign policy has also stifled the debate on other essential issues. The political process has been held hostage here at home as surely as our diplomats abroad. Before we permit Brehznev and Khomeini to pick our President, we should pause to ask who will pay the price.

Afghanistan is 7,000 miles away. Only 90 miles from our shores Moscow had already seen a Carter line that did not hold. Last fall, the President said Soviet combat troops in Cuba were unacceptable. But soon he changed his mind. He charged up the hill—and then charged back down.

Theodore Roosevelt once warned: "Don't bluster, don't flourish your revolver, and never draw unless you intend to shoot."

The false draw in Cuba may have invited the Soviet invasion of Afghanistan.

This is a real crisis, but it is also part of the recurrent condition that has periodically disturbed the peace for a third of a century. It must be countered. But it must not become so consuming that we lose sight of more vital interests. For example, this nation has an important stake in the independence of Yugoslavia. If President Tito were to die while we were preoccupied in the Persian Gulf, the Soviets could be tempted to launch an attack on Yugoslavia—a country that President Carter as a candidate declared he would not defend.

A measured response to the potential threat in the Persian Gulf must reflect certain principles that will prove less hazardous and more effective than a unilateral and unlimited American commitment.

First, this is not just our problem. It is a greater problem for nations that have a greater dependence on Middle East oil. We must seek their views and act in concert. We cannot impose policies on NATO and Japan; but together, we can set a common policy. This is even truer of the Islamic states, the countries that could be most menaced by Soviet adventurism. It is impractical to rely on a doctrine that requires us to stand astride the Persian Gulf solely on our own.

Second, we must not discount condemnation of Soviet aggression by the international community. This is important, but not because the Russians are moved by world opinion. They are not. It is important because the Soviet Union now finds itself estranged from the Third World—a result that will gravely handicap the Russians in lands they have previously regarded as their private hunting ground. This reaction runs deep in the Moslem world, where Arab nationalism and Moslem religious feeling can become a powerful force against Soviet ambition.

Third, American naval and air forces should be strengthened in the area. We must recognize, however, that such forces alone cannot secure control of a great land mass. But an enlarged presence, including carefully selected military facilities, could have a deterrent effect on the calculations of the Kremlin. And with our allies, we should increase military aid to nations that may have to face the Soviet threat.

Fourth, the greater threat to these nations is often internal decay and subversion, not external aggression. Military aid is not enough. We must also provide economic assistance and political support. Saudi Arabia and its neighbors must be strengthened against subversion from the PLO and other Soviet surrogates. And we must help Pakistan help the million refugees who are pouring across the border from Afghanistan.

Fifth, mutual assistance must be mutual. In return for strengthening their defense, the oil producing states should assure a more certain oil supply at reasonable prices. We should negotiate an arrangement that enhances both their national security and the energy security of NATO, Japan, and the Third World.

Sixth, we must not over-react to the present crisis in ways that undermine the security of Israel. That democracy is our most stable and dependable ally in the Middle East. We must not barter the freedom and future of Israel for a barrel of oil—or in a foolish effort to align the Moslem world with us, whatever the cost. Indeed, Egypt and Israel together already constitute a bulwark against Soviet expansion—and the cornerstone of the wider alliance we must seek.

Even as we take these steps, even as we express our abhorrence of the aggression in Afghanistan, let us not foreclose every opening to the Soviet Union. This is not the first abuse of Soviet power, nor will it be the last. And it must not become the end of the world. Ten months after the Cuban missile crisis—a far greater threat to American security than Afghanistan—the United States Senate ratified the nuclear test ban treaty by an overwhelming vote. The task of statesmanship is to convince the Russians that there is reason for fear, but also reason for hope, in their relations with the United States.

Just as energy insecurity weakens our national security, so inflation weakens our position in the world. Our goods have been priced out of the international marketplace. The value of the dollar has plummeted.

The numbers have nearly lost their capacity to shock. Twelve straight months of inflation over 10 percent. Wild gyrations in the price of gold. Interest rates at 15 percent. Unemployment at 6 percent. And now recession is just around the corner.

The fact is, America did not elect Gerald Ford in 1976. But under a Democratic administration, we have had three more years of Republican inflation, three more years of Republican interest rates, and three more years of Republican economics.

As a candidate, President Carter taunted President Ford in 1976 because the misery index—the sum of the inflation rate and the unemployment rate—had reached a level of 13 percent. Today that index stands at 19 percent.

These statistics are familiar. But one new fact sums up all the current chaos in our economy. The President who promised a balanced budget as a candidate four years ago now proposes a budget with a deficit of $16 billion for the coming year. If you do a little arithmetic, if you take this new deficit and add it to other Carter deficits of the past three years, you will discover an extraordinary thing—the total federal deficit during the Carter Administration will go down in the economic record book as the largest deficit of any presidential term in the history of America.

During this campaign, I have called for long-term steps to combat the fundamental causes of inflation—to foster more competition, more investment, and more productivity in our industry, and more emphasis on our foreign trade. They are obvious measures—measures that must be adopted now if we are to succeed in righting our capsized economy.

Potentially one of the most important short term weapons against inflation is voluntary restraint. But President Carter has hardly touched that weapon. He waited 21 months to set guidelines on wages and prices. And inflation is actually worse since his guidelines were put in place than it was before. The Administration's anti-inflation policy has the same credibility with major corporations that the Administration's foreign policy has with the Soviet Union.

The time has come for a frank admission that under this President, the voluntary guidelines have run their course and failed.

Inflation is out of control. There is only one recourse: the President should impose an immediate six month freeze on inflation—followed by mandatory controls as long as necessary, across the board—not only on prices and wages, but also on profits, dividends, interest rates, and rent.

The only way to stop inflation is to stop it in its tracks. Only then can we break the psychology of inflation that runs through every aspect of our economy and erodes our power in the world.

Today, I reaffirm my candidacy for the Presidency of the United States. I intend to stay the course. I believe we must not permit the dream of social progress to be shattered by those whose promises have failed. We cannot permit the Democratic Party to remain captive to those who have been so confused about its ideals.

I am committed to this campaign because I am committed to those ideals.

I am committed to an America where the many who are handicapped, the minority who are not white and the majority who are women will not suffer from injustice, where the Equal Rights Amendment will be ratified, and where equal pay and opportunity will become a reality rather than a worn and fading hope. I want to be the President who finally achieves full civil rights—and who passes an economic bill of rights for women.

And I am committed to an America where average-income workers will not pay more taxes than many millionaires, and where a few corporations will not stifle competition in our economy. I want to be the President who at least closes tax loopholes and tames monopoly, so that the free enterprise system will be free in fact.

And I am committed to an America where the state of a person's health will not be determined by the amount of a person's wealth. I want to be the President who brings national health insurance to safeguard every family from the fear of bankruptcy due to illness.

And I am committed to an America where the cities that are the center of our civilization and the farms that are the source of our food will be preserved and strengthened. I want to be the President who halts the loss of rural land to giant conglomerates and who declines to accept urban slums, unequal schools, and an unemployment rate in the inner city that approaches 50 percent.

And I am committed to an America that will safeguard the land and the air for future generations. I want to be the President who stops the seeding of the earth with radioactive wastes from nuclear plants—and who refuses to rely on a nuclear future that may hazard the future itself.

And I am committed to an America that is powerful enough to deter war and to do the work of peace. I want to be a President who does not rush to a helter skelter militarism or a heedless isolationism, who improves our military without gilding our weapons, who lifts at least a little the nuclear night that hangs over the world and who makes the world itself a little safer for both diversity and democracy.

And for all these commitments, I have only just begun to fight.

I am convinced that the people are not selfish or hopeless—and that the government is not helpless to serve the public interest. I am convinced that we as a people are ready to sacrifice—to give something back to our country in return for all it has given to us.

It is easy to preach sacrifice, while practicing the politics of symbols. It is easy to bend to the prevailing political breezes. All politicians are tempted to this at times.

But as I said a year ago, sometimes a party must sail against the wind. Now is such a time. We cannot wait for a full, fair wind or we will risk losing the voyage that is America. A New England poet once wrote: "Should the storm come, we shall keep the rudder true."

Whatever comes in the voting of this year, or in the voyage of America through all the years ahead, let us resolve to keep the rudder true.

Mr. TSONGAS. Mr. President, I had the opportunity to be there and frankly I found it to be a speech that I think articulated the reason why I as one Member of this body support the candidacy of Senator KENNEDY. Let me just highlight some of the issues raised in that speech:

If the Vietnam War taught us anything, it is precisely that when we do not debate our foreign policy, we may drift into deeper trouble. If a President's policy is right, debate will strengthen the national consensus. If it is wrong, debate may save the country from catastrophe.

One need not be committed to either candidate or to a particular party to understand the soundness of that statement.

On the issue of energy he said:

And these domestic concerns are not merely matters of social justice; they are also at the center of our foreign crisis. Iran and Afghanistan demonstrate a fundamental truth of the American condition. We are perilously dependent on OPEC oil.

A house weakened in its own foundation cannot stand unless we put our energy house in order, our strength and credibility will continue to fall; the world will grow steadily more dangerous for our country and our interests.

We must cure our addiction to foreign oil.

One could only reflect on how true that rings, given the time spent in this body in trying to develop a national energy policy.

The third area that I highlight is in reference to third world countries and the need for comprehensive, viable foreign policy:

Fourth, the greater threat to these nations is often internal decay and subversion, not external aggression. Military aid is not enough. We must also provide economic assistance and political support.

Certainly if one were to look at the statement that I made since I came back from southern Africa, that is really, I think a kind of signpost as to where we should be going and does point out the basic lack of a foreign policy by the administration.

It is my hope that these kinds of statements will nudge the President and his administration in a direction that I could support, and I wish to commend Senator KENNEDY for raising these issues and I

think most fundamentally providing the clear rationale for his candidacy.

In addition, Mr. President, I wish to have printed in the RECORD an article that appeared today in the Washington Post entitled "The Anti-Kennedy Bias in TV News Reporting," by Tom Shales.

I pride myself on being reasonably immune from criticism in the press, having endured a lot of it as a Congressman from my particular hometown newspaper. But it seems to me that when you are talking not about a Congressman or a Senator but about a Presidential candidate reporters have a certain obligation. There is nothing really to prevent people in the media from irresponsibility except their own sense of professionalism, and I have had experience in my life where that sense of professionalism was simply not adequate and I guess you just learn to live with it.

But what happens to a Congressman or a Senator in some respect is really not all that crucial, but when you are talking about a candidate for the Presidency I would have hoped that the media in this country would have treated the candidacy with the kind of respect and professionalism that they demand indeed of people in public life.

The article by Tom Shales in today's paper, which I think has been met with some agreement with the people from the media that I have spoken to, points out the kind of shocked quality of various members of especially the television media, and I hope that beyond the issue of Senator KENNEDY the media would understand the enormous impact it has on the U.S. electoral process and they should understand that, in fact, they are Americans as well.

An interesting contrast to the news reporting indicated by this article is the rather, in my opinion, courageous stand taken by the media on the six Americans who were hiding in Tehran.

So we have interesting contrasts, one reflecting the best of American journalism in what must have been a very difficult decision and one that represents the worst of American journalism.

It seems to me that it should be quite obvious which approach is not only better for the media but better for the country as a whole.

Mr. President, I ask unanimous consent that the Washington Post article be printed in the RECORD.

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

THE ANTI-KENNEDY BIAS IN TV NEWS REPORTING

(By Tom Shales)

It's hard enough running against an incumbent for the presidential nomination. Sen. Edward M. Kennedy (D-Mass.) has also had to run against all three television networks. It would take a combination of FDR and Abraham Lincoln on the same ticket to defeat that kind of coalition.

For the past three months the network news departments have had a field day playing Get Teddy. They have turned the election process into the Wide World of Politics and portrayed Kennedy as the creamed skier feasting on the agony of defeat. They supply the viewing electorate only with a daily fix on winners and losers, and they have all but declared Teddy the loser.

The latest sneak attack was committed by the exhibitionistically scrappy Phil Jones, who covers the candidate for CBS News. On Monday night's Evening News, Jones described Kennedy's appearance at Georgetown University and cracked, "and with that, Kennedy looked into the TelePrompTer and read a speech." CBS even included a shot of the TelePrompTer. THIS is news?

President Carter planned to use a TelePrompTer, too, for his State of the Union address; one was installed in the House of Representatives for him. But he changed his mind and relied on a typed text. No one at CBS, however, said, "and with that, President Carter looked down at his script and read a speech."

Even some network newsmen acknowledged—"privately," the way wee small voices at the White House are always being quoted on network newscasts these days—that the anti-Kennedy bias is phenomenal. We turn on the nightly news to find out how badly Teddy is doing today.

"It's the new sociology of news," says one of the most respected TV newsmen in the business. "They forced Teddy to declare for the nomination, and then the minute he declared, they started saying, "What good is he?' "

Says another longtime newsman at another network: "I don't think it's all television's fault, but television probably thinks less than newspapers—good newspapers— do.

"And all the while TV has been beating up on Kennedy, there's been almost benign neglect of Carter. Here you have a guy who is really a disaster, but the networks have gone right along with his Rose Garden strategy. There is absolutely no innovation in their coverage."

The symbolism that goes with presidential regalia is passed along to viewers by television, and rarely given a critical glance by TV newsmen. But the symbolism that goes with a Kennedy candidacy is subjected to repeated smart-alecky scrutiny, partly because the Kennedy mystique has such historical resonance.

When Roger Mudd decided to prove his manhood on the air with the landmark Teddy Kennedy profile which CBS televised on Nov. 4, it looked as though Mudd might be opening the door to new, tougher, more rigorous political reporting on television. It's been tougher and more rigorous all right—but only on Kennedy.

Jones followed up on Nov. 17 with a CBS Evening News report in which he deemed it terribly newsworthy that Kennedy had misidentified a railroad, that he was "using his family" to get votes—surely an unheard-of ploy in American politics—and that he stammered in response to a question on racial issues.

"He often appears to be a man without a plan," said Jones.

More recently, Kennedy was subjected to further unprofessional indignities on the ABC News program "Issues and Answers." In the last minute of the show, reporter Bob Clark suddenly said, almost jokingly, "Senator, if I may interrupt, people are going to think we are derelict if we don't get one Chappaquiddick question into this show."

Kennedy had less than 40 seconds to respond to the question Clark asked. He tried to bring up what he thought were the actual "moral issues" of the campaign but was cut off in mid-sentence when time ran out.

"We felt very bad about it," said Peggy Whedon, producer of the program, later. "It was miscalculation, purely. The clock did it to us." Sen. Kennedy was "a little testy" about the incident, she said, and "his people were angry" as they left the studio. And with good reason.

Meanwhile, on NBC's "Meet the Press," President Carter held forth with his big born-again grin as reporters pelted him with questions that, but for a few exceptions, had the stinging power of rose petals.

Television loves to give its audiences good news. It loves to give them winners. It loves to give them black-and-white comic strip versions of complex events. So the hair-spray crowd has put on the kid gloves for Carter, who is given great credit for withstanding all the crises he helped bring about, and saved all the knockout punches for Kennedy.

"It's really been savage against Kennedy," says one veteran political observer active in broadcasting. "I've been shocked by it, absolutely astounded by the coverage. And the double-standard is incredible. Carter is full of 'steely resolve' but Kennedy is 'hustling votes.' "

Why is this happening?

"I think partly because there's been so much garbage about how the press loves the Kennedys in recent years, that the reporters feel they all have to establish their neutral credentials by knocking him around. They're leaning way over backwards, that's for sure. They're preparing audition tapes so that nobody will look back someday and say, 'Oh, Phil Jones—that Kennedy whore.' "

Former presidential adviser Bill Moyers, who couldn't stomach the network news circus and this week begins a new season on public television, feels the problem involves more than just the hostility some correspondents feel toward Kennedy.

"Television is unfair to politicians generally, just as it is unfair to thinking people," Moyers says from New York. "Politicians deal in a world of complexity, and television deals in a world of simplicity. Television insists they play by the rules of television and not by the rules of politics.

"The rules of politics are negotiation, weaving, subtlety, nuance, trading, advancing, retreating, and so on; these are the things with which you sustain a political process. But television doesn't like nuance. And television doesn't like subtlety."

TV news melodramatizes events to make them good shows cast with cartoon personalities, and this streamlined version of what is happening in the world becomes the TV reality millions see on their screens. Principal offenders like Jones may stand out for their shamelessness, but the three network news departments are pretty much hewing to the same party line on Kennedy.

"A kind of group radar does take over," says Moyers. "One guy sees a blip and seizes on it, then another guy seizes on that, and so on. Teddy Kennedy hasn't been judged on whether he's been a good senator, on his grasp of the issues, on his views on Afghanistan, Iran, or anything else. Instead, it's been television deciding whether he's a good campaigner or not.

"At the same time, it's all biased in favor of Jimmy Carter. Inflation is not only as bad as it was, it's worse than ever. Americans are still being held hostage in Iran. And Russian troops are still in Afghanistan. But Jimmy Carter is high in the polls because he is able to communicate, through television, the symbols of leadership even when he is not in fact leading."

Broadcasters are continually demanding repeal of the Fairness Doctrine that is supposed to keep them in line on matters of public import. They say they don't need a Fairness Doctrine. They say it inhibits them. They say we should trust them to be fair.

Like hell we should trust them to be fair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE AUSTRALIAN RESPONSE TO THE SOVIET INVASION OF AFGHANISTAN

Mr. GLENN. Mr. President, tonight, Australian Prime Minister J. Malcom Fraser will arrive in Washington for a brief visit to discuss the appropriate international response to the Soviet invasion of Afghanistan. Such a visit will be especially valuable, for Australia has already demonstrated its recognition that the cynical and ruthless Soviet attack on Afghanistan represents a grave threat to world peace.

In the wake of the Soviet invasion, the United States has urged many countries to take a firm stand against the Soviet moves. However, no urging was necessary in the case of Australia. It spontaneously took a number of actions—some of which involved real sacrifices for it—which demonstrated its farsightedness and its solidarity with the United States.

These steps included:

Support for the U.S. grain embargo by refusing to meet any Soviet shortfall in grain purchases.

An offer of greater Australian involvement in patrolling and surveillance of the Indian Ocean, either independently or jointly with the United States.

Support for a boycott of the Olympic games or their removal from Moscow.

The indefinite suspension of arrangements and agreements with the Soviet Union over fisheries matters. Approvals already given to two ventures were withdrawn, and a planned February visit by a Soviet fisheries delegation was canceled.

The indefinite suspension of scientific collaboration with the Soviet Union.

The refusal of Soviet requests for expanded airline cooperation.

The provision of 10,000 tons of Australian wheat to Pakistan to help Afghan refugees.

Mr. President, the United States faces a difficult and trying time as a result of the Soviet decision to resort to naked military force to control the fiercely independent people of Afghanistan. Many nations are reluctant to recognize the threat such Soviet action poses to themselves and to the peace of the world. The United States is extremely fortunate to have in Australia a staunch ally, one which is willing to face facts squarely and to act upon its judgments and convictions.

Australia, along with New Zealand, has been our partner in the tripartite ANZUS security pact for nearly 30 years. It is also a signatory of the Manila Pact of 1954. During the past three decades, the cooperation between our two countries has been close, and the relationship has been valuable to both countries. It is all too easy to overlook the contributions made by such a loyal ally because of our concern over how to deal with less responsible nations. Let us not make this mistake with Australia, for it deserves our gratitude and support.

LACK OF ACCOUNTING AND COST CONTROLS

Mr. SASSER. Mr. President, I rise to discuss a matter of serious concern—that is, the lack of accounting and cost controls for the foreign military sales program.

DRAMATIC GROWTH

During the decade of the 1970's, the foreign military sales program has grown dramatically. Annual sales agreements amounted to $1.4 billion in 1971. By 1978, the annual rate had reached $13.5 billion. During this 8-year period, 1971 through 1978, foreign military sales agreements to customers worldwide amounted to $71.1 billion. Over the past 6 years, total foreign military sales have amounted to $67 billion. Virtually all of these sales have been made to countries with strong and sound economies.

COSTING CRITERIA

Mr. President, these military sales are made to foreign powers on certain costing conditions established in law and Defense Department instructions and directives.

Simply stated, the law and DOD directives state that the Defense Department shall charge the full price for the item sold so that there is no element of subsidy in the program. The program should break even—no profit and no loss.

FOREIGNERS—NOT AMERICANS—SHOULD PAY

In other words, the American taxpayer should not be charged in any way for military goods sold to foreign powers, especially not now when we are attempting to rebuild our own defense forces. The foreign purchasers should pay the full price. This seems simple enough.

ARMS EXPORT CONTROL ACT

Mr. President, the Congress enacted and the President signed the Arms Export Control Act of 1976. This statute requires recovery of all direct and indirect costs so that there are no elements of subsidy in the program. Foreign governments are to pay the full amount of procurement contracts entered into for them to assure the United States against any loss.

REPLACEMENT COSTS

In the case of an item sold out of Defense Department inventory, such as an engine motor, generator, and so forth, the foreign government is to be charged the actual or replacement cost. In other words, if the item sold from stock costs $1,000 when it was manufactured 5 years ago, and will cost $1,500 to manufacture and replace it in inventory required for American forces, then the cost to the foreign power should be $1,500, and not the $1,000 that is normally being charged by DOD. This is the law and the requirement of DOD directives and instructions. Yet, GAO identified $69 million worth of losses to the American taxpayer due to this type of undercharge in the selected cases it reviewed.

FULL COST RECOVERY

Full cost recovery also includes recovery of indirect costs such as charges for the use of Government-owned assets; nonrecurring research and development and production costs; and administration costs. It includes charges for the full cost of Defense Department services, such as DOD quality control inspections.

TOTAL COST

All of these costing criteria are established by law and DOD directives. The whole point is that prices of items sold to foreign powers shall be at their total cost to the U.S. Government.

GENERAL ACCOUNTING OFFICE INVOLVEMENT

Over the past decade, the General Accounting Office has published about 40 reports covering a wide range of financial management problems for the foreign military sales program.

Since 1975, the GAO has issued 34 of those reports.

SOME EXAMPLES

Mr. President, let me give some examples of Defense Department practices which are costing the taxpayers millions of dollars—and allowing millions of dollars of subsidy to foreign powers.

CHARGES NOT MADE FOR INVENTORY LOSSES

In maintaining inventories, the Defense Department incurs normal inventory losses such as damage, deterioration, pilferage, and disposal of obsolete items. It has been 10 years since the Department of Defense first required that foreign governments be charged for inventory losses on sales of nonstock fund items, such as engine motors or generators. This directive was followed up by an amendment to the Arms Export Control Act in 1978, expressly requiring that the 1969 directive be implemented. Yet, at the time that the GAO was completing its review of the matter in 1979, the military services were still "studying the matter."

The net result? Foreign governments had not been assessed for their fair share of inventory losses. Their share amounted to millions of dollars. The law has been ignored. And no attempt is underway to identify and recover the undercharges on foreign military sales—the majority of which go to countries with strong economies which could well afford to pay their fair share.

EXAMPLE OF LACK OF CHARGES FOR USE OF GOVERNMENT-OWNED ASSETS

Since 1970, the General Accounting Office has been reporting that although Government-owned assets are used to produce items sold to other countries, these countries have not been charged for the use of the assets as required by law and Defense Department policy. Moreover, now that the undercharges have been identified by GAO reports, the Defense Department is still not giving attention to recovering unbilled costs of using Government owned assets for foreign military sales.

What is the result? Foreign customers have been subsidized by the American taxpayer to the tune of millions of dollars—$157 million for case reviewed by GAO simply for failure to charge for use of Government-owned assets. Why? Simply because the Defense Department—over a period of 10 years—has still not brought its serious accounting and financial management problems to a proper resolution.

COST WAIVERS

The Arms Export Control Act of 1976 provided that under certain conditions, nonrecurring research and development costs and other costs associated with a sale may be waived—that is, not charged to the foreign country—by Defense. Over the next 15 months, the Department authorized or considered cost waivers of about $500 million. Moreover, the Congress was not being advised of the amounts being waived or the specific reasons for granting waivers.

FOREIGN GOVERNMENTS KNOWINGLY UNDERCHARGED

In addition to the unexplained cost waivers, the General Accounting Office has noted instances which have resulted in foreign governments being knowingly undercharged, and thus subsidized by the American taxpayer, by millions of dollars.

The Congress has made it clear that foreign governments should not be subsidized through the foreign military sales program.

Despite this, the GAO found, however, that:

After various foreign governments complained about high prices, Defense and State Department officials directed the military services to charge prices which did not include all costs. On four sales cases the military services were directed to omit about $7.9 million.

The Army intentionally did not charge a foreign country appreciable costs incurred to overhaul equipment. Overhaul costs were greater than originally anticipated. Instead of charging the foreign country for these costs as intended by law and required by Defense pricing policies, the Army improperly transferred the costs to an Army overhaul project, thereby subsidizing the foreign country.

These examples of undercharging are not isolated instances. The GAO, in the cases they reviewed, identified $8 million worth of intentional undercharging. Another $75 million of intentional undercharging was identified by the internal auditors of the military services and a Navy study team.

NAVY STUDY TEAM

Mr. President, I am particularly troubled by the revelation of the GAO regarding a Navy study team. That team was studying foreign sales pricing and identified $10 million in unrecovered costs on six sales. This included $1.6 million for Government-furnished equipment, $2.4 million for training, and $4.7 million in asset-use charges. The study team concluded if all open sales cases were to undergo similar examination, there was a potential for a recovery of an additional $100 million to $200 million in costs and charges. The team recommended that the remaining open sales cases be reviewed and that the unrecovered costs so identified be recovered.

What was the Navy response? Predictable. It stopped the review, did not attempt to charge foreign governments for the $10 million in costs already identified and probably cost the taxpayers hundreds of millions of dollars for those open cases which it would not allow to be reviewed.

$370 MILLION UNDERCHARGED

Mr. President, the GAO has found that in the past 6 years, the Defense Department has not charged an estimated $370 million for quality assurance services provided on items sold to foreign countries—even though recovery of costs for the services had been required since at least 1970. The GAO noted that—

> The problems encountered in not recovering these costs were indicative of Defense's continued failure to recover all costs for foreign military sales.

$2 TO $3 BILLION LOSS

Mr. President, since 1976, the GAO has identified over $1 billion in unrecovered costs on selected foreign military sales cases. The total of such unrecovered costs is undoubtedly substantially more. By one estimate, it is $2 to $3 billion.

Mr. President, I think it is outrageous that the American taxpayer is being made to bear an unnecessary burden of $2 to $3 billion simply because of the serious financial deficiencies of the Defense department. This is an intolerable situation—an intolerable burden. Yet, it has been going on for a period of a decade and the problem shows no sign of abating.

CONCLUSION

Mr. President, the problem of noncompliance or long delays in implementing Defense policies has been disclosed in over 30 General Accounting Office reports issued in the past few years on deficient pricing practices.

Mr. President, I believe that basic corrective action is long overdue. The Defense Department should provide sufficient resources to insure that its pricing policies—and the laws enacted by Congress—are effectively implemented.

The notion that the American taxpayers should subsidize arms sales to foreign powers is, I believe, improper, irresponsible, and illegal.

Moreover, I believe it is especially ironic—even scandalous—for the American Government to be subsidizing the manufacture of arms to be shipped to foreigners—while at the same time the hard-pressed taxpayer is being asked to pay full price for the necessary rebuilding of the American defense forces in the 1981 President's budget.

Mr. President, just maybe we would not have to be struggling so hard to play catch up in the defense area if we could get the Defense Department to block this $2 to $3 billion hemorrhage in the Federal budget.

ALASKAN VILLAGERS ARE RUNNING OUT OF HEATING FUEL

Mr. STEVENS. Mr. President, people throughout the cold regions of the Nation are feeling the crunch of rising energy prices this winter. But there are few places in the United States where astronomical energy prices are being felt as deeply as in my State of Alaska. An article which appeared in the New York Times yesterday entitled "Alaskan Villagers Are Running Out of Heating Fuel" illustrates the crisis nature of this situation.

Four rural communities have mere gallons of fuel left and 30 other communities are anticipating similar problems this winter. In several tundra communities with no wood available to burn and temperatures dipping to 40 below zero, fuel shortages are truely a matter of life and death.

For residents of these villages, it is not a simple matter of calling the fuel dealer and getting a delivery the next day. At least 75 percent of Alaskan communities do not have road access to supply centers. Therefore Alaskan villagers must order their entire supply of winter fuel in the preceding summer and have it delivered by barge. Can you imagine the financial hardship if residents of your State—be they middle income or poor—were forced to pay their entire winter fuel bill in one lump sum. If villagers cannot afford the full amount, or if they do not correctly anticipate how cold the temperatures will be throughout the winter—they will run short, sometimes during the harshest months.

To fly relief fuel into these communities this winter will allow residents to pay back their bills in increments throughout the year—just as most utility customers in the rest of the States do. It is my understanding that some of that money will be given as grants to offset the transportation costs of the fuel during emergencies. I hope that we can work in Congress and with the appropriate Federal agencies currently dispensing energy assistance funds to permanently establish such a flexible and useful loan/grant program for Alaska.

I applaud this sensitive and farsighted action by our Governor and legislature. This program fills a great need for Alaskans who require assistance not necessarily in the form of a subsidy.

I ask that the article appearing in the New York Times be printed in the RECORD.

The article follows:

[From the New York Times, Jan. 24, 1980]

ALASKAN VILLAGERS ARE RUNNING OUT OF HEATING FUEL

JUNEAU, ALASKA, January 23.—Although Alaska exports one million barrels of oil a day, four remote native villages are on the verge of running out of heating oil and 30 other communities do not expect supplies to last through the bitterly cold winter, state officials say.

"I only got 15 gallons left," said Henry Evon, president of the Kwigillingok Village Council. He spoke from the only telephone in the remote community of 210 people on the icy Bering Sea nearly 500 miles west of Anchorage.

"I know of one family that's planning to move in with another if they can't purchase fuel," said James Atti, who works for the Village Council, "And I know of one family that's living with another family because their house is cold."

LESS FUEL ORDERED FOR YEAR

Facing the rising petroleum and transportation costs that have brought fuel to $2 a gallon in remote areas and lulled by two mild winters; many natives ordered less fuel when they made their annual purchases last spring.

But this winter was not another mild one. Fuel consumption climbed sharply as the temperature hung at 40 degrees below zero in northern areas for more than three weeks.

The cold season lasts six months in northern Alaska, and many rural Alaskans are nearly running out of fuel for the small stoves they use to heat their modest, mostly wooden dwellings.

The Alaska Legislature, which Convened this month amid debate over how to spend an estimated $3 billion that oil production will provide within the next year, has been asked to consider a $1.5 million emergency appropriation.

APPROVAL BY COMMITTEES

House and Senate Finance Committee members approved the appropriation Monday, and it is expected to win final legislative passage later this week.

The measure would lend village councils money to purchase fuel in bulk and subsidize the high cost of delivering it.

Mr. Evon said that his community had borrowed 5,000 gallons of fuel from the Bureau of Indian Affairs school as an emergency measure but that the fuel was quickly running out even though it was being rationed.

Fuel is also running out in Kongiganek and Kasigouk, smaller villages in western Alaska, and Nulato, only 100 miles south of the Arctic Circle.

The Alaska Pipeline, bringing its unrefined crude from Prudhoe Bay to Valdez, passes about 300 miles east of Nulato, the closest of the four villages to the pipeline.

Villagers order their yearly fuel supply in the spring. It is shipped by barge to coastal communities for distribution by airplane to the roadless tundra towns.

An estimated 445,000 gallons of heating fuel is needed along with 155,000 gallons of gas, according to a survey by the Rural Alaska Community Action Program, an agency that serves rural communities.

The program director, Philip J. Smith, said that in the last six weeks the Alaska Village Electric Cooperative, which serves rural areas, has sent shut-off notices to over 1,000 reidential customers. The amount of unpaid bills is in excess of $750,000, he said.

THE DEATH OF COL. EBERHARD DEUTSCH

Mr. LONG. Mr. President, it was with painful sadness that I learned of the lamentable death of a dear friend, an outstanding jurist and a great American—Col. Eberhard Paul Deutsch.

Colonel Deutsch died on January 16, 1980 at his home in New Orleans. Colonel Deutsch was an American patriot in every sense of the word. He served his country with distinction in both World War I and World War II. During World War II, Colonel Deutsch took part in 12 major engagements, including the invasion of Sicily and an airborne landing behind the lines in Normandy. He was awarded a total of 16 American and foreign decorations and service medals.

In 1945–46, he served on Gen. Mark W. Clark's staff as principal legal advisor in the military administration of Austria and in their creation of that country as a free and independent nation.

But Colonel Deutsch's service to his country did not end with World War II. From February, 1964, to 1976, he was Civilian Aide for the State of Louisiana to the Secretary of the Army, and served as Civilian Aide At Large from 1976 until his death.

Mr. President, the death of this great American has truly distressed me because of our close and warm relationship.

I knew Eberhard Deutsch for the better part of my adult life and respected him as a man and as a great lawyer. In connection with my service in the Senate, I many times sought the advice of Colonel Deutsch, particularly on matters involving international law—a field in which he excelled.

It was my privilege to have sponsored a proposal by Colonel Deutsch to reconstitute the World Court so that the justices of that court would no longer be bound in their rulings and deliberations to the nations from which they were appointed.

I often looked up to Colonel Deutsch as a son would to his father because he had the kind of experience and wisdom that younger men seem to obtain for themselves. From time to time he also represented my family in legal matters. Not only was he a great lawyer, but he had commonsense and tremendous talent.

Mr. President, to read to you Colonel Deutsch's many honors and accomplishments would require hours of this Senate's time. However, some of Eberhard Deutsch's distinctions can not go without mention.

Among his American decorations and service medals were the Silver Star, Legion of Merit, Bronze Star for Valor, Army Commendation, Purple Heart, Presidential Unit Citation, and two certificates of Appreciation for Patriotic Civilian Service.

In 1976, he was presented the Distinguished Civilian Service Award, the highest award the Secretary of the Navy can bestow on a civilian.

The French awarded Colonel Deutsch their Croix de Guerre with Palm and Fourragere, Verdum St. Mihiel, and Order of Lafayette.

In his legal career Eberhard Deutsch was 1961–62 chairman of the American Bar Association's standing committee on Admiralty and Maritime Law. In 1962–63 and 1965–68, he was chairman of the American Bar Association's Standing Committee on Peace and Law Through United Nations. Colonel Deutsch served as chairman of the Louisiana State Bar Association's Standing Committee on Reform and was chairman of the Commission for Revision of the Corporation Laws of Louisiana.

In addition to being a senior partner in one of New Orleans' largest and most respected law firms, Colonel Deutsch served as Consul General of Austria in New Orleans. In 1967, Austria awarded Colonel Deutsch its Gold Cross of Merit.

Mr. President, in behalf of this honorable body, I offer condolences to Colonel Deutsch's son, Brunswick G. Deutsch, his two sisters, and to all of those who knew, respected, and loved him as I did.

WHAT CONGRESS REALLY THINKS OF ITSELF

Mr. DECONCINI. Mr. President, on January 14, 1980, U.S. News & World Report published the results of a poll of all Members of the House of Representatives, who were asked to name the three Members they most respect, are most persuaded by, and the one individual they consider to be the most effective lawmaker.

I think I speak for a majority of Arizonans when I say that I was proud to note that the Member selected as the single most effective Congressman was MORRIS K. UDALL. If that was not enough, his colleagues also voted him among the three most respected and most persuasive Members.

New York Congressman RICHARD OTTINGER noted:

Mo Udall is one of the few members who commands instant attention when he speaks.

Mr. President, I applaud Mo UDALL on this high honor bestowed on him by his fellow Members of the House, and I want to say that I am proud to be a part of Arizona's congressional delegation.

For a small State, Arizona has had its share of oustanding people on Capitol Hill. In this Chamber, Carl Hayden is revered and remembered. BARRY GOLDWATER, the 1964 Republican Presidential nominee, is respected and admired. Ernest MacFarland, another Arizonan, was Senate majority leader.

JOHN RHODES, another Republican, speaks well for his party as House minority leader. STEWART UDALL, a former Arizona congressman, went on to become Secretary of the Interior under two Democratic Presidents. Mr. President, I would add Mo UDALL to this proud list. He is a credit to his native Arizona, to his country and to the Congress.

It is with pleasure and admiration that I commend the U.S. News & World Report article to my colleagues. I ask unanimous consent that the article be printed in the RECORD at this point.

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

WHAT CONGRESS REALLY THINKS OF ITSELF

When judging the performance of Congress, senators and representatives are proving to be their own harshest critics.

Many legislators see their institution as so undisciplined, so overstaffed and so swayed by special interests—and lacking in leadership and individual courage—that it cannot function adequately.

An overwhelming majority of the senators and House members answering a survey conducted by *U.S. News & World Report* concedes that Congress is doing either poor or only fair in responding to the nation's needs. Fewer than 1 in 4 think Congress is doing a good job.

Many found Congress all too willing to give "the people what they want—not what they need." The desire to be popular "is a spirit that prevails in Congress," asserted Representative James M. Collins (R-Tex.). Added Representative William M. Brodhead (D-Mich.): "Congress responds to what it thinks the people are worried about, but it is, I believe, out of touch with the people."

One of Congress's defenders, Representative Don L. Bonker (D-Wash.), asserted: "Given the complexity of today's issues, the intense regional, economic and even partisan interests that come to bear on legislation, the overall record is not all that bad."

The magazine's poll drew responses from 192 of Congress's 535 senators and representatives—36 percent of the membership. Many questionnaires were returned with lengthy, handwritten comments—some signed, others not—that conveyed lawmaker's mounting concern for the institution they represent

and for the future of legislative government itself.

The results indicate that members are well aware of their own shortcomings and that they are increasingly willing to give up some of their freewheeling independence in exchange for firmer leadership and tighter organization.

It is perhaps significant that, when asked to name their most respected and effective colleagues, members of the Senate and the House often bypassed their chosen leaders in favor of other, less-well-known lawmakers. The two top men in Congress's hierarchy, Senate Majority Leader Robert Byrd (D-W. Va.) and House Speaker Thomas P. "Tip" O'Neill (D-Mass.), finished second and third, respectively, in separate polls to determine the most respected members of each chamber.

SEARCH FOR A MORE RESPONSIVE CONGRESS

Lawmakers showed no hesitancy in pinpointing what they see as Congress's weaknesses. Much of the criticism—from Republicans and Democrats alike—focused on the problems of weak internal leadership, poor communication, disunity and members' preoccupation with their own parochial interests.

Commented Representative Leon E. Panetta (D-Calif.): "Over the past several decades, Congress has progressed from a body controlled primarily by the dictates of party leadership to one whose membership is increasingly independent and, thus, more susceptible to pressures from single-issue constituencies." What must be developed, the congressman declared, is "a more careful balance between these two extremes."

Too often "we act in response to interest groups," observed another House member. "In seeking their vote and support, we are acting in our own self-interest, rather than that of the nation."

Though satisfied with Congress's overall performance, Senator Harrison H. Schmitt (R-N.M.) faulted his colleagues for failing to deal adequately with "major issues of energy, defense, taxes and regulatory reform." Another lawmaker said he doubted that Congress "has the backbone to legislate effectively" in the areas of government spending and inflation.

One House member blamed Congress's problems on an "ossified majority leadership" that "appears to be out of touch with the American people. As long as that prevails, Congress will not meet the people's needs."

Many Republicans echoed the sentiments of Representative Arlen Erdahl (R-Minn.): "The party in control is without cohesive direction or discipline. It is drifting, trying to respond to crises as they arise." The Democratic leadership "couldn't manage a two-car funeral," quipped Representative Henry Hyde (R-Ill.). However, Representative Bill Frenzel (R-Minn.) said the problem goes beyond leadership. "We have plenty of leaders," he concluded, "but no followers."

Said another member: "The media create the impression that we change things by changing Presidents. Not much will change on issues of inflation and energy until we change the faces in Congress."

WHO REALLY RUNS THE HOUSE AND SENATE?

Despite complaints about current leaders, no consensus for their replacement turned up when senators and representatives, assured of anonymity, were asked to name their most effective and most respected colleagues. Participants in the survey listed three choices in each of three leadership categories.

Picked as the most respected House member was Majority Leader Jim Wright of Texas. A 25-year veteran of Congress, Wright also was chosen overwhelmingly as the House's most persuasive debater. Said an admiring Democrat: "Jim's a fighter who goes full tilt all the time for the party but who's never bitter in defeat." At 57, Wright is next in line for Speaker, when O'Neill, 67, steps down and if the House remains under Democratic control.

Representative Morris K. Udall (D-Ariz.), who is chairman of the Interior and Insular Affairs Committee, emerged from the survey as a lawmaker with a large following among his peers. Second only to Wright in having the respect of his colleagues, Udall was chosen as the House committee chairman most effective in getting legislation enacted. As a persuasive debater, he placed third—behind Wright and Representative John Anderson (R-Ill.). "Mo Udall is one of the few members who commands instant attention when he speaks," said Representative Richard Ottinger (D-N.Y.).

Senators were much more circumspect in deciding who among them is the most respected. Fifty-eight senators got at least one vote. Minority Leader Howard Baker of Tennessee finished at the top of the list with 18 votes. Baker won praise on both sides of the aisle for his fairness, integrity and competence. Baker's "a genuinely nice guy," according to fellow Senator William Roth (R-Del.).

Behind Baker, tied with 16 votes apiece, were Majority Leader Byrd, Jacob Javits (R-N.Y.) and Edward M. Kennedy (D-Mass.).

If any one of the lawmakers emerged as a Senate powerhouse, he is Russell B. Long (D-La.), chairman of the Finance Committee.

Long was the runaway choice of his colleagues for the most effective committee chairman and he edged out Byrd and Javits as most persuasive in debate. Commented a Republican adversary of Long: "He's fairly reasonable. He compromises a lot and that makes him highly successful. He may get the biggest bite of the apple, but at least you end up with the core."

TOO MUCH TO DO, TOO LITTLE TIME?

An overriding complaint among senators and House members is the seemingly endless amount of work—much of it trivial—they are expected to handle.

Representative Carroll Hubbard (D-Ky.) described the frustrations: "Most of our time is spent as ombudsmen rather than as legislators. We spend many hours responding to constituent requests, attending functions, working on Social Security and veterans' claims, and securing such things as grants, loans, flags, publications, calendars, letters of recommendation and blacktop for roads in our districts. Returning telephone calls and answering letters are taking more of my time each year.

"The request and demands are increasing. In order to be considered a responsive congressman by my constituents, I, like most of my colleagues, spend much of my time—often seven days a week—attempting to fulfill these requests."

Senator Alan K. Simpson (R-Wyo.) concluded that "a great deal of time is wasted. There is not enough time to do one's homework before a bill is suddenly tossed out on the floor for discussion and a vote—and usually under a time agreement which prevents thorough debate."

By a 2-to-1 margin, legislators were in agreement that Congress had allowed itself to become overstaffed and that the staffs are generating a lot of unnecessary work.

"We have paid lip service to fighting growing bureaucracy while our committee and personal staffs have grown by leaps and bounds. We then excuse such growth by pleading that we have to keep up with the executive branch," declared Representative Dan Glickman (D-Kans.), A senator commented: "Our staffs have become another self-perpetuating bureaucracy."

"Committee staffs," added a House member, "could easily be cut by one third to one half."

Staffs "promote new bills for job justification," said Representative Collins, who has introduced his own bill to reduce congressional employment by half. Asserted Senator Simpson: "The staff has the power to overwhelm individual members with a workload which leads to legislation not even tinged with the aura of common sense but which only springs from a highly technical and clinical viewpoint of the eager and 'burrowing in' staff member."

Several characterized Congress's staff situation as "a national scandal" that is only waiting to be discovered by the nation's taxpayers.

DO LOBBIES HAVE TOO MUCH POWER?

Although most survey respondents said special-interest groups do not exert excessive influence over Congress, a significant minority expressed concern about their power.

"The increasing role of special-interest organizations in financing congressional campaigns is a very disturbing trend, which has given some groups an inordinate influence on Capitol Hill based on their ability to generate campaign funds," contended Representative Panetta.

Some pointed to the recent watering down of oil decontrol and oil "windfall profits" legislation as examples of what can happen when lobbying organizations bring their full weight to bear. "The problem," said one senator, "is that opposing views don't get voiced, and there is a vacuum on several issues of importance."

Several members of Congress expressed concern over the influence of so-called single-issue lobbies—women's-rights advocates, abortion foes, environmentalists, for example. "These people often care about nothing but their one issue—and they can drive you crazy with it," confides a House member. "You can have a perfect voting record 99 percent of the time, but oppose them just once and they'll hound you out of public life."

Representative Thomas Tauke (R-Iowa), however, said he doesn't find lobbying pressure on Capitol Hill as intense as he experienced earlier as an Iowa state legislator. But, he added, "lobbies are becoming sophisticated enough to work through each member's constituents. Is that good citizen participation in government or excessive special-interest pressure on Congress?"

Several argued that lobbies "cancel each other out" for the most part, while others defended lobbies as useful tools in the legislative process.

"Rarely, if ever, are members unable to attain all the information necessary to make informed judgments on matters before the Congress," a House member commented in support of lobbies. "In many cases, the opposing lobbyists supply differing opinions and bits of information that aid in the process of fully ventilating issues. Frankly, a congressman with integrity is not going to be unduly influenced by any lobbyist."

A few members of Congress said that they thought the press, in effect, constituted the most influential "lobby" group on Capitol Hill, but one senator contended: "No lobby can match the White House when it comes to playing hardball."

CONGRESSIONAL SALARIES: TOO HIGH OR TOO LOW?

On one matter that relies many voters, nearly all lawmakers seemed to be in agreement: They earn their $60,663-a-year salaries.

Only 13 survey respondents thought they were overpaid. Standing virtually alone was one anonymous House member who thought that a figure of "$44,600 would be about right."

A sizable minority complained that their salaries are inadequate given the demands of the job and the costs of staying in office. "It is tough for a member with a family to support and no outside income to main-

tain two homes and make ends meet," said one.

"It's one hell of a job," declared Representative John Jenrette, Jr. (D-S.C.). "Without our egos, few would stay. We make decisions that affect everyone, yet many corporate officers make much more with less responsibility and without constant demands.

Added another House member: "No one can understand the hours and effort the job requires—and the anxieties of lack of tenure."

There was criticism of Congress awkward handling last fall of its most recent pay increase. "Irresponsible," one senator called it. A House member termed it "poorly timed."

Some, while defending their own incomes, were not so sure that all of their colleagues deserved their pay. "Most members are really underpaid relative to what they would achieve outside the Congress," a House member asserted. "But a not insubstantial minority are overpaid for what they know or do."

Representative Joel Deckard (R-Ind.) thinks that "collectively, Congress has not earned a raise" because of its failure to deal adequately with the issues of inflation, energy and budgetary restraint. "Unfortunately, there is no practicable way to raise the salaries of those who have voted properly on these issues while cutting the pay of the rest," Deckard complained.

WHAT DOSE CONGRESS NEED MOST?

There were dozens of suggestions for making Congress more efficient and responsive to the nation's needs.

Representative Pat Schroeder (D-Colo.) argued for fewer committees and subcommittees. "Jurisdictional overlaps are an outrage," she said. "They allow everyone to take potshots, and no one has to take responsibility. We blame all ills on the bureaucracy, and yet increase its authority yearly."

Another thought a four-year term for the House would result in greater efficiency and responsiveness. 'Too many votes are cast for political posturing; too many votes are cast to avoid a poor rating on some group's sheet, and too much time must be devoted to campaigning," asserted one congressman.

Senator Thad Cochran (R-Miss.) called for a Congress with "more backbone to stand up to pressure groups that may not have the national interest at heart," while Representative Brodhead said the prime need is "wiser, more courageous members."

Although many of Congress's institutional reforms of the early 1970s came under attack in the survey, legislators overwhelmingly rejected the idea of returning to strict adherence to the seniority system for selecting committee chairmen. That "would be a giant step backwards," said Representative Panetta. Some thought the power of seniority is still too much of a factor in the selection of congressional leaders.

Others, however, expressed worry over a current practice that allows committee members to easily replace an unpopular chairman. "I notice chairmen are supporting legislation against their best judgment in fear of losing their chairmanships," said Representative William Goodling (R-Pa.). Another hinted that the selection of chairmen might be influenced through the "transfer of campaign funds by one member to another member's campaign." Such practice, asserted the House member, "should be illegal."

Over all, members of Congress seem to have a clear understanding of their duties. Most said their primary responsibility was to "take informed positions on national issues" rather than follow their constituents' every wish or act as a Washington go-between for their districts and states. Yet there was broad recognition that this lofty ideal is difficult to achieve and maintain.

Representative Schroeder put it this way: "We should be working on legislation and oversight of the executive branch rather than sending out baby books, birthday cards, newsletters and such. But what we have on Capitol Hill are close to 535 public-relations firms working for re-election 365 days a year."

THE HIDDEN BUDGET: SPENDING INCREASES FOR 1980

Mr. HARRY F. BYRD, JR. Mr. President, this is the third day on which I have risen to comment on the budget proposals submitted to the Congress by President Carter on Monday.

Once again, I invite the attention of the Senate to the potential violation of the law inherent in the President's 1981 budget.

The budget for 1981 calls for a deficit of $16 billion. If this budget is put into effect, it will violate Public Law 95-435, signed into law on October 10, 1978, by President Carter himself.

Section 9 reads as follows:

Beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.

I believe that is clear enough. Any deficit in the coming year will be illegal.

Now, returning to analysis of the President's proposals it is important to realize that there really are two budgets in the documents which the President sent to the Congress: the widely publicized budget for 1981, and the hidden budget—a major revision of budget figures for 1980, the current year.

The hidden budget includes a $16 billion spending increase over the total approved by Congress last November—just 2 months ago.

The biggest increase is $5 billion for interest on the debt, resulting from the skyrocketing interest rates that have been necessitated to combat our rampant inflation, an inflation stimulated by continued and accumulated deficit spending.

Of course the Government has to pay this interest, but neither the 1980 budget nor the 1981 budget will do anything to abate the inflation that has forced the interest rates upward.

Indeed, debt interest will soar to $79 billion next year, consuming one-fourth of all individual and corporate income taxes.

Among the other spending increases for the current year are $800 million in foreign aid; $1.2 billion shifted from 1981 in the foreign military sales trust fund in a transparent effort to make the 1981 budget look leaner; $2 billion for purchase of grain that will not be going to Russia; about $1 billion for new and expanded transportation programs; $2 billion in medicaid and medicare, which have high rates of waste, fraud and abuse; and $2.6 billion in mortgage assistance.

Some of this is inevitable—"uncontrollable," as the budget officials like to say—but to the extent that this is the case, I believe that outlays which can be controlled should be reduced to offset these increases. Otherwise, what is the point in the annual exercise of solemnly enacting the so-called binding resolution on the budget?

The Washington Post yesterday morning published an excellent editorial concerning the 1980 budget increases, and I ask unanimous consent that it be printed in the RECORD.

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

THE CARTER BUDGET

The Carter administration wants you to know that its budget for 1981, published yesterday, is tight as a drum. It's rigorous, responsible and severely anti-inflationary, according to a chorus of official voices. Maybe so—but you shouldn't let your attention be diverted from the current budget, which seems to have become strangely fatter since last fall.

The budget for 1981, which doesn't go into effect until next October, is at present a secondary matter. It will be largely formed by questions that have not yet been answered. One question is whether, and how much, President Carter will decide to increase defense spending. The present version is based on policy as it stood last summer, with the 3 percent annual rise to which the United States has been committed for the past two years. If there is to be a reaction to events in Afghanistan and the Persian Gulf, it will have to be added to the budget that appeared yesterday. The other question is, of course, whether the recession forecast continuously since last spring will actually appear, and when. These open questions make writing the budget more uncertain than usual—and the labor of reading it less enlightening than ever.

Instead, it is useful to look at the three-year pattern that is emerging from last year to next. That pattern is not reassuring. The Carter administration is letting the current budget go slack; it is an election year. Restraint is postponed until next year.

The budget for fiscal 1979, which ended last September, turned out to be significantly more restrictive than the White House expected, mainly because inflation pushed up tax receipts. But, oddly, the consequences were the opposite of those you'd normally expect. Unemployment ran lower than forecast, and inflation notoriously went nearly twice as high. It was a warning that the administration was still underestimating the force of inflation and overestimating the danger of unemployment.

A year ago, when it brought out the 1980 budget the administration emphasized that it had kept the deficit under $30 billion. Congress with great travail, managed to do the same. Its second budget resolution, passed last November, held the deficit to $29.8 billion. But now the administration reports that it's going to be about $10 billion larger than that. There is the money for the embargoed grain, and for more mortgage assistance, and for transportation, and for a little of this and a little of that.

When the federal government steps up defense spending, the wave of inflation begins as soon as the contractors begin tooling up. That happened in 1965, and the seeds of the present inflation were planted then—when Lyndon Johnson refused to seek the increase in taxes necessary to offset it.

Perhaps it is unrealistic to suggest a tax increase in an election year. Certainly Mr. Carter thinks so. The administration would prefer that you concentrate on all the rigor and restraint that, at least according to present plans, will come after the election in the next budget. But it's the current budget that counts—and that one is moving toward a higher deficit and higher inflation.

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 Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ECONOMIC REPORT OF THE PRESIDENT—MESSAGE FROM THE PRESIDENT—PM 155

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Joint Committee on Economics:

To the Congress of the United States:

Last year world oil prices more than doubled. This increase will add some $200 billion to the bill for imported oil paid by consuming nations. Higher oil prices were the major reason for the worldwide speedup in inflation during 1979 and the dimming of growth prospects for 1980.

The United States was severely affected, as were other oil-importing countries. Our share of the additional oil bill will come to almost $45 billion this year. Partly, but not solely, because of higher oil prices, inflation accelerated sharply. The consumer price index rose by over 13 percent. The Nation's output of goods and services, which had been predicted in last year's *Economic Report* to grow by 2¼ percent over the 4 quarters of 1979, rose by less than 1 percent.

Although growth slowed, our economy offered strong resistance to the forces of recession. Despite virtually universal forecasts of imminent recession, output continued to rise throughout the second half of last year. Housing sales and construction held up better than expected until late in the year. By reducing their savings, consumers maintained spending in the face of the multibillion dollar drain of purchasing power from higher oil prices. Because business inventories have been kept remarkably lean, declines in sales did not lead to major inventory corrections. More generally, the economic recovery of recent years has been free of the distortions which, in the past, made the economy sensitive to recessionary forces.

Employment growth held up even better than output, and unemployment remained under 6 percent all year. Unfortunately, the strength of employment gains reflected a sharp decline in productivity—2 percent over the year. This fall in productivity added to costs, and thus bore a share of the responsibility for higher inflation.

While inflation worsened in 1979, a large part of the acceleration was concentrated in a few areas—energy; homeownership and finance; and, early in the year, farm and food products. Elsewhere consumer price inflation was more moderate, as prices rose by 7.5 percent over the year. Wage gains were no higher than in 1978, despite the speedup of inflation. The government's voluntary wage and price standards were widely observed and limited sharply the extent to which inflation spread from oil and a few other troubled sectors to the rest of the economy.

THE IMPORTANCE OF REDUCING INFLATION

It is my strong conviction that inflation remains the Nation's number one economic problem. Energy and housing prices are still moving up rapidly, adding directly to inflation and continuing to threaten a new price-wage spiral in the rest of the economy. Even apart from these special problem sectors, inflation is now running at an 8 to 9 percent rate, compared to 6 or 6½ percent several years ago, in part because of a disappointing productivity performance.

Our immediate objective for 1980 must be to prevent the spread of double-digit price increases from oil and other problem sectors to the rest of the economy. My budget and economic policies have that as their primary goal. We share that same urgent goal with virtually every other oil-importing country. Halting the spread of inflation is not enough, however. We must take steps to reduce it.

Each new round of inflation since the 1960s has left our country with a higher underlying inflation rate. Without long-term policies to pull down the current 8 to 9 percent rate, our Nation will remain vulnerable to still further increases. Another sharp rise in oil prices or a worldwide crop shortage could provide the next turn of the ratchet. Failure to lower inflation after the latest episode would strengthen long-run inflationary expectations and erode resistance to even larger wage and price increases. Over the longer term, we will either bring inflation down or it will assuredly get worse.

A STRATEGY FOR DEALING WITH INFLATION

To fight inflation I propose that we act along four lines. The *first* and most immediate of these is fiscal and monetary restraint:

Under the economic conditions that now confront us we must concentrate on reducing the budget deficit by holding down Federal spending and forgoing tax reductions. We cannot afford a permissive economic environment in which the oil-led inflation of 1979 gives rise to a widespread acceleration of wage and price increases in 1980 and 1981.

To reduce inflation in subsequent years, the budget will have to stay tight. That does not mean that it should fail to respond to changing economic circumstances or that taxes can never be reduced. But compared to an earlier less inflationary era the room for budgetary maneuver has appreciably narrowed.

Monetary policy will have to continue firmly in support of the same anti-inflationary goals.

The *second* line of action is restraint by the private sector in its wage and price decisions. Aided by the deliberations of the Pay and Price Advisory Committees appointed last year, we have been updating and improving the voluntary wage and price standards.

As a *third* line of action we must pursue measures to encourage productivity growth, adapt our economy rapidly to the fact of scarcer oil supplies, and improve our competitive standing in the world economy. By dealing with these fundamental aspects of economic performance, we seek to ensure that the longterm monetary and fiscal restraints needed to curb inflation go hand-in-hand with a healthy growth in output, employment and living standards. These measures will also help us reduce inflationary pressures from the cost side.

Recent history has driven home the lesson that events outside our country—such as worldwide crop shortages or sudden increases in OPEC oil prices—can have major inflationary effects on the domestic economy. The *fourth* line of action, therefore, must be the use of measures relating to energy and food that reduce our vulnerability to outside inflationary shocks.

THE SHORT-TERM ECONOMIC OUTLOOK

We face a difficult economic transition in the next year or two. According to my economic advisers, our economy is likely to undergo a mild recession early this year. Most private forecasters share this view. Consumer purchasing power is being drained away by rising energy prices; moreover, construction of new homes may decline somewhat further because of limited supplies of mortgage credit and high mortgage interest rates.

Since economic growth in recent years has been well balanced, there are no serious distortions in our economy to intensify the forces of recession. An economic downturn, if it occurs, should therefore be brief and mild. By year-end our economy should be growing again, and the pace of expansion is likely to increase in 1981.

Unemployment will probably rise moderately this year. Next year a stronger pace of economic expansion will create more new jobs, and unemployment will begin to come down again.

Inflation has been building in our country for a decade and a half, and it will take many years of persistent effort to bring it back down. This year energy prices will still go up faster than other prices, but less so than in 1979. Some of the other special factors that contributed to inflation last year should do so to a smaller degree, or not at all, in 1980. Enactment of the budget that I have recommended, and continued exercise of reasonable restraint by business and labor in their wage and price decisions should make it possible to lower the rate of inflation from 13 percent in 1979 to close to 10 percent in 1980, and to a range of 8 to 9 percent in 1981. But that accomplishment will still leave inflation running at an entirely unacceptable pace. We cannot, and will not, rest until reasonable price stability has been achieved.

BUDGET POLICIES

My budget proposals will reduce the Federal deficit by more than half to $16

billion in fiscal 1981. Accomplishing this reduction, despite the effect of slower economic growth on Federal tax revenues, has required severe restraint on Federal spending. Outlays will increase from $564 billion this year to $616 billion in fiscal 1981. Although real defense spending will rise, total Federal outlays, adusted for inflation, will remain virtually constant. I propose to reduce inflation-adjusted spending outside of defense.

My 1981 budget is based squarely on the premise that bringing an end to inflation must remain the top priority of economic policy. Not only are budget expenditures held to the minimum level consistent with urgent national needs, but tax reductions are forgone. This austere budget policy, accompanied by supportive policies of monetary restraint, is a necessary condition for controlling inflation.

Citizens all across our country are facing rising tax burdens because of increased social security taxes and because inflation pushes individuals into higher income tax brackets. They want, and deserve, tax reductions when cuts can be granted within the framework of a prudent budgetary policy. Businesses need greater incentives to invest in the new and modern plant and equipment that is essential to growth in our productive capacity and to long-run improvement in economic efficiency. If we continue to keep the growth of Federal expenditures under tight rein, tax reductions will be forthcoming. But I could not and did not recommend tax relief this year.

I am aware that a mild recession is widely forecast. Indeed the estimates of revenues and expenditures in my budget assume its occurrence. But forecasts are necessarily uncertain. Our economy has shown remarkable resilience to date, and there is no evidence that a recession has begun. Under those circumstances, to have recommended a tax reduction and a much larger budget deficit would have been a signal that we were not serious in our fight against inflation. It would have increased inflationary expectations, weakened the value of the dollar in exchange markets, and risked the translation of last year's oil-led inflation into a new and higher wage-price spiral in 1980. In recognition of these realities, my budget proposals concentrate on reducing the deficit.

In this uncertain period, of course, economic policy cannot be fixed in place and then forgotten. If economic conditions and prospects should significantly worsen, I will be prepared to recommend to the Congress additional fiscal measures to support output and employment in ways and under circumstances that are consistent with a continued fight against inflation.

Restraint in the 1981 budget has been accomplished while still moving forward with Federal programs and expenditures that address our Nation's critical needs.

Outlays for defense will increase by over 3 percent in real terms. Both strategic and conventional forces will be strengthened. Our commitment to our NATO allies will be met, and our ability to deploy forces rapidly anywhere in the world will be improved. Recent events in Southwest Asia have underlined the necessity for these actions.

Expenditures will be raised to expand domestic energy supplies, increase energy conservation, and provide assistance to low-income families least able to pay higher energy prices.

Support for basic research, enlarged in the past three fiscal years, will be further expanded to a total of $5.1 billion in 1981. Sustained commitment to basic research will assure continued American scientific and technical preeminence.

A major new initiative, for which $1.2 billion in new budget authority is requested, addresses the serious problem of unemployment among disadvantaged youth.

These programs were made possible within the framework of a tight budget by pruning less essential programs, increasing administrative efficiencies, and reducing fraud and abuse. Legislative proposals to reduce Federal spending will save $5½ billion in fiscal 1981 and even more in subsequent years.

PAY AND PRICE STANDARDS

A little more than a year ago, I asked business and labor to join with me in the fight against inflation by complying with voluntary standards for pay and prices. Cooperation with my request was extensive. Last year's acceleration of inflation did not represent a breakdown of the pay and price standards. Skyrocketing energy prices, and rising costs of home purchase and finance lay behind the substantial worsening of inflation. Declining productivity also added to business costs and prices.

The pay and price standards, in fact, have served the Nation well. Although the price standards had only limited applicability to food, energy, and housing prices, in the remaining sectors of the economy, for which the standards were designed, prices accelerated little during the first year of the program. Wage increases were no larger than in 1978, even though the cost of living rose faster. Increases in energy prices did *not* spill over into wages and the broad range of industrial and service prices.

On September 28, 1979, my Administration and leaders of the labor movement reached a National Accord. We agreed that our anti-inflation policies must be both effective and equitable, and that in fighting inflation we will not abandon our effort to pursue the goals of full employment and balanced growth.

As an outgrowth of that Accord, I appointed a Pay Advisory Committee to work together with my Administration to review and make recommendations on the pay standards and how they are being carried out. A Price Advisory Committee was established to make recommendations with respect to the price standards.

The most immediate problem in 1980 is to ensure that last year's sharp increase in energy prices does not result in a new spiral of price and wage increases that would worsen the underlying inflation rate for many years to come. Understandably, workers, business managers, and other groups want to make up for last year's loss of real income, and they may seek to do so by asking for larger increases in wage rates, salaries and other forms of income. Such efforts would not restore real incomes that have been reduced by rising world oil prices and declining productivity, but they would intensify inflation. Improvements in our living standards can only be achieved by making our economy more efficient and less dependent on imported oil.

Voluntary standards for wages and prices, together with disciplined fiscal and monetary policies, are the key ingredients in a strategy for reducing inflation. During the years immediately ahead, monetary and fiscal policies will seek a gradual but steady lowering of inflation. By itself, restraint on borrowing and spending would mean relatively slow economic growth and somewhat higher unemployment and idle capacity. Effective standards for moderating wage and price increases will lead to greater progress in lowering inflation and thereby reduce the burden on monetary and fiscal policies and provide scope for faster economic growth and increased jobs.

LONG-TERM ECONOMIC GOALS

Just before my Administration took office the overall unemployment rate was still close to 8 percent. For blacks and other minorities, the rate was over 13 percent and had shown little improvement since the recovery began in early 1975.

Since then increase in employment have been extraordinarily large, averaging nearly 3½ percent per year. The gains for women were twice as large as for men. For blacks and other minority groups the percentage rise in employment was half again as large as for whites. Aided by a strongly expanded Federal jobs program for youth, employment among black and other minority teenagers grew by over 15 percent. Employment among Hispanic Americans rose by over 20 percent.

Unemployment rates have come down substantially for most demographic groups. Unemployment among black teenagers, however, has not fallen significantly and remains distressingly high.

To address the very serious problem of unemployment among disadvantaged youth, my Administration has substantially expanded funds for youth employment and training programs over the past 3 years. My 1981 budget includes an important new initiative to increase the skills, earning power, and employability of disadvantaged young people.

In 1978 the Humphrey-Hawkins Full Employment and Balanced Growth Act was passed with the active support of my administration. The general objectives of the act—and those of my Administration—are to achieve full employment and reasonable price stability.

When I signed that act a little over a year ago, it was my hope that we could achieve by 1983 the interim goals it set forth: to reduce the overall unemployment rate to 4 percent and to achieve a 3 percent inflation rate.

Since the end of 1978, however, huge OPEC oil price increases have made the outlook for economic growth much worse, and at the same time have sharply increased inflation. The economic policies I have recommended for the next 2 years will help the economy adjust to the impact of higher OPEC oil prices. But no policies can change the realities which those higher prices impose.

I have therefore been forced to conclude that reaching the goals of a 4 percent unemployment rate and 3 percent inflation by 1983 is no longer practicable. Reduction of the unemployment rate to 4 percent by 1983, starting from the level now expected in 1981, would require an extraordinarily high economic growth rate. Efforts to stimulate the economy to achieve so high a growth rate would be counterproductive. The immediate result would be extremely strong upward pressure on wage rates, costs, and prices. This would undercut the basis for sustained economic expansion and postpone still further the date at which we could reasonably expect a return to a 4 percent unemployment rate.

Reducing inflation from the 10 percent expected in 1980 to 3 percent by 1983 would be an equally unrealistic expectation. Recent experience indicates that the momentum of inflation built up over the past 15 years is extremely strong. A practical goal for reducing inflation must take this fact into account.

Because of these economic realities, I have used the authority provided to me in the Humphrey-Hawkins Act to extend the timetable for achieving a 4 percent unemployment rate and 3 percent inflation. The target year for achieving 4 percent unemployment is now 1985, a 2-year deferment. The target year for lowering inflation to 3 percent has been postponed until 3 years after that.

MEASURES TO IMPROVE ECONOMIC PERFORMANCE

Achieving satisfactory economic growth, reducing unemployment, and at the same time making steady progress in curbing inflation constitutes an enormous challenge to economic policy.

To lower inflation, we will have to persist in the painful steps needed to restrain demand. But demand restraint alone is not enough. We must work to improve the supply side of our economy—speed its adjustment to an era of scarcer energy, increase its efficiency, improve the workings of its labor markets, and expand its capital stock. We must take measures to reduce our vulnerability to inflationary events that occur outside our own economy. Only an approach that deals with both demand and supply can enable the Nation to combine healthy economic growth with price stability.

LONG-RUN ENERGY POLICIES

Over the past 3 years I have devoted a large part of my own efforts and those of my Administration toward putting in place a long-term energy policy for this Nation. With the cooperation of the Congress much has already been accomplished or stands on the threshold of final enactment.

The phased decontrol of natural gas and domestic crude oil prices will provide strong, unambiguous signals encouraging energy conservation and stimulating the development of domestic energy supplies. But decontrol of oil, in the face of very high OPEC prices, inevitably generates substantial windfall profits. The windfall profits tax I have proposed will capture a significant portion of these windfalls for public use.

The increased Federal revenues from this tax will make it possible to cushion the poor from the effects of higher oil prices, to increase our investment in mass transit, and to support programs of accelerated replacement of oil-fired electricity generation facilities and increased residential and commercial energy conservation. I have also proposed incentives for the development of energy from solar and biomass sources, and have asked the Congress for authority to create an Energy Security Corporation to provide incentives and assistance on a business-like basis for the accelerated development of synthetic fuels. Other legislation that I have proposed, which is also now before a Conference Committee of the Congress, would create an Energy Mobilization Board to cut the red tape and speed the development of essential energy projects. I urge the Congress to take the final steps to enact the enabling legislation for my energy initiatives.

These policies will sharply increase the efficiency with which our Nation uses energy and widen the range of economically feasible energy sources. In so doing, they will help make our economy less inflation-prone. They will also drastically cut our reliance on imported oil, and by making our Nation less vulnerable to sudden increases in world oil prices, reduce the probability of sudden inflationary surges.

By the end of this decade, we will be well on the way to completing the transition toward the new world of scarcer oil supplies. In the interim, however, our country still remains dangerously exposed to the vagaries of the world oil market.

I am pursuing measures to deal with this transitional problem. Together with other major oil-consuming countries in the International Energy Agency we are working to devise improved means of matching any future cuts in oil supplies with joint action to reduce oil demand. By avoiding a competitive scramble for scarce oil, we can reduce the chances of further large price increases.

Last year I pledged that our country would never again import more oil than we did in 1977—8.5 million barrels a day. This year I am establishing a lower import target of 8.2 million barrels a day. I am prepared to reduce that target in the event that discussions within the International Energy Agency produce a fair and equitable agreement that requires still lower imports. I will impose a fee on purchases of foreign oil if they threaten to exceed the limit that I set.

While international cooperation is essential, so are measures we can take on our own. In accordance with legislation enacted last year the Administration has developed a standby motor fuel rationing plan to deal with major supply interruptions, defined to be a shortfall in supply of 20 percent or more. This plan will be submitted to the Congress in February. But even smaller supply interruptions can cause severe economic problems. We are therefore considering proposals for standby measures to be applied if lesser, but still significant, disruptions occur. The Strategic Petroleum Reserve (SPR) can cushion the impact of an abrupt cutoff in supplies. My budget provides funds for resuming SPR purchases this year if conditions permit.

IMPROVING LABOR MARKETS

The persistence of high unemployment among some groups of workers while jobs go begging and unemployment is low elsewhere is not only a major social problem but a waste of national resources. The lack of skills, the imperfections of the labor market, and in some cases, the discrimination that gives rise to this situation, reduce national productivity and contribute to inflation.

Although our labor market currently works quite well for most people, it does not work well for disadvantaged and minority youth. In recognition of this fact, I have recently sent to the Congress proposals designed to deal with teenage unemployment.

The goals of my proposals are:

To teach basic skills in the secondary schools to those youths who did not master them in elementary school and who need special help;

To provide part-time employment and training to dropouts if they participate in long-term training to develop skills that will improve their prospects; and

To provide intensive long-term training aimed at helping older youths out of school find jobs in the private sector.

The funds will go largely to poor rural areas and central cities, where youth unemployment is particularly high because of inadequate education, and where local resources are insufficient to rectify the problem.

Another segment of the labor force needing special assistance is the working poor. The welfare reforms which I have sent to the Congress will provide training, help in seeking jobs, and work opportunities for poor but employable persons.

REFORMING REGULATION

Regulation has joined taxation, defense, and the provision of social services as one of the principal activities of the government. Unneeded regulations, or necessary regulations that impose undue burdens, lower efficiency and raise costs.

For the past 3 years I have vigorously promoted a basic approach to regulatory reform: unnecessary regulation, however rooted in tradition, should be dismantled and the role of competition expanded; necessary regulation should promote its social objectives at minimum cost.

Working with the Congress we have deregulated the airline industry. We are now cooperating with congressional committees to complete work on fair and effective legislation that eliminates costly elements of regulation in the trucking, railroad, communications, and financial industries.

Within the executive branch, we are improving the quality and lowering the cost of regulations. The Regulatory Council, which I established a year ago, is helping us comprehend the full scope of Federal regulatory activities and how these activities, taken together, affect individual industries and sectors. A number of regulatory agencies are experimenting with new regulatory techniques that promise to achieve regulatory goals at substantially lower costs.

INCREASING INVESTMENT AND ENCOURAGING RESEARCH AND DEVELOPMENT

We do not know all of the causes of the slowdown in productivity growth that has characterized our economy in recent years. But we do know that investment and research and development will have to play an important role in reversing the trend.

To meet the Nation's sharply increased requirement for investment in energy production and conservation, to fulfill its commitment to cleaner air and water and improved health and safety in the workplace, and at the same time to provide more and better tools for a growing American work force, our Nation in the coming decade will have to increase the share of its resources devoted to capital investment.

We took one step in this direction in the Revenue Act of 1978, which provided a larger than normal share of tax reduction for investment incentives. Passage of my pending energy legislation will make available major new incentives and financial assistance for investment in the production and conservation of energy. When economic conditions become appropriate for further tax reduction, I believe we must direct an important part of any tax cut to the provision of further incentives for capital investment generally.

One of the most important factors in assuring strong productivity growth is a continuing flow of new ideas from industry. This flow depends in the first instance on a strong base of scientific knowledge. The most important source of such knowledge is basic research, the bulk of which is federally funded.

Between 1968 and 1975 Federal spending for basic research, measured in constant dollars, actually fell. But since that latter year, and especially during the years of my Administration, Federal support for basic research has increased sharply. In spite of the generally tight economic situation, the 1981 budget I am submitting to the Congress calls for yet another substantial increase in real Federal support for basic research. Even during a period of economic difficulties, we cannot afford to cut back on the basis for our future prosperity.

AGRICULTURE

Because the worldwide demand for food has grown substantially, overproduction is no longer the primary problem in agriculture. Government policies now seek to encourage full production, while cushioning the American economy and the American farmer from the sharp swings in prices and incomes to which the farm sector is often subject. Over the past several years my Administration has created a system of farmer-owned grain reserves to supplement the loan and target-price approach to farm income stabilization. In periods of low prices and plentiful supplies, incentives are provided to place grain in the reserves, thereby helping to support farm income. The incentives also work to hold the grain in reserve until prices rise significantly, at which time the grain begins to move out into the market, helping to avoid or to moderate the inflationary consequences of a poor crop.

Over this last year, the reserve has been tested twice. When fears of poor world harvests threatened to drive grain prices to extraordinarily high levels last spring and summer, farmers sold grain from the reserve, limiting the price rise. Since I suspended grain shipments to the Soviet Union this month in response to that country's brutal invasion of Afghanistan, increased incentives to place grain in reserve have been serving as one of our main defenses to protect farmers from precipitous declines in prices.

THE INTERNATIONAL ECONOMY

Other countries besides our own suffered important setbacks in 1979 from the dramatic increase in oil prices. Growth prospects worsened, inflation increased, and balance of payments deficits rose. In such difficult times economic cooperation between nations is especially important. Joint action among oil-consuming countries is needed to reduce the pressure of demand on supply and to restore order in world petroleum markets. Cooperation is necessary to protect international financial markets against potential disruptions arising from the need to finance massively increased payments for oil. And cooperation is also necessary to prevent a destructive round of protectionism.

Because the dollar is the major international store of value and medium of exchange, the stability of international financial markets is closely linked to the dollar's strength. The actions taken in November 1978 by the United States and our allies to strengthen and stabilize the dollar worked well during the past year. That the dollar did well despite accelerating domestic inflation is due in part to a significant improvement in our current account balance during 1979. U.S. exports grew rapidly and thus helped to offset rising payments for oil. During the autumn of 1979, however, the dollar came under downward pressure. The October actions of the Federal Reserve Board to change the techniques of monetary policy helped moderate inflationary expectations which had been partly responsible for the pressure on the dollar. As a Nation we must recognize the importance of a stable dollar, not just to the United States but to the world economy as a whole, and accept our responsibility to pursue policies that contribute to this stability.

The Multilateral Trade Negotiations of the Tokyo Round were successfully completed and became law in the United States during 1979. These trade agreements are a major achievement for the international economy. By lowering tariff barriers both in the United States and abroad, they will help increase our exports and provide Americans with access to foreign goods at lower prices. Perhaps more important, these agreements will limit restrictive and unfair trade practices and provide clearer remedies where there is abuse. They cannot, by themselves, assure smooth resolution of all trade issues. Indeed, the real test will come as we begin to carry them out. Nevertheless the agreements reached last year do represent a clear commitment to the preservation and enhancement of an open system of world trade.

CONCLUSION

The 1970s were a decade of economic turmoil. World oil prices rose more than tenfold, helping to set off two major bouts of inflation and the worst recession in 40 years. The international monetary system had to make a difficult transition from fixed to floating exchange rates. In agriculture a chronic situation of oversupply changed to one which alternates between periods of short and ample supplies.

It was an inflationary decade. It brought increased uncertainty into business and consumer plans for the future.

We are now making the adjustment to the realities of the economic world that the 1970s brought into being. It is in many ways a more difficult world than the one that preceded it. Yet the problems it poses are not insuperable.

There are no economic miracles waiting to be performed. But with patience and self-discipline, combined with some ingenuity and care, we can deal successfully with the new world. The 1980s can be a decade of lessened inflation and healthy growth.

JIMMY CARTER.

JANUARY 30, 1980.

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 7:23 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 4320. An Act to consent to the amended Bear River Compact between the States of Utah, Idaho, and Wyoming.

The message also announced that the Speaker has appointed Mr. WAMPLER as an additional manager in the conference on the part of the House on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 932) to extend the Defense Production Act of 1950; and that the Speaker has appointed Mr. OTTINGER and Mr. MOFFETT as additional managers on the part of the House solely for the consideration of title V of the Senate amendment and modifications thereof committed to conference, and Mr. NEAL and Mr. KRAMER as additional managers on the part of the House solely for the consideration of title IX of the Senate amendment and modifications thereof committed to conference.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHURCH, from the Committee on Foreign Relations, without amendment:

S. Res. 344. A resolution commending the Government of Canada for its actions with respect to certain United States citizens in Iran.

By Mr. CRANSTON, from the Committee on Veterans' Affairs, without amendment:

S. Res. 345. An original resolution authorizing additional expenditures by the Committee to Veterans' Affairs. Referred to the Committee on Rules and Administration.

By Mr. JACKSON, from the Committee on Energy and Natural Resources, without amendment:

S. Res. 346. An original resolution authorizing additional expenditures by the Committee on Energy and Natural Resources for inquiries and investigations. Referred to the Committee on Rules and Administration.

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S. Res. 347. An original resolution authorizing additional expenditures by the Committee on Rules and Administration for inquiries and investigations (Rept. No. 96–559).

S. Res. 348. An original resolution to pay a gratuity to Angelina C. Beckmann.

S. Res. 349. An original resolution to pay a gratuity to Carolyn Watson and Abraham G. Watson.

By Mr. THURMOND, from the Committee on the Judiciary, without amendment:

S. Res. 350. An original resolution authorizing additional expenditures by the Committee on the Judiciary for inquiries and investigations. Referred to the Committee on Rules and Administration.

By Mr. THURMOND (for Mr. KENNEDY), from the Committee on the Judiciary, without amendment but with a preamble:

S.J. Res. 130. A joint resolution to authorize and request the President to proclaim May 1, 1980, as "National Save the Children Day" (Rept. No. 96–560).

By Mr. THURMOND (for Mr. KENNEDY), from the Committee on the Judiciary, with an amendment and an amendment to the title:

S.J. Res. 19. A joint resolution to authorize the President to issue a proclamation designating March 1979 as "Youth Art Month" (Rept. No. 96–561).

By Mr. ROBERT C. BYRD, from the Committee on Rules and Administration:

Special Report Relating to Consolidation of Certain Standing Rules of the Senate (Rept. No. 96–562).

REFERRAL OF S. 2040

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. PROXMIRE, I ask unanimous consent that S. 2040, the Small Business Export Expansion Act, introduced by Mr. NELSON and other Senators on November 26, 1979, and referred to the Committee on Small Business, if and when it is reported that it be referred to the Committee on Banking, Housing, and Urban Affairs.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PROXMIRE:

S. 2236. A bill to amend the Currency and Foreign Transactions Reporting Act to provide for more efficient enforcement, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CHURCH:

S. 2237. A bill to amend the Colorado River Basin Project Act to prohibit any Federal official from undertaking reconnaissance studies of any plan for the importation of water into the Colorado River Basin; to the Committee on Energy and Natural Resources.

By Mr. CANNON (for himself, Mr. STEVENSON, and Mr. SCHMITT) (by request):

S. 2238. A bill to authorize a supplemental appropriation to the National Aeronautics and Space Administration for research and development; to the Committee on Commerce, Science, and Transportation.

By Mr. PACKWOOD (for himself, Mr. NELSON, and Mr. CRANSTON):

S. 2239. A bill to amend the Internal Revenue Code of 1954 with respect to the income tax treatment of incentive stock options; to the Commitee on Finance.

By Mr. CANNON (for himself, Mr. STEVENSON, and Mr. SCHMITT) (by request):

S. 2240. A bill to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. COCHRAN:

S. 2241. A bill for the relief of Vernon Myers; to the Committee on the Judiciary.

By Mr. ROTH:

S. 2242. A bill to amend the Internal Revenue Code of 1954 to provide for a 50 percent maximum rate of income tax for individuals, to provide for a separate computation of such tax on personal service income and nonpersonal service income, and for other purposes; to the Committee on Finance.

By Mr. SASSER:

S.J. Res. 136. Joint resolution to designate the month of March 1980 as Gospel Music Month; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PROXMIRE:

S. 2236. A bill to amend the Currency and Foreign Transactions Reporting Act to provide for more efficient enforcement, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. PROXMIRE. Mr. President, I am introducing legislation to close loopholes in the Bank Secrecy Act that hinder the ability of Federal law enforcement authorities to investigate narcotics trafficking, tax evasion and other criminal activities. The purpose of the act is twofold: To establish the documentary evidence necessary to allow Federal agencies to reconstruct financial transactions and the movement of currency and to alert them to unusual money flows that might warrant investigation. The act requires that banks report large financial transactions. In addition, any person who transports more than $5,000 out of or into the United States must file a report with the U.S. Customs Service.

The law has two serious gaps, however. First, while the statute makes it illegal for a person to leave the country with more than $5,000 without having filed a report, a Federal court has held that the law does not make the attempt to leave the country illegal. This has created a "Catch 22" paradox in which an individual violates the law only when he actually leaves U.S. territorial limits. At that time, however, he can neither be arrested nor prosecuted since he is outside of U.S. jurisdiction.

Second, a Customs officer who has probable cause to believe that a person is taking over $5,000 out of the country without filing a report must first obtain a search warrant before looking for the unreported money. In most instances, however, the suspect has gone by the time the warrant is obtained, thus making it impossible for Federal authorities to discover whether or not the law is being violated.

The bill being introduced would amend the Bank Secrecy Act, formally known as the Currency and Foreign Transactions Reporting Act, to give Federal agencies the full authority that they were intended to have. Specifically, the bill would:

Make it illegal to attempt to leave the United States with more than $5,000 without filing the reports required under the present law. This would make it possible for Customs officials to apprehend suspects before they left U.S. jurisdiction; and

Allow Customs officials to search for unreported amounts of currency or monetary instruments without first obtaining a search warrant where there is reasonable cause to believe that the money is being taken illegally out of the country.

In addition, it would amend the law to tighten the conditions under which Federal authorities could seize money that was transported into or out of the United States without the required reports being filed. The aim is to protect the innocent traveler who unknowingly fails to file the required report from having his or her money seized. The act currently says that any instrument of more than $5,000 brought into or taken out of the country without being reported is subject to "seizure and forfeiture." In practice, the Treasury Department follows internal guidelines that state that "seizures/forfeitures should be made *only* if the regulations have been *knowingly* violated." (Emphasis included.) My amendment would simply incorporate that standard into the seizure section of the act.

The bill would also add a new section to the law authorizing the Secretary of the Treasury to give informants a share of the unreported money that was or was attempted to be taken illegally out of the United States if they provide information that leads to the recovery of the money. Awards would be authorized only when the Government realized an actual recovery of more than $50,000 or more through fines, penalty or forfeiture. This step hopefully will give informants further incentive to report cash smuggling to Federal officials.

These proposed changes have been endorsed by the Justice and Treasury Departments. Companion legislation has already been submitted in the House.

Mr. President, I ask unanimous consent that the proposed legislation be printed in the RECORD.

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

S. 2236

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 231 (a) (1) of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1101 (a) (1)) is amended by inserting ", or attempts to transport or have transported," before "monetary instruments—".

SEC. 2. Section 232 (a) of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1102 (a)) is amended by inserting before the period at the end thereof the following: ", except that in the case of a failure to file a required report, this subsection shall apply only if the person required to file the report knowingly fails to file the report".

SEC. 3. Section 235 of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1105) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

"(b) Any customs officer may stop, search, and examine without a search warrant, any vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States on which or on whom such officer has reasonable cause to believe there are being transported monetary instruments for which a report is required under section 231 of this title.".

SEC. 4. (a) Chapter 1 of the Currency and Foreign Transactions Reporting Act is amended by adding at the end thereof the following:

"§214. Rewards for informants

"(a) The Secretary is authorized to pay a reward to any individual who provides original information which leads to a recovery of a criminal fine, civil penalty, forfeiture, which exceeds $50,000, for any violation of this title or any regulation issued hereunder.

"(b) The amount of any reward under this section shall be determined by the Secretary, but shall not exceed 25 per centum of the net amount of the fine, penalty, or forfeiture collected or $250,000, whichever is less.

"(c) Any officer or employee of the United States or of any State or local government who provides information described in subsection (a) in the performance of official duties is not eligible for a reward under this section.

"(d) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.".

(b) The analysis of such chapter is amended by adding at the end thereof the following:

"214. Rewards for informants.".

By Mr. CHURCH:

S. 2237. A bill to amend the Colorado River Basin Project Act to prohibit any Federal official from undertaking reconnaissance studies of any plan for the importation of water into the Colorado River Basin; to the Committee on Energy and Natural Resources.

PROHIBITING WATER DIVERSION PROPOSALS

● Mr. CHURCH. Mr. President, today I am introducing legislation which extends the current prohibition banning the Secretary of the Department of Interior from undertaking studies of any plan for the importation of water into the Colorado River Basin to cover all Federal officials.

Periodically, proposals have been made to divert water from the Pacific Northwest to other areas. The fact of the matter is that water is extremely precious and already in short supply within the Pacific Northwest. Available water is already claimed. There is no water to spare. It takes very strenuous efforts to conserve and make do with already limited supplies of this vital resource.

In 1968 proposals were made to divert water from the Columbia River Basin to the Colorado River Basin. At that time I authored legislation which specifically prohibited the Secretary of Interior from undertaking any studies, either reconnaissance or feasibility, of any such interbasin transfers. Congress approved this 10-year moratorium, and extended it in 1978 for another decade.

This current moratorium is directed at the Department of Interior because it is the Federal agency with programmatic authority concerning major water projects in the Western States.

It is now necessary to make it clear to other Federal agencies that Congress intends to prohibit such interbasin transfer studies. It has come to my attention that the Environmental Protection Agency, during the course of a larger study of western water, has engaged in the study of potential transfers of water from the Columbia River Basin and its tributaries, to the Colorado River Basin. I am told that a draft of this study, performed under EPA contract by the University of Oklahoma, was presented last week before a meeting of the Western States Water Council in San Antonio, Tex.

This development points to the necessity for enactment of legislation to spell it out to other Federal officials, beyond the Department of Interior, that the study of transferring water from the Pacific Northwest to other areas is banned. Passage of this legislation will put an end to Federal agencies attempting to do what current law clearly prohibits the Department of Interior from doing. I ask unanimous consent that the text of this bill be printed at this point in the RECORD.

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

S. 2237

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proviso contained in section 201 of the Colorado River Basin Project Act (43 U.S.C. 1511) is amended by striking out "the Secretary" and inserting in lieu thereof "any Federal official".●

By Mr. CANNON (for himself, Mr. STEVENSON, and Mr. SCHMITT) (by request):

S. 2238. A bill to authorize a supplemental appropriation to the National Aeronautics and Space Administration for research and development; to the Committee on Commerce, Science, and Transportation.

● Mr. CANNON. Mr. President, I introduce today, at the request of the National Aeronautics and Space Administration, and on behalf of myself and my colleagues, Mr. STEVENSON and Mr. SCHMITT, a bill to authorize a supplemental appropriation to the National Aeronautics and Space Administration for research and development for fiscal year 1980.

I ask unanimous consent that the text of the bill, the letter of transmittal, and the sectional analysis be printed in the RECORD.

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

S. 2238

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of subsection 1(a) of the National Aeronautics and Space Administration Authorization Act, 1980 (Public Law 96-48), is amended by striking out "$1,586,000,000" and inserting in lieu thereof "$1,886,000,000."

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, D.C., January 28, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Submitted herewith is a draft of a bill, "To authorize a supplemental appropriation to the National Aeronautics and Space Administration for Research and Development," together with the analysis thereof.

The bill would authorize an additional appropriation for "Research and Development" for Space Shuttle totaling $300,000,000. The additional funding is required in FY 1980 to sustain the Space Shuttle development efforts required to achieve a first orbital flight by the end of the year, while allowing for the buildup of follow-on orbiter production activities on schedule to meet critical civil and military operational requirements. The funding requirement is due primarily to increased efforts in completing systems installation and test, particularly the thermal protection system, and pre-launch processing of the first orbital vehicle and in systems qualification and certification testing across all elements of the program. These increased efforts have required more work than was planned resulting in a delay of the first manned orbital flight from the previous schedule of March 1980.

The National Aeronautics and Space Administration recommends that the enclosed draft bill be enacted. The Office of Management and Budget has advised that such enactment would be in accord with the program of the President.

Very truly yours,

ROBERT A. FROSCH,
Administrator.

SECTIONAL ANALYSIS

The bill increases the authorization for Research and Development for Space Shuttle, for fiscal year 1980, from $1,586,000,000 to $1,886,000,000.

The supplemental authorization will be subject to the same conditions and limitations contained in the National Aeronautics and Space Administration Authorization Act, 1980 (Public Law 96-48).●

By Mr. PACKWOOD (for himself, Mr. NELSON, and Mr. CRANSTON):

S. 2239. A bill to amend the Internal Revenue Code of 1954 with respect to the income tax treatment of incentive stock options; to the Committee on Finance.

INCENTIVE STOCK OPTIONS

● Mr. PACKWOOD. Mr. President, Senator NELSON and I have been joined by our distinguished colleague from Cali-

fornia, Senator CRANSTON, in introducing legislation which would create a new category of stock options called "incentive stock options." This new class of stock options features those provisions, taken from both the pre-1964 laws governing restricted stock options and the later qualified options, which offer the greatest incentives and safeguards. This bill promotes productivity by restoring a valuable form of noncash compensation that both lowers labor costs and resulting product prices while motivating superior performance by employees. It would give more people a vested interest in their firm and enable small, growing companies to compete with large, established corporations in attracting top-caliber employees.

THE PRODUCTIVITY PROBLEM

In the past decade, the United States has experienced a serious and steady decline in its productivity growth rate. It has become clear that this drop is not a temporary aberration or a cyclical phenomenon. The economic implications of lagging productivity growth make it essential for Congress to act to reverse this trend.

The move to stimulate the supply of resources and output in the economy received a boost last year. After years of consumption-oriented tax measures, 1978 saw Congress focus on a tax policy designed to stimulate economic growth and capital formation. This was an excellent beginning. But as the Joint Economic Committee recently concluded:

> Some of the tax changes in the Revenue Act of 1978 will stimulate investment. But these are not sufficient.

Incentive stock options allow a further step in the direction of greater productivity growth by making it easier for new companies to start up and grow.

ROLE OF SMALL BUSINESS

Small, growing companies provide more than their share of technological innovation and job growth. Then can continue to contribute this sort of economic dynamism, however, only if they are successful in attracting and motivating highly talented employees.

Incentive stock options significantly improve the ability of young companies to compete successfully for capable individuals. These smaller businesses are often unable to offer the job security or the salary levels that are available in larger corporations. But since the stock of smaller companies often grows at a more rapid pace than larger companies, stock options in these businesses can be extremely attractive, thereby providing an incentive for talented individuals to risk their careers in the uncertainties of a new venture.

LEGISLATIVE HISTORY

In the past, there has been some degree of controversy over stock options. Until the early sixties, companies could offer such incentives in the form of restricted stock options. In 1963, the Kennedy administration recommended that these provisions be repealed. The administration argued that since individuals were taxed on personal service income at rates up to 92 percent, but long-term capital gains were taxed at only 25 percent, stock options allowed too much conversion of ordinary income into capital gains. Congress first limited the value of options, creating the "qualified stock option" in 1964, then phased out all stock option preferences in 1976.

Today, circumstances are considerably different. Changes in the tax code have drastically reduced the sheltering effects of stock options. The maximum tax rate on personal service income is now 50 percent and the capital gains rate, as a result of actions taken last year, now stands at a maximum of 28 percent. As I will explain in more detail later, the effect of the change is that stock options now can be reinstated at no net cost to the Treasury. In fact, a revenue gain will result after the first couple of years following enactment of the bill.

EXPLANATION OF PROVISIONS

Current tax law authorizes only so-called "non-qualified options." When employees exercise these options, they must pay income tax—at ordinary income rates—on the paper profit (or "spread") between their option price and the market price when they buy. This cost and risk of loss on a "profit" never realized has forced most companies to turn from stock options to straight cash compensation and stock purchase plans. These cost companies more and motivate employees less.

This bill creates a new category of stock options called incentive stock options. It incorporates what we believe to be the best features and safeguards of both the "pre-64" restricted option and the later qualified options. Employees would not be required to pay tax at the time they exercise these options. Since any spread would not be treated as personal service income to the employee at the time of exercise, the company would not be able to deduct it as compensation. The employee could then be eligible for capital gain treatment when the stock is sold. As under present law, the employer would not have a deduction at the time the employee sells the stock.

In order to be treated as an incentive stock option plan, the following rules must be met:

First. The option must be issued at 100 percent of its fair market value. However, if a good faith effort is made to issue the stock at not less than its fair market value, but it is later determined to be undervalued, the option will still be treated as an incentive stock option. This provision helps avoid the imposition of drastic consequences on employees as a result of inadvertent undervaluation of the stock by the employer.

Second. The option can be exercised up to 10 years after issuance, as with restricted stock options. Rules for qualified options allowed only 5 years.

Third. Shareholder approval is required, as in the case of qualified stock options.

Fourth. As was true for restricted options, employees would be permitted to exercise the options in any sequence. Qualified options rules required options to be exercised in the order granted.

Fifth. To qualify for long-term capital gain treatment, the employee would be required to hold the stock 2 years after the company had granted the option and 1 year after the employee had exercised the option. This is similar to rules governing restricted stock options. If the stock is sold within 2 years, ordinary income would be realized up to the lesser of the gain or the spread between the option price and the value of the stock at the time of exercise, as with qualified options

Sixth. Similar to qualified options, the optionee must be an employee continuously from grant to 3 months prior to exercise.

Seventh. At grant, the employee may not own more than 10 percent of the voting power or value of the stock of the company, unless the option price is at least 110 percent of the fair market value. This is similar to the rules for restricted options. In contrast, qualified stock guidelines did not permit the employee to own more than 10 percent of the voting power or stock value if the equity capital is $1 million or less, decreasing to 5 percent of the equity capital is $2 million or over.

Eighth. Variable options are permitted, as under restricted options.

Ninth. As with both restricted and qualified options, options issued would not be transferable other than at death and would be exercisable during the employee's lifetime only by the employee.

REVENUE EFFECT

As I stated briefly before, such stock options can be reinstated at no net cost to the Federal Government. The Joint Committee on Taxation has determined that this bill, after possible miniscule revenue losses in the first 3 years after its enactment, will result in a revenue gain. For example, the committee estimates that the revenue increase will approximate $15 million in fiscal year 1984 and $30 million in fiscal year 1985.

We look forward to working with other Senators, the Department of the Treasury and the public to consider any improvements in this important piece of legislation.

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

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

S. 2239

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part II of subchapter D of chapter 1 of the Internal Revenue Code of 1954 (relating to certain stock options) is amended by adding after section 422 the following new section:

"SEC. 422A. INCENTIVE STOCK OPTIONS.

"(a) IN GENERAL.—Section 421 (a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an incentive stock option if—

"(1) no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 1 year after the transfer of such share to him, and

"(2) at all times during the period beginning with the date of the granting of the option and ending on the day 3 months before the date of such exercise, such individ-

ual was an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies.

"(b) INCENTIVE STOCK OPTION.—For purposes of this part, the term 'incentive stock option' means an option granted to an individual for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

"(1) the option is granted pursuant to a plan which includes the aggregate number of shares which may be issued under options, and the employees (or class of employees) eligible to receive options, and which is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

"(2) such option is granted within 10 years from the date such plan is adopted, or the date such plan is approved by the stockholders, whichever is earlier;

"(3) such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted;

"(4) the option price is not less than the fair market value of the stock at the time such option is granted;

"(5) such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

"(6) such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation.

Paragraph (6) shall not apply if at the time such option is granted the option price is at least 110 percent of the fair market value of the stock subject to the option and such option by its terms is not exercisable after the expiration of 5 years from the date such option is granted. For purposes of paragraph (6), the provisions of section 425(d) shall apply in determining the stock ownership of an individual.

"(c) SPECIAL RULES.—

"(1) EXERCISE OF OPTION WHEN PRICE IS LESS THAN VALUE OF STOCK.—If a share of stock is transferred pursuant to the exercise by an individual of an option which would fail to qualify as an incentive stock option under subsection (b) because there was a failure in an attempt, made in good faith, to meet the requirement of subsection (b)(4), the requirement of subsection (b)(4) shall be considered to have been met.

"(2) VARIABLE PRICE OPTION.—

"(A) IN GENERAL.—For purposes of subsection (b)(4), the option price of a variable price option shall be computed as if the option had been exercised when granted.

"(B) DEFINITION.—For purposes of this paragraph, the term 'variable price option' means an option under which the purchase price of the stock is fixed or determinable under a formula in which the only variable is the fair market value of the stock at any time during a period of 1 year which includes the time the option is exercised; except that such term does not include any such option in which such formula provides for determining such price by reference to the fair market value of the stock at any time before the option is exercised if such value may be greater than the average fair market value of the stock during the calendar month in which the option is exercised.

"(3) CERTAIN DISQUALIFYING DISPOSITIONS WHERE AMOUNT REALIZED IS LESS THAN VALUE AT EXERCISE.—If—

"(A) an individual who has acquired a share of stock by the exercise of an incentive stock option makes a disposition of such share within the 2-year period described in subsection (a)(1), and

"(B) such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to such individual,

then the amount which is includible in the gross income of such individual, and the amount which is deductible from the income of his employer corporation, as compensation attributable to the exercise of such option shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share.

"(4) CERTAIN TRANSFERS BY INSOLVENT INDIVIDUALS.—If an insolvent individual holds a share of stock acquired pursuant to his exercise of an incentive stock option, and if such share is transferred to a trustee, receiver, or other similar fiduciary in any proceeding under the Bankruptcy Act or any other similar insolvency proceeding, neither such transfer, nor any other transfer of such share for the benefit of his creditors in such proceeding, shall constitute a disposition of such share for purposes of subsection (a)(1).".

(b)(1) Section 421(a) of such Code (relating to general rules in the case of stock options) is amended by inserting "422A(a)," after "422(a),".

(2) Section 425(d) of such Code (relating to attribution of stock ownership) is amended by inserting "422A(b)(6)," after "422(b)(7),".

(3) Section 425(g) of such Code (relating to special rules) is amended by inserting "422A(a)(2)," after "422(a)(2),".

(4) Section 425(h)(3)(B) of such Code (relating to definition of modification) is amended by inserting "422A(b)(5)," after "422(b)(6),".

(5) Section 6039 of such Code (relating to information required in connection with certain options) is amended—

(A) by inserting ", an incentive stock option," after "qualified stock option" in subsection (a)(1),

(B) by inserting "incentive stock option," after "qualified stock option," in the second sentence of subsection (a), and

(C) by adding at the end of subsection (d) the following new paragraph:

"(4) The term 'incentive stock option', see section 422A(b).".

(6) The table of sections for part II of subchapter D of chapter 1 of such Code is amended by inserting after the item relating to section 422 the following new item:

"422A. Incentive stock options.".

SEC. 2. The amendments made by this Act shall apply with respect to options granted after the date of enactment.●

By Mr. CANNON (for himself, Mr. STEVENSON, and Mr. SCHMITT) (by request):

S. 2240. A bill to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes; to the Committee on Commerce, Science, and Transportation.

● Mr. CANNON. Mr. President, I introduce today, at the request of the National Aeronautics and Space Administration, and on behalf of myself and my colleagues, Mr. STEVENSON and Mr. SCHMITT, a bill to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes for fiscal year 1981.

I ask unanimous consent that the text of the bill, the letter of transmittal and the sectional analysis be printed in the RECORD.

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

S. 2240

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated to the National Aeronautics and Space Administration to become available October 1, 1980:

(a) For "Research and development," for the following programs:

(1) Space Shuttle, $1,873,000,000;

(2) Space flight operations, $809,500,000;

(3) Expendable launch vehicles, $55,700,000;

(4) Physics and astronomy, $438,700,000;

(5) Planetary exploration, $179,600,000;

(6) Life sciences, $49,700,000;

(7) Space applications, $381,700,000;

(8) Technology utilization, $13,100,000;

(9) Aeronautical research and technology, $290,300,000;

(10) Space research and technology, $115,200,000;

(11) Energy technology, $4,000,000; and

(12) Tracking and data acquisition, $359,000,000.

(b) For "Construction of facilities," including land acquisition, as follows:

(1) Construction of man-vehicle systems research facility, Ames Research Center, $7,480,000;

(2) Modification of steam ejector system and thermal protection laboratory, Ames Research Center, $2,300,000;

(3) Modification of the unitary plan wind tunnel, Ames Research Center, $3,400,000;

(4) Modifications to various buildings for energy conservation, Jet Propulsion Laboratory, $1,500,000;

(5) Modifications to various buildings for seismic protection, Jet Propulsion Laboratory, $2,000,000;

(6) Rehabilitation of high temperature hot water system, zone 2, industrial area, John F. Kennedy Space Center, $760,000;

(7) Modifications for avionics integration research laboratory, Langley Research Center, $5,756,000;

(8) Modifications to aircraft landing dynamics facility, Langley Research Center, $15,000,000;

(9) Rehabilitation and modification of gas dynamics laboratory, Langley Research Center, $2,000,000;

(10) Decommissioning of Plum Brook Station Reactor facility, Lewis Research Center, $3,000,000;

(11) Modifications to central air system, various buildings, Lewis Research Center, $7,655,000;

(12) Rehabilitation of electrical switchgear, engine research building, Lewis Research Center, $1,700,000;

(13) Rehabilitation of roof, Phase II, Building 103, Michoud Assembly Facility, $3,800,000;

(14) Rehabilitation of chilled water system, Michoud Assembly Facility, $782,000;

(15) Various locations as follows:

(A) Modification of 26-meter antenna, DSS–44, Canberra, Australia, $1,200,000;

(B) Replacement of azimuth radial bearing, DSS–14, Goldstone, CA., $950,000;

(16) Space Shuttle facilities at various locations as follows:

(A) Modification of manufacturing and final assembly facilities for external tanks, Michoud Assembly Facility, $5,400,000;

(B) Modifications to solid rocket motor manufacturing and assembly facilities, Thiokol plant, Wasatch, Utah, $2,700,000;

(C) Minor Shuttle-unique projects, various locations, $2,000,000;

(17) Space Shuttle payload facility: Rehabilitation and modification for payload ground support operations, John F. Kennedy Space Center, $1,617,000;

(18) Repair of facilities at various locations, not in excess of $500,000 per project, $15,000,000;

(19) Rehabilitation and modification of facilities at various locations, not in excess of $500,000 per project, $20,000,000;

(20) Minor construction of new facilities and additions to existing facilities at various locations, not in excess of $250,000 per project, $4,000,000; and

(21) Facility planning and design not otherwise provided for, $10,000,000.

(c) For "Research and program management," $1,047,154,000 and such additional or supplemental amounts as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law.

(d) Notwithstanding the provisions of subsection 1(g), appropriations for "Research and development" may be used (1) for any items of a capital nature (other than acquisition of land) which may be required at locations other than installations of the Administration for the performance of research and development contracts, and (2) for grants to nonprofit institutions of higher education, or to nonprofit organizations whose primary purpose is the conduct of scientific research, for purchase or construction of additional research facilities; and title to such facilities shall be vested in the United States unless the Administrator determines that the national program of aeronautical and space activities will best be served by vesting title in any such grantee institution or organization. Each such grant shall be made under such conditions as the Administrator shall determine to be required to insure that the United States will receive therefrom benefit adequate to justify the making of that grant. None of the funds appropriated for "Research and development" pursuant to this Act may be used in accordance with this subsection for the construction of any major facility, the estimated cost of which, including collateral equipment, exceeds $250,000, unless the Administrator or his designee has notified the Speaker of the House of Representatives and the President of the Senate and the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the nature, location, and estimated cost of such facility.

(e) When so specified and to the extent provided in an appropriation Act, (1) any amount appropriated for "Research and development" or for "Construction of facilities" may remain available without fiscal year limitation, and (2) maintenance and operation of facilities, and support services contracts may be entered into under the "Research and program management" appropriation for periods not in excess of 12 months beginning at any time during the fiscal year.

(f) Appropriations made pursuant to subsection 1(c) may be used, but not to exceed $25,000, for scientific consultations or extraordinary expenses upon the approval or authority of the Administrator and his determination shall be final and conclusive upon the accounting officers of the Government.

(g) Of the funds appropriated pursuant to subsections 1(a) and 1(c), not in excess of $75,000 for each project, including collateral equipment, may be used for construction of new facilities and additions to existing facilities, and for repair, rehabilitation, or modification of facilities: *Provided*, That, of the funds appropriated pursuant to subsection 1(a), not in excess of $250,000, for each project, including collateral equipment, may be used for any of the foregoing for unforeseen programmatic needs.

SEC. 2. Authorization is hereby granted whereby any of the amounts prescribed in paragraphs (1) through (20), inclusive, of subsection 1(b)—

(1) in the discretion of the Administrator or his designee, may be varied upward 10 percent, or

(2) following a report by the Administrator or his designee to the Committee on Science and Technology of the House of Representative and the Committee on Commerce, Science, and Transportation of the Senate on the circumstances of such action, may be varied upward 25 percent.

to meet unusual cost variations, but the total cost of all work authorized under such paragraphs shall not exceed the total of the amounts specified in such paragraphs.

SEC. 3. Not to exceed one-half of 1 percent of the funds appropriated pursuant to subsection 1(a) hereof may be transferred to the "Construction of facilities" appropriation, and, when so transferred, together with $10,000,000 of the funds appropriated pursuant to subsection 1(b) hereof (other than funds appropriated pursuant to paragraph (21) of such subsection) shall be available for expenditure to construct, expand, or modify laboratories and other installations at any location (including locations specified in subsection 1(b)), if (1) the Administrator determines such action to be necessary because of changes in the national program of aeronautical and space activities or new scientific or engineering developments, and (2) he determines that deferral of such action until the enactment of the next authorization Act would be inconsistent with the interest of the Nation in aeronautical and space activities. The funds so made available may be expended to acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment. No portion of such sums may be obligated for expenditure or expended to construct, expand, or modify laboratories and other installations unless (A) a period of 30 days has passed after the Administrator or his designee has transmitted to the Speaker of the House of Representatives and to the President of the Senate and to the Committee on Science and Technology of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate a written report containing a full and complete statement concerning (1) the nature of such construction, expansion, or modification, (2) the cost thereof including the cost of any real estate action pertaining thereto, and (3) the reason why such construction, expansion, or modification is necessary in the national interest, or (B) each such committee before the expiration of such period has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

SEC. 4. Notwithstanding any other provision of this Act—

(1) no amount appropriated pursuant to this Act may be used for any program deleted by the Congress from requests as originally made to either the House Committee on Science and Technology or the Senate Committee on Commerce, Science, and Transportation,

(2) no amount appropriated pursuant to this Act may be used for any program in excess of the amount actually authorized for that particular program by subsections 1(a) and 1(c), and

(3) no amount appropriated pursuant to this Act may be used for any program which has not been presented to or requested of either such committee,

unless (A) a period of 30 days has passed after the receipt by the Speaker of the House of Representatives and the President of the Senate and each such committee of notice given by the Administrator or his designee containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or (B) each such committee before the expiration of such period has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

SEC. 5. It is the sense of the Congress that it is in the national interest that consideration be given to geographical distribution of Federal research funds whenever feasible, and that the National Aeronautics and Space Administration should explore ways and means of distributing its research and development funds whenever feasible.

SEC. 6. In addition to the amounts authorized to be appropriated under section 1 of this Act, there is hereby authorized to be appropriated to the National Aeronautics and Space Administration, to be available no earlier than October 1, 1981, such sums as may be necessary:

(a) For "Research and development,"

(b) For "Construction of facilities,"

(c) For "Research and program management."

All of the limitations and other provisions of this Act which are applicable to amounts appropriated pursuant to subsections (a), (b), and (c) of section 1 of this Act shall apply in the same manner to amounts appropriated pursuant to subsections (a), (b), and (c), respectively, of this section.

SEC. 7. This Act may be cited as the "National Aeronautics and Space Administration Authorization Act, 1981."

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, D.C., January 28, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Submitted herewith is a draft of a bill, "To authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes," together with the sectional analysis thereof. It is submitted to the President of the Senate pursuant to Rule VII of the Standing Rules of the Senate.

Section 4 of the Act of June 15, 1959, 73 Stat. 75 (42 U.S.C. 2460), provides that no appropriation may be made to the National Aeronautics and Space Administration unless previously authorized by legislation. It is a purpose of the enclosed bill to provide such requisite authorization in the amounts and for the purposes recommended by the President in the Budget of the United States Government for fiscal year 1981. For that fiscal year, the bill would authorize appropriations totaling $5,736,654,000 to be made to the National Aeronautics and Space Administration as follows:

(1) for "Research and development" amounts totaling $4,569,500,000;

(2) for "Construction of facilities" amounts totaling $120,000,000; and

(3) for "Research and program management," $1,047,154,000.

In addition, the bill would authorize such sums as may be necessary for fiscal year 1982, i.e., to be available October 1, 1981.

The enclosed draft bill follows generally the format of the National Aeronautics and Space Administration Authorization Act,

1980 (Public Law 96-48). However, the bill differs in substance from the prior Act in several respects.

First, subsections 1(a), 1(b), and 1(c), which would provide the authorization to appropriate for the three NASA appropriations, differ in the dollar amounts and/or the line items for which authorization to appropriate is requested.

Second, section 6 of Public Law 96-48, which added a new section 308 to the National Aeronautics and Space Act of 1958 and amended section 203(c)(13) to increase the amount for which the Administration may settle or adjust claims, has been omitted since those amendments are now permanent law.

Third, in addition to providing authorization of appropriations in the amounts recommended by the President in his Budget for fiscal year 1981, the bill also would provide authorization for such sums as may be necessary for fiscal year 1982. It is specified that all of the limitations and other provisions of the bill applicable to amounts appropriated pursuant to section 1 shall apply in the same manner to amounts appropriated pursuant to section 6.

Finally, the last section of the draft bill, section 7, has been changed to provide that the bill, upon enactment, may be cited as the "National Aeronautics and Space Administration Authorization Act, 1981," rather than "1980."

Where required by section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332(2)(C)), and the implementing regulations of the Council on Environmental Quality, environmental impact statements covering NASA installations and the programs to be funded pursuant to this bill have been or will be furnished to the Committee on Commerce, Science, and Transportation, as appropriate.

The National Aeronautics and Space Administration recommends that the enclosed draft bill be enacted. The Office of Management and Budget has advised that such enactment would be in accord with the program of the President.

Very truly yours,

ROBERT A. FROSCH,
Administrator.

SECTIONAL ANALYSIS

SECTION 1

Subsections (a), (b), and (c) would authorize to be appropriated to the National Aeronautics and Space Administration funds, in the total amount of $5,736,654,000, as follows: (a) for "Research and development," a total of 12 program line items aggregating the sum of $4,569,500,000; (b) for "Construction of facilities," a total of 21 line items aggregating the sum of $120,000,000; and (c) for "Research and program management," $1,047,154,000. Subsection (c) would also authorize to be appropriated such additional or supplemental amounts as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law.

Subsection 1(d) would authorize the use of appropriations for "Research and development" without regard to the provisions of subsection 1(g) for: (1) items of a capital nature (other than the acquisition of land) required at locations other than NASA installations for the performance of research and development contracts; and (2) grants to nonprofit institutions of higher education, or to nonprofit organizations whose primary purpose is the conduct of scientific research, for purchase or construction of additional research facilities. Title to such facilities shall be vested in the United States unless the Administrator determines that the national program of aeronautical and space activities will best be served by vesting title in any such grantee institution or organization. Moreover, each such grant shall be made under such conditions as the Administrator shall find necessary to insure that the United States will receive benefit therefrom adequate to justify the making of that grant.

In either case, no funds may be used for the construction of a facility in accordance with this subsection, the estimated cost of which, including collateral equipment, exceeds $250,000, unless the Administrator notifies the Speaker of the House, the President of the Senate and the specified committees of the Congress of the nature, location, and estimated cost of such facility.

Subsection 1(e) would provide that, when so specified and to the extent provided in an appropriation Act, (1) any amount appropriated for "Research and development" or for "Construction of facilities" may remain available without fiscal year limitation, and (2) contracts for maintenance and operation of facilities, and support services may be entered into under the "Research and program management" appropriation for periods not in excess of twelve months beginning at any time during the fiscal year.

Subsection 1(f) would authorize the use of not to exceed $25,000 of the "Research and program management" appropriation for scientific consultations or extraordinary expenses, including representation and official entertainment expenses, upon the authority of the Administrator, whose determination shall be final and conclusive.

Subsection 1(g) would provide that of the funds appropriated for "Research and development" and "Research and program management," not in excess of $75,000 per project (including collateral equipment) may be used for construction of new facilities and additions to existing facilities, and for repairs, rehabilitation, or modification of facilities.

SECTION 2

Section 2 would authorize upward variations of the sums authorized for the "Construction of facilities" line items (other than facility planning and design) of 10 per centum at the discretion of the Administrator or his designee, or 25 per centum following a report by the Administrator or his designee to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the circumstances of such action, for the purpose of meeting unusual cost variations. However, the total cost of all work authorized under these line items may not exceed the total sum authorized for "Construction of facilities" under subsection 1(b), paragraphs (1) through (20).

SECTION 3

Section 3 would provide that not more than one-half of 1 per centum of the funds appropriated for "Research and development" may be transferred to the "Construction of facilities" appropriation and, when so transferred, together with $10,000,000 of the funds appropriated for "Construction of facilities," shall be available for the construction of facilities and land acquisition at any location if the Administrator determines (1) that such action is necessary because of changes in the aeronautical and space program or new scientific or engineering developments, and (2) that deferral of such action until the next authorization Act is enacted would be inconsistent with the interest of the Nation in aeronautical and space activities. However, no such funds may be obligated until 30 days have passed after the Administrator or his designee has transmitted to the Speaker of the House, the President of the Senate and the specified committees of Congress a written report containing a description of the project, its cost, and the reason why such project is necessary in the national interest, or each such committee before the expiration of such 30-day period has notified the Administrator that no objection to the proposed action will be made.

SECTION 4

Section 4 would provide that, notwithstanding any other provision of this Act—

(1) no amount appropriated pursuant to this Act may be used for any program deleted by the Congress from requests as originally made to either the House Committee on Commerce, Science, and Transportation;

(2) no amount appropriated pursuant to this Act may be used for any program in excess of the amount actually authorized for that particular program by subsections 1(a) and 1(c); and,

(3) no amount appropriated pursuant to this Act may be used for any program which has not been presented to or requested of either such committee,

unless (A) a period of 30 days has passed after the receipt by the Speaker of the House, the President of the Senate and each such committee of notice given by the Administrator or his designee containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or (B) each such committee before the expiration of such period has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

SECTION 5

Section 5 would express the sense of the Congress that it is in the national interest that consideration be given to geographical distribution of Federal research funds whenever feasible and that the National Aeronautics and Space Administration should explore ways and means of distributing its research and development funds whenever feasible.

SECTION 6

Section 6 would authorize to be appropriated to the National Aeronautics and Space Administration for fiscal year 1982 such sums as may be necessary: (a) for "Research and development," (b) for "Construction of facilities," and (c) for "Research and program management." All of the limitations and other provisions of the Act applicable to amounts appropriated pursuant to subsections (a), (b), and (c) of section 1 would apply in the same manner to amounts appropriated pursuant to subsections (a), (b), and (c), respectively, of this section.

SECTION 7

Section 7 would provide that the Act may be cited as the National Aeronautics and Space Administration Authorization Act, 1981." ●

By Mr. ROTH:

S. 2242. A bill to amend the Internal Revenue Code of 1954 to provide for a 50-percent maximum rate of income tax for individuals, to provide for a separate computation of such tax on personal service income and nonpersonal service income, and for other purposes; to the Committee on Finance.

SAVINGS EXPANSION ACT

Mr. ROTH. Mr. President, I am today introducing legislation to encourage the savings necessary to expand economic growth in the United States.

We must expand economic growth, and increased savings is critical to economic growth.

Nothing is more important than growth. The basic choice facing the economy is to grow or not to grow. If we had put a modest but sustained growth policy

in place in 1950, the results would by now be enormous. Consider the period 1950 to 1979. In 1979, U.S. GNP reached $2⅓ trillion. It could have been $3½ trillion.

Between 1950 and 1979, the average annual growth of the U.S. economy in real terms was 3.6 percent. Many other major industrialized countries grew at annual real rates averaging in excess of 5.5 percent. If the United States had grown an average 1.5 percent faster each year since 1950, at a rate of just over 5.0 percent, its GNP in 1979 would have been $3½ trillion.

With a $3½ trillion economy, incomes would have been 50-percent higher than they were in 1979. Jobs would have been plentiful. Federal revenues in 1979 would have been $250 billion higher, enough to have provided for a balanced budget, welfare reform, national health insurance, and unquestioned military preeminence, with enough left over to have let us reduce payroll and income taxes instead of raising them. Of course, price stability would have been another spin-off of the growth of real output and the balanced budget.

Faster growth, higher incomes, and plentiful jobs are exactly what the unemployed, underprivileged, and the minorities of this country have been seeking for many years. It is no accident that the greatest gains in income, jobs, and dignity for minority workers have come during period of rapid expansion.

Savings is the key to increased economic growth. Saving, basically, is the amount of each year's GNP left over after immediate consumption. Only the amount saved provides the resources for investing in long-term capital goods, the plant and equipment that expands capacity, increases productivity, and stabilizes prices.

The United States has the lowest rate of saving in the Western World, resulting in the lowest rate of productivity growth, investment, and real wage increases among the major industrialized nations. Personal savings is falling because inflation and high tax rates reduce the real rate of return on savings. As people are pushed into higher tax brackets, they get to keep less of each additional dollars of savings income. Since income from savings is added to earned income, the highest tax rate each taxpayer pays is imposed on his or her savings income. The higher the tax rate individuals face on the additional income from saving, the less likely they are to save. Thus, the present high tax rates discourages new savings, encourage consumption, and force savings away from productive investments into tax-exempt bonds and tax shelters.

The total amount of savings in the United States—personal saving, retained earnings, and depreciation set-asides—has already fallen so low that we are not providing enough investment to keep pace with replacing worn-out machinery and equipping a growing labor force. This is leading to falling productivity, lower real wages and reduced job opportunities. Unless action is taken, we face a decade of stagnation.

Furthermore, millions of taxpayers have purchased bonds and made deposits at low-interest rates in years past, only to find these rates overwhelmed by inflation. Their real rate of return on most stocks and bond is now less than zero, yet is considered to be income and is taxed as such. This is particularly hard on retirees.

In order to encourage additional savings, the tax rates at which additional savings income is taxed must be reduced.

The legislation I am introducing today, which is also being introduced today in the House by Congressman BROWN of Ohio and Congressman ROUSSELOT of California, proposes to reduce the tax rate on additional savings by treating interest and dividend income more equally with earned income.

Specifically, the bill reduces the top marginal tax rate to 50 percent from its current level of 70 percent.

It further provides that earned income and savings income shall be taxed separately, after allowable deductions and exemptions, with the first dollars of each type of income starting in the lowest tax brackets. A limit on eligibility is imposed for those upper income taxpayers with more than $10,000 in certain sheltered "preference" income.

The bill equalizes tax rates for both earned and unearned income at rates ranging from 14 percent to 50 percent. This ends the discrimination against saving which has been in the code since 1969. Currently, "personal service income" faces a maximum tax rate of 50 percent, while savings income faces a top rate of 70 percent. The change will ultimately lead to more Federal revenue, because of a sharp drop in the use of tax shelters as the top rate is reduced.

Furthermore, lower and middle income tax rates on savings income are reduced by an income-splitting provision. In current law, after exemptions, earned and unearned income are added together to obtain taxable income, stacking one on top of the other to reach the higher brackets. Under this proposal, each taxpayer would compute a tax on earned income alone, and on unearned income alone, and then add the taxes together. In this way, the first dollar of each type of income would start in the 14-percent tax bracket.

Each type of income would rise only through as many brackets as its own size would warrant. The result would be lower tax rates on added income of both types. Specifically, the tax rate on additional interest and dividends from added savings would be in a lower tax bracket than at present for most taxpayers, resulting in more incentive to add to savings.

Currently, individuals with more than $10,000 in "preference" income—income from tax-sheltered activities—are subject to the minimum tax. As a further inducement for such individuals to return to more productive, ordinary investment, the bill limits the participation of those upper income individuals who continue to use tax shelters. Individuals with more than $10,000 in preference income—other than capital gains—are prohibited from using this income-splitting provision.

Mr. President, for most working-age taxpayers, the bulk of income is earned with only a few hundred or a few thousand in savings income added on the top. This bill would bring this income down from the taxpayer's top tax bracket, where it may face rates of 24, 36, or even 70 percent, and puts it into the 14 or 16 percent brackets, producing increased savings incentives at relatively low cost.

Outside of completely exempting all interest and dividend income from taxation, the most effective way to encourage increased savings is to reduce the marginal tax rates on interest and dividend income.

On equity grounds, and as a key first step, I supported and voted for the legislation to provide a tax exemption of up to $400 for interest and dividend income.

This legislation is designed to build on the savings exemption, and I intend to modify this bill as soon as the savings exemption issue is resolved. For in order to encourage additional savings, the tax rates at which additional savings income is taxed must be reduced. By starting both earned and unearned income off in the lowest tax bracket and at the lowest tax rates, and by applying the 50-percent maximum earned income tax rate to unearned income, the Savings Expansion Act reduces the marginal tax rates an additional interest and dividend income—increasing the rate of return on saving and encouraging the additional savings needed to increase productivity, restrain inflation, and expand real economic growth.

Mr. President, I ask unanimous consent that the bill and a Wall Street Journal editorial endorsing this legislation be printed in the RECORD.

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

S. 2242

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

SECTION 1. AMENDMENT OF 1954 CODE, ETC.

(a) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Secretary of the Treasury or his delegate shall, not later than 90 days after the date of the enactment of this Act, submit to the Committee on Ways and Means of the House of Representatives a draft of the technical and conforming amendments which are necessary to reflect throughout the Internal Revenue Code of 1954 the substantive amendments made by this Act.

SEC. 2. 50-PERCENT MAXIMUM RATE FOR INDIVIDUALS; SEPARATE COMPUTATION OF TAX

"(a) GENERAL RULE.—Section 1 (relating to tax imposed on individuals) is amended to read as follows:

"SECTION 1. TAX IMPOSED.

(a) GENERAL RULE.—

"(1) INDIVIDUALS.—Except as provided in paragraph (2), there is hereby imposed on the income of every individual a tax equal to the sum of—

"(A) the tax on personal service taxable income determined under the applicable rate schedule, plus

"(B) the tax on nonpersonal service taxable income determined under the applicable rate schedule.

"(2) CERTAIN INDIVIDUALS WITH ITEMS OF

TAX PREFERENCE, ESTATES AND TRUSTS.—There is hereby imposed on the income of—

(A) every individual who has items of tax preference described in section 57(a) (other than paragraph (9) thereof) for the taxable year in excess of $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 143)), and

"(B) every estate or trust taxable under this section,

a tax equal to the tax on taxable income determined under the applicable rate schedule.

"(b) APPLICABLE RATE SCHEDULE FOR MARRIED INDIVIDUALS FILING JOINT RETURNS.—In the case of—

"(1) every married individual (as defined in section 143) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

the following is the applicable rate schedule:

"If the amount on which the tax is to be determined is:	The tax is:
Not over $2,100	14% of taxable income.
Over $2,100 but not over $4,200	$294, plus 16% of excess over $2,100.
Over $4,200 but not over $8,500	$630, plus 18% of excess over $4,200.
Over $8,500 but not over $12,600	$1,404, plus 21% of excess over $8,500.
Over $12,600 but not over $16,800	$2,265, plus 24% of excess over $12,600.
Over $16,800 but not over $21,200	$3,273, plus 28% of excess over $16,800.
Over $21,200 but not over $26,500	$4,505, plus 32% of excess over $21,200.
Over $26,500 but not over $31,800	$6,201, plus 37% of excess over $26,500.
Over $31,800 but not over $42,400	$8,162, plus 43% of excess over $31,800.
Over $42,400 but not over $56,600	$12,720, plus 49% of excess over $42,400.
Over $56,600	$19,678, plus 50% of excess over $56,600.

"(c) HEADS OF HOUSEHOLDS.—In the case of every individual who is the head of a household (as defined in section 2(b)), the following is the applicable rate schedule:

"If the amount on which the tax is to be determined is:	The tax is:
Not over $2,100	14% of taxable income.
Over $2,100 but not over $4,200	$294, plus 16% of excess over $2,100.
Over $4,200 but not over $6,400	$630, plus 18% of excess over $4,200.
Over $6,400 but not over $9,500	$1,026, plus 22% of excess over $6,400.
Over $9,500 but not over $12,700	$1,708, plus 24% of excess over $9,500.
Over $12,700 but not over $15,900	$2,476, plus 26% of excess over $12,700.
Over $15,900 but not over $21,200	$3,308, plus 31% of excess over $15,900.
Over $21,200 but not over $26,500	$4,951, plus 38% of excess over $21,200.
Over $26,500 but not over $31,800	$6,859, plus 42% of excess over $26,500.
Over $31,800 but not over $42,400	$9,085, plus 46% of excess over $31,800.
Over $42,400	$13,961, plus 50% of excess over $42,400.

"(d) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—In the case of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 143) the following is the applicable rate schedule:

"If the amount on which the tax is to be determined is:	The tax is:
Not over $1,100	14% of taxable income.
Over $1,100 but not over $2,100	$154, plus 16% of excess over $1,100.
Over $2,100 but not over $4,200	$314, plus 18% of excess over $2,100.
Over $4,200 but not over $6,200	$692, plus 19% of excess over $4,200.
Over $6,200 but not over $8,500	$1,072, plus 21% of excess over $6,200.
Over $8,500 but not over $10,600	$1,555, plus 24% of excess over $8,500.
Over $10,600 but not over $12,700	$2,059, plus 26% of excess over $10,600.
Over $12,700 but not over $15,900	$2,605, plus 30% of excess over $12,700.
Over $15,900 but not over $21,200	$3,565, plus 34% of excess over $15,900.
Over $21,200 but not over $26,500	$5,367, plus 39% of excess over $21,200.
Over $26,500 but not over $31,800	$7,434, plus 44% of excess over $26,500.
Over $31,800 but not over $39,200	$9,766, plus 49% of excess over $31,800.
Over $39,200	$13,392, plus 50% of excess over $39,200.

"(e) SEPARATE RETURNS BY MARRIED INDIVIDUALS; ESTATES AND TRUSTS.—In the case of—

"(1) every married individual (as defined in section 143) who does not make a single return jointly with his spouse under section 6013, and

"(2) every estate and trust taxable under this subsection,

the following is the applicable rate schedule:

"If the amount on which the tax is to be determined is:	The tax is:
Not over $1,050	14% of taxable income.
Over $1,050 but not over $2,100	$147, plus 16% of excess over $1,050.
Over $2,100 but not over $4,250	$315, plus 18% of excess over $2,100.
Over $4,250 but not over $6,300	$702, plus 21% of excess over $4,250.
Over $6,300 but not over $8,400	$1,132.50 plus 24% of excess over $6,300.
Over $8,400 but not over $10,600	$1,636.50, plus 28% of excess over $8,400.
Over $10,600 but not over $13,250	$2,252.50, plus 32% of excess over $10,600.
Over $13,250 but not over $15,900	$3,100.50, plus 37% of excess over $13,250.
Over $15,900 but not over $21,200	$4,081, plus 43% of excess over $15,900.
Over $21,200 but not over $28,300	$6,360, plus 49% of excess over $21,200.
Over $28,300	$9,839, plus 50% of excess over $28,300."

(b) DETERMINATION OF INCOME.—Section 63 (defining taxable income) is amended to read as follows:

"SEC. 63. TAXABLE INCOME DEFINED.

"(a) CORPORATIONS.—For purposes of this subtitle, in the case of a corporation, the term 'taxable income' means gross income minus the deductions allowed by this chapter.

"(b) INDIVIDUALS.—For purposes of this subtitle, in the case of an individual—

"(1) PERSONAL SERVICE TAXABLE INCOME.—The term 'personal service taxable income' means personal service income reduced by so much of the allowable deductions as the individual elects to allocate against such income.

"(2) NONPERSONAL SERVICE TAXABLE INCOME.—The term 'nonpersonal service taxable income' means gross income reduced by the sum of—

"(A) personal service income, plus

"(B) so much of the allowable deductions as are not allocated against personal service income under paragraph (1).

"(3) TAXABLE INCOME.—The term 'taxable income' means gross income minus the allowable deductions.

"(4) ALLOWABLE DEDUCTIONS.—The term 'allowable deductions' means—

"(A) in the case of an individual who elects to itemize his deductions, the deductions allowed by this chapter, or

"(B) in the case of any other individual, the sum of—

"(i) the deductions allowable in arriving at adjusted gross income.

"(ii) the deductions for personal exemptions provided by section 151, and

"(iii) the standard amount.

"(c) STANDARD AMOUNT.—For purposes of this subtitle—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'standard amount' means—

"(A) $3,400 in the case of—

"(i) a joint return under section 6013, or

"(ii) a surviving spouse (as defined in section 2(a)),

"(B) $2,300 in the case of an individual who is not married and who is not a surviving spouse (as so defined),

"(C) $1,700 in the case of a married individual filing a separate return, or

"(D) zero in any other case.

"(2) SPECIAL RULE FOR CERTAIN DEPENDENTS.—In the case of an individual with respect to whom a deduction under section 151(e) is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the term 'standard amount' shall not exceed such individual's earned income (as defined in section 911(b)) for such taxable year.

"(d) PERSONAL SERVICE INCOME.—For purposes of this section—

"(1) IN GENERAL.—The term 'personal service income' means any income which is earned income within the meaning of section 401(c)(2)(C) or section 911(b) or which is an amount received as a pension or annuity which arises from an employer-employee relationship or from tax-deductible contributions to a retirement plan. For purposes of this paragraph, section 911(b) shall be applied without regard to the phrase ', not in excess of 30 percent of his share of net profits of such trade or business,'.

"(2) EXCEPTIONS.—The term 'personal service income' does not include any amount—

"(A) to which section 72(m)(5), 402(a)(2), 402(e), 403(a)(2), 408(e)(2), 408(e)(3), 408(e)(4), 408(e)(5), 408(f), or 409(c) applies; or

"(B) which is includable in gross income under section 409(b) because of the redemption of a bond which was not tendered before the close of the taxable year in which the registered owner attained age 70½.

"(e) ITEMIZED DEDUCTIONS.—For purposes of this subtitle, the term 'itemized deductions' means the deductions allowable by this chapter other than—

"(1) the deductions allowable in arriving at adjusted gross income, and

"(2) the deductions for personal exemptions provided by section 151.

"(f) ELECTION TO ITEMIZE.—

"(1) IN GENERAL.—Unless an individual makes an election under this subsection for the taxable year, no itemized deduction shall be allowed for the taxable year. For purposes of this subtitle, the determination of whether a deduction is allowable under this chapter shall be made without regard to the preceding sentence.

"(2) WHO MAY ELECT.—Except as provided in paragraph (3), an individual may make an election under this subsection for the taxable year only if such individual's itemized deductions exceed the standard amount.

"(3) CERTAIN INDIVIDUALS TREATED AS ELECTING TO ITEMIZE.—The following individuals shall be treated as having made an election under this subsection for the taxable year:

"(A) a married individual filing a separate return where either spouse itemizes deductions.

"(B) a nonresident alien individual, and

"(C) a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States).

"(4) TIME AND MANNER OF ELECTION.—Any election under this subsection shall be made on the taxpayer's return, and the Secretary shall prescribe the manner of signifying such election on the return.

"(5) CHANGE OF TREATMENT.—Under regulations prescribed by the Secretary, a change of treatment with respect to the standard amount and itemized deductions for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations—

"(A) the spouse makes a change of treatment with respect to the standard amount and itemized deductions, for the taxable year covered in such separate return, consistent with the change of treatment sought by the taxpayer, and

"(B) the taxpayer and his spouse consent in writing to the assessment, within such period as may be agreed on with the Secretary, of any deficiency, to the extent attributable to such change of treatment, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

This paragraph shall not apply if the tax liability of the taxpayer's spouse, for the taxable year corresponding to the taxable year of the taxpayer, has been compromised under section 7122.

"(g) MARITAL STATUS.—For purposes of this section, marital status shall be determined under section 143."

(c) REPEAL OF MAXIMUM RATE ON PERSONAL SERVICE INCOME.—Part VI of subchapter Q of chapter 1 is hereby repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1980.

[From the Wall Street Journal, Nov. 28, 1979]

RESCUING SAVINGS

Late in the day, the Senate has begun to worry about the damage the proposed "windfall profits tax" on oil could do to national savings. Corporate profits, after all, are a major source of economic savings, meaning money set aside to expand and replenish the Nation's productive capital.

So this week the Senate Finance Committee is trying to agree on a savings amendment to the windfall bill. This late rider is at least as important as the main body of the bill because it could determine the tax treatment of savings over the next 10 years and hence bear heavily on the future productivity of the U.S. economy.

The saving rate in the U.S. is very low. Of the total amount of savings generated, a chunk is taken off the top to finance the government's budget deficit. Most of what's left goes to replace worn out plant and equipment. Of the funds remaining for net investment, practically every dollar is needed to equip the growing labor force so that productivity per worker doesn't decline. Steve Entin of the Joint Economic Committee staff has calculated that in 1977-78 there was less than $5 billion left with which to meet mandated spending on environmental and safety equipment and to finance real economic growth. Little wonder U.S. productivity is so low.

Now enter the "windfall profits" tax. It's going to reduce the oil industry's cash flow and ability to finance investment internally. That means a decline in total savings, a decline that Donald Lubick, Assistant Secretary of the Treasury for Tax Policy, acknowledges when he says that "funds to finance investment in new field capacity will come from the private sector through capital markets as it did at the birth of the oil business."

Of course, if oil industry revenues were to balloon with decontrol, the tax would not be at the expense of the current retained earnings of the industry. But we have explained in previous columns why crude oil price decontrol is unlikely to significantly increase oil industry revenues, and Mr. Roberts brings these points up to date elsewhere on this page today. Members of the Finance Committee themselves are beginning to wonder how oil industry revenues can rise when consumers are already paying the world price for refined products. However, they are still determined to take advantage of the public ire toward oil companies induced by years of demagogy, and lay on a big new tax.

They are frightened, though, by recognition of what their bill will do to savings, investment, productivity and growth. So they are fishing around for some way to offset the effect on savings. If the Senators are intent on passing this destructive bill to begin with, we suppose it's good that they want to rescue savings. So they could do a lot worse than to hook on to the approach that Senator Roth and Representatives Bud Brown and John Rousselot have been working on.

These lawmakers have figured out that there's a difference between giving a tax break on existing savings and encouraging new, additional savings. An interest deduction from taxable income doesn't affect the tax rates; it just excludes a fixed amount of interest income from tax, and once the exclusion is used up any new saving is taxed at the existing high rates.

At the present time savings income (interest and dividends) is stacked on top of wages and salaries for tax computation. In other words, wages and salaries enter the tax brackets at a rate that begins at 14 percent and runs up to 50 percent. Savings income then enters the tax brackets at a rate that begins at the highest marginal rate applicable to the taxpayer's wage or salary income and runs from there up to 70 percent.

What Senator Roth and Representatives Brown and Rousselot want to do is to treat savings income the same as wage and salary income by splitting it out and taxing it at the same 14–15 percent rates. By eliminating the tax discrimination against savings income, this approach significantly lowers tax rates and provides an incentive to every earner to save more of his income.

In addition to encouraging more savings, the Roth-Brown-Rousselot approach would pull a lot of savings out of tax shelters and add to the economy's productivity.

But whether the Finance Committee goes with this particular approach or not, we hope the Senators have learned enough supply-side economics to recognize that if they are serious about savings, they must increase the after-tax rate of return to new savings.

For our part, we will be holding our breath. Any Congress that can come up with a piece of legislation as obscene as the "windfall profits" tax can come up with an awful savings amendment as well.

ADDITIONAL COSPONORS

S. 1843

At the request of Mr. CRANSTON, the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HART), and the Senator from Florida (Mr. STONE) were added as cosponsors of S. 1843, a bill to provide for Federal support and stimulation of State, local, and community activities to prevent domestic violence and provide immediate shelter and other assistance for victims of domestic violence, for coordination of Federal programs and activities pertaining to domestic violence, and for other purposes.

S. 2084

At the request of Mr. SIMPSON, the Senator from Oklahoma (Mr. BELLMON) was added as a cosponsor of S. 2084, a bill to deny eligibility for unemployment compensation benefits to certain members of the armed forces who are discharged from active duty before completion of at least five-sixths of their initial enlistment obligations.

S. 2166

At the request of Mr. MELCHER, the Senator from North Dakota (Mr.

YOUNG), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Hawaii (Mr. MATSUNAGA) were added as cosponsors of S. 2166, a bill to promote the development of Native American culture and art.

S. 2189

At the request of Mr. JACKSON, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 2189, a bill to establish a program for Federal storage of spent fuel from civilian nuclear prowerplants, to set forth a Federal policy and initiate a program for the disposal of nuclear waste from civilian activities, and for other purposes.

At the request of Mr. JOHNSTON, the Senator from Idaho (Mr. CHURCH), the Senator from Texas (Mr. TOWER), and the Senator from Washington (Mr. JACKSON) were added as cosponsors of S. 2189, supra.

SENATE JOINT RESOLUTION 82

At the request of Mr. GOLDWATER, the Senator from Utah (Mr. GARN) was added as a cosponsor of Senate Joint Resolution 82, a joint resolution to designate the week commencing with the third Monday in February of each year as "National Patriotism Week".

SENATE JOINT RESOLUTION 133

At the request of Mr. MCGOVERN, the Senator from Washington (Mr. MAGNUSON) was added as a cosponsor of Senate Joint Resolution 133, a joint resolution requesting the Secretary of Agriculture, in cooperation with the Secretary of Health, Education, and Welfare, to develop a plan for local nutrition monitoring throughout the United States.

SENATE CONCURRENT RESOLUTION 60

At the request of Mr. JEPSEN, the Senator from Arizona (Mr. GOLDWATER), the Senator from Utah (Mr. GARN), and the Senator from Alabama (Mr. HEFLIN) were added as cosponsors of Senate Concurrent Resolution 60, a concurrent resolution expressing the sense of the Congress with respect to the treatment of Christians by the Union of Soviet Socialist Republics, and for other purposes.

SENATE CONCURRENT RESOLUTION 61

At the request of Mr. JEPSEN, the Senator from Arizona (Mr. GOLDWATER), the Senator from Utah (Mr. GARN), and the Senator from Alabama (Mr. HEFLIN) were added as cosponsors of Senate Concurrent Resolution 61, a concurrent resolution expressing the sense of the Congress with respect to the treatment of Christians by the Union of Soviet Socialist Republics, and for other purposes.

SENATE RESOLUTION 308

At the request of Mrs. KASSEBAUM, the Senator from Oregon (Mr. PACKWOOD), and the Senator from Kansas (Mr. DOLE) were added as cosponsors of Senate Resolution 308, a resolution to express the sense of the Senate that parity for women's track and field events should be achieved in the 1984 Olympic games.

AMENDMENT NO. 731

At the request of Mr. PERCY, the Senator from Connecticut (Mr. WEICKER), the Senator from Alaska (Mr. STEVENS), and the Senator from Washington (Mr. JACKSON) were added as cosponsors of amendmetnt No. 731 proposed to H.R. 3236, a bill to amend title II of the Social Security Act to provide better work incentives and improved accountability in the disability insurance program, and for other purposes.

AMENDMENT NO. 749

At the request of Mr. METZENBAUM, his name was added as a cosponsor of amendment No. 749 proposed to H.R. 3236, a bill to amend title II of the Social Security Act to provide better work incentives and improved accountability in the disability insurance program, and for other purposes.

SENATE RESOLUTION 344—SUBMISSION OF A RESOLUTION COMMENDING CANADA FOR ITS ACTIONS WITH RESPECT TO CERTAIN UNITED STATES CITIZENS IN IRAN

Mr. CHILES (for himself, Mr. CHURCH, Mr. PELL, Mr. MCGOVERN, Mr. BIDEN, Mr. SARBANES, Mr. ZORINSKY, Mr. JAVITS, Mr. PERCY, Mr. HAYAKAWA, Mr. GLENN, Mr. NUNN, Mr. WILLIAMS, Mr. EXON, Mr. DOMENICI, Mr. MATHIAS, Mr. ROBERT C. BYRD, Mr. STEVENS, Mr. ROTH, and Mr. DOLE) submitted the following resolution, which was referred to the Committee on Foreign Relations:

S. RES. 344

Whereas six Americans sought refuge in Tehran after the takeover of the United States Embassy in November 1979;

Whereas the Americans were given refuge by the Canadian Embassy for twelve weeks;

Whereas the whereabouts of these Americans was kept a secret in order to protect the lives of those Americans held at the United States Embassy;

Whereas this action was taken despite the threat this posed to the lives of Canadian Embassy officials;

Whereas Canadian Ambassador Kenneth Taylor acted with particular courage and compassion in seeking the eventual departure of the Americans from Iran; and

Whereas the six Americans have now safely left Iran:

Resolved, That the Senate, on behalf of all Americans, hereby commends the Government of Canada for its actions in protecting certain United States citizens and arranging for their departure from Iran.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President with the request that he transmit such copy to the Government of Canada.

SENATE RESOLUTION 345—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON VETERANS' AFFAIRS

Mr. CRANSTON, from the Committee on Veterans' Affairs, reported the following original resolution, which was referred to the Committee on Rules and Administration:

S. RES. 345

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, the Committee on Veterans' Affairs is authorized from March 1, 1980, through February 28, 1981, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $269,000, of which amount not to exceed $14,800 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202 (i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1981.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SENATE RESOLUTION 346—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JACKSON, from the Committee on Energy and Natural Resources, reported the following original resolution, which was referred to the Committee on Rules and Administration:

S. RES. 346

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, the Committee on Energy and Natural Resources is authorized from March 1, 1980, through February 28, 1981, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $1,583,700, of which amount (1) not to exceed $25,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $10,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1981.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SENATE RESOLUTION 347—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON RULES AND ADMINISTRATION

Mr. PELL, from the Committee on Rules and Administration, reported the following original resolution, which was ordered placed on the calendar:

S. RES. 347

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, the Committee on Rules and Administration is authorized from March 1, 1980, through February 28, 1981, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $715,900, of which amount not to exceed $20,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(1) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1981.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SENATE RESOLUTION 348—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY

Mr. PELL, from the Comittee on Rules and Administration, reported the following original resolution, which was ordered placed on the calendar:

S. RES. 348

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Angelina C. Beckmann, widow of Bernard J. Beckmann, an employee of the Senate at the time of his death, a sum equal to eight and one-half months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 349—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY

Mr. PELL, from the Comittee on Rules and Administration, reported the following original resolution, which was ordered placed on the calendar:

S. RES. 349

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Carolyn Watson, mother of W. David Watson and to Abraham G. Watson, father of W. David Watson, an employee of the Senate at the time of his death, a sum to each equal to two and one-half months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 350—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON THE JUDICIARY

Mr. THURMOND, from the Committee on the Judiciary, reported the following original resolution, which was referred to the Committee on Rules and Administration:

S. RES. 350

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, the Committee on the Judiciary is authorized from March 1, 1980, through February 28, 1981, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $4,971,700, of which amount (1) not to exceed $177,500 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(1) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $3,350 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1981.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

AMENDMENTS SUBMITTED FOR PRINTING

FEDERAL RESERVE MODIFICATION ACT OF 1979—S. 353

AMENDMENTS NOS. 1642 THROUGH 1644

(Ordered to be printed and referred to the Committee on Banking, Housing, and Urban Affairs.)

Mr. TOWER submitted three amendments intended to be proposed by him, jointly, to S. 353, a bill to facilitate the development and implementation of monetary policy; to reduce and restructure reserve requirements; and to provide for the maintenance of reserves by member banks and other depository institutions in Earnings Participation Accounts at the Federal Reserve banks.

● Mr. TOWER. Mr. President, I am submitting today three amendments to S. 353, legislation which I introduced approximately 1 year ago to facilitate the development of Federal Reserve monetary policy and to reduce the burdens of Fed membership. These amendments, together with S. 353, will be the subject of Banking Committee hearings on February 4 and 5.

The first amendment will revise the reserve requirement provisions of S. 353 so as to have all transaction accounts, including NOW, automatic transfer, and demand-deposit accounts, subject to the same reserve standards. This amendment would set reserve requirements on the first $35 million in transaction accounts at 3 percent. All other reserve ranges in S. 353 would remain the same.

During the Banking Committee's markup session on Federal Reserve membership legislation this past November, I indicated that I would propose an amendment to S. 353 to direct the Federal Reserve to establish a pricing schedule for Fed services. Accordingly, the second amendment would require the Federal Reserve to price its services and charge interest on its float. The Fed has been moving in this direction, but I believe that this should be specifically required as part of any Fed membership bill.

The third amendment would authorize the Federal Reserve, by unanimous vote, to impose for limited periods of time supplemental reserve requirements on transaction accounts at all depository institutions. Under the amendment, the Fed could impose a reserve requirement of up to 3 percent on the first $35 million of an institution's transaction balances and a requirement of up to 5 percent on such balances in excess of $35 million.

All supplemental reserve balances would have to be maintained at a Federal Reserve Bank, either directly or indirectly, and vault cash could not be used to satisfy the reserve requirement. Supplemental reserves were discussed at the Banking Committee's November 7 markup as a tool which the Federal Reserve might need if a monetary policy or other economic emergency exists.

While I believe that S. 353, without the supplemental reserve requirements, would enable the Federal Reserve to conduct monetary policy adequately, I believe that supplemental reserve requirements should be discussed at next week's hearings, particularly since the Fed first proposed the possible need for such requirements.

Although I have expressed some skepticism as to the need for supplemental reserves, I do want to state clearly that the amendments regarding transaction accounts and pricing of services are beneficial and should be accepted as part of S. 353.●

SOCIAL SECURITY DISABILITY AMENDMENTS OF 1979—H.R. 3236

AMENDMENT NO. 1645

(Ordered to be printed and to lie on the table.)

Mr. BELLMON submitted an amendment intended to be proposed by him to H.R. 3236, an act to amend title II of the Social Security Act to provide better

work incentives and improved accountability in the disability insurance program, and for other purposes.

AMENDMENT NO. 1646

(Ordered to be printed.)

Mr. JAVITS proposed an amendment to H.R. 3236, supra.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

● Mr. JACKSON. Mr. President, I would like to announce a change in the schedule for the hearings on the geopolitics of oil held by the Committee on Energy and Natural Resources. In place of the closed session previously scheduled for February 5, the committee will hold an open hearing the same day in room 3110 of the Dirksen Senate Office Building. The subject of the hearing will be the Geopolitics of the Middle East, and the witness will be Prof. Bernard Lewis of the Princeton University Institute for Advanced Study. The hearing will begin at 9 a.m. The revised schedule for the other briefings is as follows:

February 7.—Other producers (Producers that are not members of OAPEC).

February 14.—The Soviet Union and Eastern Bloc.

February 19.—The industrialized consumers.

February 21.—The less developed countries.

With the exception of the February 5 hearing, the briefings will commence at 8:30 a.m. in room S-407 of the Capitol and will be closed to the public. Questions concerning the briefings should be directed to Jim Pugash, staff counsel, at (202) 224-0611.●

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

● Mr. WILLIAMS. Mr. President, I wish to announce that the Subcommittee on Housing and Urban Affairs, which I chair on the Banking, Housing, and Urban Affairs Committee has scheduled a hearing on Wednesday, February 6, 1980, at 9:30 a.m. in room 5302 Dirksen Senate Office Building. The hearing will focus on the state of the single and multifamily housing markets and pending proposals to revise the Emergency Home Purchase Assistance Act of 1974 (S. 2177 and S. 2178).●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. LONG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate today to hear administration, congressional, and former administration officials on the proposed arms sales to Morocco.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. LONG. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today, beginning at 10 a.m., to mark up the Committee Budget.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. LONG. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet during the session of the Senate today to hold a hearing on S. 2055, legislation to establish a reservation for the Siletz Tribe.

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

ADDITIONAL STATEMENTS

THE PROBLEM OF UNDOCUMENTED WORKERS IN THE UNITED STATES

● Mr. HAYAKAWA. Mr. President, the problem of undocumented workers in the United States is rooted deeply in the economic health of Mexico. Unfortunately, Mexico has just experienced its worst harvest in 30 years—a situation which is expected to send more than the usual number of workers across the border seeking employment. It is vitally important, therefore, that the Congress of the United States begins to deal with the problem of illegal immigration from Mexico. It is a problem that has been with us for some time, and will be with us until we legislate a solution. Numerous solutions have been proposed, ranging from an open border to a high fence. I have sponsored legislation to provide Mexican workers with temporary work permits; many of my colleagues have introduced other measures.

However, I have yet to see significant action on this issue. We need to hold hearings in committee, report legislation, and debate the issue on the Senate floor. This situation, as a recent article in the Los Angeles Times illustrates, will only become more severe. I ask that the article be reprinted in its entirety for the benefit of my colleagues.

The article follows:

CROP FAILURE DRIVES MEXICANS NORTH

(By Mark Seibel)

MEXICO CITY.—Mexico's worst harvest in 30 years could drive thousands more undocumented Mexicans to the United States in search of work at a time when talk of recession and high interest rates have many Americans fearing for their jobs.

Mexican and U.S. analysts say there is no way to determine how many Mexicans will cross the border because of the poor harvests.

Officials have blamed low rainfall and early frosts for causing the yield of beans and corn, staples in the Mexican diet, to decline by 32 percent and 18 percent respectively.

"There's no way to tell how many will cross the border," said Vernon McAgnich, the U.S. general counsel here. "But you can bet an increase."

Peasant leaders in some states already are saying their compadres are leaving for the United States, and analysts here point out that of the eight Mexican states, U.S. officials believe to be the primary source of undocumented workers, only one—Guanajuato—did not suffer losses in both beans and corn crops.

Farmers in Guanajuato, whose capital, also named Guanajuato, is about 150 miles northwest of Mexico City, did note a 40 percent drop in corn production. But the bean crop was up nearly 50 percent.

That rise was hardly enough to offset major losses in most of Mexico's 31 states, however. In Durango state, for example, the corn yield dropped 59 percent and the bean harvest declined 81 percent, from 131,416 tons in 1978 to 24,204 tons in 1979. Durango is about 350 miles south of the Texas border.

Overall, Mexico's corn harvest was nearly 2 million tons less this year than the record 10 million ton harvest last year, and the bean harvest dropped from 930,000 tons last year to 628,000 this year and the sorghum yield dropped 4 percent.

Mexico's agriculture minister, Francisco Merino Rabago, called it the "worst agricultural year in three decades."

Although the huge farms in Senora and Sinaloa posted record yields of soybeans this year and the rice and cotton harvests also were better than last year's, nothing can compensate for the loss of corn and beans. Soybeans, cotton and rice are grown on large, efficiently managed farms, but Mexico's beans and corn primarily are grown on small family plots, and the farmers rely on the corn not just as a commodity to sell, but as next year's food for their families.

The situation is complicated because the drop in the sorghum crop will force peasants to feed corn to their livestock.

Enrique Dias Ballasteros, director of the government's National Company for Public Sustenance, insists that the poor harvest does not mean Mexicans will starve next year. "It won't be anything extraordinary," he said. And Mexican officials point out that the corn harvest of 8.9 million tons is still more than the 8.3 million that officials say Mexico needs to fulfill its internal needs.

But the government has taken emergency measures in 18 of Mexico's 31 states in an effort to reassure the residents that there will be enough food for next year.

The government has announced that it will provide more than 4 million "man-days" of work to residents in the stricken areas and has said workers will be paid not only in cash but with food provided by the government's National Company for Public Sustenance, a sprawling enterprise that not only imports foodstuffs, but also sells them in 6,000 supermarkets throughout the country.

Conasupo, as the national company is known here, also announced Friday that next year it will purchase 4.2 million tons of grain from foreign sources, mostly in the United States, at a total cost of more than $807 million. Nearly 3 million tons of that will make up the poor harvest, officials said.

Analysts here say the government's efforts are aimed at forestalling the expected migration from the fields, which, they point out, affects Mexico's overcrowded urban centers even more than it does the United States.

Few here, however, anticipate that the efforts will discourage the peasants from leaving their lands.

Analysts point out that in at least eight of the states that have suffered agricultural losses this year, economic conditions were such that Mexicans left in great numbers anyway.

A report prepared last spring, before the poor harvest, says the eight states—Michoacan, Zacatecas, San Luis Potosi, Jalisco, Durango, Chihuahua, Guanajuato and Nuevo Leon—had high populations and failing agriculture.

"This (the crop failure) will just add to it," said an official who asked that his name not be used. "They will be leaving for jobs, and, I think, to escape hunger."

But the latest exodus may be coming at an inconvenient time.

While the latest U.S. Labor Department statistics show a decline in unemployment during November, from 6 percent to 5.8 percent, economists are still predicting a recession and higher unemployment.

The unemployment may be highest in the construction trades, where Mexican workers have frequently found jobs, particularly in boom states such as Texas.

Even in Dallas, which still boasts of the second highest number of housing starts in the nation, home construction declined 15 percent this year, and researchers are expecting another 20 percent decline next year.

Few experts here care to predict what effect the decline in construction as well as a

recession might have on the expected Mexican influx.

"I doubt they'll have any trouble finding jobs," said a U.S. official.●

CIGARETTE BOOTLEGGING UPDATE

● Mr. MORGAN. Mr. President, during the last session of the 95th Congress, considerable time was taken up in consideration of S. 1487, a bill to make possession of contraband cigarettes a Federal crime. After many days of discussion and deliberation, the bill passed the Senate and after a conference with the House passed into law as Public Law 95-575.

Recently, the Winston-Salem Journal ran an editorial describing life under the new Federal law. In pertinent part, the editorial noted that the cigarette bootlegging law was passed to save an alleged $500 million in tax revenue lost to State governments because of smuggling from low tax States into high tax States. Most of this smuggling was supposed to be done by organized crime and supporters of the bill argued long and hard that they were not interested in the individual who occasionally took a couple of cartons or a case of cigarettes across State lines.

During the debate, I stated that in my opinion the dimensions of the problem had been exaggerated and urged my colleagues who were intent on passage to moderate the provisions of the bill.

Now I think it is of interest to the Senate to know that New York State Taxation Investigation Director, Alfred Donati, Jr., also has some doubts and has stated:

> Whether smuggling was that substantial or whether we were mistaken is being looked at now.

The tax commissioners of New York, Massachusetts, and Pennsylvania now agree that their previous revenue loss estimates were too high, also.

Surprisingly, despite this uncertain foundation, the Winston-Salem Journal goes on to compliment the enforcement effort in North Carolina. The removal of certain unnecessary recordkeeping and reporting provisions by the supporters of the bill in response to my concerns, according to the Journal, has helped enforcement in North Carolina and generated, to some extent, a spirit of cooperation in North Carolina. Because the Congress increased the number of cartons one can buy before triggering reporting procedures, many cigarette dealers will sell the number of cartons not covered by the law but no more. Thus the loser is the organized criminal who must buy in large quantities and who now finds his supply cut off by dealers who do not want to be bothered by new Federal procedures.

Mr. President, let me repeat what I said in 1978. I am fundamentally opposed to the Federal Government's enforcing State tax laws. I still believe quite strongly that this breeds irresponsible action by States who feel that the Federal Government will pick up the tab for enforcing unreasonable State revenue laws.

I also am opposed to open-ended regulatory power for the Federal agencies as advocated by certain Members of the House of Representatives during the conference on this bill in 1978. And I note that because of the efforts of Senator KENNEDY, Senator THURMOND, Senator HATCH, and others during the conference we were able to achieve more reasonable control of Department of Treasury regulations.

An important lesson to be learned from the passage of this bill is that cooperation between Senators to resolve honest disagreements can produce legislation which satisfies legitimate concerns without being unduly oppressive. I wish again to compliment Senators KENNEDY and BELLMON for their willingness to compromise on this bill last year and for their willingness to work with those of us, especially Senators FORD and HUDDLESTON, who were concerned for the interests of legitimate small business persons in our States.

Mr. President, the verdict is still out on Public Law 95-575. As of now it appears to be operating with minimal interference with honest businessmen and with State law enforcement efforts. I reserve my judgment on the need for future funding and continuation of this law, but I am pleased to report on the progress of this legislation as of today.

I request that the editorial of the Winston-Salem Journal of October 23, 1979, be printed in the RECORD.

The editorial follows:

A SIGNIFICANT EFFECT

A task force of federal agents is making progress in battling a serious—though possibly exaggerated—problem: the smuggling of cigarettes from North Carolina to states with substantially higher cigarette taxes. Spurred by claims that state and local governments nationwide were losing up to $500 million a year in lost tax revenues, federal Alcohol, Tobacco and Firearms agents began a crackdown late last year. Agents say that a year-old federal law has helped them to curb the incidence of cigarette smuggling across state lines, but their investigation has led them to conclude that the problem is not as widespread as many have claimed.

"These Northern states were crying to Congress that they were losing so much money," said ATF agent Johnny C. Binkley, who supervises the 16 agents working in North Carolina. "We just simply have not found that to be true." Officials in several Northern states now admit that their previous estimates of lost revenues may have been in error. ". . . Whether smuggling was that substantial or whether we were mistaken is being looked at right now," said Alfred Donati Jr., director of the special investigations bureau in the State of New York, Department of Taxation and Finance. New York tax officials had previously estimated that cigarette smugglers cost the state up to $110 million a year. Officials in Massachusetts and Pennsylvania also now agree that their earlier estimates of tax loss may have been exaggerated.

Whatever the severity of the problem in the past, however, the new federal laws has apparently had a significant effect in curtailing smuggling. The law, which carries a maximum penalty of three years in prison and a $5,000 fine, requires dealers in the state to keep records of the name, address, destination, vehicle license number, signature and declaration of intended use of anyone buying more than 300 cartons of cigarettes. Because of the law, many dealers now simply refuse to sell more than 299 cartons to any buyer. "I have never seen a law, federal or state, that has had such a deterrent effect as this one has," said Brinkley.

The law does little to prevent the individual smoker from stocking up on cigarettes when passing through North Carolina. The disparity between the taxes charged by different states—only two cents in North Carolina, as opposed to more than 20 cents in some Northern states—makes such stockpiling very tempting. What the law does do is discourage the large-scale smuggling of cigarettes across state lines for the purpose of making large profits—precisely the sort of enterprise that organized criminals have been known to favor.

North Carolina Sen. Robert B. Morgan was instrumental in securing modifications in the new law which aimed it more specifically at large-scale organized smuggling while easing the paperwork burden on dealers. The measure, Morgan said at the time, is "not for the purpose of collecting taxes, but instead gets at organized crime." After one year, the federal law seems to be having its desired effect.●

ADDRESS BY WALTER E. HOADLEY OF THE BANK OF AMERICA

● Mr. HAYAKAWA. Mr. President, earlier in January I had the privilege of attending conference on Asia-Pacific in the 1980's: Toward Greater Symmetry in Economic Interdependence. At the conference I had the good fortune to hear Walter E. Hoadley of the Bank of America speak on "Structural Changes in the United States." Mr. Hoadley is a distinguished economist and a member of my Budget Advisory Committee. I would like, therefore, to let the Senate have the benefits of his thoughts and ask that his speech be entered in the RECORD.

The speech follows:

STRUCTURAL CHANGES IN THE UNITED STATES

American values and perspectives have changed markedly during the 1970's and seem likely to continue to do so in the 1980's. The repercussions of these changes are now increasingly evident within the United States and will become more noticeable across the ASEAN countries and the rest of the world in the years just ahead.

In many respects the 1980's will be a Decade of Destiny for the United States.

To some extent our nation wasted the 1970's by not facing more directly many basic problems which were unfolding: e.g., inflation, energy and other shortages, fiscal and monetary discipline, lagging innovations and productivity, balance of payments deficits, declining value of the dollar, and the cleavage between the public and private sectors. You will note that none of these problems is really cyclical. We spent far too much time debating, drifting, and doubting rather than deciding on new courses of action.

Nevertheless, the decade of the 1970's was our nation's greatest period of economic advancement. Few people in the world had a better overall economic year in 1979 than those who lived in the United States.

But, we dare not waste the decade of the 1980's either for ourselves or for the other peoples on the earth. Too much is at stake for all of us.

UNITED STATES PUBLIC ATTENTION NARROWLY FOCUSED

As everyone following developments in the United States knows, our public attention in recent months has been heavily concentrated on Iran, oil, U.S.S.R., Cambodian refugees and the "boat people" and the forthcoming

November Presidential election. Media time has been heavily devoted to these issues.

Relentlessly coming to the surface, however, are basic or structural problems which are beginning to affect more and more Americans in their day-to-day living and therefore are taking on increasing political as well as economic significance. These problems are not new but arise fundamentally out of several decades of public policies which concentrated almost exclusively upon stimulation of domestic demand to put idle people and resources to work.

Each problem reflects longstanding well intentioned public policies and attitudes which have taken too much out of our economy without caring to put sufficient resources and new strength back into it.

At home we encouraged consumption; discouraged innovation, investment, savings, productivity, and work; and met too many costs by having the U.S. government expand the money supply rather than increase taxes. In the international field, we pursued somewhat localized policies. We tended to minimize our increasing vulnerability to foreign supply sources and encouraged others to retain dollars without a forceful strategy to protect their value. We penalized Americans for selling and investing abroad. We downplayed our substantial U.S. competitive advantages including the management skills of U.S. transnational organizations.

More and more Americans now realize that we can no longer afford the luxury of these past policies and practices however well intended.

Our principal national objective can no longer be just full employment as it has been for more than four decades. In fact, full employment, the goal and dream of my generation, has been technically achieved this past year and still prevails widely in our nation. Full employment must continue to be a national objective but not the single most important one. Inflation control has now clearly moved into first place.

Instead of the great satisfaction from full employment predicted by countless scholars and political leaders, we have seen that few people have even noted its actual accomplishment. We now realize once again that expectations and progress along the way often prove more satisfying than full realization of almost any goal. But most Americans seem exceptionally difficult to satisfy these days.

WHY ARE AMERICANS SO NEGATIVE?

1. Bad news.—is about the only news which is offered by the media; record economic performance is now pretty much taken for granted. We still have no satisfactory measures by which to judge our enormous progress in a vast array of dynamic fields, especially in our service enterprises which comprise two-thirds of our national economic activity.

2. Economic security.—is also pretty much taken for granted because most Americans have achieved a large degree of it, now consider it a right, and deem any new economic uncertainty as cause for major concern rather than a normally expected occurrence. Economic security has been accompanied by a steady narrowing of the gap between tax-free welfare benefits and after tax take-home pay from private employment.

3. Perfectionism.—has been adopted by so many Americans that they have little sense of what's "normal" in work, health, or family life and become frustrated when everything is not perfect in a world of imperfect humans.

4. Inflation.—is destroying purchasing power in a way never experienced by most Americans; hence, the old normal of no or low inflation understandably still dominates most adult feelings and current inflationary trends cause alarm.

5. Energy and other shortages.—seem contrived or unreal to 29 year old average aged Americans because limited supplies have really not been a serious threat since World War II, more than three decades ago.

6. Economic developments outside the United States.—have previously provided little or no reason for public interest or concern within our country, so a weak dollar aggravating domestic inflation comes as a distinct surprise. Most U.S. voters believe that our nation has few real friends abroad and too often is forced to face global issues alone.

These developments definitely reflect some of the basic changes taking place in our society and introduce continuing new uncertainties. The very significant overall U.S. economic achievements of the 1970's have dispelled many traditional concerns about job security and no popularly supported national goal has yet been put in its place.

DISTINGUISH BETWEEN STRUCTURAL AND CYCLICAL CHANGES

Thoughtful Americans are making a major change in their approach to most forecasts and decision-making. They have learned that a large part of our current national frustration is caused by undue reliance on cyclical thinking about most economic trends and developments, thinking which results in an attitude of waiting until something familiar from the past reappears.

From time to time in history, business cycles and cyclical thinking are submerged by a tide of structural changes. In the 1930's, a deep cyclical phenomenon gave way to a period of chronic sluggishness. Another era of major change obviously took place during and after World War II when public priorities, values and expectations also were altered drastically. A much feared and forecasted postwar depression, in fact, never came.

In my judgment, we are now in another era of structural change arising out of a convergence of many specific lasting—not cyclical—changes in both the quantity and quality of U.S. life. This era can be expected to persist for at least five years and probably a decade or longer as U.S. citizens and institutions adjust to "new normal" conditions.

In this case, the new normal, in contrast to earlier times, will be marked by more, not less, uncertainty, crises, tensions, and government actions—yet there will be a great deal of solid progress while the corrective adjustment process unfolds.

What are some of these basic or structural changes now taking place in the United States? They frequently are closely related to the most important problems which confront our country:

1. Shift in public priorities to higher quality of life and away from general acceptance of good economic performance as sufficient or satisfactory.

2. Persistent inflation and expectations of further losses of purchasing power cause massive protective shifts in savings and investments seeking highest quality, safety, and more certain inflation offsetting yields; stimulate speculation in housing, precious metals, etc., and contribute to moral decay.

3. Slower real growth, returning to historically lower rates after the end of the prolonged post-World War II catch-up era; reflects less willingness by private sector to take risks because of sharply higher energy costs and government policies; and public resentment over congestion and pollutants associated with recent excessive economic expansions.

4. Shortages of energy, water, and potentially other resources—natural and contrived—cause market disruptions, sharply increased prices, and more political pressures to limit U.S. exports of scarce materials.

5. Increased grass roots participation in overall government activity via state and local initiatives and legislation designed to limit government spending, reduce taxes, and restrain excessive regulatory interference in private affairs; places strong pressures on the federal government also to pursue more disciplined fiscal and monetary policies; and raises prospects for greater tax incentives to investors and savers.

6. More reliance upon the private sector and market mechanisms to achieve results in many sectors heavily dependent upon government funds and programs.

7. Excessive financial liquidity created by chronic government budget deficits; inflation rate now quickly reflected in short-term interest rates and probably long-term as well; rising threat of capital rather than credit shortages; shift away from too literal pursuit of monetarist theory policies but more determined official effort to control money creation.

8. Rapid expansion of role of women and minorities in U.S. labor force, increasing productivity and offsetting some tendency toward job dissatisfaction and reduced work ethic in an overall atmosphere of full or near-full employment.

9. Increased internationalization of U.S. public thinking attributable to adverse pocket-book impact of declining dollar through higher prices of imported products, recognition of heavy dependence upon foreign sources for petroleum and other vital resources, and gradual understanding of the contributions of U.S. exports to domestic employment.

10. Increasing acceptance of the need to rearm—economically and to some extent militarily amidst greater challenges to the U.S. from other nations; prospects for rising U.S. nationalism as a result of the Iranian hostage conflict.

Other structural changes could be listed, but these serve to illustrate in recent years that the old normal of almost total cyclical dominance is fading in the U.S. The old normal—in contrast to what we can now see ahead—had a higher degree of certainty, greater consensus thinking and willingness to follow majority leadership, higher public patience, and more agreement and confidence that real progress was being achieved and would continue. Cycles and rhythms will still be present in the future but will be far less dominant. We must expect less certainty and inevitably more crises in the 1980's.

THE KEY QUESTION FOR THE 1980'S

I haven't yet mentioned the most profound actual or potential structural change involving the United States. It lies in one overriding question on which I know is on the minds of many if not most world leaders, including those here today. In fact, how this question is answered will determine in large measure many critical policies and prospects for the United States and other nations for the 1980's and well beyond.

The question is—Has the United States passed the zenith of its economic power and leadership in the world? Or, more directly—Is the United States "over the hill?"

A "yes" answer pretty clearly means more international challenges and overtures against U.S. interests, increased tensions and prolonged negotiations over any U.S. needs or requests, and diminishing prestige. Domestically, a "yes" answer almost certainly means a contracting rather than a traditionally expanding economy, and individual and group expectations for less and less rather than more and more.

A "no" answer does not imply an immediate lessening of problems for the United States, but indicates a new resurgence of determintion and performance ahead for our country. On this basis, the United States can be expected to work its way through the Achieving Eighties, with substantial progress in resolving many of its present principal problems.

The case for the "yes" answer is a familiar accounting of everything which seems to be going wrong in the United States, with the conviction that our nation is on an irreversible course of self-destruction. Those who hold this view contend that our country is:

1. Lacking strong leadership in government.

2. Unable or unwilling to take the disciplinary measures to stop inflation.

3. Characterized by workers who won't work or don't care about quality.

4. Less and less interested in taking risks, preferring to preserve what we have rather than create more.

5. Divisive on almost all issues and unable to obtain consensus.

6. A "paper tiger" in defense and an unreliable ally.

7. Content to rest on its laurels as a "fat" nation.

I've heard these points and others made in many oversea conversations. Most of this audience no doubt has had similar experiences. Never in my business career have I heard more disparaging remarks about the United States than in recent months.

I have found myself pondering all these accusations of weakness to try to separate facts from emotional criticism or wishful thinking. I have wondered how the image of a nation can change so quickly from the oft said "most powerful on earth" to one which can be challenged on all sides as "over the hill" and too feeble to assert itself on important issues at home and abroad.

THE POSITIVE VIEW ON U.S. PROSPECTS

In many instances when the United States has been chided or denounced by foreigners in my presence, other non-Americans have risen to take a much more positive view. These are the ones who see opportunity in the United States on a scale unequalled elsewhere. They are impressed by our political stability, massive consumer market and relatively attractive labor and other cost levels.

Moreover, within our own country the case for a "no" answer to the "U.S. over the hill" question is found in the belief that the United States:

1. Is now on a decade-long basic process to correct weaknesses arising out of excessive government spending linked to our past almost-total preoccupation with consumption and the demand management side of our economy.

2. Has unequaled national vitality and flexibility in its system.

3. Has enormous resources still to be developed.

4. Has the best educated and utilized labor force.

5. Has the ability to change public priorities, e.g., from unemployment to inflation control.

6. Public will meet any challenges once the seriousness of the problem is understood and the alternative courses of action are known.

7. Voters are strikingly more realistic about fiscal matters than in earlier decades.

8. Is about to embark on a new surge of higher productivity because of the maturing vigor of recent women and minority entrants into our labor force, passing of the peak in expansion of investment for health, safety and the environment, and the prospects of a sharp upturn in innovation, research, development and productive investment.

9. Will benefit from increasing internationalism of public thinking, reinforced by the growing contributions of foreign investors who will help expand U.S. exports, enhance quality and introduce more miniaturization efficiency into American mass production organizations.

FOR NEW SENSE OF U.S. PURPOSE—ASK AMERICANS

In my judgment, the new sense of purpose for the United States for the 1980's will be derived as each American answers this same question.

Some recent U.S. national polls suggest that the "over the hill" view is not limited to offshore doubters. Slightly more than half of U.S. adults currently believe that they have reached the peak of their living standards for many years to come and probably their lifetime.

Taken literally, this would mean an end to the American dream that tomorrow will always be better for us and our children. My own interpretation is more positive, namely, that the average American adult has grown up in a political and economic environment which has lauded expanded consumption—taken job security for granted—and degraded production and the supply side in general of our economy.

Not surprisingly, therefore, too many Americans cannot see that the solution to our major problems lies in new vigorous attention and encouragement to supply management, particularly in the private sector. By pursuing this policy a new national sense of purpose will be found.

If we Americans believe our country is not over the hill, everyone will know whether we are correct in a few years. We can make sure that it isn't by supporting public and private actions which will increase the productive side of our economy—i.e., strengthen saving; investment; efficiency, quality; increase innovation; increase incentives to work, invest, and make more profits; reduce regulations on business; provide more realistic environmental standards to permit greater development and use of U.S. energy resources; widen the gap between tax-free welfare payments for those who can work and the minimum wage, and encourage the greater joint use of skills and powers between the public and private sectors.

My management colleagues at Bank of America and I are not willing to say that the U.S. is over the hill. The process to correct our principal problems is already underway, but it's going to take a great deal of public effort and support to complete it in the decade ahead.

Let me also say that low public confidence across America is not new. I've seen it at least five times previously in my lifetime—in the depths of the depressed 1930's, in the early years of World War II, during the persistent threat of the long-expected post World War II depression (which never came), during the years of cold war with the Soviet Union, and amid the social unrest associated with the Vietnam War. In each case, public confidence was ultimately restored and a new economic resurgence took place.

Why should it not happen again?

THE ASIAN NATIONS CAN BENEFIT FROM U.S. CHANGES

Whenever a country undergoes some significant changes, as the United States is now doing, the opportunity arises for a comprehensive reappraisal of needs, relationships, policies, and programs. If the structural changes mentioned here are as profound and far-reaching as I believe them to be for the United States, certainly the ASEAN nations will be affected directly and indirectly.

Just beneath the surface in our country is always a current of incipient protectionism which can quickly emerge into a wave of anti-foreign sentiment in the face of some unhappy incident. The strong prospect of an economic recession this year in the United States, primarily in the older industrial centers of the Northeastern states, obviously increases the possibility of fewer U.S. imports and possibly some more restrictions on trade. This danger seems small, however, because the Southeast Asian countries' exports to the U.S. are fairly high priority items to a considerable extent and not dominant competition in most U.S. markets.

U.S. consumers are now extremely value conscious and are seeking the highest quality possible. Many have extended themselves somewhat during the recent Christmas shopping season, and can be expected to buy at a distinctly slower rate during the next six months or longer. In addition, the rapid rise in the price of petroleum and other energy products necessitates more prudent spending on other items in the family budget. Essentials will remain in strong demand.

As American families make these shifts in their purchasing patterns on a structural basis, it will be important that sellers of ASEAN products monitor their U.S. markets with extreme care. Many fairly permanent decisions will be made in 1980 toward products and sources which can affect sales for years to come. An image of exceptional quality and service as well as value will be of the utmost importance.

Similarly, in 1980 American business firms will be carefully making their plans for longer range raw materials and processed goods purchases against a background of domestic inflation and the spectre of possible mandatory economic controls. Any help which can be obtained from ASEAN sources will be eagerly recognized. Clearly, there is widespread understanding in the U.S. that world market conditions are unsettled and will remain so at least during the year ahead. There is a keen U.S. interest in doing business with nations and companies which will make and fulfill firm commitments in the mutual interest of all parties involved. The United States obviously has to be a reliable supplier as well.

Unhappjily, most Americans still have a rather hazy and not too positive view toward South East Asian countries. The Vietnam War experience is still to vivid not to be a negative factor in plans being made by many U.S. individuals, companies, and governmental agencies. Accordingly, any news reports of guerrilla warfare, border incidents, weak governments, or political maneuvers tend to reaffirm general doubts about the region and its future.

This situation calls for more ASEAN economic and diplomatic missions to the United States to explain and update policies and prospects and vice versa. This conference, once again, serves very constructive, informational and decision influencing purposes. Those who know South East Asia well are generally rather optimistic about the longer range outlook. They are impressed by the regional cohesiveness and stability which has been achieved because of the determined efforts of ASEAN leaders, many of whom are here today. Many senior U.S. government and corporate officials, however, still are not too familiar with the area and hesitant without strong new reasons to finalize major investment or similar decisions. There is still a continuing large-scale selling task to be done.

The greatest competitive threat to large-scale investments in almost any nation is the current attractiveness of opportunities in the United States. It is readily apparent that the persistent economic invasion of the United States by investors from outside is still underway with no real indication of any sharp downturn on the horizon.

Specifically, in my judgment the impact of major U.S. structural changes upon the ASEAN countries will be:

1. Persistent U.S. inflation means some continued weakness in the dollar and an urgent need for imports which will not aggravate the U.S. price level.

2. Slower real growth will limit general sales expansion in the U.S., but will not seriously impact many essentials.

3. U.S. shortages of materials available in South East Asia will mean strong sales opportunities.

4. Increasing grass roots political power in the U.S. will necessitate far more efforts by ASEAN leaders to explain their policies and actions in the U.S. communities in order to win strong U.S. support for ASEAN plans and projects.

5. More reliance in the U.S. upon the private sector means an increasing necessity for ASEAN leaders to increase their negotiations directly with U.S. private sector leaders on business matters and an opportunity to cooperate with the U.S. private sector to help answer regulatory questions on matters pertaining to a U.S.-ASEAN trade and investments.

6. Excessive financial liquidity offers borrowing opportunities for qualified ASEAN organizations, but a capital shortage will limit investments to those projects which promise the highest returns.

7. Rapid expansion in use of minorities in the U.S. labor force, "The Affirmative Action Program", and similar developments can provide some information to ASEAN countries on how to train and develop unskilled or inexperienced individuals into valuable members of the labor force.

8. Increased international of U.S. public thinking means that international development arising from the ASEAN countries will attract more interest in the U.S., particularly as to their economic effects on our country and whether they seem positive or negative toward the U.S. and probably Japan.

9. U.S. greater acceptance of the need to rearm economically in particular will lead to stronger U.S. competition in foreign markets and a more aggressive posture in world affairs.

Whether the United States has passed beyond the zenith of its economic and political power may be open to some question, but it is clear to me that our country is embarking on a major self-correcting program to reinforce its still enormous strengths. No one, of course, should expect the United States to reassume its earlier supreme global role in the post World War II era of worldwide economic rebuilding and postwar power vacuum among nations.

Americans generally are now quite willing to discuss our weaknesses and shortcomings. In fact, it is not difficult to find them in the United States or any other nation. It is far more difficult to find and articulate constructive suggestions as to how best to remedy any nation's problem in economic and politically realistic terms.

Therefore, I would predict that general American attitudes toward the ASEAN and other nations in the 1980's will hinge in no small way upon U.S. participant perception whether foreign negotiators seek to pursue and exploit the "over the hill" point of view. To do so, unfortunately, could fan a new fire of U.S. nationalism and certainly would accelerate U.S. economic rearmament activities. To test the skills of U.S. bargainers on the merits of the case before them will be essential, because we have much to learn about negotiating with fewer trump cards in our hand.

The United States basically is still very strong. We have lost some important momentum, however, and we cannot rest on any laurels we might have. The most important fact to everyone here today is that the American public now correctly senses something is wrong and is more and more prepared for whatever corrective action—including some sacrifices—may be necessary.

I'm personally convinced that our country will adjust to the many structural changes which are now underway and emerge stronger, in the 1980's, but this will have to be proved in this part of the world as well as elsewhere. Meanwhile, a constructive attitude toward the United States and its people and organizations will be helpful in understanding this period of structural change in our country.●

U.S.-U.S.S.R. CIVIL DEFENSE PROGRAMS

● Mr. GARN. Mr. President, the issue of civil defense has been a source of debate for a number of years. Many scholars and strategic thinkers have made positive contributions to this debate. In this light, therefore, I would like to draw to the attention of my colleagues a very well written and provocative analysis by Col. Robert K. Peel, "Civil Defense: The United States Versus the U.S.S.R."

I believe the depth of Colonel Peel's commitment to the security of this Nation is evident in his research report on U.S. civil defense needs. Mr. President, I ask that Colonel Peel's study be printed in the RECORD.

The study follows:

CIVIL DEFENSE—THE UNITED STATES VERSUS THE U.S.S.R.

SECTION I: INTRODUCTION

When we think of the strategic balance, we generally think in terms of weapon systems. We also think in terms of the triad—missiles, planes and submarine-launched missiles. In policy statements, we say that civil defense is also an important part of our strategic forces. When it comes to putting out money for our strategic forces, however, civil defense is hardly in the running as an important part of those forces. While this is true in the United States, it is hardly true in Russia. In the Soviet Union, civil defense is ". . . listed on par with other branches of the Soviet Armed Forces, and is considered to be an essential factor for ensuring the survival of the Soviet Union, and for the attainment of victory in a war."[1] Since the Soviets perceive civil defense as ". . . an integral part of Soviet overall defense capability. . ."[2] they put a considerable amount of money into it, and have done so on a continuing basis for many years.

In an article entitled "Nuclear War—A Soviet Option", Mr. O. C. Boileau, president of the Boeing Aerospace Company, commented as follows:

"Back when we were debating the antiballistic missile in this country several years ago, it was generally recognized that the effect of massive ABM deployments would be to undermine the stability of the strategic relationship between the two countries. If you had a first-class arsenal of ABMs, you might decide that you could afford to fire the first salvo of ICBMs because you could shoot down most of the other guy's missiles when he fired back. Neither nation wanted to risk having the other get into this tempting position.

Well, the Soviet civil defense program threatens to destabilize the strategic relationship for the same reasons . . . the net effect of a broad civil defense program is to transform strategic superiority into a tool useful for nuclear blackmail—or for winning a nuclear war.[3]

The Soviet Union believes, effectively then, not in a triad, but in a quad system that places civil defense on a par with missiles, planes, and submarine-launched missiles, and makes it an essential part of their strategic forces.

A comparison of the civil defense program in the U.S.S.R. and the United States points to the problem of destabilizing the strategic balance in favor of the U.S.S.R., and to steps needed to redress that balance.

SECTION II: CIVIL DEFENSE IN THE U.S.S.R.

The status of civil defense in the U.S.S.R., includes its place in strategic policy, the money and effort that goes into civil defense, its organization and its present capability.

In his book, Soviet Civil Defense in the 70s, Leon Goure brings out that the fact that the Soviets still have the view that ". . . the struggle and rivalry between socialist and capitalistic countries are part of and one of the forms of the world class struggle . . ."[4] and they feel that this struggle will continue until the Communists win a final victory on a world scale.[5] Thus, the ". . . fundamental operational doctrine of Soviet foreign and defense policies remain unaffected by any detente or, as the Soviets prefer to call it, 'peaceful co-existence,' between the U.S. and the Soviet Union."[6]

". . . G. Arbalov, the head of Civil Defense in the U.S.S.R., wrote in January 1975, that 'No country can set itself the aim of defeating the enemy at the cost of its own destruction."[7] The alternatives would be not to go to war, or to develop a war-survival capability. Current Soviet policy appears to be the latter. This impacts on foreign policy calculations, because it invalidates the U.S. concept of 'assured destruction', i.e., the U.S. view that if it can destroy one-third of the Soviet population and one-half to two-thirds of the industrial potential the Soviets will be deterred from going to war. "Since the Soviets feel that that level of destruction can be denied the U.S., to that extent civil defense contributes to Soviet deterrence of a U.S. attack."[8]

The Soviet civil defense program goes far beyond the protection of its population in wartime. It includes the hardening and dispersal of vital industries and services, the organizing, equipping and training of large civil defense formations, the compulsory training of the entire population, the protection of agriculture and food and water supplies, helping when natural disasters occur,[9] and urban planning measures which ". . . restrict the growth of large cities; reduce building density of urban areas and create satellite cities; and include the construction of wide major thoroughfares; construction of green belts and strips; construction of water reservoirs, and the building of network of highways around the city."[10] To enforce the urban planning, Soviet citizens must have residence permits in order to settle in a city.[11]

It is difficult to measure the cost of the Soviet civil defense program. It is estimated that Soviet civil defense expenditures last year were a billion dollars, ten times that of the United States. A CIA estimate puts the Soviet investment much higher. "Intelligence services in Western Europe have estimated $65 billion for the past decade."[12] Costs have to include shelter construction, training, hardening of industries, construction costs in connection with urban planning, exercises by large segments of the population, personnel costs for a large civil defense organization, dispersal of industries, etc.

Training has to be a large part of any discussion of effort that goes into the civil defense program in the Soviet Union. "The basis of the Soviet Civil Defense Program is the compulsory training of the entire adult population."[13] This training is an annual affair in which proficiency must be demonstrated.[14] The training begins with children who get ". . . a 15 hour course in school in the fifth grade and a 35 hour course in the 9th grade."[15] "Using model villages, defense training '. . . includes practice loading for evacuation, construction of expedient radiation shelters, fire fighting, rescue, medical

Footnotes at end of article.

aid, decontamination and reconstruction." [16] The size of training continues to increase, and realism is encouraged. In some exercises, volunteer blood donors actually give blood.[17] Civil defense lectures are a regular part of radio and TV programming.[18] Competitions by civil defense teams is promoted—even 'international competitions' are held with participants from Eastern European countries." [19] Factory workers are organized for civil defense, with some ". . . factories staffed by officers on active duty, frequently of general or colonel rank." [20] They are trained and equipped ". . . to conduct rescue, damage-limiting and emergency repair, and restoration work at the installation, in the event that it suffers damage from an attack." [21] Support of civil defense is also given by the various volunteer organizations.[22]

Soviet Civil Defense is organized at the top, in its central leadership, by a deputy Minister of Defense. He has an appropriate military staff organization working with him, and he is commander of the military civil defense forces.[23] Below that central leadership, civil defense is organized at its levels of government, i.e., Union Republic, region (or oblasts), cities, city-districts to rural districts, worker's settlements and villages. "At each government level, civil defense is organized on the basis of the government unit departments, i.e., at a city level, 'the services' are organized on the basis of the various municipal departments." [24] Military personnel fill the civil defense staffs at republic, region and large cities, and some factories, quite often, at general or colonel rank.[25] "The permanent, full-time staff of the civil defense organization now numbers 72,000, and a major portion of them are military. . . in time of crisis, this permanent staff would be augmented by the Soviet's police force of half a million." [26]

The present capability of the Soviet civil defense is very high. The number of shelters is growing rapidly every year, and with 53–64 percent of the urban population having accommodations four years ago, the number of shelters now available must have grown substantially. The shift in the 1970s to assigning priority to shelters in the Soviet civil defense programs indicates that the Soviets are pretty far along in their shelter construction program.[27] In addition, a trained cadre of about 10 million people make both the shelter program and crisis relocation believable programs.[28]

Crisis relocation

Crisis relocation is an important part of the Soviets' plan to protect its population from attack.[29] ". . . A 1973 Soviet Civil Defense manual asserted that pre-attack evacuation and dispersal of the 'main mass of residents of large cities and important installations' can save it from harm." [30] It is planned that the workers will commute daily ". . . to their factories from their pre-attack evacuation site, while non-essential people will be evacuated further out for the duration of the emergency." [31] Thus, while one shift works in the factory (with shelters provided for only one shift), the other shift will be at the evacuation site. "They intend to evacuate and disperse their population prior to the onset of hostilities . . . they intend to supply an urban assembly area for each two to three thousand urban dwellers. These are permanently staffed . . . vehicle convoys and in some cases, trains will be provided. Some of the able-bodied will be formed into marching brigades." [32] Every means of evacuation, then, will be utilized, public and private. The Soviets are trying to complete the evacuation in less than 72 hours. Those traveling on foot must plan to go at least 25 Km (15.6 miles) or more.[33] Numerous evacuation exercises have been conducted during the last number of years, and they ". . . appear to be increasing in scope and frequency." [34] As part of urban planning, "the development of recreational zones on the city's periphery is said to facilitate the evacuation and dispersal of the urban residents and to create possible re-settlement areas for some of them." [35]

The evacuation areas, as previously noted, are located at least 25 Km from the towns or cities. Many are located on collective farms. "The farmer is given the number and even the names of the people he's to receive. . . . some of these groups will go right to work building simple shelters, which are already designed. It takes about 11 hours to construct a shelter which will hold ten people, and it will have a blast resistancy of 30 to 50 pounds per square inch and a radiation protection factor of about 1,000." [36]

Crisis relocation was pushed hard in the 1960s, but in the 1970s there has been a shift to assigning priority to the building of shelters in the Soviet Civil Defense Program. This shift indicates ". . . that the Soviets are pretty far along in their shelter construction program. This appears to be confirmed by Soviet statements which suggest that the earlier emphasis on Crisis evacuation was due in part to the limited shelter inventory, because it took a long time to develop a substantial ready shelter capacity." [37]

This re-emphasis on shelters rather than on crisis relocation is rather ominous. "With the development of a large ready shelter capacity in potential target cities and areas, the Soviet leadership is acquiring the capability of protecting valuable elements of the population in the event of a sudden outbreak of war, as well as avoiding giving the West strategic warning of its intentions, which the massive pre-attack evacuation is bound to provide." [38]

The shelter program

The Soviets have been building shelters for over 40 years, so their inventory of shelters covers a wide variety.[39] The hard shelters are to be found in the urban areas and must protect against blast. (The hard shelters are built with reinforced steel and quality concrete. They are built to house large numbers of people).[40] The shelters found in rural areas and small towns protect mainly against fallout.

"Radiation covers are shelters built to protect against fallout in small towns and rural areas, and house less than 50 persons. Many designs and materials are used. They have, usually, simple air filters and ventilation systems. The P.F. ratings are variable. They could be erected rapidly by the local population." [41] They can be detached shelters, adapted basements, or cellars, or slit trenches. In winter, or areas of perma-frost, where diggings would be difficult, ". . . frozen blocks of earth can form the roof and 1–2 meters of snow on top—PF factor of 200–400." [42] Small expedient shelters in the winter can be built in the form of small huts made with poles and dry branches, with mounds of snow 1.5 to 2 meters thick at the top, and 4 to 5 meters on the sides. This is said to provide a protection factor of 50–80.[43]

In order to stay in a shelter for an extended time, several conditions are necessary. These include the required temperature and humidity, a ventilation system that provides breathable air, food, water and a sanitation system. The minimum space per person is 0.5 meters square.[44] Instructions on provisions and ventilation systems and sanitation systems are supplied to the people.

In the cities, "the most widely available shelters are the detached and basement shelters. The usual detached shelter is often used at factories and houses 150–1000 persons." [45] Features of the detached shelters include: at least two doors, built entirely underground, partitioned inside for groups of 50–75 persons, filter ventilation units, toilets, and air locks at the entrances.[46] The most common shelter is the basement shelter. The walls are ½ to 1½ meters thick and the roofs 12cm to 50cm thick. They generally have a tunnel for an emergency exit, usually found in the back yard. They house 50 to 500 or more persons, but usually 150–300 persons. They are equipped for long term occupancy.[47] Where possible, detached and basement shelters are given dual uses as shops, theaters, offices, storage facilities, etc.[48]

The Soviets have become very proficient in erecting blast shelters in under 72 hours. They are "built of pre-fabricated reinforced steel structural units, commonly water or sewer conduits 1.5 to 2 meters in diameter, or square. They have a PF in the range of 400 to 1000, with most in the 800 to 1000 range. They have blast doors and can house under 100 persons." [49]

The Soviets plan to have their industry also. "In a study by Boeing, which assumed the use of heavy nuclear weapons against hardened missile sites, with only smaller Poseidon and Trident warheads remaining, the damage to industry by these smaller warheads was calculated. 'The results showed that a lot of roofs would be blown off, but more than 50 percent of the industrial equipment around them would do even better.' While the buildings would be heavily damaged, a good part of the equipment would remain in working condition. This includes most of their heavy industry with survival of 75–90 percent." [50]

For the last 10 years, most of the new industrial facilities have been built in small or medium size towns. "Scientific centers have also been located away from large urban areas. Duplicate facilities have been built for some critical industries . . . some underground complexes." [51] Other industrial plans include: ". . . stockpiling of fuel, raw materials, spare and semi-finished parts, a certain degree of hardening of the installation, of the production process and of sources of power and transportation." [52]

SECTION III: CIVIL DEFENSE IN THE UNITED STATES

In a statement by Bardyl R. Tirana, DCPA Director, to a Congressional Committee on January 8, 1979, he stated, "The committee has asked that I testify on the current status of U.S. civil defense. The existing U.S. civil defense program is not effective.

Since the early 1960's, the program has concentrated on sheltering the population in-place, in the best-available protection in existing structures, at or near homes, schools, and places of work.

Most of the capabilities for in-place protection developed through the 1960's have deteriorated significantly. Shelter stocks have exceeded their intended shelf-life and have deteriorated, and many have been removed from shelters. Other systems and capabilities have been held to a maintenance level or less for a decade." [53]

In a letter appearance before a Congressional Committee, on March 22, 1979, Mr. Tirana discussed crisis relocation. He pointed out that a study requested by the President indicated that with an effective crisis relocation program, we could project an 80 percent survival rate for the United States.[54] He then stated that the crisis relocation program was proceeding very slowly—that it would take a decade to complete the plans, let alone full implementation. "Thus, there is not at present an effective U.S. capability for population relocation during a crisis." [55] Without an effective crisis relocation program, it is projected that there would be only 80–90 million survivors in a nuclear war.[56]

In the United States, lip-service is given to the fact that Civil Defense is an important part of our strategic forces. In fact, it receives less than 1 percent of the monies for strategic forces.

Footnotes at end of article.

As far as organization is concerned, civil defense is no longer tied in with the armed forces of the country, but tied in with an organization most concerned with natural disasters. There are under 6,000 personnel professionally engaged in civil defense work in the country. Not all counties and cities have civil defense directors, because they don't choose to spend limited funds in this area. Of those that are on board, not too many have received available training, because again, local governments don't wish to spend money in this area. For the same reason, organizational positions are not fully manned. And because salaries are often low, the quality of the force is not all it could be. And even when the quality is good, moonlighting is required to keep the personnel financially solvent.

In summary, the United States does not have a viable, believable civil defense force, and surely not one that would cause strategic deterrence to an enemy of this country.

Crisis relocation

The author of Counter-Evacuation indicates why the United States is so eager to embrace crisis relocation:

"The Soviet Union has highly developed plans to evacuate their population centers in a nuclear confrontation. Their plans include construction of expedient shelters in the outlying areas and continued operation of their essential industry by commuting workers. If they should successfully implement their plan, a subsequent nuclear exchange with the United States would cost them far fewer casualties than they suffered in WWII. Without a corresponding evacuation, the United States could lose from 50 to 70 percent of its population. This asymmetry in vulnerability, if allowed to persist, would seriously weaken the bargaining position of the U.S. President. To restore the balance, a great reduction in vulnerability can be achieved most economically by planning a U.S. counter-evacuation as a response to a Soviet evacuation." [57]

The United States has more facilities to move people than the Soviet Union does. With all its automobiles, it ought to be able to move all its people out of the cities in one day, rather than three.[58] (Gasoline shortages would now be a consideration.).

There are problems, however. "Private ownership of housing, especially rural, is a disadvantage to a U.S. evacuation. . . . Unless redirection of food distribution to the rural area is clearly evident to the host population, legitimate concern for its future safety could seriously raise . . . resistance." [59] Also, since the Soviets will have a commuting work force maintain essential production, the United States will be at a great disadvantage in bargaining if the evacuation lasts more than a few days." [60] After all, the Soviets could be required to evacuate and return many times. But let the citizens of the United States have one or two false alarms, and the next time around, many would fail to go. There would then be tremendous pressure for shelters.[61]

The Soviet citizens understand as U.S. citizens do not, ". . . that nuclear war does not mean the end of mankind, or even the civilization of the participants, if prudent precautions are taken to protect the population from its effects." [62] We can, in fact, save many lives by utilizing the improvements in shelter technology made in the last ten years—some of it adapted from the Soviets. "We now know how to improvise very high protection factor shelters with excellent habitability in no more than 48 hours, using a wide variety of materials and measures at hand." [63] (See Table.)

Politics: To get the increases in the FEMA budget needed, would require reeducating the public. The new agency to which civil defense has been moved.

Threatening the survival of the evacuees—trying to move them to areas where no provisions, water or shelter are available.

Threatening the survival of the host population—too many evacuees, and no provisions.

Unresponsiveness—if the U.S. population doesn't move quickly, the Russians will lose their vulnerability faster than the Americans.

Lack of Durability: The Americans would have to endure the evacuation at least as well as the Russians.

Vulnerability to false alarms: The Soviets could be ordered to evacuate repeatedly—after one time; the Americans would have to go to a crash shelter program.

Disadvantageous Prospects for long-term survival: Why make the effort if you are going to starve or die of radiation anyway?

If crisis evacuation is to be meaningful, preparations should be made in the precrisis time: "1. Encourage people to accumulate two weeks supply of non-perishable food and other needed items. 2. Development of emergency plans. 3. Construct expedient shelters at plants, homes, and host areas.[64] 4. Direct crisis plans to re-direct food supplies to host areas. 5. Distribution of instructions to the people. 6. Once Soviet evacuation takes place, U.S. evacuation must follow immediately (have full gas tanks). 7. Expedient shelters should be built immediately." [65]

The shelter program

The United States faces a greater fallout problem than the Soviet Union for two reasons: The Soviets have dirtier and bigger nuclear weapons, and the area of the United States is smaller than that of the Soviet Union by half.[66]

We are concerned about two kinds of shelters. A shelter that can withstand the blast effect—the lethal overpressures that can destroy buildings, and a shelter that can withstand the fallout threat. That is, we can expect ". . . an atack of 5000 megatons to arrive. This means a fatal dose to people who are unprotected, in about 25% of the area of the country, and to people in PF-20 shelters in about 5% of the area." [67]

While no place in the country is exempt from the hazards of lethal radiation, the weather pattern at the time of the detonation will determine where the fallout will be deposited. "In contrast to blast, it is theoretically possible to save everyone from fallout, anywhere it is possible to dig." [68]

In considering which areas should be evacuated, it should be remembered that densely populated areas not near targets would not need to evacuate, while small towns or cities near targets should evacuate. "Those nearby areas that trade with the urban areas are the logical reception areas for urban evacuees. They are also called Office of Business areas (OBE)." [69] The population of New York would have to be distributed over the Binghamton, Albany and Wilkes-Barre areas.[70]

"By taking advantage of the inherent blast hardness and wide adaptability of expedient shelter designs . . . areas threatened by overpressures of 5 or even 10 psi can remain unevacuated. The number of evacuees would be reduced by a significant factor. The load on reception areas and hosting ratios would be enormously reduced." [71]

"The basements and improved basements have the advantage of being waterproof. They are generally available where winters are severe." [72] From almost half to almost three-fourths of the population of the United States could be sheltered in rural residential basements, depending on how many people were crowded into them.[73]

About 70 percent of the population of the country lives in areas where small pole shelters could be made. "The small pole shelter, when made with green poles, with adequate cover of dry earth is extremely blast resistant in addition to having a very high radiation protection factor." [74] (See Table.)

"The door-covered trench shelter is potentially the most available single shelter type for evacuees. Interior doors are available in virtually every residence in sufficient numbers to shelter the occupants and are quite portable. Properly constructed, this shelter provides fallout protection in excess of 200, good weather and surprising blast protection . . . They are the most rapidly constructable of all the high PF shelters." [75]

When one considers the availability of expedient shelters in the United States, it is hard to understand why the various studies show such a high loss for the U.S. population in a nuclear war. Even in the heavily populated areas of the northeast, many people have back yards and parks available.

Unlike the Soviets, we have not been actively dispersing our industries, but have concentrated industrial complexes. "The Soviets perceive the state of civil defense in 'leading Capitalistic countries' as being unsatisfactory at present and not meeting the needs of modern nuclear war." [76] Indeed, "The high concentration of industry, which is characteristic of the main capitalistic countries, is in obvious contradiction to the requirements of a missile nuclear war. It results in giving the economic regions the significance of major military-industrial targets of strategic significance, the loss of which would undermine the economic capabilities of the state in wartime." [77]

There is no reason why we cannot harden existing industry, and make a determined effort to disperse future industry. We must also insure that there are shelters available at industrial sites for at least one shift of workers, and hardened shelters available to the workers who would have to commute during a crisis relocation situation.

SECTION IV: DESTABILIZATION OF THE STRATEGIC BALANCE

It is important that we consider the possible outcomes of losing the strategic balance.

"The Soviet's leaders, beginning with Lenin, have made no secret of their views of history. They foresee the collapse of the West and the eventual triumph of communism. In this sense, they are not speaking merely as leaders of a powerful nation, but as men charged with the duty of carrying out the revolutionary mission of communism. The proclaimed objective of this doctrine . . . is a universal communist society." [78]

In an updated article of several years ago, entitled "Russia's Military Buildup", by Ernest Cuneo, the thought was expressed that ". . . the intent of a major power can be measured by what it does with its steel." [79] He then goes on to document that the Russians are arming to the teeth. "Thus, whatever may be the diplomatic talk of detente and of the thawing of the cold war, Russia relentlessly pursues a policy of unprecedented armament building, approaching what would have been called before World War II a massive mobilization." [80]

Mr. Samuel P. Huntington, Director, Center for International Affairs, Harvard University, testified before a Congressional Committee on January 8, 1979, as follows:

"The past decade has also seen a significant change in the military balance of power between the Soviet Union . . . and the United States and its allies. . . . The Soviet Union has now achieved essential equivalence in strategic forces with the United States. During the next several years, moreover, the Soviet Union will have significant advantages . . . [over] . . . the United States in two key sectors of the overall strategic balance. First, the Soviets will have the capability to destroy a major portion of the U.S. ICBM forces in a first strike, while the United States will not have a comparable capability. . . . Second, the Soviet Union will have a substantial civil defense program which

Footnotes at end of article.

could, through a combination of shelters, and evacuation, provide protection for Soviet leadership and the overwhelming majority of Soviet citizens in the event of a nuclear confrontation. The United States will not have a comparable capability. These two imbalances in the strategic equation interact with and reinforce one another. . . . The decision on nuclear escalation no longer rests primarily in American hands, as it did a decade or so ago. In addition, the ABM treaty in effect bans active defenses against missile attacks, and the United States has chosen not to maintain either a significant continental air defense capability or a meaningful civil defense program. . . . If an all out nuclear exchange were to occur now, the bulk of U.S. industry and urban structures would be destroyed and a high proportion of U.S. leadership and probably over 100,000,000 citizens would be immediate fatalities. . . . Civil defense clearly asumes new importance as a means of enhancing the survivability of American citizens." [81]

The Russians well understand the strategic importance of civil defense. Milovidov states, ". . . it is impossible without civil defense to protect the population and the nation's economy. Civil defense is becoming a strategic factor with substantial determining influence on the course and outcome of a modern war, as well as on the postwar restoration of the economy." [82]

In an article by Joseph Fromm, Deputy Editor for U.S. News and World Report, entitled "New Alarm Over Russian Threat," some chilling possibilities emerge:

"By 1983, most analysts predict, Russia will achieve an unprecedented, but probably temporary, strategic advantage over the United States. . . . With that advantage, the Soviets will be in a position to threaten a knockout attack against America's entire system of land-based inter-continental ballistic missiles, continue to confront Western Europe with superior forces and intervene in remote crisis spots with increasing vigor. . . . But there is another side to this picture. Russia's impressive gains in military strength will coincide with worsening economic difficulties in the Soviet Union. . . . In this situation, strategic analysts warn, the Soviets will be tempted to exploit their military advantage before the United States can reverse the balance and before the Kremlin feels the full effects of economic and political pressures." [83]

In this same article, Samuel P. Huntington is quoted as stating, "Historically—and we cite Hitler as an example—crisis and conflicts occur when one power has gotten a lead and the other party wakes up and attempts to catch up." [84] William Hyland, a key member of Henry Kissinger's foreign policy team, points out that the optimal period for the Soviets to act, or do something, is the next five years. After that the Soviets will have problems of their own. "While American analysts differ over future Kremlin behavior, there is little disagreement over the magnitude of the Soviet military buildup. . . . The buildup, it is argued, exceeds anything the Russians could conceivably require for defensive purposes." [85]

The Soviets will face the same energy problems as the United States very soon, and this will be part of the reason the Soviet's economic problems will grow. "A CIA report predicts that Russia's economic troubles will be exacerbated by a sharp fall in oil production over the next few years, from roughly 12 million barrels daily to a possible low of 8 million barrels. If this forecast is correct, Russia would be transformed from a major oil exporter . . to an importer, spending as much as 10 billion dollars in 1985 for foreign oil." [86]

A scenario of what might happen follows: The time is 1982. Soviet military might is at its peak. Its civil defense is ready. It has not yet run out of oil. An incident is provoked in Iran, perhaps—or any other place. The situation escalates until the Soviets evacuate their cities. The Americans follow suit, but with much difficulty. The crisis is allowed to relax somewhat and it appears the Russians return to their cities. In fact, if there are any peoples without shelters, they stay in the country. The Americans return to their cities. The Soviets then hit the United States with a preemptive strike, and simultaneously four things happen: 1. Our missiles are hit in their silos. 2. Killer satellites destroy our observation satellites and our communication and navigational satellites (a capability Ira Aker points out the Soviets have though we do not).[87] 3. Washington D.C. is hit by sub-launched missiles. 4 Large nuclear detonations in the atmosphere cause electromagnetic pulse to wipe out much of our communications. The Russians survive relatively intact, due to strong civil defense, but the United States is devastated.

". . . The Russian national sport is chess. To win at chess, it is not necessary to wipe the enemy players off the board. All that is necessary is to hold the opponent in check. It is not the number of pieces on the board that is decisive—indeed, it is obligatory to begin with parity—it is the tactical arrangement of the pieces on the board that matters. The present arrangement is frightening." [88]

Finally, in a comment by James Schlesinger recently, it was pointed out that the only way to have non-nuclear options, is to have a strong conventional forces capability.[89] Mr. Boileau points out: "Right now . . . our conventional forces are outmanned and out-gunned . . . In such a situation, we might be left with only our nuclear deterrent. And when that time comes—if it comes—and we are faced with Soviet nuclear superiority, then we have no deterrent at all." [90]

Possible methods of revitalizing U.S. civil defense

The backbone of the Soviet civil defense is a strong shelter program and strong well-trained civil defense forces. The place for the United States to start to build a viable program is in the area of people and shelters.

Civil defense directors should be federalized to the extent that their salaries are fully funded and on a federal pay scale. This would mean that you could have a force of competent people on a livable wage in every county and city of any size in the United States. Training would be fully funded by the federal government. *Mobdes* (Reserves assigned to civil defense) personnel assigned to civil defense should be placed in category 'A' training status, so as to receive constant training and so as to be fully prepared. All reservists not on active reserve status, instead of being put in the inactive reserve, would become part of the national civil defense forces, as is done in Switzerland, and would be required to receive minimum annual training of from 16 to 40 or more hours. All Federal employees would receive 8 to 16 hours annual training in civil defense—to include the building of expedient radiation shelters, first aid, fire fighting, communications, etc. Subsidize similar training for all adults in adult education programs on a voluntary basis. The use of educational television stations for civil defense training on a regular basis would be helpful. Establish teams of reservists who could go out to small counties/towns to assist in times of natural disasters. It might even be wise to assign reservists to factories and large businesses.

It is essential that the shelter program be instigated to provide hardened shelters for workers who would have to commute during a crisis relocation situation, and also at factories and businesses that would have to be kept in production. They are also needed in densely populated areas, such as New York. In most other places, expedient shelters would provide satisfactory shelter. Some pre-preparation could be done on expedient shelters, such as building them adjacent to suburban homes, pouring heavy cement patios as roofs to the shelters. Factories should harden their present facilities, and future facilities should be dispersed to smaller towns and cities. This could be encouraged by special tax relief for a period of time. In the future, when public buildings are constructed, especially schools and federal buildings, basement floors should be included in their facilities—both to act as shelters and to conserve energy. Indeed, underground facilities would be desirable, water level and climate permitting. This would be desirable for shopping malls also. In some areas of the country, these could also double for tornado shelters.

One other area that deserves some attention is the area of warning the population of impending disasters. A device is needed that can have a warning signal activated by a central source, such as doctors, firemen and others currently use. One should be available in every home, car and office, and portable for those who work at some distance from them. It should also be possible to tie in Musac or other music systems in offices and malls so that warning could be given.

The will of the U.S. to keep the strategic balance

Mr. Samuel P. Huntington has stated, "In order for the Soviets to use their own nuclear forces effectively as a political instrument . . . they would have to be able to protect their own population." [91] The same would, of course, apply to the United States. And if that effective use is for deterrence, and the survivability of the American people, then a strong viable civil defense is of utmost importance. Secretary Brown has stated, "What counts in deterrence . . . is not only what we may believe, but also what the Soviet leaders may believe . . ." [92] Mr. Huntington goes on, "Given the importance they attach to damage limitation as a necessary element in a deterrent posture, they cannot assign a high level of credibility to a deterrent policy which does not attempt to limit damage to U.S. society if that policy had to be implemented. A substantial asymmetry in survivability between Soviet and American societies in the event of a nuclear war can only encourage the Soviets to question the seriousness of U.S. purpose and hence also encourage them to follow a more adventurous policy." [93]

In point of fact, . . . "only a strong civil defense program would show strength of purpose or will to Soviets or our allies.[94] ". . . The least stable situation [then, for the United States] . . . is one in which there are marked asymmetries in civil defense capability . . . If the United States does not undertake an expanded civil defense program, the least stable situation will exist in a future crisis." [95]

We insist on having a fire station near where we live. We also want a good hospital nearby. We insist also on fire stairs on buildings and life boats on ships.[96] These life-saving programs help us survive disasters. We should insist on civil defense also. If Norway, Switzerland and Israel can spend about ten dollars a person per year for civil defense, surely the United States can increase from a paltry 42 cents per capita to a like amount.[97]

Not only money, but people are needed in civil defense. In Switzerland, it is simple. "For every healthy and able man between the ages of 20 and 60 and not draft-

Footnotes at end of article.

ed for military service (or dispensed from such service by the war economy organization), civil defense service is compulsory."[98] Others may volunteer for civil defense service.[99]

"In a recent interview, Alexander Solzhenitsyn . . . said, 'The West is on the verge of a collapse created by its own hands.' He said he has noted a decline in both the strength and resolution of the West during the two years he's been out of Russia . . . What Solzhenitsyn seems to be saying is that the degeneration is underway, and that, off there in the wings, the military power is being prepared to apply the final push."[100]

Only if the American people can be aroused in time, and can fully realize what they face, will they successfully meet the challenge of survival.

SECTION V: CONCLUSIONS

As civil defense in the Soviet Union and the United States are compared, it is obvious to see that a dangerous imbalance exists. It is in the area of civil defense that the strategic balance has been destabilized. The United States now finds itself in an either/or situation. Either the U.S. can immediately upgrade its civil defense program, or the U.S. will find itself in an untenable position—a position of surrender to nuclear blackmail. There is yet time! Using the lessons learned from the Russians in the building of expedient shelters, we can assure ourselves that we can indeed survive a nuclear war. The problem is that the Soviets know this lesson too—and what before was unthinkable, is now thinkable indeed, if they can assure themselves of the privilege of naming the time, place and conditions.

It is a matter, then, of immediately putting forth the money, manpower and effort to redress the strategic balance by building a viable civil defense program NOW!

PROTECTION AVAILABLE FROM EXPEDIENT SHELTERS

Shelter types: Applicable site	Fallout protection factor[1]	Blast resistance (P.S.I.[2])	Construction time (hours)[3]
Door-covered trench: Stable soil	200+	5-6	12
Log-covered trench: Stable soil	200+	15-(?)	36
Wire-catenary: Stable soil	200+	15-30	36
Small pole: Unsaturated, unstable soil, high blast threat	500+	30-80	48
Israeli: Free-running soil	500+	20-40	36
A-frame: High water table	20+	20-(?)	48
Basement: Cold climate, low water table	10-20	2-3	6
Improved basement: Cold climate, low water table	40-200	10-30	[4] 24-7 2

[1] With entrance kept clear of fallout.
[2] Pounds per square inch.
[3] Tested construction times by rural and small town residents using hand tools.
[4] Estimate.

Footnote [101].

FOOTNOTES

[1] Leon Goure, *Soviet Civil Defense in the Seventies*, Report Prepared by the Center for Advanced International Studies, (Coral Gables: University of Miami, 1975), p. v.
[2] *Ibid.*
[3] O. C. Boileau, "Nuclear War: A Soviet Option, Part II" *Foresight*, (Winter, 1977), 2.
[4] Goure, *Op. cit.*, p. 7.
[5] *Ibid.*
[6] *Ibid.*, p. 4.
[7] *Ibid.*, p. 23.
[8] *Ibid.*
[9] *Ibid*, p. v.
[10] *Ibid.*, p. 70.
[11] *Ibid.*
[12] J. G. Hubbell, "Soviet Civil Defense: The Grim Realities," *The Reader's Digest*, (February, 1978), 80.
[13] Goure, *Op. cit.*, p. 82.
[14] *Ibid.*, p. 84.
[15] *Ibid.*
[16] Boileau, *Op. cit.*, p. 4.
[17] Goure, *Op. cit.*, p. 91.
[18] *Ibid.*, p. 93.
[19] *Ibid.*, p. 94.
[20] *Ibid.*, p. 46.
[21] *Ibid.*, p. 67.
[22] *Ibid.*, p. 46.
[23] *Ibid.*, p. 38.
[24] *Ibid.*, p. 39.
[25] *Ibid.*, p. 46.
[26] Boileau, *Op. cit.*, p. 2.
[27] Leon Goure, *Shelters in Soviet War Survival Strategy*. A Report for the Center for International Studies (Coral Gables: University of Miami, 1978), p. vii.
[28] Boileau, *Op. cit.*, p. 4.
[29] Goure, *Soviet Civil Defense in the Seventies*, p. 50.
[30] *Ibid.*, p. 51.
[31] *Ibid.*, pp. 51-53.
[32] Boileau, *Op. cit.*, p. 3.
[33] Goure, *Op, cit.*, p. 55.
[34] *Ibid.*
[35] *Ibid.*, p. 71.
[36] Boileau, *Op. cit.*, p. 3.
[37] Goure, *Shelters . . .*, p. vii.
[38] *Ibid.*, p. viii.
[39] *Ibid.*, p. 5.
[40] *Ibid.*, p. 10.
[41] *Ibid.*, p. 27.
[42] *Ibid.*, p. 34.
[43] *Ibid.*
[44] *Ibid.*, p. 51.
[45] *Ibid.*, p. 22.
[46] *Ibid.*, p. 11.
[47] *Ibid.*, p. 20.
[48] *Ibid.*, p. 24.
[49] *Ibid.*, pp. 24-24.
[50] Boileau, *Op. cit.*, p. 3.
[51] *Ibid.*, p. 4.
[52] Goure, *Soviet Civil . . .*, p. 67.
[53] U.S., Defense Civil Preparedness Agency, *Information Bulletin*. No. 303 (1979), First presentation, Tyrana, 1.
[54] *Ibid.*, Third presentation, p. 3.
[55] *Ibid.*, p. 2.
[56] *Ibid.*, First presentation, p. 1.
[57] C. V. Chester, G. A. Christy, C. M. Haaland, *Strategic Considerations in Planning a Counterevacuation* (Tennessee: Oak Ridge National Laboratory, 1975), p. 1.
[58] *Ibid.*
[59] *Ibid.*
[60] *Ibid.*, p. 2.
[61] *Ibid.*
[62] *Ibid.*, p. 3.
[63] *Ibid.*, p. 4.
[64] *Ibid.*, pp. 4-6.
[65] *Ibid.*, p. 22.
[66] *Ibid.*, p. 7.
[67] *Ibid.*, p. 9.
[68] *Ibid.*
[69] *Ibid.*, p. 11.
[71] *Ibid.*, p. 14.
[72] *Ibid.*, p. 16.
[73] *Ibid.*
[74] *Ibid.*, pp. 16-17.
[75] *Ibid.*, p. 17.
[76] Goure, *Soviet Civil . . .*, p. 30.
[77] *Ibid.*, p. 31.
[78] Oc. C. Boileau, "Nuclear War: A Soviet Option, Part I," *Foresight* (Fall, 1976), p. 3.
[79] *Deseret News*, Ernest Cuneo, "Russia's Military Buildup", No date, No page.
[80] *Ibid.*
[81] U.S., Defense Civil Preparedness Agency, *Information Bulletin*, No. 303 (1979), Second Presentation, Huntington, p. 3.
[82] Goure, *Soviet Civil . . .*, p. 27.
[83] J. Fromm, "New Alarm Over Russian Threat, *"U.S. News and World Report*, LXXXV (October 30, 1978), p. 47.
[84] *Ibid.*
[85] *Ibid.*, p. 48.
[86] *Ibid.*, p. 49.
[87] I. C. Aker, "The Military Space Program Lags," *National Defense*, LXIII (May-June 1979), p. 27.
[88] *Deseret News*, June 1, 1979, Michael Novak, "Salt II Checkmate is Enough for Russia," no page.
[89] Boileau, *Op. cit.*, part II, p. 5.
[90] *Ibid.*
[91] U.S., Defense Civil Preparedness Agency, *Information Bulletin*, No. 303 (1979), Second presentation, Huntington, p. 9.
[92] *Ibid.*, p. 10.
[93] *Ibid.*
[94] *Ibid.*, p. 11.
[95] *Ibid.*, p. 12.
[96] *Ibid*, p. 15.
[97] *Ibid.*
[98] Switzerland, Federal Office of Civil Defense, *The Swiss Civil Defense* (1978), p. 24.
[99] *Ibid.*
[100] Boileau, *Op. cit.*, Part II, p. 3.
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A RESPONSE TO PRESIDENT CARTER'S BUDGET

● Mr. HAYAKAWA. Mr. President, in 1976 inflation was 4.8 percent, welcome relief from the 12.2 percent we had experienced just 2 years before. In 1977 inflation rose 6.8 percent. In 1978 it rose 9 percent. Last year our inflation rate rose 13.3 percent, the most since 1946 when the removal of wartime controls drove inflation up 18.2 percent. Now our President, after presiding over 3 straight years of increasing inflation, is telling us his budget for fiscal year 1981 is prudent and responsible.

President Carter's economic policies continue to be disappointing. He stated that we cannot spend our way out of inflation. He stated that "the unemployed should not bear the costs of our anti-inflation efforts." I agree, but, if we continue to follow his economic philosophy, the unemployed will remain so and we will all look back on 13.3-percent inflation with nostalgic longing. The major factor underlying both inflation and unemployment is productivity. Last year, for only the second time since World War II, we experienced a net loss in productivity. According to the Department of Labor, productivity fell 0.9 percent for 1979. The President's budget, and his

projections into the years ahead, propose only more disincentives to productivity.

Government taxes continue and will continue to reduce the supply side of the economy and make increased productivity virtually impossible. According to President Carter's own figures, total tax receipts will rise 103 percent between 1980 and 1985. During that same period, the President projects that the gross national product (GNP) will only increase 75 percent. This drag on the private, productive sector of the economy will prohibit the business expansion necessary to increase productivity and create vitally needed new jobs. Productivity depends on business and business depends on money. Yet Government will continue to take a larger and larger share of the money from the productive sector of the economy leaving less and less for research and development, new machinery, new buildings and new jobs.

This can be seen in graphic detail if we compare the increases per year in personal income with the annual increases in personal taxes projected by the President's budget. In 1980, with personal income rising 9.7 percent personal income tax receipts will rise 9.6 percent. In 1981, with personal income rising 9.7 percent, personal income tax receipts will rise 14.9 percent. In 1982, with personal income rising 12 percent, personal income tax receipts will rise 16.1 percent. It gets worse. By 1985, the President projects that personal income will rise only 10.9 percent, but personal income tax receipts will rise 18.1 percent. Since personal income includes nontaxable Government transfer payments to individuals, the tax burden falls even heavier on those who pay the taxes. It is discouraging to note that the President expects total receipts as a percentage of GNP to rise from 21.1 percent in 1980 to 23.6 percent in 1985. Thus the incentive necessary for investment and capital formation will continue to decrease as the Government continues to take a larger and larger portion of the economic pie. In an editorial on January 29, 1980, the Wall Street Journal points out that, "incentive depends less on the tax on all income than the tax on additional income. The budget shows that the tax burden on increases in personal income will rise from 11.2 percent in 1980 to 23.3 percent in 1985—a startling 109-percent increase."

At the level of taxation that Jimmy Carter proposes to soak the taxpayer in coming years, productivity will decline further. Inflation will increase and the only employment many of our present unemployed will be able to find, will be public works jobs paid for with increasing Federal deficits.

An economy is a fragile thing. Government cannot continue to take and take and expect ours to be robust. If you have a milk cow, you have to feed her and care for her if you want her to give milk—you cannot beat her and starve her and expect the same results. I wonder how Jimmy Carter managed to raise peanuts. I think the Wall Street Journal summed up my feelings very well when they said, "the worst of circumstances—declining real growth, rising unemployment, 10-percent-plus inflation and a rising proportion of the budget going to pay the interest on the Federal debt—would appear to be just around the corner if the budget's economic forecast is accurate. The President proposes to deal with it all by offering even more of the same medicine that put us where we are. His spending proposals, combined with the tax increases * * * are a prescription for running the economy into the ground." ●

HAL SCOTT RETIRES

● Mr. CHILES. Mr. President. Friday, February 1, 1980 marks the retirement of a man who holds a special place in the hearts of all Floridians who are concerned with the environment and natural resources of our beautiful State. Mr. Hal Scott has served for 10 years as President of the Florida Audubon Society and, in that decade, he has been a major force in the effort to preserve the State's delicate ecology and assure wise and prudent development of our resources.

The year 1980 has been designated by the President as the Year of the Coast, and I am struck by the fact that it is because of persons such as Hal Scott that we have become sensitive to the importance and vulnerability of our marine environment and coastal resources. Hal Scott has been a seminal thinker and educator in the whole area of resource management, pointing the way time and time again to how we can meet the needs of a vigorous growth State while insuring protection of the environment.

I can think of few areas of public policy that pose more difficult questions and decisions than environmental protection. The progress we have made in that direction has been a most strenuous process fraught with many roadblocks and setbacks. It is an effort that demands wisdom and hard-headed judgment. Those virtues are what Hal Scott has consistently brought to the public debate. Since my election to the Senate, I have valued his counsel on so many legislative matters. Because he really knows the legislative process, its potential and its limits, he has been able to play a most constructive role in the consideration and disposition of a whole range of issues.

It would be impossible to succinctly describe the tremendous record of service that Hal Scott has accomplished over the years. The esteem in which he is held is evidenced by the many honors that have come his way including the Special Award of the central Florida section of the American Institute of Architects; the Tropical Audubon Society 1978 Conservationist of the Year Award and the U.S. Army Corps of Engineers—Jacksonville district—Special Award. The breadth of his interest and involvement can be seen from his active service as vice chairman of the Department of Interior OCS Advisory Board, and member of the State Department Law of the Seas Public Advisory Committee, the Chemical Transportation Advisory Committee of Department of Transportation, and the Environmental Protection Committee of the Interstate Oil Compact Commission.

Perhaps the most telling thing that I can say about Hal Scott is that when he tried to retire a year ago, the Audubon Society and the entire conservation community of Florida simply refused to allow him to step down. This time he has stood firm and his retirement will soon be a reality. However, I know that Hal Scott will continue to be an active leader for the important goals he has pursued throughout his career. I know the entire Florida Congressional Delegation wishes him well in his future endeavors.●

OPEC IS WINNER, THANKS TO U.S. PRICE CONTROLS

● Mr. TOWER. Mr. President, one of the truisms of basic economics is that when prices are set arbitrarily and artificially, without regard to the forces of supply and demand operating naturally in a free marketplace, resources will be misallocated, thus making shortage inevitable.

This simple phenomenon was argued repeatedly last year by opponents of the ill-conceived crude oil "windfall profit" tax bill. But without apparent success.

The adverse consequences of artificial price restraints are not confined to crude oil, of course, but will result from the price suppression of any other commodity as well. This fact is incontrovertible, but evidently is widely misunderstood or intentionally ignored by an amazing share of the public and Members of Congress.

Price controls on domestic crude oil production illustrate vividly why Americans today are not able to enjoy the necessary supplies of gasoline, fuel oil, and other crude oil byproducts. Those who do not comprehend that, unless prices are allowed to rise according to demand, additional energy supplies will be unavailable, insist on villifying American oil companies as the culprits. In fact, the major oil producers are mere bystanders in this period of spiraling crude oil prices. The real winner from U.S. price controls is not our domestic oil producers, but OPEC. Meanwhile, it is the American consumer who gets rolled.

An excellent analysis of how OPEC profits from U.S. price controls has been written by Prof. Randall J. Olsen, assistant professor of economics at Yale University, which appeared in the January 4 edition of the Wall Street Journal. I ask that this article be printed in the RECORD.

The article follows:

HOW OPEC PROFITS FROM U.S. PRICE CONTROLS

(By Randall J. Olsen)

OPEC, with the help of the U.S. government, has found an easy way to extract extra billions from the American economy.

To understand how this is happening, it's necessary to dispose of two myths. The first is that present price controls on domestic oil benefit the consumer by keeping gasoline and other products prices significantly lower than they otherwise would be. The second is that it is irrational for OPEC to be selling under contract for $25 a barrel at the same time that it is receiving about $40 a barrel on the "spot" market.

The first proposition has been challenged

on this page on the grounds that the prices of petroleum products such as fuel oil and gasoline are already selling at close to world levels. The chief beneficiaries of controls on crude oil produced in the U.S. aren't the consumers but the refiners, who buy controlled oil at prices below those paid by European refiners but are selling their output at nearly the same prices as their counterparts elsewhere around the world.

However, this argument must be amended. Increasingly, it's not the U.S. refiners but OPEC's members who are benefitting from U.S. controls on domestic crude. OPEC is doing this through its pricing system, in which it sells some of its oil at "official" posted prices of up to $25 a barrel and a growing amount at up to $40 a barrel on the non-contract spot market. Far from being irrational, such a system appears to reflect a more or less calculated effort to exploit U.S. price controls. This system in turn reflects Energy Department regulations which attempt to prevent oil companies from charging the higher spot price for oil purchased at the lower contract price.

As is so often the case, government efforts to regulate the marketplace are having unintended consequences. DOE officials no doubt thought their rules would protect us from "profiteering" oil companies. Instead, their efforts are encouraging "profiteering" by OPEC. The oil companies are only a pawn in this game.

By law, the cost of imported oil must be mixed with the cost of domestic price-controlled crude. Because we import about half our oil, each one dollar per barrel increase in the price of OPEC crude increases the price of the mixture of domestic and imported crude only 50 cents per barrel. Suppose price controls on domestic oil actually resulted in lower prices for American consumers. This would mean that when OPEC increases its prices the purchasers who buy the resulting mixture in the U.S. would pay a smaller increase than their counterparts in Europe. There would be less incentive for U.S. consumers to conserve. This failure to conserve in the U.S. encourages OPEC to charge high prices.

This is almost what happens but not quite. As we have seen, U.S. consumers already are paying close to world prices for the end products made from crude. If they weren't, multinational oil companies would be rerouting their products to other markets to take advantage of higher prices there.

One might suppose the oil companies are making "windfall" profits in their refining operations on the difference between what they pay for their mix of price-controlled crude and foreign oil and the world prices they charge for products. But OPEC understands this, too, and has stumbled upon a simple method for pocketing those windfalls for itself.

OPEC's technique is to shift growing amounts of oil into the "spot" market. Spot oil traditionally has been lower priced, because it was the excess oil available for emergencies when a company or country found itself a bit short. But it is now higher; in fact, the price difference between contract and spot oil has risen in recent months to seemingly breathtaking levels. When one tracks the price of spot oil these days, one notices an interesting fact: When spot oil is mixed with less costly price-controlled U.S. crude, the result is oil whose average price is as high as the price paid by the rest of the world for oil.

Say, for example, that oil companies are generally paying a world contract price of $25 a barrel. And say that U.S. price controls prevent domestic producers from charging more than $10 a barrel. Is it any surprise that the spot price will be about $40?

U.S. companies generally can't sell that $40 oil in Europe or other non-U.S. markets because it's above the world price; the companies would take a beating on such a transaction. Instead, they import the $40 oil and sell the $25 oil elsewhere. There's no incentive to import the $25 oil because they can't make any more profit on it in the U.S. than they can on $40 oil. They are only allowed to pass through their costs, not charge a $15 markup. But they can sell the $25 oil elsewhere for whatever it will fetch.

The result is that the oil company earns a profit by selling high priced OPEC oil to the U.S. and low priced OPEC oil to Europe. OPEC, in effect, collects the difference between the controlled price of our domestic oil and the world price.

Once we understand what is going on in the oil market it is no surprise that OPEC was unable to agree upon a single benchmark price for oil. By having two benchmark prices for oil OPEC will be able to obtain roughly $40 billion per year *more* from America. It would be remarkable if OPEC passed up $40 billion just to have a unified oil price system. The only alternative we have is to raise the price of our domestic oil to the world price immediately. Those who would have us do otherwise are in fact seeking to enrich OPEC at the expense of Americans.●

THE FTC AND THE CONSUMER

● Mr. METZENBAUM. Mr. President, several days before Congress recessed and the 1st session of the 96th Congress drew to a close, I began to submit on a daily basis editorials about the Federal Trade Commission. These editorials all shared similar themes—that the FTC is invaluable to consumers and that the congressional assault on this agency's authority is dangerous and wrong.

I would like to resume the practice of submitting such editorials on the FTC so that my colleagues will have the opportunity of hearing all sides of the argument for an independent, aggressive Federal Trade Commission.

Today, I am submitting an editorial which appeared in California's Sacramento Bee on November 29, 1979. It points out how important it is for American consumers to have a strong and active FTC working on their behalf. I ask that the editorial be printed in the RECORD.

The editorial follows:

ATTACK ON THE FTC

The Federal Trade Commission, the consumer protection agency that in recent years has actively campaigned against misleading advertising and promotional activities, has managed to alienate a lot of powerful people. As a result, Congress held up its budget for two years in a row and is now considering a host of bills that would not only reduce the agency's scope, its powers and its finances, but redefine its very purpose.

The Senate Commerce Committee, in its anger about the FTC's campaign against deceptive children's television ads, recently voted virtually to eliminate the FTC's ability to make any industrywide rules about what constitutes acceptable advertising. And to curtail an investigation of tobacco industry health claims, it voted to sharply reduce the agency's ability to collect information for any investigation. Taken together, those and similar measures now going through the committee do more than kill specific investigations; they jeopardize all ongoing FTC inquiries and several existing FTC regulations, among them its highly praised rules banning deception in advertising of eyeglasses and vocational training programs.

In the House, the special interest attack on the FTC has been even more direct. The House called on any interested industry to submit whatever requests for exemptions from FTC investigation they choose and this week passed every exemption requested.

This outcome was predictable from the first test of these special interest bills, when the House, at the request of the funeral industry, overwhelmingly voted to simply overturn the FTC's proposed funeral industry rules. Those rules would have done no more than ban the most unscrupulous practices of the funeral industry. They would have prevented funeral parlors from lying about what were the minimum purchases legally required for burial and cremation. And they would have made it illegal to offer grieving relatives only the most expensive package of burial services, implying that these were all that were available. Although the FTC had conducted years of hearings before deciding on these eminently fair regulations, the House voted to undo them without even the pretense of a hearing on the merits.

The House has now passed several other special interest exemptions, as well as a more general "solution" to the FTC "problem," a bill providing that either house of Congress can veto any FTC ruling—thus opening the door wide to many more travesties like the funeral vote. The full Senate will vote soon on its Commerce Committee's recommendations and the House bills.

The FTC may have brought on its troubles with its own overzealousness, as its congressional critics maintain. But if the effectiveness of certain industries in obtaining indefensible special interest legislation from Congress proves anything, it is the pressing need for a zealous and independent FTC to protect consumers from unscrupulous uses of just such industry power.●

RULES OF THE COMMITTEE ON THE JUDICIARY

● Mr. THURMOND. Mr. President, in accordance with paragraph 2 of rule 26 of the Standing Rules of the Senate, I submit for printing in the CONGRESSIONAL RECORD the rules of procedure of the Senate Committee on the Judiciary.

The material follows:

RULES OF THE COMMITTEE ON THE JUDICIARY

I. MEETINGS OF THE COMMITTEE

1. Meetings may be called by the Chairman as he may deem necessary on three days notice or in the alternative with the consent of the Ranking Minority Member or pursuant to the provision of Sec. 133(a) of the Legislative Reorganization Act of 1946, as amended.

2. Each witness who is to appear before the Committee or any subcommittee shall file with the Committee, at least 48 hours in advance of the hearing, a written statement of his testimony in as many copies as the Chairman of the Committee or subcommittee prescribes.

3. On the request of any member, a nomination or bill on the agenda of the Committee will be held over until the next meeting of the Committee or for one week, whichever occurs later.

II. QUORUMS

1. Nine members shall constitute a quorum of the Committee when reporting a bill or nomination; provided that proxies shall not be counted in making a quorum.

2. For the purpose of taking sworn testimony, a quorum of the Committee and each subcommittee thereof, now or hereafter appointed, shall consist of one Senator.

III. PROXIES

When a record vote is taken in the Committee on any bill, resolution, amendment, or any other question, a quorum being present, a member who is unable to attend the

meeting may submit his vote by proxy, in writing or by telephone, or through personal instructions. A proxy must be specific with respect to the matters it addresses.

IV. BRINGING A MATTER TO A VOTE

The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote. If there is objection to bringing the matter to a vote without further debate, a rollcall vote of the Committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with ten votes in the affirmative, one of which must be cast by the Minority.

V. SUBCOMMITTEES

1. Any member of the Committee may sit with any subcommittee during its hearings or any other meeting, but shall not have the authority to vote on any matter before the subcommittee unless he is a member of such subcommittee.

2. Subcommittees shall be considered de novo whenever there is a change in the subcommittee chairmanship, and seniority on the particular subcommittee shall not necessarily apply.

3. Except for matters retained at the full Committee, matters shall be referred to the appropriate subcommittee or subcommittees by the Chairman, except as agreed by a majority vote of the Committee or by the agreement of the Chairman and the Ranking Minority Member.●

MARRIAGE WITH CHINA COULD JEOPARDIZE U.S. AIMS

● Mr. McGOVERN. Mr. President, Stanley Karnow is an experienced journalist with a background of expertise in Asian policy matters. In a recent article, he cautions that playing "the China card" could end up jeopardizing American interests. He raises some fundamental military and foreign policy questions about the unfolding security relationship between the United States and China which should be considered by the Senate as we seek to develop new responses to the breakdown of détente and the events in Southwest Asia. I am therefore asking to insert his article, entitled "The China Card," from the January 21 Baltimore Sun, into the RECORD.

The text of the article follows:

THE CHINA CARD

WASHINGTON.—After admitting that he has been naive about the Soviet Union, Jimmy Carter now seems to be displaying a similar kind of innocence toward China. His approach to Peking could also prove to be an occasion for disaster.

The administration's new reach to the Chinese was stated recently in Peking by Secretary of Defense Harold Brown, who expressed the hope that the "global strategic relationship" between the United States and China would "broaden and deepen" in the face of their common hostility toward the Soviet Union.

But that objective is fraught with hazards. For the so-called "China card," which the Carter administration has been yearning to play against the Russians since its formal recognition of Peking last year, is hardly an ace. Backing the Chinese against the Soviet Union, therefore, could be dangerous.

This is not to deny that the United States and China share a parallel interest in discouraging Soviet designs in South Asia. It would be risky, however, for the United States to commit itself to the cause of the Chinese in their larger dispute with the Russians.

Such a commitment could draw the United States into a war of enormous dimensions should a major Sino-Soviet conflict erupt. It could also involve the United States again in Southeast Asia if tensions between China and Vietnam erupt in renewed fighting.

A closer security link with Peking makes it more difficult as well for the United States to improve its ties with the Russians in the event that they retreat to moderation in Afghanistan and elsewhere.

Most significantly, it is an illusion to believe that China can serve as a real counterweight to the Soviet Union in a triangular power game. As Mr. Brown himself observed during his trip, the Chinese military machine is obsolete. Its full modernization would cost more than either the United States or China could afford.

A realistically prudent view of the prospects for military co-operation between the United States and China is held by the Pentagon professionals, who estimated in a secret study made last year that giving the Chinese a "confident capability" to defend themselves against the Soviet Union would cost between $41 billion and $63 billion.

The study was recently leaked to Drew Middleton of the New York *Times*, presumably in an attempt to restrict the notion that a U.S. military aid program to China is a plausible undertaking.

According to the Pentagon experts, China lacks the capability to handle a large-scale infusion of modern arms, even if they were provided by the United States. As the study puts it, China's "relatively unsophisticated common soldiers" are probably unable to maintain even "low technology" equipment. Besides, China's needs are tremendous.

Bringing its forces up to date, the study calculates, would require from 3,000 to 8,600 new medium tanks, some 10,000 armored personnel carriers, roughly 20,000 heavy trucks, 6,000 air-to-air missiles, 720 mobile surface-to-air missile launchers, and, among other equipment, 240 fighter-bomber aircraft.

In addition, the backward Chinese economy would have to be expanded and modernized in order to sustain a rise in the level of the country's military effectiveness.

The Pentagon specialists doubt that American advisers could operate easily in China, since "traditional Chinese xenophobia" would "limit our ability to deal directly with the Chinese on a large scale."

The experts further point out that the Soviet Union might react against a U.S. buildup of the Chinese military establishment by staging a preemptive attack against China. They suggest, too, that American support for China during an actual conflict might prompt Moscow to launch retaliatory strikes against the United States or Western Europe.

On the other hand, the Pentagon specialists see no way for either the Russians or the Chinese to defeat each other decisively. A Soviet conventional or nuclear offensive cannot result in domination of China, which is too vast a land to control. Nor can the Chinese do more than conduct "shallow raids" against Soviet territory.

But, the experts conclude, the outcome of a Sino-Soviet war could ultimately be detrimental to the West. For even though the Russians would not beat the Chinese, they would weaken China enough to permit the redeployment of Soviet troops out of Asia into Europe.

This appraisal does not differ substantially from the assessments offered by professional soldiers in years past. Back in the late 1940s, for example, General George Marshall warned that involvement in China was the road to nowhere, and General Matthew Ridgway echoed the same sentiment during the Korean War.

It is questionable, with all this, whether President Carter is listening to the cautious counsel of the professionals. True, he has ruled out the delivery of weapons to China for the present. But, by supplying Peking with a ground satellite facility that has been denied to the Soviet Union, he is conveying the impression that he may be prepared to go further in underwriting the Chinese militarily.

Expedients contrived to meet immediate crises have a way of becoming long-range policies. Thus, the courtship of China, begun to exert pressure on the Russians in the present confrontation, could develop into a marriage that, over time, may jeopardize genuine U.S. aims rather than strengthen them.●

CORRECTION IN THE ENGROSSMENT OF H.R. 5288

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CRANSTON, I ask unanimous consent that in the engrossment of the bill, H.R. 5288, an act to amend title 38, United States Code, and for other purposes, the Secretary of the Senate be authorized and directed to make the following corrections:

In the table contained in section 901 of the bill, strike out "230" in column II on the line relating to half-time institutional training, and insert in lieu thereof "130"; and in section 902(5), strike out "$75" and insert in lieu thereof "$79."

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

ORDER VITIATING ACTION ON S. 1879 AND TAKING ACTION ON H.R. 5176

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. GLENN, I make the following unanimous-consent request: On January 25, 1980, the Senate passed by voice vote S. 1879, the General Accounting Office Personnel Act of 1979. The Senate needs to pass the House bill on this same subject. It is my understanding that with the adoption of technical amendments it is likely that the House would then accept the bill and the technical amendments without requesting a conference.

Accordingly, I make the following request: I ask unanimous consent that the Senate vitiate its actions of tabling the motion to reconsider and passage of S. 1879 on January 25; that the engrossment and advancement to third reading be vitiated, and that the technical amendments, which I shall send to the desk, be considered and agreed to en bloc, and that the bill again be advanced to third reading; that the Committee on Governmental Affairs be discharged from further consideration of H.R. 5176, and that the Senate proceed to its immediate consideration; that everything after the enacting clause of H.R. 5176 be stricken, and that the text of S. 1879, as amended, be inserted in lieu thereof, the bill passed, and the motion to reconsider laid on the table, and that S. 1879 then be indefinitely postponed.

Mr. STEVENS. There is no objection.

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

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) on behalf of Mr. GLENN

proposes an unprinted amendment numbered 940:

On page 1, line 4, and on page 19, line 18, strike "1979" and insert in lieu thereof, "1980".

On page 2, line 23, strike all up to the word "in" and on line 24, and insert in lieu thereof: "(B) prohibit the personnel practices prohibited".

On page 6, line 2, strike "(c)".

On page 7, line 21, strike "chairman" and insert in lieu thereof, "chair".

On page 10, line 13, strike "prescribed" and insert in lieu thereof "payable".

On page 10, line 19, strike all after the period through line 22 and insert in lieu thereof the following: "All members of the Board shall be entitled to travel expenses and per diem allowances in accordance with section 5703 of title 5, United States Code.".

On page 18, line 22, strike "(17)" and insert in lieu thereof "(4)".

ORDER FOR RECESS UNTIL 9:15 A.M. TOMORROW; AND FOR RECOGNITION OF CERTAIN SENATORS

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 9 a.m.

Mr. President, I ask unanimous consent that the weather forecast calling for snow be vitiated and that substituted in lieu thereof there be partly sunny skies. [Laughter.]

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

Mr. ROBERT C. BYRD. That the winds be not to exceed 2 miles per hour and that they be north, northeasterly, rather than southwesterly, and that there be no precipitation.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, in view of the order that was just entered, that the Senate, when it completes its business today stand in recess until 9:15 tomorrow morning.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, after the prayer, which I hope will provide for another snowless day on Friday, the following Senators be recognized and that the majority leader and minority leader, or their designees, not be recognized under the standing order—we will shut them out, along with the snow—and that Mr. LEVIN and Mr. HAYAKAWA—now, we have a request for rain tomorrow.

The PRESIDING OFFICER. Does the Chair hear 9:30?

[Laughter.]

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, now that we have been assured that there will be 29 days in this coming February, that the time for Mr. LEVIN and Mr. HAYAKAWA be reduced to 15 minutes, rather than to 15 minutes each.

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

Mr. ROBERT C. BYRD. And that they may fight or do anything they wish over the division of that time, as long as it is a friendly fracas, and that Mr. LEAHY be recognized for 15 minutes, all following the prayer.

And that upon the completion of those two orders, the Senate resume consideration of H.R. 3236, the social security disability bill.

Mr. President, I ask unanimous consent—the winds have changed again—that the order for the Senate's convening tomorrow at 9:30 be changed to 9:15 and that the order for the recognition of the leaders, or their designees, be restored, but with the proviso that it be reduced to 7½ minutes each.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. ROBERT C. BYRD. Now, if anybody can understand what I have just done, I would like for them to explain it to me.

Mr. MATSUNAGA. Mr. President, if the majority leader will yield, I was under the belief all along that the distinguished majority leader was created in His image. But, after listening to the orders being issued this evening, I am beginning to believe he is closer to the Creator than that.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as the Senate completes action on H.R. 3236 tomorrow, or at such time as that measure is set aside, whichever may be the case, the Senate proceed to the consideration of S. 1648, Calendar Order No. 445, which is the airport development bill; that action not be completed on that bill tomorrow, but that an amendment by Mr. SASSER be in order on Monday or Tuesday to that bill, on whichever day the Senate action is resumed on the bill, but that no other amendments be in order on such day, except amendments to the amendment, if there be such;

That on Friday of this week, the Senate proceed, first of all, to consider Senate Resolution 109, relating to functions of the Ethics Committee, on which there is a time agreement; and that upon the disposition of Senate Resolution 109 on Friday, the Senate proceed to the consideration of H.R. 5168, Calendar Order No. 454, which is the bill extending certain expiring provisions of law relating to personnel management of the Armed Forces;

That if there is a closed session—which I understand will be requested and seconded—the closed session not extend beyond 4 hours, the time to be equally divided between Mr. WARNER and Mr. NUNN; and that action on that bill not be completed that day, but that all amendments that have not been excepted according to the order be called up Friday, or otherwise, that they not be in order when the Senate resumes consideration of H.R. 5168 on Monday; that on Monday the only amendments to be in order would be the amendment by Mr. SCHMITT, which is already covered by the agreement, the amendment by Mr. ARMSTRONG, which is already covered by the agreement, and a substitute amendment to the Armstrong amendment on which there be a 2-hour time limitation; that amendment to be the Warner-Nunn amendment, and that the time on that amendment be equally divided between Mr. ARMSTRONG, the opponent of the amendment, and Messrs. WARNER and NUNN; and that any rollcall votes on legislation on Monday, if ordered, begin not before 6 p.m.

Mr. STEVENS. Reserving the right to object, it is my understanding that the Schmitt amendment, the Armstrong amendment, and the Warner-Nunn amendment would be the only amendments that would then be in order on Monday under the specific time agreement specified, and that any votes that take place on the amendments to that bill, once it is called up on Friday, will take place not before 6 o'clock on Monday? Is that my understanding?

That would mean that any amendments that are offered on Friday afternoon after the closed session would be voted upon not earlier than 6 p.m. on Monday, at the same time as the others. That is my understanding.

Mr. ROBERT C. BYRD. That is the understanding, Mr. President.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I wish to make a slight modification in the agreement on S. 1648, Calendar Order No. 445, the airport and airway improvement bill, as follows:

The time on any amendment being 30 minutes equally divided under the agreement previously entered, I ask unanimous consent that on an amendment by Mr. BELLMON, provided it is germane, there be a 1-hour time limitation to be equally divided in accordance with the usual form. It is my understanding that it will be a germane amendment and the request is conditioned on its being germane.

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

RECESS UNTIL 9:15 A.M. TOMORROW

Mr. MATSUNGA. Mr. President, if there be no further business to come before the Senate, I now move that the Senate stand in recess until the hour of 9:15 a.m. tomorrow.

The motion was agreed to; and at 7:24 p.m. the Senate recessed until Thursday, January 31, 1980, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate January 30, 1980:

DEPARTMENT OF COMMERCE

Margaret Muth Laurence, of Virginia, to be an Assistant Commissioner of Patents and Trademarks, vice Sidney A. Diamond, elevated.

CALIFORNIA DEBRIS COMMISSION

Col. Paul Frederick Kavanaugh, xxx-xx-xx... xxx-... Corps of Engineers, to be a member of the California Debris Commission, under the provisions of section 1 of an Act of Congress approved 1 March 1893 (27 Stat. 507) (33 U.S.C. 661).

NATIONAL COUNCIL ON THE ARTS

The following-named persons to be members of the National Council on the Arts for

the remainder of the terms expiring September 3, 1980:

James E. Barnett, of Georgia, vice Thomas Schippers, resigned.

Leonard L. Farber, of Florida, vice Jerome Robbins, resigned.

Sandra J. Hale, of Minnesota, vice Angus Bowmer, deceased.

DEPARTMENT OF TRANSPORTATION

The following-named persons to be members of the advisory board of the Saint Lawrence Seaway Development Corporation:

Conrad M. Fredin, of Minnesota, vice William W. Knight, Jr., resigned.

Francis Albert Kornegay, of Michigan, vice Miles F. McKee, resigned.

DEPARTMENT OF JUSTICE

Raymond L. Acosta, of Puerto Rico, to be U.S. Attorney for the district of Puerto Rico for the term of 4 years, vice Julio Morales Sanchez, resigned.

John Saul Edwards, of Virginia, to be U.S. Attorney for the western district of Virginia for the term of 4 years, vice Paul R. Thomson, Jr., resigned.

James R. Laffoon, of California, to be U.S. Marshal for the southern district of California for the term of 4 years (reappointment).

John W. Spurrier, of Maryland, to be U.S. Marshal for the district of Maryland for the term of 4 years (reappointment).

IN THE NAVY

The following-named lieutenants of the U.S. Navy for temporary promotions to the grade of lieutenant commander in the various staff corps, as indicated, pursuant to title 10, United States Code, sections 5773 (staff corps), 5793 (Medical and Dental Corps) and 5791, subject to qualifications therefor as provided by law:

MEDICAL CORPS

Allred, Thomas J.
Aulicino, Pat L.
Ayers, Warren V.
Bass, Robert R.
Buckley, Robert L.
Choisser, William V.
Coddington, Charles C. I.
Collins, Thomas M.
Condie, Scott D.
Cook, Timothy G.
Dibala, Anne C.
Dufour, David R.
Eninger, Larry A.
Farrell, George J.
Gehret, Richard G.
Gliksman, Stanley H.
Hallinan, Timothy P.
Hayes, Arthur C.
Herr, Celeste E.
Herr, Harlan G.
Hoover, Lewis D.
Huyoung, Alfred R.
Johnson, Joe S.
Kosh, David L.
Manansala, Francisco S.
McCall, Mark J.
Meguiar, Ramon V.
Mikell, Oswald L.
Miller, Michael L.
Nelson, Robert J.
Patel, Dilip D.
Potter, Bonnie B.
Pratt, Randall N., Jr.
Pratt, Steven G.
Racicot, David F.
Ruel, Theodore A.
Ryan, Mark
Scott, William, Jr.
Seaquist, Mark B.
Smith, John C.
Taylor, John K.
Thompson, Douglas F.
Tomlin, Thomas A.
Treharne, John W., Jr.
Voit, Marek S.
Wedul, Mark V.
Wilberg, Carl W.

SUPPLY CORPS

Allion, Dennis G.
Appleby, Michael R.
Argento, Terry J.
Ball, Edgar S., Jr.
Bang, Paul G.
Banghart, Allan A.
Beassie, Leslie J.
Beckman, Robert J.
Bender, Danny A.
Bennett, Bruce R.
Berg, Roland D.
Bianco, Barron B.
Bird, Robert R.
Bocchino, David L.
Bohannon, Donald C.
Bonafede, James M.
Branaman, Larry G.
Burdon, William H.
Burgess, Andrew P. III
Burton, Robert N., Jr.
Callaway, Michael P.
Camp, Gary L.
Camp, Robert T.
Capizzi, David A.
Carpenter, Levon H.
Carroll, Joseph D.
Chambers, Thomas R.
Chitty, Frederick C.
Clark, James M.
Colvin, Bruce A.
Connolly, John J.
Conover, Richard P.
Cornelison, Gary A.
Craig, Rondall R.
Crandall, Stephen G.
Croll, John M.
Cummins, John L.
Cummingham, Victor E.
Davis, Peter M.
Dewell, Kenneth G.
Duffey, Thomas O.
Elder, Jeffrey J.
Emerson, Jimmie D.
Engel, Steven R.
Ensminger, David S.
Evans, Michael W.
Fages, Sheldon N.
Faubell, Paul D.
Faurie, Bruce R.
Featherstone, Harry L., Jr.
Flohr, Larry E.
Fremont, Robert F., III
Fuller, Dana A., Jr.
Gandola, Kenneth D.
Gillespie, Daniel D.
Ginman, Richard T.
Giordano, Donald M.
Granston, Jeffrey R.
Grant, Charles W.
Gregory, Troy R.
Griffin, James H., III
Griggs, William C.
Grimes, David M.
Gross, Thomas D.
Guerard, Franklin P.
Gunia, Earl G.
Gunter, Wallace E., Jr.
Gustafson, Robert A.
Hammons, Thomas J., III
Hannaford, Philip S.
Hanson, Ryan L.
Harder, Melvin S., III
Hayes, John R., Jr.
Hayes, Reginald S.
Helman, Kenneth H.
Henke, Louis III
Henning, Robert A.
Hertstein, Mark S.
Hickman, Ronald W.
Hickson, Edward E.
Hinkel, Shelby Jr.
Hodgkins, Henry A., Jr.
Hoffman, Thomas L.
Holland, Benjamin A.
Holt, Lonnie D.
Huddleston, Ronald D.
Huss, Boyce W.
Jackson, John E.
Jackson, William A.
Jenkins, Gwilym H., Jr.
Johnson, Mark S.
Johnson, Terrence B.
Johnson, William E.
Jones, David C., III
Jones, Samuel L.
Joslin, Richard M.
Kaloupek, William T.
Kaufman, Gary R.
Keating, Charles L.
Kelly, Daniel C.
King, Wallace V.
Kosar, Peter G.
Lambert, John R.
Lawrence, Robert C.
Leon, John A., Jr.
Locke, James W., Jr.
Main, Archibald M., III
Manley, Stewart L.
Martinec, Dennis P.
Matsushima, Rodney F.
McCoy, Rex C.
McCray, James E., II
McGee, Gary O.
McKenzie, Donald R., Jr.
Mercier, Kevin G.
Merrell, Thomas O.
Merritt, Karl W.
Miller, Felton
Miller, Raymond L.
Mitchell, Kent R.
Mitchell, Lonsdale C.
Moessner, Frederick W.
Moffitt, Michael A.
Monaco, Robert E.
Moore, Joseph N.
Moore, Robert T., II
Moran, Michael D.
Nogosek, John
Nyland, Stephen C.
Ohagan, Michael G.
Ostrom, Ronald G.
Owen, Wayne A.
Pathwickpaszyc, John C.
Perkins, Charles A.
Perkins, George W., Jr.
Peterson, Carl R., Jr.
Pitkin, Richard C.
Pledger, John D.
Proctor, Leonard L.
Randall, Bobby L.
Reeve, Robert E.
Rich, Lyle V.
Rigg, David L.
Robertson, James M., III
Rodenbarger, Syd W.
Rorex, Thomas A.
Roundtree, Ronald T.
Rova, Bruce W.
Royer, Frank E.
Sargent, William H.
Sauer, George E., III
Schlax, Thomas P.
Schmidt, William G.
Schneider, Jeffrey W.
Schreiber, Thomas J.
Self, James J.
Seymour, Lyle M.
Shiffman, Robert L.
Shoemaker, Charles K.
Siegel, Allen R.
Simmons, John R.
Sims, Donald B., Jr.
Smith, Raymond W.
Standen, Eric A.
Stengelman, Anthony E.
Stilwell, Robert R.
Stone, Daniel H.
Sugermeyer, Robert S.
Sugihara, Ronald Y.
Sule, Michael F.
Sweney, Robert L.
Tarleton, George L., III
Thornton, Robert G.
Thorpe, Grant W.
Tibbetts, Joel F.
Tinker, William M.
Todd, Dale E.
Tufts, John E.
Ustick, Michael L.
Valentine, Stephen IV
Vinagre, Eduardo G.
Vinson, Charles M.
Vogelsang, James E.
Walters, James S.
Watkinson, Lyle P.
Weidemann, James L.
Wenslaff, William A.
Werthmuller, Roy W.
Weyrick, Philip F.
White, Charles E.
Willis, Roger A.
Wilson, Paul A.
Wimett, William T.
Wood, Robert H., II
Woodiel, James C.
Woods, Willie E.
Worrall, Eric H.
Wright, Dennis L.
Yates, David S.
Yount, Mark L.
Zehner, Dale J.

CHAPLAIN CORPS

Blegstad, Gary C.
Brookshire, Joseph W.
Bruce, Gerald R.
Chadwick, Thomas K.
Cluff, Merlin H.
Condon, William G.
Dieckhaus, Anthony W.
Duncan, Charles R.
Eis, Charles R.
Ferguson, Melvin R.
Fryer, Patrick L.
Gardner, Ronald E.
Giuntoli, Thomas G.
Grogan, Gerald R.
Jayne, Bruce C.
Jukam, Donald C.
Langhorne, George A.
Livojevich, Ronald
McCranie, Glenn H.
McCreary, Stanley H.
Moon, William R.
Pokladowski, Gregory S.
Rector, Larry J.
Rector, Roscoe E., Jr.
Salas, Jose F., Jr.
Tambourin, Sauveur D.
Tugan, Gary E.
Wambach, Joseph G.
Williams, Robert H.
Wiltshire, Wallace W., II
Winslow, David A.

CIVIL ENGINEER CORPS

Ackerbauer, Blair
Allen, Donald C., Jr.
Allen, James R.
Allshouse, Clare R.
Andvik, Brian K.
Bacon, Thomas A.
Bukoski, Thomas J.
Cahill, Patrick J.
Cherry, John M.
Christensen, Thomas H.
Clark, David J.
Clements, Frederick R.
Clough, Paul L.
Corbett, James T.
Craft, Gary M.
Dean, Joseph C.
Dennis, David R.
Dew, Fred W.
Dierckman, Thomas E.
Digeorge, Frank P., III
Elsbernd, Robert L.
Foster, James E.
Galer, Kenneth O.
Gebert, David K.
Glynn, William G.
Guthrie, Gene S., Jr.
Haas, Richard F., Jr.
Hall, William M.
Hanes, Samuel H., Jr.
Herning, Robert E.
Herriott, Thomas R.
Hill, Jerry D.
Hocker, Robert G., Jr.
Holst, Ronald P.
Howell, Richard A.
Katz, Alan W.
Kechter, Ronald A.
Keller, William J., Jr.
Keene, Ronald E.
Keifer, John M.
Kleven, Courtney C.
Knoll, Joseph C.
Kotz, John S.
Laboon, Thomas A., Jr.
Lappano, Gilbert C.
Larson, Steven C.
Law, George L.
MacNamara, Timothy C.
Mann, Douglas E.
McKinney, Charles G.
Molineaux, Ian J.
Morris, Donald E.
Morris, Donald G.
Morrow, James F., III
Murphy, Bernard F., Jr.
O'Toole, Thomas R.
Parisi, Anthony M.
Parsons, Robert C.
Perry, Michael J.
Pizzano, Robert C.
Pylant, Linward R.
Pyles, Troy K.
Rabold, Bernard L., Jr.
Rautenberg, Robert C.
Rigby, William H., Jr.
Saltenberger, William M.
Schneider, Charles H.
Scullion, Leonard P.
Seltzer, George H., III
Setzekorn, Robert R.
Spore, James S., III
Sullivan, John J., Jr.
Talmadge, Charles E.
Terry, Ronald E.
Thompson, Stephen R.
Thomson, Francis S., Jr.
Tull, Terrence W.
Turowski, Henry J., Jr.
Vanderels, David M.
Walker, William F.
Wong, Jack J., Jr.
Zook, Michael J.
Zuber, David E.

JUDGE ADVOCATE GENERAL'S CORPS

Baggett, Joseph E.
Bagley, David W., II
Baker, Stephen C.
Bartlett, James E., III
Becker, Fred R., Jr.
Bell, Dale E.
Bennett, John C. W.
Bergstrom, Alan L.
Boudewyns, Timothy M.
Buechler, Christopher L.
Carney, Patrick J.
Caruthers, William P.
Champagne, Gerald E.
Clark, Norman K.
Cliffe, James R.
Dalesio, Daniel J., Jr.
Dawson, Mark R.
Dirks, John A.
Duffy, Eugene O.
Eddy, Richard W., Jr.
Fahrenbacher, Ronald J.
Gonzalez, Glenn N.
Groat, John S., Jr.
Halvorson, James E.
Harrison, John G., Jr.
Haskel, Peter B.
Horgan, Mark M.
Jeffries, Charles C., Jr.
Kelley, Patrick W.
Kirkpatrick, Gerald J.
Leachman, Timothy L.
Ledvina, Thomas N.
Martin, Thomas L.
Massey, Thomas J., Jr.
McClain, Tim S.
McConnell, Daniel D.
McDonald, Alvin L.
McLaughlin, Peter J.
Meadows, Robert W.
Miller, William A.
Milner, Nora E.

Montgomery, John B.
Morgan, John D.
Muschamp, Werner, L.
Nystedt, Charles M., Jr.
Parnell, Joe M.
Peace, David L.
Pitts, Russell A.
Prochazka, Frank J., Jr.
Radd, John D.
Robertson, Brian D.
Rockwell, James D.
Scranton, Joseph D.
Seaman, Robert C., Jr
Sheehan, Patrick J.
Spence, Joseph M.
Stimson, Paul M.
Strong, Franklin W., Jr.
Tapajcik, John M.
Villemez, Clyde J., Jr.
Walsh, Richard F.
Westholm, Larry R.
Wurzel, David L.
Yuhas, Christine M.
Yund, Walter J., Jr.

DENTAL CORPS

Aker, Frank, III
Alvis, Stephen G.
Antioquia, Benjamin S.
Baker, Darrell A.
Barco, Clark T.
Biedermann, Kurt G.
Biggs, Andrew T.
Boyd, William J., Jr.
Brinkley, Eugene D., Jr.
Brown, Gordon M., Jr.
Cathers, Samuel J.
Cuprak, Elizabeth E.
Degroote, Douglas F., Jr.
Dodd, Robin B.
Elzie, Theodis
Engler, Robert A.
Ferjentsik, Ernest S.
Fox, Wendell J.
Galich, John W., Jr.
Haglund, Michael P.
Harrison, Glenn A.
Huebner, Dennis R.
Hutter, Jeffrey W.
Jaworski, Charles P.
Kaar, William H.
Koffler, David G.
Krochmal, James E.
Little, Michael E.
Lutcavage, Gregory J.
Marsaw, Frederick A., Jr.
Maynard, Robert D.
McAmis, Ronald W.
McCabe, Sheila M.
McDonald, William H.
Mehlenbeck, Clarence W.
Meyer, Daniel M.
Motley, Hudson G.
Paulson, Eric G.
Rech, John R.
Reder, Daniel G.
Remington, David N.
Rocklin, Michael F.
Ruliffson, Mark H.
Schmid, Paul E.
Schroeder, Dawn C.
Simecek, John W.
Smith, Raymond G.
Steere, James C.
Stgermain, Henry A., Jr.
Swearingen, William H.
Topcik, Philip L.
Turner, Carol I. B.
Walker, Cledius
Weaver, Peter M.
Wilcox, Dale E.
Wilkinson, Richard J.

MEDICAL SERVICE CORPS

Agent, Selwyn K.
Ambler, Frederick A.
Baker, Gerald C.
Baltrukonis, Joseph V.
Barber, Norman J.
Barina, Fred G., Jr.
Barnett, Phillip J.
Bauer, Peter J.
Beatty, Earl, III
Bennett, James D.
Bennett, Ronald E.
Berkley, Roy L.
Blome, Michael A.
Bohnet, Herbert F., III
Bolduc, Paul R.
Bowman, Jeffrey S.
Boyles, Robert W.
Breton, Robert W.
Broadhurst, Ronald W.
Brown, George R.
Brunza, John J.
Buffington, John R.
Butler, David E.
Campos, Theodore R.
Carroll, Robert M.
Christopher, John P.
Clarkson, Wallace M.
Cosenza, Joseph M.
Crabbe, Joel R.
Crabtree, Roger D.
Crafton, Lonnie D.
Crane, James A.
Crittenden, George H.
Cronin, Patrick D.
Dawson, Richard L.
Dean, Larry M.
Defibaugh, Thomas R.
DeLong, Douglas S.
Denayer, John W.
Densley, Merlynn D.
Dial, William S.
Dittman, David
Dotto, Kenneth M.
Dunkleman, Dennis C.
Eberle, James E.
Elkins, Bryan R.
Elster, Robert E.
Enright, Charles A.
Escamilla, Joel
Ewing, Ronald C.
Felton, Robert E.
Finke, Ronnie L.
Foster, Jerry A.
Frey, Mary L.
Fristad, Arvid C.
Fry, Wendell J.
Garton, Michael L.
Gibson Kenneth D.
Gray, Brian H.
Greedan, Andre M.
Greenan, John E. III
Grimes, Thomas A.
Grissom, Michael P.
Hargraves, David T.
Harrison, Robert B., Jr.
Hastings, Jerry T.
Helm, Wade R.
Henrich, William R.
Hermann, Dean A.
Hetrick, John R.
Hickery, Rodney D.
Hickey, Thomas M.
Higgins, Janet L.
Hisoire, Dennis P.
Hixson, Steven R.
Holman, Larry D.
Hughes, Francis J., Jr.
Hughes, Roger D.
Huju John I.
Hummel, James R.
Jillson, Susan G.
Johnson, David E.
Jones, Buddy L.
Joseph, William A.
Kane, Robert J.
Keenan, James M.
Kelly, Stephen J.
Knee, Dale O.
Kochis, James B.
Kolesar, Joseph T.
Kunkel, Clyde E.
Kurtich, Richard B.
Lamar, Steven R.
Lane, John C.
Larocco, James M.
Lawrence, Jonathan D.
Leadbeater, Warrell F.
Lemmerman, Donald J.
Lewis, Marion S.
Lewis, Morris N.
Love, Douglas Jr.
Mahin, Patrick L.
Malinky, Robert L.
Malinoski, James W.
Manley, Edward
Martin, Donna R.
Martin, Early M.
Maskulak, Michael J.
Mastervich, Mark M.
McBride, Joseph E.
McCaig, Joe M.
Miller, David A.
Mills, Wayne M.
Mitchell, Troy G.
Mize, Lewis W.
Moody, Johnny M.
Morey, Arlen D.
Morrison, Kathleen D.
Morrison, Tommy R.
Morton, David E.
Moses, William R.
Muklevicz, Robert E.
Mullen, Michael J.
Mullin, Jack A.
Mullin, Jimmie J.
Nelson, Ronald C.
Oldham, Richard T.
Owens, Jerry M.
Palmer, James F.
Parks, Jackie H.
Parr, Laurence F.
Pavlik, Robert E.
Penkunas, John J.
Penn, Jerry D.
Perkins, Nancy S.
Peterson, Jack L.
Pinkerton, Randy H.
Rathjen, Roger L.
Raymond, James L.
Reading, Thomas E.
Renfro, Mary A.
Reynolds, William H.
Ridgeway, Robert K.
Rockhill, Robert C.
Roman, Michael J.
Rooney, John A.
Ruffin, Tommy L.
Rutherford, Bruce D.
Ryan, Alan B.
Santore, Orlando J. Jr.
Schick, Gary E.
Schweinfurth, Karl E.
Seales, David M.
Seelbach, Richard A.
Sefranek, George A.
Seible, Lawrence G.
Shannon, Kenneth R.
Shepherd, Jack W.
Sheridan, Peter F.
Sherman, Forrest A.
Silvas, Jose M.
Skog, Roy R., Jr.
Sloan, Robert W.
Smith, Donald A.
Smith, Richard L.
Smith, Steven L.
Speir, Herbert A., III
Spillane, Dennis
Stewart, George W. K.
Stine, John W.
Struempler, Richard E.
Thompson, J. Ronald
Tingley, Terry J.
Todd, David J.
Todd, Michael L.
Tomlinson, Tommy M.
Trocha, Paul J.
Trosper, James H.
Turocy, Regis H.
Upton, Billy G.
Wallace, William E.
Wanamaker, John C.
Watson, Spann M.
Watts, Len S.
Weappa, Larry R.
West, Joseph J.
Whiten, Ronnie E.
Williams, Warren Jr.
Wood, Arthur B.
Woods, Walden R.
Yacovissi, Robert
Yost, Harry E.
Zimmerman, Craig A.

NURSE CORPS

Ahrens, William D.
Allison, Rachel V.
Ames, Ervin L.
Applegate, Joanne W.
Atkinson, Nancy J.
Bailey, Donna L.
Barlow, Judy L.
Bates, Richard A.
Baumann, Mary A. E.
Bechtel, Robert H., Jr.
Benway, Michael W.
Bessent, William M.
Beto, Cathleen A.
Bickford, Carol J.
Bishop, Joan A.
Bogart, Deanna R.
Boire, Loretto A.
Bolden, Cheryl V.
Bonnet, Kathleen M.
Bonta, Catharine M.
Bowden, Mary A.
Boyer, John F.
Breeding, Patricia A.
Broad, John R.
Brown, David A.
Brown, Paul P.
Brown, Terry L.
Burns, Kathryn P.
Cabral, Richard E.
Caffrey, Gloria J.
Capps, Karen N.
Carney, Carol A.
Carroll, Sue M.
Casa, Peggy B.
Cherrington, Dolores A
Christman, Patricia K.
Coffman, Peggy S.
Cornish, David L.
Correnti, Patrick S.
Cothern, Jimmie G.
Cox, Robert L., Jr.
Cranston, Christine S.
Cronin, Mary A.
Crowell, Mary J.
Curlee, Candace
Cychosz, Beverly K.
David, Lucy M.
Dawe, Cecelia M.
Deliberto, Vincent L.
Delowrey, Blanche S.
Desavorgnani, Adriane A.
Dick, Suzanne
Doyle, Marcia S.
Dunn, Richard A.
Eilers, Barbara G.
Ellis, Susan L. F.
Eversole, Donna R.
Field, Marion G., Jr.
Finn, Thomas J.
Foley, Barbara A.
Foster, Irene A. S.
Frazee, Daniel C.
Fry, June G.
Gantz, Gary S.
Garrison, Richard A.
Glenn, Judy J.
Graham, Alfred E., Jr.
Griffiths, Loretta A.
Guard, Janet D.
Haley, Kathleen A.
Hambidge, Anne A.
Hargrave, Michael R.
Harmeyer, Gary R.
Hasselbacher, Rosalinda
Head, Walter W., Jr.
Hemmelgarn, Nina T.
Henbest, David
Hobbs, Linda H.
Hodges, Gail L.
Hohon, Henry P.
Holmes, Lawrence C.
Honeywell, Joseph L.
Hughesrease, Marsha L.
Hyams, Orval W.
Johnson, Charlene E.
Johnson, Laurie L.
Jones, Christine S.
Jones, Donald G.
Jones, Donna M.
Jung, James W.
Kelly, Harriet P.
Kinzer, Virginia G.
Kirkman, Donna J.
Kjenstad, James E.
Kopanski, Ruth G.
Korns, Barbara J.
Kout, Kathryn K.
Kozlowski, Janet G.
Krahenbuhl, Allie F.
Kunkel, Ann M.
Laird, Janet F.
Lewis, Rosalie D.
Loftus, Margaret M.
Lombardi, Judith E.
Loose, David S.
Loveridge, Lois E.
Lujan, Eugenio A.
Maggi, Nancy F.
Majewski, Bernadette
Marine, Peggy D.
Marquart, Alison W.
Marsh, George L.
Matika, Linda C. T.
May, Rita V.
McClain, Terry W.
McConnell, Maryann S.
Michael, Dorothy A.
Minnick, Kristine E.
Mitchell, Henry, Jr.
Monahan, Michael E.
Monroe, Victoria M.
Morsillo, Sigrun M.
Neirynck, William E.
Nickerson, Carolyn J.
Norrick, Albert J.
Norris, Linwood W.
Nugent, Aurelia N.
O'Halloran, Jeannine L.
O'Hare, Patricia J.
Osborn, David L.
Parrotte, David F.
Perry, Cynthia E.
Peske, Lorelei S.
Petersen, Patricia L.
Peterson, Janet L.
Peterson, Peggy J.
Phillips, Jean M.
Picchi, Christine A.
Powers, John C., II
Pruitt, Nancy S.
Reitz, Anne E.
Rice, Edward V.
Roberts, James W.
Robinson, Leslie E.
Rollison, Lee K.
Roy, Terry D.
Ruschmeier, Elizabeth M.
Sample, Priscilla
Schafer, Dwight D.
Schemmer, Carol L.
Schneider, Donald P.
Schnoor, Elaine H.
Schwartz, Linda L.
Sciuto, Renata M.
Shaia, Evelyn R.
Sharpe, Jacqueline E.
Shelton, Mary C.
Smith, Julianne K.
Smola, Theresa N.
Soileau, Joseph C.
Spangler, Catherine E.
Spiers, Carol L.
Spraggins, Gerald G.
Standen, Julianne
Sullivan, Dennis J.
Swan, Catherine A.
Swanson, Jane W.
Taggart, Jack R.
Taschner, Ardis L.
Templeton, Alma N.
Thompson, Mari E.
Timmcke, Teresa A.
Tomsky, Carol N.
Trent, James E.
VanBuren, Donna J.
Walgren, Kenneth D.
Ward, Deborah A.
Ward, Elizabeth A.
Warren, Carolyn S.
Wells, Mary E.
White, Grace M.
Wilson, Wendy L.
Wright, Mitchell P.
Yoder, Marianne E.
Young, Robert R.
Zabel, Nancy D.

The following-named woman lieutenant of the U.S. Navy for permanent promotion to the grade of lieutenant commander in the Supply Corps, pursuant to title 10, United States Code, sections 5773 and 5791, subject to qualifications therefor as provided by law:

Nelson, Rosemary E.