SENATE—*Wednesday, May 21, 1980*

(Legislative day of Thursday, January 3, 1980)

The Senate met at 11:30 a.m., on the expiration of the recess, and was called to order by Hon. DENNIS DECONCINI, a Senator from the State of Arizona.

PRAYER

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

Almighty God, from whom cometh every good and perfect gift, grant to us here a wisdom higher than our own, an elevated sensitivity to the promptings of Thy Spirit and a ready obedience to the voice of conscience. Grant us the strength and patience which comes from above in the midst of uncertainty. Give us the ability to distinguish fact from fancy, to discern the real from the unreal, to distinguish the attainable from the unattainable. Grant us the serenity to accept the things we cannot change, the courage to change the things we can, and wisdom to know the difference. And may we walk in the faith Thou dost never leave us nor forsake us.

We pray in the Redeemer's name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., May 21, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DENNIS DECONCINI, a Senator from the State of Arizona, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

THE JOURNAL

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

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

EXPORT OF NUCLEAR FUEL TO INDIA

Mr. ROBERT C. BYRD. Mr. President, last week, the Nuclear Regulatory Commission unanimously decided against the approval of two licenses for the export of nuclear fuel to India. In the opinion of the Commission, the Indian Government has not complied with a number of the major provisions of the Nuclear Nonproliferation Act of 1978, and, therefore, does not qualify for further shipments of American nuclear materials.

After a lengthy and widely debated study, the State Department recommended that these export licenses be approved. The President is expected to exercise his authority to override the NRC and approve the export licenses. This would require the President to affirm that the failure to ship nuclear fuel to India "would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security." If the President so affirms, then Congress will have 60 days to override his decision with a concurrent resolution of disapproval.

This is the first major nuclear export license dispute under the provisions of the Nuclear Nonproliferation Act of 1978. It raises a number of important questions about U.S. nonproliferation policy and about U.S. foreign policy interests in South Asia.

The interest of the Congress in nonproliferation policy is well established. The Nuclear Nonproliferation Act was the result of congressional initiatives that date back at least to 1975. A number of our colleagues in the Senate contributed to this process—Senators RIBICOFF, GLENN, HART, PERCY, JAVITS, and others, all made substantial efforts on behalf of nonproliferation policy. From 1977, the Carter administration joined in strong support for these efforts.

Stopping the spread of nuclear weapons continues to serve the security interests of the United States. Recently, U.S. foreign policy has seemed to lurch from crisis to crisis. With respect to nonproliferation policy, Congress has at its disposal a mechanism for the orderly review of important policy decisions. I am sure that the Senate's participation in this review will contribute to the kind of continuity in U.S. foreign policy that reassures our friends and wins the respect of others.

THE OIL IMPORT FEE—A CLEAR CHOICE

Mr. ROBERT C. BYRD. Mr. President, in recent weeks, America's vulnerability to a cutoff of Persian Gulf oil imports has been underscored. There are a number of events which could cause a severe oil supply shortage, with devastating consequences to our national economy and way of life. An embargo, a terrorist act, an accident, or a change of regime in one of the producing countries could disrupt our vital lines of supply without a single shot being fired. We have taken too few steps to prepare for such a contingency.

The President's proposed oil import fee is an all too modest start at addressing our most critical national security problem—our dangerous overdependence on foreign oil from insecure sources. Although the fee would result in a mere 10-cents-per-gallon surcharge on gasoline, it has drawn fire from all quarters. Some critics charge that the fee is an abuse of Presidential authority—but Congress has repeatedly refused to face reality on the urgent and immediate need to dramatically reduce oil imports. Others claim that the modest 10-cents-per-gallon charge is too inflationary—but they are willing to watch $90 billion being bled annually from our economy to pay for foreign oil imports. It is said that the fee unfairly impacts the poor—but nothing creates greater hardship than the unemployment and inflation we import along with the $90 billion worth of oil. Some even say that 10 cents is not enough—but failure to affirm the import fee brings us no closer to the really tough measures we may need in the future.

The United States, which imports almost 50 percent of its oil, obtains 25 percent from the Persian Gulf region. We are dependent on Saudi Arabia alone for almost 10 percent of our oil supplies. Our allies are dependent on that region for substantially greater amounts: 50 percent of all the oil that is consumed in Western Europe passes through the Straits of Hormuz, and almost 90 percent of Japan's oil comes from the Persian Gulf region.

I do not cite these statistics for the sake of quoting numbers. The American people should be alarmed about what they mean. We should be more than alarmed—we should be scared. On those numbers rests the very fate of this Nation. Our national and economic security hinges on a thin line of oil tankers stretched around the globe. Our overdependence on foreign oil threatens to erode our leadership role among nations.

At some time in the near future, each of us in the Senate may be called upon

to register his or her views on the proposed oil import fee.

Depending on the outcome of the issue now before the courts, we may have to vote on a resolution of disapproval of the fee at some point—although I hope we will not do so until the courts reach their final decision—and ultimately, on whether to override a Presidential veto of such a resolution. I ask each of my colleagues to consider the implications of that vote.

In the past months, we have asked our allies to aid in the return of the hostages in Iran and to lend support to our position on Afghanistan. Few other measures would have as beneficial an effect on U.S. relations with our allies as a strong vote in Congress in favor of a realistic energy pricing policy. The French pay a gasoline tax of $1.62 per gallon; the West Germans pay $1.14 a gallon; the Italians pay $1.83 a gallon. But the gas tax in the United States, even with the import fee passthrough, would be only 14 cents a gallon, the Federal tax being only 4 cents a gallon today. It is no wonder that our trading partners question our resolve to undertake serious conservation efforts.

Besides serving as an important element for conservation and international energy diplomacy, the import fee may be critical to a balanced budget and selective tax cuts. The Budget Committees in both the Senate and the House assumed that the revenues from the import fee would serve as a cushion in the event the economy turned down, allowing for a tax cut if the budget could otherwise be balanced. Those who say they want a balanced budget, and a tax cut, and no further cuts in spending, should demonstrate how they hope to accomplish that goal without the import fee.

There are times when each of us must vote for measures which are unpopular but which are truly in the national interest. I know that a vote to sustain the import fee would be difficult for many, but this Nation's economic and national security hang in the balance. I know my colleagues will find the courage to do what is right.

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

RECOGNITION OF THE ACTING MINORITY LEADER

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

Mr. STEVENS. Mr. President, I yield the time of the minority leader to the distinguished Senator from Wyoming, who has a special order.

RECOGNITION OF SENATOR SIMPSON

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wyoming (Mr. SIMPSON) is recognized for not to exceed 15 minutes and the additional time yielded by the minority whip.

EXPRESSION OF CONDOLENCES TO SENATOR CRANSTON

Mr. SIMPSON. Mr. President, before I begin my remarks, I see my colleague, Senator ALAN CRANSTON, is in the Chamber. There is not one of us in this body who does not share and express to him our deepest sympathy on the crushing personal loss of his son.

And to you, sir, a person who has been most kind, most gracious to me in my time in serving with you on the Veterans' Affairs Committee where you serve as chairman and I serve as ranking minority member, I express to you the richest prayers and thoughts of all your colleagues.

Mr. CRANSTON. I thank my good friend from Wyoming for his thoughtful and generous words, and I take this occasion to thank each and all of my colleagues, and so many others, for their wonderful messages of support, for their prayers, and for their heartfelt wishes.

I thank the Senator.

THE AA PRAYER

Mr. SIMPSON. Mr. President, we were presented with the opening remarks this morning of our Chaplain who recited the AA prayer. That is not the administrative assistants prayer. That is the prayer of Alcoholics Anonymous. And it is one that certainly we should hope to press close to our bosoms as we perform our duties here.

The serenity to accept the things we cannot change, the courage to change the things we can, and the most important part of it, the wisdom to know the difference.

VIEWS ON SEVERANCE TAX LEGISLATION

Mr. SIMPSON. Mr. President, the purpose of my remarks this morning is to respond to the overgeneralized assumptions and the incorrect information that has been printed in this RECORD regarding S. 2695 which was recently introduced to place a Federal limitation on the amount of mineral excise tax which a State may impose on coal resources produced from Federal and Indian leases.

Introduction of this legislation is evidently based upon the contention that the rate of mineral severance tax imposed on coal resources by Western States such as Wyoming and Montana and by Indian tribes such as the Crow presents some type of "new barrier to increased coal production." Severance taxation is neither a barrier nor new tax device. The first effort to tax mineral production was enacted by the State of Wisconsin in 1846. I wish to inform my colleagues that the State of Wyoming first adopted a mineral severance tax on all mineral production in 1969.

The "barrier" to increasing coal production, if indeed such restraint does exist, is more likely to be found in the confused energy policy which this Congress has been propounding as well as by the environmental controls adopted by Congress and expanded upon by regulatory agencies such as the Office of Surface Mining and the Environmental Protection Agency. These conditions imposed for leasing of coal tracts and development of mines present much more serious hurdles to bringing new coal production on line in this country than do the very modest levels of State taxation that is levied upon the production of coal. I remind my colleagues that there has been no effort by the legislature or the people of Wyoming in an attempt to rip off electrical rate payers in other States where Wyoming coal is used to fire electrical power plants. The present rate of severance tax as established in 1977 is now 10.5 percent. The State of Wyoming has not increased its severance tax since 1977. Proponents of this legislation are erroneously stating that the rate of mineral severance tax in Wyoming is 17 percent. That is not so. I wish to include in the RECORD the following table demonstrating the allocation of revenues for specific public purposes as it relates to the State of Wyoming's efforts to respond to the massive increases in social and environmental costs occasioned by coal development.

Wyoming coal severance tax components

	Percent
Coal tax revenue until $160 million is collected	2.0
Permanent mineral trust fund	2.0
General fund	2.0
Water development account until $100 million is collected	1.5
Highway fund	.5
Capital facilities fund	1.5
Wyoming community development reserve fund	.5
Total	10.5

I find it as troubling as it is objectionable that Members of this body would attempt to set a Federal limit on States and local governments' ability to determine their own rates of taxation based upon a wholly undocumented claim that there is an "undue burden upon interstate commerce." Merely stating something does not make it so. Although I must say that sometimes one might form an opposing belief when observing this arena, the mineral excise tax imposed by the State of Wyoming does not discriminate against coal consumed outside the State. There has never been an effort to discriminate against out-of-State consumers in favor of Wyoming residents in the coal tax structure developed by my State.

I remind my colleagues that the "stop-and-start" policy for coal development on Federal leases goes back to the failure

of the environmental impact statement which was developed on Federal coal leasing to withstand the judicial challenge in the famous—or rather the infamous case in the West—of NRDC against Hughes. Only recently has the Department of the Interior been able to devise a coal leasing program that is acceptable to environmental concerns—and this program will not be on stream until 1981. The restraints on coal development must truly be laid at the feet of Congress and the Federal agencies—not thrown back in the face of the very States who have been the most responsible stewards of State and national resources. This stewardship was evident in the adoption of a mine land reclamation law—passed by the legislature of the State of Wyoming as early as 1969. This initiative was cosponsored by the present democratic government of Wyoming and myself who were both serving in the legislature at that time. These reasonable controls were applied to private and public lands. The Wyoming Department of Environmental Quality was administering, and continues to administer, a reclamation program that has become an absolute model operation for other States.

My colleagues seem to contend that utility companies are forced to pass the full cost of coal taxes on to their customers. The ability to "pass through" severance taxes, as well as reclamation costs, increased labor costs and black lung benefit costs, are due to the terms of fuel supply contracts between the mines and the utility companies. Without such "passthrough" clauses, State taxes would be treated simply as a standard deduction under the Internal Revenue Code. Also, many State public service commissions have automatic fuel adjustment tariffs that enable incremental fuel price increases to be automatically passed on to the consumer without the need for a rate hearing or any official and formal justification of such a price rise. Certainly, the legal and commercial structuring of coal supply contracts and fuel escalation rate adjustments present an area where those who really wish to protect consumer interests and magnanimously reform utility rates should concentrate their zealous efforts in their own States before they should look to those States that are trying to create an atmosphere that is favorable to energy development when most of those resources are developed or used for the benefit of nonresidents.

The sponsors of S. 2695 seem willing to concede that there is a need for a State to defray the heavy costs for facilities and services which must be provided in order to support the new influxes of population occasioned by energy development. This is commendable. However, the most accepted reason in public policy theory for severance taxation is that the mineral severance tax is based upon the concept that when a nonrenewable natural resource is extracted from the Earth, the value of that resource to the public is irretrievably lost. Therefore, the people of any State are justified in recapturing a reasonable and necessary portion of the lost value through an excise tax on the severance of the natural resource which is removed and sold for private profit.

I draw particular attention to the use of coal tax revenues in Wyoming. Of the total 10.5 percent mineral excise tax levy on coal, 6.5 percent is devoted to the providing of capital facilities directly targeted at mitigating social and economic impact. The remaining 4 percent is equally divided between operating revenue and the Wyoming permanent mineral trust fund. The purpose of the trust fund is to replace a depletable nonrenewable resource with a permanent revenue fund and it was established by voter referendum as an amendment to the constitution of the State of Wyoming. These accounts and funds may be summarized as follows:

First. Wyoming community development authority reserve fund: One-half of 1 percent to an annual amount of principal and interest payable on the bonds issued for construction of public housing and secured by the fund;

Second. Capital facilities revenue account: 1½ percent until $250 million is collected;

Third. Coal impact assistance revenue account: A graduated tax at 2 percent until $160 million is collected;

Fourth. Water development account: 1½ percent on coal until $100 million is collected;

Fifth. Highway fund: One-half of 1 percent on coal;

Sixth. Permanent Wyoming mineral trust fund: 2 percent on uranium, coal, petroleum, natural gas, oil shale, or other fossil fuel; and

Seventh. And the permanent Wyoming Mineral Trust Fund, one-half of 1 percent on coal, permanent funds that are used when the resources are no longer there.

Mr. President, the State of Wyoming has never endorsed the concept that a severance tax should be used as a regulatory device to limit or reduce the development of natural resources. Coal-producing States recognized that there is a more compelling State interest in having a strong local economy, providing jobs and meeting the Nation's energy needs, than having a strong local economy and levying a devious, burdensome severance tax. The ability to maintain coal markets and the relationship that a severance tax may have on the competitiveness of Western coal are the paramount concerns in each and every instance when the legislature meets to determine that issue.

A further disturbing feature of S. 2695 is its effort to apparently limit the severance tax for Federal and Indian leases at 12.5 percent. That figure is apparently snatched out of the air as present minimum Federal royalty and is the customary one-eighth landowner's royalty that has traditionally been negotiated since mineral leasing in Western States began in the late 1800's. The landowner royalty is certainly one that is archaic and unjustifiable in the present context of rapid energy development. Congress, in addressing itself to the question of coal leasing under the Coal Leasing Amendment Act of 1976, recognized the need to update the process of providing for royalties, and dealing with bidding and the payment of rentals on Federal coal leases.

The 12.5 percent royalty due the Federal Government will shortly undergo a dramatic revision as modern bidding methods, and techniques for evaluating fair market value are developed.

Let me tell you, too, that the Secretary of the Interior has recently successfully renegotiated royalty provisions in early tribal leases on Crow, Navaho, and Northern Cheyenne reservations in order that those tribal interests might be more adequately protected.

Congress wisely determined in the coal leasing legislation to increase the State returns from Federal mineral royalties from the 37½ to 50 percent. I know that appears to my eastern colleagues to be somewhat of an extra bonus to the Western States, but I again remind them that nearly 50 percent of the surface of my State, and nearly 65 percent of the minerals are held by the Federal Government.

I would certainly be willing to enter into a productive dialog with the sponsors of this legislation suggesting that the Federal Government quitclaim its reserved mineral interests to the State of Wyoming in exchange for the mineral severance tax limit. I think that is a magnanimous gesture on my part. That would mean that then we would be able to adjust our State's tax structure much in the same fashion as the Eastern States do when they levy local property taxes on mineral reserves. That seems only fair.

Additionally, Federal law has always provided that the royalties would go into the Reclamation Fund for construction of Federal reservoirs. The time for massive development of irrigation projects may be waning, and the need for those mineral royalty revenues to meet the large financial outlays required by energy development was well-considered when that change was adopted.

Mr. President, Senator WALLOP and I will be developing a complete and factual picture, and we will be joined in that by Senators MELCHER and BAUCUS, a very real and authentic cost picture, of the components which actually account for the inflated delivered price of coal to those States where the sponsors of this legislation reside.

In 1980—and these are important figures—the average price for a ton of Wyoming coal will be about $8.28, with a current severance tax at 10.5 percent on the contract price of that coal. The average severance tax per ton of Wyoming coal will thus be 87 cents.

Serious consideration must be given then to the coal haulage rates charged by the railroads. Rail charges generally will range from $12 to $19 per ton for markets served by Powder River Basin coal, and rate increases are indeed anticipated. In fact, some coal haulage

rates have already risen over 50 percent between 1973 and 1979.

Obviously then transportation costs have a much greater influence on the costs of marketing Western coal than any possible State severance tax. People need to know that.

Reason and commonsense, things that sometimes escape this Chamber, also demand that this body carefully review and carefully assign proper weight to such coal resource extraction costs such as—now listen to this itemized list that you have to figure in when you have to figure in the costs of coal:

(1) mining costs; (2) reclamation costs; *(3) surface owner payments; *(4) landowner royalties; *(5) black lung insurance; *(6) abandoned mine reclamation fund charges; *(7) bonding costs; *(8) Federal withholding taxes; *(9) workmen's compensation; *(10) Federal unemployment tax; *(11) union pension plans; (12) union dues; (13) construction of the energy-producing facility; (14) rail transportation charges; and (15) a reasonable return on investment.

Each and every one of those factors—in addition to State severance and ad valorem tax—must be blended into the price of coal to utilities in order to fairly determine the real "unfair burden" on coal costs that have crept into the consumer's electric bill.

To carry that analysis one step further for calculation of electrical rates, the per-kilowatt-hour cost of electricity makes it necessary to consider the relationship between the cost of fuel resources and the many factors which are cranked into the utility rate base. Specifically, the cost of powerplant construction, financing costs, compliance with State and national environmental controls, labor, and all other costs must have values assigned to them. All of those cost factors are much, much more significant than any State severance tax. Perhaps that is not more significant emotionally, but certainly it is more realistically and more honestly significant.

So, assuming a 7,000-kilowatt-hour-per-year electric consumption, which is the maximum average consumption of the households of the United States, the Wyoming severance tax, plus ad valorem tax on coal, would only add a few cents to the monthly electric bill. In areas where electric consumption is higher due to air conditioning or electric heating, that amount will be proportionately greater.

So, Mr. President, in winding down my remarks, when we have washed all the laundry on this particular issue, an electricity consumer is going to find that $7.22 of his monthly electric bill is due to coal transportation costs alone, without even considering higher-than-average consumption rates. Who is being fooled in this process? Obviously, the "poor old boob" consumer who might be stirred by the presentation of the distorted facts that undergird this legislation.

*Required or determined by Federal law.

I think H. L. Mencken had it right when he talked about that species of homo sapiens known as "Boobus Americanus."

So we are going to ride off into the fray here under the twin banners of consumer protection and saving citizens from the ripoff, when the results we are able to produce will not match that in any way. It will not do it. It is going to leave a pretty hollow taste in the mouth of the constitutent who has saved a few cents per month on his electrical bill because of this legislation.

Finally, and most significantly, from the sole perspective of national policy, this legislation poses a most serious question about the role of Congress in limiting State taxes in any form where the issue is consideration of the tax impact on regionally located production centers.

Those States that are located in the northern Midwest, which are the regional centers of production for automobiles, heavy machinery and other manufactured goods, may, in fact, be using their State corporate and possessory interest tax structure to export their tax burden to consumers in other parts of the country.

Adoption of this legislation would pose a dangerous national precedent. If Congress is able to restrict the amount of taxation which the mining States are able to levy on coal resources, then it should follow that Congress must also act under its commerce powers to restrict the level of State taxation in the farm belt States, in the manufacturing States, the timbering regions of America, and any other State which sustains within its borders a regional or national center of production. An interesting and scary concept, I am sure you will agree.

In conclusion, I urge my colleagues to reconsider this legislation. It presents a dangerous national precedent as to the ability of Congress to limit the sovereign States in their assessment of any taxation. The mineral severance tax is primarily used to offset the grave and very real social and environmental costs which are borne by the Western States in fulfillment of this Nation's energy policy, as well as to develop a permanent capital account from the depletion of those nonrenewable natural resources.

So, if the true and genuine concern of the sponsors—and I know them all; delightful colleagues—if their true and genuine concern is to deal with the increasing cost of fuel as its relates to the price of electricity, then they must consider all—each and every one—of the real component costs of coal as itemized in my remarks, as well as computing those other factors which are specifically found in any ratemaking structure for any utility charges. I think basic fairness demands that. I trust that you will render that fairness.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond 30 minutes and that Senators may speak therein.

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from New Hampshire.

RETIREMENT OF CHARLES J. QUINN

Mr. DURKIN. Mr. President, it is with tremendous pride that I rise to commend Charles J. Quinn, of Manchester, N.H. On May 21, Charlie Quinn is being honored by the people of our hometown upon his retirement after 33 years of selfless dedication to West High School.

In 1938, Charlie Quinn graduated from West High—the school which was to become his career. After receiving his degree from St. Anselm's College in Manchester, he entered the U.S. Marines, serving in World War II as a bomber pilot. With the same loyalty and respect he devoted to his alma mater, Charlie served the Marine Reserves for 27 years as a fighter pilot, retiring as a lieutenant colonel.

After receiving his master's degree at Boston University, Charlie Quinn took a teaching job at West High in 1947. His tireless dedication and close relationship with students helped him rise through the ranks to become head of the social studies department, assistant principal, and finally, in 1972, principal. He is noted as being a quiet and helpful man, always willing to help a student or teacher with a question or problem.

In addition, Charlie, a football player in his college days, coached a variety of sports for 19 years at West High. The qualities which make Charlie a respected leader in the school were transmitted to his players. His squads were winners before ever taking the field for a game.

In the busy world in which we live, the individuals who tirelessly and consistently do their jobs above and beyond the call of duty are often overlooked. I am pleased to see that "An Evening with Charlie" will finally bring Charlie Quinn the recognition he so richly deserves, and I am proud of Charlie Quinn as a New Hampshire citizen and, more importantly, as a friend.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, if any Senator wishes the floor, I will be glad to yield it. For the time being, the Senate is awaiting taking up a con-

ference report, and the manager is involved in the markup of another very important bill.

So, at this point, I will have a few remarks about the U.S. Senate. But, as I say, if any Senator wishes the floor at any time, I will be glad to yield it.

I yield to the Senator from Arizona (Mr. DECONCINI).

The PRESIDING OFFICER (Mr. NELSON). The Senator from Arizona.

JUDICIARY NOMINATIONS

JUDGE CHARLES L. HARDY

Mr. DECONCINI. Mr. President, Judge Charles L. Hardy has been nominated by the President to the position of Federal district judge in Arizona.

Judge Hardy has served for almost 14 years as superior court judge in Maricopa County and is held in universally high esteem throughout Arizona. He was recently returned to the bench by the overwhelming approval of the voters of Maricopa County, after the county Bar Association expressed its strong approval for his retention.

During World War II, Judge Hardy was awarded five battle stars and the Bronze Star Medal in the European Theater of Operations. He graduated from the University of Arizona with a B.S. in business economics in 1947 and completed law college 2 years later.

After 3 years in private practice, Judge Hardy served as deputy county attorney in Maricopa County from 1952 to 1955. He was a partner with the late Milton Bissel for 1 year and then served as assistant attorney general of Arizona from 1957 to 1959. For 6 years, he was associated with a partner in the law firm of Kramer, Roche, Burch and Steich and finally was a partner in the firm Snowberger, O'Brien & Hardy until he became superior court judge in 1966.

His experience and outstanding reputation has earned, for Judge Hardy, the consideration for appointment to the Federal bench. I am certain that in this capacity, he will serve his country and the judiciary system well, as he has in the past, and allow me many years hence, the pride of having recommended him to the President for appointment.

The Judiciary Committee has approved Judge Hardy, and I urge that the Senate quickly confirm him as a U.S. district judge for Arizona.

PROF. WILLIAM C. CANBY

Mr. President, Prof. William C. Canby has been nominated by the President to the position of Federal judge for the Ninth Circuit Court of Appeals.

William Canby has been a professor of law at Arizona State University since 1967. His distinguished career in private practice, public service and the academic world has earned him the respect and admiration of leaders in all three fields.

Professor Canby graduated from Yale University in 1953, and from the University of Minnesota Law School in 1956. He served with the Air Force Judge Advocate General's Department in Washington for 2 years, and as law clerk to Supreme Court Justice Charles Whittaker from 1958 to 1959. He spent the next 3 years in private practice with the firm of Oppenheimer, Hodgson, Brown, Baer & Wolff in St. Paul, Minn.

Professor Canby served as associate director and deputy director of the Peace Corps in Ethiopia. He also served as Director of the Peace Corps in Uganda from 1964 to 1966.

In 1966, Professor Canby served as special assistant to then, Senator Walter Mondale, in Washington. He was then appointed special assistant to Harris Wofford, president of the State University of New York at Old Westbury, before being named to his present position at Arizona State.

In 1970 and 1971, while on leave from Arizona State, he served as visiting Fulbright Professor of Law at Makerere University in Uganda.

Professor Canby has also served as counsel to the firm of Bates and Osteen, whose 1977 landmark Supreme Court case, Bates against Arizona, prohibited the Arizona Bar from denying attorneys the right to advertise. Professor Canby's participation in this case demonstrated his courage and his ability to disagree with his profession when he thought they were wrong.

Professor Canby has had a long distinguished legal career since his graduation from the University of Minnesota Law School in 1956. He is held in very high esteem by his associates in the Arizona Bar, and he will bring with him, great insight, compassion and understanding, all necessary ingredients for a circuit court judge.

Professor Canby was approved by the Judiciary Committee, and I urge that the Senate quickly follow suit.

THE UNITED STATES SENATE

Mr. ROBERT C. BYRD. Mr. President, the office of the President pro tempore is an office which I discussed at some length last week. I wish to return to that subject today, as I indicated I would do.

The office of the President pro tempore changed slowly by precedent and practice until the first half of the 20th century. At that point, two major developments shaped the pro tempore dramatically, resulting in the office as it functions today. Those developments are the ascendancy of the Majority Leader, beginning in the early 1920's, and the advent of the modern Vice Presidency in the 1950's.

Until the turn of the nineteenth century, the pace of life was slower. Though many of the issues the Senate faced were bitterly disputed, the volume of legislation was a fraction of what the Congress deliberates on today. Because of this and difficulties in communication, travel, and obtaining and maintaining a quorum, the sessions of the Senate were appreciably shorter. Also, for these reasons, the Vice President had fewer duties and obligations and, therefore, more time to devote to presiding over the Senate.

Since the first Congress, the majority of Vice Presidents have taken an active role in presiding over the Senate and thus limited the access of the President pro tempore to the chair. However, this practice dropped off dramatically in the early 1950's when Richard Nixon became the Vice President under President Eisenhower. Nixon established a new role for the Vice President as an active spokesman for the Administration and its policies across the country and the world. This required him to travel frequently and for extended periods of time. This role has been continued and expanded by subsequent Vice Presidents who have, to a large extent, abandoned their duties as President of the Senate for more important political activities.

During this period, however, an earlier development was diminishing the power of the President pro tempore just as it seemed to be expanding. On January 15, 1920, a Democratic conference was called by its chairman to select a "leader" of the Democrats in the Senate. This was the first time that the caucus minutes showed that the meeting was being called to elect a "leader" for the party and not just the chairman of the party caucus. By 1946, the Majority Leader had established himself as a prominent force in the Senate. Though the office is a political one, the rules do confer certain powers on the Majority and Minority Leaders which were established and expanded by the Legislative Reorganization Acts of 1946 and 1970. These rules and a combination of party discipline and the personalities of strong Majority Leaders managed to usurp the few powers of the President pro tempore granted under his statutory authority.

THE PRESIDENT PRO TEMPORE AND THE VICE PRESIDENT

Both the Vice President and the President pro tempore are given appointive powers for specific purposes by various statutes, concurrent resolutions, and simple resolutions adopted by the Senate. However, the joint leadership usually determines upon whom the appointments will be conferred. Moreover, often the Senate will name the members of a commission or committee in the text of the resolution.

The President pro tempore currently has a number of appointments which he is specifically authorized to make, and, in the event of a prolonged absence of the Vice President, takes over his appointive authority as well.

Aside from the appointive authority, the President pro tempore does have some advantages over the Vice President—being one of the Senate's own. In the absence of the Vice President, since 1884, it has been the sole privilege of the pro tempore to name a Senator to perform the duties of the chair in his absence for a period not to extend beyond an adjournment. Prior to that rule, the Vice President had many times been denied that same privilege.

Under the Constitution, the Vice President may cast a vote in the Senate only when that body is equally divided. But, by a resolution of April 19, 1792, the President pro tempore retained "his right to vote upon all questions." Also the Vice President is not allowed to participate in debate; although on different occasions has made long statements in the

nature of debate from the chair. The President pro tempore, on the other hand, similarly has no right to engage in debate from the chair, but he does have the right to appoint a Senator as a substitute to perform the duties of the chair while he engages in debate on the Floor of the Senate.

THE PRESIDENT PRO TEMPORE AND THE MAJORITY LEADER

Since 1789, individual Senators have assumed leading roles in the actions of the Senate. Many such men have been elected to the Office of the President pro tempore in recognition of their leadership and service to their party. At times, the pro tempore has been able to use his authority to the benefit of his party by directing the debate on the Senate Floor, making key judgments on a point of order, or by making a special appointment. But the President pro tempore has never been able to establish his authority as a party leader to the extent of the Majority Leader. This is partly a result of the President pro tempore's irregular appointments and uncertain tenure over the years while serving in the absence of the Vice President. The President pro tempore could rarely maintain his office long enough to function as an effective leader.

Since the development of the Offices of Majority and Minority Leaders the President pro tempore has worked closely with the majority leadership. Because of his position as a senior member of the party, and often the chairman of a key committee, the leadership regularly consults the President pro tempore as to his views on policies and actions of the party. However, identifying the separate influence of the Senator as chairman or as President pro tempore becomes unclear and difficult to document.

Compared to the former party caucus chairmen, the Democratic Majority Leader of today has a more encompassing authority in his role as ex-officio chairman of all the party's policymaking and organizational bodies. These include the Party Conference, the Policy Committee, and the Steering Committee. It has been the recent practice of the Senate for the President pro tempore to be an ex-officio member of the policy and organizational bodies as well.

In the past, parties have elected chairmen for their party conference or caucus, but usually individual committee chairmen would manage their own legislation on the Senate Floor. In such a case, the President pro tempore, from his position as Presiding officer might be able to direct the Floor actions to enhance the passage of a particular bill. But, in recent years, the President pro tempore has lost a great deal of his ability to affect Floor debate. The Majority Leader now has primary responsibility for the scheduling, directing, and enactment of his party's legislative program. The Legislative Reorganization Acts of 1946 and 1970 formalized earlier practices of the Majority and Minority Leaders and gave them additional authority over Floor activities and committees. Because of the Majority Leader's expanded powers, party caucus meetings are no longer called to determine a detailed program such as they had been in the past.

The Majority and Minority Leaders have become the controlling factors of floor activity. In debate, they receive deferential treatment by Senators and the chair. Under Rule XIX of the Senate, the Presiding Officer is directed to "recognize the Senator who shall first address him." However, the Presiding Officer, by custom and practice, extends the two leaders preferential recognition, with the Majority Leader having first consideration. The Floor Leader can now control to a much greater extent the flow of debate, the calling of amendments, and the timing of votes than ever before.

In his role as caucus chairman and Floor Leader, the Majority Leader is in a position to help other members of his party—especially at times when they can not help themselves alone. The Majority Leader can control the timing and scheduling, for example, and is more likely to get a unanimous consent request approved. The members of the party, in return for their support, can expect the leader's assistance in meeting their individual needs in so far as possible.

As a leader of his party, the Majority Leader has a great deal of input into most political decisions. Among those political considerations are the confirmation of nominations and appointments. Although the President pro tempore has the statutory authority to make certain appointments, it is the current practice of the Senate for the Majority Leader to decide whom the President pro tempore will appoint to other positions.

The Majority Leader has the authority to take a number of other actions which affect the President pro tempore and his duties as well. The Majority Leader offers resolutions and technical motions to the Senate including the election of the President pro tempore.

The Majority Leader also makes motions to adjourn and calls up bills, sine die resolutions, and resolutions to authorize the Vice President and President pro tempore to sign duly enrolled bills and to make certain authorized appointments during adjournment.

Because the President pro tempore and the Majority Leader are usually of the same party, there is little disagreement between them. The Majority Leader, with the support of the party membership, has the authoritative voice in his party. His wishes are usually complied with.

As a popular member of the party, the President pro tempore will usually comply with the wishes of the Majority Leader. Conversely, the Majority Leader will be likely to confer with the President pro tempore on matters related to his duties as pro tempore because of his status as an influential and senior party member. The Majority Leader needs to maintain a broad base of support in order to be effective. The support of the President pro tempore is important for that reason.

THE HONORARY NATURE OF THE PRESIDENT PRO TEMPORE

The election of a Senator to the Office of the President pro tempore has always been considered one of the highest honors offered to a Senator by the Senate body. Over time, there have been many changes made in the fashion the Senator so honored was rewarded.

Very early on in the Senate's history, a salary differential marked the significance of the office. Since 1816, the President pro tempore has been accorded a larger salary than allotted to other Senators. By an Act of 1856, the President pro tempore was compensated at the same rate as the Vice President when the Vice Presidency was vacant.

In 1977, the Senate Democratic Caucus agreed that former "Vice President Hubert H. Humphrey, now a Senator from Minnesota, should receive a special title and special pay and allowances as a mark of respect for his former high office." The Senate adopted Senate Resolution 17 on January 10, 1977, creating an Office of Deputy President pro tempore of the Senate. This resolution provided that "any Member of the Senate who has held the Office of President or Vice President of the United States shall be a Deputy President pro tempore."

Although the resolution did not specifically enumerate the duties and responsibilities of the new office, the Deputy President pro tempore is authorized a legislative staff of three persons and an automobile with driver-messenger. Mr. Humphrey, in addition, was awarded a suite of offices in the Capitol Building.

The Deputy President pro tempore has the authority to preside over the Senate and sign bills and resolutions in the absence of both the Vice President and the President pro tempore. He can do so without the specific authorization of the President pro tempore. Under the current practices of the Senate, this is the only functional difference between the Deputy President pro tempore and any Senator serving as Presiding Officer. However, in addition, the Deputy President pro tempore will also have the right, ex officio, to sit on the Democratic Policy Committee, and be included in the leadership meetings and delegations, such as the leadership groups which periodically go to the White House for meetings with the President.

The development of this new office was brought about by some very emotional as well as political considerations. After Senator Humphrey withdrew from the race for Senate Majority Leader, Senator ROBERT C. BYRD of West Virginia, the winner of that contest, appointed a three-man ad hoc committee to find some special role that Humphrey could perform.

The Office of the Deputy President pro tempore and "the package of benefits for Humphrey was, in effect, a substitute for a proposal previously advanced by Senator Muskie of Maine to make Senator Humphrey chairman of the Democratic Caucus, a post normally reserved for the Majority Leader. Such a position would have carried more substantive power for Humphrey than the title and benefits given him."

ANALYSIS OF THE DUTIES AND RESPONSIBILITIES OF THE PRESIDENT PRO TEM

One of the President pro tempore's long enduring, but, as yet, never used

privileges is to be prepared to ascend to the Presidency of the United States in the event of a vacancy in that office. The President pro tempore now stands third in line behind the Vice President and Speaker of the House of Representatives. Also, in the event of a vacancy in the Office of the Vice President, the President pro tempore customarily assumes the duties of the Vice President until the office can be filled under the provisions of the Twenty-fifth Amendment.

THE PRESIDING OFFICER

A result of the practice of electing to the office of the President pro tempore the most senior member has been a sudden decline in the interest of the President pro tempore in presiding over the Senate.

Senator Carl Hayden of Arizona appointed Senator Lee Metcalf of Montana to serve as Acting President pro tempore. From December 9, 1963, until the second regular session of the 88th Congress, Senator Metcalf served, by resolution of the Senate, as acting President pro tempore. The Senate adopted a resolution on February 7, 1964, appointing Senator Metcalf Acting President protempore "until otherwise ordered by the Senate." The Senate leadership felt it necessary to continue having Senator Metcalf serve as Permanent Acting President pro tempore because of the health and advanced age of the subsequent Presidents pro tempore. Senator Metcalf served through the election of three more Presidents pro tempore until his death on January 12, 1978.

In practice, the President pro tempore rarely presides over the Senate any more. As the President pro tempore alone has the authority to appoint an acting President pro tempore, he need only find another Senator who wishes to take the chair, and then sign an authorizing letter. In today's busy Senate, this situation can be an annoyance if there are no Senators available. Because of this problem, for approximately the last 30 years, the Senate has operated a system of rotation of the Senators in the chair.

The Senate Parliamentarian has maintained a stack of signed authorizing letters for available Senators to preside for a period of time.

This process has inevitably led to a trend of appointing more and more junior Senators to take the chair. This has occurred because it is not always easy to find a senior Senator who is readily available and willing to preside. A positive result of new members receiving the honor of presiding is that it familiarizes them somewhat with Senate procedure and customs.

On the other hand, because of the rapid turnover of Presiding officers, there are few Senators who are well versed in the Senate rules and precedents, so that Presiding Officers must usually rely on the Senate Parliamentarian for judgments on points of order or referrals to committee. The President pro tempore only takes the chair when there is some important event occurring which requires his official presence, such as a joint session of Congress.

ADMINISTRATIVE FUNCTION

The Senate as a body is highly conscious of custom and tradition. To enhance the credibility of certain actions or activities, the Senate employs a duly important official of the Senate to generate that effect. A bill signed by the President pro tempore shows that it has the endorsement of a majority of the Senate and legitimizes its actions. When an appointment is made which deserves some honorary recognition, the President pro tempore makes the announcement, giving the appointee a sense of achievement and the spectators a sense of validity. The President pro tempore announces the results of the counting of the electoral votes for President and Vice President to make it official.

The President pro tempore serves the function of figurehead, as does the Queen of England. Each commands the respect and veneration of all, which adds a certain value or quality to the activities they preside over. As compared to the Queen, however, the President pro tempore does have a good deal of power as an individual Senator.

ASCENDANCE TO THE PRESIDENCY

In 1967, the Twenty-fifth Amendment to the Constitution reinstated the President pro tempore to the top ranks of those in line to the Presidency. In case of a vacancy in the Office of the President and the inability of the Vice President and the Speaker of the House of Representatives to fill the vacancy, the President pro tempore shall act as President. There has been no occasion since its ratification that the President pro tempore was called to fill such a vacancy. However, a unique event in history has recently taken place that strengthens the idea and the vitality of the President pro tempore.

Following the resignation of Vice President Agnew in 1973, Senator Eastland of Mississippi, as President pro tempore, became, in effect, the acting Vice President of the United States. He assumed the duties of the Vice President, exercising all the powers and prerogatives of the office. He directed the Vice Presidential staff, signed, or appointed an Acting President pro tempore who signed, all bills before they could become law, and assumed the Vice President's appointive powers.

Senator Eastland served in this capacity until Gerald R. Ford was sworn in as Vice President. Upon the inauguration of Ford in 1974 as President of the United States, following the resignation of President Nixon, Senator Eastland again assumed the duties of the Vice President. He is the first President pro tempore in this century to serve in this capacity twice within a year under two Presidents. Senator Eastland fulfilled the responsibilities of the Vice President until Nelson A. Rockefeller was confirmed as Vice President.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point two tables, one with respect to the Deputy President pro tempore of the Senate; the other with respect to the permanent Acting President pro tempore of the Senate. Neither of these offices has been filled since the deaths of Senator Humphrey and Senator Metcalf, respectively.

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

DEPUTY PRESIDENT PRO TEMPORE OF THE SENATE[1]

Congress	Name	State	Elected
95th	Hubert H. Humphrey[2]	Minnesota	Jan. 11, 1977 (effective Jan. 5, 1977).

[1] This office was established by S. Res. 17, 96–1, agreed to Jan. 10, 1977 (effective Jan. 5, 1977). The resolution provided that "[a]ny Member of the Senate who has held the Office of President of the United States or Vice President of the United States shall be a Deputy President pro tempore".
[2] Died Jan. 13, 1978.

PERMANENT ACTING PRESIDENT PRO TEMPORE OF THE SENATE[1]

Congress	Name	State	Elected
88th–95th	Lee Metcalf[2]	Montana	Feb. 7, 1964.

[1] Development of this office started in 1963 upon adoption of S. Res. 232 and S. Res. 238, making Senator Metcalf Permanent Acting President Pro Tempore from Dec. 9, 1963, until meeting of the second regular session of the 88th Congress. On Feb. 7, 1964, S. Res. 296 was adopted authorizing Senator Metcalf "to perform the duties of the Chair as Acting President Pro Tempore until otherwise ordered by the Senate."
[2] Died Jan. 12, 1978.

(Mr. BAUCUS assumed the chair.)

Mr. ROBERT C. BYRD. Mr. President, I yield the floor.

EXTENSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for routine morning business be extended 30 minutes, and that Senators may speak therein up to 5 minutes each.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unani-

mous consent that the order for the quorum call be rescinded.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

FEDERAL TRADE COMMISSION AMENDMENTS—CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 2313 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2313) to amend the Federal Trade Commission Act to extend the authorization of appropriations contained in such Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of May 1, 1980.)

Mr. FORD. Mr. President, several Senators will be here soon, and the majority leader will be here, when we determine a time certain to vote on this matter. With those thoughts in mind, 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. FORD. 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. FORD. Mr. President, a great deal of attention has been directed to the Federal Trade Commission authorization legislation. With the passage of the conference report on H.R. 2313, which is before the Senate today, the FTC will be funded for the first time since 1977 through the traditional authorization process.

Disagreement over whether to subject Federal Trade Commission regulations to a legislative veto has been the longstanding controversy delaying passage of the funding bill and resulting in several different authorization bills. The initial House reauthorization bill, H.R. 3816, passed in the House of Representatives on October 13, 1977, and included a legislative veto allowing either Chamber, on its own, to reject an FTC trade rule. The Senate legislation, which I introduced, S. 1288, contained no veto or review mechanism and passed the Senate by a unanimous vote on October 20, 1977, as a substitute for the House bill. On each of the two votes on this conference committee report, the Senate voted unanimously for the report and the House voted against further funding for the agency due to the legislative veto issue.

With the passage of H.R. 2313 in the House on November 27, 1979, the House again endorsed the one-House legislative veto concept. The recent Senate reauthorization legislation, S. 1991, passed in the Senate on February 7, 1980, as a substitute for the House bill and included a legislative review process, the Levin-Boren amendment. This amendment was adopted by an 87-to-10 vote and required postponement of a final rule issued by the FTC pending congressional review and disapproval by joint resolution requiring a Presidential signature. Recently, the House-Senate Commerce Committee conferees resolved this issue by allowing industrywide regulations of the FTC to be overturned by a majority vote of the House and Senate, the so-called two-House legislative veto.

I remain opposed to the legislative veto approach; the veto is not only unconstitutional, but it simply will not help cure the Nation's regulatory ills. It is my view that legislation more clearly defining agency authority and vigorous oversight is preferable to reviewing regulations after the fact. However, in the interest of funding the agency, I endorse the two-House legislative veto compromise contained in this conference report. This veto procedure would be established for 3 years, the life of the agency's authorization, as an experiment for Congress to determine the effect on the regulatory process. I am adamantly opposed to expanding this concept to any other regulatory agency until the effects of this legislation are known, and further I hope that the court will act expeditiously to determine the constitutionality of this process if a regulation is vetoed by a majority vote of two Houses of Congress.

Mr. President, there is no question that many of the FTC's actions have saved consumers considerable sums of money and that many initiatives under way at the FTC promise similar benefits. The FTC has a constructive role to play in consumer protection and in promoting competition. But it is essential for agencies to be accountable to Congress, the elected representatives, and I believe the way to make sure that congressional intent is being met is through oversight.

Thus, beginning in July 1979, the Senate Consumer Subcommittee of the Committee on Commerce, Science, and Transportation held 9 days of oversight hearings on the Federal Trade Commission with more than 50 witnesses. These hearings focused specifically on the consumer protection activities of the Commission and on rulemaking under section 18 of the Magnuson-Moss Act. Congress had clarified the FTC's authority to write industrywide rules with the passage of this act in 1975.

In testifying before the Consumer Subcommittee at the hearings the Chairman of the Commission acknowledged that the agency at times had been over-zealous. Later, other Commissioners acknowledged that some proposed rules were too sweeping at the outset and that the Commission should weigh more carefully whether to attack consumer problems on a case-by-case approach instead of issuing industrywide rules. They noted that where industrywide rules are chosen, the Commission should provide clearer guidance to the staff, more narrowly focus the rules, and look harder at the impact of its actions.

The oversight hearings demonstrated that the FTC had taken actions beyond the intent of Congress. As a result of these hearings and committee investigations, I sponsored legislation containing procedural reforms as well as other statutory changes to clarify the Agency's role. On November 20, 1979, the Senate Commerce Committee, in a vote of 16 to 0, ordered S. 1991 favorably reported with an amendment in the nature of a substitute.

On February 6, 1980, the Senate began debate on this legislation. I opposed amendments to the bill that did not pertain to the focus of the oversight hearings including any amendment to the Agency's antitrust authority as well as other crippling amendments such as an amendment to allow a one-House legislative veto and an amendment to destroy the public participation funding program. These amendments could not be justified by the evidence in the hearing record. The Senate authorization bill passed the Senate by a 77-to-13 vote.

Ironically, while the Senate was deliberating the way that the FTC was carrying out its rulemaking authority, the Federal courts were reviewing the first two rules promulgated by the Commission under the Magnuson-Moss Act. The courts consistently indicated that the FTC's power to write industry-wide regulations should be exercised carefully, particularly where the Commission had proposed to substitute its regulations for those of State and local government agencies. Thus all but a portion of the eyeglass rule, *American Optometric Association* v. *FTC*, No. 78–1461 (3d Circ. February 6, 1980), and the FTC rule on advertising and sales practices by private vocational schools, *Katherine Gibbs School* v. *FTC*, No. 78–4204 (2d Circ. December 12, 1979), were sent back to the agency for reconsideration.

Mr. President, negotiations between the House and Senate Commerce Committee conferees over the past months have been difficult because of the widely differing bills passed by the House and Senate. The Senate conferees were negotiating from a position of a strong Senate mandate with a 77-to-13 vote on final passage of its legislation and a 3-to-1 vote on most of the major controversial issues. The pressure was further heightened by the running of the clock as the Appropriations Committee threatened no further funding for the agency

until an authorization bill became law. Finally, on April 17, 1980, a majority of the Senate conferees offered a major compromise to break the deadlock over the proposed legislative restrictions on the FTC's consumer protection authority. One week later, the President released a package of proposals which would result in a bill acceptable to him. The President's proposals mirrored in great part the Senate compromise package sent to the House a week earlier. On April 30, 1980, the Senate-House conferees met and accepted the conference report before this body today.

Before discussing the conference report, I would like to emphasize a point with respect to the Senate legislation affecting two current ongoing rulemakings, children's advertising and standards and certification. The Senate, by an overwhelming vote, felt that in certain specified cases Congress should provide guidance before the FTC initiates rulemakings at the taxpayers' expense. Clearly, Congress should not intervene as a routine matter in a normal rulemaking proceeding where the weight of the evidence is the only issue. However, if an agency has exceeded its authority to initiate a rule or if a dispute over the rulemaking involves the basic legal issue on the meaning of the statute or the scope of the Agency's jurisdiction, Congress should exercise its authority by law to take corrective action. The question of when to intervene must be decided by a pragmatic look at each case. Mr. President, I believe the Senate's action with respect to intervention in these two rulemaking proceedings was fully justified by the record.

STANDARDS AND CERTIFICATION RULEMAKING

I should like to make a few brief remarks regarding the provision in the conference report on voluntary standards activities, section 7. While the Senate bill terminated all rulemaking authority, the conference bill terminates only section 18 authority. This is the approach I originally took with the introduction of S. 1991, before the Commerce Committee acted. Ending section 18 rulemaking authority is clearly appropriate, since the bulk of the cases on which the proceeding is based are allegations of unjustified product exclusion—unfair methods of competition—not unfair or deceptive acts or practices, and since there was no prevalence of unlawful conduct which is required by section 18.

However, I point out that in the view of many there are unresolved legal issues regarding the existence and scope of section 6(g) rulemaking authority. The conference report notes this issue, but as Congress did in 1975, leaves it an open question.

But, even assuming the existence of section 6(g) rulemaking authority, there are still several issues that the Commission should address before issuing a rule: Is there a pattern of unlawful conduct sufficient to justify rulemaking as opposed to case-by-case action on violations; could an interpretive rule or guideline adequately address the problems that have been identified without imposing the possible rigidity of a rule: will FTC action regulating standards activities duplicate regulation by other Government agencies? These are not the only issues, of course, but I hope that they will be given serious consideration by the Commission before it determines what final action should be taken on this issue.

Furthermore, I continue to believe that the arguments contained in the Senate report on S. 1991 make a persuasive case for individual adjudication of product exclusion cases which occur as a result of standards activities, and that the Commission would be well advised to prosecute any such violations through case-by-case enforcement of the antitrust laws rather than by subjecting all standards developing organizations to a lengthy and detailed system of procedural regulations.

ADVERTISING RULEMAKING

With respect to advertising rulemaking, the Senate bill required termination of the children's advertising proceeding until the Commission published the text of a rule. Section 11 of the conference report requires that the children's advertising proceeding be suspended unless or until the Commission votes to publish the text of the proposed rule, and any further action could be based on acts or practices that are deceptive. The Senate report on S. 1991 points out the problems created in this proceeding by the fact that the Commission never proposed a specific rule coupled with the overly broad theory of unfairness.

Under the new standard, unfairness may not be the basis for any new advertising rulemaking proceeding during the life of the 3-year authorization so that Congress can explore the concept with additional hearings. I believe it is important to explain what the provision does and, even more importantly, what it does not do.

The Federal Trade Commission has traditionally exercised the power granted to it by Congress to prevent the dissemination of false or deceptive advertising as an unfair or deceptive act or practice. In recent years, however, the Commission has used a novel set of theories that would enable it greatly to expand its jurisdiction by asserting the power to regulate the content of truthful advertising as well, if the Commission thought that for some reason the advertising was unfair.

The unprecedented departure from the traditional scope of the Commission's jurisdiction has been a matter of great concern to many thoughtful persons in and out of Congress, including, for example, the American Civil Liberties Union, which criticized the FTC's proposed ban on children's television advertising under the "unfairness" standard as an unconstitutional abridgement of free speech which exceeded the Commission's authority. Norman Dorsen, chairperson for the ACLU stated in a letter to the FTC:

> We do not question the Commission's power to regulate deceptive advertising. We recognize fraud, deception and misrepresentation as permissible grounds for the regulation of commercial speech But what the FTC now proposes is in effect to label all advertising aimed at young children as inherently deceptive. This in our view is too sweeping a remedy that catches protected speech in its net.

The report on FTC rulemaking of the special project of the Administrative Conference of the United States, a report mandated by the Magnuson-Moss Act, traces the recent development of the Commission's unfairness theories, which it describes as "an extremely plastic, open-ended set of theories." It concludes that if the Commission remains free to frame such broad and novel theories to support its rules, then the procedural safeguards in the statute may not be an adequate substitute for substantive standards. Prof. Robert H. Bork of the Yale Law School, formerly Solicitor General of the United States, has submitted a statement to the Consumer Subcommittee in which he endorsed the provision to eliminate the unfairness standard in advertising rulemaking and urged that, because of the important constitutional considerations involved, the unfairness standard be eliminated from section 5 adjudications as well. It is apparent, therefore, that this is an important reform measure supported by many thoughtful and disinterested critics.

There is nothing in the legislative history of the FTC Act which indicates that the Congress intended for the Commission to be empowered to regulate the content of nondeceptive commercial speech on grounds of unfairness. Further, no court has ruled that the FTC could regulate the content nondeceptive advertising on grounds of "unfairness" alone. Even the FTC itself has not held in an adjudicated case that truthful but unfair advertising is prohibited by section 5 of the Federal Trade Commission Act.

With respect to the constitutional issue raised by the Commission's unfairness theories, the Supreme Court has made it clear that commercial speech is entitled to the protection of the first amendment, unless that speech is false, misleading, or deceptive. The court in the Virginia State Board of Pharmacy case expressly said that the State may not under the first amendment prevent the dissemination of advertising which contained "concededly truthful information about entirely lawful activity" because it was "fearful of that information's effect upon its disseminators and its recipients."

Mr. President, the bill's modest restrictions go only to the Commission's ability to regulate for 3 years the content of nondeceptive commercial speech on broad and novel unfairness theories, and even then only in industrywide rulemakings. This legislation does not reduce any of the powers the Commission has traditionally exercised. It does not affect the Commission's authority in individual adjudicatory proceedings under section 5 of the act. It does not limit the Commission's authority in rulemaking proceedings with respect to practices other than advertising, including unfair practices, such as "bait and switch" tactics. The legislation also would not affect the FTC's ad substantiation program, which requires advertisers to submit to the FTC

on request data concerning substantiation for particular advertising claims.

With these provisions in the conference report limiting and defining more specifically the FTC's authority, the conferees intend to redirect the Commission to its primary and longstanding function of determining whether advertising contains representations that are false or have the capacity to deceive or mislead consumers. In discharging this task, the danger will be greatly diminished that the Commission will infringe upon first amendment rights or impose its own concepts of public policy when regulating commercial speech.

CONFIDENTIALITY

Under section 14 of the conference report, the applicability of the Freedom of Information Act (FOIA) is limited to subpenaed information or information supplied in lieu of a subpena. This more narrowly defines the FOIA exemption, which was the intent of the original Senate bill, along the lines of a comparable exemption applicable to the Justice Department since 1976.

The main purposes of the exemption are to protect proprietary data without affecting agency accountability to the public through the FOIA and to encourage compliance with legitimate information demands. With respect to the protection of proprietary data, there is no reference to the legislative history of the FOIA that would support the notion that the FOIA was intended to permit a person to obtain personal information about other individuals, or to gain an advantage over business competitors. Since the basic purpose of the FOIA is to permit public access to the records of the agency's own decisionmaking so that agency officials are more accountable and cannot relp on "secret law," this legislation is consistent with that objective. Nothing in the legislation would affect in any way public access to the FTC's own documents through the FOIA.

As a result of 9 days of oversight hearings on the FTC, it was established that the problem of obtaining information at the Commission does exist. Businesses frequently take the Federal Trade Commission to court to quash subpenas, because of the fear that the FTC will release their confidential information to competitors. The Department of Justice operating under the FOIA exemption for subpenaed information since 1976, does not have the same problem of noncompliance with legitimate information demands, Antitrust Civil Process Act, 15 U.S.C. 1311. The FTC conference report emphasizes that this provision was adopted due to special circumstances surrounding the difficulty of receipt of information by the FTC. The Senate conferees urged inclusion of a provision in the report stating that the conferees do not wish this action to be construed as a precedent for general government-wide policy affecting the application of the Freedom of Information Act, and I believe this is particularly appropriate.

I should like to clarify some points regarding this provision: First, information will not become permanently confidential simply because the company labels it that way. The legislation is modeled after a process that the Commission has used for years. If a company marks its document confidential, the FTC may nevertheless decide it is not confidential and should be disclosed. The company must be given 10 days' notice of the FTC's intention to disclose the document so that it can go to court if it wishes to contest the Commission's decision. Second, evidence collected by the Committee shows that the Commission traditionally has required private parties to supply it with enormous amounts of sensitive information but has taken a narrow view as to what constitutes a trade secret exempt from disclosure. The Third Circuit Court of Appeals in the recent Wearly case spoke about inappropriate disclosures by the FTC. The court of appeals said that evidence in the lower New Jersey court demonstrated that in the past the Commission had made inappropriate disclosures stating—

> We agree with the District Judge that the unfortunate disclosures by the FTC of confidential information are the kind of governmental behavior that simply cannot be countenanced.

The court of appeal's decision left intact the lower court's finding that disclosure of secrets is an unconstitutional taking of property and pointed out clearly the need for prompt congressional action in this area.

Section 14 of the bill provides in section 21(b)(3)(B) that the custodian may provide copies of documents to authorized officers or employees of the Commission. This does not preclude use of these documents by consultants retained by the Commission, provided that they will be using the documents for official business and have signed a written agreement not to disclose information without the Commission's consent.

Section 21(c) permitting companies to designate certain information submitted to the Commission "confidential" is not intended to apply to everything filed with the Commission. Rather, Congress expects that submitters will limit their designations to information which they believe may not be made public under section 6(f) of the act. Moreover, it is not contemplated that this subsection would ordinarily apply to correspondence, pleadings, motions, and other documents designed to secure relief or to affect official Commission proceedings except as to portions which contain trade secrets or confidential and commercial information. Instead, it is intended to protect the proprietary interests of submitters. In addition, if portions of documents are marked as containing proprietary information, only those portions would be subject to the notice requirement. Release of these documents to State and Federal law enforcement agencies is permitted because these disclosures are governed by section 6(f).

As to information that is not subject to a custodianship arrangement under section 21(b), the Commission is authorized to make public information that is neither a trade secret nor confidential commercial and financial information (section 6(f)). Also, the Commission may disclose the results of investigations or studies provided that the information is not revealed in an individually identifiable manner or does not reveal a trade secret or confidential commercial and financial information of any person (section 21(d)(1)(B)). The Commission may disclose trade secrets and confidential commercial and financial information in the following circumstances; first, it may disclose such information to Congress (section 21(d)(1)(A)); second, it may disclose such information to Federal and State law enforcement agencies, provided that those agencies promise to use it for law enforcement purposes only and keep it confidential (section 6(f)); third, relevant and material information may be disclosed in Commission administrative proceedings or in judicial proceedings, but it may be made subject to appropriate protective orders (sections 21(d)(1)(C), 21(d)(2)), see Senate Report No. 96–500 at 27–28; fourth, disclosures may be made pursuant to certain statutes that authorize disclosures to other Federal agencies; and finally, disclosures may be made of disaggregated information obtained under the Federal Reports Act to Federal agencies, but the agencies may use the information only for economic, statistical, or policymaking purposes, and may not disclose that information in an individually identifiable form (Section 21(d)(1)(D)).

As to this last provision, it is the intent of the conferees to codify current Commission practice which is to allow only the Department of Commerce's Bureau of Economic Analysis (BEA) access to individual quarterly financial reports collected by the FTC. This information is used by BEA for purposes of preparing the estimates of the national income and product accounts. Other Federal agencies do not currently have regular access to disaggregated data gathered under the Federal Reports Act and we expect no change in this practice. However, if any need arises for a change in this practice, we expect the Commission to notify the Commerce Committees.

It has been noted that the conference report permits the FTC to disclose confidential information to Federal and State law enforcement agencies if the agencies agree to maintain the material in confidence and if they need the information for official law enforcement purposes. The provision maintains an authority which the Commission has under current law, as recently explained by the court in the Interco case. The conference report does not require the Commission to second-guess or look behind the scope of a State attorney general's request for access to the Commission's investigatory files.

As to information that the Commission obtained before enactment of this bill, the respective prohibitions and authorities contained in sections 6(f), 21(d), 21(e), and 21(f) apply regardless of whether the information was obtained before or after the effective date of the act. Sections 21(a), 21(b), and 21(c) apply to material obtained by the Commission after the effective date of the act.

Finally, sections 6(f) and 21(b) require

agencies that receive the information from the Commission to maintain the information in confidence. These provisions are not intended to preclude use of documents as evidence in a law enforcement proceeding. Also, if both the Commission and the provider consent, the recipient agency may make information covered by these provisions public.

One clarification needs to be made concerning section 20(i). Where the Commission, pursuant to one of its reporting programs such as QFR or line of business, is sending out identical process orders to a large number of companies, then a duplicate of the Commissioners signature on the first order on other identical orders is sufficient. However, with respect to other uses of compulsory process, the conferees intend that a Commissioner sign each order.

Mr. President, as the lengthy hearing record before the Senate Commerce Committee indicates, many proposals were recommended to affect the authority of the Federal Trade Commission. In closing, I want to emphasize that neither the legislation which passed on the Senate floor nor this conference report takes away powers which the Commission has had for years. All the improved and strengthened enforcement measures enacted by the Congress in recent years are preserved, including the extension of the Commission's jurisdiction to all matters which affect commerce, the power to issue industrywide trade regulation rules, the power to give industrywide effect to individual cease-and-desist orders, the authority to seek immediate injunctions against alleged unfair or deceptive acts or practices pending Commission adjudication of its charges, and the right to go to court after issuance of a cease-and-desist order to obtain redress for consumers who have been injured by unfair or deceptive acts or practices.

The Federal Trade Commission, with new guidelines with respect to its rulemaking authority, continues to have the potential to be an aggressive watchdog of the marketplace. I feel confident in saying that the changes we have made will help return the FTC to a respected and responsible agency which is what the Congress had in mind when it first created the agency.

I thank the distinguished chairman of the Commerce Committee for his leadership and invaluable support on this FTC authorization bill.

I would also like to thank the ranking minority member on the Consumer Subcommittee, Senator DANFORTH, for his cooperation, for his patience—and I underscore "patience"—and for his thoughtful—and I underscore "thoughtful"—contributions in this legislative endeavor. Without the time and effort he contributed, there would be no authorization bill to consider today.

Further, Mr. President, I wish to recognize all the House and Senate conferees for continuing to work together in trying circumstances in an effort to fund this agency.

Finally, I thank the administration for the time that the President and his Domestic Policy Adviser, Stuart Eizenstat, have personally contributed to this proposed legislation.

Mr. President, I suspect that this measure would not be here had it not been for the work, the tireless efforts, the patience, and the thoughtful consideration of the staff: Amy Bondurant, Mike Mullen, Loretta Dunn, and on my personal staff, Martha Moloney. To them and to each of the members of the staff of the minority, I extend my thanks and congratulations for a job well done.

Mr. President, I yield to the distinguished Senator from Nevada, the chairman of the Committee on Commerce, Science, and Transportation.

Mr. CANNON. Mr. President, first, I commend my distinguished colleague from Kentucky for his fine leadership in handling the FTC bill on the floor and in leading the Senate conferees through a difficult and complicated conference with the House. He has done an outstanding job. I would also like to commend the distinguished Senator from Missouri who has contributed and cooperated greatly in bringing this bill to conference. He contributed significantly to our efforts in developing proposals and alternatives that would bridge the gap between Senate and House positions on this legislation. I believe that the final conference version of the FTC bill represents an excellent compromise. It sets clear limits on the FTC's authority in a number of important areas, but it does not cripple or infringe on the Commission's authority to continue to protect consumers and insure a competitive marketplace.

Mr. President, this legislation grew out of 9 days of comprehensive oversight hearings indicated that the FTC's authority was very broad and that the Commission was stretching its authority to the very limits and beyond. It became clear to the committee that remedial legislation was needed, and S. 1991 introduced by Senator FORD was strongly supported in the committee and passed by the Senate on a vote of 77 to 13 on February 8, 1980. After extensive negotiations with our House conferees, we have come up with a final bill which I believe preserves the thrust of the Senate legislation, but also accommodates some strongly held views of the House conferees and certain concerns raised by the President regarding rulemaking proceedings.

I should like to explain some of the key provisions of the final version of the bill. First, the bill limits the authority of the FTC to issue subpenas. In the past the Commission has issued subpenas without any basis to believe that a company was violating the law; subpenas were issued simply to satisfy "official curiosity." Under the legislation, the Commission would be required to state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to that conduct. This provision is modeled after the Antitrust Civil Process Act and I think it will prevent fishing expeditions. In addition to limiting subpenas, the bill also requires the Commission to respect the confidentiality of commercial and financial information supplied to the Commission in the course of its investigations.

Second, the committee has incorporated into S. 1991, several regulatory reform provisions which are similar to the recommendations of the Carter administration. The most important provision is a requirement for a regulatory analysis by the FTC for each proposed and final rule issued by it. This amendment would require the FTC to publish an analysis of rulemaking options, including an assessment of the benefits and adverse effect of any proposed rule and its alternatives. Over the long run, I believe that requiring regulatory agencies to systematically analyze rulemaking options and particularly the cost and benefits of these options will result in more sound, and less burdensome, regulations.

ADVERTISING RULEMAKING

Now let me turn to the children's advertising proceeding and the FTC's rulemaking authority over advertising. The conference report would permit the FTC to engage in rulemaking with respect to children's advertising only if that advertising was deceptive. This amendment would eliminate unfairness as a ground to regulate children's advertising. The conference report would also suspend the use of "unfairness" in any new rulemaking proceeding during the 3-year authorization period. This action is consistent with the Commerce Committee's view that unfairness is too broad and vague a concept when applied to advertising. I believe the Commission will have adequate authority to regulate advertising if their power is limited to preventing false or deceptive advertising.

There is one other observation that I should like to make about the children's advertising proceeding that I think is important. In the Commerce Committee we focused on the constitutional and procedural issues and the question of what the appropriate standard was for regulating advertising. But, there is another important question regarding the FTC's activity in this area. That is: Whether the FTC proceeding was really an attempt to create through rulemaking a new national nutrition policy. To the extent that the FTC was attempting to establish nutrition policy their rulemaking proceeding was a mistake. That should be done by the Food and Drug Administration or the Department of Agriculture, not the FTC. The FTC has played and continues to play an important role in preventing false or deceptive advertising, and it will be most faithful to its charter if it sticks to that mission.

INSURANCE

Mr. President, I should like briefly to explain the purpose of section 5 of the conference report, a provision that I sponsored in committee.

This amendment clarifies the proper, but limited, role of the FTC with regard to insurance. Congressional action was made necessary because the FTC has refused to observe the limits on its jurisdiction imposed by Congress in the McCarran-Ferguson Act. As you know, the McCarran Act vests the States with authority to regulate insurance free of interference by the FTC. But despite this restriction, in the past 2 years the FTC has undertaken a wideranging program

of unauthorized insurance investigations. These activities have had precisely the result which it was the purpose of the McCarran Act to avoid—interfering with State insurance regulation.

Accordingly, section 5 makes it clear that the FTC may not conduct investigations of the business of insurance under section 6 of the FTC Act. The FTC may not initiate any new investigations, and it must terminate any existing investigations. The Commission may, however, continue to assist the Department of Health and Welfare in its ongoing study of "medi-gap" insurance.

In a broader sense, the purpose of this provision is to reaffirm and reinforce, in the strongest way possible, the basic policy of the McCarran Act—that the FTC must defer to State regulation of insurance. It is not the prerogative of the FTC to seek to narrow or change this policy by conducting investigations outside of its jurisdiction or by adopting unsupportable interpretations of the McCarran Act.

I am particularly disturbed by the Commission's attempts to substitute its judgment for that of the States on what is an appropriate regulatory philosophy. In the McCarran Act, Congress intended to leave the States freedom to choose whatever regulatory structure they deemed appropriate. Consistent with this objective, the courts have established that where a State has enacted a law or regulation, there is no Federal authority under the McCarran Act unless the law or regulation is a sham or pretense. I think that is a fair statement of the law. It is the duty and responsibility of Congress to establish the law and of the Commission to enforce it as they find it.

The FTC's only proper role is to provide its views on policy questions when requested by Congress in order to further our legislative function. The FTC authorization bill clarifies this role. Under the provision agreed to by the conferees, the Commission may conduct studies on insurance issues at the request of either the House or Senate Commerce Committee, the committees with appropriate jurisdiction. As indicated in the conference report, this authority is limited to general review and analysis of insurance policy issues, not investigations of the industry or segments of the industry. Such full-scale investigations can only be conducted after obtaining the approval of both Houses of Congress, as was done in the case of the Department of Transportation study of automobile insurance.

As chairman of the Senate Commerce Committee, I can say that we intend to use this authority responsibly, and with full recognition that State insurance officials must always be consulted. In conducting studies, I also expect the FTC to make use of the States' expertise.

By thus assuring Congress of access to FTC advice, while at the same time assuring the States that their regulatory efforts can continue without impairment, I firmly believe that this provision strikes the appropriate balance between Federal and State interests.

Just briefly, I would like to mention two other points. First, nothing in the final version of the bill is intended to affect the discussion between myself and Senator PROXMIRE regarding the ability of the Banking Committee to request investigations and studies by the FTC under the Truth-In-Lending and the Equal Credit Opportunity Acts. I recognize the Banking Committee's longstanding involvement in insurance sold or promoted by creditors. There is no intent to affect any authority given to the FTC under the Truth-In-Lending Act or the Equal Credit Opportunity Act. Our discussion of February 7, 1980, still stands.

Second, I wish to comment on my understanding of how "health maintenance organizations"—HMO's—are treated under the McCarran-Ferguson Act. The phrase "the business of insurance", as I understand it, includes those activities of health insurance plans that involve the spreading and sharing of risk and, if those plans are regulated under State laws applicable to the business of insurance they are exempt from the antitrust laws. This would include prepaid health plans, health maintenance organizations, and foundations for medical care to the extent they are regulated by State law. Of course, under the Royal Drug case, third-party contracts of insurers—to reimburse persons or firms for goods or services provided to an insured—are not protected from the antitrust laws.

STANDARDS

Mr. President, let me comment briefly on section 7 of the conference report, the provision on the standards and certification rulemaking proceeding. Under the conference substitute the Commission's section 18 rulemaking would be terminated. This is plainly justified because a clear majority of cases of alleged unlawful conduct that formed the basis of this rulemaking involved the unjustified exclusion of products from the market—a boycott under the Sherman Act, not "unfair acts or practices" to which section 18 rulemaking authority is restricted.

The conference report takes no position on the issue of whether the Commission has any other rulemaking authority. Specifically, our action should not be taken as affirming any rulemaking authority under section 6(g) of the FTC Act. That authority, if it exists, must be found in the 1914 Federal Trade Commission Act. I must say, that I personally have doubts about the Commission's rulemaking authority under this section. In my view, the legislative history of the 1914 act is very unclear on this point, and, in any event, this represents an important policy issue which an American Bar Association committee report has recently suggested should be reviewed by Congress.

Second, regardless of the extent of the Commission's rulemaking authority, the conference report stresses that "the conferees believe the Commission should explore the possibility of voluntary rules and guidelines in this area." In fact, I think the FTC staff report is clearly unpersuasive in explaining why rulemaking rather than individual actions is the preferred method for addressing this issue. Given the complexity and variation of fact patterns, individual actions rather than rigid rules seem to me to be the better approach to remedy the problems in this area.

Third, unless the Commission can establish a pattern of unlawful conduct—which the 25 cases cited in the staff report clearly fail to do, I do not think the Commission should seek to exercise rulemaking authority.

Fourth, and again assuming the FTC has other rulemaking authority, the Commission must demonstrate a "nexus" between its proposed rule and the alleged unlawful conduct which is the basis of the rule. Testimony during the course of the committee's oversight hearings indicated that many complaints did not involve situations where no notice or right to participate occurred, but involved technical disagreements over the particular standard that was established.

Finally, this rulemaking raises another important question—overlapping Government regulation. At the same time that the FTC is proceeding with this rulemaking the Office of Management and Budget has instructed the Department of Commerce to develop a rule indirectly regulating standards activities by barring reimbursement of Government officials for work on standards committees or the use of standards for procurement, unless the standard was set by a standards group meeting certain due process requirements. These requirements appear to be very similar to the requirements of the proposed FTC rule. Therefore, it would seem appropriate to coordinate these rulemaking activities and avoid any duplicate or inconsistent requirements.

The FTC standards proceeding has resulted in considerable controversy. But, what it all comes down to is some common sense about regulation: Is this regulation really necessary? And, does this regulation really address the underlying problems that have been identified in a manner that will be more effective than other possible regulations or individual actions. I hope the Commission will give careful consideration to these questions and the issues I have outlined when they determine what further action should be taken in this area.

PROVISIONS OF THE HOUSE BILL

Mr. President, there are four provisions of the House bill which are incorporated in the final conference report. The conferees accepted a House provision limiting the authority of the FTC to regulate funeral services. The FTC is limited to regulating certain specified activities and in addition a State may request exemption from FTC jurisdiction if it provides equal or greater consumer protection for funeral services. The conferees also adopted a House provision suspending FTC authority to initiate actions against generic trademarks for the 3-year authorization period. This would give the Congress time to reevaluate enforcement policy involving trademarks.

The conferees also adopted in modified form a House provision limiting the FTC authority over agricultural cooperatives. This amendment addresses the uncertainty surrounding the jurisdiction of

the FTC by making certain that the FTC may not take any action against agricultural cooperatives because of conduct that is exempt from antitrust enforcement under the Capper-Volstead Act. This amendment says that if the Capper-Volstead Act sanctions certain activities, the FTC has to stay away—totally. It may not initiate any action whatsoever. Finally, the conferees agreed on a two-House veto provision. Although I have strong doubts about whether the veto will be an effective mechanism for confining rulemaking to the agency's statutory limits, and although I think redefining an agency's authority through legislation such as this FTC bill is a more desirable means for reform, it was necessary to reach some accommodation with the House on this issue. The legislation provides for a two-House veto during the 3-year authorization period. This will provide a test of whether or not this is a workable mechanism and would also provide the opportunity for a judicial test of the veto's constitutionality.

CONCLUSION

Mr. President, the FTC and a large segment of the press seem to assume that this legislation resulted solely from pressure of special interests. This is an incorrect assumption. While it is true that parties affected by FTC's rulemaking proceeding did bring their views to the attention of the committee, that alone would not have resulted in the legislation we are completing action on today. Many industries and many companies constantly complain about regulatory action but only occasionally does it result in legislation. The real reason that we have proposed this legislation for the FTC is because the Commission appeared to be fully prepared to push its statutory authority to the very brink and beyond. The FTC lost sight of the necessity to listen to the evidence and legal arguments of its opponents. Good judgment and wisdom had been replaced with an arrogance that seemed unparalleled among independent regulatory agencies. The FTC brought this legislation upon itself because its own chairman sought to "venture in the unchartered territory" of the Federal Trade Commission Act. His views were clearly stated in a 1977 speech in which he said:

> Frankly, I don't know how far we can travel on [the "unfairness" authority of Sperry & Hutchinson], but we intend to make use of the precedent, as it illustrates the elastic nature of the concept of "unfairness" which Section 5 embodies.

We are not asking the Commission to stop carrying out its consumer protection mission. All we are asking is that the Commission confine its activities to its statutory charter.

President Carter said earlier this year in a speech on regulatory reform:

> We have got a pressing need to get rid of the regulations that are unwarranted, and many of them are absolutely unwarranted, and we have got a need to manage those that are needed in the most effective and enlightened and sensitive way.

Congress has enacted this legislation because it is fully aware of and agrees with the President's views. I hope that the Commission will implement this legislation in that spirit.

And finally, Mr. President, I wish to thank the ranking minority member of the Commerce Committee, Senator PACKWOOD, who has always consistently sought an equitable solution to the controversy surrounding the FTC. I respect and appreciate the reservations he has expressed about the report now before the Senate; and in light of his very strong opposition to parts of the report I especially appreciate his cooperative spirit in permitting the majority of the Senate to move forward on this compromise.

I also want to recognize the professional work on the part of our respective staffs who have labored diligently to make this compromise possible. The Senate is grateful to Mike Mullen, Amy Bondurant, Loretta Dunn, Martha Moloney, Steve Halloway, and Butch Almstedt.

Mr. President, I submit a statement on behalf of Senator HOLLINGS. He is engaged in the conference with the House on the budget provisions. I submit his statement for the RECORD.

STATEMENT ON INSURANCE

Mr. HOLLINGS. Mr. President, I should like to add a few words concerning the insurance provision. I cannot emphasize strongly enough that this amendment reaffirms the basic purpose of the McCarran-Ferguson Act—to leave the job of insurance regulation to the States. In this amendment, we are once again telling the FTC that it is not to investigate the business of insurance since the States alone have this responsibility. We are limiting the FTC's role to conducting studies at the request of either Commerce Committee and only for the purpose of providing information to Congress when it considers insurance issues.

Because the States have this exclusive power to regulate, I would expect that there would be few, if any, FTC insurance studies undertaken at congressional request. But if there are such studies, the appropriations process must be taken into account. The appropriations subcommittee of which I am chairman is responsible for evaluating and approving FTC expenditures. As I indicated during the Commerce Committee's mark-up of the FTC bill, we can only appropriate if there has been an authorization. The problem in the past has been that the FTC has gone ahead with insurance investigations without seeking approval from the appropriations committee.

Therefore, to exercise our responsibilities under this amendment effectively, we must be kept continuously informed by the FTC. Specifically, we expect to be advised promptly by the FTC of any request for a study from the House or Senate Commerce Committee. And, we expect to be told of the estimated funds which will be needed. We will then give full and fair consideration to including such amounts in the FTC's appropriations bill, just as we would with regard to any other budget proposal by the Committee.

Mr. DANFORTH. Mr. President, the process of arriving at a Federal Trade Commission authorization bill has been a very long fight—in fact, something of a saga—for the Federal Trade Commission has now gone some 43 months without an authorization. As a matter of fact, during the past 4 years or so, the FTC has limped along from month to month, with one continuing appropriation bill after another sustaining its life—constantly under attack from various sides, constantly in a state of uncertainty as to what its future would be, what it would be permitted to do, what it would be able to do in the future.

The continued life of the Federal Trade Commission without an authorization bill is indeed a doubt. At one point—I believe it was last March—the House of Representatives was able to muster a majority of only some 15 votes to pass a continuing appropriations bill for the FTC. Therefore, it is clear that unless the Congress of the United States is able to agree, at long last, on an authorization bill, the possibility of further continuing appropriations is very much in doubt.

So it is in a very real sense that the future of an agency of the Federal Government, of very long standing, is in question and that that future will be resolved by what we are about to do this afternoon.

On the other hand—on the other side of this particular dilemma that we have been in—an agency of the Government that continues in existence without an authorization bill to sustain it is really without any congressional control whatever, other than simply the power of the purse.

Therefore, for those who believe that regulatory agencies should not be just free-wheeling organizations spinning out of control, an authorization bill is essential not only to maintain the life of an agency but also to provide it with the kind of congressional supervision which is necessary if our system of government is going to be maintained and its regulatory agencies are going to be under the control of those who ultimately are elected by the people—namely, the Congress of the United States.

This has been a very long, hard battle to get an authorization bill.

It has lasted some 4 years during which time the Senate Commerce Committee held some 14 days of hearings. The House Consumer Subcommittee held some 6 days of hearings. The Senate at various stages had this matter on the floor of the Senate on 7 different days, the House on 8 different days. There were 5 days of meetings of conferees, not to mention numerous informal meetings of Members of the Senate and Members of the House of Representatives who were involved in this process.

I believe that this is beginning to wind its way down and that today we are going to have an authorization bill.

Mr. President, it is going to be a bill which will please absolutely no one.

I asked my legislative assistant Kermit Almstedt, when we finally put the last touches on the compromise leading up to this conference report, please name the groups that will not like this bill. And he said, "Well, the consumer advocates will not like it, the funeral directors will not like it, the agricultural co-ops will not like it," and he went down this long list, and I said, "Who will like it?" And his answer was "Nobody."

I think, Mr. President, that that really is the nature sometimes of the legislative process. But Congress is a place where compromise is worked out and when a

compromise is worked out nobody is entirely satisfied, nobody is entirely happy.

The problem of the Federal Trade Commission is that at the outset when Congress enacted the legislation creating the FTC, setting up its jurisdiction, that language was so loose that Congress really failed to provide the kind of instructions for the agency which were necessary to provide clear guidelines for what it was to do and what it was not to do. Therefore, with only very loose general instructions from Congress the agency began to, to use the vernacular, do its own thing and, therefore, the American people and interests within our country chose up sides and decided that they did or did not like what the FTC was doing on particular items.

I think one of the best things that came out of the hearings was the agreement to hold more hearings to define the meaning of the word "unfair" in the basic FTC's jurisdictional statement, that it has jurisdiction over unfair or deceptive trade practices. The term "unfair" is so loose, so elusive in definition that Congress has really had an ineffective way of judging what the FTC is up to.

Mr. President, at this point I ask unanimous consent that a statement detailing the compromise as I see it be printed in the RECORD.

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

STATEMENT OF JOHN C. DANFORTH CONCERNING THE FEDERAL TRADE COMMISSION REAUTHORIZATION BILL

Since 1976, the Federal Trade Commission has gone without legislative authorization. The FTC has a constructive and important role to play in the regulation of interstate commerce. However, congressional concern with controversial FTC investigations, rulemaking and litigation has increased to the point of forcing the Commission to operate under stop-gap continuing resolutions for a period of 43 months.

One source of controversy has been the overly broad statutory language contained within the original FTC Act which requires the agency to prohibit "unfair or deceptive acts or practices" in the marketplace. The Commission has moved against a broad range of groups within the private sector on the vague grounds that their business practices were "unfair."

A second source of controversy has been the manner in which the FTC has conducted its affairs. Investigative subpoenas have been used in "fishing expeditions" without reasonable prior expectation of wrongdoing. Rulemaking has been instituted without advance notice to affected parties and without any reasonable belief that the alleged wrongdoing was prevalent in the marketplace. In addition, investigations have been undertaken in areas where the Congress specifically has reserved jurisdiction elsewhere.

In 1978, these concerns produced a climate in which the Senate voted approval of an FTC conference committee authorization bill on two occasions, only to have the compromise legislation rejected by the House.

In early 1979, I became involved in the FTC reauthorization process as the new ranking Minority Member of the Consumer Subcommittee of the Commerce Committee. I concluded that the most constructive way to break the impasse that had developed between the House, the Senate, the FTC and the Administration would be for the Senate Subcommittee to draft legislation more precisely defining the Commission's authority. On February 7, 1980, the full Senate accepted by a vote of 77 to 13, the text of the Senate Consumer Subcommittee bill (S. 1991). It contained the following major provisions:

Prohibited FTC public disclosure of trade secrets and confidential commercial and financial information;

Required the FTC to utilize explicit subpoena processes, thereby preventing "fishing expeditions" and protecting the legitimate rights of business and persons subjected to investigations;

Required advance notice of proposed FTC rulemakings to affected parties;

Prohibited rulemaking except in instances where the FTC had a reasonable cause to believe that unlawful acts were occurring;

Clarified FTC jurisdiction over the insurance industry pursuant to the provisions of the McCarran-Ferguson Act;

Prohibited the FTC from regulating children's advertising (Kidvid) under the agency's theory that such advertising was, per se, "unfair." (Even the ACLU objected to such sweeping power.) The Subcommittee was originally in favor of giving the FTC authority to regulate children's advertising if it was "false and deceptive." I succeeded in getting the Subcommittee to accept a "false or deceptive" standard;

Prohibited FTC rulemaking authority in the area of voluntary standards or certifications (i.e. such matters as how bright a 100 watt light bulb must be or how thick a ¼" cast iron pipe must be). It was my view that existing antitrust law provided relief to anyone denied access to the marketplace due to an anticompetitive standard or certification established by a voluntary association.

During the Senate floor debate on S. 1991, amendments were offered to reinstate FTC authority to prohibit children's advertising and to permit the promulgation of trade rules affecting voluntary standards and certifications. I opposed both amendments. "Kidvid" lost 67 to 30, and standards and certification was defeated 70 to 28.

An amendment was offered that would have prohibited the FTC investigations of anti-competitive practices by members of the "learned professions," including doctors, lawyers and dentists on the ground that such practices should be regulated at the state level. I opposed the amendment because hearings on the matter had not been held and it violated the established principle of concurrent federal-state enforcement of antitrust laws. The amendment was defeated 47 to 45.

Finally, an amendment was offered to establish a one-house legislative veto of rulemaking proceedings at the FTC. I opposed the amendment for two reasons.

First, I thought its constitutionality was doubtful. Before a bill can become law, it must pass the Senate and the House of Representatives and be signed by the President. If the President vetoes the bill, it must pass Congress by a two-thirds vote. This is the way the system of checks and balances works. Under this system, if the Executive Branch (the President and the bureaucracy) enforces a law in a manner different from that intended by Congress, Congress may rewrite the law, subject to the President's veto (which may, in turn, be overridden). Or, the Executive Branch may be taken to court and charged with exceeding its authority.

The one-house veto would tend to undermine that system. It would mean that no matter what the President thought the intent of a bill was when he agreed to sign it into law (instead of exercising his right to veto the bill), one house of the Congress would have the last word. That's not what the system of checks and balances is all about—the one-house veto could turn the President into a congressional pawn. Further, the one-house veto would mean that no matter what the Senate (or the House of Representatives) intended when the President signed the bill into law, the House (or the Senate) could undo everything simply by exercising its veto. That's not the way the system is supposed to work, either.

Second, even if the one-house veto were constitutional, it suffers from other problems. The veto would invite sloppy lawmaking because it would encourage Congress to write laws knowing that it could always have a second bite at the apple when regulations were written. But the fact of the matter is that Congress would not be likely to look at the regulations because there would be too many of them. Current history proves that to be true.

In my opinion, the original Senate version of the FTC bill was a balanced and reasonable effort to define more clearly the Commission's responsibility and authority. However, deep disagreements developed between Conferees during efforts to resolve seven specific differences between the House and Senate versions of the bill. Agreement was reached only after weeks of protracted negotiation and compromise on both sides, and only after the Conferees agreed to treat the resolution of differences on the seven issues as a package—not item by item. The disagreements on these issues were resolved as follows:

(1) Trademarks.—The House version prohibited the FTC from petitioning the Commissioner of Patents to cancel a registered trademark because the trade name had become "generic"—i.e. in common usage. The Senate version placed no limit on the FTC. The Senate-House compromise will prohibit the FTC from any action in this area for three years. I offered a compromise which would have permitted the FTC to seek the cancellation of a trademark if it could show evidence that the trademark was harmful to competition. My compromise was not accepted.

(2) Funeral industry.—The House version prohibited the FTC from regulating certain marketing practices within the funeral industry. The Senate version imposed no such limits. The Senate-House compromise authorized the FTC to issue trade regulations requiring price disclosures and preventing misrepresentations, boycotts, threats, tying arrangements and the sale of services without prior consumer approval. It also exempts states from FTC regulation if they provide comparable or stiffer regulation of the funeral industry. I favored the compromise.

(3) Agricultural cooperatives.—The House version prohibited the FTC from conducting any investigation of agricultural co-ops for potential antitrust violations whether or not the questioned activity was within the antitrust immunity granted to co-ops under the Capper-Volstead Act. For example, the FTC would have been prohibited from investigating alleged price-fixing between a co-op and an unrelated grocery store chain. The Senate version imposed no such restrictions. The Senate-House compromise prohibits the FTC from conducting a study, investigation or prosecution of an agricultural co-op for violations of federal antitrust laws only when the co-op is acting under the immunity of the Capper-Volstead Act. The compromise preserves the authority of the FTC to investigate anti-competitive behavior of ag co-ops acting outside of their lawful grant of immunity. I favored the compromise.

(4) Legislative veto.—The House version allowed trade rules promulgated by the FTC to be vetoed by both Houses of Congress or by one House in the absence of action by the other. The Senate version delayed the effective date of rules promulgated by the FTC to permit Congress time to enact a joint resolution overturning the rule. The Senate-House compromise would allow a two-house veto. I favored the result.

(5) Insurance.—The Senate version clari-

fied the jurisdiction of the FTC over the insurance industry by prohibiting the Commission, pursuant to existing law (McCarran-Ferguson Act), from investigation or enforcement activities in jursdictions where insurance is already subject to state regulation. The FTC had initiated a number of ongoing investigations of the insurance industry in direct violation of McCarran-Ferguson. The House version had no comparable clarification. Under the Senate-House compromise the FTC is permitted to conduct studies of the insurance industry when requested to do so by the Commerce Committee of either the House or the Senate. I favored the compromise.

(6) Children's advertising.—The Senate version prohibited the FTC from banning children's advertising and required the Commission, if it sought to regulate any form of commercial advertising, to do so under a standard of "false or deceptive," rather than "unfair." The House version had no such provision. Under the Senate-House compromise the FTC cannot ban truthful children's advertising. Further, if the Commission wishes to proceed with a Kidvid investigation it must publish the text of a proposed rule, and conduct its investigations under the "deceptive" standard. In addition, the Commission is banned for three years from promulgating advertising rules under a standard of "unfairness." This will permit Congress to conduct hearings on the scope and limits of such a standard. I would have preferred allowing the FTC to ban children's advertising only in the case of products deemed to constitute a health or safety hazard. However, I supported the compromise.

(7) Standards and certification.—The Senate version terminated FTC authority to regulate voluntary standards and certification associations. The House version had no such limitation. The Senate-House compromise prohibits the FTC from using its authority in the FTC Act under Sec. 18 (Consumer Protection) but allows it to use whatever authority it may have under Sec. 6 (antitrust). I would have preferred to limit the FTC rulemaking authority to procedural requirements in the development of product standards—requirements aimed at insuring interested parties an opportunity to participate in the setting of standards. Under the compromise, the FTC also can rulemake in the substantive areas of product standards. This will undoubtedly result in lengthy legal disputes between standard setting organizations and the FTC which the Congress could have helped to avoid.

The legislative process involving the FTC authorization bill has been complex, lengthy, and exhausting. The final and successful compromise between the House, the Senate, the FTC, and the White House has involved difficult and, at times, highly divisive negotiations. I have approached the issues involved with the view that the FTC has a constructive role to play in the regulation of interstate commerce and that many of the controversies have arisen because Congress has failed to define, precisely enough, the FTC's mission and jurisdiction. It is my view that the reauthorization bill which finally has resulted—although certainly not acceptable to me on all counts—makes constructive and substantial progress toward both goals. It preserves FTC jurisdiction and authority to act in many important areas of commerce and it more clearly defines the agency's mission.

SUMMARY OF FTC AUTHORIZATION AND APPROPRIATION ACTIVITY IN CONGRESS FROM MAY 1976 TO APRIL 1980

1. The Congress has considered this issue for 43 months during which the FTC has gone without an authorization.

2. Appropriations:

A. For FY 1977, FY 1978 and FY 1979 the FTC received its money in the usual State, Justice, Commerce appropriation bill. Although limitations were placed on how the FTC could spend the money. These limitations were on the children's advertising rulemaking and the auto industry investigation and maintaining the confidentiality of the line of business reports.

B. For FY 1980 the FTC has received a series of three continuing resolutions with strict limitations on the use of money. In order to provide funds to the FTC under the third continuing resolution money had to be borrowed from the account of the International Communications Agency because no new money was available under the Second Budget Resolution.

3. Authorizations:

A. Committee hearings:

Senate Commerce Committee held, 14 days.

House Consumer Subcommittee held, 6 days.

B. Floor debate:

Senate, 7 days.

House, 8 days.

C. Meetings of Conferees, 5 days.

4. On each and every vote on an FTC Conference Committee Report the Senate has voted unanimously for the report and the House has voted against the report.

CHRONOLOGY OF FEDERAL TRADE COMMISSION APPROPRIATIONS

June 1, 1976, Second Supplemental Appropriations for FY 1976, $1,815,000 to Sept. 30, 1976. P.L. 94–303.

July 14, 1976, State, Justice, Commerce, Judiciary and Related Agencies Appropriations for FY 1977. $52,700,000. Oct. 1, 1976 to Sept. 30, 1977. P.L. 94–362. Restrictions placed on release of line of business data.

May 4, 1977, Supplemental Appropriations for FY 1977. $1,980,000. P.L. 95–26.

August 2, 1977, State, Justice, Commerce, Judiciary and and Related Agencies Appropriations for FY 1978. $59,500,000. Oct. 1, 1977 to Sept. 30, 1978. P.L. 95–86.

September 8, 1978, Second Supplemental Appropriations for FY 1978. $2,600,000. P.L. 95–355.

October 10, 1978, State, Justice, etc. Appropriations for FY 1979. $64,750,000. Oct. 1, 1978 to Sept. 30, 1979. P.L. 95–431. Restrictions placed on further activities in children's advertising rulemaking and auto investigation.

October 12, 1979, Continuing Resolution (H.J. Res. 412) from October 1, to November 20, 1979. P.L. 96–86. H. Rept. 96–500. Restrictions on any further activity in rulemaking.

November 20, 1979, Continuing Resolution (H.J. Res. 440) from November 20, 1979 to March 15, 1980. P.L. 96–123. S. Rept. 96–646 and H. Rept. 96–604. Continued restrictions on rulemaking.

March 28, 1980, Continuing Resolution (H.J. Res. 514) from March 15 to April 30, 1980. P.L. 96–219. Restrictions also continue.

January 4, 1975, Magnuson-Moss Warranty-Federal Trade Commission Improvement Act. P.L. 93–637. Provided authorizations for fiscal years 1975, 1976 and 1977.

May 29, 1976, Authorizations for F.Y. 1976 of $47,091,000. P.L. 94–299. No Senate hearings. One day of House hearings. S. Rept. 94–701. H. Rept. 94–1104.

February 22, 1977, H.R. 3816 introduced, "FTC Amendments of 1977".

March 8, 16, 1977, Hearings held in Consumer Subcommittee, House Commerce Committee.

March 29, 1977, Considered in Consumer Subcommittee executive session.

April 18, 1977, Considered in House Subcommittee and reported to full Committee.

April 19, 1977, S. 1288, "FTC Improvements Act of 1977" introduced.

May 3, 4, 1977, Hearings held on S. 1288 by Senate Consumer Subcommittee.

May 4, 11, 1977, H.R. 3816 considered by full Committee and ordered reported to full House as amended. H. Rept. 95–339.

May 12, 1977, S. 1288 considered in executive session and ordered reported with an amendment in the nature of a substitute. S. Rept. 95–197.

October 3, 1977, H.R. 3816 considered by House.

October 13, 1977, H.R. 3816 passed by a vote of 279 to 131.

October 20, 1977, H.R. 3816 passed the Senate by a unanimous vote of 90 to 0 with an amendment in the nature of a substitute (text of S. 1288 and S. 1533—requiring certain regulatory reform measures). Action on S. 1288 and S. 1533 indefinitely postponed.

January 24, 1978, House disagreed to the Senate amendment and requested a conference. The House appointed the following conferees: Reps. Staggers, Eckhardt, Metcalfe, Krueger, Carney, Scheuer, Luken, Devine, Broyhill, and Rinaldo, and Butler (solely for consideration of section 112 of the Senate amendment).

January 25, 1978, Senate insisted on its amendment and appointed the following conferees: Senators Magnuson, Ford, Durkin, Griffin and Danforth.

February 1, 1978, Conferees met.

February 8, 1978, Conferees met and agreed to file.

February 22, 1978, Conference report filed in the House. H. Rept. 95–892.

February 22, 1978, Conference report passed Senate by voice vote.

February 28, 1978, Conference report failed to pass the House by a vote of 255 to 146. The House reappointed the following conferees: Reps. Staggers, Eckhardt, Metcalfe, Krueger, Carney, Scheuer, Luken, Devine, Broyhill and Rinaldo and Butler (solely for consideration of section 112 of the Senate bill).

August 11, 1978, Senate insisted on its amendment and reappointed the following conferees: Senators Cannon, Ford, Schmitt and Danforth.

August 15, 1978, The conferees met and reached tentative agreement.

September 8, 1978, Conference report filed in the House. H. Rept. 95–1557.

September 11, 1978, Conference report passed Senate by voice vote.

September 14, 1978, Hearing held by House Rules Committee on conference report.

September 28, 1978, Conference report failed to pass the House by a vote of 214 to 175.

February 21, 1979, H.R. 2313, "FTC Improvements Act of 1979" introduced. Referred to House Commerce Committee.

February 28, 1979, Hearing held by Consumer Subcommittee.

March 1, 7, 1979, Hearings held.

April 26, 1979, S. 1020, "FTC Authorizations" introduced.

May 2, 1979, Hearing held on S. 1020.

May 8, 1979, S. 1020 Considered in Executive Session and ordered reported. H.R. 2313 forwarded from Consumer Subcommittee to full House Commerce.

May 14, 1979, H.R. 2313 ordered to be reported as amended.

May 15, 1979, H.R. 2313 reported to House (H. Rept. 96–181). S. 1020 reported to Senate (S. Rept. 96–184).

July 10, 1979, Senate Commerce Committee hearing on FTC life insurance cost disclosure study.

September 18, 19, 27, 28, 1979, Senate oversight hearings on FTC.

October 4, 5, 10, 1979, Senate oversight hearings on FTC.

October 17, 1979, Senate Commerce Committee hearing on FTC life insurance cost disclosure study.

November 8, 1979, S. 1991, "FTC Act of 1979" introduced.

November 14, 1979, House begins debate on H.R. 2313.

November 20, 1979, Senate Commerce reports S. 1991 as amended.

November 27, 1979, House passed H.R. 2313 as amended 321 to 63.

November 29, 1979, H.R. 2313 placed on Senate calendar.

November 30, 1979, Senate oversight hearing on FTC divestiture orders.

December 14, 1979, Report on S. 1991 filed (S. Rept. 96–500).

December 14, 1979, S. Res. 314, waiving the Congressional Budget Act introduced and referred to Budget Committee. This was a waiver for S. 1991.

February 5, 1980, Senate agreed to a time limitation on H.R. 2313.

February 6, 1980, Senate begins debate on H.R. 2313.

February 7, 1980, H.R. 2313 passed Senate with an amendment in the nature of a substitute (text of S. 1991 as amended) by a vote of 77 to 13. Senate insisted on its amendments and requested a conference. Senate indefinitely postponed consideration of S. 1020 and S. 1991.

February 20, 1980, Senate appointed the following conferees: Senators Cannon, Ford, Mangnuson, Heflin, Packwood, Danforth and Warner.

February 28, 1980, House disagreed to the Senate amendments and agreed to a conference. The House appointed the following conferees: Reps. Staggers, Scheuer, Preyer, Ottinger, Satterfield, Luken, Broyhill, Rinaldo, and Devine; Mr. Russo solely for consideration of the funeral amendment.

February 28, 1980, House instructed its conferees to insist on House language regarding congressional review of FTC regulations by a vote of 257 to 115.

March 13, 1980, Conferees met.

March 26, 1980, Conferees met.

April 30, 1980, Conferees met and accepted compromise.

Mr. DANFORTH. Mr. President, it is my understanding that Senator PACKWOOD, the ranking minority member of the Commerce Committee, is necessarily absent today when the Senate is considering the FTC conference report.

If Senator PACKWOOD were here, he would indicate that as a conferee he did not sign the conference report and he would vote against its acceptance.

Further, Mr. President, I ask unanimous consent that the Senator from Oregon (Mr. PACKWOOD) be permitted to file a statement of his views on this matter at a later date, and that those views be printed in the permanent RECORD at the appropriate place.

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

Mr. DANFORTH. Mr. President, finally, a word about the chairman of our subcommittee, Senator WENDELL FORD. I do not know of anyone who has undertaken a more thankless job than Senator FORD in being the chairman of the Consumer Subcommittee, and navigating the treacherous rocks of moving this authorization bill along. He has been a man of very great patience and very great skill in accomplishing this seemingly miraculous feat, and he has been under fire from all directions.

I am told that at one point in time Mr. Ralph Nader took it upon himself to telephone every radio station in the State of Kentucky to give an "exclusive interview" during which time he proceeded to attack Senator FORD for his work on this conference report.

(Mr. STEVENSON assumed the chair.)

Mr. DANFORTH. Well, it is very difficult to make Mr. Nader happy; it is a free country and he is free to say whatever he pleases. I think it is easier to be a hit-man than to be a constructive legislator, and I think what WENDELL FORD has accomplished is something, as I said earlier, that is not going to make very many people happy, but it is the soul of responsibility and it is exactly what service in the U.S. Senate must be about.

Therefore, I extend to him my compliments and my congratulations for an outstanding job, and my strong sense of belief that he has done something which is very worthwhile, and my belief also that without his leadership on this bill we would not have a Federal Trade Commission.

Mr. President, I yield the floor.

Mr. SCHMITT addressed the Chair.

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

Mr. SCHMITT. I would be happy to yield.

Mr. FORD. I wish I had the eloquence of Senator DANFORTH to thank him as eloquently as he has praised me. But, Jack, as they say down home, I am only armed with a silver tongue and the truth. I tell you with all sincerity that it could not have been accomplished without your patience and without your ability and your thoughtful input, as I said earlier. I am grateful to you for your kind remarks and I look forward to working with you for a long period of time.

I thank the distinguished Senator from New Mexico for allowing me the few remarks.

Mr. SCHMITT. Mr. President, I am more than happy to do that.

I say to both Senators, who have so ably managed this bill, that at least there is one group of one who is pleased and happy with the legislation.

It is this Senator's opinion that, as is implicit in the words of Senator DANFORTH, this is a landmark piece of legislation. It shows through in the numerous compromises made to deal with specific rulemaking activities and what can be done with hard work and persistence to create legislation. History may little note in the long term the specifics of the compromises but, nonetheless, they were critical to the passage of the legislation. History will note that the conferees were able to create what I believe is a workable form of congressional review, or legislative veto, over the future rulemaking activities of the Federal Trade Commission.

I congratulate all members of the conference committee, however they may have felt on this particular issue from a philosophical base, all the Senators and House Members who worked to reach this day where we on the floor of the U.S. Senate can consider not only a necessary authorization of an important agency, the Federal Trade Commission, but also an important and necessary legislative initiative—a legislative veto applied to the proposed rulemakings of an independent regulatory agency such as the FTC.

Senator PACKWOOD deserves the thanks of all of those who fought so hard for this concept, for assisting us in this effort. Senator FORD and Senator DANFORTH, although in opposition to the legislative veto under other circumstances, nonetheless were courteous in their opposition and worked diligently to reach the compromise that we have before us today.

Three years ago when the Senate began to work in earnest on the deliberation of the concept of a legislative veto, there seemed little likelihood of success. Now, however, we will be able to test the effect of a legislative veto for a period of 3 years on a major regulatory agency, one of great importance to the country. I feel confident that this test will prove the procedure to be an important addition to the oversight tools available to the Congress.

THE LEGISLATIVE VETO—A SYSTEMATIC PROCEDURE FOR EXERCISING OVERSIGHT

Mr. President, this has been referred to as the oversight Congress. Hopefully, that title will stick, and we will, in the next session of this Congress, continue to expand the process of oversight over the independent and executive agencies of Government and over their exercise of the statutory authority that we have given them.

In this light, it is therefore no coincidence that the legislative veto has become an important part of the debate concerning the most appropriate means for Congress to exert better and more consistent control over the Federal bureaucracy.

The legislative veto concept has been variously referred to as a panacea for all the problems of Government, or as an unconstitutional mechanism that will overburden the Congress with reviewing rules promulgated by the executive and independent agencies.

Neither of these positions is the correct one. Instead, the legislative veto is simply an aid to effective oversight of the exercise of legislative authority which hase been delegated to independent or executive branch agencies in the past. It will significantly increase the effectiveness of the Congress in representing the concerns of our constituents with regard to lawmaking in the form of Federal regulations and in assuring agency compliance with the intent of Congress in national policy formulation.

In developing the present legislative veto concept over the last 3 years, my colleagues and I have taken into account questions of constitutionality, House and Senate prerogatives, committee workload, and the threat of narrow special interests. It may be useful at this point to explain in some detail the concepts and procedures behind the legislative veto amendment that is contained in the Federal Trade Commission authorization bill conference report.

PROPOSED RULES

The legislative veto provision of the conference report would require that a proposed FTC rule would be transmitted to both Houses of Congress and be referred to the appropriate committees of jurisdiction. Before such a rule would go into effect, the proposed rule would lie before the Congress for 90 days, at which time the rule would go into effect automatically if both Houses of Congress have not agreed to a resolution of disapproval.

It is intended that should the Commission decide to formulate a new rule similar to that which was disapproved, the Commission will be guided by the committee report and floor debate on the disapproval resolution in determining congressional intent on the matter in question. This has been the experience with the proposed rules of the Federal Elections Commission which are already subject to legislative veto.

COMMITTEE DISCHARGE

In order to insure that resolutions of disapproval are treated seriously and that the Senate as a whole is able to pass judgment on changes in the law of the land, the amendment contains a provision which would permit one-fifth of the memberhip of either House to bring to a vote a motion to discharge the committee of jurisdiction from further consideration of a resolution should the committee fail to act on such a resolution after 75 days.

It is important to note carefully the need for such a provision that provides for the discharge of a committee. With ordinary legislation it is obvious that bills which will create changes in the Nation's laws must be brought before the full membership of both bodies of the Congress. Each Member has a full opportunity to express his or her views with regard to changes in national policy. This is the system of free and open debate we have inherited and its benefits are self-evident. Regulatory law, however, is an entirely different matter. Most decisions on these regulatory laws are made in the middle levels of the Federal bureaucracy and are not entirely open to public scrutiny. In fact, such laws are made by those who do not have to respond to the electorate as do Members of Congress.

With the establishment of a veto procedure we will allow the elected representative of the people an opportunity to review and possibly veto proposed FTC rules. Should we fail to provide a safeguard for committee inaction on a disapproval resolution, we will be endorsing the idea that fundamental changes in law will be permitted to occur without an opportunity for discussion on the floor of either body of Congress. This situation would be rectified by the discharge provision in the conference report.

LIMITATION ON DEBATE

In order to avoid a situation where debate is needlessly prolonged with regard to proposed rules, the conference report contains a provision which will limit debate to 1 hour on motions to discharge the committee from consideration of a resolution of disapproval. Debate on the resolution itself would be limited to 10 hours.

These limits would insure that there will be adequate time to consider the major policy or constitutional issues addressed by a proposed rule rather than be bogged down in technical details better left to a committee or more specifically to the FTC.

The limits would also disallow the possibility of excessive debate and possible filibuster on these proposed rules.

EXPEDITED COURT REVIEW

Mr. President, the constitutionality of the legislative veto has frequently been discussed in both the House and the Senate and it is likely that a constitutional challenge will be lodged against a legislative veto being applied to the FTC. In light of the facts that there are currently 295 provisions of law containing legislative veto or review procedures, that such procedures are regularly used by the Congress, and that, on the several occasions when it has been addressed by the courts, the veto has not been ruled unconstitutional, it appears likely that the Supreme Court will uphold the constitutionality of the procedure outlined in the conference report.

However, in order to insure that this issue is resolved as soon as possible after this legislation is enacted, and if a constitutional challenge is raised, the amendment contains a provision requesting expedited consideration of such a challenge by the Supreme Court.

STATUS OF RECOMMENDED FTC RULES

The conference committee report contains some very important language which is designed to make it very clear to the FTC, to the courts and to the Congress, the precise status of the rulemaking recommendations of the Federal Trade Commission. That language reads as follows:

Under this provision the authority of the rules is conditioned on those rules being Federal Trade Commission to promulgate submitted to the Congress for review and possible disapproval under the procedures set out above. If the Congress does not act, the rule submitted to the Congress becomes effective. If the Congress passes a concurrent resolution of disapproval, the rule would not go into effect. By requiring that the Commission submit a rule to Congress for review and possible disapproval, the Congress, under this provision, hereby provides a mechanism to determine whether and when a rule submitted to it by the Commission becomes effective.

This language explains that the FTC does not have the authority to promulgate rules unless those rules are submitted to the Congress. In other words, to a great extent, the Congress has reassumed the legislative responsibility delegated to the FTC with the passage of the original FTC Act; and subsequently, with the Magnuson-Moss Act and with other legislation. Under these new procedures, the FTC is to make recommendations to the Congress. Should the Congress disapprove such a recommendation, it has not vetoed a rule that was already effective, because the FTC no longer has any statutory authority to promulgate a rule that becomes effective prior to submission to the Congress.

Mr. President, these are the major provisions of the legislative veto language in the Federal Trade Commission authorization bill conference report. We believe that this is a fair, reasonable and efficient approach to regulatory reform that responds to the public demand for greater congressional accountability for the delegated legislative actions of the Federal Trade Commission.

It has become increasingly evident that Congress cannot stand on the sidelines and be an uninvolved bystander to the regulatory process at the FTC. Neither can we just apply short-term fixes to specific rulemaking activities, as has been proposed by some. The presence of the possibility of a legislative veto at the end of the regulatory pipeline will insure that the FTC considers our concerns at the beginning of the pipeline. Congress must become a part of the process by insisting on an opportunity to review the rulemaking recommendations of the Federal Trade Commission.

Mr. President, I ask unanimous consent that there be printed in the RECORD a statement by Eugene Gressman, a distinguished legal scholar, which discusses the constitutionality of the one-house veto device, much of which can be applied to the compromise concept contained in the conference report, which is a two-house legislative veto. I ask that it be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SCHMITT. Finally, Mr. President, I just once again cannot help but reiterate my sincere appreciation to the conferees and, most specifically, to Senator FORD and Senator DANFORTH for their leadership and for their willingness to work with all members of the Commerce Committee interested in these issues, whether they were on the conference or not. The Senator from New Mexico deeply appreciates it and congratulates them on their success.

EXHIBIT 1

STATEMENT OF EUGENE GRESSMAN

This statement is directed to the proposition that the device known as the legislative or one-House veto can be structured and used in a manner consistent with the letter and the spirit of the Constitution. That proposition rests upon a constitutional rationale established by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. (17 U.S.) 316 (1819), a rationale revived and applied by the Court of Claims to sustain a version of the so-called one-House veto in *Atkins* v. *United States*, 556 F.2d 1028, 1057–1071 (Ct.Cl. 1977), certiorari denied, 434 U.S. 1009 (1978).

My commitment to that proposition is thus something more than academic or theoretical, however relevant those factors may be.[1] It is a commitment forged in the fires of litigation respecting the constitutionality of this legislative device. I have had the honor of representing the House of Representatives in all five cases that to date have involved serious challenges to the use

[1] In my role as a professor of constitutional law at the North Carolina Law School at Chapel Hill, I have studied and taught the entire spectrum of the Constitution. I have yet to find anything therein supporting the frequently expressed academic view that the one-House veto device, in all its manifestations, necessarily violates the law-making procedures set forth in Article I, Sections 1 and 7, of the Constitution, as well as the basic principles of bicameralism, separation of powers and the presidential role in legislation established by those constitutional provisions. See, e.g., Watson, Congress Steps Out: A Look at Congressional Control of the Executive, 63 Cal L. Rev. 983 (1975).

of the device.[2] In that capacity, I have observed and hopefully contributed to the development of a viable constitutional footing for the use of this legislative technique.

The arch critics of the one-House veto device, including every President since the days of President Hoover, have yet to achieve any degree of success within judicial arenas. None of the four judicial decisions thus far rendered have indicated any tolerance or acceptance of their constitutional criticisms.[3] True, the *Clark* and *McCorkle* courts found compelling reasons for not addressing the constitutional issue, but such avoidance affords no comfort for the critics. The three-judge court in *Pressler* rejected, without extended discussion, a somewhat belated claim that the one-House veto provision in the Federal Salary Act, 2 U.S.C. § 359(1), was invalid, a claim that was renewed on the appeal to the Supreme Court. Without comment, the Supreme Court summarily affirmed the lower court's ruling in *Pressler*, 434 U.S. 1028.

However opaque may be the *Pressler* rulings with respect to the validity of the Salary Act veto provision, the *Atkins* decision of the Court of Claims leaves no doubt as to the speciousness of the constitutional assaults on that Salary Act provision. By any standard, the *Atkins* opinion is a model of judicial statesmanship and craftsmanship. It is a comprehensive analysis of the historic and pivotal role that Congress plays in the effective functioning of all three branches of the Federal Government. And it is a convincing demonstration of the enduring quality of John Marshall's "necessary and proper" analysis of the constitutional powers of Congress.

The impressiveness of the *Atkins* approach to the so-called one-House veto problem has seemingly stunned the critics of the veto. The chief critic, the Department of Justice, rarely if ever mentions the existence of the *Atkins* decision in its public statements, preferring simply to reiterate the constitutional objections that were so roundly analyzed and repudiated by the Court of Claims. When pressed, the Department brushes aside the *Atkins* ruling as merely "the view of four of the judges on the Court of Claims, upholding the one-House veto provision of the Federal Salary Act."[4] Some references are also made to the fact that the Court of Claims dealt only with the veto provision in the Salary Act and expressly disclaimed any "overarching attempt to cover the entire problem of the so-called legislative veto, or even a large segment of it." 556 F.2d at 1059. And the "necessary and proper" analysis that so permeates the *Atkins* decision is generally disposed of by the Department, if it is mentioned at all, by a footnote comment that the Necessary and Proper Clause does not authorize Congress to legislate by unconstitutional means, a proposition that is said to be "so self evident as not to require extended discussion."[5]

But the intrinsic importance of the *Atkins* ruling and its constitutional analysis rises above all attempts to ignore or understate the decision. The powerfulness of the constitutional concepts expressed in this ruling, particularly in its use of Chief Justice Marshall's perspective on the Necessary and Proper Clause, has completely shifted the focus and the nature of what until now has been a purely academic debate swirling about the constitutional propriety of the legislative oversight technique known popularly as the "one-House veto." That this first judicial declaration on the matter has been rendered by a federal court inferior to the Supreme Court does not detract from the force of the reasoning and analysis employed therein. A constitutional idea can have an importance and an impact without regard to the status of the court that first articulated the idea.

Because the *Atkins* rationale is so instructive as to how Congress may properly exercise some of its oversight functions through use of this so-called veto technique, it becomes appropriate briefly to summarize the sweep as well as the limits of the *Atkins* ruling. It must be emphasized at the outset of this recapitulation that *Atkins* does not purport to give Congress a blank check to review, revise or veto any and all forms of final executive or administrative action. One must begin this review, therefore, with a firm understanding of the kind of "one-House veto" provision that was put into issue in *Atkins*, as well as in the other four cases involving similar constitutional challenges.

THE NATURE OF THE VETO IN QUESTION

The term "one-House veto" or "legislative veto" is not a precise term of art, legislatively or constitutionally speaking. It is simply a popular shorthand term that covers a variety of forms of legislative oversight, some of which may not involve any attempt by Congress to "veto" or second-guess some final executive or administrative action.

It is a fact, doubtless coincidental, that all three statutes that have been challenged in courts for their embodiment of the so-called "one-House veto" are not true examples of the "veto" technique of oversight. The *Atkins-Pressler-McCorkle* trilogy of cases all involved the Salary Act provision that reserved to Congress its vested power to make final determinations as to the pay scales of the three branches of government. That power was exercisable by giving approval by inaction, or disapproval by resolution of either House, of salary recommendations that Congress had authorized the President to make.

In a word, the Salary Act provision at issue in the *Atkins* was not a true "one-House veto" provision. Disapproval of the President's recommendations did not mean a "veto" of a pay scale that had become final and effective upon issuance of the President's recommendations. His recommendation was simply a recommendation, nothing more, nothing less. Disapproval of such a recommendation, like disapproval of a legislator's proposal for salary increases, simply meant that the recommended or proposed new salary scale was not approved by Congress, leaving in effect the status quo as to salary scales. Since the President's salary recommendations under review in Congress merely had "the potentiality of becoming law—if neither House objects within 30 days of their announcement," 556 F. 2d at 1063, neither House was in position to "veto" any final Presidential action that had acquired the force of law.

The same kind of "non-veto" situation pertained in the *Clark* and *Chadha* litigation. *Clark* involved the issuance of *proposed* regulations by the Federal Election Commission, regulations that could not become effective until Congress had reviewed them and given its approval by failure of either House to adopt a disapproval resolution within the prescribed 30 legislative days. Likewise, *Chadha* involved a *recommendation* by the Attorney General that Congress permit a deportable alien to acquire permanent residential status in the United States, a recommendation that could be rejected by a disapproval vote in either House. In neither instance was Congress seeking to upset or veto any final action of the Federal Election Commission or of the Attorney General. In both instances the Congress was using the device of one-House disapproval as a means of exercising its reserved and vested power not to alter the status quo.

THE SCOPE OF THE NECESSARY AND PROPER CLAUSE

An understanding of the peculiar and misnamed kind of "one-House veto" prescribed in the Salary Act is the key that opens the constitutional path followed by the *Atkins* court in validating that so-called veto technique. The problem was to discover and define the power of Congress to affirm by inaction, or to disapprove by a one-House resolution, a recommendation made to it by the President respecting a matter that lay within the exclusive legislative power of the Congress. The answer to that problem was found in the Necessary and Proper Clause of the Constitution, Article I, Section 8, Clause 18. That Clause vests in the Congress the power:

"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

It is immediately apparent that this Clause enables Congress to make whatever laws are necessary and proper for carrying into execution two basic categories of vested powers: (1) those powers that are vested in Congress by Article I or any other provision of the Constitution; and (2) those powers that are vested by the Constitution in other organs of the Government of the United States, be it the executive or the judicial branch or any department or officer of the Government. The power to implement the execution of Congressional vested powers constitutes the "vertical effect" of the Necessary and Proper Clause, while the Congressional power to carry into execution the powers vested in other branches and agencies of the Government is known as the "horizontal effect" of the Clause. See Van Alstyne, The Role of Congress in Determining Incidental Powers of the President and of the Federal Courts: A Comment on the Horizontal Effect of "The Sweeping Clause," 36 Ohio State L. J. 788 (1975).

The classic delineation of the meaning and scope of the Necessary and Proper Clause was provided by John Marshall in the famous case of *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 421 (1819), where he wrote that the sound construction of this Clause

" . . . must allow to the national legislature that discretion, with respect to the means by which the powers it [the Constitution] confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Con-

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[2] The five cases in which the validity of the one-House veto has been put into issue are:

(1) Clark v. Valeo, 559 F.2d 642 (App. D.C. 1977), affirmed *sub nom.* Clark v. Kimmitt, 431 U.S. 950 (1977);

(2) Pressler v. Simon, 428 F.Supp. 302 (D.D.C., three-judge court, 1976), affirmed *sub nom.* Pressler v. Blumenthal, 434 U.S. 1028 (1978);

(3) McCorkle v. United States, 559 F.2d 1258 (C.A. 4, 1977), certiorari denied, 434 U.S. 1011 (1978);

(4) Atkins v. United States, 556 F.2d 1028, 1057–1071 (Ct.Cl. 1977), certiorari denied, 434 U.S. 1009 (1978);

(5) Chadha v. Immigration and Naturalization Service, C.A. 9, No. 77–1702, pending for decision since May 1978.

A few other challenges to the one-House veto have been made but not pursued or processed through to a court decision.

[3] While the Ninth Circuit has yet to resolve the *Chadha* case, that court in April of 1978 ordered that post-argument briefs be submitted on a narrow jurisdictional issue. If that issue is deemed dispositive, the court might feel it unnecessary to reach the question as to the validity of the one-House veto provision in § 244(c)(2) of the Immigration and Nationality Act.

[4] Brief for the Immigration and Naturalization Service, p. 19, filed in Chadha v. Immigration and Naturalization Service, C. A. 9, No. 77–1702. This brief was prepared and signed by an Assistant Attorney General and an Assistant to the Solicitor General.

[5] *Ibid.*, p. 18, fn. 17, *supra*, note 4.

stitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

The essential point of Marshall's great decision is that Congress has complete discretion, consistent with all other provisions of the Constitution, to select the means to carry into effect and execute all powers vested by the Constitution in Congress or in any other branch, department or officer of the Government. Once a vested power has been properly identified, the Necessary and Proper Clause gives Congress an affirmative power to help execute that vested power through the enactment of whatever laws are deemed by Congress to be necessary or appropriate to that legitimate or vested end. As the *Atkins* opinion noted, this Clause "can authorize a given method of obtaining a desired result, as well as ground a substantive provision (as in *McCulloch*)." 556 F. 2d at 1061.

Following John Marshall's conception of the Necessary and Proper Clause, the *Atkins* court first identified the end sought to be achieved by the legislative technique in question. That end, that vested power, was identified as the vested power of Congress to fix the compensation of federal judges. And to that end, Congress had wide discretion to select the method of obtaining or executing that desired result. In that case, the Necessary and Proper Clause was found to authorize Congress "to choose, first, to delegate the initial power to make [salary] proposals to the President, and, then, to select for itself the appropriate method for checking and monitoring the President's action." 556 F. 2d at 1061. That appropriate method, of course, was embodied in the so-called "one-House veto" provision of the Salary Act, whereby one House could disapprove any finalization of the President's recommendations respecting judicial salaries.

The affirmativeness of the grant of power to Congress given by the Necessary and Proper Clause is what the legal opponents of the "one-House veto" technique will not concede. They seek to dispose of the entire "necessary and proper" argument by slipping immediately to the last item in John Marshall's "necessary and proper" methodology—the requirement that the means selected by Congress be "not prohibited, but consistent with the letter and spirit of the Constitution." But Marshall obviously meant that the actual means selected by Congress be tested against other provisions of the Constitution, not that such other provisions be deemed controlling without regard to the affirmative powers granted Congress by the Necessary and Proper Clause.

In other words, only after the end has been found legitimate and the means appropriate to that end can the means properly be tested against other provisions of the Constitution. That is precisely what the *Atkins* court did. It identified the legitimate end, the Congressional power to set judicial salaries. And it interpreted the means selected in the Salary Act as appropriate to that end, at least in the minds of Congress. It is at this point that the proper delineation of the means selected becomes critical. Once the court realized that Congress had not delegated to the President its total or final authority to set judicial salaries, but retained that final authorization unto itself, the court was able to test such a carefully limited means against the constitutional challenges that have so long been indiscriminately made against all forms of the "one-House veto" device. The *Atkins* court had little difficulty in disposing of those challenges once the means selected by Congress in the Salary Act was understood.

THE CONSISTENCY WITH OTHER PROVISIONS

It bears reiteration that the *Atkins* court was confronted with a "necessary and proper" means selected by Congress that amounted to nothing more than the ability of one House to block Congressional approval or acceptance of a Presidential salary recommendation that bore no elements of a final executive determination. So identified, such means were found not to be prohibited by other provisions in the Constitution. To wit:

(1) The provision in Article I, Section 1, vesting all legislative power in a two-House Congress, does not require that all activities of a legislative nature be accomplished by bicameral action. And there is certainly no requirement that the refusal to accept the recommendations of the President respecting judicial salaries must be with the concurrence of both Houses. Just as one House can vote down a proposal for new legislation, which involves no changing of the status quo, so too one House can vote down acceptance of a Presidential recommendation.

(2) The Presidential power under Article I, Section 7, Clause 3, to approve or veto new legislation enacted by both Houses in the traditional bicameral fashion, is simply not implicated by the refusal of one House to approve a Presidential recommendation.

(3) The exclusivity of the executive power vested in the President by Article II, Section 1, is not compromised by a statutory procedure whereby Congress calls upon the President to assist it, by way of making studies and recommendations, in the execution of its vested authority to establish judicial salaries. Moreover, whatever power the President exercises in connection with judicial salary recommendations, that power stems not from Article II but from a statutory delegation from Congress, acting pursuant to the Necessary and Proper Clause. The horizontal thrust of that Clause would confer vast power upon the Congress to assist the President in the execution of this delegated function. And since the ultimate power with respect to setting judicial salaries is vested in and retained by Congress, the President cannot be heard to complain that some kind of unconstitutional conditions have been placed upon his execution of an exclusively executive power.

In sum, the Court of Claims decision in *Atkins* is an unusually clear blueprint for the constitutional structuring of the device commonly known as the "one-House veto." It warrants the most careful consideration by all who propose or oppose continued use of this oversight device.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I would like to extend my thanks and congratulations to Kermit Almstedt of my staff, Steve Halloway of the Commerce Committee staff, and Amy Bondurant of the Commerce Committee staff for their excellent work in this long effort to achieve an FTC authorization bill. They have really performed excellent service for the committee, for the Senate and, I think, for the country, and I appreciate their efforts.

Mr. McCLURE. Mr. President, H.R. 2313, the so-called FTC reform legislation, will unfortunately pass the Senate today. But we should take a careful look at its provisions before we hand out awards to the numerous "born-again" conservatives who are now taking credit for cleaning up the FTC.

H.R. 2313 raises a whole series of problems with the Federal Trade Commission. But it does not solve any of them.

It attacks "fishing expedition" subpenas, but explicitly allows those subpenas once a complaint has been issued.

H.R. 2313 requires the FTC to analyze the impact of its major rules, but specifically excludes any judicial guarantee that this analysis be in good faith or nonfrivolous, or even that preparation will be in accordance with the Constitution.

The bill grants legal fees to successful defendants, but allows the FTC to withhold them if it determines that it was justified in its actions. How often is the FTC going to determine that it is unjustified in bringing an action?

No doubt there are some Members in the Senate who, in supporting H.R. 2313, but opposing strengthening amendments, such as the one House veto and professional association measures, felt they could diffuse the issue of regulatory reform without really embracing its premises. In my opinion, those Senators will prove to be sadly mistaken.

Mr. President, Congressman JOHN ASHBROOK correctly perceived in the House of Representatives yesterday why Congress has failed to reform the FTC. He said:

> The mentality of Washington is one of service to the established bureaucratic order, not to the citizens in the Nation who are supposedly served by this city. The sacred rule of this mentality is that no Federal entity can die, only survival or growth is allowed.

Mr. President, the FTC is not the villain. Congress is.

Mr. FORD. Mr. President, I do not know whether there are other Members that wish to make a statement. I understand that the minority has at least one member who would like to make a statement.

We do not want to preclude anyone from having an opportunity to make a statement but I will advise my colleagues that a motion will be made by the leader shortly for a time certain on this conference report and a motion to set it aside until the time certain to vote.

Mr. SCHMITT. Mr. President, will the Senator withhold that request for a moment?

Mr. FORD. Mr. President, I will not make any motion. The leader is going to make the motion. I respect his position and will not make any kind of motion without him being here or without his approval.

Mr. HAYAKAWA. Mr. President, section 5 of H.R. 2313 exempts from the FTC's rulemaking jurisdiction "the business of insurance." As I understand it, this exemption includes all health insurance plans regulated by the States, including indemnity health insurance plans, prepaid health plans, health maintenance organizations and foundations for medical care. Prepaid health plans, including individual-practice-association type health maintenance organizations, have often been successful in holding down the cost of medical care and have been encouraged by Congress through legislation such as the Health Maintenance Organization Act of 1973. Like other health insurance plans, they are regulated by the States. Thus, they fall squarely within the rationale and underlying purpose of the exemption in section 5 of the bill, namely to safeguard

State jurisdiction over the regulation of insurance.

Since some interpretations of the phrase "the business of insurance" have suggested that prepaid health plans, health maintenance organizations, and foundations for medical care would not be entitled to the exemption as would other health insurers, I believe it is important to stress that these innovative health care organizations we have sought to encourage are intended to receive the same treatment as other health insurers under the exemption.

Essentially, Mr. President, I hope that this is the case, that these organizations are given the same treatment as other health insurers.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

ORDER FOR VOTE TODAY AT 3:30 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote occur on the pending conference report at 3:30 p.m. today.

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

Mr. FORD. Mr. President, I ask for the yeas and nays on that vote at 3:30.

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

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to express my very deep reservations about the conference report on the reauthorization of the Federal Trade Commission which the Senate is about to consider.

I will cast my vote in opposition to this legislation. It is not because I oppose what the FTC is and has been doing. I am the last person who believes the FTC should be permitted to go out of business. But I cannot in good conscience agree to legislation that goes against the best interests of the people of this country.

I am not satisfied with the conference report. This legislation is still anticonsumer and may be worse than that. it is antifree enterprise. And I believe that in adopting the report the Senate will be condoning an unjustified special interest assault on a Federal agency whose main job is to protect and promote competition and honesty in the marketplace.

The overburdened people of this country need a diligent Federal Trade Commission that serves as a watchdog in the marketplace. The FTC is that watchdog—and if in some cases it has acted with bull-dog tenacity, then I say so much the better. I only wish that other Federal agencies, which have so often become creatures of the industries they are supposed to regulate, felt as strongly about the peoples' rights.

The people of this country need an FTC to help foster competition. Competition should be one of the most important weapons we have to combat inflation, but it is a weapon that we have not used.

At a time when the inflation rate is 18 percent, when interest rates are so high that very few people can afford to purchase a home or a car, when energy prices are escalating and when more and more people are being thrown out of work—I will not vote to limit the one Federal agency that has the responsibility to protect consumer interests in the marketplace.

Consumers of this country need a friend like the FTC because it is apparent that they cannot always count on the Congress to defend them when their well-being comes into conflict with the interests of the Nation's powerful corporate lobbies.

This shift in Congress became evident in 1978, when Congress refused to spend a paltry $15 million to establish a Consumer Protection Agency—an investment that would have saved hundreds of millions of dollars every year for the people of this country.

But if Congress has been reluctant to enact legislation which would directly benefit consumers—such as legislation to provide hospital cost controls, national health insurance, or to reverse the Supreme Court's Illinois Brick decision to allow consumers to sue alleged price fixers—there has been no hesitation at all to act in matters beneficial to powerful interest groups.

As a matter of fact, this past week gave good evidence of that. For 3 days we labored and toiled, while the Nation's problems were given no heed, to pass the so-called bottlers bill, a bill to give antitrust exemption to one industry, the bottling industry.

We paid no attention during that period of time to the fact that national unemployment is rising to almost 8 percent. Why should we be concerned about the fact that inflation is running at 18 percent? Why should we waste the time of the Senate discussing such matters as unemployment running at 35 percent for black youths in this country and 60 percent in some cities of the country? Why, indeed, should we concern ourselves with the problems of the farmers in the Midwest and the grain States?

Why should we be worried about anything? We had the bottlers bill and spent 3 solid days on it, and we did, indeed, provide an antitrust exemption for it.

This Congress has plenty of time, indeed the hours are unlimited, to provide special benefits for private interest lobbies. But when it comes to legislation that has to do with protecting the consumer, we need only to give heed to Congress watch which labeled the 1979 congressional session as the "most anti-consumer session of the decade," but I wonder how 1980 will compare?

For one thing, with the adoption of this conference report, Congress will deal another blow to the pocketbooks of the people of this country. Congress is about to tie the hands of the Federal Trade Commission—at a time when we should be doing just the opposite. We in the Congress should be challenging monopoly power. It helps create inflation, and is contrary to the thrust of the free enterprise system.

We should oppose business practices that mislead and overcharge consumers. But no. We want to shackle the agency that has had the temerity to take on the monopolists.

I am aware that the conferees have worked long and hard on this issue.

I congratulate them for their endeavor. I am not unaware of the fact that had they not been able to effectuate a compromise, there would, indeed, be no funding for the Federal Trade Commission.

So, in that respect, I have to commend them for their efforts for being able to bring something back to the Congress, to both Houses, that makes it possible for the FTC not to be totally eliminated as a governmental agency.

As a compromise, the conference report is preferable to either the House or Senate versions of the bill. Some FTC activities targeted for extinction in the original bills have been preserved, though in somewhat different form.

For instance, although the House voted to kill the FTC's funeral rulemaking, this inquiry survived the conference. I commend the managers on the Senate side for this good news.

The millions of consumers who pay an average cost of $2,400 per funeral will benefit from the FTC's effort to insure full price disclosure and honest sales practices by members of the funeral industry.

The FTC will also be able to continue its rulemaking on the product standards and certification process; another FTC activity which would have been terminated under the Senate bill. I congratulate the managers on the House side in that respect. This too is good news. Even though the conferees have narrowed the focus of this inquiry to antitrust abuses.

The process by which standards for products are written and tested has been justly criticized—not only by the FTC, but by consumers, small businessmen, and labor—for being a closed process dominated by industries with self-interests to protect. Small businessmen have complained time and again of standards written to favor the products of larger companies. And we have heard time and again of standards that add cost without improving quality or product safety.

The FTC actions in these areas will help eliminate some very real and very bad anticompetitive and dishonest practices which have been working to the detriment of the public good. But before we in Congress begin celebrating a

victory for American consumers, let us not forget what this legislation will prevent the FTC from doing.

Under the conference report, the FTC will be prevented from investigating any "unfair" advertising practices for 3 years, until Congress has a chance to define what is meant by the term "unfair."

The way Congress has acted to date in this area means that "unfair" will mean what the business lobbyists and business PACs want it to mean.

It would be wrong to stop the FTC effort in this area.

Is it truly an abuse of power or a misinterpretation of authority when the FTC questions the "fairness" of $600 million a year in hard sell advertising directed at small children? Is it "fair" to parents, to children and to the Nation's interest in better public health to permit an industry to bombard young children with commercials promoting junk food and candy and cereals that contain as much as 71 percent sugar?

I am certainly not alone when I say that the FTC has the right—indeed, it has the responsibility to conduct such investigations and rulemaking activities. Millions of parents in this country agree that the FTC is on target in trying to protect their children from the dozens of hours of hype and promotion to which they are subjected each week.

But Congress is not listening to American parents who are concerned about the health of their children who are demanding the candies and sugared cereals advertised on TV. Confronted with a choice between the profits of the food processors, advertising agencies, and TV broadcasters, and the welfare of the children who are this Nation's future, Congress chose the special interests.

Special interests have succeeded in curtailing FTC activity in yet another area. The conferees have agreed to restrict the FTC's role in investigating insurance matters and in doing so have raised an issue which I do not believe was previously in dispute. Under the conference report, only the House and Senate Commerce Committees will be able to request FTC studies of matters pertaining to insurance.

On that score, I point out that I am not at all certain that the conference did not go beyond their prerogatives so far as the rules of the House and the Senate are concerned by including something in the conference report that was not previously in dispute. But I do not intend to raise the issue. I merely intend to point out the fact that I think the insurance question led us to a point of legislation in the conference report that neither the House nor the Senate had in their bills.

However, I am confident that the restriction in the conference report will not abate and will not lessen the resolve of other congressional committees and their members to explore matters pertaining to the insurance industry. I am confident that the language in the conference report will not preclude other committees from requesting, via the Commerce Committees, FTC assistance on insurance-related matters. The millions of policyholders who have been the victims of unfair and unscrupulous insurance practices can ill-afford to have Congress turn a blind eye in this area.

Special interest dominance over public concerns will not end with children's advertising or insurance. The veto provision contained in the FTC legislation will guarantee that. That provision will open the floodgates to more pressure upon the Congress from industries that want to be protected from a Federal Trade Commission that takes seriously its mandate to promote competition and protect consumer interests.

I think this whole congressional veto issue is an interesting one. If we can take those steps with respect to an agency that protects consumers, then on another day, at another hour, and under different circumstances, I can see where the congressional veto may well be used for FCC actions, for SEC actions, for Federal Reserve Board actions, and for a host of other agency actions that perhaps also should have a legislative veto mechanism applied to them.

For the reasons I have outlined, Mr. President, I cannot in good conscience vote in favor of this conference report.

Mr. CRANSTON. I would like to congratulate the conference manager for his skill and perseverance in arriving at the important reaffirmation of the Capper-Volstead Act contained in section 20 of the bill. Agricultural cooperatives in California and in fact throughout the United States have played a major role in developing the most efficient agricultural production and distribution system in the world. I would inquire of the conference manager whether my understanding is correct that the conference provision is intended to restrict the Federal Trade Commission from pursuing agricultural cooperatives for conduct protected by the Capper-Volstead Act?

Mr. FORD. My colleague from California is correct. The conference substitute is clearly intended to restrict the Commission from any studies, investigations or prosecutions of agricultural cooperatives for conduct which is exempted from the antitrust laws by the Capper-Volstead Act. Simply put, the Commission has no business tampering with cooperative activities that fall within the Capper-Volstead Act.

Mr. DECONCINI. Am I correct, that the conferees agree that the antitrust exemption in the Capper-Volstead Act includes contracts and agreements entered into by a cooperative in connection with the processing, preparing, handling, and marketing of agricultural products?

Mr. FORD. My distinguished colleague from Arizona is correct. While we were reluctant to describe definitively the scope of the exemption with respect to all issues, it is clear that for Capper-Volstead to have any meaning a cooperative must have the freedom to enter contracts and agreements to further the "legitimate" interests of its members.

Mr. DECONCINI. Does the conference substitute affect current activities of the Commission that may involve transactions protected by Capper-Volstead?

Mr. FORD. We would certainly expect the Federal Trade Commission to review carefully all proceedings or investigations involving agricultural cooperatives regarding any conduct which is protected by the Capper-Volstead Act.

Mr. CRANSTON. I think we have taken a step forward in protecting the integrity of the Capper-Volstead Act. However, what real protection would cooperatives have if the FTC investigated or proceeded against protected conduct?

Mr. FORD. Well, in the first instance we expect the Commission and the courts to carry out the law. In addition, the Consumer Subcommittee is required to hold oversight hearings every 6 months under section 22 of the bill, and the co-op provision or any other section of the bill could be subject for these hearings.

Mr. CRANSTON. I thank the manager.

Mr. MAGNUSON. Mr. President, I rise in support of the conference report on H.R. 2313.

I am supporting this conference report for two basic reasons. First, it is a substantial improvement over the bills that passed the House and Senate respectively. No permanent far-reaching changes are made in the FTC statute. No major ongoing administrative proceeding is terminated. Earlier versions of these bills would have terminated or curtailed no less than three Magnuson-Moss rulemaking proceedings—children's advertising, standards and certification, and funerals—and made other far-reaching changes to the FTC's basic authority. This conference report allows all three of these rulemaking proceedings to continue, and avoids making permanent, unjustified changes to a statutory mandate that has served the public well since 1914.

I also am supporting this conference report because it contains necessary authorizing legislation for the agency. Through no fault of its own, the FTC has not had an authorization bill for the last 3 years. This situation has made it difficult for the Appropriations Committees to expeditiously and favorably provide funding for the agency. By adopting this conference report the Congress removes this cloud of uncertainty and allows the Commission to continue its vital mission of protecting the consumer and promoting healthy and vigorous competition in the marketplace.

I would like to say a special word about the FTC's children's advertising proceeding. As you know, the conference report would allow the proceeding to continue under a theory of deception once the Commission has published a text of a proposed rule. Mr. President, I applauded the Commission for its courage in addressing this important question in 1978, and I remain convinced that this agency must continue to examine whether our children are being misled to their detriment by the 20,000 television commercials they are exposed to each and every year.

Therefore, I applaud the action of the conferees in allowing this important inquiry to continue.

Mr. HELMS. Mr. President, the Federal Trade Commission has come under increasing scrutiny in recent years as Congress has haggled over the extent to

which it was willing to impose controls on this abusive agency.

This conference report marks the culmination of a great deal of rhetoric but scarcely any real accomplishment. In short, Mr. President, this conference report is, in fact, a victory for the FTC. It is a victory of form over substance. I cannot support it.

It may be that for the time being the FTC will behave a little more cautiously. But rest assured that, before the ink is dry from the President's signature on this bill, momentum will begin for the FTC to resume its activist role as an overzealous regulator.

If ever there was a Federal agency needing strong discipline by Congress, it is the FTC. Sadly, Congress had a real opportunity to impose significant regulatory reform. Congress botched it.

This bill does not impair the powers of the Federal Trade Commission one iota. Nor does it really limit the abuses of agency as much as the bills passed in the House and Senate. It is a sellout. I predict that time will prove this assessment to be correct.

Many of my colleagues in the Senate, and in the House, fought long and hard for meaningful reform of the FTC. These comments should not be interpreted as criticism of their good efforts. All of us tried, but there simply was not enough sentiment for true and meaningful reform.

Roadblocks were constantly placed in the path of true reform. The leadership in Congress used every advantage to thwart attempts to reform the FTC. The White House battled vigorously to protect the FTC from effective congressional scrutiny, and reform of clearly documented cases of its abuses. The White House threatened to veto any bill that would have genuinely reformed the FTC.

These were obstacles impossible to overcome, and they are the reason we are considering a cosmetic bill rather than a bill with teeth.

Mr. President, the citizens of this country are pleading for relief from oppressive regulation. Congress has had a chance to reform one of the most onerous regulatory agencies in existence. And Congress has not mustered the courage to take definitive action.

Mr. President, I cannot vote for a watered down meaningless bill. No legislation would be better than this legislation, because defeat of this bill would be a mandate to Congress to go back to the drawing boards and come up with truly meaningful reform of the FTC. This gentle slap on the wrist is not enough.

Mr. FORD. We are through, Mr. President, so far as those who have requested time to speak on the conference report are concerned. As soon as the majority leader arrives in the Chamber, we expect to make a motion to set this matter aside until 3:30. We will attempt to set it aside when he arrives in the Chamber, vote at 3:30, and get on with other items.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 1:58 p.m., the Senate took a recess, subject to the call of the Chair.

The Senate reassembled at 2:22 p.m., when called to order by the Presiding Officer (Mr. PRYOR).

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, appoints the Senator from Illinois (Mr. PERCY) as a Congressional Adviser to the Executive Board of the United Nations Children's Fund (UNICEF) annual meeting, to be held in New York City, May 19–30, 1980.

Mr. HAYAKAWA. 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.

EXTENSION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that morning business be extended until 3:30 p.m. today and that Senators may speak therein.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:38 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2313) to amend the Federal Trade Commission Act to extend the authorization of appropriations contained in such act, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 3807) to amend subtitle IV of title 49, United States Code, to codify recent law and improve the Code without substantive change.

The message further announced that the House has passed the following joint resolution, with amendments in which it requests the concurrence of the Senate:

S.J. Res. 119. Joint resolution to authorize the Vietnam Veterans Memorial Fund, Inc., to establish a memorial.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4417. An act to provide for the coordination of federally supported and conducted research efforts regarding the Chesapeake Bay, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 340. Concurrent resolution directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 2313.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker has signed the following bill and joint resolution:

S.J. Res. 175. Joint resolution to extend the expiration date of the Defense Production Act of 1950; and

H.R. 6081. An act to amend the Foreign Assistance Act of 1961 to authorize assistance in support of peaceful and democratic processes of development in Central America.

The enrolled bill and joint resolution were subsequently signed by the President pro tempore (Mr. MAGNUSON).

At 3:15 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 91. Concurrent resolution to disapprove the regulations of the Department of Health, Education, and Welfare relating to grants to State educational agencies for educational improvement, resources, and support.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 662) to provide for increased participation by the United States in the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con Res. 342. Concurrent resolution providing for an adjournment of the House

from May 23 to May 27, 1980, and a recess of the Senate from May 24 to May 27, 1980.

HOUSE BILL REFERRED

The following bill was read twice by its title and referred as indicated:

H.R. 4417. An act to provide for the coordination of federally supported and conducted research efforts regarding the Chesapeake Bay, and for other purposes; to the Committee on Governmental Affairs.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that today, May 21, 1980, he presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 175. Joint resolution to extend the expiration date of the Defense Production Act of 1950.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROBERT C. BYRD (for Mr. KENNEDY), from the Committee on the Judiciary, with amendments:

S. 1717. A bill to amend certain provisions of title 18, United States Code, relating to the procedures for interception of wire or oral communications (Rept. No. 96–788).

By Mr. PROXMIRE, from the Committee on Appropriations, with an amendment:

H.J. Res. 521. Joint resolution making additional funds available by transfer for the fiscal year ending September 30, 1980, for the Selective Service System (together with additional views) (Rept. No. 96–789).

By Mr. NELSON, from the Select Committee on Small Business, without amendment:

S. 2749. An original bill to establish a Federal program to assist innovative small businesses by strengthening the role of such businesses in federally funded research and development and by fostering the formation and growth of such business.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations: Dean R. Axtell, of Illinois, to be Executive Vice President of the Overseas Private Investment Corporation.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations: Gordon Robert Beyer, of Florida, to be Ambassador Extraordinary and Plenipotentiary of the United States to Uganda.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Gordon Robert Beyer.

Post: Ambassador to Uganda.

Contributions, amount, date, and donee:

1. Self, none.

2. Spouse, none.

3. Children and spouses names, none.

4. Parents names: Jewel Gordon Beyer, father (deceased), none.

5. Brothers and spouses names: Mrs. F. H. Beyer, $25, September 27, 1978, J. Howard Coble.

Mr. and Mrs. R. A. Beyer—see attached schedule.

POLITICAL CONTRIBUTIONS

January 16, 1976, Citizens for Joseph Kennedy, $50.

April 11, 1976, Democratic Party of Evanston, $40.

February 22, 1976, Abner Mikva, $100.

June 4, 1977, Democratic Party of Evanston, $35.

September 7, 1977, Democratic Party of Evanston, $15.

March 5, 1978, Democratic Party of Evanston, $25.

May 13, 1978, Citizens for Mikva, $200.

September 3, 1978, Democratic Party of Evanston (Tyler Thompson Senior), $10.

October 8, 1978, Citizens Committee for Mikva, $200.

November 17, 1980, Wainberger for Congress, $100.

Total, $775.

By Mr. PELL, from the Committee on Foreign Relations:

Robert V. Keeley, of Florida, to be Ambassador Extraordinary and Plenipotentiary of the United States to Zimbabwe.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Robert V. Keeley.

Post: Ambassador to Zimbabwe.

Contributions, amount, date, and donee:

1. Self, none.

2. Spouse, see attached sheet.

3. Children and spouses names, Michael M. Keeley, Christopher J. Keeley, none.

4. Parents names, James Hugh Keeley (Mother deceased), none.

5. Brothers and spouses names, Edmund L. Keeley (see attached sheet), Mary K. Keeley, none.

POLITICAL CONTRIBUTIONS

(a) Spouse. September 17, 1979, John Culver, $10.

October 12, 1979, Edward Kennedy, $15.

(b) My brother, Edmund L. Keeley, does not keep a record of his political contributions. To the best of his recollection he has made contributions, all of them ranging from $10 to $20 each, to the following candidates for Federal office during the past 5 years:

1976—Jimmy Carter, Morris Udall, Frank Thompson.

1978—Frank Thompson, Bill Bradley.

1980—Bill Bradley, Edward Kennedy, John Anderson.

By Mr. PELL, from the Committee on Foreign Relations:

Charles E. Marthinsen, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States to the State of Qatar.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Charles E. Marthinsen.

Post: Ambassador to Qatar.

Contributions, amount, date, and donee:

1. Self, $15, August 11, 1976, Democratic Party.

2. Spouse, $15, February 28, 1977, Democratic Party.

$25, January 21, 1978, Fisher for Congress.

3. Children and spouses names: Guy Hooker and Hugh Hunt Marthinsen, none.

4. Parents names: Mr. and Mrs. A. L. Marthinsen, none.

5. Brothers and spouses names: Mr. and Mrs. R. A. Marthinsen; Mr. and Mrs. A. R. Marthinsen, none.

6. Sisters and spouses names: Mr. and Mrs. Louis Maries, none.

By Mr. PELL, from the Committee on Foreign Relations:

William Caldwell Harrop, of New Jersey, to be Ambassador Extraordinary and Plenipotentiary of the United States to the Republic of Kenya and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States to the Republic of Seychelles.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: William Caldwell Harrop.

Post: Ambassador to Kenya.

Contributions, amount, date, and donee:

1. Self, none.

2. Spouse, none.

3. Children and spouses names: Mark D. Harrop, none; Lucy M. Harrop, $10; Caldwell Harrop, none; Scott N. Harrop, none; and George H. Harrop, none, July 1976, Carter campaign.

4. Parents names: Mrs. George A. Harrop, none.

5. Brothers and spouses names: David C. Harrop (single), none.

6. Sisters and spouses names: Mr. and Mrs. William Godfrey, none.

By Mr. PELL, from the Committee on Foreign Relations:

Phillip R. Trimble, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States to the Kingdom of Nepal.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the

fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Phillip R. Trimble.

Post: Ambassador to Nepal.

Contributions, amount, date, and donee:

1. Self, none.

2. Children names: John Gardner Trimble, William Trimble, none.

3. Parents names: Melvin Trimble, Dorothy Trimble, none.

By Mr. PELL, from the Committee on Foreign Relations:

C. William Kontos, of Illinois, to be Ambassador Extraordinary and Plenipotentiary of the United States to the Democratic Republic of the Sudan.

(The above nomination from the Committee on Foreign Relations was reported wth the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: C. William Kontos.

Post: Ambassador to Sudan.

Contributions, amount, date, and donee:

1. Self, none.

2. Spouse, none.

3. Children and spouses names: Mark and Danielle Kontos, Stephen and Julie Kontos, none.

4. Parents names: Irene Kontos, none.

DIPLOMATIC AND FOREIGN SERVICE

Mr. PELL. Mr. President, I also report favorably from the Committee on Foreign Relations sundry nominations in the Diplomatic and Foreign Service which have previously appeared in the CONGRESSIONAL RECORD and, to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they lie on the Secretary's desk for the information of Senators.

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

(The nominations ordered to lie on the Secretary's desk appeared in the RECORD on May 9, 1980, at the end of the Senate proceedings.)

ORDER FOR STAR PRINT—S. 2711

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, on behalf of Mr. MORGAN, that S. 2711 be star printed to include a technical change, conforming it to the committee action reported in Senate Report No. 96–724.

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

ORDER FOR STAR PRINT—S. 2363

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill S. 2363, and the report accompanying it, be star printed.

When reported, the language of S. 2363 did not include an effective date for the authorization of appropriations.

While reporting it on May 15 in time for the fiscal year 1981 budget deadline would seem to imply fiscal year 1981 authority, the Senate Budget Committee has interpreted the lack of an effective date to mean the fiscal year 1980 funding was anticipated. This, of course, was not the case.

The star print will add the omitted effective date.

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. HART (for himself, Mr. STEVENS, Mr. STONE, and Mr. NELSON):

S. 2747. A bill to authorize the President of the United States to present on behalf of Congress a specially struck gold-plated medal to the U.S. Summer Olympic Team of 1980; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BAYH (for himself, Mr. JAVITS, Mr. MATHIAS, Mr. NUNN, Mr. TALMADGE, Mr. CHAFEE, Mr. COCHRAN, Mr. THURMOND, and Mr. STEVENSON):

S. 2748. A bill to simplify trade procedures regarding sales of United States products abroad, and for other purposes; to the Committee on the Judiciary.

By Mr. NELSON (from the Select Committee on Small Business):

S. 2749. A bill to establish a Federal program to assist innovative small businesses by strengthening the role of such businesses in federally funded research and development and by fostering the formation and growth of such business. Original bill reported and placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HART (for himself, Mr. STEVENS, Mr. STONE, and Mr. NELSON):

S. 2747. A bill to authorize the President of the United States to present on behalf of Congress a specially struck gold-plated medal to the U.S. Summer Olympic Team of 1980; to the Committee on Banking, Housing, and Urban Affairs.

PRESENTATION OF MEDALS TO THE 1980 U.S. SUMMER OLYMPIC TEAM

Mr. HART. Mr. President, I am pleased to introduce today, along with my honorable colleagues, Senator STEVENS, Senator STONE, and Senator NELSON, a bill which provides for the striking and presentation of gold medals to honor the 600 amateur athletes who, on the basis of their outstanding performances, have earned places on the 1980 summer Olympics team.

These men and women in the finest tradition of American athletics, have been selected in strictest competition with their peers. They deserve recognition not only for their talent, but for their great personal sacrifice and dedication to the spirit of the Olympic games.

At a time of turmoil abroad, Americans are united in admiration of the devotion to the best in themselves which these athletes represent. We all have a natural pride in these men and women and in the commitment to excellence which they have shown.

In their striving toward perfection, in their dedication and countless hours of hard work, in their promotion of the virtues and benefits of athletic competition, these young people exemplify the very best which the United States has to offer.

To honor and to thank them, this legislation provides for the presentation by the President of the United States, on behalf of Congress, of special gold medals in recognition of their outstanding athletic achievements. The medals will be paid for out of appropriations to the U.S. Olympic Committee.

I hope action on this bill will move quickly to permit the presentation of the medals to take place as soon as possible.

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

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

S. 2747

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the President of the United States is authorized to present a gold-plated medal of appropriate design, on behalf of the Congress, to those athletes selected through the Olympic trial process to represent the United States in the Summer Olympics of 1980, in recognition of their outstanding athletic achievements and of their determination in the pursuit of excellence. For such purpose, the Secretary of the Treasury is authorized and directed to cause to be stricken 650 gold-plated medals with suitable emblems, devices, and inscriptions to be determined by the Secretary of the Treasury.

(b) The medals provided for in this Act are national medals for the purpose of section 3551 of the Revised Statutes (31 U.S.C. 368).

(c) Funds to carry out the provisions of this Act, which shall not exceed $50,000 shall be available only from amounts appropriated to carry out activities under the Amateur Sports Act of 1978.

Mr. STEVENS. Mr. President, I am pleased to join Senators HART, STONE, and NELSON in sponsoring a bill to authorize the striking of a medal to honor those who are selected through the trial process to be members of the U.S. Olympic team. Each of those selected will be the best athletes in any particular sport in the United States.

There is no question that these atheletes deserve recognition. They have worked long and hard to achieve an outstanding level of excellence in their particular sport. They are the American athletes who are qualified to compete in the international arena.

Any of us who have ever engaged in any sport can appreciate the talent and dedication of these atheletes. It takes an incredible amount of time, effort, and excellence to become a world class athlete. Among the literally hundreds of thousands of people of all ages who participate in amateur sports there are but a handful who, by virtue of their intense devotion, self-motivation, and unique talent become Olympic athletes. This achievement can only be reached with total dedication. These athletes live their sport every day of their lives.

Their dedication is not just to the sport itself, but to a level of excellence that very few of us will ever reach. I have a very strong feeling of admiration and re-

spect for their achievement, an achievement which I believe deserves the highest honor.

There is a point that I would like to make clear. This medal is not in any way intended to be a substitute for any gold, silver, or bronze medal that any athlete could have conceivably won in Moscow this summer. Rather, the intention of this medal is to recognize these athletes for what they are, and what they have achieved. It is to pay tribute to all the hours, days, and years that were expended to attain the status of Olympic athlete.

Mr. President, it is my hope the entire Senate will join in this effort to honor these athletes who so justly deserve this honor.

By Mr. BAYH (for himself, Mr. JAVITS, Mr. MATHIAS, Mr. NUNN, Mr. TALMADGE, Mr. CHAFEE, Mr. COCHRAN, Mr. THURMOND, and Mr. STEVENSON):

S. 2748. A bill to simplify trade procedures regarding sales of U.S. products abroad, and for other purposes; to the Committee on the Judiciary.

REMOVING REGULATORY BARRIERS TO SMALL BUSINESS EXPORTS: THE TRADE PROCEDURES SIMPLIFICATION ACT OF 1980

● Mr. BAYH. Mr. President, the week of May 18–24 has been proclaimed by President Carter as World Trade Week to emphasize the importance to our people and our Nation's economy of world trade and the role it plays in our economic health and future promise. Part of the export promotion program undertaken by the Department of Commerce in connection with this effort has involved bringing more and more small and medium sized businesses into export trade by acquainting these firms with services available to enable them to profitably participate in the world market.

Very recently, the Small Business Export Development Act which I cosponsored was reported from the Senate Banking Committee as one demonstration of the Senate's commitment to support the overall effort. Today, I am introducing a bill which will further improve our overall effort in getting more small business to export, the Trade Procedures Simplification Act of 1980.

The favorable impact which expanded exports could have upon the depressing economic conditions we face can hardly be overestimated. Our chronic trade deficits constitute both a spur to inflation and a drag on domestic employment and overall productivity. Exports are needed to offset the effect of massive oil imports, which are not likely to abate significantly for a number of years.

The United States is the world's largest trading nation with combined imports and exports valued at more than $326.71 billion in 1978 compared with $35 billion in 1960. As bad as inflation has been, U.S. trade in 1978 still showed an increase based on 1960 prices of 350 percent—$143.57 billion of the 1978 trade turnover figure were U.S. exports, sales abroad which in many instances produced jobs at home. These agricultural and manufacturing activities contributing the lion's share of the U.S. export total also represented 8 percent of the U.S. gross national product for 1978.

What these figures tell us is how important exports are to both the national economy and local economies. In Indiana, exports of soybeans, corn, heavy machinery, and farm implements play a major role in the economic vitality of the State. Very soon, I hope to be able to say that Indiana coal also constitutes a high-value market for exporters, especially small- and medium-size coal producers as well as the major mining operations.

Still, we face a declining share of the growing world trade market which showed a 25-percent increase in 1979 to more than $9,600 billion. And while free world exports have grown at a brisk rate over the past 20 years, the U.S. share dropped from 20 percent in 1960 to 17 percent in 1970 to about 14 percent today. If our share of the export market had remained at the 1970 level, we would have no trade deficit today. But rising oil prices have obstructed efforts to tread water in this case and today we are faced with a challenge of regaining our position in the market.

While help appears to be on the way with a growing demand for U.S. export of coal, we must take a number of steps at this time to rationalize present Government regulations which only more and more provide obstacles in exports with no enduring public policy benefit.

Finally, the more we export, the stronger the dollar becomes. Although progress was realized last year in the balance of trade situation of the United States—showing only about a $300 million overall deficit for the year, the first quarter of 1980 is not promising at all with the deficit standing at over $10 billion.

A strong export sector is also needed to help shore up America's tenuous position of leadership in international affairs. As we enter the crucial implementation phase for the multilateral trade agreements, the performance of U.S. exports will become the critical factor in determining whether the agreements represent a boon to economic growth.

Unless we act immediately to take advantage of the new markets opened up for our products, the net effect of the multilateral trade agreements will be to facilitate foreign penetration of our domestic markets and denial to our exporters of overseas markets, to our enduring disadvantage.

Mr. President, there can be little doubt that the United States can expand our exports through greater inclusion of medium and small businesses. In fact, we have not begun to tap our economy's full export potential. The Department of Commerce recently estimated that 20,000 additional firms could engage in exporting, but for some reason do not. This is export potential above and beyond the capacity of current exporters to expand their overseas activities. Nearly all of these 20,000 firms are small- and medium-sized companies which have never before exported. You can be sure that an untapped potential of this magnitude does not exist in, say, Japan or Germany, because these are countries where policymakers understand the importance of exports, and leave no stone unturned in the search for additional ways to expand their markets.

For our export expansion efforts to succeed, however, we must look at present regulations in current law which constitute real export barriers unrelated to national security. One of these areas in past years has been that of the application of U.S. antitrust laws to exporters. Just as the benefits of antitrust legislation in the domestic market have been substantial, their "extraterritorial application" has not always provided the same level of advantage to the worker, producer and consumer. Part of the reason is the fact that in a world of over 160 nations, only about 30 have comparable legislation. And of those, extraterritorial application of these statutes has clearly a secondary position to export policies.

American companies have indicated that no other nation so restricts export enterprises such as joint ventures abroad or licensing foreigners to produce patented or trademarked goods abroad as does the United States. Other areas of activity are restricted as well, but perhaps the most consistent criticism has been the lack of firm and precise guidelines on what is and is not permitted in terms of economic activity overseas.

This may be why so many of our small businesses fail to realize their export potential. The single greatest factor distinguishing U.S. trade policy from that of our major competitors is that our Government has not placed a high institutional priority on exports, and thus continues to burden exporters with regulations, paperwork, and outright interference derived from bureaucratic pursuit of competing objectives. In many cases, this interference is both unintentional and unnecessary, and stems from a failure to evaluate domestic programs from the point of view of the importance of export promotion. Needless to say, such Government impediments to exporting, unrelated to national security, fall most heavily on small businesses, which do not have the time, money, or legal resources to run the gauntlet of redtape.

Mr. President, the Trade Procedures Simplification Act of 1980 will help in our efforts to mobilize potential exporters, and eliminate one very important, unintended and unnecessary Government impediment without sacrificing the principle of "workable competition" in the domestic market which antitrust laws were established to promote.

The impediment involved is the uncertainty, confusion, and outright fear generated among potential exporters by the extraterritorial application of antitrust laws by Federal agencies. A number of academic studies conducted during the last few years have amply demonstrated that the uncertain state of extraterritorial antitrust enforcement inhibits businesses already involved in exporting. More serious still is the effect on potential exporters, most of which, again, are small- and medium-sized businesses with no experience. Often the only information these companies possess concerning antitrust enforcement is derived from

newspaper and trade journal accounts of spectacular prosecutions involving enormous penalties. As a general rule, they do not have access to legal specialists trained in this tremendously complex area of law, and their own lawyers are likely to advise extreme caution.

The problem is not just that the antitrust laws prohibit activities which could help mobilize potential exporters. The more basic problem is that the lack of accurate information has created an impression that many more activities are subject to prosecution than is actually the case.

The logical source for accurate information concerning the scope of antitrust laws applied to overseas transactions is the enforcing agency itself. But agency personnel, who generally share a prosecutorial ethic, quite naturally do not consider it their job to notify potential violators of activities not subject to prosecution. Furthermore, enforcing agencies do not presently have the means to insure broad public understanding of extraterritorial antitrust enforcement.

This Trade Procedures Simplification Act of 1980 would provide such means to the Justice Department and the Commerce Department. Its basic aim is to encourage the issuance of comprehensive disclosures indicating the Justice Department's enforcement intentions concerning broad areas of export activity, keyed to specific product sectors and country markets. The bill would make these disclosures reliable by prohibiting enforcement actions against exporters conducting business pursuant to a disclosure. The disclosures themselves are designed to be easily communicable to small- and medium-sized companies, through trade journals and business magazines.

To further promote effective disclosures, the legislation provides that the Department of Commerce may give limited assistance, on a reasonable fee basis, to smaller companies wishing to petition the Justice Department for a disclosure statement.

As a corollary to the comprehensive disclosure authority, this legislation also makes the Justice Department's current procedure for enforcement statements concerning particular export transactions binding on future enforcement actions.

Monitoring of business compliance with the terms of disclosures is provided for through an injunction proceeding to terminate unauthorized export activities.

Finally, congressional oversight is facilitated through strict reporting requirements imposed on the Justice and Commerce Departments. Within a year, the Congress should be in an excellent position to evaluate the effect of antitrust enforcement on our international trade posture.

The impact of this legislation upon small business exports should be immediate and quite substantial. A very conservative estimate is that six major areas of export activity would be cleared the first year. Assuming only 10 medium sized businesses utilized the disclosure to begin exporting—again, a quite conservative estimate—$600 million in new export sales could be generated during the first year. This translates into 24,000 new jobs for our sagging economy, and around $15 million in unforeseen tax revenues. All these benefits would be obtained for an expenditure of about $350,000—or less than $15 per permanent job created. Since expanded exports would also help reduce inflation, by reducing the trade deficit, it is obvious that this legislation is an unusually cost-efficient means of stimulating the economy.

It must also be emphasized that this proposal would in no way alter the substance of our antitrust laws, or affect domestic competition. Nor would the Justice Department disclosure program encourage any great measure of concentration in the export sector, since larger companies with access to teams of antitrust lawyers will not benefit significantly. In fact, greater involvement of smaller businesses in exporting could actually reduce the domination of export markets by large multinational corporations.

This legislation is not intended to serve as a cure-all for our international trade problems. Working with the Export Caucus, I am also supporting efforts to develop an omnibus export expansion legislation. But I regard the Trade Procedures Simplification Act of 1980 as a first step—a demonstration by the Congress that it will act to remove obstacles to small business exports where no compelling justification can be offered.

Academic observers are not alone in pointing to extraterritorial antitrust enforcement as an appropriate starting place for a new attitude toward exports while also pointing out the evidence of special burdens placed on small businesses in this country in this area. In fact, this legislation closely parallels policy recommendations adopted unanimously by the National Governors' Association in February. It is also consistent with suggestions made by the President in his interim report on impediments to trade. This is legislation which can be supported by all concerned with strengthening our small business exports, regardless of their views on antitrust law or international trade policy.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD, that the section-by-section analysis be printed in the RECORD, and that a portion of the study by Prof. Robert A. Flammany which analyzes antitrust law as a barrier to U.S. export competitiveness be printed in the RECORD.

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

S. 2748

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Trade Procedures Simplification Act of 1980".

FINDING AND CONCLUSIONS

SEC. 2. (a) The Congress finds that—

(1) the unpredictable and conflicting nature of antitrust enforcement and interpretation by United States agencies has caused unnecessary confusion among exporters as to the scope of legitimate overseas activities;

(2) the antitrust laws relating to export sales are extremely complex; yet most small- and medium-sized companies likely to export do not as a practical matter have access to specialized legal advice in this area;

(3) the application of antitrust laws to exporting activities does not reflect critical differences in competitive conditions among various country markets for different products;

(4) the extension of court-made rules developed in the context of domestic commerce to overseas activities does not always reflect the intent of antitrust legislation, and needlessly inhibits legitimate and much-needed export sales; and

(5) United States agencies applying antitrust laws to export sales do not sufficiently coordinate interpretation and enforcement practices among themselves, or with other agencies responsible for foreign policy, international trade policy, export promotion and international monetary policy.

(b) The Congress concludes that—

(1) exporters should not be subject to conflicting demands by diverse United States agencies applying antitrust laws extraterritorially;

(2) United States agencies enforcing antitrust laws should help reduce uncertainty by informing small- and medium-sized companies in a clear, direct and inexpensive manner, of conduct and structural arrangements which will not be subject to antitrust prosecutions if associated with the export of particular products or services to specific country markets during specified time periods;

(3) legal interpretations and enforcement practices associated with the application of antitrust laws to export activities, as well as the economic consequences of such interpretations and practices, should be communicated to Congress and the public in a timely and effective manner;

(4) conduct and structural arrangements of United States exporters which materially expand overseas sales should be permitted, provided they do not have a substantial negative impact on our commerce with foreign nations or otherwise conflict with basic substantive principles and objectives of existing antitrust laws; and

(5) legal interpretations and enforcement practices associated with the application of antitrust laws to export activities should be developed in concordance with considerations underlying foreign relations, international trade and monetary policy, national security, and export promotion.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) The term "structural arrangement" means a situation or course of action that affects the pattern of ownership or control in industry.

(2) The term "conduct" means a practice that may affect domestic competition but does not directly affect the structure of ownership or control in industry.

(3) The term "disclosure" means a statement published by the Attorney General or the Assistant Attorney General for the antitrust division under section 5(a) describing conduct and structural arrangements relating to export sales that will not be subject to criminal or civil prosecution under the antitrust laws.

(4) The term "antitrust laws" means the Sherman Act, the Federal Trade Commission Act, the Clayton Act, and any other Acts in pari materia.

STUDIES BY ATTORNEY GENERAL

SEC. 4. (a) The Attorney General, in consultation with the Secretary of Commerce and the heads of other United States agencies with enforcement responsibility under the antitrust laws, shall conduct studies to determine whether—

(1) the conduct and structural arrangements employed in various countries by various types and sizes of United States businesses to expand exports conflict significantly with basic antitrust principles; and

(2) a more liberal enforcement policy for overseas activities than would be appropriate for domestic transactions would impede thorough implementation of the legislative intent of the antitrust laws.

(b) On the basis of studies carried out under subsection (a), or other information available to the Department of Justice, the Attorney General shall identify conduct and structural arrangements associated with particular types of export sales which the Attorney General determines would not warrant criminal or civil prosecution under the antitrust laws by the Department of Justice.

(c) The initial studies made under subsection (a) shall be completed within 1 year after the date of enactment of this Act and shall be updated annually.

PROCEDURES

SEC. 5. (a) The Attorney General shall—

(1) publish a description of conduct and structural arrangements identified pursuant to section 4(b) as not meriting criminal or civil prosecution under the antitrust laws and shall make the published description available to all potentially interested exporters; and

(2) establish procedures to assure a prompt response to—

(A) petitions from individual exporters or classes of exporters for the issuance of descriptions under paragraph (1); and

(B) petitions from an individual exporter or group of exporters for the issuance of a statement of civil and criminal enforcement intentions concerning specific conduct in which the petitioner proposes to engage, or structural arrangements the petitioner proposes to establish, in connection with exports.

(b) The Secretary of Commerce may intervene at any time to request that the Attorney General publish a description under subsection (a)(1) with respect to conduct or structural arrangements or to reconsider a description published under such subsection. Within 30 days after receiving such a request from the Secretary, the Attorney General shall take whatever action he determines to be appropriate with respect to the request and inform the Secretary of the determination and action taken. The action of the Attorney General shall be final and shall not be subject to judicial review.

(c) The Attorney General shall establish appropriate forms and procedures for the purpose of—

(1) communicating disclosures issued under subsection (a) to affected parties;

(2) informing exporters of specific actions they must take to obtain disclosures pursuant to subsection (a), or to be deemed covered by disclosures made pursuant to subsection (a)(2);

(3) determining actions exporters have taken in reliance on such descriptions; and

(4) identifying problems associated with discharging the evaluation, disclosure, and monitoring functions authorized under this Act.

(d) Upon request, the Secretary of Commerce may, on a reimbursable basis, provide legal assistance to existing and potential exporters who are unable to obtain specialized antitrust counsel. Such assistance shall be limited to assistance in obtaining enforcement intention disclosures provided for under subsection (a)(2).

(e) Agency proceedings and agency actions (as defined in paragraph (12) and (13), respectively, of section 551 of title 5, United States Code) under this Act shall not be subject to subchapter II of chapter 5 of title 5, United States Code (other than sections 552, 552a, and 552b).

COMPLIANCE BY EXPORTERS

SEC. 6. (a) Notwithstanding any other provision of law, an exporter shall not be subject to civil or criminal prosecution under the antitrust laws by any Federal agency if—

(1) the exporter, or group of exporters, notifies the Attorney General, pursuant to procedures established under section 5(c)(2), that the exporter or group intends to engage in conduct or to establish structural arrangements which have been designated by the Attorney General as conduct or structural arrangements not subject to civil or criminal prosecution under the antitrust laws, and the Attorney General does not object to the proposed conduct or arrangement within 30 days and inform such exporter, or group of exporters, of the specific reasons why the proposed conduct and structural arrangements are not covered by disclosures made pursuant to section 5(a); or

(2) the exporter requests a statement of civil and criminal enforcement intentions concerning a particular transaction pursuant to sections 5(a)(2)(B), and within 60 days after the date of the request—

(A) receives an approval from the Attorney General, or

(B) does not receive an objection in writing from the Attorney General to the transaction setting forth the specific reasons why the transaction is in conflict with specific provisions of the antitrust laws.

(b) Whenever the Attorney General objects to proposed conduct or structural arrangements under paragraph (1) or (2) of subsection (a)—

(1) the Attorney General shall notify the exporter or group of exporters of such objections within 30 days (60 days in the case of a request described in paragraph (2) of such subsection) of receiving notification regarding the proposed conduct or structural arrangements and shall notify the exporter or group of exporters involved that they may request that a hearing be held on the objections to the proposed conduct or structural arrangements.

(2) the exporter or exporters involved shall notify the Attorney General within 15 days after receiving the objections if they wish to have a hearing;

(3) the Attorney General shall conduct any such hearing within 30 days after the date on which the request for a hearing under paragraph (2) is received by the Department of Justice;

(4) such hearing shall continue for no more than 30 days; and

(5) the Attorney General shall make the disclosure determination within 15 days after the completion of such hearing, notify the exporter or group of exporters of the determination, and publish the determination.

(c) A determination by the Attorney General under subsection (b) shall be final and shall not be subject to judicial review.

INJUNCTIONS

SEC. 7. The Attorney General may request any United States district court to issue an injunction regarding a disclosure under section 5(a)(2) of this Act, when the Attorney General determines that—

(1) the activity of the exporter or, group of exporters is acting outside of the scope of the disclosure;

(2) the circumstances under which the disclosure was issued have substantially changed; or

(3) the disclosure was issued upon inaccurate or fraudulent information.

REPORTS AND DISCLOSURES

SEC. 8. On December 31 of each year, the Attorney General, the Secretary of Commerce, and the heads of other United States agencies directly affected by disclosures under this Act shall each file with the Congress, and make public, a detailed report of—

(1) all actions by the appropriate department or agency, or by other interested public and private parties, taken pursuant to this Act;

(2) any problems associated with the implementation of this Act;

(3) the specific plans of the appropriate department or agency to carry out its responsibilities (if any) under the Act in the next fiscal year; and

(4) any recommendations for amendment of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. (a). There are authorized to be appropriated to the Attorney General such sums as may be necessary for the purpose of carrying out this Act.

(b) There are authorized to be appropriated to the Secretary of Commerce such sums as may be necessary for fiscal year 1981 for the sole purpose of covering costs associated with initial implementation of section 5 (d) of this Act.

EFFECTIVE DATE

SEC. 10. This Act shall take effect on October 1, 1980.

THE TRADE PROCEDURES SIMPLIFICATION ACT OF 1980: SECTION-BY-SECTION ANALYSIS

Section 2 of the bill incorporates findings and conclusions concerning the present status of extraterritorial antitrust enforcement by United States agencies.

Section 4(a) provides for studies by the Justice Department to determine areas of export activity for which blanket disclosures of enforcement intentions would be appropriate. Section 4(a)(1) requires evaluation of specific types of export transactions, distinguished by company size and market destination, in light of basic principles derived from antitrust legislation and judicial decisions. The principal aim of this provision is to encourage agencies which apply antitrust laws extraterritorially to differentiate their enforcement policies according to market realities facing specific types of exporters. Section 4(a)(2) requires re-evaluation of the overall extraterritorial enforcement philosophy of the Justice Department, based on actual antitrust legislation rather than extensions of court-made domestic rules.

Section 4(b) provides for identification of particular export activities which, based on the analysis mandated in section 4(a), should not be the target of criminal or civil enforcement actions. This identification process can also rely on research already conducted by the Justice Department, and on information made available by other agencies.

Section 4(c) stipulates a one-year deadline on the first cycle of studies conducted by the Justice Department to determine areas of export activity for which blanket disclosures are appropriate. While the study process will be continuing in nature, and certainly some areas should be identified well before a year has passed, the one-year deadline ensures tangible results within the first year of the Act.

Section 5(a)(1) is the basic authorization for blanket disclosures of Justice Department enforcement intentions. The term "potentially interested exporters" is not intended to describe a particular class of persons, but rather indicates that the Justice Department should release disclosure statements in a form and manner (e.g., a press release which could be picked up by trade journals and business magazines) designed to notify small and medium-sized businesses with export potential (see also section 5(c)).

Section 5(a)(2)(A) authorizes procedures whereby business may petition for section 5(a)(1) blanket disclosures. Section 5(a)(2)(B) extends statutory authority for existing Justice Department procedures allowing petitions for disclosures concerning specific export transactions, subject to limitations contained in section 6.

Section 5(b) gives the Secretary of Commerce a personal advocacy role in encouraging the Attorney General to issue or modify blanket disclosures of enforcement intentions. The Secretary's right to request a

final determination by the Attorney General could be exercised at any time, whether or not a disclosure has been published or a 5(a)(2)(A) petition has been filed.

Thus the issuance of section 5(a)(1) blanket disclosures could be triggered in three ways: (1) on the Justice Department's own motion, subsequent to the studies authorized in section 4; (2) in response to a petition by businesses pursuant to section 5(a)(2)(A); and (3) in response to a special request by the Secretary of Commerce.

Section 5(c) describes appropriate Justice Department activities needed to implement sections 5(a)(1) and 5(a)(2). Sections 5(c)(1) and 5(c)(3) are designed to ensure that disclosure statements in fact reach all potentially affected exporters.

Section 5(d) provides for limited legal assistance by the Commerce Department for small and medium-sized businesses seeking to petition for disclosure statements pursuant to section 5(a)(2). As indicated in the appropriations section, this assistance program is intended to become financially self-supporting within one year.

Section 5(e) exempts all proceedings authorized by the Act from the Administrative Procedure Act, with the exception of Freedom of Information Act requirements.

Section 6 describes the means by which business can conduct export activities in reliance upon disclosures issued pursuant to sections 5(a)(1), 5(a)(2)(B). Section 6(a)(1) covers businesses seeking to act under section 5(a)(1) blanket disclosures issued by the Justice Department. Section 6(a)(2) covers Justice Department responses to section 5(a)(2)(B) petitions for specific disclosures, and is designed to be compatible with existing Justice Department procedures. Section 6(b) provides for prompt notice and the availability of a hearing where the Justice Department has denied coverage under a blanket disclosure, or has denied a petition for a specific disclosure.

Section 7 provides for monitoring and enforcement of business compliance with the terms of section 5(a) disclosure statements, through requests for additional information and through injunction proceedings to terminate unauthorized activities. Injunctions are the sole means of terminating coverage once it has been extended pursuant to section 6.

Section 8 provides for reports to Congress to facilitate congressional oversight of agency implementation of the Act. The reports should also aid Congress in determining the need for future antitrust reform legislation.

Sections 9 and 10 are self-explanatory.

U.S. PROGRAMS THAT IMPEDE U.S. EXPORT COMPETITIVENESS: THE REGULATORY ENVIRONMENT

(By Robert A. Flammang)

ANTITRUST LEGISLATION

The United States has the oldest and most vigorously enforced antitrust legislation in the world; indeed, only about thirty countries have such legislation. The benefits of the antitrust program have been substantial—certainly the U.S. economy is much more competitive, efficient, and vigorous than it would be in its absence. What is more, antitrust laws have generally been applied with a keen appreciation of the real world. The thrust has generally been to promote "workable competition" rather than seek some theoretical degree of purity of competition. Thus we have found labor unions and farmers' organizations exempted from the antitrust laws to better balance power in those particular market-places; cartel-like arrangements have been tolerated in coal mining and agriculture when it appeared that this would put these industries on better footing vis-a-vis less competitive sectors with whom they have to deal; mergers of competitive firms have been permitted when it could be shown that this strengthened competition in industries like automobiles and steel.

In the international arena, however, the norm of "workable competition" has yet to be applied in a consistent way, partly because of the many complexities encountered there. American companies complain that no other government restricts their enterprises nearly so much in setting up joint ventures abroad, in engaging in consortium bidding, in licensing foreigners to produce patented or trademarked goods abroad, in dealing with centralized state trading countries, or in negotiating with commodity cartels like OPEC. No other government, they allege, offers so few firm guidelines for what is acceptable behavior abroad, or is so eager to apply its antitrust laws extraterritorily. No other government, they believe, takes such a strong adversary stance with respect to their own firms; most even encourage mergers and cartels among their firms in their overseas selling and investment activities.

Since 1918 the United States, under certain circumstances, has permitted its exporters to combine to promote their export trade. The Webb-Pomerene amendment to the Sherman and Clayton antitrust legislation allows firms to join together, share marketing costs, and bid jointly for international business to meet the competition of foreign cartels and consortia better, as long as this activity does not adversely affect competition in the U.S. greater competitiveness in world markets.

The fact is that the structure of world competition has been changing rapidly in the last 20 years. Adam Smith's ideal of numerous small firms acting autonomously in competitive markets has faded into the reality of large multinational enterprises, state buying and selling organizations, and cartels. Galbraith's notion of countervailing power suggests that de facto competition in such a world is more likely to be created if similar-sized sellers on reasonably common ground compete for the buyer's money. This is not to argue that U.S. firms are infinitesimal while their foreign competitors are large; it is to argue that the day of unilateral restraint aimed at the reconstruction of war-torn economies and the development of viable producers in the Third World is coming to an end. The Marshall Plan era is over.

Competitive conditions in the United States and abroad are much more likely to result from a common code of unfair trade practices, uniformly enforced, than from a "good example" approach by the United States or any other country. Moreover, a common code is more likely to be developed if other countries feel the pressure of U.S. competition on the same basis on which they themselves operate than if the United States denies its producers equal access to foreign markets. If our antitrust stance abroad is one of "equal morality" rather than "superior morality," it is much more likely that there will be a common interest in a common code, or in making a common code more "moral." Common action requires a common interest.

In fact, the "superior morality" approach of the United States has provoked reactions from friendly countries. The British government recently introduced legislation that would block the enforcement of American court decisions, multiple damage awards, and subpoenas on British soil when British firms are involved in U.S. antitrust actions. The British object to "the accumulation of attempts by the United States to impose its own economic and other domestic policies on individuals and companies outside its territorial jurisdiction."

Approval by the Parliament is considered a virtual certainty, and other countries are expected to follow suit with similar legislation. Interestingly enough, according to a British government official "We have tried to solve this situation quietly" through diplomatic channels, but "with little success. So we decided to show a little bit of muscle to defend our companies and our sovereignty." The "equal morality" approach would clearly have a much better chance of success.●

ADDITIONAL COSPONSORS

S. 2521

At the request of Mr. DOLE, the Senator from Ohio (Mr. GLENN) was added as a cosponsor of S. 2521, a bill to amend the Internal Revenue Code of 1954 to provide more equitable treatment of royalty owners under the crude oil windfall profit tax.

S. 2625

At the request of Mr. WEICKER, the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 2625, a bill to amend chapter 39 of title 28 of the United States Code, relating to the appointment of a special prosecutor.

S. 2677

At the request of Mr. STEWART, the Senator from Colorado (Mr. HART) was added as a cosponsor of S. 2677, a bill to amend the Internal Revenue Code of 1954 to provide for the nonrecognition of gain of the proceeds from the sale of incentive stock to an ESOP if those proceeds are reinvested in such stock, and for an increase in basis for incentive stock held for certain period.

S. 2681

At the request of Mr. DOLE, the Senator from Iowa (Mr. JEPSEN) was added as a cosponsor of S. 2681 a bill to amend the State and Local Fiscal Assistance Act of 1972 to provide a 5-year extension of the general revenue sharing program and to provide that each State make an annual election to receive its State government allocation or the equivalent amount in specific categorical grant programs, but not both.

SENATE CONCURRENT RESOLUTION 94

At the request of Mr. HUDDLESTON, the Senator from Georgia (Mr. TALMADGE), the Senator from Kentucky (Mr. FORD), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of Senate Concurrent Resolution 94, a concurrent resolution to express the sense of the Congress that the United States not admit more than 650,000 immigrants in fiscal year 1980.

SENATE RESOLUTION 414

At the request of Mr. STEWART, the Senator from New York (Mr. MOYNIHAN), the Senator from Florida (Mr. STONE), and the Senator from Maine (Mr. COHEN) were added as cosponsors of Senate Resolution 414, a resolution to commend the National Forensic League on its Golden Anniversary Tournament.

SENATE RESOLUTION 432

At the request of Mr. NELSON, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of Senate Resolution 432, a resolution with respect to taxing social security benefits.

SENATE RESOLUTION 437

At the request of Mr. BUMPERS, the Senator from New Jersey (Mr. WIL-

LIAMS), and the Senator from Maine (Mr. COHEN) were added as cosponsors of Senate Resolution 437, a resolution disapproving the proposed deferral of budget authority for financial and technical assistance to States for the planning, designing, and construction of highway projects and highway safety projects.

SENATE RESOLUTION 443—SUBMISSION OF A RESOLUTION AUTHORIZING PRINTING OF "HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROGRAM"

Mr. RANDOLPH submitted the following resolution, which was referred to the Committee on Rules and Administration:

SENATE RESOLUTION 443

Resolved, That the annual report of the Secretary of Transportation to the Congress of the United States (in compliance with section 144 of title 23, United States Code), entitled "Highway Bridge Replacement and Rehabilitation Program" be printed as a Senate document.

SEC. 2. There shall be printed five hundred additional copies of such document for the use of the Committee on Environment and Public Works.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. BRADLEY. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate today to continue markup of S. 2294, the fiscal year 1981 Department of Defense authorization bill.

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

COMMITTEE ON THE JUDICIARY

Mr. BRADLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate today to hold a hearing on a judicial nomination.

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

ADDITIONAL STATEMENTS

S. 265—EQUAL ACCESS TO JUSTICE ACT

● Mr. DOMENICI. Mr. President, when the Senate Committee on Commerce, Science, and Transportation reported the Federal Trade Commission Act of 1979 it included a section which was the embodiment of S. 265, the Equal Access to Justice Act. As sponsor of this bill I was gratified to see its inclusion by the full committee. As S. 265 has passed in the first session by a 94 to 3 vote, I expected it would not be changed in the course of the Senate's deliberations on the bill. Further, the White House Conference on Small Business had selected this legislation as one of its legislative priorities for the 96th Congress. In the House this measure had already garnered approximately 90 cosponsors. Clearly the Senate supported the bill, it was on record by its vote. Popular support in the House was apparent from the number of cosponsorships. Presumably the administration would support a priority selected by a conference it convened and composed of participants largely selected by the administration.

But the unpredictability of the conference process was reaffirmed. This final version of the Federal Trade Commission Act no longer provides that when a small businessman or individual litigates on either the administrative or judicial level against the FTC, prevails, and the agency cannot substantially justify its position, then he would be entitled to attorney's fees and costs. Why was this priority of the small business community thrown out in conference? I can only surmise that it was because this administration actively lobbied for its exclusion. This administration has chosen to actively oppose a major plank of its own White House Conference on Small Business.

Mr. President, S. 265 has passed the Senate. It was originally included in S. 1991 as reported and passed by this body. Our colleague, Senator THURMOND, has introduced legislation making it applicable to OSHA. I intend to offer S. 265 as an amendment to the Legal Services Corporation bill and other legislation which will come before the Senate. I pledge to the small business community this legislation, in one form or another, will be presented and debated before the whole Congress so that they will see who are the real supporters of their programs and those who are paying lipservice to them.●

TRIBUTE TO THE LATE HUBERT H. HUMPHREY

● Mr. PELL. Mr. President, I had the privilege to be present on May 18 when New Englanders and a host of distinguished visitors joined in a tribute to the late Hubert H. Humphrey.

Senior statesmen, Ambassadors, Governors, legislators, business and labor leaders, educators, and ordinary people of all races, creeds, and walks of life gathered at Mechanics Hall in Worcester, Mass., to remember, to sing, to laugh and cry, and to raise funds for the Humphrey Institute at the University of Minnesota where young people will study politics and government and the ideals of public service.

Secretary of State Muskie was the keynote speaker at the tribute and delivered an eloquent reminder of the vision and the principles that guided Hubert Humphrey through his life. Secretary Muskie spoke of how that vision and those principles can help our Nation as it faces new challenges now and in the years ahead.

Joining in the tribute were the President of the United States (by telephone), former President Gerald Ford, and Vice President WALTER MONDALE.

Mr. President, at the tribute, Republicans and Democrats alike agreed that history will record Hubert Humphrey as a great man who ennobled this country and enriched the lives of millions of people—the many who felt the warmth of his personality and the many more who will benefit from his legacy: his programs, the people he elevated and inspired, and the center of learning that will bear his name.

Mr. President, I ask that the keynote address delivered by Secretary Muskie at the Hubert Humphrey New England tribute be printed at this point in the RECORD.

REMARKS OF SECRETARY MUSKIE

Today we remember Hubert Humphrey: his life, his work, his legacy.

For my part, I can think of no better way to honor Hubert than to give a brief speech . . .

The length of Hubert's speeches became a sort of affectionate national joke. But to those of us who listened often to Hubert, and who learned from him, even his longest speeches seemed short—so infectious were his enthusiasm, his vision, and his love for people.

If his speeches were sometimes long, his life—that vibrant, buoyant life—was far too short.

Because of all he did—as small businessman, Mayor, Senator, Vice President; as father, husband and prophet of a just America and a world at peace—Hubert Humphrey earned a special place in our hearts and in history. The memorial that this event supports will help confirm that place.

In these times, when too many voices are filled with despair and frustration, I can hear Hubert's voice and his vision. He would have been impatient—monumentally impatient—with the Cassandras, the voices and prophets of doom. He would have been working—solving our problems instead of endlessly deploring them. He would have been optimistic, as Americans have been throughout our history. Hubert would have had a pocketful of ideas—concrete, practical ideas—creating solutions as only Americans can.

For Hubert Humphrey was not only an impatient, energetic, optimstic man. He was a man of vision. He could look beyond our day-to-day crises and see the America we should be building.

What was that vision?

It was, first of all, a vision of a strong America.

Those who emphasize Hubert's compassion and his love of peace should not neglect his support for a strong America.

He never relented in his belief that our defenses must be sound and our alliances vigorous. He fought for a strong and effective NATO alliance.

The strength he sought for America was not an end in itself. No Fortress America for Hubert. He saw America's strength as a means to ensure peace and to buttress an effective, activist foreign policy.

Hubert never underestimated America's adversaries. Indeed, it was his understanding of their ambitions and their resolve that caused him to advocate balanced arms control with the Soviet Union—long before the issue came to the top of our national agenda.

In proposing the mutual termination of atmospheric nuclear testing in the early sixties, Hubert understood the central relationship between strategic arms reductions and America's security.

Hubert Humphrey was a believer that within the United States, opposing interests with opposing ideas could settle their differences by searching patiently, negotiating, defining the common ground. He believed that the same thing was possible—and essential—in relations between nations.

We must be guided by that same vision today. We must understand that our military forces and our alliances—the bedrock of our foreign policies—are strengthened by arms control. And we must never fear to seek agreements that limit a threat to our security.

Hubert's vision was of a just, humane America. He believed that our values as a people should be expressed in our policies abroad. He believed that a nation conceived and born in revolution—as ours was—should not shrink from change in the world. And just as he believed in human rights and economic justice here at home, he believed in a foreign policy that supported those same ends.

He believed that America's commitment to freedom should not stop at the water's edge; that it should help the Jews of the Soviet Union, the blacks of South Africa—all those whose human rights were denied.

He believed that America's great bounty should inspire a generous foreign policy. So he fought for programs of foreign assistance that would help developing nations feed their poor, heal their sick and build their economies.

He became an eloquent advocate for the Food for Peace program, the Peace Corps, and other international development efforts.

Hubert fought for these causes not as international welfare, but because he believed that poverty was a waste of precious human potential. He believed generous assistance programs were not only morally right, but politically wise and economically sound. He knew in the end they would strengthen our own economy and serve our own interests.

Let us not forget Hubert's advice, which he expressed often in the words of Franklin Roosevelt: "The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little." Stability and peace come not through static policies defending the status quo. They come through a dynamic process which advances the human condition.

Finally, Hubert Humphrey's vision was a vision of an America leading the world's nations in a crusade to build peace. Not a search to find peace; nothing so passive as that. No, a crusade to build peace.

As a young man, he was deeply influenced by his father's commitment to Woodrow Wilson's vision of a League of Nations. How natural for Hubert to become a champion of the United Nations.

His vision of peace was no figment of airy idealism. It was concrete and practical. He believed peace was not just a worthwhile goal, but a process to be pursued—however slowly and painstakingly progress might come. The fruits of his efforts today can be seen in the test-ban treaty; in the existence of an Arms Control and Disarmament Agency; in the Middle East peace process; in the SALT process, which was begun when he was Vice President of the United States; in a hundred other concrete efforts to construct peace.

He would have understood—and applauded—the patient, slow but steady effort to build a settlement in Zimbabwe. He would have urged us to continue to pursue, with the same determined patience, a settlement in Namibia. He would have urged us not to despair in the agonizing search for a solution to the hostage crisis in Iran.

In the weeks and months ahead, as I work on the serious problems of our hostages in Iran, peace in the Middle East and the presence of Soviet troops in Afghanistan, I will remember what Hubert taught this nation about solving tough problems and fashioning workable alternatives to war.

And most of all I will remember that he taught us to have confidence in ourselves.

For Hubert Humphrey was a believer in the inexhaustible potential of the American people and America's institutions. As a leader in the United States Senate and a member of the Executive branch, he believed both branches could work together. He had almost a religious belief in our American Constitution. And he believed in himself; he never let temporary defeat or disappointment deter him from pursuing his vision for America.

Nor should we.

Those who are in danger of being overwhelmed by doubt should remember him. Perhaps they should listen for the message he doubtless would have found in the thousands of refugees who now are fleeing toward our country. To these thousands—and to Hubert Humphrey—America has always been a haven from tyranny; a means to a better life.

Hubert would have understood these refugees. And they would have understood him.

He used to close his speeches with some lines from Carl Sandburg. I can think of no better way to end now, for the lines summarize not only his vision for our country, but his own life and character:

"I see America not in the setting sun of a black night of despair ahead of us.
"I see America in a crimson light of a rising sun fresh from the burning creative hand of God.
"I see great days ahead, great days possible to men and women of will and vision."

It is our challenge, yours and mine, as legatees of Hubert Humphrey, to carry on his work—and to fulfill his vision.●

SOUTH LEBANON'S CHIEF

● Mr. WEICKER. Mr. President, I made a private trip to the Middle East last year and while I was there I had an opportunity to meet briefly with a remarkable man, Maj. Sa'ad Hadad. Major Hadad is the leader of the forces of Free Lebanon, and protector of the Christian community in southern Lebanon.

He is also one of those historical inconveniences which seems to clutter up international relations as they are practiced today. Those who have read about him in the press are informed, so to speak, that Major Hadad is one of the impediments to peace in the Middle East. This view is held by those who also see Israel as an impediment to peace in the Middle East. The idea, in the latter case, is that PLO and PFLP terrorism would cease if only there were not those Israeli infants and schoolchildren there, virtually asking to be murdered.

In the same fashion, Hadad is an impediment to peace because he fights back against aggression of the PLO and the Syrian Army which now occupies half of Lebanon. As if that were not enough, he embarrasses the U.N. forces in southern Lebanon by confronting the terrorists who traverse U.N. lines with no difficulty at all and, indeed, often with the active assistance of the U.N. forces.

Hadad is an impediment to the peace of the graveyard.

There was a time when the free world would have lionized such a man. Hadad himself has asked how it can be that Christians give no comfort, no moral support to their embattled coreligionists in southern Lebanon. There is a thought to conjure with. I will not explore it here.

I will note, however, that one cannot help but be fascinated at how Major Hadad and his fighters are characterized as "puppets" of the Israelis. This formulation masks the inconvenient reminder of the barbaric abuses of human rights within the Arab Islamic world that must flow from any admission that Hadad is protecting a minority marked for slaughter, and that Israel—peopled by men and women mindful of what it means to be marked for slaughter—is helping. Helping where no one else will.

Perhaps the greatest irony of all resides in the fact that the Christian minority of Lebanon is under the guns of the PLO, while the PLO continues to insist that what it wants in the area is a secular state where Moslem, Christian, and Jew will live together in peace and brotherhood. Surprisingly, there are those willing to believe this. Major Hadad is not among them. He cannot afford to be. Too many Christians, and may I say Jews as well, rely upon him for survival.

Mr. President, the New York Times last Monday published for once a favorable article on Maj. Sa'ad Hadad. To mark this unprecedented event, I ask that this article be printed in the RECORD.

The article follows:

SOUTH LEBANON'S "CHIEF"

(By Ray Errol Fox)

Maj. Saad Haddad, the officer estranged from Lebanon's Army who now commands a Christian militia force in that country, has emerged from the chaos following the Lebanese Civil war of 1975–76 as an elusive, controversial village chieftain. He is at war with the Government in Beirut because it is controlled by Syrians in Damascus; with Syrian armored divisions for intruding in Lebanon; with the Palestine Liberation Organization for, as he says, "invading" Lebanon and terrorizing its citizens; and with the United Nations Interim Force in Lebanon for obstructing his efforts to repel the terrorists in the south. He may well be the only remaining obstacle to Syrian annexation of Lebanon, and P.L.O. occupation of southern Lebanon.

On April 18, 1979, Major Haddad declared the area of his command, a six-mile north-south strip and 12-mile east-west strip along the southern border, with a population of 60,000 Shiite Moslems and 40,000 Christians, as "Free Lebanon"—free from government and religious interference. It has no government of its own.

He is the father of five little girls whom he and his wife gather in a room under his Merj'Uyun house in "Free Lebanon" when P.L.O. shells come raining down on their heads on any night. One might gather from some press reports that he is a wild man, an outlaw, yet as I have seen, any child can flag down his jeep for a fatherly hello as he and his men relentlessly patrol Christian and Moslem villages for terrorists or terrorists' mines and bombs that threaten the innocent. Still, he is frequently called "a traitor to his people" by Arab journalists.

This "Israeli-sponsored thug," as Sean Whelan, the Irish charge d'affaires in Beirut characterized him, is not fighting Israel's battles; he is fighting his own and his people's—for survival, then for freedom—on their land. The "rightist rebel renegade" (as I heard him called on a European radio program) has created friendship and trust in southern Lebanon among Christians, Moslems, and Jews across the border to the south.

According to recent reports, which I believe are erroneous, this "local strong-arm baron"—so called by David Landau and Anan Safadi in The Jerusalem Post—commanded children at gunpoint to throw rocks at Irish soldiers in the United Nations force and demanded a sizable ransom from a Shiite village. Yet, as he lay in bed 10 days ago, recovering from a mild knee injury incurred when he drove his jeep over a mine while pursuing terrorists, Christians and Moslems and Armenians and Druze by the thousands came from all directions, in some instances from behind P.L.O. strongholds, to say thank you.

He repeatedly asked me where the rest of the Christian world is when it is needed: "I think all of the Christian world knows what is going on. But it is too involved in its own materialist problems. No more, human values. Religion, it is only by name now. We have been born a Christian, so we say we are Christian. Even my Pope doesn't help. He is supposed to tell all the Christians of the world to wake up, their brothers in Christianity are in danger of being exterminated and they have to help. By saying a few words he can change the picture. I wrote to the Pope and never got an answer. He is supposed to be our spiritual father on the ground, and each father is supposed to protect his son, even if he is wrong. How come we are right and he is not supporting us? The terrorists are getting volunteers from Iran, Iibya, Iraq, Saudi Arabi, from all the Communist countries, to fight for them. What prevents the Christians from sending funds or coming as volunteers to help us? We feel left out from all the world except by Israel. We are fortunate that we found Israel on our border to help us. Israel understood our problem, that we are a minority threatened with extermination, and extended its hand to us. They ask for nothing, and for whatever they give, I am thankful. I have no right telling them I need this and this. But I have a right to ask my brother in Christianity."

He asked why America always backs the wrong side: "I can't understand—Americans are fighting their friends and supporting their enemies. They say we have to support the legitimate authority in Beirut. But there is no legitimate authority anymore. How come they are supporting something illegitimate? In your country, when something was wrong, you changed the President. How come you are supporting the wrong man here? You should support the people who can't be Communist. Why, when we are fighting Communists, are you fighting against us? We love you, The Communists say you support, us, so they must kill us. They don't know all the pressure we are getting from the Americans, that our hands are tied because of the Americans. But we cannot change. We are prepared to die. But if the free world open its eyes, if we could make you see that Lebanon is the gate to the Middle East, and if you lose Lebanon you have fought to close the gate in your own faces . . . if you could finally see the reason for a free Lebanon. . . ."

He began talking about the future. About his plans for his country. I asked if he really believed he could rid Lebanon of the Syrians and P.L.O. He practically whispered: "It can be done." Then, stronger: "If there is good will, nothing is impossible. All our lives are based on the hope. A good hope." ●

TAKING CARE OF THE ELDERLY

● Mr. BAUCUS. Mr. President, I read with great interest the very cogent article by Bruce Vladeck in the May 19 New York Times. Mr. Vladeck makes a compelling and compassionate case for changing the way Federal policymakers view long-term care for senior citizens.

For too long, we have viewed nursing homes as the only way to provide long-term care for the elderly. Less expensive alternatives exist, however, and Federal policies should be designed to encourage their use.

Many seniors can—and should—remain in their homes, rather than moving to nursing homes. In-home and community based care is available at less cost than in nursing homes or hospitals.

Congress has an opportunity to redirect these policies, and to encourage greater use of these alternatives. Legislation is now pending which promotes greater use of home-health care. Further, Congress can respond to the problem of excess hospital beds, especially in rural areas, by enacting the so-called swing-bed legislation, which allows hospitals to use their beds interchangeably for either acute or long-term care.

Mr. President, I ask that the article be printed in the RECORD.

The article follows:

CARING FOR THE OLD

(By Bruce C. Vladeck)

TRENTON, N.J.—It was recently reported in the press that more than 2,000 elderly people in New York City are being confined to hospitals because nursing-home beds are not available. Hospital care in New York City now costs $200 to $300 a day, while nursing homes generally charge $60 to $70. Since most of those awaiting nursing-home placement are in hospitals at public expense, through Medicare or Medicaid, tens of millions of scarce public dollars are at stake—more than $50 million a year in New York City alone.

The solution appears to be simple: If old people can't get into nursing homes, we should build more. But apart from the fact that building nursing homes means the proliferation of institutions widely believed to be unsatisfactory and overused, this solution will not work: there is no money to be saved in building nursing homes.

Elderly patients have been "backed up" in hospitals awaiting nursing-home beds in New York City since the early 1950s; backlogs have persisted through succeeding waves of nursing-home construction. Areas with more nursing-home beds in proportion to their elderly population have similar waiting lists. Nursing homes, which tend to get filled no matter how many there are, are full almost everywhere in the United States.

New nursing-home beds primarily tend to get filled not from hospital backlogs but rather from a permanent but marginal demand among the unhospitalized aged, including a large proportion of people who have been shown, in survey after survey, not to need nursing-home care at all.

Furthermore, building new nursing homes to reduce hospital utilization does not save money.

The marginal cost of treating a "nursing-home" patient in a hospital is not much greater than that of nursing-home care, since a high proportion of all hospital and nursing-home costs are fixed, or partly fixed. Moreover, at today's construction costs and interest rates, "replacing" hospital beds with new nursing homes is extraordinarily expensive.

Both policy makers and the general public have been confused by the conventional pricing of hospital (and nursing-home) services on the basis of an average per diem, despite the enormous variation in the actual costs of treating different patients at different points in their hospitalization.

The coronary-bypass-surgery patient in his third postoperative day is far more expensive to care for than the elderly pneumonia victim in her 25th day. Thus, it doesn't really cost $250 per day for hospitals to care for patients awaiting nursing-home beds, even though these are the average costs levied on taxpayers.

The average per diem charge for hospitals is so irrational, and so perverse in the incentives it creates, that it has now been partly abandoned in New York State and will be completely abandoned, over a three-year period, in New Jersey.

But the illusion it has created—that building nursing homes can save money—has impelled public policy to support the construction of one million new nursing-home beds in the last 15 years, even though most policy makers have never thought that nursing homes were particularly desirable institutions.

For a generation, there has been broad agreement among gerentologists, health administrators and public officials that most of the elderly in need of supportive services should receive them in their homes, or in "sheltered" or "congregate" dwellings less institutional in character than nursing homes, or as out-patients in day programs.

Such alternative services have expanded with glacial slowness, largely because all available public funds have been consumed by the ever-expanding supply of nursing homes, created in large part as a response to the phantom hospital back-log problem.

In a nation where, by conservative estimate, there are 100,000 too many hospital beds, where most nursing homes are continually full, and where noninstitutional programs limp along on starvation budgets, building more nursing homes to solve a non-problem simply makes no sense.

If we stopped building nursing homes now—or even closed some—and made better use of excess hospital capacity, the savings relative to what we otherwise would spend should permit, in as few as five years, a manifold increase in noninstitutional services. *Then* the "backlogs" would disappear. ●

THE CASE OF LEV LUKYANENKO, A UKRAINIAN HUMAN RIGHTS ACTIVIST

● Mr. PELL. Mr. President, Lev Lukyanenko is a Ukrainian lawyer who was a founding member of the Ukrainian Helsinki Watch Group. That group was formed in November 1976 to monitor Soviet compliance with the human rights provisions of the 1975 Helsinki accord.

Two years ago, Mr. Lukyanenko was convicted for engaging in "anti-Soviet agitation and propaganda." The conviction, apparently based on statements he had drafted regarding human rights violations in the Ukraine, resulted in Mr. Lukyanenko's being sentenced to 10 years in a labor camp and 5 years of internal exile. Mr. Lukyanenko is currently serving his sentence in a Mordovian special-regime labor colony.

Mr. Lukyanenko's imprisonment represents a denial of his right to free speech, in violation of article 50 of the Soviet Constitution and article 19 of the International Covenant on Civil and Political Rights. Reports have also been received indicating that Mr. Lukyanenko's trial in July 1978 may have involved several substantive violations of due process guaranteed by both Soviet law and article 14 of the above-mentioned covenant.

At age 52, Mr. Lukyanenko is presently serving his second 15-year sentence. Since his graduation from the law faculty of Moscow University in 1958, he has spent almost 17 years in prison, all for activities theoretically protected by Soviet and international law. It was during his first prison term, from 1961 to 1976, that he was designated a "prisoner of conscience" by Amnesty International.

Throughout his adult life, Mr. Lukyanenko has attempted to defend and pre-

serve the integrity of the rule of law in the Soviet Union. Today, as a result of his lengthy and ongoing imprisonment, he is reported to be suffering from chronic stomach ailments. In addition, he is presently confined under harsh conditions which may of themselves represent a violation of articles 7 and 10 of the International Covenant on Civil and Political Rights.

Mr. Lukyanenko's plight has come to the attention of a number of individuals and organizations concerned with human rights. In recent months, the Lawyers Committee for International Human Rights and the International League for Human Rights have gathered the signatures of 250 prominent American attorneys on a petition urging his release. This petition was transmitted to the procurator of the Ukrainian Soviet Socialist Republic, Mr. F. K. Hlukh, by the chairman of the Lawyers Committee, former Federal District Court Judge Marvin E. Frankel, and the president of the International League, Harris Wofford, on April 17, 1980. The Individual Rights and Responsibilities Section of the American Bar Association is also considering Mr. Lukyanenko's case.

Whenever lawyers are oppressed, the rule of law itself is threatend. For almost 20 years, Mr. Lukyanenko's efforts to insure Soviet recognition of basic rights—rights guaranteed by both Soviet and international law—have been consistently frustrated. His case thus demonstrates that a human rights commitment on paper is not sufficient. I ask that the letter to the Soviet authorities and the accompanying petition be printed at this point in the RECORD.

The material follows:

THE INTERNATIONAL LEAGUE
FOR HUMAN RIGHTS,
New York, N.Y. April 15, 1980.

F. K. HLUKH, Esq.
Procurator of the Ukrainian Soviet Socialist Republic, UL. Khreshchatyk 2., Kiev, Ukrainian S.S.R.

DEAR MR. HLUKH: We have the honor to enclose a petition signed by 250 American attorneys on behalf of Lev Lukyanenko, a Ukrainian lawyer sentenced to 10 years in a labor camp and five years of exile in July 1978 for engaging in anti-Soviet propaganda.

The petition expresses a number of concerns about irregularities in the trial, conviction and continuing incarceration of Mr. Lukyanenko. In this connection, we ask that the official record of Mr. Lukyanenko's trial and his verdict be made public.

We also request that an attorney designated by a respected international human rights organization be allowed to visit Mr. Lukyanenko at the labor colony where he is being held.

The petition is signed by a number of prominent United States attorneys, including current and past Presidents of the Association of the Bar of the City of New York, deans of law schools, and other lawyers of national distinction.

With assurances of our highest respect.

MARVIN E. FRANKEL,
Chairman, Lawyers Committee for International Human Rights.
HARRIS L. WOFFORD, JR.,
President, International League.

PETITION OF AMERICAN LAWYERS TO F. K. HLUKH, PROCURATOR OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC, ON BEHALF OF UKRAINIAN ATTORNEY LEV LUKYANENKO

We, the undersigned, are attorneys practicing in the United States who are disturbed by the trial, conviction, and continuing incarceration of Lev Lukyanenko. Mr. Lukyanenko, a Ukrainian lawyer, was a founding member of the Ukrainian Helsinki Watch Group, a committee formed to monitor Soviet compliance with the 1975 Helsinki human rights accords.

In July 1978, Mr. Lukyanenko was sentenced to ten years in a labor camp and five years of exile. His conviction, for engaging in anti-Soviet propaganda, was evidently based on statements he had drafted regarding human rights violations in the Ukraine. Mr. Lukyanenko's imprisonment violates his right to free speech, which appears to us to be protected by Article 50 of the Soviet Constitution and Article 19 of the International Covenant on Civil and Political Rights, which the Soviet Union ratified in 1973.

Reports we have received indicate that Mr. Lukyanenko's trial also involved several substantive violations of due process guaranteed by both Soviet law and Article 14 of the above-mentioned Covenant. Article 14 states that "everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law."

In addition, several eyewitnesses have concluded that the conditions of detention in the Mordovian special-regime labor colony where Mr. Lukyanenko is imprisoned violate Articles 7 and 10 of the International Covenant on Civil and Political Rights. Article 7 provides that "no one shall be subjected to cruel, inhuman or degrading treatment or punishment" and Article 10 guarantees that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Because the Soviet Union's treatment of Mr. Lukyanenko has apparently violated and continues to violate both Soviet law and Soviet obligations under international law, we call for Mr. Lukyanenko's immediate release.

Mr. Lukyanenko's case has been described in more detail in reports published by Amnesty International and the *Chronicle of Current Events*, and in the testimony of Mr. Lukyanenko's wife, Nadezhda Lukyanenko, and his friend, Nadezhda Svetlichnaya.

We believe that our information about the Lukyanenko case is reliable. However, in order to resolve any doubts, we ask that the official record of his trial and verdict be made public. We also ask that an attorney designated by a respected international human rights organization be allowed to visit Mr. Lukyanenko at his place of detention as soon as possible.●

GASOHOL WORKS

● Mr. BAYH. Mr. President, America has to stop relying on imported crude oil and petroleum products. The American public is reducing its consumption of gasoline and other refined products, but not enough. Crude oil imports are down, but we need to do more. We need to develop our domestic renewable energy resources. We need to strive for energy independence.

Increased use of gasohol, the clean-burning, octane boosting mixture of 90 percent gasoline and 10 percent alcohol fuels derived from renewable sources, would represent an important step toward energy independence. Gasohol can make a real contribution to reducing our need for crude oil and our need to import that crude oil. Several American enterprises are currently conducting operational field tests of gasohol. As the results of those operational field tests are revealed, the record is clear. Gasohol not only saves 10 percent of the gasoline it takes to fill a gas tank, but in many vehicles it improves mileage, extends engine life, reduces the number of tune-ups required for efficient operation and decreases auto emissions.

Recently, Illinois Bell Telephone reported the results of their year-long operational field test of gasohol in fleet vehicles. Illinois Bell reported the savings which I have alluded to and announced that they will expand their use of gasohol in their statewide fleet. This is significant because Illinois Bell maintains the largest privately-owned automotive fleet in Illinois. This one company can save 700,000 gallons of gasoline annually by using gasohol.

Mr. President, the management of Illinois Bell should be commended for their efforts to use renewable domestic energy supplies. We need to convince more American enterprises to follow Illinois Bell's lead. To do so we must not waver from our commitment to the rapid commercialization of our domestic alcohol fuel industry. The production credits and Federal excise tax exemption enacted in the crude oil windfall profit tax have helped, but we need the synfuels bill as soon as possible. With the added incentives for alcohol fuel production contained in the synfuels bill, we can make even greater strides toward our most cherished goal of energy independence.

Mr. President, I ask that the press release of Illinois Bell, describing the results of their gasohol field tests, be printed in the RECORD.

The press release follows:

PRESS RELEASE

Illinois Bell announced today that it will expand its use of Gasohol in its fleet statewide as the fuel becomes available and is competitively priced.

The company is now using Gasohol in 235 vehicles in Woodstock, McHenry, Watseka, Bradley, Bourbonnais, and Rock Falls.

The decision to expand the use of Gasohol came at the completion of a 12-month trial of the fuel in 30 Illinois Bell vehicles in the Peoria area. Gasohol is a mixture of 90 percent gasoline and 10 percent ethanol (alcohol) derived from renewable sources.

Ron Aldridge, the company's division manager for automotive operations, said the trial indicated that usage of the cleaner burning fuel could lead to savings in maintenance costs through longer engine life and could mean a reduction in the number of tune-ups required to keep vehicles operating efficiently.

During the 12 months of the test, mileage results were mixed.

"One test group of older vehicles obtained much better mileage with Gasohol than with regular gasoline," Aldridge said. "The test group with newer vehicles tended to obtain slightly better mileage results by using unleaded gasoline. Overall, test results indicated that the Gasohol fuel obtained 4.8 percent better mileage than the conventional fuels.

"Maintenance savings and other benefits of Gasohol, including better cold weather starting and its potential as a gasoline extender have convinced us to use the fuel where it is available at a cost effective price."

Aldridge said that since the start of the 30-vehicle trial, Illinois Bell saved 22,000 gallons of gasoline through the use of Gasohol.

"We're convinced that Gasohol can be an important gasoline extender and could help us keep our vehicles on the road during any periods of gasoline shortages," Aldridge said. "If Illinois Bell used Gasohol in all its ve-

hicles statewide, the company could save about 700,000 gallons of gasoline annually."

The company also found that emissions were reduced with the use of Gasohol. Tests indicated a 30 percent decrease in carbon monoxide and an 8 percent drop in hydrocarbons.

Illinois Bell began its test of Gasohol in January 1979. The effect of Gasohol on mileage and maintenance was studied by comparing 15 vehicles using Gasohol with a control group of 15 vehicles using gasoline.

After six months, the 15 vehicles using Gasohol were switched to gasoline and the control vehicles were switched to Gasohol. The trial was continued through January 1980, reflecting a transition month for the mid-year fuel change of the vehicles.

Illinois Bell stressed that the trial was not a "laboratory" or "scientific" test. It was an operational field test to evaluate the fuel's performance under normal job and driving conditions. Drivers recorded mileage data and evaluated vehicle performance.

Illinois Bell has the largest privately-owned automotive fleet in the state with nearly 8,000 vehicles. The company uses 7 million gallons of gasoline annually.

Since 1973, Illinois Bell has increased the miles-per-gallon performance of its vehicles nearly 10 percent. The company used only 4 percent more gasoline in 1979 than in 1973, even though the number of phones served increased 17 percent.●

AMTRAK

● Mr. PELL. Mr. President, I would like to call the attention of my colleagues to the outstanding record of achievement compiled by Amtrak so far this year. As it passes the halfway mark in its current fiscal year, Amtrak has carried a record number of passengers and offered substantial savings in petroleum fuel consumption.

The evidence indicates that more and more travelers are not only switching to trains, but that they are experiencing more reliable and comfortable trips. Of the 9.9 million passengers that Amtrak carried from October 1979 through March 1980, 88 percent were riding in either new passenger cars or completely rebuilt and refurbished cars. On time performance has improved consistently over last year, and is now averaging 75 percent—a record higher than that of the country's top 200 airline markets, according to the Civil Aeronautics Board. For the 6-month period, ridership on Amtrak's short distance routes grew by more than 17 percent over last year and long distance ridership also showed an increase of 11 percent.

Over half of Amtrak's ridership is concentrated in the heavily traveled Northeast Corridor, and it is here that we can see the true potential of high speed rail service to save precious energy. Using national averages for automobile fuel consumption and passenger loads, at least 18 million gallons of gasoline would have been required to carry Amtrak's passengers riding between Washington and New York in automobiles. Put another way, the Nation would have to purchase nearly 1 million barrels of crude oil to provide an energy source equivalent to the electrical demands of the Corridor between New York and Washington which can use any fuel source available.

The Northeast Corridor's contribution to intercity transportation and fuel conservation will grow dramatically in the next few years as the track rebuilding program completes electrification of the main line from New York to Boston. Amtrak estimates that ridership in this end of the corridor will double by the end of the 1980's.

I think that statistics like these demonstrate the tremendous importance of rail passenger service in our national transportation system. New equipment—more reliable and comfortable for the passenger—coupled with improved track and faster trip times have truly inaugurated a renaissance in rail passenger service. Congress can take just pride for its role in providing the support which has made this renaissance a reality.●

THE COMMUNITY ENERGY ASSISTANCE ACT

● Mr. DURKIN. Mr. President, recently I introduced the Community Energy Assistance Act. This bill is designed specifically to assist communities of all sizes with energy conservation and renewable activities, and it is a direct response to recommendations which have come before my Subcommittee on Energy Conservation and Supply.

Last month I held a hearing in Durham, N.H., as part of my ongoing effort to bridge the gap between Washington and the citizens of my State. I wanted to hear firsthand local views on the legislation before my subcommittee.

At this hearing New Hampshire's State and local officials explained how Federal legislation could be fashioned so that local communities have a freer and larger hand in implementing energy programs. These officials testified that both the Community Energy Act (S. 2576) and the administration's Energy Management Partnership Act (S. 1280) have grave problems in their treatment of small communities. While I want to congratulate the sponsors of S. 2576 and S. 1280 for the initiative and foresight they have shown in their work in this area, I believe their legislation has several deficiences and needs to be augmented so that it is as responsive to the needs of our smaller communities as to the needs of larger cities. My bill does just that. It provides direct financial assistance to all communities—large and small—with as little redtape and Federal bureaucratic requirements as possible.

One of the problems with the Community Energy Act is that it designates only one-fifth of the Federal funds for communities of less than 50,000. However, in New Hampshire, over 90 percent of the population lives in such communities.

Additionally, both bills have the disadvantage of providing funds only on a competitive basis to small communities. The testimony I heard in New Hampshire was unanimous in its objection to competitive grants for small communities, saying that most of these communities do not have the resources to compete for Federal funds, that the required paperwork eats up a good part of the assistance, and that the uncertainty of continued funding prevents effective programs.

The witnesses stated that their experience with similar community development and other grant programs has been that these programs are wrapped in redtape and are inappropriate for small communities. The bill I am proposing is a direct response to the concerns expressed by these local experts.

I have proposed the community energy assistance bill because I understand the great force and effectiveness of local initiatives. I have long maintained that the foundation of an effective conservation and renewable resource policy lies with our county and local governments. The local level is where the most effective and responsive policies are generated and where implementation of most policies take place. The Community Energy Assistance Act recognizes the wisdom of the local approach and offers direct aid to small communities for energy programs and activities to improve the efficiency of energy use and promote renewable resources.

The ability of small communities to utilize traditional community development and other grant programs is limited. If we are to successfully reach these communities and initiate grassroots energy programs, we must develop assistance programs to meet their needs. Federal policy has long neglected the energy needs of small communities and their immense potential contribution to solving our national energy dilemma. In fact, there are no programs existing today which provide direct Federal assistance to small communities for energy programs and activities.

We must come to terms with the fact that small communities are facing energy problems of crisis proportions. Their problems stem not only from the general weakness of our national energy position, but also from the burdens of implementing and enforcing Federal and State programs. In the past several years, we in Congress have passed a number of statutes which require States and local governments to act to conserve energy and promote renewable resources. While these are certainly worthwhile ambitions, it would serve us well if Federal cost-sharing matched Federal ambitions. Most small communities do not have excess funds to undertake the kinds of energy programs necessary to promote or to adequately implement State and federally mandated programs.

The legislation that I propose would help out those communities most burdened in their effort to both meet Federal and State requirements and explore their own solutions without diverting funds from other critical social services; those communities which cannot be reached through traditional programs.

The program which I propose has the following features:

It provides grants to all communities on a noncompetitive basis.

The only requirements are that first, the community agree to spend the money on conservation and renewable activities, and second the community agree not to

reduce its own funding efforts for these types of programs.

The program is administered by DOE, but the Secretary does not have the authority to withhold funds except in cases of fraud or illegal use of money.

The funds will go directly to eligible communities but are allocated by State.

The allocations formula is similar to the formula used in the low income weatherization program and the fuel assistance program and is based on:

First, total residential energy consumption.

Second, heating-degree days squared.

Third, total population.

Fourth, number of households below the lower living standard.

The fiscal year 1981 funding proposed is $75 million.

I urge your support for this legislation and hope we can work together to see that it is enacted into law as soon as possible. Small communities, particularly those in our oil dependent Northeast cannot afford to wait for answers to their energy problems. We must mobilize communities—cities, towns, regional councils, villages, counties and neighborhood associations—for action on energy now.●

FIFTIETH ANNIVERSARY OF THE INAUGURATION OF HERBERT HOOVER AS THE 31ST PRESIDENT OF THE UNITED STATES

● Mr. HATFIELD. Mr. President, one of the most influential American historians in the reassessment of Herbert Hoover has been William Appleman Williams. In his writings in the mid-1950's and 1960's, Williams described a Hoover who was markedly different from the one portrayed by New Deal enthusiasts. In Williams' view, Hoover was not a champion of laissez-faire and isolationism but, rather, the "keystone in the arch" in the path from progressivism to the liberalism of the New Deal. As a sophisticated analyst of capitalism's strengths and dangers, Hoover recognized the need for new economic structures, as well as the evils which could result from using the Federal Government as a substitute for community action.

While Williams was tremendously important in spawning new attitudes about Hoover, the reassessment of Hoover did not begin in earnest until the 1966 opening of the Hoover Library at West Branch, Iowa, with its treasure of previously unavailable primary materials on the Hoover Presidency.

In 1970, the New York Review of Books printed a Williams review of the Gene Smith book on Hoover entitled "the Shattered Dream." This article was another milestone in the reassessment of Hoover. Dr. Williams has given permission to reprint this article as part of the series of essays commemorating the 50th anniversary of the inauguration of Hoover as our 31st President. I am also grateful to the New York Review of Books for its permission to reprint the article.

Williams takes issue with Smith's view of Hoover's dream. According to Williams:

Hoover's dream was that the people—the farmers, the workers, the businessmen, and the politicians—would pull themselves together and then join together to meet their needs and fulfill their potential by honoring the principles of the system.

The role of the Government in the economic crisis would be to encourage cooperation among groups, so as to avoid the Government's direct intervention in the lives of the people.

Although he offered more Federal aid than had been offered in any other depression, and some additional programs were defeated by the Democratic Congress elected in 1930, Hoover could not bring himself to "embark upon what he considered the 'disastrous course' of centralized, irresponsible, and increasingly irresponsive and manipulatory bureaucracy." Nevertheless, Hoover's actions, according to Williams, did "block out the basic shape of the new deal."

Mr. President, in these times of low confidence in Government, it is heartening to read of Hoover's abundant faith in the American people. I ask that Dr. Williams' review of "The Shattered Dream" be printed in the RECORD.

The material follows:

BIOGRAPHIC SKETCH—WILLIAM APPLEMAN WILLIAMS

Born: June 12, 1921.

Education: B.S., U.S. Naval Academy, 1944; M.A., University of Wisconsin, 1948; Ph. D., University of Wisconsin, 1950.

Professional Experience: Professor, History, University of Wisconsin, Madison, 1957–68; Professor of History, Oregon State University, 1968—.

Publications: Author: American Russian Relations, 1787–1947, Rinehart, 1952; Contours of American History, World Publications, 1961; Tragedy of American Diplomacy, Dell, 1962; The Great Evasion, Quadrangle, 1962; The Roots of the Modern American Empire, Random, 1969; America Confronts a Revolutionary World: 1776–1976, Morrow, 1976; Americans in a Changing World, Harper, 1978; Empire as a Way of Life, 1980.

Membership: President, Organization of American Historians.

WHAT THIS COUNTRY NEEDS . . . THE SHATTERED DREAM: HERBERT HOOVER AND THE GREAT DEPRESSION

(By Gene Smith)

Herbert Clark Hoover almost never laughed, or so Gene Smith tells us; but I have one of those visions that historians occasionally allow themselves: if one arose very early (sometime during that missing hour twixt four and five), and moved very quietly along the upper reaches of the McKenzie River east of Springfield, Oregon, there Hoover would be, just barely visible in the mist in his waders, standing tit-high in that damnably cold water, a string of trout drifting downstream from his suspender button, one hand with a fly rod and the other with the latest *New York Times Book Review* section, his head and cigar tilted high, roaring at the latest historical account of his failures. His belly laugh would override the rapids because he would already have read a story about voluntary communes in Iowa, Idaho, and Indiana, and another about Julius Lester's beautiful blast at white radicals for having to learn the same thing over and over and over and . . .

Back in the real world one would naturally assume that old-mod Charlie Michelson[1] killed Olde Herbie dead between 1929 and 1933. As a kind of live-ammunition training exercise for the subsequent massacre of Alfred Landon.

Not quite. Professor Richard Hofstadter raised him from the grave in a memorable chapter of his fine book on *The American Political Tradition*.

But then Professor Schlesinger devoted an entire volume to a counterattack on Hoover as a tune-up job for levitating Godfather Franklin. And Izzy Stone can hardly let an issue escape him without swinging his scimitar at what he assures us is the ghost of Hoover ensconced in the White House as clandestine adviser to Richard Nixon and Billy Graham.[2]

But why?

Why so much labor to exorcise a cold and feeble failure? And why so much reliance on analogy to put down Nixon, a man who has generously stockpiled a public arsenal accessible to all critics?

Smith gives us a clue or two but never uses them. So the place to start is with Julius Lester's wryly devastating comment: "The inability to move beyond a politics of reaction has been detrimental to the growth of a white radical movement." For to discuss Nixon in terms of Hoover, and to define Hoover in terms of the Michelson (and textbook) myths, is to display the mind (and politics) of the knee-jerk. The way to get at Hoover, as well as Nixon, is to pick up on two more of Lester's remarks. The first is his accurate observation that white radicals persistently react to specifics instead of seeing the specifics as part of an integrated system that must be dealt with as a system. The second is his call for "a positive revolutionary program."[3]

Now at this point we must go very slowly because we are so confused (as Harold Cruse pointed out a year ago) that, given a problem, we tend to duck into a cloud of quick-frozen New Deal rhetoric for the solution. Hoover was not a revolutionary. He was not even a modern liberal. And he does not deserve uncritical acclaim. But he was an unusually intelligent, and often perceptive, conservative who understood that the system was a system; that it was based on certain clear and not wholly absurd axioms, and that it would work only if the people acted in ways that honored those principles.

"I want to live in a community that governs itself," Hoover explained very simply, "that neither wishes its responsibilities onto a centralized bureaucracy nor allows a centralized bureaucracy to dictate to that local government."[4] "It is not the function of government," he continued, "to relieve individuals of their responsibilities to their neighbors, or to relieve private institutions of their responsibilities to the public." "You cannot extend the mastery of the government over the daily working life of a people," he warned, "without at the same time making it the master of the people's souls and thoughts."

If you are Hoover, that is to say, then your moral imperative demands that you let the

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[1] Michaelson was the Democratic Party's publicity agent who mounted a powerful smear campaign against Hoover based on the classic techniques of the false choice and the false syllogism (very similar to the current advertising for Winston cigarettes).

[2] A convenient review of the Hoover literature is Murray N. Rothbard, "The Hoover Myth"; now reprinted in *For A New America*, edited by James Weinstein and David W. Eakins (Vintage, 1970), pp. 162–79.

[3] *Liberation* (June, 1970), pp. 38, 39, 40.

[4] The bulk of the basic information on Hoover, and his ideas and policies, is available in published sources. For ease of reference, most of these quotations have been taken from Ray Lyman Wilbur and Arthur Mastick Hyde, *The Hoover Policies* (Scribner's, 1937). Significant exceptions are noted in the text.

system come apart at the seams rather than violate the principles by saving the system *for* the people. One of your principles is that the system is *their* system, and hence the moment *you* save it *for* them you kill the dream. For when you do that you *rule* the people instead of serving the people. And the commitments to honoring principles, and to service, are Quaker creed. Perhaps, even, *the* Quaker faith. And Hoover was a Quaker.

So is Nixon. Of course. So there we have a case of no difference with a fantastic distinction. For Hoover held the dream as if it were the Holy Grail, while Nixon has the Holy Grail carried around in a black box by an aide as if it were the daily code for Armageddon.

Back to Gene Smith and his book. His title is The Shattered Dream, yet he shows little if any recognition of Hoover's dream. For Hoover did not dream that the system would always function perfectly; or that, in the crisis of the Great Depression, it would right itself automatically and roll on beyond poverty. Hoover's dream was that the people—the farmers, the workers, the businessmen, and the politicians—would pull themselves together and then join together to meet their needs and fulfill their potential by honoring the principles of the system.

That dream defined both the basis and the nature of his anti-depression program. In his view, the government could ". . . best serve the community by bringing about co-operation in the large sense between groups. It is the failure of groups to respond to their responsibilities to others that drives government more and more into the lives of the people."

Thus he offered ideas, his own influence, the services of the national government, and increasing monetary help short of massive federal intervention. But he could not go beyond his commitment to the principle that the people were responsible—"this is the people's problem"—and embark upon what he considered the "disastrous course" of centralized, irresponsible, and increasingly irresponsive and manipulatory bureaucracy.

As it happened, he did provide more federal aid than had been offered in any other depression, and would have supplied far more if the Democrats had not defeated or spiked a long list of proposals after their victory in the 1930 Congressional elections. And he did in truth block out the basic shape of the New Deal. But he simply could not give over and admit through his actions that he had abandoned his commitment to an American community and to the spirit and the will of the people.

And that faith had its useful side. Led by Gerrard Swope of General Electric, some corporation giants pushed him to endorse a plan, presented as a cure for the Depression, that would have given them official sanction to exercise vast powers over the entire political economy. Hoover erupted in angry opposition. It was "the most gigantic proposal of monopoly ever made in history" and "a cloak for conspiracy against the public interest"—a long step toward fascism. It later became, of course, the blueprint for the NRA of the New Deal.

You have to take Hoover whole. He should have given more direct rebel and he should have blocked Swope and his cronies. He should have offered more of himself sooner to the people and he should have held fast to that beautiful faith in the people, the visceral truth of it all is that Hoover was done in by his faith in the dream of a co-operative American community, and by his ruthless intellectual analysis of what would happen if the dream was not honored.

Either the people save their country or it does not get saved. It may get stuck back together. It may get managed well enough to remain operational. It may even get shoved into the next historical epoch. But it does not get saved. Meaning it does not get purified by the people demanding that it operate according to its principles.

Hoover was traumatized by the failure of the people to take charge of their immediate lives and then join together in a cooperative action, and by his terrifying insight into what the future would be if the people continued to duck their obligation—or if they settled for less.

Do not laugh. Hoover outlined our future in 1923. We are living in it now. We do not like it. And even yet we have not taken charge of our immediate lives so that we can then come together and create an American community. We have let the future that Hoover foresaw in 1923 happen to us. Hoover did not do it to us.

To fully comprehend this, we must understand that Hoover knew modern American industrial society better than any other President. It takes one to know one. And he had been one. And had become increasingly disturbed and concerned. Let us begin in 1909, with the chapter on labor in his famous (and still used) exposition of the Principles of Mining. "The time when the employer could ride roughshod over his labor is disappearing with the doctrine of *"lassez faire,"* on which it was founded." Indeed, unions were "normal and proper antidotes for unlimited capitalistic organizations." The good engineer "never begrudges a division with his men of the increased profit arising from increased efficiency." And the good engineer took an honest "friendly interest in the welfare of the men"; and further understood that ". . . inspiration to increase exertion is created less by driving than by recognition of individual effort, in larger pay, and by extending justifiable hope of promotion."

Of course it is capitalistic. And of course it has a tinge of paternalism. But it is personal, it is moral, and it reveals an awareness that the past is past—and that the corporation poses a serious danger to community.

The Bolshevik Revolution extended Hoover's awareness of such matters, in part because, as he noted, it "was a spector which wandered into the [Versailles] Peace Conference almost daily," and he dealt with it as an adviser to President Wilson. He naturally opposed communism as being destructive of individuality and true cooperation among individuals and groups. But he did understand that the Revolution was the work of men and women striving to realize their potential. Misguided as they might be, he acknowledged that they, too, were reaching for the dream.

Even more important, perhaps, Hoover saw and understood the rise of fascism long before most other American leaders. During those same years of the early 1920s, moreover, he extended his awareness of what the corporation was threatening to do to America. The "congestion of population is producing subnormal conditions of life. The vast repetitive operations are dulling the human mind. . . . The aggregation of great wealth with its power to economic domination presents social and economic ills which we are constantly struggling to remedy."

He then pulled it all together in a perceptive (though horribly mistitled) essay called *American Individualism* that he wrote as he entered upon his long service as Secretary of Commerce (1921–1928). From experience and observation, Hoover concluded that capitalistic industrial society (and specifically America) had become functionally divided into three major units, and that the society was poised on the threshold of becoming a syndicalist system. One group was composed of capitalists, including agricultural entrepreneurs as well as industrial, banking, and commercial operators. The second functional bloc was labor.

The third was defined by a rather tricky concept, that of the public *per se*. It was in substance, though neither in form nor in rhetoric, a class. That is, it was all the small and middle-sized independents and their dependents—along with labor. Meaning most of us. Hoover was in effect making an analysis of the giants, on the one hand, and the rest of society, on the other: those with national power and those who had to cooperate if they were to avoid manipulation. "The American people from bitter experience have a rightful fear that great business units might be used to dominate our industrial life and by illegal and unethical practices destroy equality of opportunity."

From this it followed that two criteria had to be met if the dream was to be fulfilled. First: the government had to act, simultaneously, as umpire of the actions of the three groups *and as leader of the public in coming together in cooperative action.*

Beautiful. And damnably difficult.

Hoover maneuvered some of it almost beyond belief. As in his successful battle to define broadcasting as a public forum. And as in his use of brain power and moral power to keep wages high in 1929 and 1930.

Compare that with Nixon.

No problem. Nixon has no moral power.

On with Hoover's second imperative: the people had to accept and discharge their responsibility to come together in cooperative action to create "a community that governs itself." Then came the eerie part. The future map. What would happen if the people gave up on the dream? If job-oriented labor leaders took over a mutant, mundane, and ethical corruption of socialism. If government *per se* took over-an elitist, bureaucratic, and community-destroying hell on earth.

So right it shakes you.

If the people abdicated their responsibility for realizing the dream, and instead relied on the government. Hoover projected a period of increasing unsuccessful bureaucratic pesudo-socialism. And then, "in the United States the reaction from such chaos will not be more Socialism but will be toward Fascism."

So what we have now is the worst possible combination of what he saw as the three possibilities.

But he *must* have failed beyond giving too little relief, beyond waiting too long to give more of himself, and beyond being bullheaded about this dream.

True.

His mishandling of the Bonus Army.

That story is the best thing in Smith's book. He describes it very well, but he does not tell us what it means. To understand that, you have to know the dream. And then face the truth that by 1932 the people had not taken charge of their immediate lives and begun to come together to create a community. Instead, they had begun to petition the government for salvation.

For the feel of how Hoover reacted, do not waste your time ransacking the archives. Just listen to The Doors doing the first verse of "The Soft Parade." His dream was crumbling, dribbling down into Washington by ones and twos. Then by thousands. And he drew the traditional American conclusion. People maching pose a military problem. The explanation for that response is basically simple: the people have done little serious marching except on the way to war.

Now the American military have the patience that begets great power: wait for the civvies to come to us and then we are in charge. And so they were. MacArthur and his minions. The third-person types. McArthur to an aide: "MacArthur has decided to go into active command in the field."[5]

But the key was Hoover's trauma. That shut him off: confused the desperation of the people with the willful intent of the people. He mistakenly thought they wanted what we have today. So he gave over to MacArthur. And Douglas did his thing. Bayonets, sword-drawn cavalry, tear gas (a baby died), and fire. (And then another failure. For Mac-

[5] Smith, *The Shattered Dream*, p. 159.

Arthur usurped power, went beyond his orders, and Hoover did not strike him down.)

But the people only wanted what they thought was the New Frontier—help from the Metropolis for the country. Help from a few of the people for most of the people. In Hoover's view, however, that was impossible. He was correct. The Metropolis is not a few of the people helping the rest of the people. The Metropolis is managers and directors ruling the people. In reality the New Frontier was simply the Metropolis as the center of the empire, lording it over us at home and abroad with increasing indifference (even contempt) for what Hoover understood as the principles of the system—and for Hoover's dream. If the Metropolis saves the country, it does so by changing what Hoover believed in as the people and the community into The Empire.

Hoover was against The Empire. That was the Quaker. Just Iowa-boy-Hoover-Quaker. Meaning that he Honest-to-God-and-to-the-people simply wanted us to exchange the things we create for the things we need. And to give of ourselves to each other in times of well-being as well as in times of crisis. If we did that, then there would be no government intervention and management in our honest exchange, we would remain masters of our lives, and we would create an American community.

So we come right down on it. The trouble with Hoover was that he believed. Not just in us. But in the very best in us.

To get straight on that is to understand the great strengths of his foreign policy along with his weaknesses during the Depression. The guiding axiom was to act, as a people, in ways that would build an international community. To be a good neighbor. "We have no hates; we wish no further possessions; we harbor no military threats." That meant, *ipso facto*, that he "absolutely disapproved" of the concept of the United States as Big Brother to the world.

Hoover was keenly aware that "a large part of the world had come to believe that they were in the presence of the birth of a new imperial power intent upon dominating the destinies and freedom of other people," and he recognized the necessity for nonimperial- and anti-imperial-action. The Quaker knew it was not enough simply to say that Dollar Diplomacy was "not a part of my conception of international relations."

First things first. Control the bankers. The government, he asserted bluntly, "has certain unavoidable political and moral responsibilities to guide and control such loans." "No nation should allow its citizens to loan money to foreign countries unless this money is to be devoted to productive enterprise." Otherwise the government would be drawn ever deeper into the maelstrom of intervention. That meant no loans to prop up Potemkin-like governments, no loans for military purposes, and none for "political adventure." And it meant no government underwriting because that "placed the risk on the taxpayer and not upon the private banker."

The financiers and their allies were too powerful, and Hoover could not win a clear victory in that battle. He needed help from the people which they never gave. But he blocked the bankers when and as he could, kept the issue before the public, and refused to be drawn into intervention. Thus, when he became President, he promptly published J. Reuben Clark's memorandum on the Monroe Doctrine, a document that President Calvin Coolidge had buried because it destroyed the grounds for using the policy as a sanction for such interventions. Thus he returned to the policy of recognizing Latin American governments without demanding that they satisfy U.S. criteria. And thus he withdrew the Marines from Nicaragua and Haiti, and refused to send them into Panama, Honduras, or Cuba.

Of course, all that principle poses a problem. If you cannot properly intervene for the bankers, neither can you intervene to reform the backward or to block the difficult and the bothersome. Once again the trouble with Hoover was his damn stubbornness about that dream. He was all the time trying to play it straight.

Hoover resolved the dilemma by cutting through to first principles on military policy. The armed forces of the United States had the one purpose of guaranteeing "that no foreign soldier will land on American soil". "To maintain forces less than that strength is to destroy national safety, to maintain greater forces is not only economic injury to our people but a threat against our neighbors and would be a righteous cause for ill will amongst them."

That meant that the Chinese had to meet the Japanese attack of 1931 with their own resources and will. The assault on Manchuria was of course "immoral" but "the United States has never set out to preserve peace among other nations by force" and Hoover was not about to begin. "These acts do not imperil the freedom of the American people, the economic or moral future of our people. I do not propose ever to sacrifice American life for anything short of this." To intervene in China, moreover, "would excite the suspicions of the whole world." And, finally, a sense of history: "No matter what Japan does in time they will not Japanify China and if they stay long enough the will be absorbed or expelled by the Chinese."

Reminds one of John Quincy Adams, "America goes not abroad in search of monsters to destroy. . . . She might become the dictatress of the world; she would no longer be the ruler of her own spirit."[6]

Herbert Clark and John Quincy: too bad they are gone. Spiro Agnew could spend the rest of his life chasing after them, screaming all the while that it was time to take care of those effete radical-liberal snobs who are undermining and destroying the nation and its rightful place in the world.

So we come back to what the man Julius Lester says: if we concentrate on destroying Hoover, then "ultimately we will destroy ourselves."

What I mean is that Gene Smith tells us that Hoover, in the depths of the hell of 1931, said that "what this country needs is a great poem. Something to lift people out of fear and selfishness."[7]

If you kill a Quaker engineer who came to understand that—and to believe in and to commit himself to that—than you have murdered yourself.●

WASTE WATER TREATMENT FINANCING—TIME FOR A CHANGE

● Mr. PELL. Mr. President, both houses of the Rhode Island General Assembly have passed resolutions asking Congress to support the passage of S. 1962, legislation I introduced to amend the Federal Water Pollution Control Act to revise the allotment formula for grants for construction of treatment works.

This legislation is designed to bring the funding more in line with clear anti-pollution priorities, to correct some inequities in funding distribution and to simplify the complex method of computing each State's share of the funds.

In my opinion, a clear definition of priorities within the funding formula is necessary to assure that the taxpayer's money is spent wisely on waste water treatment construction. My funding formula would not increase Federal spending for waste water treatment construction, but it would clearly define priorities for that construction.

The resolutions of the Rhode Island House and the Rhode Island Senate underscore the clear need to define these priorities and to provide adequate Federal assistance for waste water treatment construction where it is urgently needed.

Mr. President, I submit for the RECORD the text of the Rhode Island House resolution and the General Assembly joint resolution.

The material follows:

HOUSE RESOLUTION

Whereas, Senator Claiborne Pell has introduced Senate bill 1962 which amends the Federal Water Pollution Control Act to revise the allotment formula for grants for construction of treatment works; and

Whereas, This legislation is designed to bring the funding more in line with clear anti-pollution priorities, to correct some inequities in funding distribution and to simplify the complex method of computing each state's share of funds; and

Whereas, The passage of S–1962 would increase Rhode Island's share of federal funding for this program by as much as twenty-two million dollars ($22,000,000); and

Whereas, This increase would be as a result of the federal government changing its appropriation formula to reflect the very serious regional need for this increased appropriation; now, therefore, be it

Resolved, That this house of representatives of the state of Rhode Island and Providence Plantations hereby memorializes the congress of the United States to support Senator Claiborne Pell's senate bill 1962; and be it further

Resolved, That the secretary of state be and he hereby is authorized and directed to transmit a duly certified copy of this resolution to the Rhode Island delegation in the congress of the United States.

JOINT RESOLUTION

Whereas, Passage of Senate Bill 1962, entitled, An Act to Amend the Federal Water Pollution Act to Revise the Allotment Formula for Grants and Construction of Treatment Works, will increase from $17 million to $40 million the Rhode Island share of money available from the environmental protection agency; and

Whereas, The state of Rhode Island urgently needs to upgrade the capacity and efficiency of the existing sewage treatment facilities and storm sewer systems throughout the state because of the damage to coastal waters and to drinking water supplies already experienced from storm water runoff and concentrations of pollutants in soils, riverbeds, and Narragansett bay resulting from inadequate sewage and wastewater treatment; now, therefore be it

Resolved, That this general assembly of the state of Rhode Island and Providence Plantations hereby memorializes the congress of the United States to enact Senate Bill 1962, An Act to Amend the Federal Water Pollution Act to Revise the Allotment Formula for Grants and Construction of Treatment Works; and be it further

Resolved, That the secretary of state be and he hereby is authorized and directed to transmit duly certified copies of this resolution to the Rhode Island delegation in the Congress of the United States and to the Committee on the Environment and Public Works.●

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[6] 1821 Fourth of July Oration, Washington, D.C.

[7] Smith, *Ibid.*, p. 67.

THE SPINAL CORD REGENERATION RESEARCH ACT

● Mr. STEWART. Mr. President, last December I introduced S. 2098, the Spinal Cord Regeneration Research Act. My bill would simply require the National Institute for Neurological, Communicative Disorders, and Stroke (NCDS) to spend $16 million for spinal cord regeneration research in fiscal 1981. That amount is more than twice what we are currently spending on this type of research.

Spinal cord injury is the cause of paralysis in at least 200,000 Americans and costs the American people billions of dollars each year in medical expenses, lost wages, and Government benefit payments. At the same time recent breakthroughs in the area of spinal cord regeneration put us closer to finding a cure for spinal cord injury than we have ever been. Yet the officials at NCDS have failed to make the development of a cure for spinal cord injury a priority. Moreover, they have failed to take advantage of the research capabilities of our research community. This is reflected in the large numbers of Americans suffering from spinal cord injury related paralysis who seek treatment behind the iron curtain each year.

On May 1, President Carter announced that the Government will launch a major new effort to find a cure for spinal cord injury. In announcing this new initiative, the President recognized that spinal cord injury is a major cause of disability in this country. He also recognized the tremendous breakthroughs that have been made in this area in the past few years. The President's announcement was a welcome one to the hundreds of thousands of Americans who are paralyzed as a result of spinal cord injury. They now have hope that one day they and others like them might be restored as productive and fully functional members of our society.

I commend the President for his vision and compassion in initiating this new Federal effort to find a cure for spinal cord injury. The newly established Federal Interagency Task Force on Spinal Cord injury and the soon to be established President's Council on Spinal Cord Injury are important steps in the ultimate development of a cure for spinal cord injury. The Interagency Task Force on Spinal Cord Injury will provide the executive branch with the capability to develop and implement a national strategy for providing better care for spinal cord injured persons and to enhance current Federal research programs aimed at developing a cure for spinal cord injury.

I believe that it is now time for the Congress to recognize the significance of the problem of spinal cord injury. I am hopeful that the Senate Labor and Human Resources will hold hearings in the very near future on S. 2098. We have an obligation to all those who suffer from spinal cord injury to examine our research into a cure for spinal cord injury and to take steps required to hasten the day when we can cure spinal cord injury.●

SISTER VERONICA ANNE ARMAO

● Mr. JAVITS. Mr. President. Sister Veronica Anne Armao, director of Our Lady of Victory Infant Home, Lackawanna, N.Y., has celebrated her 65th birthday and 38 years of service to the home. She has touched the lives of more than 15,000 special children and their families. She has dedicated herself to working with children so profoundly retarded or handicapped that they cannot be adequately cared for in the home.

A special tribute was paid to Sister Veronica Anne by the Buffalo Courier Express and I would like to share this article with my colleagues in the Senate.

I therefore ask to have the following article printed in the RECORD.

The article follows:

INFANT HOME NOT "END OF LINE"

(By Rita Smith)

Some doctors think "it's the end of the line" when they send a severely handicapped child to Our Lady of Victory Infant Home. "But it's not so," says Sister Veronica Anne Armao, the perennially optimistic silver-haired nun who is director of children's services at the Lackawanna home.

Her broad, warm-hearted smile masks the steely determination that helps hopeless situations improve. "I've seen it happen," she says.

"We have had children sent here by doctors who thought it was the end of the children—such as hydrocephalic or other brain-damaged children—and sometimes they have progressed when there seemed to be no hope.

"As soon as we see that spark of hope, we're right there to develop it."

She explains, "To see our children develop, even though it is very slowly, is very rewarding. To see a child who hasn't ever smiled, to see that child smile for the first time . . . to see a child who is 2 years old roll over for the first time . . . things like this make us very happy."

"We don't think of that child's total handicap. You mark the bright spots when they happen and rejoice."

Sister Veronica treasures such milestones in her 38 years of service at the home. She's touched the lives of more than 15,000 special children and their families.

"One day we thought we would count them," she says. "We went through all the records and we came up with more than 15,000."

Tuesday was a very special occasion for the nun, who is a member of the Sisters of St. Joseph. Our Lady of Victory Infant Home's staff held Sister Veronica Anne Day with a Mass and open house to mark her 38th year at the home.

Sister Veronica also turned 65 on Tuesday. It was definitely a birthday and not a retirement party for her.

"I have no intention of retiring," she says in high spirits. "I'd like to work as long as the Lord gives me the health to continue."

She says she would miss her children too much to leave.

She's never missed having children of her own because, she comments, I've considered all of the ones I've looked after as mine."

Nor has she ever given a thought to quitting the religious order she joined almost 44 years ago in Buffalo. She says simply, "I've been too happy."

Sister Veronica is also a child psychologist. She does the psychological testing of all the 110 youngsters presently under the home's supervision. This figure includes 45 children, so profoundly retarded or handicapped they cannot be adequately cared for in their own homes.

The others are the babies to be adopted, born of unwed mothers, and children with emotional and behavior problems who are brought into the home during the day for schooling and treatment.

Compassion softens Sister Veronica's words when she speaks of the 45 little ones who will spend their lives in the institution. "We know they have broken minds, broken bodies but the blessing is the child doesn't realize it and can be happy.

"We benefit from his handicap—he makes us a more loving person."

A plaque was placed in the main entrance of the Ridge Road home on Tuesday. On it is a picture of Sister Veronica feeding a helpless child.

Is also has a short story describing a typical busy day in the life of this nun who was born in Italy. The story ends with her frequent prayer, "Tomorrow Lord, help me to get organized."

Part of the secret of Sister Veronica's deep feeling for "her" children is that she knows what it is like for a youngster to grow up in an institution. When she was 9 years old her father died, and her mother had to place her in an orphan home because she had to go to work and couldn't take care of her.

"I grew up in St. Vincent's Orphan Home in Troy," Sister Veronica says.●

PRELIMINARY NOTIFICATION OF PROPOSED ARMS SALES

● Mr. PELL. Mr. President, Section 36 (b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million, or in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that four such notifications were received on May 15, May 16, and May 19, 1980.

Interested Senators may inquire as to the details of these preliminary notifications at the offices of the Committee on Foreign Relations, room S–116 in the Capitol.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., May 15, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., May 15, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., May 16, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., May 19, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.●

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. Mr. President, in the meantime, I ask unanimous consent that the Senate stand recessed awaiting the call of the Chair and that if the Chair is called upon to recognize a Senator, upon the completion of the Senator's statement, the Chair put the Senate back into recess awaiting the call of the Chair.

There being no objection, at 2:29 p.m., the Senate took a recess, subject to the call of the Chair.

The Senate reassembled at 3:30 p.m., when called to order by the Presiding Officer (Mr. MITCHELL).

FEDERAL TRADE COMMISSION AMENDMENTS—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the hour of 3:30 having arrived, the Senate will now vote on the adoption of the conference report to H.R. 2313, the Federal Trade Commission Improvements Act.

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 Delaware (Mr. BIDEN), the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I further announce that the Senator from Washington (Mr. MAGNUSON) is absent on official business.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I also announce that the Senator from Illinois (Mr. PERCY) is absent on official business.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) and the Senator from Illinois (Mr. PERCY) would each vote "yea."

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

The vote was announced—yeas 74, nays 15, as follows:

[Rollcall Vote No. 152 Leg.]

YEAS—74

Baucus	Exon	Nunn
Bayh	Ford	Pell
Bellmon	Glenn	Pressler
Bentsen	Hart	Proxmire
Boren	Heflin	Pryor
Boschwitz	Heinz	Randolph
Bradley	Hollings	Riegle
Bumpers	Huddleston	Roth
Burdick	Inouye	Sarbanes
Byrd, Harry F., Jr.	Jackson	Sasser
Byrd, Robert C.	Javits	Schmitt
Cannon	Jepsen	Schweiker
Chafee	Johnston	Stafford
Chiles	Kassebaum	Stennis
Cochran	Leahy	Stevens
Cohen	Levin	Stevenson
Cranston	Long	Stewart
Culver	Lugar	Stone
Danforth	Mathias	Talmadge
DeConcini	Matsunaga	Tsongas
Dole	Melcher	Wallop
Domenici	Mitchell	Warner
Durenberger	Morgan	Weicker
Eagleton	Moynihan	Williams
	Nelson	Zorinsky

NAYS—15

Armstrong	Helms	Ribicoff
Durkin	Humphrey	Simpson
Garn	Laxalt	Thurmond
Hatch	McClure	Tower
Hayakawa	Metzenbaum	Young

NOT VOTING—11

Baker	Gravel	McGovern
Biden	Hatfield	Packwood
Church	Kennedy	Percy
Goldwater	Magnuson	

So the conference report was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

HOUSE CONCURRENT RESOLUTION 340

Mr. FORD. Mr. President, I ask the Chair to lay before the Senate a message from the House on House Concurrent Resolution 340, corrections in the enrollment of H.R. 2313.

The PRESIDING OFFICER (Mr. MITCHELL) laid before the Senate a message from the House of Representatives directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 2313.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the concurrent resolution (H. Con. Res. 340) was considered and agreed to.

Mr. FORD. I move to reconsider the vote, Mr. President.

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

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes today. There will be rollcall votes tomorrow. Beginning at 11 a.m.. there will be several rollcall votes.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business not to extend beyond 1 hour, and that Senators may speak therein up to 10 minutes each.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FLEECE OF THE MONTH

Mr. PROXMIRE. Mr. President, May Fleece of the Month goes to the new Department of Education which in spite of promises has more personnel and spends more for both overhead and program costs than before it was created.

I am giving my Fleece of the Month Award for May to the new Department of Education for fattening its staff and beefing up its budget after promising that, if it were created, it would include no more people and would cost no more than previously devoted to education programs. The facts are that by September 30, 1980, on a comparable basis, the De-

partment will include 157 more people than a year ago and 1,121 more people than 2 years ago. Personnel compensation and other management costs will explode. Between fiscal years 1979 and 1980 budget authority for its programs will go up by $1 billion and outlays will rise by $2 billion.

So much for the promises of no more costs and no more people.

Technically, the Department will argue that it has kept its promise. But the public does not realize what the small print says or how the sleights of hand and legerdemain actually work. The Department has, in fact, outdone Dicken's Artful Dodger. Here is the long, sad story.

PROMISES—PROMISES

From the time the first bill to create the Department passed the Senate in September 1978 until the Department officially came into business on May 5, 1980, there were repeated promises of no new jobs and no new costs. For example:

The Senate report accompanying the original Senate bill in 1978 stated that—

Staff additions outside the executive positions newly authorized in the bill (16 permanent and 15 transitional) to carry out the administrative functions of the new Departments are not anticipated.

In September 1978, the Roth amendment to the original Senate bill placed a staff ceiling on the Department, allowing only 1-percent leeway from then current staff estimates. There were 6,460 full and part-time employees at that time.

On April 5, 1979, the Senate manager of the new Senate bill said the Department "will not result in any new costs. The Office of Management and Budget estimates that 350 to 400 positions will be eliminated by the organization."

In March of 1979, OMB Director McIntyre testified:

The Department will include no more people and will cost no more than is now devoted to education programs. In fact, 350 to 450 positions will be eliminated, saving $15 to $19 million. Creation of the Department will require no new funds.

On June 7, 1979, the House manager said: "Far from adding to the Federal bureaucracy, the new Department will result in a smaller and simpler management structure" and repeated the 350 to 450 estimate of jobs to be eliminated.

Because of these pledges, Congress wrote into the law a provision which stated:

Not later than the end of the first fiscal year beginning after the effective date of this Act, the number of full-time equivalent personnel positions available for performing functions transferred to the Secretary or the Department by this Act shall be reduced by 500.

Therein lies the catch. The Department interprets this language to mean that the 500 reduction should be from the number on board on September 30, 1980, estimated to be 7,581. This figure is 1,121 more persons than were on board on September 30, 1978, in the agencies which made up the new Department. Thus, even if the Department achieves its reduction of 500 by September 30, 1981, it will have 621 more people than when the original Senate bill and the early promises were made.

MORE PEOPLE

After marching up the hill, the Department of Education will march only part way down. They will take two steps forward and one step back. Or as Rip Van Winkle, when he was trying to stay on the wagon, would say before taking a drink, "We won't count this one."

The following table may help make this clear:

TABLE 1.—PERSONNEL AT THE DEPARTMENT OF EDUCATION OR COMPARABLE AGENCIES AT END OF FISCAL YEARS

Date	Full-time permanent	Other	Total
September 30, 1978	5,551	909	6,460
September 30, 1979	5,943	1,481	7,424
September 30, 1980 (estimated)	6,120	1,461	7,581
September 30, 1981 (estimated)	6,032	1,049	7,081

Note that the big cuts are proposed for the temporary, not the permanent positions.

Source: Department of Education, May 1980.

In their official reply to questions raised in the Senate Appropriations Committee about these increases, the new Department of Education, in May 1980, attempted to blame the increase in full-time permanent employment from fiscal year 1978 to fiscal year 1979 on the Congress. They said it "* * * results from the fact that Congress approved a substantial increase in positions for the Office of Civil Rights to eliminate its case backlog."

What they failed to say was that the administration itself made the request for 898 full-time permanent positions and that Congress cut that back and allowed a total increase of only 418.

Further, in the fiscal year 1981 budget justification of the new Department (page 348), they state that—

At the beginning of fiscal year 1980, the backlog of (civil rights) complaints filed in these areas was largely eliminated, enabling the Office for Civil Rights to direct additional resources to the areas of compliance reviews and technical assistance, while maintaining a strong complaint investigation program.

What this means is that, while the backlog was said to be eliminated, the Department kept the people. Note also that the backlog was eliminated with less than half the people the Department asked for.

But whether it was the fault of Congress or the administration, the fact is that the bureaucracy now in the new Department of Education, like Topsy, just grew and grew and grew.

MORE OVERHEAD COSTS

With respect to the OMB promise that the Department "* * * will cost no more than is now devoted to education programs", OMB estimates that between fiscal years 1979 and 1981:

Personnel compensation will rise from $113 to $163 million, or by $50 million and 44 percent.

Contractual services, including travel, utilities, printing, and supplies, go up from $342 to $518 million, or by $176 million or 51 percent.

The budget for capital assets rises from $634 million to $932 million, or by $298 million or 47 percent.

PROGRAMS COST MORE

In addition, the overall costs for the Department, including the cost of education programs, grows as well. While there are no comparable figures for fiscal year 1978, the latest official figures, including President Carter's revised budget estimates, for budget authority (BA) and outlays (O) are as follows:

Fiscal year	Budget authority	Outlays
1979	$12.6 b.	$10.9
1980	13.6	12.9
1981	15.1	13.1
1982	16.2	15.3
1983	17.6	16.8

Source: Fiscal Year 1981 Budget Revisions, March 1980. Executive Office of the President. Office of Management and Budget. Pages 67, 69.

No matter how one slices it, even if the personnel cuts promised for fiscal year 1981 are carried out, the new Department of Education will have more people, spend more for overhead costs, and spend far more for education programs than when it was proposed.

While excuses will be made, explanations trotted out, and the fine print brought to the fore to prove that the promise that "The Department will include no more people and will cost no more than is now devoted to education programs," has been kept, the hard truth is that the creation of the Department of Education is a saga showing how bureaucracy grows, costs increase, and promises are broken.

For this display of bureaucratic razzle-dazzle, the Department of Education wins the Golden Fleece of the Month Award for May.

THE HOLOCAUST: "THE FINAL SOLUTION"

Mr. PROXMIRE. Mr. President, the destruction of the Jews of Europe by the Nazi regime was an unprecedented assault upon humanity. The Nazi campaign of genocide was engaged in with such ferocity and hate that there was no doubt as to its purpose. It was to be Hitler's final solution for the Jews and other allegedly undesirable peoples of Europe.

How did the world first learn of this hideous campaign? It has been known for some time that the first authentic information came from a German industrialist who visited Switzerland in 1942. The first transmission of his report ran as follows:

Received alarming report that in Fuehrer's headquarters plan discussed and under consideration according to which all Jews in countries occupied or controlled by Germany numbering 3½–4 million should after deportation and concentration in East be exterminated at one blow to resolve once and for all Jewish question in Europe.

Walter Laqueur of Georgetown University recently wrote an intriguing

article on this incident called "The Mysterious Messenger and the Final Solution." Though Laqueur sought to uncover the identity of the mysterious figure, his search proved to be inconclusive. The messenger remains a mystery, a historical curiosity.

Nonetheless, Laqueur draws some important conclusions from his search. First, there were a number of sources from which came reports of Hitler's plans, indicating that knowledge of the extermination campaign was more widespread than previously thought. Second, Laqueur points out that, at the time of the report in 1942, Hitler's plans were not just under consideration but were actually being carried out. We now know that the murders began not just on arrival in the extermination camps, but long before—during the inhuman deportations, through forced labor, starvation, action by special murder squads, and in countless other crimes. We now know that, at the time of the first authentic reports, a monstrous force was already loose in the world and the world had failed to act until it was too late.

Now, more than 30 years after the adoption of the Genocide Convention by the United States, the Senate has yet to act, and, with each passing year, it becomes more difficult to do so. Yet this very fact makes it imperative that we do not succumb to the dangers of apathy and complacency. We must protect the future for the young and those yet unborn. We must ratify the Genocide Convention.

QUORUM CALL

Mr. PROXMIRE. 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.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the following nominations on the Executive Calendar, under the following headings: National Institute of Education, and under the Judiciary, all with the exception of Calendar Orders Nos. 138 and 139.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object, does that include Calendar No. 736 on the first page?

Mr. ROBERT C. BYRD. No. It only includes, beginning on page 2, National Institute of Education, and under New Reports, the Judiciary, with the exception of Calendar Orders Nos. 138 and 139.

Mr. STEVENS. There is no objection.

Mr. ROBERT C. BYRD. I thank the distinguished acting minority leader.

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

The Senate proceeded to the consideration of executive business.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominees be confirmed en bloc, that the motions to reconsider en bloc be laid on the table, and that the President be notified of the confirmation of the nominees.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER (Mr. STEWART). Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

NATIONAL INSTITUTE OF EDUCATION

P. Michael Timpane, of Virginia, to be Director of the National Institute of Education.

THE JUDICIARY

Samuel James Ervin III, of North Carolina, to be U.S. circuit judge for the 4th circuit.

William Cameron Canby Jr., of Arizona, to be U.S. circuit judge for the 9th circuit.

Raul A. Ramirez, of California, to be U.S. district judge for the eastern district of California.

John David Holschuh, of Ohio, to be U.S. district judge for the southern district of Ohio.

Ann Aldrich, of Ohio to be U.S. district judge for the northern district of Ohio.

George Washington White, of Ohio, to be U.S. district judge for the northern district of Ohio.

Charles L. Hardy, of Arizona, to be U.S. district judge for the district of Arizona.

Milton Irving Shadur, of Illinois, to be U.S. district judge for the northern district of Illinois.

Frank J. Polozola, of Louisiana, to be U.S. district judge for the middle district of Louisiana.

Clyde S. Cahill, Jr., of Missouri, to be U.S. district judge for the eastern district of Missouri.

Patrick F. Kelly, of Kansas, to be U.S. district judge for the district of Kansas.

W. Earl Britt, of North Carolina, to be U.S. district judge for the eastern district of North Carolina.

Walter Herbert Rice, of Ohio, to be U.S. district judge for the southern district of Ohio.

S. Arthur Spiegel, of Ohio, to be U.S. district judge for the southern district of Ohio.

George Ross Anderson, Jr., South Carolina, to be U.S. district judge for the district of South Carolina.

Mr. GLENN. Mr. President, from Ohio, we have five nominees on this list, all outstanding people that have been reviewed by our Judiciary Review Commission, and recommended.

We are sure they will be very worthy Federal judges: John David Holschuh, Ann Aldrich, George Washington White, Walter Herbert Rice, and S. Arthur Spiegel, all of Ohio, some in our southern district and some in our northern district.

It gives me great pleasure to see them confirmed by the Senate. I appreciate the majority leader's expediting the consideration of these nominations this afternoon. We look forward to see them getting installed on the Federal bench. We know they will do a great job.

Mr. HELMS. Mr. President, I, too, am pleased with the confirmation of the nominees to the Judiciary. Two of the distinguished nominees are from North Carolina; Samuel James Ervin III, who is the son of our former distinguished colleague, and W. Earl Britt.

Both Judge Ervin and Judge Britt will serve with distinction.

Mr. President, I had the honor of joining Senator MORGAN when presenting them to the Judiciary Committee. I know both will serve with the highest of distinction.

I congratulate them and I congratulate the people of North Carolina for having them serve on the Federal bench.

Mr. CRANSTON. Mr. President, the Senate today has acted to advise and consent to the nomination of Sacramento Municipal Court Judge Raul Ramirez to be U.S. district judge for the Eastern District of California.

This action will be a significant event because Judge Ramirez will be the first Chicano to sit on the Federal bench in California.

Judge Ramirez is representative of several million members of the Hispanic community who live and work in California, but for whom participation in California government is relatively recent.

I am particularly pleased at his confirmation today because the selection and nomination of Judge Ramirez was accomplished as a result of the work of the California Federal Judicial Selection Commission established by myself, Senator HAYAKAWA and the California State Bar Association.

Judge Ramirez' selection by the Commission demonstrates that an open system for selecting candidates for the Federal judiciary can bring to the forefront the names of truly capable and outstanding minority community members who will do honor to the bench by their presence as members of the Federal judiciary.

Raul Ramirez is such an individual who will enhance the Federal judiciary.

He brings to the Federal bench a strong legal background and a keen understanding of the Eastern District of California in which he will be sitting and judging cases.

His nomination is in keeping with our long tradition of selecting as Federal judges local residents who are knowledgeable about local conditions, a tradition that has persisted since the time the first Congress confirmed President George Washington's appointments to the Federal courts.

The purpose of this tradition and of the Senate's insistence that local residents be appointed to the Federal bench is to protect against the establishment of a class of mandarin civil servants sent as emissaries from the central government to mete out Federal justice to the States.

It has been in keeping with this policy that Senators have developed a strong role in selecting the Federal judiciary. And it is in keeping with this policy that Senators traditionally have looked to individuals who are representative of the interests, the people, and the communities which are to be served by the Federal judiciary sitting in the local district.

Raul Ramirez will bring to the Federal judiciary in California his presence as representative of the Hispanic community of the Eastern District which has a

long history and tradition in California. Its contributions to the development and growth of the State are notable and continuous.

Raul Ramirez will be another in a distinguished line of individuals who ably serve the community, the State, and the Nation.

Finally, Mr. President, I wish to acknowledge to my colleagues the outstanding cooperation of my distinguished colleague from California (Mr. HAYAKAWA) in making possible the fine work of the California Judicial Selection Commission. In addition, I wish to congratulate the California State Bar for their cooperation and to express my appreciation to the members of the Commission who have volunteered many hours of time to review and screen applicants for appointment to the Federal judiciary and to the posts of U.S. attorney.

Mr. HOLLINGS. Mr. President, in connection with the action the Senate has just taken in confirming G. Ross Anderson to be U.S. district judge for the district of South Carolina, I ask unanimous consent to have printed in the RECORD the statement I made on May 1 when I introduced him to the Committee on the Judiciary.

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

STATEMENT BY SENATOR ERNEST F. HOLLINGS

Mr. Chairman, it is with great pleasure that I introduce to the Senate Mr. G. Ross Anderson, Esquire, who has been nominated by the President for the District Court in South Carolina.

If approved by the Senate, Mr. Anderson will take the seat held by Judge Robert J. Martin who has assumed senior status. Judge Martin's career has been significant and important. He has provided great legal insight and has made many, many well conceived and properly framed decisions. Judge Martin's daily presence in the district will be sorely missed and his absence makes the need for a quality appointee even more important. Ross Anderson is that person and I am sure that, upon examination, the Senate will agree with that point.

G. Ross Anderson was born on January 29, 1929 in Anderson County, South Carolina. He is a graduate of Southeastern University where he received his Bachelor of Commercial Science in 1949. He then attended George Washington University, leaving to enter military service in the Air Force and served as a Staff Sergeant.

He entered law school in 1952 at the University of South Carolina Law School, where he was the president of the student body and assistant editor of the U.S.C. Law Review. After graduating second in his class, he was awarded his Bachelor of Laws degree in 1954. After his admission to the Bar in December of 1954, he began to practice law in Anderson, South Carolina and has continued to do so until the present where he has distinguished himself as an attorney with great ability, knowledge and skill.

Mr. Anderson is a member of the American Bar Association, the South Carolina Bar Association, the Association of Trial Lawyers of America, and a Fellow of the International Academy of Trial Lawyers where he serves on the Board of Directors and the Admissions Committee.

He is admitted to practice before all South Carolina courts; the United States Court of Appeals, 4th Circuit; the United States District Court of South Carolina; the United States Tax Court; and the United States Supreme Court.

He also serves on the Salvation Army Board of Directors, the Financial Board of Anderson College, is a member and Vice-President of the Board of Directors of the Anderson County Area Chamber of Commerce, and is on the Financial Advisory Board of the First Baptist Church. He is married to the former Dorothy Downie and has one son.

The selection process used to make this recommendation included the use of the Merit Selection Commission which was assembled to process the applications for the three newly created judgeships of last year. All of the applicants from that 1979 review process were considered for the Martin vacancy and additional applications were received for review. It seemed evident to me that Mr. Anderson was eminently qualified and I talked personally with members of the Commission for their input. To a person, the Commission endorsed Mr. Anderson and they join me today in introducing to you the person we feel the best qualified to fill this vacancy.

I think it should be clear that the Commission's unanimous endorsement of Ross Anderson indicates the kind of man he is and the kind of judge he would be. He has sound personal values, he possesses a superior legal judgment, and he is a fair and decent man. Few in my state have more respect or are held in higher esteem than Mr. Anderson, and it is with personal pleasure that I bring his name to this body because I am completely confident that if confirmed he will be a superior judge in the District Court system.

Mr. ROBERT C. BYRD. Mr. President, I believe the nominees have been confirmed, the motions to reconsider laid on the table, and the President notified; am I correct in that?

The PRESIDING OFFICER. The Senator is correct.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

ORDER FOR RECOGNITION OF SENATORS ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders have been recognized under the standing order, that Messrs. STENNIS, EAGLETON, CRANSTON, and ROBERT C. BYRD, each be recognized for not to exceed 15 minutes.

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

ORDER FOR RECESS TO 9:45 A.M. TOMORROW

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 9:45 a.m. tomorrow morning.

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

ORDER OF BUSINESS ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the orders for the recognition of Senators on tomorrow, if there be any time remaining between that hour and the hour of 11 o'clock, that such time be utilized for the transaction of routine morning business, and I ask that Senators may speak therein up to 1 minute each.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR CONSIDERATION OF THE INTERNATIONAL NATURAL RUBBER AGREEMENT OF 1979

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, as in executive session, that following the disposition of Calendar Order No. 757, the civil rights authorization on tomorrow, the Senate go into executive session for the purpose of considering Calendar Order No. 6 on the Executive Calendar under Treaties, Executive D, 96th Congress, 2d Session, the International Natural Rubber Agreement of 1979; that the treaty be considered as having passed through it various parliamentary stages up to and including the presentation of the resolution of ratification; that there be 10 minutes equally divided for debate, Mr. SARBANES and Mr. JAVITS to control the time, after which time has expired or been yielded back, the Senate proceed, without further debate, amendment, motion, or point of order to vote on Executive D; that upon the expiration of that vote, there may be no time on any motion to reconsider; and that upon the full disposition of Executive D, 96th Congress, 2d Session, the Senate immediately, and without any further debate, motion, or point of order, return to legislative session.

Mr. STEVENS. I do not object, Mr. President.

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

Mr. ROBERT C. BYRD. Mr. President, that will be a rollcall vote. The yeas and nays have not been ordered yet, but it will be a rollcall vote.

THE INTERNATIONAL NATURAL RUBBER AGREEMENT OF 1979; EX. D—96TH CONGRESS, 2D SESSION

The PRESIDING OFFICER. Without objection the treaty, Executive D, 96th Congress, 2d Session, will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the International Natural Rubber Agreement, 1979, together with three annexes relating

thereto, signed on behalf of the Government of the United States of America at the United Nations Headquarters on January 8, 1980 (Ex. D, Ninety-sixth Congress, second session).

SARA ANN STEVENS COVICH

Mr. STEVENS. Mr. President, I do want to thank my good friend from West Virginia for the very kind remarks he made concerning my new granddaughter. She has given me exactly the experience that he said I would have. I am delighted to have had the opportunity to visit her. I think it demonstrates, again, my position on not trying to make certain that you have a 100-percent voting record, because I certainly would have broken that record to go see my granddaughter, had I maintained one previously.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator. I know he will be getting back to see that granddaughter often.

EXTENSION OF TIME TO FILE REPORTS, STATEMENTS, BILLS, AND RESOLUTIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the committees may have until 6 p.m. to file reports, conference reports, and that Senators may have until 6 p.m. to insert statements in the RECORD, bills, and resolutions.

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

ORDER FOR ROLLCALL VOTES TOMORROW

Mr. ROBERT C. BYRD. Mr. President, there will be at least four rollcall votes tomorrow. Three of them will be back-to-back, beginning at 11 a.m.

I ask unanimous consent that the two rollcall votes that will be back-to-back on tomorrow be 10-minute rollcall votes each.

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

Mr. STEVENS. It is 15, and 10 and 10?

Mr. ROBERT C. BYRD. That is correct.

RECESS UNTIL 9:45 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand recessed until 9:45 a.m. tomorrow.

The motion was agreed to; and, at 4:47 p.m., the Senate recessed until Thursday, May 22, 1980, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate May 21, 1980:

COMMISSION ON CIVIL RIGHTS

Blandina Cárdenas Ramirez, of Texas, to be a Member of the Commission on Civil Rights, vice Robert S. Rankin, deceased.

IN THE AIR FORCE

The following officers for appointment in the Reserve of the Air Force to the grade indicated, under the provisions of chapters 35, 831, and 837, title 10 United States Code:

To be major general

Brig. Gen. Robert J. Collins, xxx-xx-xxxx FG, Air National Guard of the United States.

Brig. Gen. Grady L. Patterson, Jr., 251–22–5089FG, Air National Guard of the United States.

To be brigadier general

Col. Justin L. Berger, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. George J. Dowd, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Ralph E. Leonard, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Dan C. Mills, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Robert H. Neitz, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. William H. Neuens, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Glenn W. Osgood, Jr., xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Raymond V. Palmer, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Henry C. Smyth, Jr., xxx-xx-xxxx FG, Air National Guard of the United States.

Col. John H. Stennis, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Paul M. Thompson, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Donald J. Tressler, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Thomas J. Turnbull, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Herbert L. Wassell, Jr., xxx-xx-xxxx FG, Air National Guard of the United States.

Col. John A. Wilson III, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Russell A. Witt, xxx-xx-xxxx FG, Air National Guard of the United States.

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force:

MEDICAL CORPS

To be major

Ngo, Santa C., xxx-xx-xxxx.

To be captain

Wohlrab, Eric P., xxx-xx-xxxx.

DENTAL CORPS

To be first lieutenant

Barnhurst, Kenneth, xxx-xx-xxxx.

The following persons for appointment as Reserve of the Air Force, in grade indicated, under the provisions of section 593, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated.

MEDICAL CORPS

To be colonel

Ferre, George A., xxx-xx-xxxx.

To be lieutenant colonel

Bergon, Enrique, xxx-xx-xxxx.
Biener, Robert S., xxx-xx-xxxx.
Boyle, Desmond G., xxx-xx-xxxx.
Burns, Frank M., xxx-xx-xxxx.
Derick, Dale E., xxx-xx-xxxx.
Fox, James M., xxx-xx-xxxx.
Hoffman, Gerhard H., xxx-xx-xxxx.
Hoogerland, David L., xxx-xx-xxxx.
Jansen, George A., xxx-xx-xxxx.
Maeser, Sherwin M., xxx-xx-xxxx.
Marquart, Chris D., xxx-xx-xxxx.
Perry, Robert L., xxx-xx-xxxx.
Potts, Ronald S., xxx-xx-xxxx.
Radomski, Theodore J., xxx-xx-xxxx.
Reitnauer, John S., xxx-xx-xxxx.
Shamiyeh, Samir B., xxx-xx-xxxx.
Sickinger, Glen H., xxx-xx-xxxx.
Smith, James A., xxx-xx-xxxx.

DENTAL CORPS

To be lieutenant colonel

Deemer, James P., xxx-xx-xxxx.

The following persons for appointment as Reserve of the Air Force (ANGUS) in the grade indicated, under the provisions of sections 593 and 8351, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated.

MEDICAL CORPS

To be lieutenant colonel

Muntz, Keith S., xxx-xx-xxxx.
Sandstrom, Roy H., xxx-xx-xxxx.
Sheffield, James A., xxx-xx-xxxx.
Williams, Ellen S., xxx-xx-xxxx.

The following officer for promotion in the Regular Air Force, under the provisions of chapter 835, title 10, United States Code, as amended. Officer is subject to physical examination required by law.

LINE OF THE AIR FORCE

Captain to major

Trabitz, Eugene L., xxx-xx-xxxx.

The following officer for promotion in the Air Force Reserve, under the provisions of sections 593 and 8371, title 10, United States Code. SAFCB 79–02843.

LINE OF THE AIR FORCE

Lieutenant colonel to colonel

James, Robert D., xxx-xx-xxxx.

The following officers for promotion in the Air Force Reserve, under the provisions of sections 593 and 8376, title 10, United States Code.

MEDICAL CORPS

Lieutenant colonel to colonel

Anderson, John A., xxx-xx-xxxx.
Baker, Mason R., xxx-xx-xxxx.
Delcampo, Enrique J., xxx-xx-xxxx.
Lavarreda, Carlos A., xxx-xx-xxxx.
Lawrence, Mills E., III, xxx-xx-xxxx.
Lyons, James T., xxx-xx-xxxx.
Mays, Joseph L., xxx-xx-xxxx.
McGovern, Edward L., xxx-xx-xxxx.
Mintek, Victor J., xxx-xx-xxxx.
Nitzberg, Benjamin W., xxx-xx-xxxx.
Pavlik, Kenneth K., xxx-xx-xxxx.
Rosen, Paul R., xxx-xx-xxxx.
Wisehart, Willard J., xxx-xx-xxxx.

LINE OF THE AIR FORCE

Major to lieutenant colonel

Bolick, Carl A., Jr., xxx-xx-xxxx.
Claytor, Richard L., xxx-xx-xxxx.
Cutler, Willard M., Jr., xxx-xx-xxxx.
Frausto, Julio, Jr., xxx-xx-xxxx.
Frye, Donald E., xxx-xx-xxxx.
Gibson, William H., xxx-xx-xxxx.
Grace, Dennis C., xxx-xx-xxxx.
Harris, John H., III, xxx-xx-xxxx.
Hurlbut, Edmund W., xxx-xx-xxxx.
Johnson, Thomas R., xxx-xx-xxxx.
King, Wayne D., xxx-xx-xxxx.
Laslo, Alexander J., xxx-xx-xxxx.
McGuire, George G., xxx-xx-xxxx.
Miller, James J., xxx-xx-xxxx.
Nevin, Richard, xxx-xx-xxxx.
Pavone, John W., Jr., xxx-xx-xxxx.
Payne, Kenneth L., xxx-xx-xxxx.
Pearce, James P., xxx-xx-xxxx.
Peterson, Richard W., xxx-xx-xxxx.
Redman, James S., xxx-xx-xxxx.
Samuels, Lewis M., xxx-xx-xxxx.
Schlegel, John B., xxx-xx-xxxx.
Schowalter, Henry N., xxx-xx-xxxx.
Sidwill, David A., xxx-xx-xxxx.
Simpson, Harold J., xxx-xx-xxxx.
Swinarsky, Gerald, xxx-xx-xxxx.
Tisdale, David W., xxx-xx-xxxx.
Wade, William E., xxx-xx-xxxx.
Wadell, James A., xxx-xx-xxxx.

CHAPLAIN CORPS

Major to lieutenant colonel

Andrews, Francis G., xxx-xx-xxxx.
Bienvenu, Kenneth A., xxx-xx-xxxx.
Gasparovic, Eugene C., xxx-xx-xxxx.
Pryor, George R., xxx-xx-xxxx.
Steen, Raymond A., xxx-xx-xxxx.

MEDICAL CORPS

Ahlschier, Allan D., [redacted].
Astorga, Alex M., [redacted].
Bailey, George O., [redacted].
Caven, Robert E., [redacted].
Perocieraguirre, Camille, [redacted].
Roca, German, [redacted].
Slack, Robert G., [redacted]

NURSE CORPS

Blanchard, Kay L., [redacted].
Lofberg, Maureen, [redacted].
Rigopoulou, Helen, [redacted].
Ugenas, Aldonna J., [redacted].

The following-named officer for promotion in the U.S. Air Force, under the provision of chapter 839, title 10, United States Code, as amended.

LINE OF THE AIR FORCE

Major to lieutenant colonel

Kissner, George G., [redacted].

The following Air Force officer for appointment as permanent professor, U.S. Air Force Academy, under the provisions of section 9333(b), title 10, United States Code.

May, John T., [redacted].

CONFIRMATIONS

Executive nominations confirmed by the Senate May 21, 1980:

NATIONAL INSTITUTE OF EDUCATION

P. Michael Timpane, of Virginia, to be Director of the National Institute of Education.

The above nomination as approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

THE JUDICIARY

Samuel James Ervin III, of North Carolina, to be U.S. circuit judge for the fourth circuit.

William Cameron Canby, Jr., of Arizona, to be U.S. circuit judge for the ninth circuit.

Raul A. Ramirez, of California, to be U.S. district judge for the eastern district of California.

John David Holschuh, of Ohio, to be U.S. district judge for the southern district of Ohio.

Ann Aldrich, of Ohio, to be U.S. district judge for the northern district of Ohio.

George Washington White, of Ohio, to be U.S. district judge for the northern district of Ohio.

Charles L. Hardy, of Arizona, to be U.S. district judge for the district of Arizona.

Milton Irving Shadur, of Illinois, to be U.S. district judge for the northern district of Illinois.

Frank J. Polozola, of Louisiana, to be U.S. district judge for the middle district of Louisiana.

Clyde S. Cahill, Jr., of Missouri, to be U.S. district judge for the eastern district of Missouri.

Patrick F. Kelly, of Kansas, to be U.S. district judge for the district of Kansas.

W. Earl Britt, of North Carolina, to be U.S. district judge for the eastern district of North Carolina.

Walter Herbert Rice, of Ohio, to be U.S. district judge for the southern district of Ohio.

S. Arthur Spiegel, of Ohio, to be U.S. district judge for the southern district of Ohio.

George Ross Anderson, Jr., of South Carolina, to be U.S. district judge for the district of South Carolina.