SENATE—*Friday, October 7, 1983*

(Legislative day of Monday, October 3, 1983)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Father in Heaven, we remember in silence the family of Noel Coffey, one of our doorkeepers, who lost his son, and ask Thy blessing and peace for them.

Father in Heaven, we thank Thee for our families. Help all of us to be sensitive to the sacrifices which spouses and children must make so that Senators and all Senate staffs can devote themselves to the demanding tasks of public service.

May the October recess be a time when families have opportunities to be together in ways that will bring healing and reconciliation where there is estrangement and alienation and during which relationships between spouses, parents, and children will be deepened and strengthened. Enable Senators and staffs to accomplish all the work which awaits them in the recess without sacrificing family time.

Protect those who travel, keep them healthy and whole, and return them to their duties refreshed. We pray this in the name of the Lord who taught the sanctity of marriage and the priority of the family. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SENATE SCHEDULE

Mr. BAKER. Mr. President, as I indicated last evening near the end of the session, I hope we can finish the farm bill today, and I think we can. I am committed then to try to get to the second farm bill, the so-called target price bill, after disposing of the farm bill. I say in all candor that I think it is unlikely I will be able to. I may not be able to reach that bill. There may be opposition to a motion to proceed. Even if I reach the bill, I think it is unlikely that we can dispose of the bill before the close of business today. However, Senators should know that I will try to go to that bill when the farm bill is finished.

We may be able to do another 14-day extension of the Export Administration bill today. That is still being negotiated. It came apart yesterday afternoon. I hope it is put back together. Otherwise, there is going to be a hiatus in the authority of the Government to forbid the export of strategic equipment and material from this country from the expiration of the last extension until the time we return and have an opportunity to address it once more.

It is possible we can do the defense procurement bill extension. Yesterday, it looked as if that might clear, too, but I am told this morning that there are still stumbling blocks in the way.

I do want to go to the Executive Calendar today. There are a number of items left on today's calendar.

I am advised that at least one of them will require a rollcall vote. I also anticipate a rollcall vote, at least one or two, and maybe more, on the farm bill.

Incidentally, Senators should be on notice that there will be votes today almost assuredly.

Back to the Executive Calendar. I hope we can do all of it or most of it. As I say, there is a notation on our calendar that a rollcall vote will be required on one of the nominations.

That is about it, Mr. President. When we finish, I expect to ask the Senate to adjourn pursuant to the adjournment resolution adopted last evening. The Senate will return, of course, on Monday, October 17.

Mr. President, I have nothing further to report at this time.

Mr. President, I have no further need for my time under the standing order. I offer the remainder of my time under the standing order to the minority leader.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

Mr. BYRD. I thank the majority leader for yielding me his remaining time.

SENATE SCHEDULE FOR WEEK OF OCTOBER 17

Mr. BYRD. Mr. President, I would like to inquire as to what business we will be discussing on Monday, October 17.

Mr. BAKER. Mr. President, Monday, October 17, is the first day after our Columbus Day break. I would like to be able to say to the minority leader it will be a good, full day taken up by worthwhile legislative endeavor. But he and I have both been around here long enough to know that unless we can do it ourselves, we are not likely to have all of our troops on hand. So I expect Monday will not be a heavy day, but we will be in session. I expect we will be getting ready for Tuesday and Wednesday because Tuesday and Wednesday will be devoted to the Martin Luther King, Jr., holiday bill, with a vote occurring on Wednesday.

The literal answer to the minority leader is that when we adjourn today, the unfinished business will be the State authorization bill, and the pending question at that time will be the perfecting amendment to the Byrd amendment.

Mr. BYRD. Mr. President, on that note, I do not intend to press the matter today involving my amendment. Several Senators will be absent.

On what day would the majority leader see the Senate considering my amendment?

Mr. BAKER. Mr. President, when we come back, even though the State authorization bill will be the unfinished business and will recur as the unfinished business, we will probably not finish it on Monday.

Tuesday and Wednesday will be devoted to the consideration of the Martin Luther King, Jr., holiday bill. After the Martin Luther King, Jr., holiday bill is disposed of on Wednesday, the State authorization bill once again will be before us. I would guess Wednesday afternoon or Thursday I will probably have put all my fingers into the dike.

We shall be at the place where we are very likely to have a vote.

Mr. BYRD. On Wednesday or Thursday?

Mr. BAKER. Yes, Mr. President. More likely Thursday.

Mr. BYRD. I thank the majority leader.

Mr. BAKER. I thank the minority leader.

Mr. BYRD. Mr. President, I have no further use for my time. I yield it back.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Mr. BAKER. Mr. President, I yield back my time if I have time remaining.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond 10 a.m., with statements therein limited to 1 minute each.

NOMINATIONS

Mr. BAKER. Mr. President, there are a couple of items on the Executive Calendar. After consulting with the distinguished minority leader and the distinguished President pro tempore, I believe there is one nomination cleared for action by unanimous consent. I would like to do that now, if the minority leader is agreeable.

Mr. BYRD. Yes, Mr. President. I am.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate proceed into executive session for the purpose of considering the nomination on the calendar numbered 325, Francis M. Mullen, Jr., of Virginia, to be Administrator of Drug Enforcement.

There being no objection, the Senate proceeded to the consideration of executive business.

DEPARTMENT OF JUSTICE

The bill clerk read the nomination of Francis M. Mullen, Jr., of Virginia, to be Administrator of Drug Enforcement.

Mr. THURMOND. Mr. President, I urge my colleagues' support for President Reagan's nominee for Administrator of the Drug Enforcement Administration—Mr. Francis M. Mullen.

Mr. Mullen is a fine and capable law enforcement officer who has devoted over 30 years of service to his country. Mr. Mullen served in the U.S. Air Force from 1953 to 1958. After leaving the Air Force, he served 4 years with the New London, Conn., Police Department. In 1962, Mr. Mullen joined the FBI where he has served with distinction. Through hard work and a display of exceptional talent, he rose to the rank of executive assistant director of investigations. Since 1981, Mr. Mullen has been the Acting Administrator of the Drug Enforcement Administration and has now been nominated to serve full time in this position.

This nomination has been the subject of intensive investigation by the Judiciary Committee for over a year and a half. The results have proven that Mr. Mullen is a qualified and capable individual who will act with integrity and ability to enforce our Nation's drug laws. I have personally spent many hours reviewing reports and being briefed on Mr. Mullen's nomination, and I have concluded, as have the majority of the members of the Judiciary Committee, that Mr. Mullen should be confirmed as Administrator of DEA. I support the nomination and urge my colleagues to do likewise.

Mr. HATCH. Mr. President, at a most critical time in the history of our Nation's drug enforcement effort, President Reagan has nominated Mr. Francis M. Mullen to head the Drug Enforcement Administration. Some questions arose in the Judiciary Committee over Mr. Mullen's alleged association with a bank official who was later convicted of bank fraud and embezzlement. To ascertain if there was any substance to these allegations, I personally examined thousands of records kept in secure vaults at FBI headquarters, met often with Justice Department and FBI investigators, and employed every means at my disposal to examine the available evidence. On the basis of an 18-month process of scrutiny, I can aver that Mr. Mullen had no unseemly association whatsoever with the convicted bank official and deserves the approval of the Senate.

In the first place, Mr. Mullen only knew Mr. Lota, the felonious bank loan officer, as a passing acquaintance who processed the paperwork on the mortgage of Mr. Mullen's home. Mr. Mullen was transferred to Washington, D.C., 18 months before the FBI learned of Mr. Lota's criminal activities. Moreover, Mr. Mullen did not know Lota was involved in illicit activities until after he had settled his account with Lota's former bank. Mr. Mullen received no form of special treatment from Mr. Lota and paid full interest rates on his loans.

Any questions about the purportedly lenient sentencing Mr. Lota received for his confessed crimes were dispelled by extensive evidence that Mr. Lota has cooperated with law enforcement officers in three States. His cooperation was responsible for at least nine other convictions. Mr. Mullen had nothing to do with Lota's sentencing.

There was also no substance to the insinuations that Lota was somehow linked to the criminals who murdered Judge Wood or the criminals involved in bribing corrupt State officials. These supposed links between Lota and other major crimes never materialized. Obviously, if Lota was not associated with these notorious crimes, any insinuation that Mr. Mullen, who was barely acquainted with Lota, knew of those supposed ties is fallacious.

Another concern was several accounts opened by FBI agents serving under Mr. Mullen in other branches of the bank that employed Mr. Lota. Careful investigation revealed that those accounts were used in undercover operations and that Mr. Mullen had no part in selecting the bank used for those operations.

Finally, several representations made by Mr. Mullen on an application for a mortgage when he moved here to Washington, D.C., and on his annual financial disclosure forms comprise another question raised about Mr. Mullen. The Department of Justice, after a thorough examination of these matters, determined that Mr. Mullen had made some good faith mistakes in completing these forms, but that nothing in the forms remained unexplained. In fact, the operative effect of the mistakes on his mortgage application was to understate his new worth by $70,000. It is hardly in the interest of any borrower to understate his own net worth. With regard to the financial disclosure forms, Mr. Mullen has since filed correct amended versions of his reports.

With all clouds over Mr. Mullen's reputation and ability to serve dispelled, I urge the Senate to approve this nomination and allow him to continue his vital mission. At this point, I will present for the RECORD more detail rebutting the allegations against Mr. Mullen.

Mr. President, rarely, if ever, in its entire history has our Nation faced a law enforcement problem of the magnitude of our current drug trafficking epidemic. In 1980 alone, the estimated value of illegal drug sales in the United States reached more than $79 billion—up approximately 22 percent from the previous year. Not only are these drugs destroying countless productive lives, but the illicit drug enterprise is proving largely responsible for the growth in other forms of crime. Some studies have shown that 50 to 60 percent of all property crimes are related to drugs. For example, one study found that 49 drug criminals had claimed responsibility for 10,500 other crimes. In a very real sense, our response to this crisis may affect the future of our way of life. For this reason, I personally examined thousands of documents filling over eight file drawers, met repeatedly with Department of Justice and FBI investigators, committed extensive personnel resources, and pursued every available bit of evidence in an effort to establish the veracity or falsity of assertions that President Reagan's nominee to head the Drug Enforcement Administration may have had some association with a bank official who was later convicted of bank fraud and embezzlement. No unsubstantiated speculation could be permitted to cast a chilling shadow over Mr. Mullen's ability to lead a relentless battle against illicit narcotics.

In the 18 months that this nomination has remained pending, I have received invaluable cooperation from Chairman THURMOND and would like

to thank him for his personal dedication to this effort dismissing any lingering question about the integrity of the nominee which would reflect upon our national drug enforcement commitment. I would also like to commend the rest of the Judiciary Committee for patiently granting me the time to resolve my concerns over these important issues. Finally, I would also like to express my appreciation for the careful, deliberate, and exhaustive examination conducted by law enforcement officials at the Department of Justice, whose careful analysis is the primary reason that I can, with confidence, based upon objective inquiry and study, advise the committee that any remaining doubts about these questions have been dispelled.

Before proceeding further, however, I would like to set the record straight once again on Mr. Mullen's appearance before the Labor Committee. It is well known that Senator KENNEDY and I, among others, were very concerned with Mr. Mullen's testimony before our committee regarding the nomination of Secretary Donovan to his Cabinet post. Misunderstandings between Mr. Mullen and the committee on the technical wording of questions and the adequacy of his responses on behalf of the FBI led to hearings on the process of investigating and confirming appointees.

Mr. Mullen has explained his conduct, regretted certain responses and pledged that he would in the future fully inform the committee to the degree permitted by law. Hereafter he will call for a closed hearing if necessary to address sensitive issues before a Senate committee. I accepted his explanation, regrets, and pledge months ago and I do so now. Accordingly, the misunderstanding involving the Labor Committee's obligation to examine the qualifications of Presidential nominees was resolved in my mind before these more recent allegations came forth.

My endeavors with regard to Mr. Mullen's nomination arose out of an earlier Labor Committee investigation and documents in his file that I did not see until July 14, the day this committee first discussed the appointment. Just before that markup, I was cautioned by knowledgeable friends to examine Mr. Mullen's file carefully before voting. Indeed when I checked that file after our committee meeting, it contained three letters with attachments that I had not seen in earlier examinations of the information about Mr. Mullen. Those three letters disclosed Mr. Mullen's association with Victor J. Lota, the bank official later convicted of embezzlement, Mr. Mullen's real estate transactions, and Mr. Mullen's personal finances. These letters contained information about matters which if not fully clarified, malign Mr. Mullen's reputation and undercut his professional efforts. My purpose today is to clarify these matters.

Incidentally, this sequence of events clarifies a misconception conveyed by a recent Newsweek article on this nomination. Newsweek was under the impression that this information about Mullen was available to me before the July 14 meeting. In fact, these three documents were not in the files I examined prior to July 14. I saw those documents for the first time after the July committee meeting.

The first issue and the basis for other insinuations, was whether Mr. Mullen was inappropriately associated with Victor J. Lota, a loan officer at a New Orleans bank later convicted of embezzling funds for a drug ring and other reputed organized crime activities. Mr. Mullen did indeed know Victor Lota, but only as the officer assigned by Mr. Mullen's bank to do the paperwork for his housing loans. In fact, Mr. Mullen's primary contact at the Hibernia National Bank was its president, Mr. Miler. Mr. Mullen left New Orleans on October 28, 1978; it was another year and a half (February 18, 1980 to be precise) before the FBI learned of Lota's criminal activity.

Mr. Mullen has explained that he first learned of Lota's criminal conduct only after settling his debt at Hibernia. After extensive FBI investigation, no evidence was uncovered that Lota's criminal conduct ever came to Mr. Mullen's attention until months after terminating his business relationship with Hibernia.

In short, the only contact Mr. Mullen had with Lota were passing business exchanges. This has been supported by Hibernia Bank records. Mr. Mullen never received special treatment, but paid the full market interest rate on his loans. Moreover the single instance of deviation from established bank practices was completely unknown to Mr. Mullen. In this instance, Lota recorded one loan in the name of "Bud Mullen," rather than "Francis M. Mullen"—the name used on all other loans to Mr. Mullen—in an effort to avoid the lending limit of $100,000 per client imposed on Lota by the bank. Mr. Mullen was oblivious to Lota's alteration and endorsed the loan note with his full name as he had all earlier loans.

Mr. Mullen, according to a comprehensive FBI investigation, simply had no unseemly association with Victor Lota whatsoever. He did not even know certainly that Lota was involved in criminal enterprises until after he settled his account at the bank that had dismissed Lota.

The next question raised about Mr. Mullen involves the sentencing of Victor Lota for bank fraud. Although convicted of offenses with a maximum penalty of over 75 years, Lota received a 3-year prison sentence. The insinuation behind these facts is that Lota may have been treated lightly due to his association with Mr. Mullen. I have established to my personal satisfaction that this is false. The sentencing judge, the U.S. attorney, and assistant U.S. attorneys involved in the Lota case have refuted this allegation. There is no evidence that Mr. Mullen ever contacted or in any way intervened with law enforcement or judicial officers handling Lota's case.

Lota's cooperation with law enforcement officials in at least three States has been extensive. Although all the details of this cooperation are not public—either due to the need to protect Lota or due to legal protections extended to grand jury records—I personally examined records of nine convictions obtained as a result of Lota's willingness to testify. For instance, his assistance led to the conviction of Ciro Callico, an organized crime figure, for bank fraud, and Frank D'Acquisto for drug trafficking. In addition, his assistance helped indict Robert Walsh, a fugitive former police officer, for drug dealing. Any hint that Lota was treated leniently is fallacious.

A third issue raised by Victor Lota's name involves two major criminal investigations code-named Brilab—short for bribery of corrupt State officials—and Woodmur—short for the murder of Judge Wood. During surveillance associated with the Brilab investigation, the FBI learned that one organized crime figure had speculated that an individual associated tangentially with Lota was responsible for the killing of Judge Wood. This speculation was wrong. The Chagra crime family, not the Lota associate, was responsible for the murder. Extensive FBI investigations revealed no link between Lota and the Brilab and Woodmur investigations other than the organized crime figure's single, offhand guess about an associate of Lota. Moreover Mr. Mullen was not apprised of Lota's tendentious link to Brilab and Woodmur until after he had terminated all association with Lota's former bank.

Another question about Mr. Mullen involved deposit of government funds in noninterest-bearing accounts benefitting Hibernia Bank. During Mr. Mullen's tenure at the head of operations in New Orleans, the FBI did use Hibernia National Bank, in Lota's former place of employment, in connection with two undercover operations. In one undercover operation, an interest bearing account of $5,000 and a noninterest-bearing checking account of $3,000 were opened by an FBI case agent at Hibernia due to its proximity to the undercover business location. While these accounts were used an extended period, the total balance never exceeded $8,000. In the other undercover operation, $236,000 was deposited on one afternoon and $225,000 removed the next day. The balance of

the account was transferred into FBI accounts in other banks. This account was open 1 day to launder funds for use in an undercover investigation in another city.

In neither of these instances did Mr. Mullen himself participate in selecting Hibernia or opening the accounts. His entire involvement with these accounts was the ministerial duty of signing the requisition forms for the funds. None of the accounts in question was maintained in the branch where Lota worked. No evidence indicates that Lota even knew or could have known of the undercover operations or the accounts.

The final question raised about Mr. Mullen concerns the representations he made on an application for a mortgage loan on a home in northern Virginia. This aspect of Mr. Mullen's record is the subject of an extensive legal memorandum prepared by the Public Integrity Section of the Department of Justice concluding that no legal violation occurred. I have studied that memorandum and the surrounding documents. Although these circumstances are somewhat troubling, I am satisfied that Mr. Mullen has adequately explained the apparent inconsistencies in his application.

Mr. Mullen made eight questionable representations on his mortgage application:

First, in the block marked "Source of Down Payment and Settlement Charges" the Mullens inserted the words "Personal Cash."

Second, under the "Asset" category headed "Cash Deposits Toward Purchase Held By," the Mullens inserted "Hibernia Bank N.O., La. Cash or Market value $50,000."

Third, in the block entitled "Schedule of Real Estate Owned," the Mullens omitted reference to their ownership of a home in Harahan, La.

Fourth, under the "Liabilities and Pledged Assets," category, the Mullens inserted "Hibernia Bank N.O. La., $70,000."

Fifth, under the "Asset" category headed, "Real Estate Owned," the Mullens listed total real estate holdings of $10,700.

Sixth, under "Net Rental Income" the $9,000 entry appears to have been made with a pen different from the pen used to make other entries in the application. This entry is inconsistent with the assumed sale of the Louisiana home.

Seventh, the residential loan application also contained the question "Is any part of the down payment borrowed?", to which the Mullens responded "No."

Eighth, under the "Liabilities and Pledged Assets" category the Mullens failed to include a $5,000 signature loan obtained by Francis Mullen at the Hibernia Bank on Novemer 9, 1978.

Six of those representations spring from his effort to project what his financial condition would have been if he had consummated the sale of his Louisiana home. Although at the time of the application he had not sold the home, he expected sell the home within a short period of time. When this anticipated sale did not occur, a belated entry was made on the application reporting rental income of $9,000 on the Louisiana home that was nowhere mentioned in the form because earlier entries has assumed it would be sold. This later representation, according to the DOJ assessment, was an attempt to acknowlege the change in circumstance: rental instead of sale of the home.

A seventh questionable statement related to whether the "downpayment" for the Virginia home would be borrowed. Mr. Mullen answered "no" because he considered his cash deposit to be "earnest money," not a "downpayment" which he would pay upon closing the real estate deal. The legal distinction between "earnest money" and "downpayments" can be considered, as the DOJ memo avers, very muddled. Mr. Mullen credibly asserted that he thought his payment was "earnest money," rather than a "downpayment" which he paid later without resort to borrowed funds.

The final questionable representation on his statement was an apparent oversight. He failed to report that he still owed Hibernia $5,000 on a signature loan. This oversight, according to Mullen's explanation, was understandable because he was continually "rolling the loan over" and overlooked the fact that it was still outstanding.

The primary factor arguing against any wrongful intent on Mr. Mullen's part, however, is that the cumulative effect of his inadequate completion of the application was to underestimate his net worth by $70,000. It is hardly in the interest of any borrower to understate his own net worth when seeking a loan. The DOJ's scrutiny of this matter concluded that Mr. Mullen was not attempting to mislead lending officials, but that he legitimately miscomprehended what the application required. Two other factors are prominent in the DOJ conclusion. First, the Northern Virginia Savings & Loan suffered no pecuniary loss whatsoever. Second, the president of that institution, Mr. Martin Schnider, states that he would have extended the loan regardless of the application based on Mr. Mullen's personal integrity.

Under the Ethics in Government Act, Mr. Mullen is required to submit annually a financial disclosure report. Over the past few years, Mr. Mullen has failed to report some required information, such as the $5,000 signature loan, while reporting some unrequired information. These filings are also discussed in Public Integrity Section's memorandum. DOJ concluded that Mr. Mullen, without assistance, completed the forms in the mistaken, good faith, belief that he had supplied the necessary information. In order to fully comply with the Ethics Act, he has submitted susequently amended reports.

This lengthy confirmation process has provided the committee one unexpected benefit. For over 2 years, Mr. Mullen has been acting as the Administrator of the Drug Enforcement Administration. We are not solely confirming a single individual, but also approving a record of performance. Since taking over at DEA, Mr. Mullen has effected a significant reorganization of the Administration. He has eliminated unnecessary intermediate layers of supervision and thus put more manpower directly on the front lines of the battle against drugs. He has successfully implemented a new program of cooperation with the FBI. In July of 1981 the FBI and DEA were involved in 12 joint enterprises; today they are cooperating on 539 cases. All of our Nation's law enforcement resources are being marshalled for this vital effort. In 1981, the DEA seized heroin with a street value of $23,231,819. Under Mullen in 1982, the street value of the seized heroin was $45,945,116, nearly double the amount of the year before. Already in the first half of 1983, the DEA has captured heroin with a street value of $34,890,652. These statistics attest both to the success of Mr. Mullen's work and to the growth in drug trafficking. Currently the DEA is arresting more than 1,000 offenders a month, but more enforcement is needed.

While Mr. Mullen's success at DEA speaks for itself, his record prior to joining the DEA also commends this outstanding individual. After only 3 years in managerial positions at FBI headquarters, he was entrusted with the post of Deputy Assistant Director for Criminal Investigations, making him second in charge of the Bureau's criminal work. Within a year, he had taken charge of all criminal investigations. Ten months later, he was placed in charge of all FBI investigations, where he served until his Presidential appointment. In each of the last 5 years he received an outstanding performance evaluation and won special commendations for excellence in 4 of those years. Mr. Mullen's record provides us with an excellent reason to support him as he continues his service.

I regret that Mr. Mullen has had to endure months of uncertainty during this process. In the long run, however, this delay will prove a benefit to him. If these doubts had not been dispelled, they would have haunted him throughout his career and hampered

his ability to make significant contributions in public service.

As many of you realize, this examination of the questions publicly raised concerning Mr. Mullen has not been easy for me. My examination has been wrongly perceived as an effort to obstruct the confirmation of this exemplary law enforcement officer and question President Reagan's new emphasis on drug enforcement. My intent is exactly the opposite: To clear Mr. Mullen's reputation and assure that President Reagan's drug enforcement drive is not jeopardized by unfounded suspicions. After months of personal effort, after personally examining more than eight file drawers of information, after meeting repeatedly with FBI and DOJ investigators, after committing extensive resources to this investigation, after questioning Mr. Mullen himself at length, I am satisfied that the questions have been answered and that the DOJ's careful point-by-point analysis which found no substance to these allegations is correct. Naturally I must rely extensively upon the evidence produced by comprehensive DOJ investigations. Based on my examination of this evidence, I am prepared to vote to confirm Mr. Mullen and urge this body to do likewise. No questions remain in my mind about his suitability for this important post. Exposed to the light of careful DOJ investigation, the allegations pose no threat to Mr. Mullen's name or the conduct of our battle against drugs. I urge the Senate to join me in dispelling any clouds over this man or his work and let him get on with his essential task.

This is not an exhaustive statement of the facts concerning Mr. Mullen's suitability to serve, but it gives a summary of the reasons the President's appointment ought to be confirmed by the Senate.

(By request of Mr. BYRD, the following statement was ordered to be printed in the RECORD:)

● Mr. METZENBAUM. Mr. President, if there were to be a rollcall vote on the nomination of Francis Mullen to be Director of the Drug Enforcement Administration, I would vote in the negative.

While I have no question that Mr. Mullen has had a long and distinguished career at the Federal Bureau of Investigation, I feel that the evidence submitted to the Judiciary Committee, Mr. Mullen's actions, or inactions, in the confirmation investigation of Labor Secretary Donovan and Mr. Mullen's own testimony before the Judiciary Committee are ample reasons to conclude that he should not be confirmed for this highly important position.

The weight of the evidence shows, in my mind, that Mr. Mullen has made serious errors of judgment in his decision to withhold what could have been critical information from the Labor and Human Resources Committee in the Donovan investigation.

The same type of judgment, or lack of it, evidenced itself in dealings he had with a New Orleans banker who later was to be indicted and convicted in a massive embezzlement case. While it appears Mr. Mullen was in no way involved in the embezzlement case, his lack of candor with his superiors about his business dealings with the banker raises cause for concern.

In another personal financial case in Virginia, the same lack of candor and judgment was apparent.

As I told Mr. Mullen at his confirmation hearing, he is going to be required, in his official duties, to testify frequently before congressional committees. Based on his past performance, I am afraid that any committee may have a difficult time replying on his testimony or knowing whether or not the full story is being told.●

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. BAKER. I move to reconsider the vote by which the nomination was confirmed.

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to the nomination.

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

LEGISLATIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

SECRETARY LEHMAN AND THE PHILADELPHIA NAVAL YARD

Mr. SPECTER. Mr. President, I speak out today on statements made yesterday by the Secretary of the Navy, John Lehman, at the Philadelphia Naval Yard. I do so on the floor of the Senate with some reluctance, because the public comments by the Secretary do require a public response. It would have been preferable, I believe, to have vented these issues privately, at least initially, but that potential moment for private discussions is past in the light of Secretary Lehman's press conference yesterday. I attempted earlier today—the hour now being 9:50—to reach Secretary Lehman by telephone, but I am advised by his office that he is on the west coast and unavailable.

The comments which Secretary Lehman made yesterday in Philadelphia related to the *Saratoga*. A lead story in this morning's Philadelphia Inquirer reports that the decision to overhaul the aircraft carrier *Independence* at the Philadelphia Naval Shipyard is under review because of the "serious problems in the work performed here"—referring to Philadelphia—"earlier on the *Saratoga*."

Mr. President, based on what I know of the situation of the *Saratoga* and based upon the direct statements attributed to Secretary Lehman in this news account, it is my judgment and conclusion that the comments made by the Secretary are unwarranted, considering all the facts.

The news report contains a number of factual matters which demonstrate on their face that the problems with the *Saratoga* are not, in fact, the responsibility of the Philadelphia Naval Yard. The news story contains this reference:

> The new welding process used on the steam system had proved to be "not mature," he—

Referring to Secretary Lehman—

> said, and its use on carriers has been discontinued.

The newspaper account goes on to say:

> It was a calculated risk to make a breakthrough in technology on the welding," Lehman said.

Based on those factual matters and what I have heard on briefings from the Department of the Navy, it is plain that the problems which have arisen with the *Saratoga* are due to the methodology that was employed on the welding processes.

It may well be true that there have been significant problems with the welding which was done on the *Saratoga*, but the matters referred to in this news account stated by Secretary Lehman yesterday and the other information which I have had on briefings by Navy officials demonstrate that the problem in issue here is the technology used and not the fault of the personnel at the Philadelphia Naval Yard.

Continuing from the story:

> The new process involved complicated robotics and automatic welding techniques that had worked well on destroyer-size ships, he said.

The work which was done on the *Saratoga*, an aircraft carrier, was a novel approach so that it should not be surprising that the procedures did not work as well as they had on destroyer-type ships.

The comments made by the Secretary of the Navy further in this news article appear to be ambivalent with the quotations already made showing that the defects were caused by the technology as opposed to the work-

manship. But Secretary Lehman then proceeds to say that:

It was a gamble that failed and it failed particularly because the yard quality control was not appropriate for the risk involved.

That, Mr. President, in my judgment is inconsistent on its face. With the earlier statements that the welding had failed because of the techniques, it is not logical to say that it failed because of the yard quality control. If the techniques were not adequate for the job, then it may be that the quality control could have had some impact but is hardly the causative factor.

The newspaper account goes on to say, again referring to Secretary Lehman:

He said that the new process would not be used on the *Forrestal*. When asked whether the chief problem with the *Saratoga* was with the welding process or the procedure followed by yard personnel, Lehman replied "both."

Now, that is an obvious hedge, but the thrust of what Secretary Lehman has had to say, it seems to me, is plain; that the problem has arisen here because of the techniques which were employed.

For some time now, Mr. President, I have been concerned about the reports of problems with the *Saratoga* and what effect this would have on the continuing work which is to be done at the Philadelphia Naval Yard. Because of that, I had inquired of the Navy about an opportunity to have a personal inspection of the *Saratoga*, because I have learned that it is one thing to read documents and have briefings and quite another to see the ship and talk to personnel who are directly involved with the process.

Toward that end, I had requested some 10 days to 2 weeks ago an opportunity to visit the *Saratoga* in Florida on Saturday, October 8, which is tomorrow. I had asked for that date because it was the first Saturday that I could make the trip in 1 day to see the *Saratoga*, considering the fact that we have been in session continuously recently.

The Department of the Navy responded, asking that I not make that trip but instead rely on the briefing. I replied that I would be willing to have the briefing in the first instance but, if that proved insufficient, reserved the pressing of my request to see the ship, the carrier *Saratoga*.

Earlier this week, I did have the briefing. While helpful, it was not as informative as a visit to the *Saratoga* would be, and I again pressed the issue, and at this time I am scheduled to make the trip to Florida tomorrow to inspect the *Saratoga*. That will give me a better opportunity to gain the facts firsthand.

In the course of the Navy briefing which I have had, however, I was assured by ranking naval authorities that there was no problem with the *Saratoga* which was attributable to the work done at the Philadelphia Naval Yard and that those issues, in fact, were behind the Navy's consideration. While I consider that to be comforting to an extent, I still had a concern about what the facts might disclose, especially in light of the fact that the work at the Philadelphia Naval Yard is so important to the State of Pennsylvania and, really, to the Nation.

The work at the naval yard involves some 10,000 employees and turns on a $600 million contract to overhaul the *Independence* in 1985. Above and beyond the issue of the *Independence*, the work at the Philadelphia Naval Yard concerns a great many additional jobs which are very vital to the continued vitality of the naval yard.

As the news account this morning summarizes, it is not only the contract for the *Independence*, but also, contracts for the *Kitty Hawk* class of carriers; and the *Kitty Hawk* contracts could keep the yard at full employment through the end of this century.

This is a matter of concern above and beyond Philadelphia, the State of Pennsylvania, the Delaware Valley area, the State of New Jersey, and the State of Delaware, and it has a very material impact upon the ability of this Nation to do what is necessary to keep our fleet in operation. We need facilities like the Philadelphia Naval Yard throughout this country on a diversified basis; and if this work were to be withdrawn from the Philadelphia Naval Yard, there is a real question as to whether that naval yard could continue to exist.

Historically, the Philadelphia Naval Yard has been a major factor in the naval preparedness of this Nation for many wars and many conflicts and many wars not called wars.

So it is not only the interest of a Pennsylvania Senator on this subject, but also, it is a matter of national interest that the Philadelphia Naval Yard be preserved as a locale where this important work can be carried out.

Mr. President, there is a factor above and beyond the Philadelphia Naval Yard itself in the matters to which I have referred, and that is a very decided tilt which has come into play away from the Northeast, where defense contracts have been allocated in large numbers, to the Sun Belt. While I do not wish to take away any of the job opportunities from the Sun Belt, there should be some balance in this matter for an allocation of Department of Defense contracts to areas such as the Northeast and Midwest as well as to the Sun Belt areas.

This issue has come into focus as a result of activities of the Northeast-Midwest coalition, which I cochair, and meetings we have had this year, in early August, with Secretary of Defense Weinberger on a related question of employment in labor surplus areas, where there is a congressional mandate for the years 1981, 1982, and 1983 that there be some $12.1 billion in defense contracts allocated; and as of the statistics available in early August, approximately 2 months ago, only $3.1 billion had been allocated. So the congressional mandate is not being followed.

The competition, obviously, is very keen in various sections of the country on the kind of work which is involved.

There is a related matter in the Philadelphia area, in Chester, Pa., where the work force was reduced from 4,200 to about 1,000, and work which had been sought by that yard has been allocated in other directions. That may be necessary, depending upon a given contract; and while a Senator may press to have work in his own area, it is understandable that there has to be some judgment by the Department of the Navy on some specific situations.

However, the comments made by the Secretary of the Navy yesterday, it seems to me, will inappropriately exacerbate the kind of congressional competition which is involved in this type of issue. The Virginia delegation, quite appropriately, in its own interest, and for its own State, carried on a pitched battle when the *Saratoga* was an issue, and they can be expected to carry on a pitched battle for further contracts. That kind of controversy is going to be fueled by the comments which were made by the Secretary of the Navy yesterday.

I think it not inappropriate to comment that when the Secretary of the Navy seeks support in Congress and the Senate and the Appropriations Committee, he comes to us, privately and quietly, to lay out his case, and we listen to him privately and quietly and, to the extent we can, agree with what he seeks, and we try to be cooperative.

So I am especially surprised to see that in this kind of sweeping, condemnatory statement, the Secretary of the Navy does not seek out the same type of quiet, private meeting so that the matters can be considered and deliberated upon without the kind of front page story which casts an unfair aspersion on the Philadelphia Naval Yard and subjects the 10,000 people who are working at the Philadelphia Naval Yard to the fear of losing their jobs, a fear which is immediately translated to their families and is a matter of enormous concern, especially given the very high unemployment rate which is present in Pennsylvania—in excess of 10.8 percent and in excess of 620,000 individuals.

The news account points out:

Twelve civilians and two military officers at the Philadelphia yard, including the commander, Commodore Thomas U. Seigenthaler, have been reprimanded by the Navy for not providing enough quality control in the welding process. No Washington-based officials have been similarly reprimanded, and Lehman said the Saratoga case was not closed.

If the matter is still pending and if the issue exists as to sanctions or reprimands as to others in the Department of the Navy—and certainly there are other issues involved beyond the quality control, as shown on the face of the facts here, in terms of an inappropriate technique having been applied—I wonder why the officials at the Philadelphia Naval Yard are singled out for censure and reprimand in advance of conclusion of the investigation and in advance of blame on a proper basis, if any blame does exist.

I shall report further to my colleagues in this body after I have had an opportunity to inspect personally the *Saratoga* in Florida tomorrow, and I am scheduled to visit the Philadelphia Naval Yard to see the work which is currently in progress on the carrier *Independence.*

However, I do believe that if there is to be cooperation and joint action between Congress, including the Senate, and the executive branch, including the Department of Defense and the Department of the Navy, such public pronouncements are not to be made when they are not supported by the underlying facts.

Mr. President, I ask unanimous consent to have printed in the RECORD the full text of the article in the Philadelphia Inquirer of this morning to which I have referred.

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

[From the Philadelphia Inquirer, Oct. 7, 1983]

SHIPYARD DECISION REVIEWED: NAVY MAY REVOKE INDEPENDENCE JOB

(By Robert R. Frump)

The decision to overhaul the aircraft carrier Independence at the Philadelphia Naval Shipyard is under review because of the "serious problems" in the work performed here earlier on the Saratoga, Secretary of the Navy John F. Lehman said yesterday.

The quality of work being done now on the carrier Forrestal will determine whether the Philadelphia yard and its 10,000 workers receive the $600 million contract to overhaul the Independence in 1985, Lehman said.

"I would say very strongly to everyone at the Philadelphia Navy Yard that they must work hard to see that this problem does not occur again," Lehman said. "The role of every worker will make up the sum total upon which the yard is judged."

After the Saratoga's two-year, $520 million overhaul at the Philadelphia yard, the ship developed leaks in its steam system that forced it into port.

At a news conference at Penn's Landing aboard the battleship Olympia, the Navy secretary discussed for the first time in public the Navy's opinion of the Philadelphia yard's record and the region's chances of retaining future carrier contracts. (At stake is not only the contract for the Independence but contracts for the Kitty Hawk class of carriers. The Kitty Hawk contracts could keep the yard at full employment through the end of this century.)

In addition to putting Philadelphia on notice, Lehman said Navy officials in Washington should share some of the blame for the Saratoga's problems. The leaks, he said, were "not solely the problem of the Philadelphia Navy Yard."

Twelve civilians and two military officers at the Philadelphia yard, including the commander, Commodore Thomas U. Seigenthaler, have been reprimanded by the Navy for not providing enough quality control in the welding process. No Washington-based officials have been similarly reprimanded, and Lehman said the Saratoga case was not closed.

The new welding process used on the steam system had proved to be "not mature," he said, and its use on carriers has been discontinued.

That new process involved complicated robotics and automatic welding techniques that had worked well on destroyer-size ships, he said, but had never been applied to carriers.

"It was a calculated risk to make a breakthrough in technology on welding," Lehman said. "It was a gamble that failed, and it failed partly because the yard quality control was not appropriate for the risk involved."

He said that new process would not be used on the Forrestal. When asked whether the chief problem with the Saratoga was with the welding process or the procedures followed by the yard personnel, Lehman replied: "Both."

The Saratoga contract was sought by Philadelphia-area politicians in 1978 and 1979 to assure the survival of the shipyard. Philadelphia won after a fight on the Senate floor against the Virginia delegation, which argued that Philadelphia had no experience in carrier work.

After the overhaul, the ship's leakage problems forced it into port in August at Mayport, Fla., for further repair. That repair work was to have been finished Sept. 15 and cost $2 million. It was extended to Nov. 1 after more than 3½ extra months out of service. The repair bill, Lehman said yesterday, has climbed to $12 million.

The Navy had announced earlier in the year that it was planning to send the Independence to Philadelphia, and Lehman's comments yesterday were the first indication that that decision might be revoked. But he said the final decision on the Independence—and future contracts—would be based on the quality of work done on the Forrestal and not as a direct result of failures on the Saratoga.

"Overall, it is not accurate to say that the problem with the Saratoga will lead to a lessening of work levels," Lehman siad. "The judgments on work levels, say on the Independence, will depend more on the quality of the work on the Forrestal."

ORDER OF BUSINESS

(The following proceedings occurred during Mr. SPECTER's remarks:)

The PRESIDING OFFICER. The Chair advises the Senator from Pennsylvania there is a limitation of 1 minute this morning, and it has expired.

Mr. BAKER. Mr. President, may I inquire of the Senator from Pennsylvania how much more time he needs? I will be glad to provide it.

Mr. SPECTER. I thank the majority leader. I would like about 10 more minutes. I had not asked for a special order this morning because I had not anticipated making these comments, which were occasioned by the morning report.

Mr. BAKER. Let me say to my friend from Pennsylvania that at 10 a.m. we are scheduled to go to the farm bill.

I would have to clear it with the managers before I could go past 10. I know that the Senator from Wisconsin is seeking time.

I wonder, since no other Senator is here, if they might be agreeable to splitting the time between now and 10 a.m.

Mr. PROXMIRE. I only need a minute or two.

Mr. BAKER. Mr. President, I ask unanimous consent, if I may, that the Senator from Wisconsin next be recognized in the time remaining before 10 a.m., and that the Senator from Pennsylvania be recognized for 2 minutes before 10 in morning business.

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

Mr. BAKER. Now, Mr. President, one other thing. If the Senator would give me 15 seconds, I would like to get two nominations confirmed.

Mr. SPECTER. I yield whatever time it will take. I am sure it will be more than 15 seconds.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate go into executive session for the purpose of considering two nominations, that of Lyn P. Meyerhoff, of Maryland, to be Alternate Representative to the United Nations, and Josephine S. Cooper, of Virginia, to be an Assistant Administrator of the Environmental Protection Agency.

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

The Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nominations will be stated.

UNITED NATIONS

The assistant legislative clerk read the nomination of Lyn P. Meyerhoff, of Maryland, to be an Alternate Representative to the 38th session of the General Assembly of the United Nations.

The PRESIDING OFFICER. The nomination is considered and confirmed.

Mr. BAKER. Mr. President, I move to consider the vote by which the nomination was confirmed.

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

The motion to lay on the table was agreed to.

ENVIRONMENTAL PROTECTION AGENCY

The assistant legislative clerk read the nomination of Josephine S. Cooper, of Virginia, to be an Assistant Administrator of the Environmental Protection Agency.

The PRESIDING OFFICER. The nomination is considered and confirmed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

EXTENSION OF ROUTINE MORNING BUSINESS

Mr. BAKER Mr. President, I am now advised that the principal cosponsor of the pending question will not be here promptly at 10 a.m. I ask unanimous consent, therefore, that the time for morning business be extended until 10:15 a.m. and that 10 minutes of that be allocated to the Senator from Pennsylvania and 5 minutes to the Senator from Wisconsin.

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

Mr. SPECTER. I thank the majority leader for extending the time in that manner.

(Conclusion of earlier proceedings.)

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER (Mr. COCHRAN). Under the previous order, the Senator from Wisconsin is recognized.

UNITED STATES AND SOVIET NUCLEAR STRENGTH ROUGHLY EQUIVALENT—NOW IS THE TIME FOR COMPREHENSIVE AGREEMENT

Mr. PROXMIRE. Mr. President, at the heart of the drive for a massive buildup of our nuclear forces is the conviction held as an absolute truth by many that at the present time the Soviet Union has nuclear military strength that is decisively superior to the United States. This view is demonstrably wrong. And yet we encounter it in some of the most widely read and authoritative publications such as U.S. News & World Report. Even in the top echelons of the Reagan administration—among officials who should know better we find this erroneous and false view.

On the other hand last spring we had a series of hearings before the Defense Appropriations Subcommittee at which the Government's most authoritative experts overwhelmingly agreed that the United States and the Soviet Union have roughly equal nuclear military power. In an article in the Washington Post on October 2, Alton Frye takes a look at three myths that allege Soviet nuclear superiority. Like a veteran baseball player, Frye eyes these myths as they come over the plate, swings at each one in turn and slams each of them out of the park and over the fence. Frye is a former strategic analyst for the Rand Corp., and is presently the Washington director of the Council on Foreign Relations.

The first so-called simple fact so stated by Defense Secretary Caspar Weinberger was that U.S. strategic forces are many years older than the Soviet's and that "we haven't done any strengthening or modernization of our strategic systems since they were built." Frye points out that at West Point a Defense Department official recently said that three-fourths of our missiles are on systems that are 15 years old or older. This statement is flatly wrong. Of the 7,000 to 8,000 warheads our ballistic missiles can carry, less than 500 are on missiles 15 years old or older. In Frye's words: "Most U.S. strategic warheads are mounted on missiles from 1 to 13 years of age—thousands on missiles 5 years old or less."

The second myths of the Reagan administration was Weinberger's assertion that "at heart of the current United States-Soviet strategic force imbalance is the Soviet monopoly of hard target kill capability." And Weinberger's consequent conclusion was that the Soviets strategic forces pose a vastly greater threat to U.S. forces than the United States poses to the Soviets. Again this is flatly wrong. Here's why:

Sure, the Soviets could destroy virtually all the U.S. land-based, immobile missiles—the Minuteman missiles and the new MX. But this constitutes less than one-fourth, less than 25 percent, of our warheads. But they cannot find, and they cannot knock out the 75 percent of our nuclear missiles that we have based under the oceans in our submarines and in the air in our bombers. On the other hand the Soviets have more than 70 pecent of their nuclear warheads sitting on land like ducks in a row—stationary, immobile, in fixed mode. We know precisely where they are now and where they will be next month and next year. Yes, indeed, there is a difference in vulnerability between the United States and the Soviet Union. The difference is that their deterrent is far, far more vulnerable than ours. In fact NATO data shows that the United States, right now, today, holds hostage a larger number of Soviet warheads—60 percent of their total force—than the 25 percent of our warheads that the Soviet Union threatens.

The third myth held by the Reagan administration and destroyed by Frye is the assertion that the United States has reduced its nuclear capability in the past 20 years. Frye quotes Assistant Defense Secretary Richard Perle as contending that "it's been a roughly 2-for-1 build-down" that is two warheads eliminated for every new one deployed. Here is the answer which the Defense Department will confirm if pressed. As Frye puts it:

> Since 1968, Soviet offensive warhead totals quadrupled from about 1,800 to over 8,000; U.S. totals have more than doubled from about 4,000 to 10,000. Current modernization programs on both sides could move each country to 15,000 or more strategic warheads in the early 1980's.

Mr. President, the perennial argument of those who resist moving toward a comprehensive arms control agreement like a nuclear freeze is that the Russians are far ahead of us today in nuclear capability, and that we should catch up before we negotiate so we can negotiate from strength. This argument is based on an absolutely false premise. The fact is that the Soviet Union is not ahead of the United States in nuclear military power. We have now, today, exactly the kind of rough equivalence in nuclear power that should be the basis for an agreement on limiting nuclear power to stop the arms race while our two countries are in a nuclear power balance. Of course, the nuclear strength of the two countries is not precisely symmetrical, Yes; indeed, they do have more megatonnage and throwweight. They do have more land-based missiles. But we have more nuclear warheads. Their numerical superiority in land-based warheads is matched by our superiority in sea-based and air-based warheads. The advantage the Russian land-based missiles hold in megatonnage, throwweight, and accuracy is balanced by the far greater invulnerability of our sea- and air-based missiles. This is precisely why I have never seen nor heard an American military official who will tell me that if he had a choice, he would prefer the Soviet over all strategic position to the United States over all strategic position. If we wait for the day when we have a precise parity with the Soviet Union in land-based missiles before negotiating an agree-

ment, we would have to wait for many years longer until they have a parity in sea-based and air-based missiles. The day will never come when both sides have a precise symmetry, an exact mirror image, in all nuclear weapons up and down the line. In fact, it is doubtful if we would ever reach the point when the nuclear military power of our two countries are in closer overall balance. The time to negotiate, and negotiate comprehensively is now.

Mr. President, I ask unanimous consent to have printed in the RECORD an article by Alton Frye to which I referred.

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

[From the Washington Post, Oct. 2, 1983]

STRATEGIC MYTHS MISLEAD REAGAN

(By Alton Frye)

"It ain't what a man don't know that makes him a fool, but what he does know that ain't so."Josh Billing's insight, spoken in the last century, endures. Misinformation is often more dangerous than ignorance, especially when it comes to the great issues of state.

Mistaken notions and incorrect data are troubling in any realm of policy, but they are especially pernicious in cases involving the nation's security. Policy makers may not be able to filter out the dubious claims and spurious numbers which are commonplace in debates on national security. They are vulnerable to the selective use of evidence chosen to play upon their predilections about defense issues.

These potential problems have become real in the Reagan presidency. Neither the president nor his senior colleagues came to office with significant backgrounds in defense policy. There is reason to worry that they have been systematically misinformed on key issues which have shaped the scale and direction of the administration's national security posture.

Ronald Reagan has been a victim of his administration's penchant for assertions which, it turns out, "ain't so." Consider three themes advanced by various officials to support the administration's strategic weapons programs:

U.S. strategic forces are many years older than Soviet strategic forces. Secretary of Defense Casper Weinberger has stated as "simple fact" that "we haven't done any strengthening or any modernization of our strategic systems virtually since they were built."

Soviet strategic forces pose a vastly greater threat to U.S. forces than the United States poses to the Soviets. Weinberger told Congress in May that ". . . at the heart of the current U.S.-Soviet strategic force imbalance is the Soviet monopoly of prompt hard target kill capability."

The United States has drastically and unilaterally reduced its nuclear capabilities over the last 20 years. "Ironically," says Assistant Defense Secretary Richard Perle, "it's been roughly a two-for-one buildown"—i.e. two warheads were eliminated for every new one deployed, he claimed.

Each of these assertions is marshaled to buttress the claim that the United States must modernize its strategic forces rapidly. Unfortunately, each is either wrong or utterly misleading. The valid case for force modernization rests on more measured premises.

American strategic weapons are hardly so ancient or obsolescent as some aver. At West Point recently, a Defense Department official evoked sharp criticism when he declared that "three-fourths of U.S. warheads are on systems that are 15 years old or more." That same line recurs in current interdepartmental analyses of strategic arms control options. It is a dreadful distortion.

Most U.S. strategic weapons are now deployed on ballistic missiles. Of the 7,000-8,000 warheads those missiles can carry, less than 500 are on missiles 15 years old or older (the Minuteman II and Titan II). The 550 Minuteman III missiles (1,650 warheads) were deployed from 1970-1975, as were the 304 Poseidon sea-based missiles (3,040 warheads). Furthermore, some Minutemen III were built as late as 1978, with new guidance and warheads installed on 300 missiles in the late 1970s. The Trident missiles (264 boosters with 2,112 warheads) began to enter service in 1979 and are currently in production.

Thus, most U.S. strategic weapons (about 6,800 warheads) are mounted on missiles from one to 13 years of age—thousands on missiles five years old or less. The newest Minuteman III and Poseidon are about the same age as the oldest SS-17, SS-18 and SS-19 missiles which carry the bulk of Soviet warheads. And our confidence in the longevity of these missiles is well placed. The Air Force has just successfully fired a rocket motor from a Minuteman I built in 1963 and decommissioned in the mid-seventies. We need not disparage our forces in order to recognize that Soviet weapons are indeed modern and dangerous.

Exasperated with Weinberger's erroneous description of the age of U.S. missiles, strategic analyst Richard Garwin says: "It's incredible that a business executive [as Weinberger used to be] would tolerate in his staff . . . persons providing demonstrably wrong information for his public speeches and presumably for his program decisions."

The thesis that the Soviet have a far greater ability to strike our missiles in their silos than we have to strike theirs also requires qualification. Under plausible assumptions. Soviet missiles could destroy virtually all the U.S. strategic missiles based in silos. But those silos hold *less than one-fourth* of U.S. warheads, meaning that the Soviets would still face retaliation from the overwhelming forces at sea and on aircraft. This is why the Scowcroft Commission—whose main findings the administration embraced—said we ought not worry too much about the once-trumpeted "window of vulnerability," because we have many more weapons than the land-based missiles that some analysts put in that window. In reality, because we have more balanced strategic forces, the United States is far less vulnerable to a "counterforce" strike (an attack on enemy weapons systems) than the Soviet Union.

According to the North Atlantic Treaty Organization's official comparison of NATO and Warsaw Pact forces, we have a potent capability to attack Soviet forces. NATO credits the present Minuteman III force with the capacity to destroy over 800 "hard targets" (missiles in silos). The Soviet Union has concentrated well over 5,000 warheads in fewer than 800 ICBMs. Thus, even without the MX missiles, NATO data show that the United States already holds hostage a larger number of Soviet warheads—over 60 percent of their total force—than the Soviet Union threatens by placing American land-based missiles at risk. (Those missiles carry about one-fourth of total American warheads.)

Testimony by the Joint Chiefs of Staff indicates that the United States already has rough parity with the Soviet Union in overall capacity to attack hardened targets, although it has only about one-third the Soviet ability to strike such targets quickly.

Some analysts argue that NATO overstates present U.S. capabilities—maybe our missiles aren't quite so accurate and Soviet silos are harder than ours. But even if the NATO calculation were in error by a factor of two, even if the United States could destroy only 400 silos, the conclusion holds: Soviet warheads are more vulnerable in absolute and percentage terms than are U.S. weapons.

Marshal Nikolai Ogarkov, the Soviet commander, has not missed the point. There are clear signs that he and his colleagues are trying to move toward a less vulnerable posture in the coming decade. Ambassador Edward Rowny has said that he detects keen Soviet interest in moving toward deployment of smaller, mobile ICMBs. The awareness that both sides have serious vulnerabilities could be a crucial advantage in mapping a mutually acceptable path toward more survivable and stable forces. But neither military planning nor diplomacy benefits from the myth that the United States is worse off than the Soviet Union when it comes to land-based missile vulnerability. The Soviets are in comparable jeopardy, and they know it.

One also needs to dissect the contention that the United States has made major cuts in forces over the last two decades. That is absolutely untrue with regard to strategic offensive forces. While many nuclear warheads for air defense systems, theater forces and similar weapons have been retired by the United States, both Soviet and American strategic offensive forces have acquired thousands of additional warheads. Since 1968, Soviet offensive warhead totals quadrupled from about 1,800 to over 8,000; U.S. totals have more than doubled from about 4,000 to around 10,000. Current modernization programs on both sides could move each country to 15,000 or more strategic warheads in the early 1980s.

Partly because they deal with technical and complex issues, these three false assertions have received little critical appraisal. Such contrived figures and arguments appear in many administrations. They stem not from malice but from understandable pressures to dress up the case, to put the best face on favored policies. Yet sound policy requires more than mere debating points.

How might the president react to this challenge to the evidence on which the administration is basing its strategic programs and arms control proposals? He could ignore it, denounce it, rebut it—or he could welcome it as a caution to scrutinize more closely information he receives from subordinates.

In particular, the president should ask whether the administration is actually meeting his oft-repeated pledge to seek deep reductions in strategic forces. On April 17, 1982, Reagan declared that "It must be the objective of any negotiations on arms control to reduce the numbers of nuclear weapons." In February 1983, he reiterated "our willingness to seek reduction to significantly lower levels of nuclear forces based on

equal, balanced levels of comparable systems."

Yet, Congressional Budget Office studies indicate that, even if the Soviets accepted the American proposals at the Strategic Arms Reduction Talks, the United States would have more strategic nuclear weapons in the 1990s than it has today. The dramatic cuts called for in missile-borne weapons—where the Soviets have most of their warheads—would be more than offset by the massive expansion planned for U.S. bomber weapons. Such proposals directly contravene Reagan's commitments to the nation as candidate and incumbent. And many of his own associates admit privately that the proposals are non-negotiable.

Perhaps, as congressional leaders are urging, President Reagan will see merit in broadening his circle of advisers, relying more on retired Gen. Brent Scowcroft, chairman of the strategic forces commission, and other independent figures.

In his eloquent address to the United Nations on Sept. 26, Reagan made the "unequivocal pledge" to seek and accept "any equitable, verifiable agreement that stabilizes forces at lower levels than currently exist." To devise—or even to recognize—such an agreement requires precise and judicious analysis.

Knowing things "that ain't so" serves neither the president's nor the nation's interest.

GENOCIDE—THE INDELIBLE SHADOW

Mr. PROXMIRE. Mr. President, last Sunday's New York Times contained a review of Annette Insdorf's new book "Indelible Shadows," in which she examines and analyzes over 50 films on the Holocaust. She begins with the questions, It occurred to me that if I, the only child of Holocaust survivors, needed a film to frame the horror and give it meaning, what about the others? How great a role are films playing in determining contemporary awareness of the Final Solution? Yet, her book goes far beyond simple criticism of films, it explores their ethical impact on society.

Her book makes it clear that the pains and fears of the Holocaust are not forgotten. Even the title, "Indelible Shadows," implies that this tragedy will always haunt us. The stains of genocidal blood are permanent. The nightmares of Holocaust memories are permanent. And they are permanent thanks in part to the medium that will not allow this dark incident in our history to be forgotten. As Ms. Insdorf so aptly notes, "Images are wounds that won't heal."

Mr. President, we will never heal the wounds inflicted by past atrocities. We will never be able to turn back the hands of time and save those who are depicted in these films.

But it is not too late for us to reassure those living today, and generations yet to be born, that we are committed to their right to exist, their right to live free from fear of extinction.

We have the means at our disposal to take the first small step toward providing them that assurance. By ratifying the Genocide Convention we will place would-be perpetrators of these grave crimes on notice that the world community will not tolerate such despicable actions, that we will take firm action to prevent their occurrence and firmly punish the guilty if our preventive efforts fail.

Mr. President, ratification of the Genocide Convention is just one small step forward. But with the indelible shadow of past genocides looming in mankind's history, can we afford to do any less?

Mr. President, I yield the floor.

Mr. SPECTER. Mr. President, I commend the distinguished Senator from Wisconsin on his very cogent statement, and I agree with the statement which he has made about the necessity for arms reduction.

His statement comes at an opportune time with the President having earlier this week announced a new approach in Geneva, and I for one am hopeful the President will proceed to initiate action to have a summit at the earliest possible moment in accordance with the resolutions enacted by this body urging that summit and hopefully a summit before the deployment of the Pershing II missiles because that deployment will have a very marked impact on relations between the United States and the Soviet Union.

While it may ultimately be necessary to have that deployment as the facts may unfold, it would be my hope that if and under any circumstance there could be an arms reduction agreement as urged by the distinguished Senator from Wisconsin that the action could be taken and I think must be taken for the summit and hopefully could be taken before the deployment of the Pershing II's and cruise missiles.

I thank the Chair and yield the floor.

Mr. PROXMIRE. I thank the Senator.

The PRESIDING OFFICER. The Senator from Florida is recognized.

REGAN WRONG AGAIN

Mr. CHILES. Mr. President, as you know the reporting date for the reconciliation package has been put back once again, this time until Halloween. In some ways, I suppose, that is appropriate, because the budget debate has been haunted by some strange events lately.

The most recent of those came this week when Secretary of the Treasury Donald Regan said he thought the budget deficit could be down to somewhere around $100 billion by 1985. That would really be a supernatural event, especially if you examine how the Treasury expects that to be accomplished.

Indeed, Mr. Regan is wrong again.

After Secretary Regan's remarks before the U.S. Chamber of Commerce, I had my staff check out how the Treasury expected to reach $100 billion deficit figure, especially since the deficit now is around $200 billion. Here is what Treasury had to say.

They said they expected a 1983 real growth rate of around 6½ percent, and a 1984 rate of 5 percent to bring the deficit down to $155 billion, down $15 billion from their current policy estimate of $170 billion.

Next they expect something they call spending underruns to carry through to next year and cut the deficit another $15 billion, down to $140 billion.

Finally they anticipate additional spending cuts to bring the deficit down $20 billion to around $120 billion by 1985. That figure of $120 billion by their arithmetic, is close enough to $100 billion to justify Secretary Regan's claim.

I would remind the Senate, Mr. President, these faulty figures are provided by the same Department of the Treasury which just this summer issued a report claiming that deficits really had no effect on interest rates. Now, after claiming in effect that deficits do not really matter, they are saying that at least half the deficit does not really exist, or will not exist next year.

Frankly, Mr. President, I think the Department of the Treasury either ought to be ashamed of itself, or enter the 1984 Olympics competition for gymnastics. They really ought to be ashamed of themselves.

The same day that Secretary Regan claimed the deficit would fall to $100 billion by 1985, he also said the administration should not commit itself to serious deficit-cutting measures until 1985 which, of course, just happens to be after the election.

And, if there is any doubt elections effect budgets, just look at yesterday's Washington Post which opened with the headline, "Election-Year HUD Budget Would Reverse Three Years of Cuts."

So just when we could use some real leadership from Treasury, we are getting continued gamesmanship as a substitute.

Let us look more closely at the Treasury claim of $100 billion deficit by 1985.

For openers, they chose to start with a current policy deficit estimate of $170 billion. That is not the way the Congressional Budget Office sees it. CBO estimates the current policy deficit to be $197 billion. So Treasury seems to have started with wishes that do not reflect the facts.

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Next, the Treasury found another $15 billion in savings from those spending underruns. That is a relatively new term for those familiar with the budget. We heard it first this summer when Budget Director David Stockman found saving in the defense budget of more than $2 billion because of lower inflation rates. Of course spending underruns would be a treat for the budget, but if past experience is any guide, chances are it will become nothing more than a Halloween trick.

Unfortunately, the current spending shortfalls are not a permanent fact. Mostly they are due to this summer's drought driving up farm prices, which reduces farm price supports. I wonder if the Treasury is predicting another drought for 1985?

The other major shortfall is a delay in spending for new defense systems. CBO says that while those outlays are lower than projected in 1983 and 1984, they will add almost a billion dollars to the 1985 deficit.

So Treasury seems to be using a minus sign where it should have a plus.

Finally, the Treasury Department anticipates another $20 billion a year in spending cuts to help reduce the deficits. That estimate comes at a time when the entire reconciliation package is under a threat because of what appears to be an impasse over the extent of spending cuts and revenues in this year's budget.

To give you an idea of how big the "if" is, the original Reagan cuts that passed in 1981 added to $39 billion. The total the President asked for this year was $12 billion. The total being hung up in reconciliation is only $3 billion a year.

So simply assuming $20 billion a year is absurd.

So, to say the very least Mr. President, I think we should be very skeptical about Secretary Regan's claims. His projections for actually cutting the deficit in half are based on assumptions of strong growth, matched to expected savings which the odds seem to be against just now.

I for one, do not see how we expect rapid growth to continue when a $200 billion deficit stands in the way at the very outset. I do not see how interest rates can stay low enough to foster strong growth when the deficits are so high. And I do not see how private concerns will find the money to borrow when Federal deficits are chewing up so much of available funds. If growth goes at that higher rate, we are clearly going to get a real credit crunch.

Let me point to a recent study by Chase Econometrics to underscore the problem. Part of that study measured credit supply and demand. It showed that in 1984 total domestic nonfinancial credit demand will exceed supply by $58 billion. By 1985, they expect demand to exceed supply by $270 billion.

That does not sound to me like a recipe for robust recovery. In fact, it sounds like a classic formula for crowding out. And Chase Econometrics agrees. In their study, they estimated probabilities—figured the odds, in other words—on when deficits would really start putting the screws to the credit markets. They figured, and I quote, "There is a 65 percent probability that crowding out will begin to occur in 1985—and only a 2 percent probability it will not occur at all."

Frankly, the 2-percent probability is about the same bet I would be willing to place on Secretary Regan's hopes of $100 billion deficit when he prescribes no hard action to bring that about.

If you look at the dates in the Chase survey, one thing comes through loud and clear. Crowding out is certain to occur soon. In fact, there is a 25-percent chance it will begin in the coming year. If that happens, our current economic recovery will end.

Let me explain. A classic recovery goes on for about 3 years. The first year is pushed along by consumer spending that dries up business inventories. The second year is when business starts to rebuild capital. The third year normally finds recovery operating on all cylinders before it begins to ebb.

Mr. President, the second year of the current recovery is 1984, the same year Chase Econometrics predicts a 25-percent chance that crowding out will begin. You simply cannot have a recovery when Federal deficits are keeping business investors out of the credit markets.

So I have strong doubts about Treasury Department optimism on the deficits. Treasury expects deficits to fall without doing anything to make them fall.

What that means is that the pressure is that much greater on us to stick with the budget we passed in June. It was an action plan, a blend of spending restraint and revenues designed to reduce the deficit by $89 billion over the next 3 years. It is a positive plan that gets us moving rather than just hoping.

It certainly beats waiting for the administration tooth fairy to put $100 billion under the deficit pillow on Halloween.

Mr. President, I ask unanimous consent that the Chase Econometrics study I cited earlier be printed in the RECORD at this point.

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

CROWDING OUT? AN ANALYSIS OF CREDIT SUPPLY AND DEMAND

(Bernard M. Markstein, III)

SUMMARY

Public concern over the Federal deficit remains at a high level, yet little relief is in sight. In the past, alarms about crowding out have been raised only to be proven false. Is this the case now?

An estimate of credit supply is made based on the historical relationship between domestic nonfinancial debt and GNP. The demand for credit is projected using the experience of the recovery following the 1973-75 recession and the forecast for the Federal deficit. The analysis suggests that credit needs may be met throughout 1984, but that starting in 1985 pressures of excess demand will build. Other methods of analysis confirm this result.

INTRODUCTION*

Much public discussion has centered on the anticipated size of the Federal Government deficit over the next several years. The current deficit is running around $200 billion. Projections call for the deficit to continue near this record high well into the recovery. Chase Econometrics is not alone in its projections for the deficit: the Administration, Congress, and other forecasters have produced similar figures. More disturbing, the deficit projections are not significantly lower for higher GNP growth paths. Among the many factors contributing to this result are the indexation of taxes, accelerated defense spending, and benefit increases for Social Security recipients. The first reduces the beneficial effects on the deficit of bracket creep, and the latter two will widen the deficit on the expenditure side.

At this stage of the recovery large deficits are not only acceptable but are even desirable—they provide needed stimulus to the economy. The economy is able to absorb them because of low private credit demands. It is later in the recovery that problems arise. In the past, private credit demands have increased as a recovery proceeds. Simultaneously the deficit has fallen—generally in absolute terms, as well as relative to GNP—permitting the rising private credit needs to be funded. This time, however, it appears that the deficit will remain high both in absolute terms and relative to GNP. Will the economy be able to properly fund private credit needs or will there be crowding out?

This article first will examine the supply of credit, then the demand for credit. Finally the implications of the interaction of the two will be discussed. The results indicate that through 1984 the large government deficits will not crowd out private investment, but that starting in early 1985 there will be increased competition for funds due to rising private credit demands. This will lead to some crowding out of private investment.

THE SUPPLY OF CREDIT

Pioneering work has been done by Dr. Benjamin M. Friedman, a Professor of Economics at Harvard University, indicating a strong historical relationship between total domestic nonfinancial credit and GNP. (Benjamin M. Friedman, "Debt and Eco-

Charts and graphs not reproduced in the Record.

*Based on the presentation, "Forecast and Planning Issues for 1984," given at the Chase Econometrics Economic Outlook Forum on September 13, 1983 in Atlantic City, New Jersey.

nomic Activity in the United States" National Bureau of Economic Research, Reprint No. 278.) Dr. Friedman has found this ratio to be almost constant over the 1960 to 1980 period; there has been only a slight trend upward, with almost negligible cyclical movements. Whatever cyclical movements there are result from the fact that the denominator—total domestic non-financial credit—is a stock that changes slowly while the numerator—nominal GNP—is a flow that changes more rapidly. Hence, during a recession the ratio tends to rise somewhat (note particularly the recent 1981-83 period) while during an expansion phase it declines. Yet over longer periods of time the ratio is very stable.

This stability occurs despite considerable variation in the components. Total domestic nonfinancial debt represents the stock of outstanding debt instruments issued by nonfinancial entities (entities that are not banks or thrift institutions). These include nonfinancial businesses (corporations, farms, partnerships), households, state and local governments, and the Federal Government. Nonfinancial Federal Government debt excludes such financial governmental borrowings as those of the various federally sponsored credit agencies, such as GNMA, and mortgage pools.

In the early 1950's the Federal portion of this debt was considerable, due to debt remaining from World War II. This share was gradually reduced as the economy grew faster than new debt was acquired, to a low in 1974. From that nadir the Federal Government share has again grown.

The decline in the Federal Government portion of domestic nonfinancial debt has allowed the business and household shares to grow. Most of the growth in the household share can be traced to increased mortgage borrowing—much of it encouraged by Federal programs and policies.

Friedman has tested the stability of the overall ratio—domestic nonfinancial debt to GNP—and found it to be as good or better than many comparable measures, including the money supply-GNP relationship. Further, when he extended his study to four other major industrial countries (Canada, Germany, Japan, and the United Kingdom) he found similar overall stability in the credit ratio. (Benjamin M. Friedman, "Money, Credit and Nonfinancial Economic Activity: An Empirical Study of Five Countries," National Bureau of Economic Research, Working Paper No. 1033.)

Based on this strong historical evidence, the credit supply may be forecasted by extrapolating the credit ratio through the end of 1985. Table 1 presents historical and extrapolated values along with GNP figures (including forecast figures) and the implicit total domestic nonfinancial credit levels. This extrapolation is the supply of domestic nonfinancial credit in the sense that it represents the willingness of the economy to hold domestic nonfinancial debt. The extrapolation lies within the Fed's target range of growth for domestic nonfinancial credit.

TABLE 1.—CREDIT SUPPLY PROJECTIONS

[Dollar amounts in billions]

	Domestic nonfinancial debt-GNP ratio	GNP	Domestic nonfinancial credit supply
1983.1 [1]	151.32	$3,172	$4,799
1983.2 [1]	150.95	3,272	4,939
1983.3	151.15	3,359	5,077

TABLE 1.—CREDIT SUPPLY PROJECTIONS—Continued

[Dollar amounts in billions]

	Domestic nonfinancial debt-GNP ratio	GNP	Domestic nonfinancial credit supply
1983.4	151.35	$3,418	$5,174
1984.1	151.56	3,496	5,299
1984.2	151.76	3,582	5,436
1984.3	151.97	3,672	5,580
1984.4	152.17	3,754	5,713
1985.1	152.37	3,851	5,867
1985.2	152.58	3,939	6,010
1985.3	152.78	4,021	6,143
1985.4	152.99	4,103	6,277

[1] Actual.

THE DEMAND FOR CREDIT

The projection for credit demand is based on the experience coming out of the 1973-75 recession. The choice of this period was made for two reasons. First, the 1981-82 and 1973-75 recessions were very similar. They were of equal length and of similar severity. Second, the recovery phase from the 1981-82 recession has had a similar profile to that after the 1973-75 recession and is forecasted to proceed on a similar path.

The quarterly growth rates of nonfinancial debt for households, corporations, noncorporate businesses, and state and local government for the 1975-80 recovery period were calculated. A projection of the level of debt for each sector was made using these rates. To calculate the Federal nonfinancial debt, the deficit for each quarter was added to the level of U.S. debt. Table 2 shows the individual sector projections and the total credit demand.

TABLE 2.—CREDIT DEMAND PROJECTIONS

[In billions of dollars]

	Federal Government	State and local government	Household	Nonfinancial corporations	Other nonfinancial businesses	Total domestic nonfinancial credit demand
1983.1	1,047	364	1,694	1,091	603	4,799
1983.2	1,094	383	1,737	1,105	621	4,939
1983.3	1,139	391	1,788	1,119	637	5,074
1983.4	1,186	397	1,815	1,127	646	5,171
1984.1	1,231	407	1,872	1,156	663	5,329
1984.2	1,276	414	1,928	1,173	679	5,469
1984.3	1,320	417	1,996	1,207	693	5,633
1984.4	1,364	418	2,044	1,234	711	5,771
1985.1	1,408	428	2,128	1,276	736	5,975
1985.2	1,453	439	2,218	1,305	756	6,171
1985.3	1,499	444	2,313	1,352	780	6,389
1985.4	1,547	447	2,372	1,388	793	6,547

SUPPLY AND DEMAND

The results of the supply and demand projections are summarized in Table 3. The third column of the table is the difference between supply and demand. Of course, on an ex post basis the amount lent and the amount borrowed are always equal. Thus, the third column represents a measure of the pressure on interest rates. Excess supply (a positive value) represents downward pressure on interest rates, and excess demand (a negative number) upward pressure. The changes in rates would have the usual effect—lower rates producing increased demand and reduced supply, higher rates the reverse. Thus Table 3 indicates that upward pressure on interest rates may begin to be felt as early as 1984, and continue to build progessively throughout 1985. Given the method of deriving these estimates, excess demand of under $75 billion does not necessarily represent a serious mismatch of supply and demand. If excess demand of that magnitude is not due to statistical error, a relatively small increase in interest rates would bring about equilibrium with only minor private sector crowding out. Excess demand of over $7 billion probably does represent true upward pressure on interest rates. Clearly, by the end of 1985 excess demand grows to the point that interest rates will have to rise are some private credit demands will be crowded out of the financial markets. Figure 5 shows the supply and demand graphs in terms of their relationship to GNP.

TABLE 3.—CREDIT SUPPLY AND DEMAND

[In billions of dollars]

	Total domestic nonfinancial credit supply	Total domestic nonfinancial credit demand	Supply-demand
1983.3	5,077	5,074	3
1983.4	5,174	5,171	3
1984.1	5,299	6,329	−30
1984.2	5,436	5,469	−33
1984.3	5,580	5,633	−53
1984.4	5,713	5,771	−58
1985.1	5,867	5,975	−108
1985.2	6,010	6,171	−161
1985.3	6,143	6,389	−245
1985.4	6,277	6,547	−270

Why does pressure on credit market build in 1984 and 1985 when similar pressure did not occur in 1967-77? The answer is, of course, Federal deficits. Taking the ratio of deficits to GNP, in both the 1973-75 recession and the 1981-82 recession, deficits peaked at just over 6 percent of GNP. However, where in the recovery following the 1973-75 recession deficits quickly fell back to the 1 to 2 percent range, Chase Econometrics projections are for deficits to remain above 4 percent of GNP through 1985. These estimates are in agreement with those of the Reagan Administration and the Congressional Budget Office. Even more disquieting, our forecast is not changed appreciably by altering the growth path of GNP.

SENSITIVITY OF ESTIMATES

The nature of the data and the methodology for this study suggest that the specific numbers and timing could vary somewhat. Hence, caution is required in their application. Before addressing this point more directly, it is useful to look at the problem from a different perspective. Table 4 presents a table of net new funds raised (excluding equity) from 1973 through second quarter 1983 by domestic borrowers divided into Federal Government borrowing and private borrowing (which includes state and local government borrowing) along with each sector's percentage share of total funds raised. Table 4a provides a breakdown of private borrowing by major sector and each sector's percentage of total domestic nonfinancial funds raised. Table 5 shows the percentage of funds available for nonfederal borrowing under different assumptions. The assumptions are: (1) credit supplied grows by the amount projected above, (2) available credit grows according to the Federal Reserve Board's target range of growth for domestic nonfinancial credit. The latter is broken into two cases: (a) available credit grows according to the Fed's lower target bound of 8½ percent for 1983 and 8 percent for 1984 and 1985, and (b) available credit grows according to the Fed's upper target bound of 11½ percent for 1983 and 11 percent for 1984 and 1985. For each assumption the Federal Government's demand for

funds as a percentage of total available funds has been calculated to determine the residual percentage of funds available for private borrowing needs. Clearly pressure builds throughout 1985. This conclusion is compatible with the analysis above.

TABLE 4.—NET FUNDS RAISED IN THE CREDIT MARKET

[Dollar amounts in billions]

Date	Total domestic nonfinancial borrowing (amount)	Federal Government borrowing		Private domestic borrowing	
		Amount	Percent of total	Amount	Percent of total
1973	$188.2	$8.3	4.4	$180.0	95.6
1974	175.1	11.8	6.7	163.3	93.3
1975	194.6	85.4	43.9	109.2	56.1
1976	243.8	69.5	28.5	174.3	71.5
1977	321.4	56.8	17.7	264.7	82.3
1978	364.0	53.7	14.7	310.4	85.3
1979	386.1	37.4	9.7	348.8	90.3
1980	342.6	79.2	23.1	263.4	76.9
1981	377.0	87.4	23.2	289.6	76.8
1982	386.3	161.3	41.7	225.0	58.3
1983.1 [1]	88.9	55.6	62.6	33.3	37.4
1983.2 [1]	140.0	46.9	33.5	93.1	66.5

[1] Not seasonally adjusted.

Source.—Flow of funds.

TABLE 4a.—PRIVATE DOMESTIC BORROWING

[Dollar amounts in billions]

Date	State and local		Household		Corporation business		Noncorporation business	
	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total
1973	$12.3	6.5	$79.6	42.3	$48.8	25.9	$39.3	20.9
1974	15.5	8.9	53.7	30.7	66.2	37.8	27.9	16.0
1975	13.7	7.1	51.9	26.7	21.0	10.8	22.5	11.6
1976	15.2	6.2	90.5	37.1	43.0	17.6	25.6	10.5
1977	15.4	4.8	137.6	42.8	71.2	22.1	40.6	12.6
1978	19.1	5.3	167.7	46.1	78.5	21.6	45.0	12.4
1979	20.5	5.3	177.0	45.9	95.4	24.7	55.8	14.5
1980	20.3	5.9	119.9	35.0	75.5	22.0	47.6	13.9
1981	9.7	2.6	125.4	33.3	98.8	26.2	55.8	14.8
1982	36.3	9.4	80.2	20.8	75.6	19.6	32.9	8.5
1983.1 [1]	4.2	4.7	19.7	22.2	4.4	5.0	5.0	5.6
1983.2 [1]	18.8	13.4	43.1	30.8	14.1	10.1	17.2	12.2

[1] Not seasonally adjusted.

Source.—Flow of funds.

TABLE 5.—PRIVATE FUNDS AVAILABILITY RELATIVE TO FEDERAL FUNDING NEEDS UNDER ALTERNATIVE SCENARIOS

	Total funds available			Federal demand for funds				Private credit availability		
	Projected available funds	Fed's lower target bound	Fed's upper target bound	Federal Government demand for funds	As a percent of projected available funds	As a percent of Fed's lower bound	As a percent of Fed's upper bound	As of percent of projected available funds	As a percent of Fed's lower bound	As a percent of Fed's upper bound
1983.3	137.72	101.76	136.25	45.23	32.84	44.45	33.20	67.16	55.55	66.80
1983.4	96.89	103.86	140.01	46.57	48.07	44.84	33.26	51.93	55.16	66.74
1984.1	125.45	99.94	137.86	45.70	36.43	45.73	33.15	63.57	54.27	66.85
1984.2	136.87	101.88	141.50	44.45	32.48	43.63	31.42	67.52	56.37	68.58
1984.3	143.75	103.86	145.24	44.11	30.69	42.48	30.37	69.31	57.53	69.63
1984.4	133.37	105.88	149.08	43.66	32.74	41.24	29.29	67.26	58.76	70.71
1985.1	154.07	107.94	153.02	44.10	28.62	40.86	28.82	71.38	59.14	71.18
1985.2	142.38	110.03	157.06	44.78	31.45	40.70	28.51	68.55	59.30	71.49
1985.3	133.93	112.17	161.22	46.78	34.93	41.70	29.02	65.07	58.30	70.98
1985.4	133.41	114.35	165.48	47.96	35.95	41.95	28.99	64.05	58.05	71.02

Accuracy of supply estimates

The projection for supply may be a little optimistic because the figures key off of the data for second quarter 1983. Since the ratio of domestic nonfinancial debt to GNP was high in that period due to the cyclical effects of the recession, there is a slight upward bias to the projections. Thus from the supply side, it is more likely that the pressure on the financial markets will build slightly sooner rather than later.

On the other hand, there is a small chance that the estimate may prove too low because foreign inflows and a higher personal saving rate might add to the supply of funds moving the pressure to a later date or eliminating it all together. The latter seems very unlikely, however. At best such developments might delay the problem by a quarter or two. Recent foreign purchases of Treasury securities have not exceeded the 1977 figure of $31.5 billion which represents only about 15 percent of this year's deficit and an even smaller percentage of the anticipated shortfall between supply and demand for credit in 1985. The net inflows of foreign funds to the credit market have not been much different in absolute size—the top figure to date is the 1977 inflow of about $40 billion. At present, about $16 billion has come in from foreigners in the first half of 1983 (about $15 billion of that to purchase Treasury securities). An increase in savings also would do little to help. This can be seen in Table 6, which is a reproduction of Table 13 from the article "Federal Deficits and Private Credit Demands: Economic Impact Analysis" by James R. Capra in the Federal Reserve Bank of New York Quarterly Review for Summer 1983.

TABLE 6.—SAVINGS AS A PERCENTAGE OF GNP

[Calendar year]

Item	1961 to 1970	1971 to 1980	1985 projection
Gross private saving	16.4	16.9	17.5
Personal	4.7	4.9	4.0
Business	11.7	12.0	13.5
Total use of saving	16.4	16.9	17.5
Less:			
Financing the Federal deficit	0.5	1.9	5.9
Other [1]	0.5	−0.9	−2.6
Equals: Amount available for gross private investments	15.4	15.9	14.2

TABLE 6.—SAVINGS AS A PERCENTAGE OF GNP—Continued

[Calendar year]

Item	1961 to 1970	1971 to 1980	1985 projection
Addendum: Capital consumption allowance	8.4	9.9	11.0
Amount available for net new private investments	7.0	6.0	3.2

[1] Includes net foreign investment and State and local deficits.

Source.—Federal Reserve Bank of New York.

Accuracy of demand estimates

On the demand side estimates could be a bit too high since the present recovery may prove weaker than the recovery from the 1973-75 recession, although to date it has proved to be remarkably strong. This would push the credit conflict to a later date.

Alternatively, the estimate of credit demand could possibly prove too low because of the tax cuts. With the exception of the small 1975 tax rebates, there were no tax cuts in the recovery following the 1973-75 recession—hence our estimates do not account for them. Together with pentup consumer demand for durable goods, the cuts might increase demand and move the problem to an earlier date.

Accuracy of timing estimates

The timing of pressures in the credit market outlined in this analysis represents the most likely projection. While crowding out could occur in the credit markets at an earlier date, it is unlikely to be postponed to a later period. A reasonable subjective probability distribution would be that there is a 65 percent probability that crowding out will begin to occur in early 1985, a 25 percent probability it will begin to occur by mid-1984, an 8 percent probability it will not occur until 1986, and a 2 percent probability it will not occur at all.

CONCLUSION

Pressures on the credit markets are likely to arise in early 1985 and increase throughout the year. Available domestic nonfinancial credit was estimated by extrapolating from its historical relationship to GNP. Demand for credit was projected based on the experience following the 1973-75 recession and the forecast of the Federal deficit. The economy should be able to accommodate credit demands through 1984, but after that demand pressures grow progressively higher.

CONCLUSION OF MORNING BUSINESS

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

DAIRY AND TOBACCO ADJUSTMENT ACT OF 1983

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1529, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 1529) to stabilize a temporary imbalance in the supply and demand for dairy products, to enable milk producers to establish, finance, and carry out a coordinated program of dairy product promotion, to adjust the support levels for the 1983 and subsequent crops of tobacco, to make modifications in the tobacco production adjustment program, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 2307

The PRESIDING OFFICER. The pending question is the Baucus amendment. The Senator from Montana.

Mr. BAUCUS. Mr. President, yesterday before the Senate recessed we considered the Rudman amendment dealing with producer handlers. That amendment was tabled by a very narrow margin. The amendment I have before the Senate today is similar.

My amendment is an amendment which addresses an inequity that the pending bill imposes upon States like Montana, Wyoming, North Dakota, New Jersey, New Hampshire, Vermont, Maine, Virginia, North Carolina, South Carolina, Nevada, and California.

Let me explain: Very simply the bill reported out of committee attempts to provide a solution to the dairy support system that we have in our country to encourage the production of milk and to eliminate surpluses, essentially an approach to handle the dairy surplus that we face.

Mr. President, my amendment addresses what I see as a gross inequity in the compromise dairy bill now before us. The purpose of my amendment is to limit the milk assessment and diversion programs to areas in which Federal milk marketing orders are in effect.

The pending bill, the bill reported out of committee, requires that all producers pay a 50-cent assessment. Well, the States I mentioned, Mr. President, including the State of Montana, are States that are non-Federal marketing order States. Nevertheless producers in Montana and the States I mentioned still have to pay the 50-cent assessment.

Moreover the producers in Montana are producers that do not produce a surplus, it is a nonsurplus State. Consumers in Montana consume the milk produced in Montana.

We are not the only producers that face this situation. Producers in other States I mentioned also face the same inequity. So my amendment, Mr. President, is very simple. It is very fair. It is designed to address this inequity. It says the Secretary shall have discretion to exempt those procedures in non-Federal marketing order States from the 50-cent assessment.

The dairy compromise provides a direct subsidy encouraging the slaughter of dairy cows in direct competition with unsubsidized beef cattle slaughter. U.S. cattlemen face high grain prices, drought and stressed pastures—all forcing liquidation. They now must also face the prospect of the dairy industry being paid not to produce milk and also being paid to put more beef on the market.

The National Cattlemen's Association provides some startling figures. If the dairy incentive payment program attracted participation like that in the PIK grain program, dairy cow slaughter could be increased by 3.5 million head in a matter of months. This additional cow slaughter would be equal to half of the total cow slaughter in 1982.

I cannot put my stamp of approval on a dairy program that will further depress beef cattle prices.

If the 50-cent assessment does not put the dairymen in my State out of business, they will have the opportunity to receive a diversion payment for cutting their production by 5 to 30 percent. This $10 per hundredweight payment may look too good to pass up.

Two major problems would result if dairy production is cut in Montana in this way.

First, if production is reduced we will be forced to import milk from Washington State, Wyoming, or somewhere even more distant. Because of the high cost of transportation the cost to consumers would skyrocket. If the price of milk increases dramatically, no amount of market promotion will convince consumers to buy more dairy products. In short, Montana would fall into a chaotic marketing system—not an orderly one.

The second problem that would result from reducing dairy production in Montana and other areas is the increased marketing of dairy cattle. Dairy cattle would directly compete with beef cattle in the marketplace. Selling additional cattle to slaughter would force down already depressed beef prices even further.

Mr. President, I support the efforts of many of my colleagues in reforming the present dairy program. The current 50-cent assessments do nothing to curb production. They do, however, impose an undue hardship on many dairy farmers across the country. The current assessments must be repealed—I think most of us agree with that.

The dairy compromise before us is no more palatable to many dairymen or consumers than the current assessments. My amendment would correct a basic inequity in the compromise bill.

So, Mr. President, I urge my colleagues to listen closely to this amendment, weigh it carefully, and put themselves in the shoes of the dairymen in these States that I mentioned so that we can come up with a fair and equitable solution.

Mr. HUDDLESTON. Mr. President, as the distinguished Senator from Montana pointed out earlier, amendments similar to this one have been rejected by the Senate already during consideration of this bill. The Senate

has rejected the amendments principally because of the recognition that the bill contains a very carefully crafted compromise on the dairy program. The compromise takes into account differences in the various States as to the production of milk and the distribution of milk, the sale of milk, but accommodates such differences within a nationwide program.

What the Senator from Montana is offering throws us into an area of the unknown. He, himself, has indicated that there may be an unknown amount of milk exempted or an unknown certain percentage of the total production exempted. I do not think anybody knows precisely what impact that would have on the overall program. If a great deal of milk is excluded from the diversion program, the program could not be operated effectively.

I reiterate what has already been said: Those who are in the States where there is no particular surplus are in fact benefiting from the program. They benefit from the price levels that are established, whether or not they would have to make a contribution into the fund or not.

On the question of fairness, on the question of practicality, on the question of whether we are going to have a program that works at all, on the question of whether we can really reduce the surplus that exists, we can only say that the answers will depend on whether or not we have a nationwide program that treats all producers the same. Every loophole that is built into the bill, as we have learned from past experience, will be a great attraction, a great magnet, to draw more and more producers through that loophole. Moreover, the amendment could prohibit milk producers who produce milk in an area not under a Federal marketing order from participating in the voluntary paid diversion program.

So I hope that the Senator from Montana might be willing to modify his amendment. I propose that we direct the Department of Agriculture to conduct a study. This is an area that undoubtedly does need investigation as to what impact it would have on the overall program.

Otherwise, of course, we would have to oppose the amendment, principally on the bases that it would, first, destroy what has been so carefully put together and would probably make it impossible to pass any kind of dairy legislation; and second, even if we were able to pass it, we would have such a variety in the program, such a loophole, that there is no assurance that it would in any way accomplish the objectives that we are trying to accomplish here.

Mr. HELMS. Mr. President, I have several problems with the amendment. I have none with the distinguished Senator from Montana. What he wishes is simply to exempt his State. And everyone can understand that because all Senators would like to exempt their States.

I do not quite understand one provision which relates to a producer who does not market milk to the Commodity Credit Corporation. No producer does. The amendment is a bit defective, but I know that was not the fault of the distinguished Senator from Montana.

But this amendment would exempt from the assessment and paid diversion program those producers in areas not covered by a Federal milk marketing order.

Now, as I say, I sympathize with my colleague's desire to exempt his State's producers from this facet of the compromise. I have heard that all over this Chamber. We could all be popular back home by offering such an amendment. And that may be the way to go.

But we have already voted on this proposition and we have a lot of Senators out today. Speaking for this side of the managers of the bill, I just cannot accept in good faith this amendment, because the Senate has already voted on this proposition and Senators have left. I know it is Friday and the Senator from Montana, the Senator from North Carolina, and the Senator from Kentucky are here working, but the fact is there are a lot of Senators out on both sides.

Now, Mr. President, let me say again that a significant portion of U.S. milk production occurs outside of the Federal milk marketing orders, and to exempt this production could subvert the effectiveness of the program. So if you do not want a program, offer amendments like this.

I go back to the statement I made yesterday. We have a fragile coalition on all of these farm matters including cattle, wheat, feed grains, and all the rest. I want to be cooperative with all of the commodities. But it would be unfair to those producers who live in areas covered by the Federal orders to adopt any amendment of this sort. Either we are going to have the program or we are not.

Mr. CHAFEE. Will the distinguished floor manager yield for a question in connection with this subject?

Mr. HELMS. I would rather finish my statement, but as a courtesy to the Senator I would be glad to yield to him.

Mr. CHAFEE. The Senator may complete his statement and then I will be glad to ask him a question.

Mr. HELMS. Whatever the Senator wishes.

Federal milk marketing orders are part of a broad program of marketing agreements and orders authorized by the Agricultural Marketing Agreement Act of 1937. So this is no new thing. Under this authority, the Secretary of Agriculture is empowered to help stabilize market conditions by issuing Federal orders which apply to handlers of milk and its products. In its simplest terms, a marketing order, a milk marketing order, is a legal instrument issued, subject to the approval of the affected producers, to provide the ground rules for transactions between producers and buyers of grade A milk in a specific geographic area.

Mr. President, at the present time there are about, as I recall, 46 milk marketing orders in effect. Last year, about 69 percent of all milk sold to processing plants and dealers, and about 81 percent of the fluid grade deliveries in the United States, were regulated by these orders. Through this amendment, then, 31 percent of milk sold to plants and 19 percent of all fluid grade deliveries would be exempt from the assessment. Acceptance of this amendment would effectively undermine the support for the compromise and thus take the steam out of the movement to replace the current assessment program. Farmers would have to continue to pay the present $1 per hundredweight assessment under those circumstances.

Now, let me put it like it is, Mr. President. Senators really have a choice of continuing the obviously undesired situation now or the compromise which moves us several steps in the right direction of getting this matter under control.

There is no other option.

This amendment will break down what I call repeatedly the fragile coalition. While many—including myself—do not like certain aspects of the compromise, it is the best we can do if we want to move away from the horrendous situation that we now have.

That is the choice. This amendment, in effect, like the one yesterday, is a killer amendment in terms of doing anything about a bad situation. It is like the little boy holding a fish in his hand saying, "Hold still, little fish. I am not going to hurt you. I am just going to gut you."

It is not apparent, furthermore, that there is any correlation between production under Federal milk marketing orders and sales of surplus dairy products to the Commodity Credit Corporation. For example, under this amendment we would be exempting all but 1 percent of the production in California, since that State is not under a Federal marketing order. However, purchases of surplus dairy products from California have accounted for 19 percent of the total Commodity Credit Corporation purchase costs for dairy products during the years 1979-82.

Do we want to burden the taxpayers with respect to California? Let them have it both ways? The Senate will have to make a choice on that.

On the other hand, much of New Jersey does fall under a Federal order. Still, the producers in New Jersey last year were responsible for only 0.3 percent of CCC expenditures. Thus, to exempt California from the program and not exempt the producers in New Jersey seems to be patently unfair.

Maybe we want to go to the situation where we just say, "What we have is just fine. Just pile up these surpluses. Do not do anything about it." But I do not think the Senate really wants to do that. That is the reason I hope the Senator will work with the Committee on Agriculture in formulating a new farm bill which will take care of the situation he is talking about. We begin that in January 1985. I am involved in an election in November 1984. It may be that I ought to say, "They will begin it." But in any case, in January of 1985 we will need all of the input we can have about solving this problem. In the meantime, we ought not destroy what little hope we have of bringing down surpluses.

If the Senator will allow us to modify his amendment, or if he will modify it along the lines the Senator from Kentucky has suggested, we will work with him, fully understanding the way he feels about it. If he does not, I will have to oppose the amendment. I would do so with regret, maintaining the highest degree possible in our friendship.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I will speak very briefly.

We have a national milk supply and the dairy price support program influences prices farmers receive for their milk in every State—Wisconsin, Montana, Kentucky, and so on. By undergirding the price structure for all milk, the price support program effectively provides all dairy farmers a minimum degree of price assurance whether their milk is sold to a cheese plant in Wisconsin or to a fluid milk processor in Florida, or sold in the Montana area by Montana producers.

Several States have developed and maintain State milk marketing programs that provide some additional price or market assurance to their dairy farmers. For the most part, these programs deal with the pricing of milk eligible for the fluid market. None of them eliminate the effect of the price support program, however.

At present, some 13 States utilize a State marketing program for all or a portion of the milk produced within their borders. These include California, Maine, Massachusetts, Montana, Nevada, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, and Virginia.

That is what the amendment, as I understand it, of the Senator from Montana would do. It would exempt these 13 States from the assessment. In 1982, the combined milk production in these States was 43.9 billion pounds, 32 percent of the total U.S. milk production. The Baucus amendment would take 32 percent, one-third, of the milk production out of the bill. Such a situation would not only be totally inequitable to the remaining two-thirds of the milk producers across the country; it would effectively guarantee the failure of the program.

The differing regional and marketing conditions across the country were fully considered as the dairy compromise was developed by Members of the Senate, the House, and administration representatives. The need to address the current problem on a national basis is recognized by dairy farmers across the country and is at the heart of the support expressed for the compromise by the administration and a broad bipartisan coalition within the Congress.

Carving out exemptions for this group or that region or a number of States would simply weaken the entire effort and place a still greater burden on those producers not exempted.

Mr. President, I have great admiration and respect for the Senator from Montana, but I do think what his amendment would do would be literally to gut this bill. I think if this happened, the bill would have no prospect of working. There is no way you can provide for a reduction in production but then exempt one-third of all the producers from that. The fact is we do have a national milk market, whether we like it or not. I do think that the amendment proposed by the Senator from Montana, as I say, would simply finish, would end, the effectiveness of these programs that have been so carefully worked out by the committee. Therefore, I hope the amendment will be rejected.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I appreciate the statement of the distinguished Senator from Wisconsin. Let me make a few observations.

The Senator from North Carolina would lead this body to conclude that the Senator from Montana is trying to provide a special provision for his own State. That is the implication.

Mr. President, let me say there are already exemptions in the present law for the State of Hawaii and the State of Alaska. There are exemptions.

Second, this amendment that I am offering benefits the State of North Carolina. North Carolina producers would benefit by the provision that I am suggesting because North Carolina is in the same situation.

There are many States in this situation. It is not just Montana. As the Senator from Wisconsin mentioned, there are roughly the portions of 12 States that are in this situation. It is not just one of 50 States that this Senator is speaking for.

Mr. President, I submit even if it were that the situation only applied to the State of Montana, I would proudly be standing here making the same case. I would do so because it is my right and also because it is my obligation. But mainly because Montana is being treated unfavorably, as are producers in the other 11 or 12 States. In all the comments we have heard, I have not heard any Senator say that the situation that Montana faces is fair. There is an implicit ring in their words, that they are agreeing that the dairymen and producers in Montana and other States are at a disadvantage. It is comparatively less fair for those producers than for producers in Federal market order States.

Mr. President, what we have heard basically is that there is this fragile coalition, we do not want to upset the fragile coalition the committee has come up with. Part of the legislative process is to work to mold and shape legislation as it goes through the process. This Senator is offering an amendment which improves the bill.

Beyond that, we are only one part of the legislative process. The House of Representatives, the other body, has not taken up this bill yet. The bill in the other body has not yet reached the floor. There will be plenty of opportunities for further correcting and modifying amendments to make a better deal in the other body. When we go to conference, there is a chance to modify it in conference, too. It is all part of the process.

So, I find it difficult to swallow the argument that this is a fragile coalition, leaping into the unknown, without an opportunity to amend the compromise bill before us.

It has been suggested on the floor this morning, well, let us have a study; let us look at it. You know, let us not force the issue; the coalition is too fragile.

Mr. President, we have had studies. We have had lots of studies. There was a dairy study mandated by the 1981 farm bill. Where is it? What happened to that study?

Further, Mr. President, there is no guarantee that the Senator from North Carolina or the Senator from Montana is going to be able in 1985 to help fashion a better solution. The Senator from North Carolina and the Senator from Montana both, appropriately and properly, face our constituents in 1984. The voters of the State of North Carolina and the voters of the State of Montana will decide whether or not they wish to send us back here

or send somebody else back here. There is no guarantee that we are going to be here in 1985 when a new farm bill comes up.

Mr. President, we have to address this issue; we know we have to address this issue sooner or later. Let us address it. Let us not procrastinate.

Mr. President, I am not trying to force a solution here. The amendment is very definitely crafted to give the power into the hands of the Secretary at his discretion—at his discretion—to exempt producers from the 50-cent assessment in non-Federal marketing order States. It is not mandatory. It does not require it. It does not require this leap into the unknown this big risk, this destruction of the fragile coalition. It gives the Secretary discretion, according to his judgment based upon the circumstances, whether it is 32 percent of the production or 20 percent of the production or 50 percent of the production. It gives the Secretary discretion to do what he thinks best in all circumstances, to fashion a solution that is better for everyone.

So, Mr. President, The fundamental question is one of fairness. It is true that it will be a change from the present bill but it is intended to address an inequity in several parts of the country and to make this a better bill.

Mr. President, the amendment that I submitted last night essentially addresses this question. I have a minor modification which is a clarifying provision. I send that modification to the desk and ask unanimous consent that it be made.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

The modified amendment is as follows:

On page 4, line 11, insert after the period the following new sentence: "The Secretary may grant exemptions from the provisions of this paragraph to a producer if the producer does not produce any quantity of milk in a production area specified in a marketing order issued under section 8c of the Agricultural Adjustment Act, as amended and reenacted by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c).".

On page 6, line 2, insert after the period the following new sentence: "The Secretary may grant exemptions from the provisions of this paragraph to a producer if the producer does not produce any quantity of milk in a production area specified in a marketing order issued under section 8c of the Agricultural Adjustment Act, as amended and reenacted by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c).".

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

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

The yeas and nays were ordered.

Mr. HELMS. Mr. President, may I have a copy of the modified amendment?

I thank the Senator.

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. HELMS. 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. KASTEN. Mr. President, this amendment would allow the Secretary, at his discretion, to apply the milk assessment and paid diversion only to producers who produce milk in a production area specified in a Federal milk marketing order. I think this amendment would have the effect of breaking the compromise, of ruining the compromise dairy program that people have tried to craft. I think it would destroy the efforts that the committee and others have made over the past several months. Let me point out a few reasons why this amendment must be rejected.

First of all, it applies to producers producing milk in a production area specified in a Federal order. In other words, Federal orders do not regulate milk production, they regulate handlers in certain geographic regions. A producer in a regulated area might sell the milk to a handler outside of that area; thus, his milk would not be regulated by the order.

Also, producers outside the marketing order area might ship milk to a regulated handling area; thus, the milk would be covered by the order.

For example, in the Senator's own State of Montana, there are producers shipping milk to handlers regulated under the inland empire marketing order covering parts of Washington and Idaho, outside of the State of Montana. The question here is, How would this work? It would not work.

I think there is a basic reason why we ought not to, No. 1, destroy the compromise and, No. 2, adopt an amendment that would create further confusion and further trouble in the overall program.

Mr. President, I urge that the Senate defeat this amendment by a tabling motion or a simple up or down vote.

Mr. THURMOND. Mr. President, I rise in support of the amendment offered by the Senator from Montana, Mr. BAUCUS. This amendment will exempt dairy producers in non-Federal milk marketing areas from the assessment on milk production and from the paid diversion program.

Mr. President, there are thousands of dairy producers across this Nation who are understandably opposed to the assessment on commercially marketed milk, and who, for various reasons, are not attracted to the concept of a paid diversion program. Many of those who oppose both the assessment and the diversion program produce milk in areas where that commodity is now, or traditionally has been, in short supply. Many of these dairy farmers also operate under State-controlled milk markets, such as is the case in my State of South Carolina. Dairy farmers in these State-order areas do not have their milk prices set by the Federal support level. They do not directly benefit from the Federal dairy price support program which has recently constituted an artificial incentive to overproduce. They are not a significant contributor to the current surplus problem.

Mr. President, it is inequitable to ask dairy farmers to finance the cost of a Federal milk price support and diversion program which does not benefit them and in which they have no desire to participate. By eliminating the assessment, along with the right of diversion program participation, in non-Federal milk market areas, we can add a greater degree of fairness to this dairy compromise.

Mr. President, in South Carolina the $100 assessment is costing the dairy industry $450,000 a month, or an average of $1,285 for the typical milk producer. In other words, the assessment has largely taxed away their profit margin. An auctioneer in my State who handles a large percentage of the farm dispersals has informed my office that he has a long list of dairy farmers who are requesting his services to liquidate their herds.

I cannot stand idly by and watch the dairy farmers in my State forced out of business one after the other because of this heavy tax on their milk production. The Southeast is generally short of fluid milk now, and if South Carolinians and Southeastern citizens are to continue to have adequate supplies of fresh, locally produced milk, this unjust and counterproductive assessment must be terminated.

Mr. President, it is a well known fact that vast differences exist in various regions of the country within the dairy industry. It is very difficult to fashion a dairy program that will satisfy all factions of our national dairy industry. In my view, this amendment takes these differences into account and makes the program more suitable for all concerned.

Mr. President, this amendment does not substantially revise the dairy compromise that was worked out in the Agriculture Committee. It simply narrows the focus to Federal milk marketing areas where the present costly surpluses have been occurring. This is a workable solution to some of the problems that have resulted from the assessment on commercially marketed milk. It does not place any undue burden on dairy producers in any area of the country, and it will greatly im-

prove the effectiveness and fairness of our dairy price support program.

Without objection, it is so ordered.

Mr. BAKER. Mr. President, I am prepared to make a tabling motion. Because of my high regard for the distinguished Senator from Montana (Mr. BAUCUS), I hesitate to do that, but duty calls. I have had a lot of practice in that regard. If no other Senator is now seeking recognition, I move to table the Baucus amendment, and I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll.

Mr. BAKER. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from New Mexico (Mr. DOMENICI), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Washington (Mr. EVANS), the Senator from Arizona (Mr. GOLDWATER), the Senator from Florida (Mrs. HAWKINS), the Senator from New Hampshire (Mr. HUMPHREY), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. McCLURE), the Senator from Oklahoma (Mr. NICKLES), the Senator from Illinois (Mr. PERCY), the Senator from Wyoming (Mr. SIMPSON), the Senator from Alaska (Mr. STEVENS), the Senator from Virginia (Mr. TRIBLE), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois (Mr. PERCY) would vote "yea."

Mr. BYRD. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from New Jersey (Mr. BRADLEY), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Ohio (Mr. METZENBAUM), the Senator from New York (Mr. MOYNIHAN), and the Senator from Arkansas (Mr. PRYOR) are absent on official business.

The PRESIDING OFFICER (Mr. SYMMS). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 58, nays 12, as follows:

[Rollcall Vote No. 287 Leg.]

YEAS—58

Abdnor	Bingaman	Byrd
Andrews	Boschwitz	Chafee
Baker	Bumpers	Chiles
Biden	Burdick	Cochran
Cohen	Huddleston	Proxmire
D'Amato	Jepsen	Quayle
Danforth	Kasten	Randolph
DeConcini	Kennedy	Riegle
Denton	Leahy	Roth
Dixon	Levin	Sarbanes
Dole	Long	Sasser
East	Lugar	Stafford
Exon	Matsunaga	Stennis
Ford	Mattingly	Symms
Garn	Mitchell	Tower
Gorton	Murkowski	Tsongas
Grassley	Nunn	Weicker
Heflin	Packwood	Zorinsky
Heinz	Pell	
Helms	Pressler	

NAYS—12

Baucus	Hecht	Specter
Bentsen	Kassebaum	Thurmond
Hatch	Melcher	Warner
Hatfield	Rudman	Wilson

NOT VOTING—30

Armstrong	Goldwater	McClure
Boren	Hart	Metzenbaum
Bradley	Hawkins	Moynihan
Cranston	Hollings	Nickles
Dodd	Humphrey	Percy
Domenici	Inouye	Pryor
Durenberger	Johnston	Simpson
Eagleton	Lautenberg	Stevens
Evans	Laxalt	Trible
Glenn	Mathias	Wallop

So the motion to lay on the table Mr. BAUCUS' amendment (No. 2307, as modified) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2312

(Purpose: To express the sense of the Congress that the Secretary of Agriculture should barter, under existing provisions of law, commodities (especially dairy products) owned by the Commodity Credit Corporation for materials produced in foreign countries)

Mr. KASTEN Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Wisconsin (Mr. KASTEN) proposes an amendment numbered 2312, for himself and Mr. NICKLES.)

Mr. KASTEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 38, between lines 7 and 8, insert the following new section:

BARTER OF DAIRY AND OTHER COMMODITIES

SEC. 124. (a) It is the sense of the Congress that the Secretary of Agriculture should exchange or barter, to the maximum extent practicable under the provisions of law specified in subsection (b), commodities (especially dairy products) owned by the Commodity Credit Corporation for materials, goods, and equipment produced in foreign countries.

(b) The provisions of law referred to in subsection (a) are—

(1) section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h)),

(2) section 310 of the Agricultural Trade Development and Assistance Act of 1954 (Public Law 83-480, as amended; 7 U.S.C. 1692), and

(3) section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431).

Mr. KASTEN. Mr. President, I ask unanimous consent that Senators TOWER, JEPSEN, BOREN, and GRASSLEY be added as cosponsors to my amendment.

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

Mr. KASTEN. Mr. President, all of us want to save the taxpayer's dollars, promote our national security, and assist those in need. I am introducing an amendment that fulfills all of these goals.

My amendment urges the Secretary of Agriculture to utilize to a maximum extent the authorities that he already possesses under current law to barter surplus commodities owned by the Commodity Credit Corporation for materials, goods, and equipment produced overseas that we need for our national security stockpiles.

Under the Strategic and Critical Materials Stock Piling Act of 1979, the administration is rebuilding our stockpiles. The purpose of the act passed by Congress is "* * * to decrease and preclude * * * a dangerous and costly dependence by the United States upon foreign sources of supplies * * * in times of national emergency."

Already some $11 billion worth of critical materials have been procured for these stockpiles. These purchases are costing our constituents money. At the same time, USDA is purchasing and storing at taxpayer expense surplus agricultural products while depressed commodity prices are forcing many farmers into bankruptcy. Through barter, we can save money and remove agricultural surpluses from the commercial market.

Between 1950 and 1967, USDA had an active barter program under which some 60 strategic materials, valued at $1.2 billion, were secured from more than 50 nations in exchange for surplus, USDA-owned agricultural commodities. Since 1967, only one further barter agreement has been enacted: An agreement with Jamaica to trade surplus milk-based products for bauxite.

It is only commonsense that the Government more actively pursues this avenue of trade that has a proven track record. Some 20 percent of world trade is already conducted through barter. And America's major corporations—including McDonnell-Douglas, Northrup, and Pepsico—have active barter programs.

No new legislation is needed to reap these benefits. The administration already has the authority. All that we

here in Congress need to do is assure that maximum use is made of these powers.

Mr. President, this amendment simply states that it is the sense of Congress that barter agreements be pursued to all possible extent.

The objective is to urge the administration to aggressively pursue and use the present authority which they have in regard to barter agreements.

Mr. President, I ask unanimous consent that the Senator from Utah (Mr. HATCH) be named as a cosponsor.

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

Mr. THURMOND. Mr. President, will the Senator add my name onto the amendment?

Mr. HELMS. Mr. President, I ask unanimous consent that the Senator from South Carolina be added as a cosponsor.

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

Mr. HELMS. Mr. President, commend the Senator from Wisconsin for his amendment supporting barter. At the same time, it would be unfair not to say that there are a number of Senators who also have barter proposals. All of these proposals have their merits.

The Committee on Agriculture, Nutrition, and Forestry recognized the need for the increased use of barter of agricultural commodities by adopting an amendment proposed by the Senator from Nebraska (Mr. ZORINSKY) in the Export Equity Act, reported earlier this year—S. 822. Another member of the Agriculture Committee, the senior Senator from Iowa, has introduced legislation that would provide for enhanced barter opportunities for U.S. agricultural products.

My friend from Texas, Senator TOWER, has also introduced a bill that would eliminate a number of the roadblocks that now exist in current law with regards to the barter of agricultural commodities.

Since the committee continues to have a strong interest in these various proposals, I let Senators know that I plan to call for a hearing by the Committee on Agriculture, Nutrition, and Forestry—early next year. I expect that the committee will be able to make a recommendation to the Senate on the barter issue soon thereafter.

With regards to the pending amendment by the Senator from Wisconsin, I know of no objection to it. Passage of this amendment will set the stage for future consideration of this issue by the Senate.

Mr. President, I have indicated my approval of this amendment by cosponsoring it.

I do support the Senator's amendment.

● Mr. JEPSEN. Mr. President, I would like to commend my colleague, Senator KASTEN for his initiative in introducing this amendment. This past June I introduced S. 1703, which would require the Department of Agriculture to barter surplus dairy products for minerals designated for priority acquisition for the strategic stockpile.

The gist of the legislation is to have USDA dispose of 15 percent of its surplus dairy products in each of the next 2 years.

Currently, the dairy stocks owned by the Commodity Credit Corporation (CCC) are valued at over $3.25 billion. These stocks include over 476 million pounds of butter, 891 million pounds of cheese, and 1.33 billion pounds of nonfat dry milk.

Even with the movement of some of this dairy surplus through domestic and international donation programs, procurement and storage costs for the uncommitted dairy stocks continue to mount.

Over the past year (July 16, 1982, to July 15, 1983) the butter stocks increased by 33 million pounds or 7.4 percent, the cheese stocks increased 107 million pounds or 13.6 percent, and the nonfat dry milk stocks increased 202 million pounds or 17.9 percent.

It seems to me and some of my colleagues that swapping some of our surplus dairy products for the strategic and critical materials that our country needs makes good sense.

We have been encouraging the administration to use the barter authority that exists and have introduced some measures that would strengthen or open up new methods of reaching a better balance in these two areas.

In cosponsoring this resolution, my colleagues and I are not attempting to place the burden of the barter transactions on the shoulders of the Government, but rather in the hands of the private traders who are better equipped for trading.

I urge you to support this amendment. I also would like to urge the Agriculture Committee to hold hearings on this important topic by early next year.●

Mr. KASTEN. Mr. President, I thank the Senator from North Carolina for his support of my amendment.

The PRESIDING OFFICER. Is there further debate? It not, the question is on agreeing to the amendment of the Senator from Wisconsin.

The amendment (No. 2312) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2313

(Purpose: To require that the dairy promotion assessment be levied on imported milk and milk products)

Mr. PRESSLER. Mr. President, I send an amendment to the desk and ask immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from South Dakota (Mr. PRESSLER) for himself and Mr. BENTSEN proposes an amendment numbered 2313.

Mr. PRESSLER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 20, line 21, insert "and on all milk and milk products imported into the United States" after "use".

On page 27, line 5, insert "and each person importing milk or milk products into the United States" after "the producer".

On page 27, line 7, insert "or the equivalent thereof" after "hundredweights".

On page 27, line 8, insert "or imported by the importer" after "producer."

The PRESIDING OFFICER. Will the Senator please suspend? May we have order in the Chamber so that the Senator can be heard? Senators wishing to have conversations please retire from the Chamber.

Mr. PRESSLER. Mr. President, the amendment I am offering to S. 1529, the dairy price support legislation, will expand the authority for the promotional assessment to include imported dairy products. As the legislation is currently written, a 15 cent per hundredweight fee will be assessed on all domestic milk production to finance a dairy promotion program.

The program will encourage consumers to use more milk products, thus insuring a demand for dairy products. However, not only domestically-produced dairy products will benefit from increased consumption—so will imported dairy products. It is only fair that importers of dairy products also help finance a promotion program.

Dairy imports are a small percentage of total dairy production, but a promotional assessment on them would still raise a substantial amount of money. In 1982, 2.5 billion pounds of dairy products or 1.8 percent of domestic production were imported. A 15 cent per hundredweight assessment on these products would have raised approximately $3.7 million in 1982. The small fee would have little or no impact on consumer prices.

My amendment also addresses the fairness of the assessment program. If domestic producers are to be assessed a fee to promote dairy products, then importers of foreign dairy products should also be assessed a fee. Charging assessments for promotion or research to importers is not new. The 1981 farm

bill included the Floral Research and Consumer Information Act, which requires importers to pay the same fees as domestic producers. Efforts have also been made by other commodity growers to include assessments on importers. If importers are going to benefit from domestic programs, then they should have to pay for them.

Mr. President, I urge my colleagues to join me in support of this amendment.

I think it is important to take a look at the fact sheet on this amendment to expand the assessment fee to include dairy imports.

This would not be a violation of GATT because we are treating the imported products the same as we are treating the products which are grown in our own country.

But if those imported products are going to enjoy the benefits of sales the same as our domestic products, then the same promotion fee should be assessed.

In 1982, 2.5 billion pounds of dairy products, valued at $612 million, were imported into the United States.

Dairy imports in 1982 equalled 1.8 percent of domestic production.

A 15 cent per hundredweight assessment on imports in 1982 would have generated $3.7 million. The $3.7 million assessed by the fee would have equalled only 0.06 percent of the total value of dairy product imports.

This amendment is equitable in requiring promotional fee assessments against dairy imports and domestic production without imposing excessive dairy price increases.

This would really put the imports on the same basis as our domestic products are, and I think it is very important. It is not a violation of GATT, and it is something that we should do.

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

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

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HELMS. 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. HELMS. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order so that we can hear the committee chairman.

Mr. HELMS. I thank the Chair.

We have been in a huddle, I will say to the distinguished Senator from South Dakota, in trying to figure out some way in which we can be helpful to him with his amendment.

We start off with a small problem. Some feel that the amendment is unconstitutional since it provides for a tax, which it does, to originate in the Senate. I have several questions. First, let me ask the Senator, who would collect this, the customs service, the CCC, or who? How would you implement this?

Mr. PRESSLER. It would probably be collected by the CCC at the time of import when it comes into the United States.

Mr. HELMS. By whom? I am not trying to press the Senator. Maybe Senator DANFORTH would like to take over? This is under his subcommittee.

Mr. DANFORTH. Well, Mr. Chairman, thank you.

I would like to pose a question to the Presiding Officer, a parliamentary inquiry.

If an assessment is imposed at the port of entry and if it is collected by the U.S. Customs Service, is it, therefore, a tariff and must it, therefore, under the Constitution, originate in a House bill?

The PRESIDING OFFICER. The Chair would state to the Senator that under the precedents of the Senate, points of order as to the constitutionality of a bill or amendments proposing to raise revenue will be submitted to the Senate for decision; the Chair or Presiding Officer has no power or authority to pass thereon.

Mr. DANFORTH. Mr. President, I make the point of order that this amendment would impose a tariff; therefore, it would be unconstitutional to attach it to a Senate bill.

Mr. PRESSLER. Mr. President, may I respond to that? Under the rules, may I respond to that?

The PRESIDING OFFICER. It is debatable.

Mr. PRESSLER. Mr. President, the assessment could be collected by the CCC, which now has machinery to collect it, but still some might call it a tariff. Essentially, it would not be a tariff for bringing products into the country but the same promotion fee that our domestic producers are paying.

I would not want this to be classified as a tariff. It is a promotion fee for the sale of those products, just the same as our domestic products are assessed. The imported products are benefiting. It would not be a tariff, in my view.

Mr. DANFORTH. Mr. President, if the Senator will yield, I withdraw my point of order.

The PRESIDING OFFICER. The point of order is withdrawn.

Mr. HELMS. Mr. President, if I may have the attention of the Senator from South Dakota, I do not think that there are any Senators who would not agree with what the Senator from South Dakota has in mind. As a matter of fact, the administration, the President, and Bill Brock sent me over to Geneva last November to make the kind of point that the Senator is implicitly making with this amendment when I attended the GATT ministerial conference.

But we have to do something about the unfair trade practices of a lot of these countries around the world. Clearly, I think there is some question about the constitutionality of the Senator's amendment, but let us see.

I am perfectly willing—I have not discussed this with the Senator from Kentucky—but I would be willing to accept the amendment and then study it further and do the best we can in conference.

Mr. PRESSLER. I am very worried about that because I am afraid it will be taken out in conference. I think we could have an overwhelming vote for it. I will tell you the reason I am concerned. I think there is going to be some technical reason somebody will come up with and say, "Well, this is really a tariff," or this or that.

I am a student of the fine speeches of the Senator from North Carolina on this subject. We have to start doing something in this whole area of trade. This is a very constitutional thing. It is not an import tariff.

I am prepared to go to a vote on it, because I would like it to stay in the bill. I do not want to prolong this. I know there are some Senators waiting to catch airplanes. I have asked for the yeas and nays, and I am prepared to vote.

Mr. HELMS. In that case, I think the Senator from Missouri might well wish to reconsider his point of order and have a vote on that question.

Mr. PRESSLER. I am objecting to that point of order in the sense that we do not consider it an import tariff. We consider it an assessment.

Mr. HELMS. But under the rules of the Senate, the Chair is obliged to put this question to the Senate. The Chair will not rule on it.

Here is the difference in the vote that the Senator is talking about. If I have to vote on a question of constitutionality, if I have to vote on the Senator's amendment, feeling absolutely persuaded that it is unconstitutional, at this moment, pending further study, I am going to have to vote against an amendment with which I agree.

I yield the floor.

Mr. PRESSLER. Is the Senator saying that his feeling is it is unconstitutional because he considers it an import tariff? The way we would set it up, it would not be an import tariff. It is an assessment.

Mr. DANFORTH. Mr. President, at the time that I withdrew the point of order, I did so after discussing the matter with the chairman of the Agriculture Committee. I was perfectly

content to let the conferees decide the matter on the merits.

I do think that on the merits, this is a very questionable amendment. It is a very questionable amendment because the United States is now facing the possibility of very stringent import restrictions being imposed on corn gluten and vegetable oil by the European Community. If, in fact, that takes place, then in that context, I think the United States is going to have to respond in some very tough way. I would rather respond in some very tough way to what the Europeans may do than trigger by this kind of an amendment, if it were to become law, the kind of protectionism and aggressive subsidization which may be accelerated in the future by the European Communities.

So, on the merit, I think it is a very bad amendment. But I think that there is another line of attack on the amendment, and that is, that it is unconstitutional. This is a tax. This is a tariff to be imposed on an import. You do not go around collecting a fee from farmers located in France. The only way you can do it is at the point of entry. Therefore, it is a tariff and, therefore, under the Constitution, it must originate in the House of Representatives.

Therefore, Mr. President, I renew the point of order and submit it to the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MELCHER. 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. MELCHER. Mr. President, is it permissible to debate this point of order?

The PRESIDING OFFICER. It is permissible.

Mr. MELCHER. Mr. President, there is one thing that has not been mentioned here. It is as if we are operating somehow in a vacuum on the principle of this amendment. Section 22 provides that the Secretary of Agriculture is required to either impose quotas or tariffs on an agriculture product that is imported into this country that works to the detriment of an agricultural program.

Now, this is very explicit. Here is an agriculture program, the dairy program, and imports that are brought into this country are operating detrimental to the dairy program. The dairy program costs us a bundle of money every year because we are in a surplus condition. And that is exactly what section 22 is supposed to operate under.

Now what the Senator from South Dakota is doing actually by his amendment, though he does not refer to section 22, is to force the issue. The Secretary of Agriculture simply has not used the authority under the law that he is required to use under the law. He has ignored it under section 22, and we continually import dairy products into this country without any restrictions, without applying a quota to it—not all of them, but a great number of them—without applying a quota to them and without applying a tariff to them, to slow that down and help operate the agriculture programs we have.

So I do not think there is any question but what the amendment is, first of all, constitutional. Second, it is clearly within the intent of section 22, which is an old standing law to make sure that it is enforced.

So the point of order can be voted upon. I hope it is voted upon and voted upon correctly. Indeed, there should be no point of order lie against it and that the will of the Senate is to consider the amendment.

The PRESIDING OFFICER. Is there further debate on the point of order?

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HELMS. 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. HELMS. I yield to the Senator from South Dakota.

Mr. PRESSLER. As I understand, the chairman will take the amendment and I will, therefore, vitiate the request for the yeas and nays.

Mr. HELMS. I will take it and do the best I can in conference. The Senator must understand that I agree with him, and I think we can come up with a satisfactory solution. But I wanted to level with the Senator.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Is it my understanding that the yeas and nays have been vitiated?

The PRESIDING OFFICER. They have not been vitiated. The present business before the Senate is the point of order raised by the Senator from Missouri.

Mr. DANFORTH. Mr. President, I would simply repeat what I have previously said. I think this is very bad trade policy. I think it would put us in a very bad position in dealing with the Europeans in what I think is going to be a very serious situation that may happen in any event.

On the merits, I think it is a bad amendment. My hope would be that if it is taken, it be dropped in conference. I understand that the Senator from North Carolina is prepared to accept the amendment, I hope for the purpose of dropping it in conference.

It is my understanding that the Senator from South Dakota is prepared to ask to vitiate the yeas and nays. If he does so, I would then be prepared to withdraw the point of order.

Mr. PRESSLER. Mr. President, I cannot vitiate the yeas and nays with the legislative history being the intent to drop it in conference.

Let me say that I, too, have been concerned for a number of years about the European Community.

Mr. HELMS. Will the Senator yield?

Mr. PRESSLER. Yes.

Mr. HELMS. Senator DANFORTH was speaking as one Member with conviction, but he is not a member of the Agriculture Committee and he will not be a conferee.

Mr. PRESSLER. Let me give a little background. For 9 years, I have served in Congress and I am always told, "Do not offer amendments that will do anything to Europeans because they might retaliate."

This is just saying that the dairy products coming in will pay the same promotional fees as our domestic producers would pay. That is what they do on our products going into their countries in five or six categories.

I admired so much the speeches of the Senator from North Carolina that he made when he returned from Geneva. I have served as a lawyer in our delegation in Geneva, at GATT. But on amendment after amendment, we are told, "Do not do this because the Europeans might retaliate."

Well, the Europeans have retaliated in every which way and so have the Japanese. We continue to be the good guys. The only way we are going to get the message across is to start taking some strong measures. This is not a very strong measure. It is a first step.

I think I can win this on a vote. If there is legislative history that indicates this is being taken to be dropped, I will not accept that.

Mr. RANDOLPH. Mr. President, who has the floor?

The PRESIDING OFFICER. The floor is open to whoever seeks the floor.

The Senator from West Virginia.

Mr. RANDOLPH. I ask the Senator who offered the amendment if there is to be a rollcall on the amendment.

Mr. PRESSLER. There is a rollcall vote ordered on the amendment but there is a procedural point that has been raised.

The PRESIDING OFFICER. The business before the Senate is the point of order of the Senator from Missouri. The Chair has no authority or power

to pass on a constitutional point of order. The Chair, therefore, submits the question to the Senate: Is it in order to offer the pending amendment on constitutional grounds to the Senate?

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

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

The yeas and nays were ordered.

Mr. DANFORTH. Will the Chair restate the question?

The PRESIDING OFFICER. The question is, Is it in order to offer such an amendment to the pending bill? Those in favor of it being constitutional will vote yea and those not in favor will vote nay.

Mr. DANFORTH. If the Chair will repeat, if a Senator believes that the amendment is unconstitutional because it is a tariff originating in a Senate bill, if a Senator believes it is unconstitutional, how would the Senator vote?

The PRESIDING OFFICER. The Senator would vote no.

The question is, Is it in order to offer such an amendment to the pending bill? Those in favor, vote yea; those opposed, vote nay.

Is there further debate?

Mr. PRESSLER. Mr. President, I would much rather have that framed if a Senator believes that placing an assessment on European products the same as they place on ours domestically, which has nothing to do with a tariff, and is not a constitutional question, he should vote yes. But if he believes their products should be sold in the same market as ours without paying the promotional assessment, then the Senator would vote no. That is the way I would frame the question.

The PRESIDING OFFICER. Under the precedents and practices of the Senate, the Chair has no power or authority to pass on such a point of order. The Chair, therefore, under the precedents of the Senate, submits the question to the Senate. Is it in order to offer such an amendment to the pending bill?

Those in favor will vote yea, those opposed vote nay. If there is no further debate, the clerk will call the roll.

Mr. MELCHER. Will the Senator from Missouri yield for a practical question?

Mr. DANFORTH. Yes.

Mr. MELCHER. The Senator, of course, is basing his call for a determination of constitutionality on the assessment only in this amendment, not the assessment that would be raised by the rest of the bill?

Mr. DANFORTH. Correct.

Mr. MELCHER. Does the Senator from Missouri see any inconsistency?

Mr. DANFORTH. The Senator from Missouri does not because this amendment requires a duty to be imposed at the border. A duty imposed at the border is a tariff. A tariff under the Constitution must originate in the House of Representatives.

Mr. MELCHER. Mr. President, I simply want to make the point that the assessment that we are talking about is called a tariff at the border and, therefore, a tax. But the assessment that is required from the milk producers of this country is collected out of their money. To make this amendment unconstitutional we are going to say that the assessment collected from the milk producers is not a tax. To me it seems a little bit inconsistent. If one is to be declared a tax, then it seems to me that both should be declared a tax, no matter what kind of language is used.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAKER. 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 majority leader.

Mr. BAKER. Mr. President, the situation that we find ourselves in is that the Chair has properly submitted to the Senate a constitutional question on a point of order in respect to this amendment. I have been tabling amendments, or attempting to, at the request of the managers of this bill for the last 2 days. I am prepared to do that now.

May I inquire of the Chair, is a tabling motion in order notwithstanding the submission of a point of order on a constitutional question?

The PRESIDING OFFICER. The majority leader is correct.

Mr. BAKER. Mr. President, I move to lay the Pressler amendment on the table. I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BAKER. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from New Mexico (Mr. DOMENICI), the Senator from Washington (Mr. EVANS), the Senator from Florida (Mrs. HAWKINS), the Senator from New Hampshire (Mr. HUMPHREY), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. McCLURE), the Senator from Oklahoma (Mr. NICKLES), the Senator from Illinois (Mr. PERCY), the Senator from Wyoming (Mr. SIMPSON), the Senator from Alaska (Mr. STEVENS), the Senator from Texas (Mr. TOWER), the Senator from Virginia (Mr. TRIBLE), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

Mr. BYRD. I announce that the Senator from New Jersey (Mr. BRADLEY), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Ohio (Mr. METZENBAUM), the Senator from New York (Mr. MOYNIHAN), and the Senator from Arkansas (Mr. PRYOR) are necessarily absent.

The PRESIDING OFFICER (Mr. QUAYLE). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 47, nays 25—as follows:

[Rollcall Vote No. 288 Leg.]

YEAS—47

Andrews	Dole	Matsunaga
Baker	Durenberger	Mattingly
Bentsen	East	Murkowski
Biden	Ford	Nunn
Bingaman	Garn	Packwood
Boschwitz	Goldwater	Pell
Bumpers	Gorton	Proxmire
Burdick	Hatfield	Quayle
Chafee	Helms	Randolph
Chiles	Huddleston	Roth
Cochran	Jepsen	Rudman
Cohen	Kassebaum	Sasser
Danforth	Kasten	Stafford
DeConcini	Leahy	Stennis
Denton	Long	Wilson
Dixon	Lugar	

NAYS—25

Abdnor	Heflin	Specter
Baucus	Heinz	Symms
Boren	Kennedy	Thurmond
Byrd	Levin	Tsongas
D'Amato	Melcher	Warner
Exon	Mitchell	Weicker
Grassley	Pressler	Zorinsky
Hatch	Riegle	
Hecht	Sarbanes	

NOT VOTING—28

Armstrong	Hollings	Nickles
Bradley	Humphrey	Percy
Cranston	Inouye	Pryor
Dodd	Johnston	Simpson
Domenici	Lautenberg	Stevens
Eagleton	Laxalt	Tower
Evans	Mathias	Trible
Glenn	McClure	Wallop
Hart	Metzenbaum	
Hawkins	Moynihan	

So the motion to lay on the table was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BAKER. Mr. President, if I may have the attention of the Senate, I wish to state two things.

First, I urge Senators to remain in the Chamber, because votes are running much longer than they should. Members have planes to catch. I have ventured the guess that we could finish by midafternoon, and we will not make it if we do not stick close by.

Second, I wonder if the managers can give me some idea of how many amendments and how many rollcall votes they anticipate.

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

Mr. BAKER. I yield.

Mr. HELMS. I think we had better poll the delegation. First, let us ask who wants to get away from here by 3 o'clock.

Mr. BAKER. I will not do that on this side. Perhaps the manager on the Democratic side can do that.

I inquire on this side of the aisle, how many amendments do we know of?

I see two hands raised. We know of two on this side.

May I inquire if rollcall votes will be required?

I suppose "perhaps" is the best way to describe it.

I now yield to the Senator from Kentucky.

Mr. HUDDLESTON. I will be glad to inquire on this side, of those who are here. I am not aware, specifically, of any amendments that will be offered on this side. I ask those present.

I do not see any hands raised at this time, so I hope that the two amendments that have been identified will be the only two.

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

I encourage Senators to stay here and to settle for a voice vote if at all possible, and to keep the debate as short as possible, because Members on both sides are trying to finish this bill by about 2 o'clock.

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

Mr. BAKER. I yield.

Mr. EXON. I wonder if it might be possible to expedite the proceedings by agreeing now to a time limit for final passage, regardless of the number of amendments.

Mr. BAKER. I will be glad to try that. I should like to confer with the minority leader and the two managers before I make the request; so let me get started on that.

AMENDMENT NO. 2314

(Purpose: To modify the dairy production stabilization program, establish a minimum price for class I milk subject to milk marketing orders, and delete the milk assessment, diversion, and promotion programs.)

Mr. D'AMATO. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. D'AMATO) proposes an amendment numbered 2314.

Mr. D'AMATO. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 2, beginning on line 3, strike out all that follows through line 17 on page 40 and insert in lieu thereof the following new title:

TITLE I—DAIRY

SHORT TITLE

SEC. 101. This title may be cited as the "Dairy Farmer Protection Act of 1983".

SUBTITLE A—DAIRY PRODUCTION STABILIZATION

DAIRY PRICE SUPPORT PROGRAM

SEC. 102. (a) Subsection (c) of section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446(c)) is amended to read as follows:

"(c)(1) The price of milk shall be supported at not less than $11.85 per hundredweight of milk containing 3.67 per centum of milkfat.

"(2) The price of milk shall be supported through the purchase of milk and the products of milk.".

(b) Subsection (d) of section 201 of such Act is repealed.

MINIMUM PRICE FOR CLASS I MILK UNDER MILK MARKETING ORDERS

SEC. 103. Section 8c(5)(A) of the Agricultural Adjustment Act, as amended and reenacted by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(5)(A)), is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of this section, in the case of milk and its products, orders issued pursuant to this section shall fix, or provide a method for fixing, the minimum price for milk classified as class I milk under this paragraph at no less than $12.56 per hundredweight.".

SUBTITLE B—DAIRY REPORT

REPORT

SEC. 110. Not later than July 1, 1984, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the effect of applying nationally, standards similar to the current California standards for fluid milk products in their final consumer form, as they would relate to—

(1) overall consumer consumption trends and total per capita consumption;

(2) nutritional augmentation, particularly for young and older Americans;

(3) implementing improved interagency enforcement of minimum standards to prevent consumer fraud and deception;

(4) multiple component pricing for producer milk;

(5) reduced Commodity Credit Corporation purchases;

(6) consistency of product quality throughout the year and between marketing regions of the United States; and

(7) consumer prices.

The PRESIDING OFFICER. Before the Senator commences, the Chair will attempt to get order in the Senate. The Senate will be in order.

Mr. D'AMATO. Mr. President, yesterday I introduced S. 1929, the Dairy Farmer Protection Act of 1983. Now, as we come to the end of our lengthy deliberation on the dairy/tobacco compromise bill, I offer my legislation as an amendment. I am convinced that it is the only reasonable alternative left for the dairy industry, for the Federal Government, and for the consumer.

There are certain principles on which I believe everyone in this chamber can agree: The current excessive cost to the Federal Government of the dairy program must be reduced; the dairy industry, especially small producers and family farmers, must not be driven to the verge of bankruptcy—or beyond; and, to protect the consumer, the cost of dairy products should not be driven up through the creation of artificial shortages. And, Mr. President, I think that is exactly what is going to take place if this compromise bill passes.

I think we have a situation where we are going to take out of production anywhere up to 30 percent of the small dairy farmers, and we are going to be penalizing exactly the wrong person.

To place an assessment on those farmers who sell their product to the consumer directly and not to the Federal Government is not fair to that farmer and it certainly is a disservice to the consumer.

I have asked my good friends and colleagues who have labored on this difficult subject to attempt to justify what we are going to say to the consumer when they go to the dairy counter and find the price of dairy products going up in the next year or 18 months because we have taken dairy herds out of production.

I suggest that if we are really interested in relieving the burdens to both the consumer and to the taxpayer, then let us not penalize people who sell fluid milk directly to the consumers. Let us see to it that we do not pay premiums to people to sell to the Federal Government, and that is what this compromise does.

So, Mr. President, let me boil it down basically to what my proposal is.

I believe that the producer of fluid milk known as class I dairy products, which are sold to the consuming public, should not be penalized. Keep the target prices as they are, at $13.10. Do away with the assessments. Drop by $1.25 the payment to those who produce class II dairy products.

For God's sake, have we not really had enough of attempting to subsidize and pay people for nonproduction? Have we not seen what has happened to the Federal deficit when we are now

paying $20 billion plus in terms of our agricultural products that are not being produced under the PIK and other programs? This is another PIK program and there is no reason to think this is going to inure to the benefit of the consumers or reduce the Federal deficit or benefit the Federal Treasury.

We will have a situation where we have tampered with the free flow of dairy products and we have driven people out of business because we gave them $10 not to produce. We will take out 30 percent of the herds or 20 percent or 15 percent if this compromise is passed. The Northeast in particular may have to pay higher prices because we have to get the fluid milk transported from different regions when we do not have the available local supply. I think this is a very, very, very dangerous experiment. I believe all the Senators in this Chamber would prefer a workable market solution.

Despite our basic agreement on these principles, however, there is substantial controversy in this Chamber—and elsewhere—over how best to achieve these goals. Many alternatives have been put forth and either discarded or defeated. At this time, therefore, we are left with only three possible options: We can pass the dairy bill as it now stands, we can defeat this bill and enact no new legislation, or we can accept my amendment.

Let us examine the options. The easiest to dispose of is the alternative of adopting no new legislation. That would maintain the current situation and would make no one happy. Dairy farmers would continue to be hit with a $1 assessment—a $1 tax—on every hundredweight of milk they produce, whether or not they sell their product to the Government. The Government would continue to spend more than $2 billion a year to purchase this excess production, as well as untold additional amounts to store it and, eventually, to dispose of it. Consumer prices for class II products would continue to be maintained at artificially high levels, as market conditions for these products would continue to be completely subverted.

No one wants this solution—or nonsolution. That is why we have this dairy bill on the floor. This, then, leaves us two alternatives: The complicated and untried diversion plan or the simple, tried-and-true market solution offered by the Dairy Farmer Protection Act of 1983.

What do these two plans entail? How do they differ? Well, simply put, the diversion plan provides welfare for some dairy farmers—or should I say soon to be ex-dairy farmers—by unfairly taxing other dairy farmers to pay for it. The Dairy Farmer Protection Act, on the other hand, solves the problem by reducing the artificial incentive to overproduce, which now exists. It eliminates the $1 tax entirely because there would be no more need for it. By allowing market conditions to operate, we can greatly reduce both excess production and the cost to the Federal Government, without the imposition of a tax on those dairy farmers who continue to produce to meet market demand.

We all know what the diversion plan now contained in this bill does. It has been discussed and debated on the floor of this Chamber for the past 2 days. I will not burden my colleagues by describing it again. The question, therefore, is "What does the Dairy Farmer Protection Act do?"

It does three things. First, it completely eliminates the $1 per hundredweight assessment now imposed on dairy production. Second, it maintains the $13.10 price support level now in place for class I dairy products. Finally, it lowers the price support level for class II dairy products by $1.25, to $11.85 per hundredweight.

This is the superior solution to the dairy problem for several reason. Since the Government purchases only class II products, this amendment provides the logical solution of lowering the price support level solely for class II. This lowered price support will provide a sufficient disincentive to excess production. Thus, why should we penalize the producers of class I products? The answer, of course, is that we should not.

This amendment also avoids the well-known problem that Congress created with the PIK program: It does not pay farmers not to produce. It does not undermine the important American tradition that the only way to get ahead is through hard work. It does not tell people that being lazy is better than being productive. My amendment does not say that staying in bed in the morning is better—or at least more profitable—than getting up and going to work. My amendment upholds the basic American principle that work will be rewarded and sloth will not.

My amendment also relies on history, rather than theory. Yesterday, my distinguished colleague from the State of Florida, Senator HAWKINS, made the point—and made it well—that, every time in the past that the price support level has been reduced, the market has responded with a reduction in excess production and a decrease in the cost to the Federal Government. If we are trying to eliminate the surplus and cut the Federal cost for the dairy program, as we all agree we are, then my amendment is the route to take.

The Congress has examined, eliminated, reexaminated, and reeliminated the dairy problem countless times in the past and we may do so countless times in the future, no matter which solution we now choose. I am convinced that we will be back to the issue sooner, however, if we adopt the diversion plan than if we accept my amendment.

Mr. President, the Dairy Farmer Protection Act offers a reasoned solution to the dairy crisis. I urge its adoption.

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

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

The yeas and nays were ordered.

Mr. BOSCHWITZ. Mr. President, if I understood the Senator's amendment a little better, perhaps I could respond to it, but it is difficult to understand. Forty percent of the milk produced in the State of New York is used for liquid consumption; 60 percent is for cheeses and nonfat dried milk and butter, and so forth.

New York produces as much that goes to the CCC as the national average.

Somehow, the Senator wants to lower the price of that which is purchased by the CCC but, on the other hand, wants a different price for fluid milk, and I am not sure if he wants a different price for the cheeses or the nonfat dried milk that is consumed by the public, but this would absolutely cause consternation, in my judgment, in the entire dairy industry. A new and a different price formula would apply on top of the already difficult situation that exists.

The good Senator from New York talks about cost of the agricultural program being $21 billion or $20 billion.

I ask him in that case when it comes to embargoing, as his colleague from New York often says we should do with respect to farm products, that he desist from joining such a force because that is the underlying problem in agiculture. When we embargo our principal customers, it just causes that same consternation to go up and down through the dairy industry.

Mr. President, the price-support programs in agriculture until this most recent year have been rather reasonable, $4 billion, $1 billion, $600 million for an entire year, $3 billion, $2.7 billion in 1980, $4 billion in 1981.

Yes, they have risen in recent years. Yes, there have been embargoes. Yes, there have been very expensive dollars which have prevented us from shipping abroad. Yes, there has been a worldwide recession.

The agricultural industry is at the base of the economic success of this country, and support over the years has been modest for agriculture.

Most recently, it has gone up. It will go down once again. If there had not been the PIK program that my friend talked about, there would have been just enormous disaster and catastro-

phe payments around the country this year. There would have been enormous FHA mortgage foreclosures and taxpayers would have been picking up mortgages in every corner of the country where the drought hit. So the cost of these programs has not been excessive over the years.

The base of our economy is agriculture. I resist the amendment of my friend from New York. I think it would cause consternation throughout the dairy industry.

The whole pricing mechanism would be disrupted if you are going to now establish another level of price for manufacturing grade milk and yet another price for liquid milk.

I yield the floor.

Mr. HUDDLESTON. I thank the distinguished Senator from Minnesota.

Mr. President, I also rise in opposition to this amendment and shall make two very simple points that have been made before.

First of all, if this amendment were to pass, in all likelihood we would not have a dairy program to deal with the tremendous surpluses that we are confronted with, nor would we be able to relieve the taxpayers of the costs of the program, including the storage of surpluses.

Second, it is not accurate, as it has been indicated, that the production referred to by this amendment does not contribute to the problem. The fact is, of course, that every gallon of milk produced and sold in the United States contributes to the surplus problem that we have. Every farmer, whether he is within the marketing orders or without the marketing orders, benefits from the program.

The amendment of the distinguished Senator from New York would, of course, establish two classes of dairy farmers in the country, one with a higher sale price than the other. That does not seem to me particularly reasonable. So I urge that this amendment not be accepted, and that we move forward with the program that has been worked out and is available to us in the bill.

Mr. BAKER. Mr. President, notwithstanding the withering glances being cast in my direction, I move to table the amendment.

Does the Senator wish the yeas and nays?

Mr. D'AMATO. Yes.

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee to lay on the table the amendment of the Senator from New York.

The Clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BAKER. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from New Mexico (Mr. DOMENICI), the Senator from Washington (Mr. EVANS), the Senator from Florida (Mrs. HAWKINS), the Senator from New Hampshire (Mr. HUMPHREY), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. McCLURE), the Senator from Oklahoma (Mr. NICKLES), the Senator from Illinois (Mr. PERCY), the Senator from Wyoming (Mr. SIMPSON), the Senator from Alaska (Mr. STEVENS), the Senator from Texas (Mr. TOWER), the Senator from Virginia (Mr. TRIBLE), the Senator from Wyoming (Mr. WALLOP), and the Senator from Utah (Mr. HATCH) are necessarily absent.

Mr. BYRD. I announce that the Senator from New Jersey (Mr. BRADLEY), the Senator from North Dakota (Mr. BURDICK), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Ohio (Mr. METZENBAUM), the Senator from New York (Mr. MOYNIHAN), the Senator from Arkansas (Mr. PRYOR), the Senator from Montana (Mr. BAUCUS), and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

The PRESIDING OFFICER (Mrs. KASSEBAUM). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 50, nays 19, as follows:

[Rollcall Vote No. 289 Leg.]

YEAS—50

Abdnor	East	Levin
Andrews	Exon	Lugar
Baker	Ford	Matsunaga
Bentsen	Garn	Melcher
Biden	Goldwater	Mitchell
Bingaman	Gorton	Pressler
Boren	Grassley	Proxmire
Boschwitz	Hatfield	Randolph
Bumpers	Hecht	Riegle
Byrd	Heinz	Roth
Chiles	Helms	Sarbanes
Cochran	Huddleston	Sasser
Cohen	Jepsen	Stafford
Danforth	Kassebaum	Stennis
Dixon	Kasten	Tsongas
Dole	Kennedy	Zorinsky
Durenberger	Leahy	

NAYS—19

Chafee	Murkowski	Symms
D'Amato	Nunn	Thurmond
DeConcini	Packwood	Warner
Denton	Pell	Weicker
Heflin	Quayle	Wilson
Long	Rudman	
Mattingly	Specter	

NOT VOTING—31

Armstrong	Bradley	Cranston
Baucus	Burdick	Dodd
Domenici	Inouye	Percy
Eagleton	Johnston	Pryor
Evans	Lautenberg	Simpson
Glenn	Laxalt	Stevens
Hart	Mathias	Tower
Hatch	McClure	Trible
Hawkins	Metzenbaum	Wallop
Hollings	Moynihan	
Humphrey	Nickles	

So the motion to lay on the table amendment No. 2314 was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2315

(Purpose: To limit total annual payments to a product under the milk diversion program to $50,000 and to permit the Secretary of Agriculture to reduce the minimum reduction in milk marketings required under such program to encourage participation in such program)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Rhode Island (Mr. CHAFEE) for himself and Mr. JEPSEN proposes an amendment numbered 2315.

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

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

The amendment is as follows:

On page 7, line 12, strike out "Except as provided in subparagraph (D)," and insert in lieu thereof "Except as otherwise provided in this subparagraph and subparagraph (D),".

On page 7, line 21, insert after the period the following new sentence: "The total amount of payments that a milk producer may receive in a year under this subparagraph may not exceed the greater of $85,000 or the total assessment (not including the assessment for dairy promotion) paid by that producer in that year.

On page 9, line 11, insert "(i)" after "(E)".

On page 9, between lines 22 and 23, insert the following:

"(ii) If the Secretary determines that the reduction required under subparagraph (B) in the quantity of milk marketed by a producer is such that such producer would not elect to enter into a contract with the Secretary under this paragraph, the Secretary may reduce the level of such reduction to the extent the Secretary determines is necessary to encourage such producer to enter into such contract.

Mr. CHAFEE. Madam President, what my amendment would do is place a cap of the greater of $85,000 or the total assessment—not including the assessment for dairy promotion, but the total other assessment paid by that producer in that year—as a limitation which can go to a single producer. In other words, that producer can get up to $85,000 or, if his payments under the program were greater than that,

up to the total payments of his program.

Madam President, whom does this cover? This covers practically all the dairy farmers in the United States and over 90 percent of the milk produced. If you take the situation of 15,000 pounds per cow per year, that is 150 hundredweight, or, at $10 a hundredweight, 1,500 pounds per cow. That would provide that at the 30 percent limitation presently in the bill, 56 cows would be covered and, therefore, that would be a herd of 185 cows. If the percentage were dropped, as is estimated under this, it could go at 20 percent. It would be a herd of 370 cows.

So, Madam President, I know the time is short. I have discussed this in considerable detail with the Senator from Minnesota. It is my understanding that it is agreeable with him. I hope the amendment will be accepted.

Mr. BOSCHWITZ. Madam President, while I shall not speak against the amendment, it is with very great reluctance that I do not do so. It was the intention of this program not to set this type of limitation inasmuch as we wanted to reduce milk production and would be happy to have the larger producers also able to participate in order to get the reduction. We do not want to shift the production from small producers to large producers, which I hope this amendment does not do.

In any case, the Senator is correct that the farm programs in general suffer when the very large payments are made to individual farmers. Weighing the equities, Madam President, I reluctantly do not object to this amendment.

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

Mr. CHAFEE. Yes, Madam President.

Mr. SYMMS. How large a dairy would then be limited under the Senator's amendment?

Mr. CHAFEE. If they stay at the 30-percent level, in other words, they will take out pay for 30 percent of a herd, then a herd would be 185 cows. If it dropped to 20 percent, then it would be, as they estimate it could well be, it would go up to a herd of 370 cows. Plus, it could even be higher than that because, as my colleagues recall, this amendment is the greater of $85,000 or whatever the producer paid into the program. So it will get nearly all the herds in the country.

Mr. SYMMS. Does the Senator mean the amendment will affect nearly all——

Mr. CHAFEE. No, Madam President, nearly all the herds in the country will qualify, be able to collect even with these limitations.

Mr. SYMMS. The reason I asked the question is Senator ABDNOR and I held a hearing on agricultural problems in the Joint Economic Committee. We received testimony from one dairyman who was milking 7,000 milk cows three times a day, producing 350,000 pounds of milk. They were beating the average of the rest of the dairymen in the Idaho producing area by about 20 pounds per milk cow per day. Will the result of the amendment of the Senator from Rhode Island be to end up punishing the more efficient producer who happens to be bigger?

Mr. CHAFEE. No, not at all.

Mr. SYMMS. How would that person qualify? I do not know whether they are getting a subsidy or not, but I think they do.

Mr. CHAFEE. He will qualify, because if he has that many cows, he is paying a very substantial sum into the program and thus can collect the diversion payments at least up to the amount that he pays into the program, so he is not going to be adversely affected. What we are trying to do is hold down the size of the checks that are going out.

Mr. BOSCHWITZ. If the Senator will yield, in the example that the Senator from Idaho gives, that farmer would not be able to participate in the diversion program to 30 percent, or even 10 percent. He would be able to participate in the diversion program to perhaps 4 or 5 percent. Yes, there is a certain penalty that we would impose upon very large farmers. But the very large farmers are not always the most efficient.

Mr. SYMMS. I know the Senator is correct. Most times, they are not. However, in this particular case, I think there are people who are milking cows in this country who are milking them three times a day and being very careful with the breeding stock and the management of it that are actually more efficient in some cases, in terms of production per cow, anyway. That is what I was wondering, if this is going to affect someone like that.

Mr. BOSCHWITZ. Those folks will survive, I say to the Senator, because of all the things he has said.

The PRESIDING OFFICER. Is there any further debate on the amendment? If not——

Mr. COCHRAN. Madam President, the person who said he would not debate the amendment is not the chairman or the manager of the bill. He is a Senator on the floor expressing his opinion about the amendment. This Senator, if the Chair please, opposes the amendment. I hope the managers of the bill will not accept it.

One thing that comes to mind immediately, Madam President, about the merits of this amendment is the fact that we have other provisions in farm legislation that do effectively limit the amount of money that can be paid to an individual under certain farm programs, specifically in the cotton, rice, wheat, and other areas. But in the payment-in-kind program that we implemented last year, there was a specific exception made so that there would not be any limitation.

The fact of the matter is if we are going to limit the amount of money paid to these producers to a relatively low level, we are not going to be able to take out of production the amounts of commodity or product that we are seeking to remove from the marketplace, to bring supply in line with demand.

I am afraid that although the intentions of the Senator from Rhode Island are quite commendable, the practical result is going to be that this program will be much less effective if this amendment is agreed to; just as the payment-in-kind program in the wheat, corn, grain sorghum, rice, and cotton areas would have been totally inadequate if there had been a payment limitation written into the program.

We have seen that program turn out to be quite successful in terms of the amount of stocks removed from production this year, bringing supply in line with demand.

I hope the Senate will not agree with this amendment and the managers will resist it.

Mr. HELMS. Madam President, I share the sentiment of the Senator from Mississippi in respect to the amendment. We simply cannot accept it. Here I go again: It will destroy the very thing we are trying to accomplish and we shall end up with nothing, with no movement whatsoever toward controlling these surpluses. I do hope that the Senator will consider himself an ex officio member of the Committee on Agriculture, and I mean this in all sincerity, and help us work on this, meaning the farm bill of 1985.

I sort of feel, I say to the Senator from Rhode Island, that we are trying to put together a horse on the Senate floor with these kinds of amendments and ending up with a camel.

I respect the Senator, but I hope the amendment will not prevail.

Mr. HUDDLESTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. HUDDLESTON. I will not delay the Senate at all except to associate myself with the remarks of the distinguished Senator from Mississippi and the Senator from North Carolina, who I think have made the case exactly as it should be made against this particular amendment. I urge its defeat.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. I think it is a worthwhile amendment. I would like to have the Senate voice its views on it. Sure, it is a cap, but I think these other programs have gotten into an awful lot of

trouble by being uncapped. This was a generous cap. I started out with $50,000, and we have worked our way up to $85,000, or the greater of $85,000 or whatever the producer pays into the program, and thus I would hope the Senate would accept it. If not, I would ask for the yeas and nays at the proper time. I am not trying to cut off debate on this, Madam President.

Mr. HUDDLESTON. Madam President, if there are no other Senators who want to speak on this particular amendment, I would move that the amendment be laid on the table.

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the motion to table the amendment of the Senator from Rhode Island (Mr. CHAFEE).

The clerk will call the roll.

The bill clerk called the roll.

Mr. BAKER. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Alabama (Mr. DENTON), the Senator from New Mexico (Mr. DOMENICI), the Senator from Washington (Mr. EVANS), the Senator from Washington (Mr. GORTON), the Senator from Florida (Mrs. HAWKINS), the Senator from New Hampshire (Mr. HUMPHREY), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. McCLURE), the Senator from Oklahoma (Mr. NICKLES), the Senator from Illinois (Mr. PERCY), the Senator from Wyoming (Mr. SIMPSON), the Senator from Alaska (Mr. STEVENS), the Senator from Texas (Mr. TOWER), the Senator from Virginia (Mr. TRIBLE), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

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

Mr. BYRD. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from New Jersey (Mr. BRADLEY), the Senator from North Dakota (Mr. BURDICK), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Ohio (Mr. METZENBAUM), the Senator from New York (Mr. MOYNIHAN), the Senator from Arkansas (Mr. PRYOR), the Senator from Tennessee (Mr. SASSER), the Senator from Louisiana (Mr. LONG), and the Senator from Arkansas (Mr. BUMPERS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 36, nays 30, as follows:

[Rollcall Vote No. 290 Leg.]

YEAS—36

Abdnor	Ford	Melcher
Andrews	Garn	Nunn
Baker	Goldwater	Proxmire
Bentsen	Grassley	Quayle
Bingaman	Hecht	Randolph
Boren	Heflin	Riegle
Chiles	Helms	Stafford
Cochran	Hollings	Stennis
Cohen	Huddleston	Symms
Dole	Kasten	Thurmond
East	Levin	Warner
Exon	Matsunaga	Weicker

NAYS—30

Biden	Hatfield	Packwood
Boschwitz	Heinz	Pell
Byrd	Jepsen	Pressler
Chafee	Kassebaum	Roth
D'Amato	Kennedy	Rudman
Danforth	Leahy	Sarbanes
DeConcini	Lugar	Specter
Dixon	Mattingly	Tsongas
Durenberger	Mitchell	Wilson
Hatch	Murkowski	Zorinsky

NOT VOTING—34

Armstrong	Gorton	Moynihan
Baucus	Hart	Nickles
Bradley	Hawkins	Percy
Bumpers	Humphrey	Pryor
Burdick	Inouye	Sasser
Cranston	Johnston	Simpson
Denton	Lautenberg	Stevens
Dodd	Laxalt	Tower
Domenici	Long	Trible
Eagleton	Mathias	Wallop
Evans	McClure	
Glenn	Metzenbaum	

So the motion to lay on the table Mr. CHAFFE's amendment (No. 2315) was agreed to.

Mr. HUDDLESTON. Madam President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HATFIELD addressed the Chair.

Mr. BAKER. Madam President, I shall not take a moment, and I apologize to the Senator from Oregon.

Madam President, on that vote I know there are Senators who did not get to vote.

I regret it, but we were 5 minutes over.

We have dropped now to less than 70 Senators—I believe 67 Senators—and we simply must finish this bill before we lose a quorum.

So I urge Senators to keep their remarks brief, to avoid rollcall votes where necessary, and for goodness' sake stay on the floor or very close by.

AMENDMENT NO. 2316

(Purpose: To modify the dairy compliance program)

Mr. HATFIELD. Madam President, I send an amendment to the desk and ask for its immediate consideration on behalf of Senators MATTINGLY, RUDMAN, WILSON, and PACKWOOD.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Oregon (Mr. HATFIELD), for himself, Mr. MATTINGLY, Mr. RUDMAN, Mr. WILSON, and Mr. PACKWOOD, proposes an amendment numbered 2316.

Mr. HATFIELD. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 2, beginning with line 12, strike out all down through line 2 on page 4 and insert in lieu thereof the following:

"(1)(A) Effective for the period beginning on the date of the enactment of the Dairy Production Stabilization Act of 1983, and ending on September 30, 1985, the price of milk shall be supported at a rate equivalent to $12.40 per hundredweight for milk containing 3.67 per centum milkfat, except that—

"(i) if on October 1, 1984, and thereafter on the first day of each fiscal-year quarter, the Secretary estimates that for the twelve-month period beginning on such date net price-support purchases of milk or the products of milk would be more than six and one half billion pounds milk equivalent, the Secretary shall reduce the price-support rate in effect on such date in the amount of 20 cents per hundredweight, but in no event may the Secretary reduce the price-support rate below the rate equivalent to $11.40 per hundredweight for milk containing 3.67 per centum milkfat; or

"(ii) if on October 1, 1984, or thereafter on the first day of any fiscal-year quarter the Secretary determines that during the three fiscal-year quarters preceding such date net price support purchases of milk or the products of milk were less than 75 percent of the annual equivalent of six and one half billion pounds of milk equivalent, estimates that for the twelve-month period beginning on such day net price-support purchases of milk or the products of milk will be six and one half billion pounds milk equivalent or less, and determines that it is necessary in order to assure an adequate supply of pure and wholesome milk to meet current needs, the Secretary shall increase the price-support rate in effect on such date in an amount not less than 10 cents per hundredweight but not more than 20 cents per hundredweight.

"(B) The price of milk shall be supported through the purchase of milk and the products of milk.

On page 4, line 5, strike out "December 31, 1984" and insert in lieu thereof "the date which occurs two years after such date of enactment".

On page 4, line 9, strike out "50 cents" and insert in lieu thereof "30 cents".

On page 4, line 11, insert after the period the following new sentence: "Notwithstanding the preceding sentence, in carrying out this subparagraph, the Secretary shall provide for a reduction of 15 cents per hundredweight to be made in the price received on all milk marketed in the United States for commercial use by producers who produce any quantity of milk, process such quantity into consumer packages, and market such packages.".

On page 5, lines 10 and 11, strike out "made using funds otherwise available to the Commodity Credit Corporation" and insert in lieu thereof "reduced among producers participating in the milk diversion program on a pro rata basis".

On page 6, lines 1 and 2, strike out "December 31, 1984" and insert in lieu thereof "the date which occurs two years after such date of enactment".

On page 7, line 12, strike out "Except as provided in subparagraph (D)," and insert in lieu thereof "Except as otherwise provided in the second sentence of this subparagraph, paragraph (2) (C), and subparagraph (D),".

On page 7, line 21, insert after the period the following new sentence: "The total amount of payments that a milk producer may receive in a year under this subparagraph may not exceed $100,000.".

Mr. HATFIELD. Mr. President, the amendment I have just sent to the desk should finally break the logjam over the dairy provisions of this bill. It is plainly obvious that the committee compromise penalizes the majority of dairy farmers in this country, to pay for the excesses of a very few. We should not predicate our dairy policy on those who take undue advantage of the provision.

The dairy farmers of the Northwest, Southeast, and elsewhere do a good job at marketing, promotion, and sales of their milk production. In my State, the cheese manufacturing industry has helped keep Oregon farmers from adding to the dairy surplus. Unfortunately, this is not the case everywhere. We must remove the incentive to produce for the surplus, which is essentially what has been happening under the current program.

The incentive has been the $13.10 price-support level, which is sufficiently higher than the market price to cause the huge influx of surplus to the CCC. We must reduce this support level to a more realistic figure, which provides the protection for the farmer, while more accurately reflecting the true cost of production.

We must not provide too large a diversion payment for cutting back on overproduction. Far from providing an incentive to permanently cut back on production, it rewards those few that have been abusing the program, and causing the problem.

We must also provide the Secretary with sufficient flexibility to solve this problem once and for all. What I propose is:

Reduce support for 1 year by $0.70 per hundredweight—$12.40/cwt. At end of 12 months, Secretary will lower support by $0.20 each quarter until projected CCC purchases are estimated to be below 6.5 billion pounds annually, however rate cannot be reduced below $11.40 per hundredweight. When projections reach 6.5 billion no further reductions and after estimate has held steady for three quarters Secretary mandated to raise support at least $0.10 with maximum increase in any quarter of $0.20.

Continued $0.30 per hundredweight assessment on all milk produced but with exemption of $0.15 per hundredweight for those who produce and market own supplies. Terminates after 2 years. Revenue from $0.30 assessment would be used to pay "diversion" but no appropriated funds in excess of actual revenue could be used for such purpose.

A. Producers in marketing areas would receive diversion payments in proportion to that area's total sales to CCC for the 1983 fiscal year.

B. No producer could receive more than $100,000 per year from diversion payment.•

Mr. President, this issue has been discussed enough. We all know what must be done to provide equity for all dairy farmers. Not just those that have presented us with this problem.

Madam President, I shall briefly outline the amendment. What this amendment would do is reduce the support for 1 year by 70 cents per hundredweight from $13.10. At the end of the 12 months the Secretary will lower the support by 20 cents each quarter until they reach the level of 6.5 billion pounds annually.

The rate cannot be reduced below $11.40 per hundredweight level.

When the production reaches 6.5 billion pounds then no further reductions, and after the estimate has held steady at that level for three quarters the Secretary would be mandated to raise the support at least 10 cents per hundredweight with maximum increases in any one quarter to 20 cents.

We would continue under this amendment the 30-cent assessment for all milk produced but with the exception of 15 cents a hundredweight for those who produce and market their own supplies, and this would terminate at the end of 2 years.

Revenues from the 30 cents assessment will be used to pay for diversion but no appropriated funds in excess of actual revenues could be used for such purpose.

The producers in the marketing areas would receive diversion payments in proportion to that area's total sales to the Commodity Credit Corporation for the 1984 fiscal year and cap producers. No producer could receive more than $100,000 per year in diversion payments.

This issue has been discussed so long and I am not going to go into further detail, but that basically is a compromise that finds itself somewhere between the amendment offered by the Senator from New York (Mr. MOYNIHAN) and the Senator from Florida (Mrs. HAWKINS), and it to me is a reasonable compromise and I wish to query at this time if the committee managers are willing to accept this amendment.

I thank the committee managers for considering this amendment.

Mr. HELMS. Madam President, we are all rushing to stand up. I need not express again my affection and respect for the Senator from Oregon. But his amendment, while somewhat different from previous ones, would do the same thing that the others would have done if they had been approved; that is, to assure the defeat of this compromise legislation and I regret to tell my good friend from Oregon but I must resist the amendment.

Mr. HATFIELD. Did I understand the Senator is not willing to accept it?

Mr. HELMS. Words to that effect, yes.

Mr. HATFIELD. I see.

Mr. MATTINGLY. Madam President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. HATFIELD. Can we not get the yeas and nays on this simple amendment?

Mr. BAKER. If we are going to have a vote, as much as I hate to say this to the Senator from Georgia, I prefer to do it on a tabling motion. If there be no further debate, I make that motion.

Mr. THURMOND. Wait a minute. Let us see if we can have a standing vote. Some have to catch a plane. Does the Senator mind having a standing vote?

Mr. MATTINGLY. No.

Mr. BAKER. I overhear the conversation.

Let me tell Senators this rollcall is going to be as close to 15 minutes as we can make it.

Mr. CHILES. Why do we not have a standing vote?

Mr. BAKER. If we can have a division vote, fine.

Mr. HUDDLESTON. There has been no request for a rollcall vote on the tabling motion.

Mr. THURMOND. Let us have a division vote.

Mr. HATFIELD. Is there is a motion to table this fine amendment?

Mr. BAKER. Yes. It is a fine amendment and it has fine sponsorship.

But I feel constrained in the interest of the fine lateness of the hour to move to table, and I do now move to table.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HUDDLESTON. No one asked for the yeas and nays.

Mr. BAKER. There has been no request for the yeas and nays.

Mr. WILSON. Madam President, I ask for the yeas and nays.

Mr. THURMOND. Do not ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HATFIELD. Madam President, give me a moment to count the House before we agree to that.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee to lay on the table the amendment of the Senator from Oregon.

Mr. MATTINGLY. Madam President, I ask for the yeas and nays.

Mr. THURMOND. No. Let us have a division vote.

Mr. COCHRAN. Regular order.

The PRESIDING OFFICER. The question is on the motion to table. (Putting the question.)

The PRESIDING OFFICER. The Chair is in doubt and asks for a division.

All those in favor stand please and be counted.

Those opposed, please stand.

The ayes appear to have it. The ayes do have it.

The motion to lay on the table was agreed to.

Mr. BAKER. Madam President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BAKER. Madam President, we are rapidly running out of time and, maybe more importantly, we are running out of Senators. So I urge we get on with the business at hand and try to avoid rollcalls.

AMENDMENT NO. 2317

Mr. ABDNOR. Madam President, I have an amendment to send to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from South Dakota (Mr. ABDNOR) for himself and Mr. BOREN proposes an amendment numbered 2317.

Mr. ABDNOR. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of title I, insert a new section and number appropriately:

"SEC. . The minimum limitation of 1,250,000,000 pounds provided under subsection (f)(1) of the Meat Import Act of 1979 is hereby suspended for 1984 and 1985."

Mr. ABDNOR. Madam President, I am going to be very, very brief. This amendment, as short as it is, limits the amount of beef which can be imported into the United States.

Let me tell you why I am doing this.

Under section 7 of the limitation on beef imports there is a provision that says:

No limitation imposed under this paragraph for any calendar year may be less than 1,250,000,000 pounds.

I need not tell anyone in this Chamber of the depressed situation in the livestock industry. It has been with us for a long time and is starting to grow worse.

High feed prices, the PIK program, the drought, high interest rates, and now the dairy program are painting a dark and bleak picture for those in the cattle business.

I am not making any big changes in the Meat Import Act of 1979; I am simply removing a base floor so that beef imports may fall below that level. It is very critical to do this because if 1.5 million dairy cows are sent to slaughter, as expected upon enactment of S. 1529, beef prices will plummet and cattlemen's income will diminish even more.

My amendment would suspend two sentences of the Meat Import Act and would allow meat imports to drop during the period of increased dairy cow slaughter. If slaughter cattle numbers are high, imports of foreign beef would be allowed to decrease below the minimum amount which is now specified in the law.

Let me add this: Other countries of the world which are presently importing beef into this country are using voluntary restraint, and I commend them for it. They have been holding back their beef exports and are very close to the minimum floor level of 1.25 billion—just a few pounds short—and I predict with an extra 1.5 million dairy cows going to slaughter, the floor level of 1.25 billion pounds will be much too high and permit too much beef into the United States, pushing our own cattlemen into economic ruin and bankruptcy.

This is a worthy amendment, an amendment worthy of your consideration, and I urge your support.

Mr. RANDOLPH. Madam President, will my colleague yield? I ask unanimous consent that I be made a cosponsor of the amendment.

Mr. ABDNOR. I would be happy to have the Senator from West Virginia as a cosponsor; also Senator BOSCHWITZ and Senator THURMOND as cosponsors.

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

Mr. HELMS. Madam President, this is another one of the amendments that would appeal to all Senators. On the other hand, it will have a very, very sensitive impact on our trading relationship. But I will say this to the Senator: I will be glad to accept the amendment and take it to conference even though this is an amendment that should go on a Finance Committee bill. On that basis I will accept the amendment.

Mr. ABDNOR. We are not ramming anything down the throat of the board. If they felt it necessary and advisable to do it they could do it.

I appreciate the Senator's accepting the amendment.

The PRESIDING OFFICER. Is there any further debate? If not, the question is on agreeing to the amendment of the Senator from South Dakota.

The amendment (No. 2317) was agreed to

AMENDMENT NO. 2318

(Purpose: To make technical and other necessary modifications in the dairy production stabilization provisions and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota (Mr. BOSCHWITZ) proposes an amendment numbered 2318.

Mr. BOSCHWITZ. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(1) On page 2, line 9, insert "(a)" immediately after "Sec. 102.".

(2) On page 2, line 14, strike out "September 30, 1983" and insert in lieu thereof "on the last day of the month of enactment of such Act".

(3) On page 2, strike out lines 18 and 19 and insert in lieu thereof the following:

"(B) Effective for the period beginning on the first day of the first calendar month following the date of enactment of the Dairy Production Stabilization Act of 1983 and ending on September 30, 1985, the price of".

(4) On page 2, line 23, strike out "on January 1, 1985," and insert in lieu thereof "on the date following by fifteen months the date established by the Secretary for the beginning of the diversion program under paragraph (3) of this subsection, but not later than March 31, 1985,".

(5) On page 3, line 3, strike out "shall" and insert in lieu thereof "may".

(6) On page 3, line 12, strike out "shall" and insert in lieu thereof "may".

(7) On page 3, line 23, strike out "shall" and insert in lieu thereof "May".

(8) On page 4, strike out line 3 and all that follows through "1984," on line 5, and insert in lieu thereof:

"(2)(A) Effective for the period beginning with the first day of the first calendar month following the date of enactment of the Dairy Production Stabilization Act of 1983 and ending on the date of termination of the milk diversion program established under paragraph (3) of this subsection,".

(9) On page 4, strike out lines 9 through line 11, and insert in lieu thereof: "duction of 50 cents per hundredweight from the price received on all milk marketed by producers in the United States for commercial use: *Provided*, That enactment of the Dairy Production Stabilization Act of 1983 shall not affect in any manner the collection or enforcement of any deduction from the price of milk previously implemented by the Secretary under this subsection as in effect

for any milk marketed for commercial use prior to the effective date of the reduction provided for in this paragraph, as added by section 102(a) of the Dairy Production Stabilization Act of 1983.".

(10) On page 4, strike out line 23 and all that follows through "Fund are" on page 5, line 8, and insert in lieu thereof "(C) To the extent that funds collected under this paragraph are".

(11) On page 5, line 18, insert "as soon as practicable following the enactment of the Dairy Production Stabilization Act of 1983, but no later than January 1, 1984," immediately after "shall".

(12) On page 5, line 23, strike out "period beginning" and all that follows through "1984." on line 2, page 6, and insert in lieu thereof "fifteen month period beginning with a date determined by the Secretary (not earlier than the date of enactment of the Dairy Production Stabilization Act of 1983, nor later than January 1, 1984)".

(13) On page 6, strike out line 22 and all that follows through line 4, page 7, and insert in lieu thereof the following: "sold, leased, or otherwise transferred to another person after the date of enactment of the Dairy Production Stabilization Act of 1983, unless such cattle are sold for slaughter or sold or transferred to another producer with respect to whom there is in effect a contract entered into under this subsection, except that the Secretary may, to the extent practicable and to the extent deemed consistent with the goals of the diversion program, permit the sale of registered, purebred cattle for breeding purposes subject to such terms and conditions as the Secretary may prescribe based on a history of such sales by the producer;".

(14) On page 7, strike out lines 7 and 8 and insert in lieu thereof "section, including simple interest payable at a rate prescribed by the Secretary which shall, to the extent practicable, reflect the cost to the Commodity Credit Corporation of its borrowings from the United States Treasury, commencing on".

(15) On page 8, line 13, strike out the semicolon and insert in lieu thereof a colon, and between lines 13 and 14, insert the following proviso: "*Provided*, That no payment may be made for any reduction in the quantity of milk greater than 30 per centum of the aggregate quantity of milk marketed by the producer for commercial use during the marketing history period;".

(16) On page 9, line 6, strike out "and", and between lines 6 and 7, insert the following:

"(iii) any reduction in the quantity of milk marketed for commercial use by a producer who, as determined by the Secretary, was not actively engaged in the production of milk for commercial use as of the date of enactment of the Dairy Production Stabilization Act of 1983; and".

(17) On page 9, line 7, strike out "(iii)" and insert in lieu thereof "(iv)".

(18) On page 9, line 11, insert ", in accordance with such rules or procedures as prescribed by the Secretary," after "may".

(19) On page 9, line 15, strike out "paragraph and the Secretary" and all that follows through line 22, and insert in lieu thereof the following: "paragraph. In the event of such modifications, the Secretary may reduce the required reduction among all contracts on such basis as the Secretary determines will serve to reduce future dairy surpluses: *Provided*, That in no event shall any such reduction be apportioned on the basis of geographic region or area.".

(20) On page 10, strike out line 2 and all that follows through the period on line 10 and insert in lieu thereof "marketing history shall be the marketings of milk by such producer for commercial use during the 1981-1982 milk marketing year (October 1 through September 30) or, at the option of the producer, the average marketings of milk by the producer during the 1980-1981 and the 1981-1982 milk marketing years.".

(21) On page 10, line 13, strike out "or manmade disaster" and insert in lieu thereof "disaster or other condition".

(22) On page 10, line 16, strike out "The Secretary" and all that follows through line 21.

(23) On page 11, line 16, strike out "card".

(24) On page 12, strike out lines 21 through 23, and insert in lieu thereof "such producer.".

(25) On page 13, strike out lines 2 through 19, and insert in lieu thereof "Allotment Act.".

(26) On page 19, line 7 strike out "graph (2) through (5)" and insert in lieu thereof "graphs (2) and (3)".

(27) On page 19, between lines 9 and 10, insert the following:

"(b) The Secretary shall implement the provisions of section 201(d) of the Agricultural Act of 1949, as amended by subsection (a) of this section, without regard to the provisions requiring notice and other procedures for public participation in rulemaking contained in section 553 of title 5, United States Code.".

Mr. BOSCHWITZ. Mr. President, these are technical amendments agreed to by both sides.

I ask unanimous consent to have printed in the RECORD a summary of the amendments.

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

SUMMARY OF DAIRY AMENDMENTS

Item 1—makes a technical change that designates all of section 102 as subsection (a).

Items 2 and 3—provide for the dairy support price to drop to $12.60 effective on the first day of the month following enactment of this bill and clarify that the current $13.10 support price will continue through the last day of the month of enactment.

Item 4—establishes the date for the Secretary to make the second 50 cent reduction in the dairy support price at the end of the 15 month diversion program, but in no event later than March 31, 1985.

Items 5, 6, and 7—make all adjustments of the dairy price support level after the initial reduction to $12.60 discretionary rather than mandatory as currently provided in the bill.

Items 8 and 9—provide that the 50 cent deduction from all milk will begin on the first day of the first month after enactment of the bill and will terminate at the end of the diversion program, and clarify that enactment of this bill will not affect in any way the Secretary's authority to collect the current $1.00 assessment on all milk marketed for commercial use prior to the effective date of the 50 cent deduction established in this bill.

Item 10—deletes all reference to a Dairy Stabilization Fund from this bill.

Items 11 and 12—set the length of the diversion program at 15 months and provide that it will begin on a date following enactment of the bill determined by the Secretary, but not later than January 1, 1984.

Item 13—provides that the diversion contract for a producer must prohibit any sale or transfer of cattle by the producer, after enactment of this bill, except sales for slaughter, sales or transfers to another producer participating in the diversion program, or sales of breeding cattle by a producer with a history of such sales.

Item 14—modifies the provision that requires producers who fail to comply with their diversion contracts to repay any advance diversion payments by specifying that they must also pay interest at a rate comparable to the cost of money borrowed by CCC from the Treasury.

Item 15—establishes a 30% cap on the total amount of milk reduction that a producer can get paid for under the diversion program.

Item 16—provides that a producer must have been actively engaged in the production of milk on the date of enactment of this bill to be eligible to participate in the diversion program.

Item 17—makes a technical change to renumber a paragraph.

Item 18—provides that modifications of diversion contracts by the Secretary will be made in accordance with rules and procedures established by the Secretary.

Item 19—clarifies the Secretary's authority to modify diversion contracts to prevent an excessive reduction of milk in the U.S. The change would allow the Secretary to modify all contracts in such a way as to reduce future dairy surpluses, but would prohibit any modifications on the basis of geographic region or area.

Item 20—provides that the marketing history period is the 1981-1982 milk marketing year (October 1 through September 30) or at the producer's option the average of the 1980-1981 milk marketing year and the 1981-1982 milk marketing year.

Item 21—makes a technical change to delete reference to "manmade" disasters in the provision allowing the Secretary to make adjustments in the marketing history period of a producer.

Items 22 and 23—delete from the bill all reference to a marketing history card.

Items 24 and 25—delete from the bill the provisions that would have allowed milk handlers to make diversion payments to producers and would have allowed the Secretary to require a handler to collect any overpayments made by the handler to a producer.

Item 26—makes a technical change in the definition of United States to clarify that it applies only to the provisions of the bill establishing the dairy assessment and the diversion program.

Item 27—would add to section 102 of the bill a new subsection (b) to allow the Secretary to implement the dairy price support provisions, including the assessment and diversion program provisions, of this bill without regard to the provisions of the Administrative Procedure Act or any Secretarial memorandum requiring notice and public participation in rulemaking proceedings.

Mr. BOSCHWITZ. I move the adoption of the amendment.

The PRESIDING OFFICER. Is there any further discussion? If not, the question is on agreeing to the amendment of the Senator from Minnesota.

The amendment (No. 2318) was agreed to.

AMENDMENT NO. 2319

(Purpose: To make technical corrections)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2319.

Mr. HELMS. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 3, line 25, insert "than" after "less".

On page 4, line 16, strike out "prerscribed" and insert in lieu thereof "prescribed".

On page 20, line 9, strike out "is" and insert in lieu thereof "are".

On page 28, line 18, strike out "prinicpal" and insert in lieu thereof "principal".

On page, 29, line 14, strike out "informatioin" and insert in lieu thereof "information".

On page 31, line 16, strike out "milk fluid" and insert in lieu thereof "fluid milk".

On page 34, line 8, strike out "thrity" and insert in lieu thereof "thirty".

On page 37, line 3, strike out "were" and insert in lieu thereof "where".

On page 38, line 8, strike out "and Cotton".

On page 39, strike out line 22 and all that follows through line 17 on page 40.

On page 40, line 23, strike out "1983" and insert in lieu thereof "1984".

On page 41, line 3, strike out "(e)" and insert in lieu thereof "(f)".

On page 41, strike out lines 5 through 9.

On page 41, line 10, strike out "(2)" and insert in lieu thereof "(1)".

On page 41, line 13, strike out "(3)" and insert in lieu thereof "(2)".

On page 42, line 4, strike out "(4) and insert in lieu thereof "(3)".

On page 42, line 11, strike out "kind of such" and insert in lieu thereof "such kind of".

On page 42, line 23, strike out "(5)" and insert in lieu thereof "(4)".

On page 44, line 7, strike out "(17 U.S.C. 1445-2(a))" and insert in lieu thereof "(7 U.S.C. 1445-2(a))".

On page 44, strike out line 8 and insert in lieu thereof "(1) in paragraph (1), striking out ', except that".

On page 44, line 18, strike out "1983" and insert in lieu thereof "1938".

On page 44, line 23, strike out "price-support" and insert in lieu thereof "price support".

On page 46, line 9, strike out "the" and insert in lieu thereof "this".

On page 48, lines 4 and 5, strike out "any person knowingly failed to comply with the provisions of paragraph (1)" and insert in lieu thereof "the conditions for forfeiture specified in such paragraph exist".

On page 49, line 19, insert a semicolon immediately before "and".

On page 51, strike out lines 11 through 19.

On page 51, line 22, strike out "SEC. 212" and insert in lieu thereof "SEC. 211".

On page 52, line 9, strike out "SEC. 213" and insert in lieu thereof "SEC. 212".

On page 53, strike out lines 1 through 15.

Mr. HELMS. Mr. President, the amendment I have offered simply makes technical corrections in the bill. In addition to correcting typographical errors, the amendment deletes several provisions that have already been enacted into law and makes the necessary changes to conform the remainder of the bill.

The provisions deleted include section 131 relating to the payment-in-kind program for upland cotton. This provision was enacted in the Supplemental Appropriations Act for 1983 (Public Law 98-63). Also deleted is the price-support freeze for the 1983 crop of tobacco contained in section 202, section 211 giving the Secretary of Agriculture additional authority to provide for reductions in the national marketing quota for burley tobacco, and section 214 requiring the Secretary of Agriculture to review the effects of imports of burley tobacco. These tobacco program provisions were included in Public Law 98-59.

The amendment has been cleared on both sides of the aisle and I urge its adoption.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from North Carolina.

The amendment (No. 2319) was agreed to.

Mr. MELCHER. Madam President, I shall not send an amendment to the desk. I will make a brief description of an amendment which was offered and which we considered in committee that dealt with the importation of casein. That amendment would not place a limitation on the amount used for industrial uses but would limit the amount of casein imported for food.

The reason why that is significant, Mr. President, is that every pound of casein that is imported into this country that is used for food displaces a certain amount of dry powdered milk and, therefore, costs the program.

In 1982 our International Trade Commission study revealed that casein imports for the year 1980 displaced 330 million pounds of nonfat dried milk for the market, and thus added $300 million to the Commodity Credit Corporation purchase costs.

We believe the CCC nonfat dried milk purchase necessitated by casein imports continues above the level of 1980 and intervening years. In other words, it costs the program that much each year.

The amendment in committee failed by an 8 to 8 vote. It is an amendment that we should consider.

The agrument will be made that it ought to come up in the Finance Committee, Madam President, and I take note that this is a matter we should take up, and if it is not taken up in a bill from the Finance Committee within the next several months I hope we can consider an amendment on another bill, regardless of what the Finance Committee does.

Mr. COCHRAN. Mr. President, over the years the dairy price-support program has performed quite well. While there have been times when supplies have been in surplus and Government cost of the program increased to unacceptable levels, adjustments were made and supply was brought back in line with demand.

However, the Food and Agriculture Act of 1977 increased the minimum support level for milk to 80 percent of parity with a midyear adjustment. This level of parity combined with low grain prices and low cattle prices resulted in expansion of dairy cow numbers for the first time in 30 years. At the same time productivity per cow continued to increase. Everyone knows the results. Surpluses of dairy products started to mount and the cost of the program went from $250 million in 1978-79 to over $2 billion a year for the last 2 years.

Congress addressed the problem starting in the spring of 1981 by eliminating the April 1 adjustment that year thus leaving the support price at the $13.10 level. Subsequent action has left the dairy support price at the $13.10 level.

Last fall during the budget process legislation was passed to more directly address the mounting surplus problem faced by the dairy industry. The House passed a plan to establish a refundable assessment program to encourage farmers to cut production. The Senate passed a bill which kept the support price level at $13.10. During the House-Senate conference a compromise was reached to give the Secretary authority to impose a $0.50 nonrefundable assessment and if production was still in surplus by April he could impose a second $0.50 assessment which was to be refunded to those that cut production.

Litigation resulted which effectively blocked the implementation of the first $0.50 assessment until April 16 of this year. With Government purchases projected to continue at a high level the Secretary of Agriculture announced on May 31 the second assessment would be put into effect on September 1, 1983. Very soon now dairy farmers will receive milk checks reflecting the $1 per hundred deduction.

The assessment program has been very unpopular and with implementation of second $0.50, concern by dairy farmers is growing rapidly. Their concern is twofold: Production costs have increased considerably this year due to impact of the PIK program and the drought on feed prices. And apparently the assessment program has not effectively dealt with excess milk supply. This year the Government will purchase over $2 billion of surplus

dairy products and unless adjustments are made, about the same will be purchased next year.

During this same time there has been a general belief among producers that there is a better way to encourage farmers to cut production and to encourage consumers to buy more. And Mr. President, too often there has been inadequate attention given to the consumption side of not only dairy products, but all agriculture products. After all, to solve the farm income problem there must be improvements on the demand side and not just reductions of supply.

That is why we are here today—to consider a better way. If the assessment program is eliminated, something has to be put in its place to more effectively bring the supply of milk in line with demand.

My Subcommittee on Production, Marketing, and Price Stabilization held 2 days of hearings on April 13 and 14 to hear testimony from Members of Congress, the administration, producers, processors, and consumers. There was agreement by all that changes needed to be made in the current dairy program. Unfortunately, that is where the agreement ended. The proposals ranged all the way from a paid diversion approach to a simple reduction in the support price.

The administration chose not to present a specific plan but rather outline the criteria of a program which would be acceptable to them. The two criteria which I believe are most significant are the freedom of initiative for the individual dairy farmer and the need to lower dairy surpluses by both reducing production and increasing demand.

It can be argued to one degree or another that all the proposals meet these two main objectives. For example, those arguing for a price support cut point to the economic signals it will send to producers to reduce production and to consumers to increase consumption. And, clearly, a price reduction still allows dairy farmers the freedom to produce milk at what ever level they desire. A paid diversion program like that proposed by the National Milk Producers Federation would cut production. They argue that when combined with their proposal to increase promotion and advertising there would be an increase in consumption even though the price to the consumer would remain the same. They also say that their plan would not restrict the right of an individual farmer to produce at what ever level he wishes. Therefore, both competing proposals satisfy USDA's criteria for a dairy program.

After a great deal of effort, the dairy industry has now agreed to support this bill as the best way to address the dairy problem. The dairy program is contained in title I of S. 1529. The program does not completely satisfy everybody because individual proposals to solve the dairy problem varied greatly. The bill is described as "the dairy compromise." Many have worked sincerely and diligently with a common purpose of putting together a program that would effectively address the immense problem confronting the dairy industry. I am confident it represents the best that can come from such a diverse range of needs, production, marketing operations, and economic conditions. It certainly is the only program or proposal to gain industrywide support this year. It was favorably reported by the Agriculture Committee on June 23.

I strongly urge the Senate to support S. 1529 without any substantive changes.

Mr. LEAHY. Mr. President, I am pleased that after these many months of negotiations begun in my office on April 8 that we are about to enact the dairy compromise legislation contained in S. 1529.

I want to express my appreciation to those Senators of both parties who participated in the crafting of this bill.

The dairy compromise is a fair, workable, and effective program. It provides dairy farmers an incentive to reduce production, not a penalty for being some of the best business men and women in this country.

Mr. President, this is a compromise bill designed to address an emergency situation in the dairy industry. It is not a long-term solution. That long-term solution must be addressed in the next farm bill, which the Agriculture Committee will work on in 1985.

As with any compromise, Mr. President, this bill represents the thinking of many diverse interests. I do not agree with every part of this legislation, particularly the price support cuts contained at the end of this program.

I am also concerned with the lack of a payment limitation in this legislation. I voted in favor of the amendment of the Senator from Rhode Island (Mr. CHAFEE) which would have placed a cap on the amount of money an individual dairy farmer could receive under the diversion program.

Absent this, I want to urge the Secretary of Agriculture to use the authority available to him in this legislation to insure that unusually large payments to certain dairy farm operations are not made.

Despite these reservations, Mr. President, the dairy compromise legislation is clearly superior to either a straight price support cut or the current unfair, ineffective assessment program.

It will cut Government costs, reduce surplus purchases and buildup, and do so in a way that enables dairy farmers in Vermont and the Nation to stay in business.

Mr. WARNER. First, I would like to thank the distinguished chairman of the Agriculture Committee, Senator HELMS, and the Senator from Kentucky, Senator HUDDLESTON, for the diligence and hard work that has gone into finally bringing this legislation to the floor, and to the point which it now appears we may pass it.

This legislation is extremely important to both the dairy and tobacco farmers in Virginia. Mr. President, I strongly supported the no net cost tobacco program passed by the Congress in 1982. This program solved some of the problems of the tobacco industry, however, many of these problems remain.

S. 1529 will freeze the price support for tobacco in 1984 at 1982 levels just as was done for the 1983 crop year. This is necessary in order to keep the price of American tobacco more in line with the world markets. American tobacco is the finest in the world, but if we are to reverse the current decline in the U.S. market share of tobacco, we must be able to keep our prices competitive. This bill also addresses some of the problems associated with leasing transfer.

Phasing out the necessity of many growers to pay allotment holders for the right to grow tobacco will lower the production costs of growing tobacco—further increasing the likelihood of lowering the price of U.S. tobacco and enabling us to recapture our share of the world market. There are 16,360 farms growing tobacco in Virginia, the overwhelming majority being family farming operations.

The tobacco program is the least costly, most successful farm program ever operated in our country. With the adjustments contained in S. 1529, the program will continue and be still improved so that these hard-working farmers can remain in business.

S. 1529 also addresses the problems currently within the dairy industry. The production of dairy products has been increasing steadily over the past several years. We are now at a point where surpluses of dairy products and costs of operating the dairy program are dangerously high. It is important that the excessive production be cut severely.

While I supported the amendments to replace the assessment and paid diversion programs because I believe that there are better ways to address the problems of the dairly industry, I will vote for final passage so that the consideration process of this legislation can continue. However, it is my judgment that the solutions to the dairy problems contained in S. 1529 are temporary and I fully expect that, in the near future, we will be back here on the floor of the Senate debating these same issues.

Virginia's dairy production is overwhelmingly in the form of fluid milk, and dairymen in Virginia are, in my judgment, rightfully opposed to this sort of program.

Mr. President, I hope that the Senate will move expeditiously to pass this much needed and overdue agriculture legislation.

STATEMENT ON DAIRY CAP AMENDMENT

● Mr. LEVIN. I would like to take this opportunity to describe why I voted to table the amendment offered by Senator CHAFEE that would have put a cap on the amount that could be paid under the dairy diversion program.

Since coming to the Senate, I have been a supporter of efforts to reform agriculture programs to concentrate Federal payments to family and other small farms. I have supported proposed modifying the deficiency payment program, for example, so that the benefits of that income supplement program would go to family farms. I support such efforts, not only because of a Jeffersonian belief in the value of small farms, but also because of the benefits such farms provide for rural America and also as a counterpoint to the many benefits—from the standards in the Tax Code to Federal reclamation projects—that accrue to large, primarily corporate, landholders.

The amendment offered by Senator CHAFEE would have modified the diversion program envisioned by the dairy bill. Unlike deficiency payments, which supplement farmers' income, the purpose of a diversion program is to lessen the supply of a particular crop. The Government is trying to entice individual farmers to reduce production to lower surpluses overall. With a diversion program, we are concerned less with the attributes or needs of individual farmers; rather we are trying to get a concerted effort by as many farmers as possible to limit agricultural output.

Unfortunately, the amendment offered by Senator CHAFEE would have decreased the chance for success of the diversion provisons of the dairy bill, S. 1529. I fear that if the Senate had agreed to the cap many dairy producers would not find the diversion program profitable and would decide not to limit their production. The amendment, then, would have helped defeat the very purpose of the diversion program—to limit dairy production.

Although I did not vote for the amendment, I still am committed to working toward a farm policy that emphasizes benefits for small farms. I hope that when we draft other agriculture bills, leading up to the preparation of the 1985 farm bill, many changes in the current agriculture programs will be proposed with the family farm in mind.●

Mr. HELMS. Madam President, I wish to express my deep appreciation to the Senator from Montana.

Third reading.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and to be read a third time, and was read the third time.

PAYMENT-IN-KIND PROGRAM RELATING TO COTTON PRODUCERS

Mr. HELMS. Madam President, I ask unanimous consent that the Senate proceed to the consideration of Calendar 311, H.R. 3385.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3385) to provide equity to cotton producers under the payment-in-kind program.

The Senate proceeded to consider the bill.

Mr. HELMS. Madam President, I move that all after the enacting clause be stricken and that the language of S. 1529, as amended by the Senate, be substituted therefore.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from North Carolina.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time. The bill was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass?

The bill (H.R. 3385), as amended, was passed, as follows:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Dairy and Tobacco Adjustment Act of 1983".

TITLE I—DAIRY

SHORT TITLE

SEC. 101. This title may be cited as the "Dairy Production Stabilization Act of 1983".

Subtitle A—Dairy Compliance Program

DAIRY PRODUCTION STABILIZATION

SEC. 102. (a) Section 201(d) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)) is amended to read as follows:

"(d) Notwithstanding any other provision of law—

"(1)(A) Effective for the period beginning with the date of enactment of the Dairy Production Stabilization Act of 1983 and ending on the last day of the month of enactment of such Act, the price of milk shall be supported at a rate equivalent to $13.10 per hundredweight for milk containing 3.67 per centum milkfat.

"(B) Effective for the period beginning on the first day of the first calendar month following the date of enactment of the Dairy Production Stabilization Act of 1983 and ending on September 30, 1985, the price of milk shall be supported at a rate equivalent to $12.60 per hundredweight for milk containing 3.67 per centum milkfat, except that—

"(i) on the date following by fifteen months the date established by the Secretary for the beginning of the diversion program under paragraph (3) of this subsection, but not later than March 31, 1985, if the Secretary estimates that for the twelve-month period beginning on such date net price-support purchases of milk or the products of milk would be in excess of six billion pounds milk equivalent, the Secretary may reduce the price-support rate in effect on such date in the amount of 50 cents per hundredweight; and

"(ii) on July 1, 1985—

"(I) if the Secretary estimates that for the twelve-month period beginnng on such date net price-support purchases of milk or the products of milk would be in excess of five billion pounds milk equivalent, the Secretary may reduce the price-support rate in effect on such date in the amount of 50 cents per hundredweight; or

"(II) if the Secretary estimates that for the twelve-month period beginning on such date net price-support purchases of milk or the products of milk would be five billion pounds milk equivalent or less and if the Secretary determines it necessary in order to assure an adequate supply of pure and wholesome milk to meet current needs, the Secretary may increase the price-support rate in effect on such date in an amount not less than 50 cents per hundredweight.

"(C) The price of milk shall be supported through the purchase of milk and the products of milk.

"(2)(A) Effective for the period beginning with the first day of the first calendar month following the date of enactment of the Dairy Production Stabilization Act of 1983 and ending on the date of termination of the milk diversion program established under paragraph (3) of this subsection, to encourage the adjustment of milk production to levels consistent with the national demand for milk and the products of milk, the Secretary shall provide for a reduction of 50 cents per hundredweight from the price received on all milk marketed by producers in the United States for commercial use: *Provided*, That enactment of the Dairy Production Stabilization Act of 1983 shall not affect in any manner the collection or enforcement of any deduction from the price of milk previously implemented by the Secretary under this subsection as in effect for any milk marketed for commercial use prior to the effective date of the reduction provided for in this paragraph, as added by section 102(a) of the Dairy Production Stabilization Act of 1983.

"(B) The funds represented by the reduction in the price required to be applied to the marketings of milk by a producer under subparagraph (A) shall be collected and remitted to the Commodity Credit Corporation at such time in such manner as prescribed by the Secretary by each person making payment to a producer for milk purchased from the producer, except that in the case of a producer who markets milk of the producer's own production directly to consumers, such funds shall be remitted directly to the Commodity Credit Corporation by the producer.

"(C) To the extent that funds collected under this paragraph are inadequate to make the payments to producers who reduce marketing under paragraph (3), such

payments shall be made using funds otherwise available to the Commodity Credit Corporation. The funds remitted to the Commodity Credit Corporation under this paragraph shall be considered as included in the payments to a producer of milk for purposes of the minimum price provisions of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

"(3)(A) The Secretary shall as soon as practicable following the enactment of the Dairy Production Stabilization Act of 1983, but no later than January 1, 1984, provide for a milk diversion program under which the Secretary shall offer to enter into a contract with any producer of milk in the United States for the purpose of reducing the quantity of milk marketed by the producer for commercial use during the fifteen month period beginning with a date determined by the Secretary (not earlier than the date of enactment of the Dairy Production Stabilization Act of 1983, nor later than January 1, 1984). In setting the terms and conditions of such contracts, the Secretary shall take into account any adverse impact of the reductions in milk production on beef and pork producers in the United States and shall take all feasible steps to minimize such impact.

"(B) Each such contract shall require that—

"(i) the producer shall reduce the quantity of milk marketed for commercial use in an amount equal to a percentage specified by the producer, but not less than 5 per centum and not more than 30 per centum, of the quantity of milk marketed by such producer for commercial use during the marketing history period described in subparagraph (F);

"(ii) any production capacity of a facility that becomes available for us because a producer reduces milk production in order to comply with the contract shall not be used by the producer, or made available by the producer for use by any other persons, for the production of milk;

"(iii) any dairy cattle that would or could have been used by the producer for the production of milk if the producer had not entered into and complied with such contract shall not have been sold, leased, or otherwise transferred to another person after the date of enactment of the Dairy Production Stabilization Act of 1983, unless such cattle are sold for slaughter or sold or transferred to another producer with respect to whom there is in effect a contract entered into under this subsection, except that the Secretary may, to the extent practicable and to the extent deemed consistent with the goals of the diversion program, permit the sale of registered, purebred cattle for breeding purposes subject to such terms and conditions as the Secretary may prescribe based on a history of such sales by the producer;

"(iv) the producer shall repay to the Secretary the entire payment received under this subsection, including simple interest payable at a rate prescribed by the Secretary which shall, to the extent practicable, reflect the cost to the Commodity Credit Corporation of its borrowings from the United States Treasury, commencing on the date of payment is first received under this paragraph, if the producer fails to comply with such contract.

"(C) Except as provided in subparagraph (D), the Secretary shall pay to a producer who complies with a contract, entered into under this paragraph, an amount equal to the product of $10 per hundredweight and the amount, measured in hundredweights, by which the quantity of milk marketed by such producer for commercial use during the period specified in such contract is less than the quantity of milk marketed by such producer for commercial use during the marketing history period.

"(D) No payment may be made under subparagraph (C) to a producer with respect to—

"(i) any reduction in the quantity of milk marketed by the producer for commercials use that exceeds the sum of—

"(I) the reduction in the quantity of milk marketed for commercial use required under the provisions of the contract the producer has entered into under this paragraph, after any adjustment by the Secretary under subparagraph (E); and

"(II) 3 per centum of the quantity of milk marketed by the producer for commercial use during such producer's marketing history period: *Provided,* That no payment may be made for any reduction in the quantity of milk greater than 30 per centum of the aggregate quantity of milk marketed by the producer for commercial use during the marketing history period;

"(ii) any reduction in the quantity of milk marketed by the producer for commercial use if such reduction is less than the larger of 5 per centum of the aggregate quantity of milk marketed by the producer for commercial use during the marketing history period or the difference between—

"(I) the reduction in the quantity of milk marketed for commercial use required under the provisions of the contract the producer has entered into under this paragraph, after any adjustment by the Secretary under subparagraph (E); and

"(II) 3 per centum of the quantity of milk marketed by the producer for commercial use during such producer's marketing history period;

"(iii) any reduction in the quantity of milk marketed for commercial use by a producer who, as determined by the Secretary, was not actively engaged in the production of milk for commercial use as of the date of enactment of the Dairy Production Stabilization Act of 1983; and

"(iv) any reduction in the quantity of milk marketed for commercial use by a producer who violates any requirement specified in this paragraph.

"(E) The Secretary may, in accordance with such rules or procedures as prescribed by the Secretary, modify contracts entered into under this paragraph if the Secretary determines that an excessive reduction in the level of milk production in the United States would result from contracts entered into under this paragraph. In the event of such modifications, the Secretary may reduce the required reduction among all contracts on such basis as the Secretary determines will serve to reduce future dairy surpluses: *Provided,* That in no event shall any such reduction be apportioned on the basis of geographic region or area.

"(F) Any producer of milk in the United States seeking to enter into a contract for diversion payments under this paragraph shall provide the Secretary with evidence of such producer's marketing history. The marketing history shall be the marketings of milk by such producer for commercial use during the 1981-1982 milk marketing year (October 1 through September 30) or, at the option of the producer, the average marketings of milk by the producer during the 1980-1981 and the 1981-1982 milk marketing years. The producer's marketing history may be adjusted as the Secretary determines necessary to correct for abnormally low production resulting from a natural disaster or other condition beyond the control of the producer or such other factors as the Secretary determines necessary to provide a fair and equitable marketing history.

"(G) No marketing history shall be assigned to any producer who commenced marketing of milk after December 31, 1982, except as provided in subparagraph (H).

"(H) A producer's marketing history established under this paragraph shall not be transferable to any other person, unless the entire milk production facility used by the producer to produce milk for commercial use during the marketing history period and the producer's entire dairy herd were transferred by reason of the death of the producer, by reason of a gift from the producer, or to a member or members of the family of the producer. The term 'member or members of the family of the producer' means (i) an ancestor or ancestors of the producer, (ii) the spouse of the producer, (iii) a lineal descendant or descendants of the producer, or the producer's spouse, or a parent of the producer, or (iv) the spouse of any such lineal descendant.

"(I) Eligibility for diversion payments shall be determined on the basis of the marketing history provided for in subparagraph (F).

"(J)(i) Producers eligible for diversion payments shall apply for such payments at the end of each quarter. Payment may be made to any producer who can establish that marketings of milk by such producer for commercial use have been reduced from the level of marketings during the corresponding period of the marketing history period in an amount as specified by the Secretary for each quarter in the contract: *Provided,* That the aggregate quantity of such reductions for the entire diversion period must be at least equal to the total reduction required by the contract. Prior to approving such payment, the Secretary shall require evidence that such reduction in marketings has taken place. As part of such evidence, the producer shall certify, in a form specified by the Secretary, that such reduction is a net decrease in marketings of milk for commercial use and has not been offset by expansion of production in other production facilities in which the producer has an interest, or by transfer of partial interest in the production facility, or by employment of such other scheme or device to qualify for payment for which such producer would otherwise not be eligible.

"(ii) Payments made under this paragraph during the year shall be considered preliminary settlements for reductions in marketings. A final settlement shall be made following the end of the contract period and shall be based on the volume of marketings for the entire contract period. If, based on total marketings for the contract period, it is determined that preliminary settlements have resulted in overpayments to the producer, the Secretary shall recover such overpayments from such producer.

"(K) Application for payment shall be made by producers through the county committees established under section 8 of the Soil Conservation and Domestic Allotment Act.

"(L) A producer may assign a contract entered into under this paragraph only if-

"(i) the producer's interest in the entire milk production facility and the entire dairy herd used by the producer to produce milk for commercial marketings have been trans-

ferred as a unit to the person to whom the assignment is to be made;

"(ii) the assignee is a person to whom the producer's marketing history may be transferred unde subparagraph (H);

"(iii) the producer and the assignee agree in writing that the assignee shall succeed to all rights and liabilities of the producer under the contract; and

"(iv) a copy of such writing is submitted to the Secretary before the transfer occurs.

"(M) A contract entered into under this paragraph by a producer who by reason of death cannot perform or assign such contract may be performed or assigned, in accordance with subparagraph (L), by the estate of such producer.

"(N) If the provisions for reductions in the price received for milk marketed for commercial use as provided for in paragraph (2) are held to be invalid by any court, or the Secretary is restrained or enjoined by any court from implementing such provisions, the Secretary shall immediately suspend making any diversion payments under this paragraph for the period beginning with the date of such court action and shall resume making such payments only if such court action is overruled, stayed, or terminated.

"(O) If the Secretary determines that there has been a marked deviation in the composition of milk marketed for commercial use by a producer from that of such producer's marketing during the marketing history period, an adjustment as determined appropriate by the Secretary shall be made in the producer's diversion payments to reflect the composition of milk marketed during the marketing history period.

"(4) Each producer who markets milk and each person required to make payment to the Commodity Credit Corporation under this subsection shall keep such records and make such reports, in such manner, as the Secretary determines necessary to carry out this subsection. The Secretary may make such investigations as the Secretary deems necessary for the effective administration of this subsection or to determine whether any person subject to the provisions of this subsection has engaged or is engaged or is about to engage in any act or practice that constitutes or will constitute a violation of any provision of this subsection or regulation issued under this subsection. For the purposes of such investigation, the Secretary may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of records. Such court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony on the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district of which such person is an inhabitant or wherever such person may be found.

"(5)(A) The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any provision of this subsection or any regulation issued under this subsection. Any such civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action. The Secretary is not required, however, to refer to the Attorney General minor violations of this subsection whenever the Secretary believes that the administration and enforcement of this subsection would be adequately served by suitable written notice or warning to any person committing such violation.

"(B) Each person (i) as to whom there is a failure to make a reduction in the price of milk received by such person as required by paragraph (2), (ii) who fails to remit to the Commodity Credit Corporation the funds required to be collected and remitted by paragraph (2)(B), or (iii) who fails to make the reduction in marketing required by a contract under paragraph (3) shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to the support price for milk for the fiscal year in which the failure occurs on the quantity of milk as to which the failure applies. The Secretary may reduce any such marketing penalty in such amount as the Secretary determines equitable in any case in which the Secretary determines that the failure was unintentional or without knowledge on the part of the person concerned. Each person who knowingly violates any provision of this subsection, or any regulation issued under this subsection, shall be liable for a civil penalty of not more than $1,000 for each such violation. Any penalty provided for under this subparagraph shall be assessed by the Secretary after notice and opportunity for a hearing.

"(C) Any person against whom a penalty is assessed under subparagraph (B) may obtain review of such penalty in an appropriate district court of the United States by filing a civil action in such court not later than thirty days after such penalty is imposed. The Secretary shall promptly file in such court a certified copy of the record upon which the penalty is based. The findings of the Secretary may be set aside only if found to be unsupported by substantial evidence.

"(D) The district courts of the United States shall have jurisdiction to review and enforce any penalty imposed under subparagraph (B).

"(E) The remedies provided in this paragraph shall be in addition to, and not exclusive of, the remedies otherwise provided at law or in equity.

"(F) In carrying out this subsection, the Secretary may, on a reimbursable basis, as the Secretary deems appropriate, use—

"(i) administrators of Federal milk marketing orders;

"(ii) State and county committees established under section 8 of the Soil Conservation and Domestic Allotment Act; or

"(iii) administrators of State milk marketing programs.

"(6) The term 'United States' as used in paragraphs (2) and (3) of this subsection means the forty-eight contiguous States in the continental United States.".

(b) The Secretary shall implement the provisions of section 201(d) of the Agricultural Act of 1949, as amended by subsection (a) of this section, without regard to the provisions requiring notice and other procedures for public participation in rulemaking contained in section 553 of title 5, United States Code.

REPORT

SEC. 103. (a) Not later than December 31, 1984, the Secretary of Agriculture shall submit to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry, a report on (1) recommendations for changes in the application of the parity formula to milk so as to make the formula more consistent with modern production methods and with special attention to the cost of producing milk as a result of changes in productivity and (2) the feasibility of imposing a limitation of the total amount of payments and other assistance a producer of milk may receive during a year under section 201 (d) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)).

(b) Not later than six months after the date of the enactment of this Act, the Secretary of Agriculture shall—

(1) review in light of current economic conditions all regulations governing, and provisions of, milk marketing orders issued under section 8c of the Agricultural Adjustment Act, as amended and reenacted by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c), that have not been reviewed by the Secretary at any time during the ten year period preceding the date of the enactment of this Act;

(2) take such actions as the Secretary determines are necessary to revise such regulations and provisions in light of such reviews; and

(3) submit a report on such review and actions to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

Subtitle B—Dairy Promotion Program

FINDINGS AND DECLARATION OF POLICY

SEC. 110. (a) Congress finds that—

(1) dairy products are basic foods that are a valuable part of the human diet;

(2) the production of dairy products plays a significant role in the Nation's economy; the milk from which dairy products are manufactured is produced by thousands of milk producers and dairy products are consumed by millions of people throughout the United States;

(3) dairy products must be readily available and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(4) the maintenance and expansion of existing markets for dairy products vital to the welfare of milk producers and those concerned with marketing, using, and producing dairy products, as well as to the general economy of the Nation; and

(5) dairy products move in interstate and foreign commerce, and dairy products that do not move in such channels of commerce directly burden or affect interstate commerce of dairy products.

(b) It, therefore, is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided herein, of an orderly procedure for financing (through assessments on all milk produced in the United States for commercial use) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the United States. Nothing in this subtitle may be construed to provide for the control of production or otherwise limit the right of individual milk producers to produce milk.

DEFINITIONS

SEC. 111. As used in this subtitle—

(a) the term "Board" means the National Dairy Promotion and Research Board established under section 113 of this subtitle;

(b) the term "Department" means the United States Department of Agriculture;

(c) the term "Secretary" means the Secretary of Agriculture;

(d) the term "milk" means any class of cow's milk produced in the United States;

(e) the term "dairy products" means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products;

(f) the term "fluid milk products" means those milk products normally consumed in liquid form as a beverage;

(g) the term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity;

(h) the term "producer" means any person engaged in the production of milk for commercial use;

(i) the term "promotion" means action such as paid advertising, sales promotion, and publicity to advance the image and sales of and demand for dairy products;

(j) the term "research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for milk and dairy products;

(k) the term "nutrition education" means those activities intended to broaden the understanding of sound nutritional principles including the role of milk and dairy products in a balanced diet;

(l) the term "United States" means the forty-eight contiguous States in the continental United States.

ISSUANCE OF ORDERS

SEC. 112. (a) During the period beginning with the date of enactment of this subtitle and ending thirty days after receipt of a proposal for a dairy products promotion and research order, the Secretary shall publish such proposed order and give due notice and opportunity for public comment upon the proposed order. The proposal for an order may be submitted by an organization certified under section 114 of this subtitle or by any interested person affected by the provisions of this subtitle.

(b) After notice and opportunity for public comment are given, as provided for in subsection (a) of this section, the Secretary shall issue a dairy products promotion and research order. Such order shall become effective not later than ninety days following publication of the proposal.

(c) The Secretary may, from time to time, amend dairy products promotion and research orders.

REQUIRED TERMS IN ORDERS

SEC. 113. Any order issued under this subtitle shall contain terms and conditions as follows:

(a) The order shall provide for the establishment and administration of appropriate plans or projects for advertisement and promotion of the sale and consumption of dairy products, for research projects related thereto, for nutrition education projects, and for the disbursement of necessary funds for such purposes. Any such plan or project shall be directed toward the sale and marketing or use of dairy products and fluid milk products to the end that the marketing and use of dairy products may be encouraged, expanded, improved, or made more acceptable. No such advertising or sales promotion program shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

(b) The order shall provide for the establishment and appointment by the Secretary of a National Dairy Promotion and Research Board that shall consist of not less than thirty-six members. Members of the Board shall be milk producers appointed by the Secretary from nominations submitted by eligible organizations or associations certified under section 114 of this subtitle, or, if the Secretary determines that a substantial number of milk producers are not members of, or their interests are not represented by, any such eligible organization or association, then from nominations made by such milk producers in the manner authorized by the Secretary. In making such appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of milk production volume throughout the United States. In determining geographic representation, whole States shall be used as a unit. A region may be represented by more than one director and a region may be made up of more than one State. The term of appointment to the Board shall be for three years with no member serving more than two consecutive terms, except that initial appointments shall be proportionately for one-year, two-year, and three-year terms. The Board shall appoint from its members an executive committee whose membership shall equally reflect each of the different regions in the United States in which milk is produced and, to the maximum extent practicable, the membership composition of the Board. The executive committee shall have such duties and powers as are conferred upon it by the Board. Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board including a per diem allowance as recommended by the Board and approved by the Secretary.

(c) The order shall define the powers and duties of the Board that shall include only the powers enumerated in this section. These shall include, in addition to the powers set forth elsewhere in this section, the powers to (1) receive and evaluate, or on its own initiative develop, and budget for plans or projects to promote the use of fluid milk and dairy products as well as projects for research and nutrition education and to make recommendations to the Secretary regarding such proposals, (2) administer the order in accordance with its terms and provisons, (3) make rules and regulations to effectuate the terms and provisions of the order, (4) receive, investigate, and report to the Secretary complaints of violations of the order, and (5) recommend to the Secretary amendments to the order. The Board shall solicit, among others, research proposals that would increase the use of fluid milk and dairy products by the military and by persons in developing nations, and that would demonstrate the feasibility of converting surplus nonfat dry milk to casein for domestic and export use.

(d) The order shall provide that the Board shall develop and submit to the Secretary for approval any promotion, research, or nutrition education plan or project and that any such plan or project must be approved by the Secretary before becoming effective.

(e) The order shall require the Board to submit to the Secretary for approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including projected costs of dairy products promotion and research projects.

(f) The order shall provide that the Board, with the approval of the Secretary, may enter into agreements for the development and conduct of the activities authorized under the order as specified in subsection (a) and for the payment of the cost hereof with funds collected through assessments under the order. Any such agreement shall provide that (1) the contracting party shall develop and submit to the Board a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such plan or project, (2) the plan or project shall become effective upon the approval of the Secretary, and (3) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, and make periodic reports to the Board of activities conducted and such other reports as the Secretary or Board may require.

(g) The order shall provide that each person making payment to a producer for milk purchased from the producer shall, in the manner as prescribed by the order, collect an assessment based upon the number of hundredweights of milk for commercial use handled for the account of the producer and remit the assessment to the Board. The assessment shall be used for payment of the expenses in administering the order, with provision for a reasonable reserve, and shall include those administrative costs incurred by the Department after an order has been promulgated under this subtitle. The rate of assessment prescribed by the order shall be 15 cents per hundredweight of milk for commercial use or the equivalent thereof: *Provided*, That a milk producer or the producer's cooperative who can establish that the producer is participating in active, ongoing qualified State or regional dairy product promotion or nutrition education programs intended to increase consumption of milk and dairy products generally shall receive credit for contributions to such programs of up to 10 cents per hundredweight of milk marketed in determining the assessment due from such producer. Any person marketing milk of that person's own production directly to consumers shall remit the assessment directly to the Board in the manner prescribed by the order.

(h) The order shall require the Board to (1) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe, (2) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and (3) account for the receipt and disbursement of all funds entrusted to it.

(i) The order shall provide that the Board, with the approval of the Secretary, may invest, pending disbursement under a plan or project, funds collected through assessments authorized under this subtitle only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(j) The order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of

influencing governmental policy or action except as provided by subsection (c)(5).

(k) The order shall require that each person receiving milk from farmers for commercial use maintain and make available for inspection such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order. Such information shall be made available to the Secretary as is appropriate or necessary to the administration or enforcement of this subtitle, or any order or regulation issued under this subtitle. All information so obtained shall be kept confidential by all officers and employees of the Department, and only such information so obtained as the Secretary deems relevant may be disclosed by them and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order with reference to which the information to be disclosed was obtained. Nothing in this subsection may be deemed to prohibit (1) the issuance of general statements, based upon the reports, of the number of persons subject to an order or statistical data collected therefrom, which statements do not identify the information furnished by any person, or (2) the publication, by direction of the Secretary, of the name of any person violating any order, together with a statement of the particular provisions of the order violated by such person. No information obtained under the authority of this subtitle may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of this subtitle and any investigatory or enforcement actions necessary for the implementation of this subtitle. Any person violating the provisions of this subsection shall, upon conviction, be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or both, and, if an officer or employee of the Board or the Department shall be removed from office.

(l) The order shall provide terms and conditions, not inconsistent with the provisions of this subtitle, as necessary to effectuate the provisions of the order.

CERTIFICATION OF ORGANIZATIONS

SEC. 114. (a) The eligibility of any organization to represent milk producers, and to participate in the making of nominations under section 113 of this subtitle shall be certified by the Secretary. The Secretary shall certify any organization that the Secretary determines meets the eligibility criteria established by the Secretary under this section and the Secretary's determination as to eligibility shall be final.

(b) Certification shall be based, in addition to other available information, upon a factual report submitted by the organization, which shall contain information deemed relevant and specified by the Secretary, including, but not limited to, the following:

(1) geographic territory covered by the organization's active membership;

(2) nature and size of the organization's active membership including the proportion of the total number of active milk producers represented by the organization;

(3) evidence of stability and permanency of the organization;

(4) sources from which the organization's operating funds are derived;

(5) functions of the organization; and

(6) the organization's ability and willingness to further the aims and objectives of this subtitle.

The primary considerations in determining the eligibility of an organization shall be whether its membership consists primarily of milk producers who produce a substantial volume of milk and whether the primary or overriding interest of the organization is in the production or processing of fluid milk and dairy products and promotion of the nutritional attributes of fluid milk and dairy products.

REQUIREMENT OF REFERENDUM

SEC. 115. (a) Within the sixty-day period immediately preceding September 30, 1985, the Secretary shall conduct a referendum among producers who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use for the purpose of ascertaining whether any order then in effect shall be continued. Such order shall be continued only if the Secretary determines that it has been approved by not less than one-half of the producers voting in the referendum, who during a representative period (as determined by the Secretary) have been engaged in the production of milk for commercial use. If continuation of the order is not approved by a majority of the producers voting in the referendum, the Secretary shall terminate collection of assessments under the order within six months after the Secretary determines that such action is favored by a majority of the producers voting in the referendum.

(b) The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred by the Government in connection with the conduct of any referendum under this section and section 116, except for the salaries of Government employees.

SUSPENSION AND TERMINATION OF ORDERS

SEC. 116. (a) After September 30, 1985, the Secretary shall, whenever the Secretary finds that any order issued under this subtitle or any provision thereof obstructs or does not tend to effectuate the declared policy of this subtitle, terminate or suspend the operation of such order or such provisions thereof.

(b) After September 30, 1985, the Secretary may conduct a referendum at any time, and shall hold a referendum on request of a representative group comprising 10 per centum or more of the number of producers subject to the order, to determine whether the producers favor the termination or suspension of the order. The Secretary shall suspend or terminate the order and collection of assessments under the order within six months if the Secretary determines that suspension or termination of the order is favored by a majority of the producers voting in the referendum who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use.

(c) The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this subtitle.

COOPERATIVE ASSOCIATION REPRESENTATIVE

SEC. 117. Whenever, under the provisions of this subtitle, the Secretary is required to determine the approval or disapproval of producers, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing milk or the products thereof, as the approval or disapproval of the producers who are members of or under contract with such cooperative association of producers: *Provided*, That if a cooperative association of producers elects to vote on behalf of its members, such cooperative association shall provide each producer on whose behalf the cooperative association is expressing approval or disapproval a description of the question presented in the referendum together with a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership. Such information shall inform the producer of procedures to follow to cast an individual ballot should the producer so choose within the period of time established by the Secretary for casting ballots. Such notification shall be made at least thirty days prior to the referendum and shall include an official ballot. The ballots shall be tabulated by the Secretary and the vote of the cooperative association shall be adjusted to reflect such individual votes.

PETITION AND REVIEW

SEC. 118. (a) Any person subject to any order issued under this subtitle may file with the Secretary a petition stating that any such order or any provision of such order or any obligation imposed in connection therewith is not in accordance with law and requesting a modification thereof or an exemption therefrom. The petitioner shall thereupon be given an opportunity for a hearing upon the petition, in accordance with regulations issued by the Secretary. After such hearing, the Secretary shall make a ruling upon the petition which shall be final if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant or carries on business are hereby vested with jurisdiction to review such ruling, if a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering a copy of the complaint to the Secretary. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires.

ENFORCEMENT

SEC. 119. (a) The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued under this subsection shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General minor violations of this subtitle whenever the Secretary believes that the administration and enforcement of this subtitle would be adequately served by suitable written notice on warning to any person committing such violation.

(b) Any person who willfully violates any provision of any order issued by the Secretary under this subtitle shall be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation and in the case of a willful failure to pay, collect, or remit the assessment as required by the order, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and

may be recovered in a civil suit brought by the United States.

(c) The remedies provided in subsections (a) and (b) of this section shall be in addition to, and not exclusive of, the remedies otherwise provided at law or in equity.

INVESTIGATIONS; POWER TO SUBPENA AND TAKE OATHS AND AFFIRMATIONS; AID OF COURTS

SEC. 120. The Secretary may make such investigations as the Secretary deems necessary for the effective administration of this subtitle or to determine whether any person subject to the provisions of this subtitle has engaged or is about to engage in any act that constitutes or will constitute a violation of any provision of this subtitle or of any order, or rule or regulation issued under this subtitle. For the purpose of such investigation, the Secretary may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of records. The court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Process in any such case may be served in the judicial district in which such person is an inhabitant or wherever such person may be found.

ADMINISTRATIVE PROVISIONS

SEC. 121. (a) Nothing in this subtitle may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

(b) The provisions of this subtitle applicable to orders shall be applicable to amendments to orders.

SEPARABILITY

SEC. 122. If any provision of this subtitle or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this subtitle and of the application of such provision to other persons and circumstances shall not be affected thereby.

AUTHORIZATION

SEC. 123. There are hereby authorized to be appropriated such funds as are necessary to carry out the provisions of this subtitle. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Board in administering any provisions of any order issued under the terms of this subtitle.

BARTER OF DAIRY AND OTHER COMMODITIES

SEC. 124. (a) It is the sense of the Congress that the Secretary of Agriculture should exchange or barter, to the maximum extent practicable under the provisions of law specified in subsection (b), commodities (especially dairy products) owned by the Commodity Credit Corporation for materials, goods, and equipment produced in foreign countries.

(b) The provisions of law referred to in subsection (a) are—

(1) section 4 (h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b (h)).

(2) section 310 of the Agricultural Trade Development and Assistance Act of 1954 (Public Law 83-480, as amended; 7 U.S.C. 1692), and

(3) section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431).

Subtitle C—Dairy Reports

REPORTS

SEC. 130. The Secretary of Agriculture shall submit to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry the following reports:

(1) Not later than July 1 of each year after the date of enactment of this title, an annual report describing activities conducted under the dairy products promotion and research order issued under subtitle B of this title, and accounting for the receipt and disbursement of all funds received by the National Dairy Promotion and Research Board under such order including an independent analysis of the effectiveness of the program;

(2) Not later than April 15, 1985, a report on effectiveness of the paid diversion program carried out under section 201(d) of the Agricultural Act of 1949; and

(3) Not later than July 1, 1984, a report on the effect of applying, nationally, standards similar to the current California standards for fluid milk products in their final consumer form, as they would relate to—

(A) Overall consumer consumption trends and total per capita consumption;

(B) Nutritional augmentation, particularly for young and older Americans;

(C) Implementing improved interagency enforcement of minimum standards to prevent consumer fraud and deception;

(D) Multiple component pricing for producer milk;

(E) Reduced Commodity Credit Corporation purchases;

(F) Consistency of product quality throughout the year and between marketing regions of the United States; and

(G) Consumer prices.

MEAT IMPORT ACT AMENDMENT

SEC. 131. The minimum limitation of 1,250,000,000 pounds provided under subsection (f)(1) of the Meat Import Act of 1979 is hereby suspended for 1984 and 1985.

TITLE II—TOBACCO

SHORT TITLE

SEC. 201. This title may be cited as the "Tobacco Adjustment Act of 1983".

PRICE-SUPPORT ADJUSTMENTS

SEC. 202. Effective for the 1984 and subsequent crops of tobacco, section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end thereof the following new subsections:

"(f) Notwithstanding the foregoing provisions of this section—

"(1) For the 1984 crop of Flue-cured tobacco, the support level shall be the level in cents per pound at which the 1982 crop was supported.

"(2) For the 1985 crop of Flue-cured tobacco, the support level shall be the level in cents per pound at which the 1982 crop was supported, plus or minus, respectively, the amount by which (A) the support level for the 1985 crop, as determined under subsection (b), is greater or less than (B) the support level for the 1984 crop, as determined under subsection (b), as that difference may be adjusted by the Secretary under subsection (d) if the support level under clause (A) is greater than the support level under clause (B), except that the support level for the 1985 crop shall be the level in cents per pound at which the 1982 crop was supported if the support level as determined under subsection (b) for the 1985 crop would not be more than 5 per centum greater than the support level as determined under subsection (b) for the 1984 crop.

"(3) For the 1984 and 1985 crops of any kind of tobacco (other than Flue-cured tobacco) for which marketing quotas are in effect or are not disapproved by producers, the Secretary shall establish the support level at such level as will not narrow the normal price-support differential between the Flue-cured tobacco and such other kind of tobacco. Before establishing the support level under this paragraph for any such kind of tobacco the Secretary shall publish in the Federal Register a notice of the level the Secretary proposes to establish and give an opportunity for the public to comment on the proposal. In determining the level to be established under this paragraph for a particular kind of tobacco, the Secretary shall take into consideration the cost of producing such kind of tobacco, the supply and demand conditions for such kind of tobacco, the comments received in response to the public notice of the proposal, and such other relevant factors as the Secretary determines appropriate.

"(4) For the 1986 and each subsequent crop of any kind of tobacco for which marketing quotas are in effect or are not disapproved by producers, the support level shall be the level in cents per pound at which the immediately preceding crop was supported, plus or minus, respectively, the amount by which (A) the support level for the crop for which the determination is being made, as determined under subsection (b), is greater or less than (B) the support level for the immediately preceding crop, as determined under subsection (b), as that difference may be adjusted by the Secretary under subsection (d) if the support level under clause (A) is greater than the support level under clause (B).

(g) Notwithstanding the provisions of subsection (d) and section 403, the Secretary, if requested by the board of directors of the association through which price support for Flue-cured tobacco is made available to producers, may (1) designate for any crop certain grades of Flue-cured tobacco that are eligible for price support (but representing in the aggregate not more than 25 per centum of the total quantity of the Flue-cured tobacco crop that the Secretary estimates will be produced) that the Secretary determines are of such quantity or quality as to impair their marketability, and (2) without regard to the weighted average of the support rates for eligible grades of Flue-cured tobacco determined under the proviso to the first sentence of subsection (d), further reduce the support rates for such grades to the extent the Secretary deems necessary to reflect their market value, but in no event by more than 12 per centum of the respective support rates that would otherwise be established under this section.

ELIMINATION OF DOUBLE ASSESSMENT; USE OF FUND

SEC. 203. Section 106A(d) of the Agricultural Act of 1949 (7 U.S.C. 1445-1(d)) is amended by—

(1) in paragraph (2), striking out "and subsequent crops" and inserting in lieu thereof "crop only"; and

(2) in paragraph (3), inserting before the semicolon at the end thereof the following: ": *Provided*, That, notwithstanding any other provision of law, use by the association of moneys in the Fund, including interest and other earnings, for the purposes of reducing the association's outstanding indebtedness to the Corporation associated with 1982 and subsequent crops of quota tobacco and making loan advances to producers is authorized, and use of such moneys for any other purposes that will be mutually beneficial to producers who contribute to the Fund and to the Corporation, shall, if approved by the Secretary, be considered an appropriate use of the Fund".

NO NET COST TOBACCO ACCOUNT—FLUE-CURED TOBACCO

SEC. 204. Section 106B(a) of the Agricultural Act of 1949 (7 U.S.C. 1445-2(a)) is amended by—

(1) in paragraph (1), striking out ", except that the term does not include such an association that has entered into such an agreement to make price support available to producers of Flue-cured tobacco"; and

(2) in paragraph (5), striking out "except Flue-cured tobacco".

LEASE AND TRANSFER OF FLUE-CURED TOBACCO; FORFEITURE OF ALLOTMENT AND QUOTA

SEC. 205. (a) Effective for the 1984 and subsequent crops of tobacco, section 316(a)(1) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314(a)(1)) is amended to read as follows:

"(a)(1) Notwithstanding any other provision of law—

"(A)(i) The Secretary, if the Secretary determines that it will not impair the effective operation of the tobacco marketing quota or price support program, may permit the owner and operator of any farm for which a tobacco acreage allotment (other than a Burley, Flue-cured, dark air-cured, Fire-cured, Virginia sun-cured and cigar-binder, type 54 or 55 tobacco acreage allotment) is established under this Act to lease and transfer all or any part of such allotment to any other owner or operator of a farm in the same county for use in such county on a farm having a current tobacco allotment of the same kind.

"(ii) The Secretary shall, only with respect to the 1984 through 1986 crops of Flue-cured tobacco, permit the owner of a farm to which a Flue-cured tobacco acreage allotment or quota is assigned under this Act to lease and transfer all or any part of such allotment or quota to any other owner or operator of a farm in the same county for use in such county on a farm having a current Flue-cured tobacco acreage allotment or quota only if (except as otherwise provided in paragraph (2)(A)) the parties to the lease file a copy of the lease agreement with the county committee for the county in which the farms are located, together with a written statement certifying that none of the consideration for the lease has been or will be paid to the lessor, either directly or indirectly in any form including a loan by the lessee to the lessor, the endorsement of a note by the lessee for the lessor, or any other similar arrangement which represents the anticipated income for the lease, prior to the marketing of the tobacco produced under the lease and that the lease and transfer is otherwise in compliance with the provisions of this section. The Secretary shall promulgate rules which establish a similar requirement for fall payment of any rental of Flue-cured tobacco allotment acreage and quota, and further shall require that any seller of a Flue-cured tobacco allotment and quota grant to the buyer an option to make payment therefor in equal annual installments payable each fall for a period not to exceed five years from the year in which the sale is made. With respect to the 1987 and subsequent crops of Flue-cured tobacco, the Secretary shall not permit the lease and transfer of Flue-cured tobacco acreage allotments and quotas.

"(B) If, after notice and opportunity for a hearing, the county committee determines that the lessee or the lessor of a Flue-cured tobacco acreage allotment or quota knowingly made a false statement in the written statement filed under subparagraph (A), (i) in the case of a false statement knowingly made by the lessee, the lease agreement for purposes of the Flue-cured tobacco marketing quota program with respect to the lessee's farm shall be considered null and void as of the date approved by the county committee or (ii) in the case of a false statement knowingly made by the lessor, the Flue-cured tobacco allotment and quota next established for the farm of the lessor shall be reduced by the percentage which the leased allotment or quota was of the total Flue-cured allotment or quota for the farm. Notice of any determination made by the county committee under the preceding provision shall be mailed as soon as practicable to the lessee or lessor involved. If the lessee or lessor is dissatisfied with such determination, the lessee or lessor may request, within fifteen days after notice of such determination is mailed, a review of such determination by a local review committee under section 363 of this Act.".

(b) Effective for the 1984 and subsequent crops of tobacco, section 317 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314c) is amended by inserting at the end thereof the following new subsection:

"(k)(1) Notwithstanding any other provision of law, any person who, on or after January 1, 1968, owns a farm for which a Flue-cured tobacco acreage allotment or marketing quota is established under this Act shall, subject to paragraph (2) of this subsection, forfeit such allotment or quota after February 15 of any year immediately following the last year of the three-year period immediately preceding the year for which the determination is being made in which Flue-cured tobacco has not been planted or considered planted on such farm during at least two years out of such three-year period.

"(2) The allotment or quota specified in paragraph (1) of this subsection shall be forfeited if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture specified in such paragraph exist. Any allotment or quota so forfeited shall be reallocated by such county committee for use by active Flue-cured tobacco producers (as defined in section 316(g)(1) of this Act) in the county involved.

"(3) Notice of any determination made by the county committee under paragraph (2) of this subsection shall be mailed, as soon as practicable, to the person involved. If such person is dissatisfied with such determination, such person may request, within fifteen days after notice of such determination is mailed, a review of such determination by a local review committee under section 363 of this Act.".

CONFORMING AMENDMENTS

SEC. 206. (a) Effective for the 1984 and subsequent crops of tobacco, section 316(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(c)) is amended by striking out the second through the sixth sentences.

Effective for the 1987 and subsequent crops of tobacco, section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b), as amended by subsection (a), is further amended by—

(1) in subsection (a), striking out paragraph (2);

(2) in subsection (e)(1), striking out "or, in the case of Flue-cured tobacco," and inserting in lieu thereof "or, in the case of the sale of Flue-cured tobacco acreage allotment or poundage quota,"; and

(3) in subsection (g)(2), striking out the second sentence.

MANDATORY SALE OF ALLOTMENTS AND QUOTAS BY NONFARMING ENTITIES

SEC. 207. (a) Section 316A(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b-1(a)) is amended by—

(1) striking out clause (2) and inserting in lieu thereof "(2) does not use the land on the farm for agricultural purposes;" and

(2) striking out "1983" and inserting in lieu thereof "1984".

(b) Section 316B(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b-2(a)) is amended by—

(1) striking out clause (2) and inserting in lieu thereof "(2) does not use the land on the farm for agricultural purposes;"; and

(2) striking out "1983" and inserting in lieu thereof "1984".

FLUE-CURED MARKETING QUOTA ANNOUNCEMENT DATE

SEC. 208. Section 317(d) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314c(d)) is amended by striking out "December 1" and "February 1" each time they appear in the first and sixth sentences and inserting in lieu thereof "December 15" and "March 1", respectively.

RESERVE OR NEW FLUE-CURED TOBACCO GROWERS; FARM YIELD

SEC. 209. (a) The second sentence of section 317(e) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314c(e)) is amended by—

(1) striking out "1 per centum" and inserting in lieu thereof "3 per centum"; and

(2) inserting "(except that not less than two-thirds of such reserve shall be for new farms)" immediately before the period at the end thereof.

(b) The last sentence of section 317(e) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314c(e)) is amended by striking out the phrase ", and shall not exceed the community average yield".

DETERMINATION OF FLUE-CURED TOBACCO PLANTED ACREAGE

SEC. 210. Section 317 of the Agriculture Adjustment Act of 1938 (7 U.S.C. 1314c), as amended by section 205 of this Act, is further amended by adding at the end thereof the following new subsection:

"(l) The Secretary shall determine the acreage planted to Flue-cured tobacco on each farm whenever an acreage-poundage program for Flue-cured tobacco is in effect under this section.".

LIMIT ON THE LEASE OF BURLEY QUOTA; PROHIBITION AGAINST FALL LEASING

SEC. 21. Effective for the 1984 and subsequent crops of tobacco, section 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(g)) is amended by striking out the third proviso and inserting in lieu thereof the following new provisos: *"Provided further*, That not more than fifteen thou-

sand pounds of Burley tobacco quota may be leased and transferred to any farm under this section. *Provided further*, That a lease and transfer of Burley tobacco quota shall not be effective for any crop year unless a record of the transfer is filed with the county committee not later than July 1 of that crop year:".

COMBINATION OF FARMS WITH BURLEY QUOTA

SEC. 212. (a) Section 318(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d(b)) is amended by inserting "except as provided in section 379(b) of this Act," immediately after "(1)".

(b) Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended by—

(1) inserting "(a)" immediately after the section designation; and

(2) adding at the end thereof a new subsection as follows:

"(b) In any case in which two or more tracts of land are located in contiguous counties in the same State and are owned by the same person, the Secretary shall permit such tracts to be combined as one farm if (1) a Burley tobacco poundage quota is established for one or more such tracts, and (2) the county committee determines that such tracts will be operated as a single farming unit.".

IMPORTED TOBACCO

SEC. 213. (a)(1) Notwithstanding any other provision of law, all tobacco offered for importation into the United States shall be—

(A) inspected for grade and quality as tobacco marketed through a warehouse in the United States is inspected for grade and quality; and

(B) accompanied by a written certification by the importer, in such form as the Secretary of Agriculture may prescribe, that none of the pesticides the registration of which has been cancelled or suspended for use on tobacco in the United States under the Federal Insecticide, Fungicide, and Rodenticide Act, has been used in the production of the tobacco offered for importation into the United States.

(2) The Secretary of Agriculture shall establish grade and quality standards for the purposes of paragraph (1)(A) that are, insofar as practicable, the same as those applicable to tobacco marketed through a warehouse in the United States.

(3) Any tobacco that is not accompanied by the certification required by paragraph (1)(B) shall not be permitted entry into the United States. The provisions of section 1001 of title 18, United States Code, shall be applicable with respect to any such certification made by an importer under such paragraph.

(b) The Secretary shall enforce the provisions of subsection (a) at the point of entry of tobacco offered for importation into the United States. The Secretary shall by regulation fix and collect from the importer fees and charges for inspection under subsection (a)(1) which shall, as nearly as practicable, cover the costs of such services, including the administrative and supervisory costs customarily included by the Secretary in user fee calculations. The fees and charges, when collected, shall be credited to the current appropriation account that incurs the cost and shall be available without fiscal year limitation to pay the expenses of the Secretary incident to providing services under subsection (a)(1).

TITLE III—EMERGENCY FEED ASSISTANCE

SHORT TITLE

SEC. 301. This title may be cited as the "Emergency Feed Assistance Act of 1983".

EMERGENCY FEED ASSISTANCE

SEC. 302. (a) As used in this section—

(1) the term "damaged corn" means corn that is classified as U.S. No. 4, U.S. No. 5, or U.S. Sample grade under section 810.353 of title 7, Code of Federal Regulations; and

(2) the term "eligible farmers and ranchers" means farmers and ranchers who are eligible to receive loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961).

(b) To assist eligible farmers and ranchers in areas that have been adversely affected by the drought, hot weather, or related disaster to preserve and maintain foundation herds of livestock and poultry (including their offspring) and secondary livestock, the Secretary of Agriculture shall make damaged corn held by the Commodity Credit Corporation available to such farmers and ranchers in accordance with section 407 of the Agricultural Act of 1970 (7 U.S.C. 1427).

(c) In making damaged corn available to such farmers and ranchers under this section, the Secretary shall offer the damaged corn held by the Corporation at a price that is equal to 75 per centum of the current basic county loan rate for such corn in effect under the Agricultural Act of 1949 (or a comparable price if there is no such current basic county loan rate).

(d) The Secretary shall make damaged corn available for sale, as provided under this section, until September 30, 1984, or the date, as determined by the Secretary, on which any emergency created by the drought, hot weather, or related disaster no longer exists.

(e) Effective for the period beginning on the date of enactment of this Act and ending September 30, 1984, the fifth sentence of section 407 of the Agricultural Act of 1949 (7 U.S.C. 1427) is amended by inserting "and secondary livestock," after "sheep, and goats, and their offspring,".

TITLE IV—EGGS

SHORT TITLE

SEC. 401. This title may be cited as the "Egg Adjustment Act of 1983".

EGG INDUSTRY MARKETING ORDERS

SEC. 402. The Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended in the first sentence of section 8c(2) by striking out "poultry (but not excepting turkeys), eggs (but not excepting turkey hatching eggs)," and inserting in lieu thereof "poultry (but not excepting turkeys and not excepting poultry which produce commercial eggs),"; and in subsection (L) of section 8c(6) by inserting after the word "pecans," and before the word "avocados,", the word "eggs,".

Mr. BAKER. Madam President, I move to reconsider the vote by which the bill, as amended, was passed.

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

The motion to lay on the table was agreed to.

The title was amended so as to read as follows: "A bill to stabilize a temporary imbalance in the supply and demand for dairy products, to enable milk producers to establish, finance, and carry out a coordinated program of dairy product promotion, to adjust the support levels for the 1984 and subsequent crops of tobacco, to make modifications in the tobacco production adjustment program, to provide emergency livestock feed assistance, and for other purposes."

Mr. HELMS. Mr. President, I am pleased that the Senate has finally concluded consideration of the dairy compromise. It has been too long a time coming.

Let me reiterate, that while many of us are not entirely endeared to this compromise, it does substantially modify the current program, places a definite end to the 50-cent assessment, and achieves the heretofore unobtainable goal of reducing the support level.

Dairy farmers across the Nation, I believe, owe a great debt of gratitude to those members of the Agriculture Committee who have been so instrumental in putting together and assisting in the passage of this legislation. Hopefully, all dairymen will take note of the leadership demonstrated by the ranking minority member of the committee, Senator HUDDLESTON, by the chairman and ranking member of our subcommittee overseeing this issue, Senator COCHRAN and Senator LEAHY, and of course, by Mr. Dairy himself, Senator BOSCHWITZ.

Mr. BAKER. Madam President, there may have been so much commotion that everyone did not hear. We have just passed the farm bill, and I am grateful.

Mr. RANDOLPH. Madam President, we are not able to hear what is going on. I want to hear the able majority leader.

The PRESIDING OFFICER. The point of the Senator from West Virginia is well taken. The Senate will be in order.

The majority leader.

Mr. BAKER. Madam President, there may be other Senators who wish to speak on this measure. And while the bill has been passed, I certainly have no objection to having a colloquy with any Senator or any statement that may be inserted in the RECORD in the proper context. Let me say, for the benefit of Senators, that I will confer now with the minority leader on any other business that he wishes to transact, but I know of no other rollcall votes that will be anticipated before we go out.

Mr. DOLE. Will the majority leader yield?

Mr. BAKER. Yes, I yield.

Mr. DOLE. It is my hope that we might now move to at least see if we can get up the Quayle bill which has the target prices on it.

Mr. BAKER. Madam President, I am committed on the record, and in personal conversations with the distin-

guished Senator from Kansas and others, that we will try to get to the other farm bill now, which is the bill that the Senator described.

Before we do that, though, I know that the Senator from West Virginia has something he wants to say. We will move to that in just a moment.

Madam President, I yield the floor.

Mr. WEICKER assumed the chair.

Mr. BAKER. Mr. President, I indicated earlier that when we finished this bill we would then try to get to H.R. 2733, which is another agriculture bill, to which I understand might be offered a target price amendment. I believe that the principals involved are here on the floor.

ORDER TO INDEFINITELY POSTPONE S. 1529

Mr. BAKER. Before I do that, Mr. President, I ask unanimous consent that S. 1529, which was the Senate dairy and tobacco bill, be indefinitely postponed.

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

CRITICAL AGRICULTURAL MATERIALS ACT

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar Order No. 262, H.R. 2733.

Mr. MELCHER. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, this bill, if I am not mistaken, is the target price freeze bill on wheat, feed grains, rice, and cotton. It is a bill that we have discussed previously on this floor.

We would not be prepared to agree to the unanimous-consent request at this time. So I must object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. Mr. President, was the objection to bringing up H.R. 2733?

The PRESIDING OFFICER. That is the bill which was being requested by a unanimous-consent request and an objection was heard.

Mr. DOLE. Mr. President, I regret the Senator from Montana objects to this bill because there are a number of us on both sides, and hopefully the Senator from Montana will finally agree, trying to work out some satisfactory approach that would save some dollars and also provide producers with a better program.

The amendment that I intended to offer for myself and the distinguished Senator from Iowa, Senator JEPSEN, would have target price minimums for 1984 and 1985 crops of $4.38 for wheat, $2.95 for corn, and 78½ cents a pound for cotton and $11.65 per hundredweight for rice. The wheat program would be a 20-percent acres reduction, 10-percent paid land diversion, and an 85-percent minimum PIK payment rate for the 1984 crop. It would also have a $300 million revolving fund to be used in fiscal years 1984 and 1985 each year for export programs with repayment diverted to a permanent revolving fund.

This was an idea of the distinguished Senator from Minnesota, Senator BOSCHWITZ, and Senator JEPSEN, Senator HUDDLESTON, and others.

In addition, it has a provision for drought assistance. It would insure that $600 million would be available for disaster assistance. That is the idea of the distinguished ranking member of the committee, Senator HUDDLESTON, who has been pursuing that for a long time.

This would, in addition to the provision Senator HUDDLESTON proposes, try to target it to make certain it was going to areas with the greatest need, such as eastern Texas and other areas that have had a great deal more problems than some of the other areas.

It would also require the Secretary to promulgate regulations on loan deferrals and foreclosure deferrals, because this is another very real problem with some farmers across the Nation, such as many areas in the southeastern part of the country where they just cannot meet their obligations and, rather than some broad moratorium saying, "You don't have to make your payment," we are trying to figure out a case-by-case review and this would authorize that.

So it would just be my hope, and it obviously is not possible today, because the Senator from Montana is objecting. But I visited with the Senator from Montana earlier. There is a House bill introduced by Congressman FOLEY and others that I think is pretty much the same as the amendment that I have been discussing. I hope that when we return here on the 17th or 18th that perhaps at that time the Senator from Montana would be willing to sit down with me and Congressman FOLEY and others who have an interest in this legislation to see if there is not something we can do.

There is no need to stand here and debate it, because it is not going to do any good. But if we can reach some agreement, I believe that the commodities directly involved—whether it is wheat, rice, feed grains, or cotton—I believe we could move on this bill very quickly.

I wish to thank the distinguished chairman for his efforts on the bill we have just completed, but also for his efforts in trying to make certain that we could get this bill considered. I regret that we cannot do that. In the winter wheat areas, we are planting wheat. Our farmers are frustrated, as they usually are, because here we are still trying to legislate and have been trying for several months, while they are trying to make plans on what they should do right now. So, Mr. President, I thank the chairman of the committee.

I say to my good friend from Montana that we are advised by the national wheat growers that the program that we are suggesting for wheat is much better for the American farmer and it still saves money for the Federal Treasury. As I have said many times before, we are going to have to be responsible, those of us in farm areas, for the ballooning cost of farm programs or we are going to wake up in 1985 without any farm program at all.

So I hope over the next 7 or 8 days we can sit down and try to work out some accommodation.

Mr. President, I have long believed that compromise requires willingness to recognize some merit in each opposing or different viewpoint and to make some concession in order to get agreement. Our work here would come to a complete stop if Senators representing every special interest refused to even enter into a discussion of differences and how to bridge them.

It has become increasingly clear in the past few months, Mr. President, that at least as far as agricultural legislation is concerned, we may have arrived at such a point. And until the opponents of any reduction in the level of 1984 and 1985 target prices are willing to acknowledge the administration's rationale for proposing the freeze, we are very likely to remain at an impasse.

REVIEW OF 1983 EFFORTS

Let us put the issue, for one last time, into perspective. Back in December 1982, the administration responded to the growing crisis in the farm economy—high production, increasing stocks, and tumbling prices—by devising the payment-in-kind program. PIK was a radical and innovative method to attract acreage out of production. It has not been perfect, but it has reduced stocks and raised prices for most commodities, except for wheat. Even for wheat, PIK prevented a significant increase in stocks this year.

But PIK also has not been cheap. Estimates of its cost vary from $9 to $12 billion, outlays that were expensed when commodity loans and inventories were made and acquired in previous fiscal years. And as these assets have now been written off, we all know that, at some point, the Commodity Credit Corporation will come in for a reimbursement to its revolving fund. And then the debate over the cost of farm programs will become even more acrimonious.

Also back in December, the administration proposed offsetting the cost of PIK, at least in part, through a freeze on target prices scheduled in the farm

bill. However, due to the limited time remaining in the 97th Congress, USDA agreed to support legislation to authorize the PIK program with the understanding that the target price issue would be dealt with by the new Congress.

RISING COST OF FARM PROGRAMS

The administration's commitment to reducing target prices has only become more firm as the cost of farm programs has skyrocketed this year. After averaging between $3 and $4 billion in the late 1970's and in fiscal year 1981, regular program outlays rose to $12 billion in 1982 and to nearly $22 billion in the fiscal year just ended.

Against this backdrop, Congress delayed consideration of the target price proposal until July, when the Senate Agriculture Committee finally reported it out. Even after some of us, working with the National Association of Wheat Growers, developed a compromise to improve the 1984 wheat program, a small number of Senators continued to refuse to allow the plan to come up for a vote. As a result, we were not able to change the program, and the USDA was forced to announce a less attractive package built around the higher scheduled wheat target price.

Since recess, Mr. President, some of us have continued to work with the wheat growers and with several wheat State Senators who have opposed the freeze proposal to try to come up with a new compromise that we can all support. After numerous meetings, we reached a point where the differences were minor, and could have been easily bridged.

THE DOLE PROPOSAL

Two weeks ago, I proposed a package that would have allowed target prices to increase about one-third of the way toward the scheduled 1984 levels. After discussions with other wheat State Senators, my proposal would now set the increase at one-half of the difference. Specifically, wheat would increase from $4.30 this year to $4.38 in 1984; corn from $2.86 to $2.95; cotton from 76¢ per pound to 78.5¢; and, rice from $11.40 per hundredweight to $11.65. The Department of Agriculture estimates that this plan would save $3.2 billion over the next 3 fiscal years, compared to $4.4 billion if target prices were frozen at current levels.

In addition, my proposal would make major improvement in the 1984 wheat program announced on August 9. In place of the 30-percent unpaid acreage reduction program, I would include a 20-percent unpaid, 10-percent paid land diversion. In place of the 75-percent payment rate announced for next year's wheat PIK program, I would raise the level to 85 percent.

FAVORABLE RESPONSE FROM WHEAT PRODUCERS

Mr. President, this proposal has been receiving favorable reaction from wheat producers across the country. They recognize the importance of effective curbs on production to prevent the high level of current wheat stocks from increasing. They know that, without such controls, wheat production next year could top 3 billion bushels, raising stocks to over 2 billion bushels. Mr. President, such an increase would deal a devastating blow to wheat prices and to this country's wheat farmers.

THE SITUATION FOR OTHER CROPS

I would like to briefly address the possible concerns of Senators who represent other commodities which would be affected by my proposal. We are all aware of the important effect of this year's PIK program on the production of crops covered under target prices. Corn stocks, which totaled over 3.4 billion bushels at the end of last week, are expected to drop to nearly 900 million bushels by October 1, 1984.

About half of this reduction is due to the extensive drought this summer, but PIK was responsible for taking about 2 billion bushels out of production.

For cotton and rice, the results of PIK were equally beneficial to farmers. Cotton stocks are projected to decline from 7.9 million bales at the end of the 1982-83 year to about 4.7 million bales 1 year later. Supplies of rice are expected to be cut from 66.6 million hundredweight to 30.1 million hundredweight—a reduction of more than one-half.

In the opinion of most industry analysts, these stock levels are either below desired levels in the case of corn or at the high end of desired levels in the case of cotton and rice. As a result, farm prices are much improved over last year.

Under these circumstances, Secretary Block decided last week not to continue a cash land diversion program for the 1984 feed grain crop. He has not yet decided on the details of the cotton and rice crops which are to be announced by the end of this year. There is an important distinction, however, between buying land out of production when stocks are heavy and prices are low and doing so when supply and demand are close to being in balance.

I make this point, Mr. President, only to make clear that I am not seeking some special benefit or advantage for wheat producers by including a paid diversion in my proposal. As I said earlier, wheat stocks will remain at over 1.5 billion bushels at the end of this marketing year on next June 1. This level is about double the desired stock level, and will only increase if we do nothing to restrain production next year. I firmly believe that wheat producers must be provided some incentive to bring production and stock levels down.

EXPORT REVOLVING FUND

Mr. President, I also believe that we must increase our efforts to maximize exports of all agricultural commodities if we are to remain competitive in world markets and prevent future price-depressing surpluses. Unilateral production restraint is a self-defeating proposition. We must make clear the intention of the United States to aggressively defend its position as the world's principal supplier of farm products.

For this reason, I have kept the provision of H.R. 2733 regarding financing of the export revolving fund in my proposal. This provision was sponsored by the distinguished ranking member of the Senate Agriculture Committee, Senator HUDDLESTON, and my distinguished colleague from Iowa, Senator JEPSEN. It would divert $300 million in both fiscal year 1984 and 1985 to be used to restore our competitive position in world trade. Combined with other export funds already appropriated, this initiative would establish a permanent fund of nearly $1 billion to finance agricultural exports.

DROUGHT ASSISTANCE

Mr. President, many of us have expressed our grave concern over the serious impact of this summer's drought on U.S. farmers and ranchers. I do not believe that our political differences should be allowed to prevent us from responding by targeting assistance to those most in need.

The distinguished Senator from Kentucky and ranking minority member of the Agriculture Committee, Senator HUDDLESTON, has been waiting since January to bring his farm credit bill, S. 24, before this Chamber. I would like to compliment the Senator on his patience.

I would also indicate to the Senator, in the interest of responding to the critical drought situation in his State, my State, and in all of the other States affected, I have taken the liberty of making several modifications in S. 24 and would like to include it in this package. In brief, the revised version would make available $600 million in disaster relief to those farmers and ranchers most affected by the drought. It would also require the Secretary to promulgate regulations under which FmHA loan repayments would be deferred.

ELIMINATION OF COUNTY DESIGNATION

Finally, Mr. President, my proposal would delete the requirement that counties be designated for disaster relief before individual farmers can receive assistance. If a State has been severely affected, I see no reason why local authorities must go through the redtape of county damage assessment reports. It is the individual farmer, not

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his county, that we should be trying to assist.

CONCLUSION

Mr. President, after all the delay, I believe that its time that we decide whether farm legislation is to remain subject to amendment and compromise like all other legislation or whether opinion has become so polarized on the subject that we should just give up our efforts to work out the differences. My own position is clear—agricultural legislation has always been achieved through compromise and must periodically be adjusted through further compromise. Those of us concerned not only with farm program benefits but with the consequences of their rising cost have made every effort to accommodate the views of other Senators on the target price issue. In return, there has been progress in working out the problems. But at some point, we must decide to either pass an amendment on target prices or drop the effort entirely. I believe that farmers would be best served in the long run if we proceed to its consideration as soon as possible.

Thank you, Mr. President.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, I very much appreciate the comments of the Senator from Kansas. I will look with great interest at his proposal. I hope during the next week or two we can find some common ground.

The Senator from Kansas is really in earnest in his proposal, I assume. I think it is similar to the one that the Senator from Kansas put into the RECORD not too long ago. Indeed, if it follows that pattern or is perhaps even more comprehensive than that pattern that was published in the CONGRESSIONAL RECORD a week or two back—if it is more comprehensive than that—it would be just that much better and would be much of an improvement over the wheat program which has been offered to wheat farmers of this country by the administration in the August 9 announcement by the Secretary of Agriculture, John Block.

I hope we can arrive at something because the sad situation that farmers are faced with this year is a drag on the economy. It is extremely difficult for the country. It is not accomplishing our true goals for the agricultural producers.

The truth of the matter is that it is an extremely bleak proposal for the wheat producers so far and the prospects for the sale of this year's crop as well as next year's crop is very much on the low side.

The wheat situation as we started this year was that the 1982 wheat crop was 2.8 billion bushels, I believe an all time record. At the start of the year, Secretary Block announced the payment in kind program.

Mr. DOLE. Will the Senator yield for one moment?

Mr. MELCHER. Yes.

Mr. DOLE. I want to assure the Senator from Montana that the Senator from Kansas is serious about the proposal. In fact, we have also added some other components. In a bipartisan way I have discussed a lot of this with the distinguished Senator from Oklahoma (Mr. BOREN) and the junior Senator from Oklahoma (Mr. NICKLES). I see others present who may have a little different view, but we are serious that it is a comprehensive proposal. I cannot be 100 percent certain, but I do believe the administration would support this provision if, in fact, we could work it out.

Mr. MELCHER. I thank my friend from Kansas for those remarks. The last part of it really is the nub.

I do not know when this administration wants to change its wheat policy. I am in hopes, as the Senator from Kansas says, they will want to change their policy on wheat. I do not know when that is coming but I am waiting and hoping that they will change it.

The Secretary of Agriculture at the start of this year announced the payment-in-kind program, the PIK program, and he announced that program despite the fact that the Senate had not acted on his proposal. Nevertheless it took a great number of acres out of production. I think the total now can be added up as far as wheat is concerned. It took a total of 32 million acres out of production. That was not all in the PIK program. Part of that was the other set-aside land that those producers must agree to set aside as they sign up for the wheat program.

But the bulk of that 32 million, almost 18 million, was taken out of production because of the PIK program. In fact, the total set-aside in this country with no production because of PIK was 48.1 million acres: 4 million in cotton, 1 million in rice, 18 million in wheat, and 25 million in corn set aside for the PIK program.

Mr. President, what happened with the almost 50 million acres of PIK land taken out of production and almost another 30 million other set-aside agreements with producers meant a total of 80 million acres taken out of production from crops this year. What happens when the land is out of production does not necessarily relate to a reduction in crops. What most farmers do when they agree as to what acres are going to be taken out of production, with no planting on those acres, is generally select the poorer producing land. Quite often they fertilize and concentrate more heavily on the cropland that is in production. The results have been that we have had a pretty high production of wheat for this year, almost as high as the record 2.8 billion bushels 1982 crop. The estimate for the total 1983 crop is 2.4 billion bushels.

As far as reducing the amount of production, even though that great amount of land was taken out of production, it did not follow that very much production was reduced.

To adopt the proposed bill before us would mean a reduction in the target prices for wheat in 1984 from the $4.45 down to $4.30 and for the 1985 crops a reduction from $4.65 as the target price down to $4.30. That is objected to by many wheat producers because the target price, after all, is the safety net feature that assures them some income on a portion of their crop.

It is what they have to depend upon when prices are low and that is the situation they are faced with as it is right now.

The announced program of August 9, Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. MELCHER. Mr. President, this announced program is not very encouraging. It is no surprise that the highest figure of how many of the wheat farmers will be signed up in the program is about 50 percent. That is half and that does not create a very good atmosphere as far as the Department is concerned. I know most of the wheat producers would like to see a better program being offered and get a higher sign-up in the wheat program than 50 percent. The problem is that we have no assurance on what the administration position will be, no assurance that they will change their position. Until we hear from the administration on that, it is a little bit dubious, despite the great interest and sincere desire of the Senator from Kansas and the Senator from North Carolina, the chairman of the Committee on Agriculture.

It is questionable whether we could actually enact into law the program that has been offered for wheat by the Senator from Kansas. Furthermore, we are not certain of what the House action will be, but I believe that the House action will await some indication from the administration that they are willing to accept such an offer that has been proposed by the Senator from Kansas and has also been proposed by Representative FOLEY in the House, who is the assistant majority leader and also an outstanding member of the House Committee on Agriculture.

I believe that the administration should change its position, should come up with a much better proposal for the wheat program for next year. I am hoping they will. I think it would be very wise on their part and would

be well received not only by the people in the Wheat Belt, but I think it would be well received by the public. It would be good policy.

I think there are other things we should do in the bill. I think we should increase the requirement that Secretary of Agriculture use concessionary sales to our traditional, usual customers abroad. I am speaking of such countries as the Philippines, Mexico, some of the friendly nations in Africa, and others in Central and South America.

I think the use of food through either the Food for Peace or other authorities granted to the Secretary of Agriculture for foreign sales should be pushed to the ultimate.

Another point that should become part of the bill is a requirement that better conservation practices be made available for our land, because we are losing that through erosion, through the loss of fertility. It is a problem that can wait through no longer delay by Congress. I would be greatly hopeful that all of this would start to come together during the next week or several weeks and that not only the Senate but also the House will be acting on comprehensive legislation that will indeed put us in a better position.

Mr. President, I yield the floor.

EXHIBIT 1

USDA ANNOUNCES 1984 WHEAT PROGRAM

WASHINGTON, August 9.—Deputy Secretary of Agriculture Richard Lyng today announced provisions of the 1984 wheat program and set the signup period from Jan. 16 through Feb. 24.

Lyng said because Congress took no legislative action on a proposed freeze in the wheat target price before its summer adjournment, he is now putting into effect provisional measures previously announced on July 29. The U.S. Department of Agriculture is required by law to announce the wheat program for the following year no later than Aug. 15.

The 1984 wheat program includes:

A $4.45 per bushel target price.

A $3.30 per bushel national average loan rate.

An acreage reduction requirement of 30 percent.

No advance deficiency payments.

To be eligible for program benefits, producers must limit 1984 wheat planted acreage to no more than 70 percent of the farm's wheat base and devote to conservation use of acreage of eligible cropland equal to 42.86 percent of the 1984 planted and payment-in-kind (PIK) acreage.

The 1984 acreage base will be the average of the acreage planted and considered planted to wheat in 1982 and 1983.

Farmers participating in the acreage reduction program may divert an additional 10 to 20 percent of their wheat base and receive payment-in-kind equal to 75 percent of the established yield times the acres diverted.

PIK program participants will not receive wheat from Commodity Credit Corporation stocks. Producers signing up on the PIK program will agree first to use their outstanding reserve or regular CCC price support loans. Producers with no outstanding loans agree to harvest for PIK. Those producers with no outstanding loans and who are unable to harvest for PIK will not receive a PIK payment.

Land designated for conservation use must have been devoted to row crops or small grains in two of the last three years except for a summer fallow farm. Under summer fallow rules the land must be acreage that would have been planted to small grains or row crops in 1984 in the absence of the 1984 wheat program.

Haying will not be permitted on the conservation use acreage. However, the acreage may be grazed except during the six principal growing months.

Offsetting and cross compliance will not apply to the 1984 program.

There will be no immediate entry into the farmer owned reserve for the 1984 crop of wheat. Further, USDA intends to review the size of the reserve before regular price support loans for the 1984 crop reach maturity. A ceiling may be placed on the size of the wheat reserve at that time which will effectively preclude entry of the 1984 crop into the reserve.

Contracts signed by program participants for either the acreage reduction or PIK program will be considered as binding and will provide for liquidated damages for failure to comply with program requirements.

SUPPORT FOR H.R 2733

Mr. HELMS. Mr. President, I urge the Senate to proceed to H.R. 2733, because this legislation is very important and timely.

H.R. 2733, as amended, will extend and expand certain agricultural research programs, it will make a much-needed adjustment in farm commodity programs, and it will strengthen U.S. farm exports.

The legislation includes the provisions of the bill passed by the House of Representatives relating to research on guayule rubber. In addition, H.R. 2733 now contains a provision on target prices and export initiatives which was adopted by the Agriculture Committee with bipartisan support.

The legislation would allow the Secretary of Agriculture to "freeze" or maintain target prices at current levels for the 1984 and 1985 crops. In addition, H.R. 2733 will generate $600 million for export initiatives and will finance the agricultural export credit revolving fund.

According to the Department of Agriculture, a "freeze" in target prices will result in potential budget savings of nearly $4.4 billion in fiscal years 1984 through 1986. I ask unanimous consent that two tables from USDA showing estimated deficiency payments and target prices be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HELMS. Beyond that, the escalation of target prices which was mandated in the 1981 farm bill is not necessary. Economic conditions have changed since 1981. The Reagan administration has been more successful at whipping inflation than we estimated. Therefore, the escalation of target prices is costly and unnecessary.

I remind Senators that this is only authority to "freeze" target prices, it is not a reduction. This legislation will not reduce the income protection provided to farmers by 1 penny. It will simply maintain it at current levels, which are the highest levels in history.

Maintaining target prices at current levels will send a more correct price signal to farmers and will help the United States in our efforts to negotiate freer world trade for agricultural commodities.

Farm programs should be cost-effective and consistent. At a time when USDA is attempting to drastically cut production by implementing a massive acreage cutback through the payment-in-kind program, it makes no sense to encourage production through an escalation in the target price. Our farmers are not well served by such mixed signals from the Government.

The bipartisan compromise contained in H.R. 2733 will also provide for two export initiatives:

First, use $300 million for export assistance in 1984 and again in 1985, and

Second, use repayments from the annual $300 million export initiative and from the annual $175 million program for export activities in the 1982 Budget Reconciliation Act to fund the agricultural export credit revolving fund established in the 1981 farm bill.

I urge my colleagues to consider what this package would accomplish. It will require the use of $600 million to help expand farm exports and strengthen farm prices. It will send a more accurate price signal to farmers through the target price mechanism. According to the Congressional Budget Office, it will save the taxpayer $185 million in fiscal year 1984, $1.262 billion in fiscal year 1985, and $2.490 billion in fiscal year 1986 for total savings of $3.397 billion over the 3 years.

These savings are important, if we are to preserve the support of the public for all farm programs. Adoption of this proposal will show the taxpaying public that those in agriculture are willing to bear a fair share of spending cuts.

At the same time, we can support our farmers through the marketplace, rather than through an income transfer from the Government. This action will send a signal to competitive exporting nations around the world that we intend to stand by our farmers in seeking world markets. It will help us to regain and retain our competitive edge in farm exports.

What is more, the revolving fund will be a continuing source of export credit, in contrast to a one-time, nonrecoverable target price payment.

These savings will be an investment in building long-term demand for American farm products.

Export promotion efforts to stimulate increased foreign demand for U.S. agricultural products will help reduce our current massive surpluses, strengthen domestic prices, and ultimately increase farm income.

That is what farmers prefer—not Government checks, but higher prices in the marketplace.

The best way to strengthen the farm economy is through the market mechanism. That is embodied in H.R. 2733, so I urge my colleagues to proceed to consideration of this important measure.

EXHIBIT 1

DEFICIENCY PAYMENTS [1]

[By fiscal years, in millions of dollars]

	1982	1983	1984	1985	1986	Total 1984–86
Wheat:						
Current law	414	816	435	960	2,014	3,409
Frozen			435	742	1,095	2,272
Savings				218	919	1,137
Feedgrains:						
Current law	277	766	10	851	2,560	3,421
Frozen			10	403	906	1,319
Savings				448	1,654	2,102
Cotton:						
Current law	467	790	333	805	1,175	2,313
Frozen			333	521	559	1,413
Savings				284	616	900
Rice:						
Current law	22	390	123	280	278	681
Frozen			123	207	124	454
Savings				73	154	227
Total:						
Current law	1,180	2,762	901	2,896	6,027	9,824
Frozen			901	1,873	2,684	5,458
Savings				1,023	3,343	4,366

[1] Analysis based on supply/demand estimates as of Sept. 1, 1983.

TARGET PRICES

(By crop year)

	1982	1983	1984	1985
Wheat (bushels):				
Current law	$4.05	$4.30	$4.45	$4.65
Frozen			4.30	4.30
Corn (bushels):				
Current law	2.70	2.86	3.03	3.18
Frozen			2.86	2.86
Cotton (pounds):				
Current law	.71	.76	.81	.86
Frozen			.76	.76
Rice (hundredweight):				
Current law	10.85	11.40	11.90	12.40
Frozen			11.40	11.40

Source: U.S. Department of Agriculture.

Mr. RANDOLPH. Mr. President, many may not think of West Virginia as an agriculture State. It is a very important State for the growing and harvesting of food. It is one of the most important States in the livestock industry and in crop production.

Our State has approximately 4,000 dairy farmers so we are a substantial dairy State. The measure which the Senate approved a short time ago is important to our dairy farmers.

Now, the Senate is moving to consideration of another agriculture measure.

West Virginia has a high level of production of corn and hay that complements our cattle production. In 1982, over 37,000 head of cattle were slaughtered, amounting to nearly 35 million pounds.

Our State is a major grower of apples, 240 million pounds in 1982, and peaches, 14 million pounds.

Thus, Mr. President, while many people might not think of West Virginia as an agriculture State, the fact of the matter is that agriculture is a vital industry for our citizens.

Personally, I have derived great satisfaction from my experiences in farming and livestock. I wish the record to indicate that my grandfather, when I was 9 years of age, taught me to milk a cow. As a young boy, I loaded into the cars in West Virginia, with the help of others, more than 100 carloads of cattle that were shipped to Baltimore and Jersey City eastern markets. I understand farming, although I do not appear as an expert. An expert is, you know, seldom right, but never in doubt; and all day here, we have had this difference of opinion among knowledgeable Senators on the dairy price support bill.

For the record, these lines, rather simplistic, I shall repeat for my colleagues: "The doctor heals, the lawyer pleads, the miner follows precious leads, but this or that, whate'er befall, the farmer feeds them all."

I thank the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, it is clear that we are not going to reach this point by unanimous consent. I am not going to try to move to the consideration of this bill at this time. I frankly do not think we are ready for that. I join the others in hoping that the parties can work out a satisfactory solution to this problem yet this session and present something that we can consider when we return.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business to extend no longer than 2:45 p.m., in which Senators may speak.

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

Mr. BAKER. Mr. President, if any Senator wishes to speak, I shall yield the floor. Otherwise, I suggest the absence of a quorum while I consult with the minority leader preparatory to taking care of routine wrap-up matters before we adjourn for the Columbus Day recess.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. STAFFORD). Without objection, it is so ordered.

SENATOR KENNEDY'S REMARKS AT LIBERTY BAPTIST COLLEGE

Mr. RIEGLE. Mr. President, Senator KENNEDY, the senior Senator from Massachusetts, delivered a most important address this week at Liberty Baptist College in Virginia. This eloquent plea for religious tolerance in America deserves the attention of the country, and I ask unanimous consent that it be printed in the RECORD.

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

TOLERANCE AND TRUTH IN AMERICA, REMARKS OF SENATOR EDWARD M. KENNEDY, LIBERTY BAPTIST COLLEGE, OCTOBER 3, 1983

Let me thank Dr. Jerry Falwell for that generous introduction. I never expected to hear such kind words from him. So in return, I have an invitation of my own: On January 20, 1985, I hope Dr. Falwell will say a prayer—at the inauguration of the next Democratic President of the United States. Now Dr. Falwell, I'm not sure exactly how you feel about that. You might not appreciate the President, but the Democrats certainly would appreciate the prayer.

Actually, a number of people in Washington were surprised that I was invited to speak here—and even more surprised when I accepted the invitation. They seem to think that it is easier for a camel to pass through the eye of a needle than for a Kennedy to come to the campus of Liberty Baptist College.

In honor of our meeting, I have asked Dr. Falwell, as your chancellor, to permit all the students an extra hour next Saturday night before curfew. In return, I have promised to watch "The Old Time Gospel Hour" next Sunday morning.

I realize that my visit may be a little controversial. But as many of you have heard, Dr. Falwell recently sent me a membership card in the Moral Majority—and I didn't even apply for it. I wonder if that means I am a member in good standing.

This is, of course, a non-political speech—which is probably best under the circumstances.

Since I am not a candidate for President, it certainly would be inappropriate to ask for your support in this election—and probably inaccurate to thank you for it in the last one.

I have come here to discuss my beliefs about faith and country, tolerance and truth in America. I know we begin with certain disagreements; I strongly suspect that at the end of the evening some of our disagreements will remain. But I also hope that tonight and in the months and years ahead, we will always respect the right of others to differ—that we will never lose sight of our own fallibility—that we will

view ourselves with a sense of perspective and a sense of humor. After all, in the New Testament, even the Disciples had to be taught to look first to the beam in their own eyes, and only then to the mote in their neighbor's eye.

I am mindful of that counsel. I am an American and a Catholic; I love my country and treasure my faith. But I do not assume that my conception of patriotism or policy is invariably correct—or that my convictions about religion should command any greater respect than any other faith in this pluralistic society. I believe there surely is such a thing as truth, but who among us can claim a monopoly on it?

There are those who do, and their own words testify to their intolerance. For example, because the Moral Majority has worked with members of different denominations, one fundamentalist group has denounced Dr. Falwell for hastening the Ecumenical Church and for "yoking together with Roman Catholics, Mormons, and others." I am relieved that Dr. Falwell does not regard that as a sin—and on this issue, he himself has become the target of narrow prejudice. When people agree on public policy, they ought to be able to work together, even while they worship in diverse ways. For truly we are all yoked together as Americans—and the yoke is the happy one of individual freedom and mutual respect.

But in saying that, we cannot and should not turn aside from a deeper, more pressing question—which is whether and how religion should influence government. A generation ago, a Presidential candidate had to prove his independence of undue religious influence in public life—and he had to do so partly at the insistence of Evangelical Protestants. John Kennedy said at that time: "I believe in an America where there is no (religious) bloc voting of any kind." Only twenty years later, another candidate was appealing to an Evangelical meeting as a religious bloc. Ronald Reagan said to 15 thousand Evangelicals at the roundtable in Dallas: "I know that you can't endorse me. I want you to know that I endorse you and what you are doing."

To many Americans, that pledge was a sign and a symbol of a dangerous breakdown in the separation of church and state. Yet this principle, as vital as it is, is not a simplistic and rigid command. Separation of church and state cannot mean an absolute separation between moral principles and political power. The challenge today is to recall the origin of the principle, to define its purpose, and refine its application to the politics of the present.

The Founders of our Nation had long and bitter experience with the state as both the agent and the adversary of particular religious views. In colonial Maryland, Catholics paid a double land tax, and in Pennsylvania they had to list their names on a public roll—an ominous precursor of the first Nazi laws against the Jews. And Jews in turn faced discrimination in all the Thirteen Original Colonies. Massachusetts exiled Roger Williams and his congregation for contending that civil government had no right to enforce the Ten Commandments. Virginia harassed Baptist preachers—and also established a religious test for public service, writing into the law that no "popish followers" could hold any office.

But during the revolution, Catholics, Jews, and non-conformists all rallied to the cause and fought valiantly for the American commonwealth—for John Winthrop's "city upon a hill." Afterwards, when the constitution was ratified and then amended, the Framers gave freedom for all religion—and from any established religion—the very first place in the Bill of Rights.

Indeed the Framers themselves professed very different faiths—and in the case of Benjamin Franklin, hardly any at all. Washington was an Episcopalian, Jefferson a Deist, and Adams a Calvinist. And although he had earlier opposed toleration, John Adams later contributed to the building of Catholic churches—and so did George Washington. Thomas Jefferson said his proudest achievement was not the Presidency, or writing the Declaration of Independence, but drafting the Virginia Statute of Religious Freedom, he stated the vision of the first Americans and the first amendment very clearly: "The God who gave us life gave us liberty at the same time."

The separation of church and state can sometimes be frustrating for women and men of deep religious faith. They may be tempted to misuse government in order to impose a value which they cannot persuade others to accept. But once we succumb to that temptation, we step onto a slippery slope where everyone's freedom is at risk. Those who favor censorship should recall that one of the first books ever burned was the first English translation of the Bible. As President Eisenhower warned in 1953, "Don't join the bookburners . . . the right to say ideas, the right to record them and the right to have them accessible to others is unquestioned—or this isn't America." And if that right is denied, at some future day the torch can be turned against any other book or any other belief. Let us never forget: Today's Moral Majority could become tomorrow's persecuted minority.

The danger is as great now as when the Founders of the Nation first saw it. In 1789, their fear was of factional strife among dozens of denominations. Today there are hundreds—and perhaps thousands of faiths—and millions of Americans who are outside any fold. Pluralism obviously does not and cannot mean that all of them are right; but it does mean that there are areas where Government cannot and should not decide what it is wrong to believe, to think, to read and to do. As Professor Laurence Tribe, one of the Nation's leading constitutional scholars has written, "Law in a nontheocratic state cannot measure religious truth"—nor can the state impose it.

The real transgression occurs when religion wants government to tell citizens how to live uniquely personal parts of their lives. The failure of prohibition proves the futility of such an attempt when a majority or even a substantial minority happens to disagree. Some questions may be inherently individual ones or people may be sharply divided about whether they are. In such cases—cases like prohibition and abortion—the proper role of religion is to appeal to the conscience of the individual, not the coercive power of the State.

But there are other questions which are inherently public in nature, which we must decide together as a nation, and where religion and religious values can and should speak to our common conscience. The issue of nuclear war is a compelling example. It is a moral issue; it will be decided by government, not by each individual; and to give any effect to the moral values of their creed, people of faith must speak directly about public policy. The Catholic bishops and the Reverend Billy Graham have every right to stand for the nuclear freeze—and Dr. Falwell has every right to stand against it.

There must be standards for the exercise of such leadership—so that the obligations of belief will not be debased into an opportunity for mere political advantage. But to take a stand at all when a question is both properly public and truly moral is to stand in a long and honored tradition. Many of the great Evangelists of the 1800's were in the forefront of the abolitionist movement. In our own time, the Reverend William Sloane Coffin challenged the morality of the war in Vietnan. Pope John XXIII renewed the gospel's call to social justice. And Dr. Martin Luther King, Jr., who was the greatest prophet of this century, awakened our national conscience to the evil of racial segregation.

Their words have blessed our world. And who now wishes they had all been silent? Who would bid Pope John Paul to quiet his voice about the oppression in Eastern Europe; the violence in Central America; or the crying needs of the landless, the hungry, and those who are tortured in so many of the dark political prisons of our time?

President Kennedy, who said that "no religious body should seek to impose its will," also urged religious leaders to state their views and give their commitment when the public debate involved ethical issues. In drawing the line between imposed will and essential witness, we keep church and state separate—and at the same time, we recognize that the city of God should speak to the civic duties of men and women.

There are four tests which draw that line and define the difference.

First, we must respect the integrity of religion itself.

People of conscience should be careful how they deal in the word of their Lord. In our own history, religion has been falsely invoked to sanction prejudice and even slavery, to condemn labor unions and public spending for the poor. I believe that the prophecy—"The poor you have always with you" is an indictment, not a commandment. I respectfully suggest that God has taken no position on the Department of Education—and that a balanced budget constitutional amendment is a matter for economic analysis, not heavenly appeals.

Religious values cannot be excluded from every public issue—but not every public issue involves religious values. And how ironic it is when those very values are denied in the name of religion—for example, we are sometimes told that it is wrong to feed the hungry—but that mission is an explicit mandate given to us in the 25th chapter of Matthew.

Second, we must respect the independent judgments of conscience.

Those who proclaim moral and religious values can offer counsel, but they should not casually treat a position on a public issue as a test of fealty to faith. Just as I disagree with the Catholic bishops on tuition tax credits—which I oppose, so other Catholics can and do disagree with the hierarchy, on the basis of honest conviction, on the question of the nuclear freeze.

Thus, the controversy about the Moral Majority arises not only from its views, but from its name—which, in the minds of many, seems to imply that only one set of public policies is moral—and only one majority can possibly be right. Similarly, people are and should be perplexed when the religious lobbying group Christian voice publishes a morality index of congressional voting records—which judges the morlity of

Senators by their attitude toward Zimbabwe and Taiwan.

Let me offer another illustration. Dr. Falwell has written—and I quote: "To stand against Israel is to stand against God." Now there is no one in the Senate who has stood more firmly for Israel than I have. Yet I do not doubt the faith of those on the other side. Their error is not one of religion, but of policy—and I hope to persuade them that they are wrong in terms of both America's interest and the justice of Israel's cause.

Respect for conscience is most in jeopardy—and the harmony of our diverse society is most at risk—when we re-establish, directly or indirectly, a religious test for public office. That relic of the colonial ERA, which is specifically prohibited in the Constitution, has reappeared in recent years. After the last election, the Reverend James Robison warned President Reagan not to surround himself, as Presidents before him had, "With the counsel of the ungodly." I utterly reject any such standard for any position anywhere in public service. Two centuries ago, the victims were Catholics and Jews. In the 1980's the victims could be atheists; in some other day or dacade, they could be the members of the Thomas Road Baptist Church. Indeed, in 1976 I regarded it as unworthy and un-American when some people said or hinted that Jimmy Carter should not be President because he was a born again Christian. We must never judge the fitness of individuals to govern on the basis of where they worship, whether they follow Christ or Moses, whether they are called "born again" or "ungodly." Where it is right to apply moral values to public life, let all of us avoid the temptation to be self-righteous and absolutely certain of ourselves. And if that temptation ever comes, let us recall Winston Churchill's humbling description of an intolerant and inflexible colleague: "There but for the grace of God—goes God."

Third, in applying religious values, we must respect the integrity of public debate.

In that debate, faith is no substitute for facts. Critics may oppose the nuclear freeze for what they regard as moral reasons. They have every right to argue that any negotiation with the Soviets is wrong—or that any accommodation with them sanctions their crimes—or that no agreement can be good enough and therefore all agreements only increase the chance of war. I do not believe that, but it surely does not violate the standard of fair public debate to say it.

What does violate that standard, what the opponents of the nuclear freeze have no right to do, is to assume that they are infallible—and so any argument against the freeze will do, whether it is false or true.

The nuclear freeze proposal is not unilateral, but bilateral—with equal restraints on the United States and the Soviet Union.

The nuclear freeze does not require that we trust the Russians, but demands full and effective verification.

The Nuclear freeze does not concede a Soviet lead in nuclear weapons, but recognizes that human beings in each great power already have in their fallible hands the overwhelming capacity to remake into a pile of radioactive rubble the Earth which God has made.

There is no morality in the mushroom cloud. The black rain of nuclear ashes will fall alike on the just and unjust. And then it will be too late to wish that we had done the real work of this atomic age—which is to seek a world that is neither red nor dead.

I am perfectly prepared to debate the nuclear freeze on policy grounds, or moral ones. But we should not be forced to discuss phantom issues or false charges. They only deflect us from the urgent task of deciding how best to prevent a planet divided from becoming a planet destroyed.

And it does not advance the debate to contend that the arms race is more divine punishment than human problem—or that in any event, the final days are near. As Pope John said two decades ago, at the opening of the Second Vatican Council: "We must beware of those who burn with zeal, but are not endowed with much sense . . . We must disagree with the prophets of doom, who are always forecasting disasters, as though the end of the Earth was at hand."

The message which echoes across the years since then is clear: The Earth is still here; and if we wish to keep it, a prophecy of doom is no alternative to a policy of arms control.

Fourth and finally, we must respect the motives of those who exercise their right to disagree.

We sorely test our ability to live together if we too readily question each other's integrity. It may be harder to restrain our feelings when moral principles are at stake—for they go to the deepest wellsprings of our being. But the more our feelings diverge, the more deeply felt they are, the greater is our obligation to grant the sincerity and essential decency of our fellow citizens on the other side.

Those who favor E.R.A. are not "anti-family" or "blasphemers" and their purpose is not "an attack on the Bible." Rather we believe this is the best way to fix in our national firmament the ideal that not only all men, but all people are created equal. Indeed, my mother—who strongly favors E.R.A.—would be surprised to hear that she is anti-family. For my part, I think of the amendment's opponents as wrong on the issue, but not as lacking in moral character.

I could multiply the instances of name-calling, sometimes on both sides. Dr. Falwell is not a "warmonger"—and "liberal clergymen" are not, as the Moral Majority suggested in a recent letter, equivalent to "Soviet sympathizers." The critics of official prayer in public schools are not "pharisees"; many of them are both civil libertarians and believers, who think that families should pray more at home with their children, and attend church and synagogue more faithfully. And people are not "sexist" because they stand against abortion; they are not "murderers" because they believe in free choice. Nor does it help anyone's cause to shout such epithets—or try to shout a speaker down—which is what happened last April when Dr. Falwell was hissed and heckled at Harvard. So I am doubly grateful for your courtesy here today. That was not Harvard's finest hour, but I am happy to say that the loudest applause from the Harvard audience came in defense of Dr. Falwell's right to speak.

In short, I hope for an America where neither fundamentalist nor humanist will be a dirty word, but a fair description of the different ways in which people of good will look at life and into their own souls.

I hope for an America where no President, no public official, and no individual will ever be deemed, a greater or lesser American because of religious doubt—or religious belief.

I hope for an America where the power of faith will always burn brightly—but where no modern inquisition of any kind will ever light the fires of fear, coercion, or angry division.

I hope for an America where we can all contend freely and vigorously—but where we will treasure and guard those standards of civility which alone make this Nation safe for both Democracy and diversity.

Twenty years ago this fall, in New York City, President Kennedy met for the last time with a Protestant assembly. The atmosphere had been transformed since his earlier address during the 1960 campaign to the Houston Ministerial Association. He had spoken there to allay suspicions about his Catholicism—and to answer those who claimed that on the day of his baptism, he was somehow disqualified from becoming President. His speech in Houston and then his election drove that prejudice from the center of our national life. Now, three years later, in November 1963, he was appearing before the Protestant Council of New York City to reaffirm that he regarded as some fundamental truths. On that occasion, John Kennedy said: "The family of man is not limited to a single race or religion, to a single city or country . . . the family of man is nearly 3 billion strong. Most of its members are not white—and most of them are not Christian." And as President Kennedy reflected on that reality, he restated an ideal for which he had lived his life—that "the members of this family should be at peace with one another."

That ideal shines across all the generations of our history and all the ages of our faith, carrying with it the most ancient dream. For as the Apostle Paul wrote long ago in Romans: "If it be possible, as much as it lieth in you, live peaceably with all men."

I believe it is possible; the choice lies within us; as fellow citizens, let us live peaceably with each other; as fellow human beings, let us strive to live peaceably with men and women everywhere. Let that be our purpose and our prayer—yours and mine—for ourselves, for our country, and for all the world.

Mr. RIEGLE. 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. HOLLINGS. 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 PRESIDENT'S REMARKS IN LOUISVILLE ON A BALANCED BUDGET

Mr. HOLLINGS. Mr. President, President Reagan's remarks in Louisville, Ky., have come to my attention. The wire service report states:

> In a stinging attack on Congressional Democrats, President Reagan Friday renewed his call for a balanced budget amendment to the Constitution to help build "a new era of lasting economic expansion."

Amazing. We have not heard anything about a balanced budget amendment to the Constitution for almost a year. Yet now the President of the United States, having enacted a $33 billion tax cut for the rich in July, having exacted a 6.5 percent increase in defense for another $26 billion—for a total of $59 billion—is demeaning the

Democrats in Congress for fiscal irresponsibility. Yet just the day before yesterday, in light of all the money the President has wasted, those same Democrats were defeated in a modest attempt to increase education funding for the disadvantaged and the college students of America.

Then, Mr. President, the wire service report states:

In the meantime, Reagan said, "We will reduce deficits by encouraging growth and handcuffing the big spenders. . . . It is their profligacy, not our economic recovery program, that is the source of Federal red ink."

Mr. President, I think the record should show exactly who is responsible for the red ink. I think we should talk with some historic perspective here, so that those who have not followed exactly what has been occurring in this Nation's Capital will know that it is none other than President Reagan, himself, who is responsible for the profligacy and the red ink.

You could see it coming. When President Reagan took office, his program had already been described as "voodoo economics" by Vice President BUSH. Later it was described by the chairman of the National Governors Conference, Richard Snelling of Vermont, as an economic Bay of Pigs.

The PRESIDING OFFICER. The Chair informs the Senator that time for morning business has expired.

Mr. BAKER. Mr. President, I ask unanimous consent that the time for routine morning business be extended until 3 p.m.

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

Mr. HOLLINGS. I thank the distinguished Presiding Officer.

Mr. President, it was Governor Snelling who characterized Reaganomics as an economic Bay of Pigs. I had personally described it as economic quackery because, in simplest terms, it said, "We will increase revenues by decreasing taxes, spend that mystery money to increase defense, and then produce a balanced budget."

I repeat that. He said, "We will increase revenues by decreasing taxes, increase defense, and then produce a balanced budget."

Having been the chairman of the Budget Committee I knew this was nonsense. And having met with the President Carter's economic advisers and counselors during 1980 and having stood here in the well of the U.S. Senate during 1980 we were able to stonewall a number of various tax cuts because they were inflationary. I refer specifically to Kemp-Roth, the Carter tax cut, the Reagan proposal, and even the Finance Committee tax bill—we stonewalled all of these in 1980 because they were ill founded, inflationary, and just bad public policy.

And on the spending side, President Carter was determined that we were not going to leave the deficit in excess of the one we inherited from President Ford. And we succeeded. With the cooperation of President Carter, a lameduck President, and a lameduck Democratic Party in the Senate, we passed the 1980 reconciliation bill. This was the first such bill that was ever passed. It cut spending and reduced the deficit to $57.8 billion.

So despite the rhetoric of the President, the reality was that we did show discipline and we did reduce the deficit.

However, under the leadership of the President and the policy of Reaganomics—of taking the increased revenues from the decreased taxes and increasing defense—we are now swamped by a tidal wave of $200 billion deficits today, next year, and every ensuing year thereafter.

It is so terrifying that the homebuilders came to Washington this week and called these deficits a pistol pointed at the temple of the economy.

The American business conference, with most of its business members obviously of a Republican political bent, met in emergency session recently. They were trying to find out how to get President Reagan's attention on these deficits given that he feels that Reaganomics is working, the economy is turning around, and everything is just fine. Of course it isn't, and they know differently.

Why do they know differently, Mr. President? For the simple reason that they know this recovery is lopsided. What you are seeing is consumer demand. You are not seeing capital investment—that investment is critical to a strong and lasting recovery.

The record now shows the projection of Alan Greenspan, one of the economic advisers to this administration, a minus 4.6 percent capital investment in 1983 over 1982.

Since that time 2 weeks ago the Department of Commerce, President Reagan's own department, has projected a minus 3.1 percent in capital investment and an incredible minus 9.2 percent change in new plant and facilities investment.

What we are seeing is that those in business are telling you in the simplest terms what—that this program is not working. I went last year to a meeting of the executives of the high-tech industries at Stamford, Conn. I started in on my talk about high tech, and the executives, before I could even proceed very far said, "Senator, cool it." They said, "High tech has all the money it needs. We are ready, willing, and able to invest. We can borrow now at 9 percent, but what really concerns us is that by 1985 this 9-percent rate will be back up to an inflationary 18 percent. We do not see any way out of it with the high deficits you have in Washington."

I will list those deficits that have been projected by the Congressional Budget Office under current policy. They are $186 billion for 1984, $187 billion for 1985, $198 billion for 1986, $211 billion for 1987, and $216 billion for 1988. The 5-year total is an add on of $998 billion, nearly a trillion dollars in new debt and red ink.

Mr. RANDOLPH. Mr. President, will my able colleague yield for an observation of 1 minute?

Mr. HOLLINGS. I yield.

Mr. RANDOLPH. The comment of my friend from South Carolina is very legitimate and candid. Turning aside, however, for the moment from deficit, we in West Virginia and many other States continue to have unemployment rates that are not dropping but unemployment rates that in many instances are rising. Also, in the nearby State of Maryland, close to West Virginia, let us take what happened in the last few days. At Cumberland, Md., Celanese has stopped the production and the 1,100 workers that have been gainfully employed are now not laid off but the plant has closed. At Hagerstown nearby West Virginia, we have the Mack Truck program of production. Five hundred workers have been laid off. We have Fairchild Industries where 1,100 workers have now been laid off just in the last week. I mention these two communities to indicate the rising unemployment as well as the problem of deficits to which the Senator makes a very realistic approach.

We must not forget that unemployment is not easing in this country but deepening in many parts of the United States and West Virginia with more than 17 percent of our workers that want to work unable to secure jobs.

Mr. HOLLINGS. The distinguished Senator from West Virginia is right on target. I did not want to hold him up. I know the afternoon is late. The leadership is prepared to go and it is not my idea to take the time but I just could not in conscience let this moment pass with respect to the President on balanced budgets.

The economic recovery is not taking hold. We have the highest rate of unemployment and the lowest rate of capital investment of any recovery. We are not having the turn around that Reaganomics, as pointed out by the Senator from West Virginia, was supposed to produce with supply side economics. Supply side held that with tax incentives industry would invest, that they would retool, that they would reemploy, and that they would stimulate the economy and produce increased revenues. Well, that is not working here in October 1983.

We still have that high rate of unemployment and negative investment in capital investment and in plant and new facilities. All we have really seen

to date is a spurt of automobile purchasing and the little increae in housing. And that has basically been from the simple turn of the economic cycle—consumer demand exists because it was pent up for the last few years in this recession. And another statistic to remember is that we have gone down to our lowest rate of savings in 30 years. Remember supply side said that if we have the money we would save and in saving we would then have a large capital pool and with that capital pool interest rates would stay low. But the savings rate is at a 4-percent level and the real cost of money is between the 4-percent inflation rate and the 12.5 interest rate—8.5 percent is the real cost of money.

So anyone who has been in economics and Federal budgeting must look the facts coldly in the face, as Marty Feldstein does. Yet for doing so he is in disrepute as the Chairman of the Council of Economic Advisers, and he says, "I cannot smile; I am trying to put on the best face." But we have a President who can put on any face. And he is putting on the face of Democratic profligacy when in fact we can hardly get our foot in the door for needed education funding here this week and when in fact he is the one who has been wasting the billions. And add to those billions the interest costs of his $200 billion deficit. We are adding another $16 billion onto interest costs and will soon be paying at the rate of $150 billion to $160 billion annually in interest cost alone.

Therein is the high cost of government. When you add those things together you can see where the money is going and who is profligate. Do not go out to the poor people on food stamps who have been cut $2 billion and tell them that they are getting more. They know differently. Go ask the mayors of the cities of the United States where people are backed up in the churches in hunger.

Senator MARK ANDREWS and myself had a bipartisan hearing at the mayor's conference this year. Do not tell the 2 million kids who have dropped out of title 1 for the disadvantage when this President was running around saying "stay the course." Do not tell those 2 million kids. They have to quit the course; the money is cut off. And we can go down the list. Do not tell legal services. Do not tell the student loans. Do not tell women, infants, and children's feeding programs. We can go down every particular program, that has been cut back.

But this President thinks that all government is Hollywood East and that all he needs do is get his cue cards and start back in with the tent show speech about Democratic profligacy. And their ending with an appeal for congressional amendment for a balanced budget.

I was on the point, Mr. President, how under President Carter the discipline persisted and how this President broke it. We went to President Reagan at the very beginning of his term and repeated exactly what the economists and what the financial community had told us time and again. Yes, some supply side, Mr. President, if it is of a nature of only a $15 billion investment tax credit for business. Let me emphasize that—for business only. I have been in the presence of President Reagan three times when he has misquoted the Kennedy situation back in the 1960's. He leans over with a bright, warm smile and he says, "But Senator, I only want to do it exactly like they did it under Kennedy in the 1960's."

(Mr. GORTON assumed the chair.)

Mr. HOLLINGS. But he does not understand the fact. The fact is that, yes, in 1962 we passed the investment tax credit for business only but we waited 2 years to trigger in the individual income tax cut. But President Reagan went whole hog and got it all at once by pushing a $750 billion tax cut.

Within a month of that legislation, President Reagan was on the national TV saying "We are in trouble. We have got to retrench." And a bipartisan group developed under the distinguished leadership of Senator BAKER, and we started working on trying to see what we could do to repair the damage because we all realized that we just had gone too far, far too far.

And the sad fact of the matter is, Mr. President, that here with 46 Democrats in the U.S. Senate only 8 Democrats voted against Reaganomics. It is a very interesting thing. The President persuaded an overwhelming majority of Democrats as well as Republicans under the cry "Give him a chance, give him a chance." I am willing to give anybody a chance but I do not want to give the people a disaster with this kind of Reaganomics and economic quackery.

Yet we were on course working out a plan to find a solution. But then the Stockman article came up in the Atlantic Monthly and thereupon the whole White House reacted. It reminded me of the Navy, "When in danger, when in doubt, scream, in circles run about."

So they retrenched and said after all that was a Carter budget and what we really needed to do was let the President submit his own first budget.

The President did submit his first budget in 1982. And I made the motion, as a member of the Budget Committee, to approve President Reagan's budget. And what happened? All 12 Republicans voted "no," voted against the Ronald Reagan budget?

Let us keep that event fixed in our minds because President Reagan submitted his second budget this year. And do you know that they do not even have the guts to present that budget on the floor of the U.S. Senate? Our Republican colleagues asked us on the Democratic side, "Please do not present it because we can not get any votes for it."

So we now have a President, a Chief Executive Officer and Chief Financial Officer of our Government, talking about balanced budgets. He has presented two budgets, and under no circumstance has anyone, even with a Republican majority here, has anyone ever presented the Reagan budget for consideration and debate because everyone knows it is totally unrealistic. One of the things, just to point out what I am trying to emphasize, is that he proposed that in 1985, if we still had deficits, we would trigger in a tax increase. In other words, if the house was still burning in 1985 we would call the fire department.

If I had presented that kind of an approach on the floor of the State legislature back in my home State they would have laughed me off the floor. They would say "Some loon is up there in the legislature trying to tax the next Governor and the next legislature. Have you ever heard such a silly way to legislate?" Why they could not even take it seriously.

But here we are now, with the President having made such a proposal and with a budget that no one would present, making a talk about irresponsibility and lack of discipline. But I see some distinguished colleagues on the floor who understand and remember congressional discipline. Harry Truman balanced the budget four times. President Kennedy lived within his means. Lyndon Baines Johnson balanced the budget in 1968-69—the last time the Federal Government's budget was balanced. And I just related President Jimmy Carter moved toward a balanced budget at a lesser deficit in December of 1980.

But here this President comes forth and in his address to the joint Congress stated categorically "Don't listen to this talk about deficits being caused by increases in defense." That does not cause deficits at all. Yet he was asking for a $36 billion increase and he got $26 billion. He says "Don't listen to the logic that tax cuts reduce revenues and cause deficits. I want my tax cut, I want my increase in defense." And he had some addons for other special programs. Well, that is a strange way for discipline to get started.

Also, at the beginning of this year when we were attempting to have some kind of bipartisanship and discipline you would go to the individual Member and he would say "Look, I don't want to be postured as antitax cut and antidefense. The President said he is going to veto it. He already has asked for his and since he is going to get it I want to protect my money

for education, I want a little more for school lunches, I want a little more for research and development and other programs."

So in the end there is no discipline at all. We have mounted our horses and gone in different directions, but the President should have come right in and said "Look, we are going to do like every mayor and freeze the budget." If he had appeared before a joint session of Congress and said we must live within our means he could have acheived bipartisan discipline. He could have also enhanced his foreign policy by saying "Look, the world leaders are worried about the turn-around in the economy, they cannot get hold of their own economies until we do in Washington. Therefore I am going to do like every mayor and every Governor and freeze spending increases—no cuts, no increases. Just take the budget I sent down in December and sign that into law for next year."

It would have been a shared sacrifice that would have balanced the budget rather than this political charade of talking about the Democrats' profligacy.

In my 30 some years of public service at every level of service, and 17 years here in the U.S. Senate, I can say categorically that the biggest spender that I have ever had the occasion to meet is Ronald Reagan. Yet he does not even understand it, or maybe he does. Maybe he does know what he is doing to the programs for the needs of the people, to the programs to open up opportunities, and to the programs to remedy public education in America. Yet rather than provide solutions for those programs which are a national problem, we have a $241 billion defense budget. We have a national problem in public education but we only spend $15 billion a year. But if the President could recommend $2 or $3 billion to improve this situation, that would be terrific. But instead he comes in for all of the sophisticated weaponry that you could possibly imagine, all the high-ticket defense items he can find, and all of these outrageous tax cuts. But in reality he comes in with a big deficit which results in even higher interest rates, and a plea for a constitutional amendment as the solution to the problem.

He has succeeded. He is getting his defense money. He is getting his programs though. And now that he is getting near the announcement of his campaign, he is going to beat his chest and be the warrior going out there to save the country from going broke.

Well, it worked pretty well last year. But I can tell you it is an outrageous fraud. I do not think the President of the United States can get by with it. The Governors have come to Washington this year and asked us to freeze the budget. The mayors have come to Washington and asked us to freeze the budget. But every interested party, whether homebuilders, business leaders, or consumers, has come and asked: "How do you get through to Ronald Reagan and make him understand? He doesn't realize."

I happen to believe he does realize. I think he believes this is a good way to really strip down the Government, break down the bureaucracy, and prove his point that the Government is the enemy.

Mr. President, I am glad to yield to my distinguished friend from Hawaii.

Mr. MATSUNAGA. I thank the Senator for yielding.

I wish to commend the Senator for bringing out the truth, for the truth shall set Americans free from all this confusion that they are being put into by such rhetoric as the Senator quoted earlier.

What the Senator failed to point out, in addition to all the facts he brought out, is that since President Reagan has occupied the White House, we have had the highest rate of bankruptcy. Businessmen are not going to be taken in by this rhetoric, because today we are suffering the highest rate of bankruptcy since the Great Depression of the 1930's. I would like to add that to the facts which the Senator from South Carolina has brought out.

I thank the Senator for yielding. I commend him again for taking the truth to the American people.

The PRESIDING OFFICER. The period for morning business has expired.

Mr. HOLLINGS. Mr. President, one more item about handcuffing the big spenders.

The President has been here for 3 years now and he has not encouraged economic growth. His whole idea was to reduce the size of Government and increase the size of the economy but he has failed on both courts.

If you look at the size of Government, Government has gone from 23.1 percent of the GNP to 25.2 percent of the GNP. The deficits that we are running are 6 percent of the GNP. Government has gotten bigger and bigger and bigger and, as the distinguished Senator from Hawaii says, businesses in the economy are disappearing from Main Street. The economy has gotten less with these high deficits. We have people out of jobs with no chance of reemployment.

The best jobs bill is to get the deficits down. The President of the United States, to the dismay of the world leaders, held a conference in Williamsburg. They came looking, knowing that the richest country in the world would have some idea, some plan for paying the bill. And, to their dismay, they heard no idea and no plan but rather the Secretary of the Treasury just stating that:

Don't worry about deficits. Deficits don't cause high interest rates.

The President cannot finesse it now. If you voted a constitutional amendment in the next 10 minutes, you could not put it on the ballot before 1984. Come 1985, then, it would have to be confirmed, and by then you would have to start with fiscal year 1986 at the earliest. So he should not be going to Louisville and telling the people that there are some real plans afoot for cutting the deficit.

The President has got to get hold of himself and take responsibility for the size of Government. We happen to feel on this side of the aisle that the wrong part of the Government is increasing. It is the deficit that is increasing, and it is defense that is increasing, and in an extraordinary fashion. And, of course, it is the President's own tax cuts for the rich.

I thank the distinguished majority leader for his indulgence.

Mr. BAKER. Mr. President, I thank my friend from South Carolina. I have just been listening to an account of his participation in the Democratic debate last evening in New York among the Presidential candidates, of which he is one. The report I have is that he fared very well indeed. My other duties prevented me from staying and listening to his entire presentation, but I am sure it is worthwhile and a valuable contribution.

He will understand, being a fellow southerner, when I say that if all of our colleagues did not understand him, I would be glad to translate for them.

Mr. President, I am awaiting now for the minority leader to arrive so we can do the wrapup. In the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAKER. 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 CALENDAR

Mr. BAKER. Mr. President, I have a folder now of routine matters that can be taken care of, I believe, by unanimous consent. I would like to go through them, if the minority leader is prepared to do that, and see how far we can get.

Mr. President, I first would propose to call up H.R. 1035 and pass that bill if the Senate will agree and the minority leader has no objection.

Mr. BYRD. That matter has been cleared on this side.

Mr. BAKER. I thank the Senator.

EDUCATION CONSOLIDATION AND IMPROVEMENT ACT AMENDMENTS

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar Order No. 451, H.R. 1035.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 1035) to make certain technical amendments to improve implementation of the Education Consolidation and Improvement Act of 1981, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2320

Mr. BAKER. Mr. President, I now send to the desk an amendment in the nature of a substitute on behalf of the distinguished Senator from Utah (Mr. HATCH) and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Tennessee (Mr. BAKER), for Mr. HATCH, proposes and amendment numbered 2320.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

AMENDMENT NO. 2320

STATE PROGRAM DESIGN

SECTION 1. (a) Section 555(b) of the Education Consolidation and Improvement Act of 1981 (Public Law 97-35; 20 U.S.C. 3801 et seq.) (hereinafter in this Act referred to as "the Act") is amended to read as follows:

"(b) PROGRAM DESIGN.—State agency programs shall be designed to serve migratory children of migratory agricultural workers or of migratory fishermen, handicapped children, and neglected and delinquent children (as described in subparts 1, 2, and 3, respectively, of part B of title I of the Elementary and Secondary Education Act of 1965) in accordance with section 554(a)(2) and the other applicable requirements of this chapter. The Secretary shall continue to use the definitions of 'agricultural activity', 'currently migratory child', and 'fishing activity' which were in effect on June 30, 1982, in regulations prescribed under subpart 1 of part B of title I of the Elementary and Secondary Education Act of 1965. No additional definition of 'migratory agricultural worker' or 'migratory fisherman' may be applied after the date of enactment of this subsection to such subpart 1.".

(b) Section 555 of the Act is amended by adding at the end thereof the following new subsection:

"(e) EVALUATION.—Each State educational agency shall—

"(1) conduct an evaluation of the programs assisted under this chapter at least every two years and shall make public the results of that evaluation; and

"(2) collect data on the race, age, and gender of children served by the programs assisted under this chapter and on the number of children served by grade-level under the programs assisted under this chapter.".

APPLICATIONS

SEC. 2. (a) Section 556(b) of the Act is amended by inserting "or" at the end of paragraph (1)(A) and by striking out "or" at the end of paragraph (1)(B) and by striking out paragraph (1)(C).

(b) Section 556 of the Act is amended by adding at the end thereof the following:

"(c) EXEMPTION FROM TARGETING.—The requirements of subsection (b)(1) shall not apply in the case of a local educational agency with a total enrollment of less than one thousand children, but this subsection does not relieve such an agency from the responsibility to serve children under the assurances set forth in subsection (b)(2).".

(c) Clause (2) of section 556(b) of the Act is amended by striking all that follows "areas," in such clause and inserting in lieu thereof "requires, among the educationally deprived children selected the inclusion of those children who have the greatest need for special assistance, and determines the needs of participating children with sufficient specificity to ensure concentration on those needs;".

(d) Clause (4) of section 556(b) of the Act is amended by inserting before the semicolon a comma and the following: "and that the results of such evaluation will be considered by such agency in the improvement of the programs and projects assisted under this chapter; and".

FLEXIBILITY TO CONTINUE TITLE I TYPE EXPENDITURES

SEC. 3. Section 556 of the Act is further amended by adding at the end thereof the following new subsection:

"(d) LOCAL EDUCATIONAL AGENCY DISCRETION.—Notwithstanding subsection (b)(1) of this section, a local educational agency shall have discretion to make educational decisions which are consistent with achieving the purposes of this chapter as set forth in this subsection, as follows:

"(1) A local educational agency may, with the approval of the State educational agency, designate as eligible (and serve) school attendance areas with substantially higher numbers or percentages of educationally deprived children before school attendance areas with higher concentrations of children from low-income families, but this provision shall not permit the provision of services to more school attendance areas than could otherwise be served. A State educational agency shall approve such a proposal only if the State educational agency finds that the proposal will not substantially impair the delivery of compensatory education services to educationally deprived children from low-income families in project areas served by the local educational agency.

"(2) Funds received under this chapter may be used for educationally deprived children who are in a school which is not located in an eligible school attendance area when the proportion of children from low-income families in average daily attendance in such school is substantially equal to the proportion of such children in an eligible school attendance area of such agency.

"(3) If an eligible school attendance area or eligible school was so designated in accordance with section 556(b)(1)(A) in either of two preceding fiscal years, it may continue to be so designated for a single additional fiscal year even though it does not qualify in accordance with section 556(b)(1)(A).

"(4) With approval of the State educational agency, eligible school attendance areas or eligible schools which have higher proportions of children from low-income families may be skipped if they are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this chapter, but (A) the number of children attending private elementary and secondary schools who receive services under this chapter shall be determined without regard to non-Federal compensatory education funds which serve eligible children in public elementary and secondary schools, and (B) children attending private elementary and secondary schools who receive assistance under this chapter shall be identified in accordance with this section and without regard to skipping public school attendance areas or schools under this paragraph.

"(5) Educationally deprived children who begin participation in a program or project assisted under this chapter who, in the same school year, are transferred to a school attendance area or a school not receiving funds under this chapter, may continue to participate in a program or project funded under this chapter for the remainder of such year.

"(6) The local educational agency is not required to use funds under this chapter to serve educationlly deprived children in greatest need of assistance if such children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this chapter.

"(7) In the case of any school serving an attendance area that is eligible to receive services under this chapter and in which not less than 75 per centum of the children are from low-income families, funds received under this chapter may be used for a project designed to upgrade the entire educational program in that school in the same manner and only to the same extent as permitted under section 133(b) of the Elmentary and Secondary Education Act of 1965 (but without regard to paragraph (4) of such section).

"(8) Public school personnel paid entirely by funds made available under this chapter may be assigned limited, rotating, supervisory duties which are assigned to similarly situated personnel who are not paid with such funds, and such duties need not be limited to classroom instruction or to the benefit of children participating in programs or projects funded under this chapter. Such duties may not exceed the same proportion of total time as is the case with similarly situated personnel at the same school site, or 10 per centum of the total time, whichever is less.".

PARENTAL INVOLVEMENT

SEC. 4. Section 556 of the Act is further amended by adding at the end thereof the following new subsection:

"(e) PARENTAL INVOLVEMENT.—For the purposes of complying with the assurances given pursuant to subsection (b)(3) with respect to consultation with parents of participating children, (1) a local educational agency shall convene annually a public meeting, to which all parents of eligible students shall be invited, to explain to parents the programs and activities provided with funds made available under this chapter, and (2) if parents desire further activities, the local educational agency may, upon request, provide reasonable support for such activities.".

AREAS FOR SERVICES TO PRIVATE SCHOOLCHILDREN

SEC. 5. Section 557(a) of the Act is amended by inserting "(1)," immediately after "556(b)".

APPLICATION OF NONSUPPLANTING RULE TO STATES

SEC. 6. Section 558(b) of the Act is amended—

(1) by inserting "State educational agency or other State agency in operating its State level programs or a" before "local educational agency" in the first sentence; and

(2) by striking out "a local educational agency shall not be required" in the second sentence and inserting in lieu thereof "no State educational agency, other State agency, or local educational agency shall be required".

EXCLUSIONS OF SPECIAL PROGRAM FUNDS

SEC. 7. Section 558(d) of the Act is amended—

(1) by striking out "if such programs are consistent with the purposes of this chapter" and inserting in lieu thereof "including compensatory education for educationally deprived children (which meets the requirements of section 131(c) of the Elementary and Secondary Education Act of 1965)"; and

(2) by adding at the end thereof the following new sentence:

"For the purpose of determining compliance with the requirements of subsection (c), a local educational agency may exclude State and local funds expended for—

"(1) bilingual education for children of limited English proficiency,

"(2) special education for handicapped children or children with specific learning disabilities, and

"(3) certain State phase-in programs as described in section 131(d) of the Elementary and Secondary Education Act of 1965.".

OVERLAP IN COUNTY BOUNDARIES

SEC. 8. Section 558(e) of the Act is amended by striking out "In any State" and inserting in lieu thereof "Notwithstanding section 111(a)(3)(C) of the Elementary and Secondary Education Act of 1965, in any State".

PHASEOUT AND TRANSITION EXPENSES

SEC. 9. Section 562(c) of the Act is amended by adding at the end thereof the following: "Until September 30, 1983, such funds may also be used to assist in phasing out programs described in section 561(a) and in promoting an orderly transition to operations under this chapter.".

STATE ALLOTMENTS

SEC. 10. The first sentence of section 563(a) is amended by striking out "not to exceed".

AUDIT REQUIREMENT OF SMALL LEA'S

SEC. 11. Section 564(a) of the Act is amended by inserting after paragraph (7) the following new sentence: "Notwithstanding section 1745 of this Act, local educational agencies receiving less than an average $5,000 each year under this chapter shall be audited at least once each five years.".

REQUIREMENT FOR STATE CERTIFICATION OF LEA APPLICATIONS

SEC. 12. Section 566(a) of the Act is amended by striking out everything preceding paragraph (1) and inserting in lieu thereof the following:

"SEC. 566. (a) A local educational agency may receive its allocation of funds under this chapter for any year for which its application to the State educational agency has been certified to meet the requirements of this subsection. The State educational agency shall certify any such application if such application—".

SCHOOL-LEVEL PROGRAMS

SEC. 13. Section 573(a) of the Act is amended by striking out "chapter" in the first sentence and inserting in lieu thereof "subchapter".

STATE RULEMAKING

SEC. 14. Section 591 of the Act is amended by adding at the end thereof the following new subsection:

"(d) Nothing in this subtitle shall be interpreted (1) to authorize State regulations, issued pursuant to procedures as established by State law, applicable to local educational agency programs or projects funded under this subtitle, except as related to State audit and financial responsibilities, or (2) to encourage, preempt, or prohibit regulations issued pursuant to State law which are not in conflict with the provisions of this subtitle. The imposition of any State rule or policy relating to the administration and operation of programs funded by this subtitle (including those based on State interpretation of any Federal law, regulation, or guideline) shall be identified as a State-imposed requirement.".

WITHHOLDING OF PAYMENTS

SEC. 15. Section 592(a) of the Act is amended—

(1) by striking out "on the record" in the first sentence; and

(2) by adding at the end thereof the following new sentence: "A transcript or recording shall be made of any hearing conducted under this subsection and shall be available for inspection by any person.".

JUDICIAL REVIEW

SEC. 16. Section 593(b) of the Act is amended by inserting "and a local educational agency" after "A State educational agency".

APPLICATION OF GEPA

SEC. 17. (a) Section 596 of the Act is amended to read as follows:

"APPLICATION OF OTHER LAWS

"SEC. 596. (a) Except as otherwise specifically provided by this section, the General Education Provisions Act shall apply to the programs authorized by this subtitle.

"(b) The following provisions of the General Education Provisions Act shall be superseded by the specified provisions of this subtitle with respect to the programs authorized by this subtitle:

"(1) Section 408(a)(1) of the General Education Provisions Act is superseded by section 591(a) of this subtitle.

"(2) Section 426(a) of such Act is superseded by section 591(b) of this subtitle.

"(3) Section 427 of such Act is superseded by section 556(b)(3) of this subtitle.

"(4) Section 430 of such Act is superseded by sections 556(a) and 564(b) of this subtitle.

"(5) Section 431A of such Act is superseded by section 558(a) of this subtitle.

"(6) Section 453 of such Act is superseded by section 592 of this subtitle.

"(7) Section 455 of such Act is superseded by section 593 of this subtitle with respect to judicial review of withholding of payments.

"(c) Sections 434, 435, and 436 of the General Education Provisions Act, except to the extent that such sections relate of fiscal control and fund accounting procedures, shall not apply to the programs authorized by this subtitle and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this subtitle.".

(b) Section 406A(a) of the General Education Provisions Act, as added by the Education Amendments of 1974 (relating to responsibility of States to furnish information), is amended—

(1) by striking out paragraphs (3) and (4);

(2) by inserting "and" at the end of paragraph (2); and

(3) by redesignating paragraph (5) as paragraph (3).

CONFORMING AND TECHNICAL AMENDMENTS TO TITLE I OF ESEA

SEC. 18. (a) Title I of the Elementary and Secondary Education Act of 1965 is amended—

(1) in section 142(a) by striking out "subpart 3 of part A, other than sections 122, 123, and 126(d) thereof" in paragraph (3) and inserting in lieu thereof "section 556 (other than subsection (b)(1)) and section 558 of the Education Consolidation and Improvement Act of 1981"; and

(2) in sections 147 and 152(a), by striking out "subpart 3 of part A, other than sections 122, 123, 125, 126(d), and 126(e) thereof" and inserting in lieu thereof "section 556 (other than subsection (b)(1)) and section 558 (other than subsection (c)) of the Education Consolidation and Improvement Act of 1981".

(b) The amendments made by subsection (a) shall apply only with respect to funds for use under the Education Consolidation and Improvement Act of 1981.

AVAILABILITY OF TITLE I APPROPRIATIONS

SEC. 19. (a) Section 553 of the Act is amended—

(1) by inserting "(a)" after "SEC. 553."; and

(2) by adding at the end thereof the following new subsection:

"(b) From the amount appropriated to carry out this chapter, not more than 14.6 per centum of such amount for each of the fiscal years 1983 and 1984 shall be available to carry out programs described in sections 141, 146, and 151 of the Elementary and Secondary Education Act of 1965. After the allocations for programs operated by State agencies, the Secretary shall assure that the amount available for allocation under section 117 of such Act bears the same ratio to the amount appropriated in each such fiscal year for this chapter as the amount available for such section in fiscal year 1980 bore to the total amount appropriated for title I of such Act in fiscal year 1980.".

(b)(1) Section 514(a)(2) of the Act is repealed.

(2) Section 514(a) of the Act is amended by striking out "(1)".

EXTENSION OF AUTHORIZATION FOR TITLE VII OF ESEA

SEC. 20. Section 528 of the Omnibus Budget Reconciliation Act of 1981 is amended—

(1) by striking out "and" at the end of paragraph (13);

(2) by striking out the period at the end of paragraph (14) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding at the end thereof the following new paragraph:

"(15) title VII of the Elementary and Secondary Education Act of 1965.".

CONFORMING AMENDMENTS

SEC. 21. (a) Section 565(a) of the Act is amended by striking out "nonpublic" and inserting in lieu thereof "private, nonprofit".

(b) The first sentence of section 1003(a)(1) of the Elementary and Secondary Education Act of 1965 is amended by inserting after "Act" a comma and the following: "or the Education Consolidation and Improvement Act of 1981".

ASSESSMENT OF COMPENSATORY EDUCATION

SEC. 22. Chapter 1 of the Act is amended by adding at the end thereof the following new section:

"NATIONAL ASSESSMENT OF COMPENSATORY EDUCATION ASSISTED UNDER THIS CHAPTER

SEC. 559. (a) The Secretary shall conduct a national assessment of compensatory education assisted under this chapter, through independent studies and analysis by the National Institute of Education. The assessment shall include descriptions and assessments of the impact of (1) services delivered, (2) recipients of services, (3) background and training of teachers and staff, (4) allocation of funds (to school sites), (5) coordination with other programs, (6) effectiveness of programs on student's basic and higher order academic skills, school attendance, and future education, and (7) a national profile of the way in which local educational agencies implement activities described under section 556(b). The National Institute of Education shall consult with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives in the design and implementation of the assessment required by this section. The National Institute of Education shall report to Congress the preliminary results of the assessment required by this section in January and July of 1986, and a final report shall be prepared and submitted to the Congress not later than January 1, 1987.

"(b) Notwithstanding any other provision of law or regulation, such reports shall not be subject to any review outside of the Department of Education before their transmittal to the Congress, but the President and the Secretary may make such additional recommendations to the Congress with respect to the assessment as they deem appropriate.

"(c) From amounts otherwise available to the National Institute of Education, $2,000,000 for the fiscal year 1984 and $4,000,000 for each of the succeeding fiscal years ending prior to October 1, 1987, shall be made available to carry out the provisions of this section.".

IMPACT AID

SEC. 23. Section 5(c) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is amended by adding at the end thereof the following: "In the determination of amounts of payments made on the basis of entitlements established under sections 2, 3, and 4 after March 31, 1983, by reason of any provision of law other than this Act which places any additional restriction on payments based on the concentration of children counted under subsection (a) or (b) of section 3 in the schools of the local educational agency, such restriction shall be applied, in the case of any State (other than a territory or possession of the United States) within which there is only one local educational agency, by treating each administrative school district within such State as a local educational agency (solely for the purpose of computing the amount of such payments).".

EFFECTIVE DATE

SEC. 24. (a) Except as provided in subsection (b), the amendments made by this Act to the Education Consolidation and Improvement Act of 1981 and title I of the Elementary and Secondary Education Act of 1965 shall be effective July 1, 1983.

(b) With respect to the period beginning July 1, 1982, and ending June 30, 1983, no recipient of funds under the Education Consolidation and Improvement Act of 1981 shall be held to have expended such funds in violation of the requirements of such Act if such funds are expended either in accordance with such Act as in effect prior to the date of enactment of this Act or in accordance with such Act as amended by this Act.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute.

The amendment in the nature of a substitute (No. 2320) was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 1035) was passed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. BAKER. Now, Mr. President, I move that the Senate insist on its amendment and request a conference with the House of Representatives and that the Presiding Officer be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. HATCH, Mr. STAFFORD, Mr. QUAYLE, Mr. KENNEDY, and Mr. PELL conferees on the part of the Senate.

ORDER TO PLACE S. 1327 ON THE CALENDAR

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of S. 1327, the Atlantic Salmon Agreement, and that the item be placed on the calendar.

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

SMALL BUSINESS ACT AMENDMENTS

Mr. BAKER. Mr. President, next I will say to the minority leader that I propose to go to S. 1323, if he has no objection.

Mr. BYRD. No objection.

Mr. BAKER. Then I ask the Chair to lay before the Senate Calendar Order No. 195, S. 1323.

The PRESIDING OFFICER. The bill will be stated by title.

The bill clerk read as follows:

A bill (S. 1323) to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

AMENDMENT NO. 2321

(Purpose: To permit assistance under the certified development company loan program to certain small business concerns)

Mr. BYRD. Mr. President, I send an amendment to the desk on behalf of Mr. NUNN, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from West Virginia (Mr. BYRD), for Mr. NUNN, proposes an amendment numbered 2321.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the bill, add the following:

DEVELOPMENT COMPANY DEBENTURES

SEC. 5. Section 503(a)(2) of the Small Business Investment Act of 1958 is amended by inserting before the period at the end thereof the following: ": *Provided*, That the Administration shall not decline to issue such guarantee when the ownership intersts of the small business concern and the ownership interests of the property to be financed with the proceeds of a loan made pursuant to subsection (b)(1) are not identical because one or more of the following classes of relatives have an ownership interest in either the small business concern or the property: father, mother, son, daughter, wife, husband, brother, sister: *Provided further*, That the Administrator or his designee has determined on a case-by-case basis that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the small business concern".

SBA'S CERTIFIED DEVELOPMENT COMPANY PROGRAM

● Mr. NUNN. Mr. President, the amendment that I am offering today will provide that the Small Business Administration may provide financial assistance to certified development companies to assist in purchasing fixed assets—such as land, plant and equipment—to assist small business concerns under the 503 certified development company program, even though the ownership interests in the property to be financed are not identical to the ownership interests held in the small business concern. The amendment would provide that, within the section 503 program only, financial assistance would be made available in those situations where the

ownership deviation is within interfamily relationships.

Since the Small Business Administration's creation in 1953, the agency has had a statutory provision requiring that all financial assistance which it provides be made available to an identifiable small business concern. The agency has interpreted this legislative requirement strictly. This prohibition has been slightly modified by the agency to recognize that there are legitimate business reasons why the ownership interest in the small business concern is separated from the ownership interest in the assets of the firm. This deviation has been called the alter-ego rule.

Thus, as part of its regulatory scheme, SBA prohibits financial assistance unless the ownership interest in the applicant is completely identical with the ownership interest in the project. Furthermore, the proportion of the ownership interests in the small business, and the identity of interest must remain unchanged until the loan is repaid in full, or SBA gives approval for any ownership change.

In 1979, when Senator WEICKER and I initiated the legislation in the Senate which became the 503 certified development company program, our interest was to create an economic development program that would enhance the growth and expansion of small business, and take advantage of the ability of small business to create jobs, increase opportunities for entrepreneurship, and assist in community development.

Today, there are over 400 SBA licensed 503 certified development companies. In this fiscal year alone, through June 1983, these companies have made a total of 785 loans for $149.9 million. Since the inception of the program in 1981, 1,445 loans for a total of $264.9 million have been approved. In my own State of Georgia, I have seen the program used repeatedly. I was pleased to be present at Georgia's first loan closing of a 503 project in Columbus. Since that time, Georgia has had 32 loans made to small business concerns, for a total of $6.1 million. In Georgia, and around the Nation, this program has proven to be an important financial assistance tool for small business, an important economic development tool for States and communities, and an important source of job creation and retention.

However, the Small Business Administration has taken the regulations that were applied to its regular business loan programs, and has fully applied them to the certified development company program created under section 503 of the Small Business Investment Act of 1958, even though that act has a different policy, and a different financing scheme for its programs. This rule has prevented small businesses from receiving the assistance that this program was designed to provide. I believe the explanation of this regulatory provision, and the impact it has had on small businesses, is fully explained in the Senate Small Business Committee's report on this bill, and I will not take the time today to review that matter in any greater detail.

However, in that report, the committee indicated that the alter ego exception, by itself, was not sufficient to take into account the legitimate business reasons why there would be a different ownership interest between the small business concern and the ownership interest in the project to be financed for purposes of this program. We urged the agency to act regulatorily to deal with this matter. Repeatedly, the agency has decided that it will not act by regulation, and, regrettably, I believe it is now necessary that Congress act legislatively.

Mr. President, SBA appears to be unique among the Federal agencies which provide direct or guaranteed financial assistance in their use of the alter ego rule. However, I want to make clear that the entire problem is not with the agency. There has been, and continues to be, a legitimate reason to have the alter ego rule; namely, to insure that the benefits of the agency's programs, and of the Federal Government's extension of assistance for economic development, flows to benefit small business, not speculators or investors. I believe we are providing latitude to the certified development companies, and to the Small Business Administration, if this amendment is adopted, which will maintain the integrity of the program and the solid finanical base that Congress put it on when the legislation was adopted in 1980. More importantly, this legislation will insure that small businesses are able to take advantage of both this program and legitimate business decisionmaking in economic development.

This amendment does not address the entire problem which the alter ego rule has created for small business concerns under the 503 program. However, the detailed cases which we have had before our committee clearly show that a great number of transactions involving the family are prohibited from being helped because the financial relationship does not fully comply with the alter ego exception. I believe this situation needs to be reversed, and I believe that this amendment will correct it. But I want to reiterate that the problem goes beyond the family situation. During the next several weeks, and before we conclude the conference that I believe will be likely on this legislation, I will be trying to determine the full extent to which the alter ego rule is impeding the legitimate use of the 503 program. It would be my intent to insure that an appropriate solution is found to this important issue, even to the extent that a legislative override of the agency's rule be expanded beyond the family situation that we have addressed in this amendment.

Mr. President, I appreciate the support from Senator WEICKER, the chairman of the committee. During the past 3 years, it has been my privilege to serve as the ranking Democratic member of the Senate Small Business Committee. I believe that we have forged an excellent, bipartisan, working relationship within the committee, and on behalf of small business. Although I am no longer the ranking member, having yielded that responsibility to the distinguished Senator from Arkansas (Mr. BUMPER), I expect to remain active in this important area.

Mr. President, I urge the Senate to approve this amendment.●

● Mr. WEICKER. Mr. President, I fully support the amendment offered by Senator NUNN that would permit financial assistance in the 503 program to be made available in the those cases where ownership interests of the small business and ownership interests of the property to be financed with the proceeds of a section 503 loan are not identical because of the interfamily relationships. Currently, this is not permitted because of SBA's alter-ego rule which requires identical ownership interests.

The Small Business Committee has heard testimony on this important issue which showed clearly that there are legitimate business reasons for different ownership interests between the small business concern and the property to be financed. Most of the cases cited to the committee involved reasons dealing with family relationships. Therefore, I fully support Senator NUNN's amendment. In addition, we have agreed to work together to determine the full extent to which the alter-ego rule impedes the legitimate use of the 503 program and whether further action is necessary. I have instructed the committee staff to work jointly with Senator NUNN's staff in this endeavor.●

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

The amendment (No. 2321) was agreed to.

● Mr. NUNN. Mr. President, I rise in support of S. 1323, a bill amending the Small Business Act and the Small Business Investment Act of 1958, and urge its passage by the Senate.

Mr. President, the Small Business Committee last year reported an authorization bill to the Senate (S. 2408) which, unfortunately, we did not have time to consider. The issue of the appropriate program levels for the Small Business Administration's lending pro-

grams for fiscal year 1983 and 1984, among other items, were considered in that bill. Since the Congress did not complete action on that legislation before the close of the 97th Congress, in March of this year I introduced four separate pieces of legislation. Three of those four bills dealt with setting the program level for key financial assistance programs within the Small Business Administration, including the 503 certified development company program, the Small Business Investment Company (SBIC) program, and the Minority Enterprise SBIC (MESBIC) program. The fourth bill, S. 745, provided new authority so that the Small Business Administration could purchase or guarantee debentures issued by State development companies which are established under existing section 501 of the Small Business Investment Act of 1958.

On May 15 of this year, the Small Business Committee approved these four bills, and incorporated them in full in the original bill which is now pending before the Senate. I will not take the Senate's time today to review those proposals because I believe they are fully and accurately spelled out in the Small Business Committee's report on this legislation, and highlighted again by the chairman's opening remarks here today.

In addition to these four proposals, the committee bill addresses the critical issue of the appropriate program levels for direct loans and other programs to be undertaken by the Small Business Administration in fiscal years 1984 and 1985, makes permanent the statutory authority for sheltered workshops to participate in the small business procurement program, and includes language which has been twice included in appropriations bills that SBA shall enter into commitments to guarantee loans in the full amounts provided by the authorization, subject only to the availability of qualified applicants and limitations imposed by the appropriations process.

Mr. President, the need for prompt congressional action on this legislation has become very important for two SBA programs, in particular. The first is the Small Business Investment Company, or SBIC, program. In July of this year, 41 SBIC's submitted applications to the Small Business Administration, qualifying for almost $95 million in new leveraging requests. Based on the quarterly allocation of funds within SBA, only $16 million was available to meet this demand. The remaining $79 million in outstanding requests for leveraging has been deferred until October, the start of the new fiscal year. However, unless the Congress enacts this legislation to increase the program level for the SBIC program for fiscal year 1984, the Small Business Administration will have pending on the first day of the new fiscal year qualified applications that could exceed 50 percent of the total current program level of $160 million for the entire year.

The second important program that needs this legislation if it is to continue to remain as an active partner with SBA in meeting the financing needs of the small business community is the 501 State development company program. Under current law, the Small Business Administration is limited to providing direct loans to these State development companies, which in turn combine these funds with private sector resources to make financial assistance available to the small business. With SBA's across-the-board administrative phase down of direct loans, and our committee's recommendation that direct loans be limited to specifically determined target groups, a change in the law is necessary if this economic development program is to remain viable, and if SBA is to continue working with these State development companies as the agency has told our committee they would like to do.

Mr. President, I believe the recommendations made by the committee are sound, that the needs of the small business community will be fully accommodated by the levels we have proposed, and that the Small Business Administration will be put in a better position to provide quality financial assistance to the small business sector.

I want to compliment Chairman WEICKER for his cooperation in putting this entire package together, and for accommodating in full in this bill the legislation that I had proposed earlier.

I urge my colleagues to support this bill.●

● Mr. WEICKER. Mr. President, I rise in support of S. 1323, legislation passed by the Small Business Committee to set authorization levels for the Small Business Administration (SBA) in the 1984 and 1985 fiscal years.

The provisions set forth in this bill reflect the current reality of the programs being administered by the SBA, and the needs of the small business community for the 1980's. It has been carefully crafted to insure that funding for such worthwhile programs as the guaranteed lending and "503" economic development, is maintained at adequate levels, while money for the direct lending program, which has not delivered as much to the taxpayer or the individual small business borrower, is eliminated. Direct loans for handicapped, veterans, and minority enterprise small business investment companies (MESBIC's) are continued under this bill, however. Finally, this legislation increases authorization levels for salaries and expenses at SBA in order to insure that a sufficient level of qualified personnel is available to discharge and effectively meet the agency's congressional mandate.

This bill was reported out of the Small Business Committee on May 13, 1983, with the bipartisan support of all of the committee's members. It has been the subject of a number of hearings before the committee, and is the product of considerable work and discussion between the past ranking minority member, Senator NUNN, and myself.

Mr. President, let me just step off the subject for 1 minute here, and allow me to say that it has been a pleasure and privilege to work alongside SAM NUNN for the past 2½ years that I have been chairman of the Small Business Committee. I do not think anyone would disagree that ours has been a truly bipartisan committee in every sense of the word, and that is largely due, I believe, to the fine leadership, cooperation, and commitment of Senator NUNN. I have no doubt that even as he steps down as ranking member on this committee, he will maintain that same high level of commitment and concern for the needs of the Small Business Community. I have the greatest respect for my colleague from Georgia, as I know many of us do here in this body, and I wish him the best of success as ranking member of the Armed Services Committee. Although it is in sad circumstances that he takes over the role, I can think of no man better qualified to fill the shoes of Scoop Jackson in this regard than SAM NUNN.

Now, as to the specifics of the bill before us today: Over the past several years, this committee has consistently urged the SBA to shift its program priorities to place a greater emphasis on its nonlending functions, such as advocacy, economic and innovation research, and management, technical and procurement assistance. Studies, surveys, and the lessons of experience have long shown us that the diverse needs of the small business community are best served through the effective administration of these programs, as well as the agency's more traditional lending activities.

In these tight budgetary times, it is the committee's view that the agency can no longer be all things for all small businesses. Programs that effectively leverage private sector resources and expertise must be emphasized, and fundamental shifts in the allocation of agency resources must take place.

Through the drafting of S. 1323, the committee has attempted to address the need for a greater emphasis on these programs, by strengthening those functions of the agency, which have truly delivered, in terms of the small business owner and the American taxpayer.

The primary example of this is the guaranteed lending program, which leverages Federal dollars by a 5-to-1 ratio, through the use of the secondary market and the private sector. The committee has consistently supported guaranteed lending as the most efficient, economical, and practical means of providing access to debt-financing for small businesses, and in this bill, increases funding for the program from $2.708 billion to $2.8 in fiscal year 1984, and to $3 billion in fiscal year 1985.

For years, Mr. President, the SBA's guaranteed lending program has helped small businesses, who otherwise could not get credit, to obtain capital to sustain and expand their operations. An extensive study, conducted by the General Accounting Office (GAO), and released just this past April, concluded that fully 82 percent of the loans made under the guaranteed loan program would not have been made on the same terms and conditions—or made at all—without the Government guarantee.

GAO supported the longstanding claim by many small firms that they are the victims of discrimination and inequitable treatment in the commercial market. The study found that the absence of a guaranteed loan program would result in many small businesses not getting credit-rationing, or that they would only qualify for shorter maturities, higher interest rates, or smaller loan amounts.

Mr. President, this bill also increases funding for the SBA's 503 certified development company program. With severe cutbacks at EDA, UDAG, and other traditional suppliers of economic development assistance, this program has become one of the primary sources of economic development funding in the country.

The 503 program allows municipalities to be licensed by SBA as certified development companies, which can then issue federally guaranteed debentures for up to 50 percent of the cost of land, plants, and equipment necessary for the expansion of small business concerns. I believe this program, enacted in 1980, is a classic example of a Federal Government program that takes advantage of the best resources the private and public sectors have to offer.

Under the program, banks are encouraged to make, and are making, long-term loans to small businesses under more favorable terms than they normally would have. In fact, prior to the program's enactment, there was little, if any, long-term, fixed-asset lending available for many of these companies.

In the 2½ years the program has been operating, 381 entities have been licensed as certified development companies under 503. Many of these companies are still getting off the ground, but nonetheless, by April of this year, 1,185 loans, representing a Federal guarantee of $217.5 million, had been made under the program. As of October of last year, 28,846 documented jobs had been created as a result of 503 financings, with an average cost to the Government of only $3,990 per job. And, as the number of jobs created climbs, the corresponding cost per job drops steadily lower. In every quarter since the creation of the 503 program, more and more jobs have been created and the Federal commitment per job has declined.

The committee bill also makes statutory changes in the SBA's 501 program by authorizing SBA or purchase or guarantee debentures issued by State development companies.

Accordingly, S. 1323 increases the program level for the section 501, 502, and 503 programs from $350 million to $500 million in fiscal 1984 and 1985.

Two other important SBA programs that create jobs and promote economic development are the Small Business Investment Company (SBIC) and Minority Enterprise Small Business Investment Company (MESBIC) programs.

SBIC's and MESBIC's are SBA-licensed companies, which, through a private and public sector partnership, provide equity capital, long-term loans and management assistance to small business concerns and to small business concerns owned by socially or economically disadvantaged persons. In return for a commitment to invest in a small business, SBIC's are licensed and authorized by SBA to issue a debenture which is guaranteed by the Federal Government at the full cost of money to the Treasury, plus a premium. MESBIC's, which go through the same licensing procedure, obtain leverage capital from the Government through the purchase of preferred securities in the MESBIC itself, and through debentures. To be currently licensed as an SBIC or MESBIC, the company must first have a minimum of $500,000 in private sector, paid-in captial. Before an SBIC can leverage any funds, it must first have committed at least 60 percent of its assets to investment in small business concerns.

At a December 16, 1982, committee hearings, SBA Administator James Sanders testified that "for every taxpayer dollar invested in the SBIC and MESBIC programs, the Government has received $100 back in the form of tax revenues." Current figures show that there are now 500 SBIC's operating around the country, of which 140 are MESBIC's.

Since the program's inception 25 years ago, SBIC's have invested more than $4.5 billion in some 60,000 small businesses. The MESBIC program, which began only 5 years ago, has invested more than $190 million in minority-owned small firms.

As a result of the successful track record of these two valuable programs, the committee's bill increases the SBIC program level from $160 million to $250 million for fiscal years 1983-85. The program level for the MESBIC program (which is funded in the form of a direct loan) is also increased, from $35 million to $45 million in fiscal year 1983-85.

Mr. President, under the bill, funding for the direct lending activities at SBA—with the exception of the MESBIC program, and loans for veterans and the handicapped—is eliminated. This was done with a great deal of thought and much hard work and consideration. The fact is, that while the direct loan program may be what the SBA is best known for, it has been one of the agency's least effective programs in terms of "bang for the buck."

The business of making loans is one that requires considerable manpower and a ready supply of cash—two things in short supply in today's economy. SBA, unfortunately, has neither sufficient personnel or capital to effectively run such a program. In recent years, as the pool of direct loans has decreased, the number of loans and the average size of the loans have also decreased. In fiscal year 1982, the agency made less than half the loans at half the dollar amount than it made 2 years earlier—2,206 loans at a value of $145.5 million. This averages out to about 52 loans per State. At this level, it seems to me ludicrous to tell prospective borrowers that such a program exists and then have so many firms competing for so few loans.

Even those who do get the loans are going to find it does not go very far. The average loan these days is about $50,000, hardly enough to make any kind of impact in today's economy.

Finally, as the economy has improved recently and interest rates have begun to decline, there is little differential between the cost to a borrower of a direct and a guaranteed loan. Direct loans are now being made at 11¾ percent. This compares to a guaranteed lending rate of 10½ percent (prime) plus a maximum of 2½ percent to 2¾ percent. When interest rates are so comparable, one has to seriously question whether to keep SBA in the business of making direct loans, particularly when, if these businesses are to survive, they must begin to establish a track record with a banking institution, and not with the SBA.

Let me quickly mention some of the other lending activities at the agency addressed in the committee's bill.

S. 1323 maintains a $250 million authorizations level for the SBA's pollution control equipment contract guarantee program, and a $1.4 billion authorization level for its surety bond guarantee program. By using tax-exempt, SBA-guaranteed, pollution

control bonds, SBA cooperates with commercial and investment banks and local and State authorities to make financing available to eligible small businesses for pollution control equipment mandated by environmental regulatory agencies. The surety bond guarantee program is virtually the only program available that provides small business contractors access to bonding, and is vitally needed.

Another provision of the bill maintains the eligibility of certain not-for-profit organizations for assistance under SBA's setaside program for small businesses, not to exceed $100 million for each fiscal year. This action was taken by the committee after we received a report from the SBA indicating that there were no complaints from small businesses concerning the participation of nonprofit sheltered workshops in the program, and that no measurable economic injury was sustained by small businesses as a result of participation by nonprofits in the program.

An amendment, offered by Senator DIXON, and unanimously adopted by the committee, also provides that SBA shall enter into commitments to guarantee loans, debentures, and other types of financial assistance in the full amounts provided by law, subject only to the availability of qualified applications, and limitations contained in the appropriations acts. It should be noted, however, that this provision is not intended to require SBA to enter into commitments where the guarantee authorization is not being used because of an absence of applicants, or where the applicants do not meet the threshold eligibility requirements for such guarantees as provided for in the law.

The salaries and expenses section of the SBA budget covers all of the nonlending activities of the agency. In accordance with the committee's desire to shift the emphasis of the agency's overall focus, and to strengthen many of its nonlending functions, this bill recommends that $265.5 million be authorized for the salaries and expenses portion of the SBA budget for fiscal year 1984. The committee assumes that $15 million budgeted for business development expense will be accounted for under the business loan and investment fund, rather than salaries and expenses account, as suggested by the administration. Therefore, the committee's recommendation is $23.4 million over the administration's salary and expense request in fiscal year 1984.

Under salaries and expenses, the committee provides an additional $1.8 million for the Office of Veterans' Affairs, over and above the approximately $1.5 million remaining from the inital $3 million appropriated in Public Law 97-276 to establish the office. This sum will be used to cover personnel and administrative costs, as well as to assist the agency in meeting its mandate of giving "special consideration" to veterans in the delivery of its assistance programs.

Also, $500,000 is specifically earmarked for the Office Innovation, Research, and Technology to develop a technology transfer system at SBA. This system will be used to assist small business participation in the small business innovation research program, as established in Public Law 97-219. A million dollars was appropriated for the development of this program in fiscal year 1983, and this $500,000 will help to continue the progress that has already begun.

In fiscal year 1984, the administration requested funding for 3,910 permanent position at SBA, as well as an additional 425 temporary position. As of 1982, SBA's loan portfolio was $17.9 billion, with 476,022 loans requiring service. It is the committee's feeling the Congress should recognize the enormous growth in this portfolio, and allocate, on a permanent basis, the appropriate number of people to handle a fund of this size. Accordingly, $15 million is added to the administration's budget request to allow for additional permanent staff needed to accommodate the increased demand expected to result from the guarantee levels recommended in this bill.

Mr. President, that is the summary of the committee's authorization request. I think it is fair, I think it is reasonable, and I think it is realistic. Most importantly, I think it addresses, in a very constructive way, the programs facing the SAB and the small business community in this economy. I urge my colleagues to support this legislation.●

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1323

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

SMALL BUSINESS ADMINISTRATION PROGRAM LEVELS

SECTION 1. Section 20 of the Small Business Act is amended—

(1) by striking from paragraph 2 of subsection (n) "section 503" each time it appears and inserting in lieu thereof "sections 501 and 503", and by striking "$350,000,000" and inserting in lieu thereof "$400,000,000";

(2) by striking from paragraph 3 of subsection (n) "$35,000,000" and inserting in lieu thereof "$45,000,000", and by striking "$160,000,000" and inserting in lieu thereof "$250,000,000";

(3) by amending paragraph 1 of subsection (q) to read as follows:

"(1) For the programs authorized by section 7(a) of ths Act, the Administration is authorized to make $20,000,000 in direct and immediate participation loans as provided in paragraph (10) and $25,000,000 in loans to be made only to disabled veterans and veterans of the Vietnam era as defined in section 1841, title 38, United States Code, under the general terms and conditions of title III of Public Law 97-72.";

(4) by striking from paragraph 2 of subsection (q) "section 503" each time it appears and inserting in lieu thereof "sections 501 and 503", by striking "$3,140,000,000" and inserting in lieu thereof "$3,380,000,000", and by striking "$350,000,000" and inserting in lieu thereof "$500,000,000";

(5) by striking from paragraph 3 of subsection (q) "$35,000,000" and inserting in lieu thereof "$45,000,000", and by striking "$160,000,000" and inserting in lieu thereof "$250,000,000".

(6) by striking from the first sentence of subsection (r) "$804,000,000" and inserting in lieu thereof "$1,069,500,000";

(7) by striking from the second sentence of subsection (r) "$531,000,000" and inserting in lieu thereof "$779,000,000", by striking "$239,000,000" and inserting in lieu thereof "$256,500,000," and by striking the phrase "of which amount—" and inserting in lieu thereof a period;

(8) by striking from subsection (r) paragraphs (1), (2), (3), (4), and (5), and by striking "(6)" from the last numbered paragraph; and

(9) by adding at the end of section 20 the following:

"(t) The following program levels are authorized for fiscal year 1985:

"(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $20,000,000 in direct and immediate participation loans as provided in paragarph (10) and $25,000,000 in loans to be made only to disabled veterans, and veterans of the Vietnam era as defined in section 1841, title 38, United States Code, under the general terms and conditions of title III of Public Law 97-72.

"(2) For the programs authorized by section 7(a) of this Act and sections 501 and 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,580,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), $60,000,000 in loans as provided in paragraph (11), $15,000,000 in loans as provided in paragraph (12), and $500,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in sections 501 and 503.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $45,000,000 in direct purchases of debentures and preferred securities and to make $250,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,400,000,000.

"(5) For the program authorized by section 7(b)(3) of this Act, the Administration shall not enter into any loans, guarantees or other obligations or commitments.

"(6) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $250,000,000.

"(7) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.

"(u) There are authorized to be appropriated to the Administration for fiscal year 1985, $896,000,000. Of such sum $601,000,000 shall be available for carrying out the programs referred to in subsection (t), paragraphs (1) through (3); $30,000,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958; $4,000,000 shall be available for the purpose carrying out the provisions of section 403 of the Small Business Investment Act of 1958; and $261,000,000 shall be available for salaries and expenses of the Administration.".

STATE DEVELOPMENT COMPANY PROGRAM

SEC. 2. Section 501 of the Small Business Investment Act of 1958 is amended—

(1) by inserting in the first sentence of subsection (a), after the phrase "make loans to" the phrase ", or to purchase or guarantee debentures issued by,";

(2) by striking in the second sentence of subsection (a), the phrase "funds advanced" and inserting in lieu thereof the phrase "loans made";

(3) by adding at the end of subsection (a), the following new sentence: "Any purchases of guarantees of debentures made under this section shall be subject to the provisions of subsection (c) of this section, but shall be made without regard to the use and investment by the development company of funds secured by it from other sources."; and

(4) by adding at the end thereof the following:

"(c)(1) The Administration may purchase, or guarantee the timely payment of all principal and interest scheduled on, any debenture issued by any qualified State development company, except that the Administration may not purchase or guarantee any debenture collateralized by obligations described in section 103(b) of the Internal Revenue Code of 1954.

"(2) Such purchases or guarantees may be made by the Administration on such terms and conditions as the Administration may by regulation determine to be appropriate. The Administration may impose an additional charge for administrative expenses with respect to each debenture purchased or guaranteed under this section.

"(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this section.

"(4) Debentures purchased or guaranteed under this section shall be treated on an equal basis in repayment and liquidation with those funds borrowed by the qualified State development company, regardless of source, unless the Administration is in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines that debentures purchased or guaranteed may be subordinate to other debts and obligations of such company.

"(5) The interest rate on any such debenture shall be the rate of interest determined by the Secretary of the Treasury pursuant to section 303(b) of this Act.

"(6) The proceeds of any such financing shall be used solely to assist an identifiable small business concern and for a sound business purpose as determined by the Administration.".

ELIGIBILITY OF CERTAIN NOT-FOR-PROFIT ORGANIZATIONS FOR ASSISTANCE UNDER THE HANDICAPPED PROCUREMENT PROGRAM

SEC. 3. Section 15(c) of the Small Business Act is amended—

(1) by striking from paragraph (1) "During fiscal years 1981, 1982 and 1983, public" and inserting in lieu thereof "Public", and by striking "such" after the phrase "not to exceed $100,000,000 for each"; and

(2) by striking from paragraph (2) "1982" and inserting in lieu thereof "of each year", and by striking "Select".

PROGRAM GUARANTEE AUTHORITY

SEC. 4. Section 20(a) of the Small Business Act is amended—

(1) by inserting "(1)" after "SEC. 20. (a)"; and

(2) by adding at the end thereof the following:

"(2) Notwithstanding any other provision of law, the Administration shall enter into commitments to guarantee loans, debentures, payment of rentals or other amounts due under qualified contracts and other types of financial assistance and enter into commitments to guarantee sureties against loss pursuant to programs under this Act and the Small Business Investment Act of 1958, in the full amounts provided by law subject only to (A) the availability of qualified applications for such guarantees, and (B) limitations contained in appropriations Acts. Nothing in this paragraph authorizes the Administration to reduce or limit its authority to enter commitments for such guarantees to qualified applicants.".

DEVELOPMENT COMPANY DEBENTURES

SEC. 5. Section 503(a)(2) of the Small Business Investment Act of 1958 is amended by inserting before the period at the end thereof the following: ": *Provided*, That the Administration shall not decline to issue such guarantee when the ownership interests of the small business concern and the ownership interests of the property to be financed with the proceeds of a loan made pursuant to subsection (b)(1) are not identical because one or more of the following classes of relatives have an ownership interest in either the small business concern or the property: father, mother, son, daughter, wife, husband, brother, sister: *Provided further*, That the Administrator or his designee has determined on a case-by-case basis that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the small business concern".

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

TRANSFER OF CERTAIN SATELLITE SYSTEMS TO THE PRIVATE SECTOR

Mr. BAKER. Next, Mr. President, I propose to go to Senate Concurrent Resolution 67, Calendar Order No. 450, if the minority leader concurs.

Mr. BYRD. Mr. President, there is no objection.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The bill clerk read as follows:

A concurrent resolution (S. Con. Res. 67) expressing the sense of the Congress that it is not appropriate at this time to transfer ownership or management of any civil meteorological satellite system and associated ground system equipment to the private sector.

The Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 67) was agreed to.

The preamble was agreed to.

The concurrent resolution (S. Con. Res. 67) and the preamble are as follows:

S. CON. RES. 67

Whereas the Federal Government has traditionally provided weather forecasts which rely significantly upon data gathered by civil meteorological satellites;

Whereas within the United States the Federal Government is the principal user of data gathered by civil meteorological satellites;

Whereas the Federal Government has the responsibility for providing forecasts and warnings regarding severe weather in order to protect property and public safety;

Whereas the United States has engaged for over one hundred years in the free international exchange of meteorological data;

Whereas civil meteorological satellite systems and associated ground system equipment are essential components in ensuring the national security of the Nation, through their use in conjunction with satellites operated by the Department of Defense;

Whereas transfer to the private sector of ownership or management of any civil meteorological satellite system and associated ground system equipment would likely create a Government-subsidized monopoly and jeopardize the cost-efficiency and reliability of data gathered by such system and equipment;

Whereas it is highly unlikely that, under the current plan for transfer of civil meteorological satellites, any significant new commercial venture involving marketing of weather data would develop;

Whereas continued consideration of the transfer of civil meteorological satellite systems only serves to complicate and delay the pressing decision about the future of the civil land remote sensing satellite system; and

Whereas no satisfactory explanations or proposals have been advanced for the transfer of ownership or management of any civil meteorological satellite and associated ground system equipment to the private sector: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that it is not appropriate at this time to transfer ownership or management of any civil meteorological satellite system and associated ground system equipment to the private sector.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

THE CALENDAR

Mr. BAKER. Mr. President, I propose to go to Senate Concurrent Resolution 76.

Mr. BYRD. There is no objection.

Mr. BAKER. I make that request, Mr. President, that the Senate proceed to consider that resolution.

The PRESIDING OFFICER. Without objection. It is so ordered.

CONGRATULATING LECH WALESA ON WINNING THE NOBLE PEACE PRIZE

The concurrent resolution (S. Con. Res. 76) to congratulate Lech Walesa, leader of the independent Polish trade union Solidarity, on being awarded the 1983 Noble Peace Prize, was considered, and agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, is as follows:

S. CON. RES. 76

Whereas a secure and universal peace is a major objective of people of good will throughout the world;

Whereas one of the necessary conditions of achieving such peace is universal respect for and realization of internationally recognized human rights and fundamental freedoms;

Whereas article 23 of the Universal Declaration of Human Rights establishes the right of every individual to work, to free choice of employment, to just and favorable conditions of work, and to form and to joint trade unions for the protection of the interests of such individual;

Whereas the right to form and to join trade unions for the protection of the interest of the individual is a right guaranteed by the Helsinki Final Act, of which Poland is a signatory;

Whereas the independent Polish trade union Solidarity has for three years represented the interests of the Polish working class in a cooperative, moderate, and conciliatory fashion;

Whereas the trade union Solidarity preserved peaceful methods and intentions even in the face of persecution, imprisonment of union leaders, and government violence against the union;

Whereas the founder and elected leader of Solidarity, Lech Walesa, has had a fundamental role in establishing and leading Solidarity as a labor organization working for peaceful goals by peaceful means; and

Whereas Lech Walesa has been awarded the 1983 Nobel Peace Prize in recognition for inspiring all peace-loving people by attempting to solve the labor problems of Poland through negotiations and cooperation, and suffering imprisonment and unjust vilification as a result of these actions: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress of the United States of America—

(1) congratulates Lech Walesa as the recipient of the 1983 Nobel Peace Prize and commends the Norwegian Nobel Committee on this outstanding choice,

(2) requests the Government of Poland to facilitate the personal attendance at the award ceremony and to guarantee the safe return to Poland of Lech Walesa, and

(3) calls upon all peace-loving nations to continue to support the cause of free trade unions everywhere, to promote internationally recognized human rights and fundamental freedoms, and to help establish on the basis of freedom and mutual trust a secure and universal peace.

Mr. BAKER. I move to reconsider the vote by which the resolution was adopted.

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

The motion to lay on the table was agreed to.

FIFTIETH ANNIVERSARY OF JAMBOREE U.S.A.

Mr. BAKER. Mr. President, I ask unanimous consent to proceed to the consideration of Senate Resolution 240.

Mr. BYRD. I join the majority leader in that request.

The PRESIDING OFFICER. The resolution will be stated by title.

The bill clerk read as follows:

A Senate resolution (S. Res. 240) to commemorate the fiftieth anniversary of Jamboree U.S.A.

The Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, I hope the majority leader and the Presiding Officer can attend the Wheeling Jamboree. I must say I have listened to it many a lonely night as I have driven over the hills and through the valleys of West Virginia. I have to admit that I have been invited to go there and have not been able to accept the invitation up to now. I do hope to some day. The majority leader comes from Musicland, USA, where the Grand Ole Opry is located, to which I listened when I was a boy, doing a little courting on the side and also, from which Hee Haw emanates. I know that he has the same appreciation for country music, Western music, bluegrass music, and classical music that I have. I invite him to go sometime and I shall try to make every arrangement to see that the red carpet is laid out for him.

Mr. BAKER. Mr. President, I am grateful for that. The distinguished minority leader has been in my State and visited the Grand Ole Opry.

As a matter of fact, he was invited to be and was indeed a distinguished performer at that institution. Not only did he prove his prowess as a musician, but he also represented the Senate in a most admirable way. We all share his glory from that standpoint.

It is my supreme regret that I have no corresponding and compensating talent. All I can offer the minority leader is the opportunity to listen attentively to his musical performance and to do so wherever he may choose to perform.

Mr. BYRD. I thank the majority leader.

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

The resolution was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 240

Whereas country music is a unique American art form and dear to the hearts of millions of Americans;

Whereas Jamboree U.S.A. has promoted and preserved traditional country music in the American culture for fifty years;

Whereas Jamboree U.S.A. has encouraged country music artists since its inception in 1933;

Whereas Jamboree U.S.A. has delighted audiences and radio listeners for a half century with a live show every Saturday night; and

Whereas Jamboree U.S.A. has distinguished West Virginia by establishing an important capitol for the performance of country music: Now, therefore, be it

Resolved, That the Senate recognizes the dedication and vision of the producers of Jamboree U.S.A. in Wheeling, West Virginia, and pays tribute on the golden anniversary of this grand country music tradition.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the director of Jamboree U.S.A.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

RESOLUTION PLACED ON THE CALENDAR—SENATE RESOLUTION 243

Mr. BYRD. Mr. President, on behalf of myself and Mr. BAKER, I send to the desk a resolution authorizing the printing of additional copies of a Senate document. I ask in this instance that the resolution be placed on the Senate Calendar.

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

COMMENDATION OF EVE BALL

Mr. BAKER. Mr. President, I am now prepared to go to Senate Resolution 230, if the minority leader can clear that item.

Mr. BYRD. There is no objection, Mr. President.

Mr. BAKER. I thank the minority leader.

I ask the Chair to lay before the Senate, Senate Resolution 230.

The PRESIDING OFFICER. The resolution will be stated by title.

The bill clerk read as follows:

A resolution (S. Res. 230) to commend Eve Ball.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

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

The resolution (S. Res. 230) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 230

Whereas Eve Ball, of Ruidoso, New Mexico, is widely regarded as the "First Lady of Letters" of New Mexico;

Whereas the numerous awards and honors received by Eve Ball include the coveted Golden Spur and Golden Saddleman Awards of the Western Writers of America;

Whereas the writings of Eve Ball have contributed enormously to an American understanding and appreciation of the Apache Indian;

Whereas these and other historical pieces have been adopted as textbooks in the schools and universities of this Nation as well as Europe;

Whereas the commitment to the preservation of history compelled Eve Ball to persevere in pursuit of the facts upon which such historical pieces are based; and

Whereas at the age of ninety-four Miss Ball remains indefatigable in the zeal to recount history: Now therefore, be it

Resolved, That it is the sense of the Senate that the people of the United States owe Eve Ball a tremendous debt of gratitude for writings which enrich our knowledge of the Indian, the West, and those courageous persons who settled that vast land and for the invaluable legacy such writings will be for future generations.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Eve Ball.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

SENATE JOINT RESOLUTION 180, AMERICAN ENERGY AWARENESS WEEK, PLACED ON THE CALENDAR

Mr. BAKER. Mr. President, I next have a joint resolution which I am pleased to cosponsor with the minority leader, who is the principal sponsor, marking the 10th anniversary of the OPEC oil embargo and certain other recitations in respect thereto. I ask unanimous consent that the joint resolution be placed on the calendar.

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

The text of the joint resolution is as follows:

S.J. RES. 180

Whereas 1983 marks the 10th anniversary of the OPEC oil embargo which precipitated unprecedented inflation, a major recession and national vulnerability in energy supply; and

Whereas the decade gave rise to dramatic advances by individual industry and government in conservation and improved energy efficiency, expanded exploration for domestic reserves of oil and natural gas, a greater utilization of coal and nuclear energy, and an accelerated development of renewable resources and synthetic fuels; and

Whereas the momentum for change must be sustained to maintain and expand conservation and all indigenous energy resources and technologies to consolidate the advances of the last decade and assume a diversified and practical base of energy resources for the future; and

Whereas realization of any long-term gains depends to a great extent on the awareness of individuals and industry of the social, economic and security benefits resulting from conservation, a balanced, timely development of all our resources and the scientific and technological advances that have been the hallmark of American Industry; now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That the week of October 23, 1983 through October 29, 1983 is designated "American Energy Awareness Week"; and be it further

Resolved, That, American Energy Awareness Week is dedicated to stimulating the development of America's resources and technologies and energy conservation for a more secure and stable future for our nation; and that the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

Mr. BYRD. Mr. President, this year marks the 10th anniversary of the OPEC oil embargo which shook the very foundations of the world economy. That event awakened us to the extent to which America's economy was vulnerable to sudden disruptions in the supply of oil. We realized that the economic health of the United States was far too dependent upon a thin line of oil tankers from the Middle East. In response to the challenge raised by OPEC, a bipartisan national energy policy was passed by the Congress to address our dependence on imported oil, to promote the more efficient use of energy, and to develop and use our abundant domestic energy resources, such as coal.

Mr. President, we have made great strides since those dark days in 1973. In that year our oil imports were 6.2 million barrels per day. By 1977 our oil imports reached a peak of about 8.8 million barrels a day. So far, in 1983, our oil imports are about 5 million barrels a day, a 43-percent reduction. In 1973 the Nation used 562 million tons of coal. Last year our coal consumption was 702 million tons.

Despite the progress we have made, the United States and the world remain vulnerable to disruptions in oil supply as a result of political turmoil in the Middle East. The current situation in that region of the world should be a reminder to all of us that another disruption of oil supplies is not out of the question. Events in the Middle East, including the war between Iran and Iraq, could threaten supplies of oil from the Persian Gulf.

Mr. President, we need to continue our efforts to expand the use of coal and other domestic energy resources. We need to continue to use energy more efficiently. We must not allow ourselves to become complacent in the face of the current world oil situation. The relatively low world price of oil and the over abundance of oil are only temporary phenomena. A wrong turn of events in the Middle East can change the situation virtually overnight.

Therefore, Mr. President, I am introducing a resolution cosponsored by my distinguished colleague, Senator BAKER, to declare the week of October 23-29, the week of the OPEC oil embargo, "American Energy Awareness Week."

THE EXECUTIVE CALENDAR

Mr. BAKER. Now, Mr. President, the Executive Calendar on this side is cleared to act on nomination Nos. 312, 326, 337, 338, 339, and 340.

May I inquire of the minority leader if he is in a position to clear all or any part of those nominations at this time?

Mr. BYRD. Mr. President, on this side we are prepared to clear all of the nominations to which the majority leader has referred with the exception of the first nominee, Calendar No. 312.

Mr. BAKER. I thank the minority leader.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask that the Senate now go into executive session for the purpose of considering the nominations beginning with Calendar Order 326, and then including 337, 338, 339, and 340.

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

Mr. BAKER. Now, Mr. President, I ask unanimous consent that the nominees so described be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

The nominations confirmed en bloc are as follows:

DEPARTMENT OF COMMERCE

Clarence J. Brown, of Ohio, to be Deputy Secretary of Commerce.

UNITED NATIONS

Alan Lee Keyes, of California, to be the Representative of the United States of America on the Economic and Social Council of the United Nations, with the rank of Ambassador.

The following-named persons to be Representatives and Alternate Representatives of the United States of America to the Thirty-

eighth Session of the General Assembly of the United Nations:

Representatives

Jeane J. Kirkpatrick, of Maryland.

John Langeloth Loeb, Jr., of New York.

Joel Pritchard. U.S. Representative from the State of Washington.

Stephen J. Solarz, U.S. Representative from the State of New York.

Jose S. Sorzano, of Virginia.

Alternate Representatives

Constantine Nicholas Dombalis, of Virginia.

Alan Lee Keyes, of California.

Charles M. Lichenstein, of the District of Columbia.

William Courtney Sherman, of Virginia.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Hugh W. Foster, of California, to be U.S. alternate Executive Director of the International Bank for Reconstruction and Development for a term of 2 years.

ENVIRONMENTAL PROTECTION AGENCY

A. James Barnes, of the District of Columbia, to be an Assistant Administrator of the Environmental Protection Agency.

CLARENCE J. BROWN

● Mr. GLENN. Mr. President, I am pleased to support the nomination of a fellow Ohioan, Clarence J. Brown, to become Deputy Secretary of Commerce. The name is a familar one to the people of Ohio's Seventh Congressional District. The nominee's father, Clarence Brown, represented the area from 1938 until his death in 1965. In that year, Clarence Brown, better known as "Bud," was elected to fill the seat, a position he held until his unsuccessful gubernatorial campaign in 1982.

I relate this background because I want to emphasize that Bud Brown is a man who understands Congress. As a former member of the House Commerce and Government Operations Committee, he developed intimate familiarity with many of the complex issues that he will be expected to deal with daily in his new capacity. But Bud Brown brings more than a political background to this challenging assignment. As a newspaper and radio executive, he learned the businessman's view of commerce.

I know that I speak for all Ohioans when I wish Bud Brown well as he attempts to bring his broad background to bear in a way that promotes the smooth functioning of American commerce.●

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. BYRD. Mr. President, I repeat that tired old motion. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I say somewhat in jest that I made that same motion for more years than the minority leader has now made it.

Mr. President, I ask that the President be immediately notified that the Senate has given its consent to these nominations.

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

Mr. BAKER. Mr. President, before we return to legislative session, may I give first a moment of explanation for what I am about to do and then make an inquiry of the minority leader.

I have adhered lately to the policy of not taking up either a legislative item or an executive item until that item has first appeared in print on the regular calendars of the Senate for at least 1 day. That way, all Members will be aware of matters that are to be or might be considered for action by unanimous consent or otherwise.

I believe it is a good policy, and I intend to adhere to that policy in the future. However, with all policies there must be exceptions in exceptional cases, and I believe we have such a case here. The nomination of Donald P. Hodel of Oregon to be our representative to the 27th Session of the General Conference of the International Atomic Energy Agency is now in progress.

The Secretary is there, along with his Alternate Representatives, Mr. Richard P. Kennedy, Mr. Nunzio J. Palladino, and Mr. Richard Salisbury.

Mr. President, when I learned that, through an error, these nominations were not delivered to the officials of the Senate in time to reach the calendar for today, through an inadvertence, I initiated on this side a hotline inquiry to our Members to see if there was any objection to proceeding with the confirmation of these nominations, notwithstanding the policy I have just described, and there was none.

I am prepared to clear this matter on this side, and I am prepared to make this exception because of the extraordinary circumstances.

However, I wish to say that this in no way diminishes my determination to see that nominations and legislative items be on the calendar in printed form before they are addressed to the Senate on motion or request of the leadership on this side.

Now the inquiry: Mr. President, having made that concession, so to speak, I wonder if the minority leader would be in a position to clear this nomination.

Mr. BYRD. Mr. President, all nominations have been cleared.

Mr. BAKER. I thank the minority leader.

INTERNATIONAL ATOMIC ENERGY AGENCY

Mr. BAKER. Mr. President, I ask that the Senate now proceed to the consideration of four nominations, en bloc, to be the representative and alternative representatives of the United States of America to the 27th session of the General Conference of the International Atomic Energy Agency.

There being no objection, the Senate proceeded to consider the nominations which had been reported earlier today by the Committee on Foreign Relations.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

REPRESENTATIVE

Donald P. Hodel, of Oregon.

ALTERNATE REPRESENTATIVES

Richad T. Kennedy, of the District of Columbia.

Nunzio J. Palladino, of Pennsylvania.

Richard Salisbury Williamson, of Virginia.

Mr. BAKER. Mr. President, I ask unanimous consent that it be in order to move en bloc to reconsider the vote by which the nominations were confirmed en bloc.

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

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

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask that the President be immediately notified that the Senate has given its consent to these nominations.

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

LEGISLATIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate return to legislative session.

There being no objection, the Senate resumed the consideration of legislative business.

DEFENSE PRODUCTION ACT EXTENSION

Mr. BAKER. Mr. President, I have one other matter of a legislative character. The Defense Production Act extension has now been cleared for action on this side with an amendment to the message from the House on S. 1852.

I inquire of the minority leader if he would object if I asked the Senate to proceed to the consideration of that matter at this time.

Mr. BYRD. Mr. President, I have no objection. It is my understanding that the amendment is the text of S. 1852 as it originally passed the Senate.

Mr. BAKER. Yes, I believe that is correct.

Mr. BYRD. In which case, there is no objection.

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1852.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1852) entitled "An Act to extend the expiration date of the Defense Production Act of 1950," do pass with the following amendment:

Strike out all after the enacting clause, and insert: That the first sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking out "September 30, 1983" and inserting in lieu thereof "September 30, 1985".

SEC. 2. (a) Section 301(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2091(a)) is amended by adding at the end thereof the following:

"(3) A guarantee may be entered into under this section only if the President determines that—

"(A) the guaranteed contract or operation is for a material, or the performance of a service, that is essential to the national defense;

"(B) without the guarantee, United States industry cannot reasonably be expected to provide the capability for the needed material or service in a timely manner;

"(C) the guarantee is the most cost-effective, expedient, and practical alternative for meeting the need;

"(D) the United States national defense demand is equal to or greater than the output of domestic industrial capability which is reasonably determined to be available for national defense, including the output to be established through the guarantee; and

"(E) the material or service of the guaranteed contract has been identified in a specification agreed to by the United States and the contractor.".

(b) Section 302 of such Act (50 U.S.C. App. 2092) is amended by inserting before the period at the end of the second sentence the following: ", and (3) no such loan may be made unless the President determines that—

"(A) the loan is for the expansion of capacity, the development of a technological process, or the production of materials essential to the national defense;

"(B) without the loan, United States industry cannot reasonably be expected to provide the needed capacity, technological processes or materials in a timely manner;

"(C) the loan is the most cost-effective, expedient, and practical alternative method for meeting the need;

"(D) the United States national defense demand is equal to or greater than domestic industrial capability which is reasonably determined to be available for national defense, including the output to be established through the loan; and

"(E) the material or service has been identified in a specification agreed to by the United States and the borrower".

(c) Section 303(a) of such Act (50 U.S.C App. 2093(a)) is amended by adding at the end thereof the following: "The President may not execute a contract under this subsection unless he determines that—

"(1) the mineral, metal, or material is essential to the national defense;

"(2) without Presidential action under authority of this section, United States industry cannot reasonably be expected to provide the capability for the needed mineral, metal, or material in a timely manner;

"(3) purchases, purchase commitments, or other action pursuant to this section are the most cost-effective, expedient, and practical alternative method for meeting the need;

"(4) the United States national defense demand for the mineral, metal, or material is equal to or greater than the output of domestic industrial capability which is reasonably determined to be available for national defense, including the output to be established through the purchase, purchase commitment, or other action; and

"(5) the mineral, metal or material has been identified in a specification agreed to by the United States and the contractor.".

SEC. 3. (a) Section 301(e)(1) of the Defense Production Act of 1950 (50 U.S.C. App. 2091(e)(1)) is amended to read as follows:

"((e)(1) Except during periods of national emergency declared by the Congress or the President, a guarantee may be made under this section only if the industrial resource shortfall which such guarantee is intended to correct has been identified in the budget, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of subsection (a)(3) of this section.

If the making of any guarantee or guarantees to correct an industrial resource shortfall would cause the aggregate outstanding amount of all guarantees for such industrial resource shortfall to exceed $38,000,000, any such guarantee or guarantees may be made only if specifically authorized by law.

(b) Section 302(2) of such Act (50 U.S.C. App. 2092(2)) is amended to read as follows: "(2) no such loan may be made under this section, except during periods of national emergency declared by the Congress or the President, unless the industrial resource shortfall which such loan is intended to correct has been identified in the budget, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of paragraph (3) of this section. If the making of any loan or loans to correct an industrial resource shortfall would cause the aggregate outstanding amount of all loans for such industrial resource shortfall to exceed $48,000,000, any such loan or loans may be made only if specifically authorized by law.

(c) Section 303(a) of such Act (50 U.S.C. App. 2093(a)) is amended by adding at the end thereof the following: "Except during periods of national emergency declared by the President or the Congress, the President shall take no action under authority of this section unless the industrial resource shortfall which such action is intended to correct has been identified in the budget, or amendment thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of the preceding sentence. If the taking of any action or actions under authority of this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed $48,000,000, any such action or actions may be taken only if specifically authorized by law.

AMENDMENT NO. 2322

Mr. BAKER. Mr. President, I move that the Senate concur in the amendment of the House with an amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Tennessee (Mr. BAKER) proposes an amendment numbered 2322.

Mr. BAKER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That the first sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking out "September 30, 1983" and inserting in lieu thereof "September 30, 1988".

SEC. 2. (a) Section 301(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2091(a)) is amended by adding at the end thereof the following:

"(3) A guarantee may be entered into under this section only if the President determines that—

"(A) the guaranteed contract or operation is for a material, or the performance of a service, that is essential to the national defense;

"(B) without the guarantee, United States industry cannot reasonably be expected to provide the capability for the needed material or service in a timely manner;

"(C) the guarantee is the most cost-effective, expedient, and practical alternative for meeting the need;

"(D) the United States national defense demand is equal to or greater than the output of domestic industrial capability which is reasonably determined to be available for national defense, including the output to be established through the guarantee; and

"(E) the material or service of the guaranteed contract has been identified in a specification agreed to by the United States and the contractor.".

(b) Section 302 of such Act (50 U.S.C. App. 2092) is amended by inserting before the period at the end of the second sentence the following: ", and (3) no such loan may be made unless the President determines that—

"(A) the loan is for the expansion of capacity, the development of a technological process, or the production of materials essential to the national defense;

"(B) without the loan, United States industry cannot reasonably be expected to provide the needed capacity, technological processes or materials in a timely manner;

"(C) the loan is the most cost-effective, expedient, and practical alternative method for meeting the need;

"(D) the United States national defense demand is equal to or greater than domestic industrial capability which is reasonably determined to be available for national defense, including the output to be established through the loan; and

"(E) the material or service has been identified in a specification agreed to by the United States and the borrower".

(c) Section 303(a) of such Act (50 U.S.C. App. 2093(a)) is amended by adding at the end thereof the following: "The President may not execute a contract under this subsection unless he determines that—

"(1) the mineral, metal, or material is essential to the national defense;

"(2) without Presidential action under authority of this section, United States industry cannot reasonably be expected to provide the capability for the needed mineral, metal, or material in a timely manner;

"(3) purchases, purchase commitments, or other action pursuant to this section are the most cost-effective, expedient, and practical alternative method for meeting the need;

"(4) the United States national defense demand for the mineral, metal, or material is equal to or greater than the output of domestic industrial capability which is reasonably determined to be available for national defense, including the output to be established through the purchase, purchase commitment, or other action; and

"(5) the mineral, metal or material has been identified in a specification agreed to by the United States and the contractor.".

SEC. 3. (a) Section 301(e)(1) of the Defense Production Act of 1950 (50 U.S.C. App. 2091(e)(1)) is amended to read as follows:

"(e)(1) Except during periods of national emergency declared by the Congress or the President, a guarantee may be made under this section only if the industrial resource shortfall which such guarantee is intended to correct has been identified in the budget, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of subsection (a)(3) of this section, and if guarantees to correct such industrial resource shortfall have been authorized by law.".

(b) Section 302(2) of such Act (50 U.S.C. App. 2092(2)) is amended to read as follows: "(2) no such loan may be made under this section, except during periods of national emergency declared by the Congress or the President, unless the industrial resource shortfall which such loan is intended to correct has been identified in the budget, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of paragraph (3) of this section, and unless such loans to correct such industrial resource shortfall have been authorized by law".

(c) Section 303(a) of such Act (50 U.S.C. App. 2093(a)) is amended by adding at the end thereof the following: "Except during periods of national emergency declared by the President or the Congress, the President shall take no action under authority of this section unless the industrial resource shortfall which such action is intended to correct has been identified in the budget, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of the preceding sentence, and unless actions to correct such industrial resource shortfall have been authorized by law.".

Mr. BAKER. Mr. President, as the minority leader has indicated, I believe this amendment is the Senate bill, to be substituted for the text.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee.

The motion was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

ORDER FOR RECORD TO REMAIN OPEN

Mr. BAKER. Mr. President, I ask unanimous consent that the RECORD remain open today until the hour of 5 p.m. so Senators may submit bills and statements.

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

IN TRIBUTE TO EDWIN D. ESHLEMAN

Mr. HEINZ. Mr. President, I am proud to report that my colleagues have chosen to honor a close friend and constituent from Pennsylvania for a lifetime of devoted service by naming the U.S. Post Office in Lancaster, Pa., the "Edwin D. Eshleman Post Office."

Born in Lancaster, Pa., on December 4, 1920, Edwin Eshleman has spent his life in public service to his fellow man. He graduated from Franklin and Marshall College with a degree in political science and continued his education by enrolling in the graduate school at Temple University. After the outbreak of World War II, he attended the Coast Guard's Officer Candidate School and eventually served 18 months overseas. As a result of his distinguished service as a lieutenant of a landing ship, he was awarded a commendation for conduct.

Following the war, Edwin Eshleman served as a teacher in the public schools in his home State of Pennsylvania for several years. Upon leaving teaching, he directed the Pennsylvania Bureau of County Audits and, soon after, became an executive assistant in the Pennsylvania Department of Treasury.

By 1955, Edwin Eshleman was about to embark on what would ultimately be a long and illustrious legislative career. In that year, he was elected to the first of six consecutive terms to the Pennsylvania State Assembly. It was during this period that his prominence as an expert in the field of education rose. As chairman of the House Education Committee, assistant Republican leader, and finally, majority whip, he used his influence and expertise to shape, direct, and refine Pennsylvania's education programs.

On November 8, 1966, Edwin Eshleman was elected to the first of a total of six successive terms in the U.S. House of Representatives. Using his tremendous knowledge of education issues, he secured an assignment on the House Education and Labor Committee, later becoming the ranking Republican on the Select Education Subcommittee. In 1975, he retired from public service to return to Lancaster County where, to our benefit, he has continued to be active in numerous civic affairs.

Mr. President, Edwin D. Eshleman served Pennsylvania and the Nation at the local, State, and Federal levels with unsurpassed vigor and devotion. During his years in Congress, he became a recognized spokesman on education issues and a prime mover in the constant effort to improve the Nation's system of education. As a friend and a public servant, Edwin Eshleman demonstrated his desire to improve the quality of life for all Americans. The tribute we have bestowed upon him by renaming the Lancaster Post Office in his honor is our attempt to thank him for his dedication, loyalty, and caring. We will long remember the contributions that this generous public servant made while in office.

ARMS CONTROL WHITE PAPER BY SENATOR BOSCHWITZ

Mr. BAKER. Mr. President, the public's perception of the issue of arms control becomes more important every day as our negotiators try to work out agreements with the Soviets on a number of fronts. Therefore, public understanding of the intracacies of this complex issue becomes crucial.

For that reason I would like to include in the RECORD a white paper written by Senator RUDY BOSCHWITZ, I know that Senator BOSCHWITZ did the research and the writing of this work completely himself. The result is a concise and understandable survey of our negotiations. I think it is one of the more thoughtful treatments of the subject I have seen.

I ask unanimous consent that it be included in the RECORD.

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

NUCLEAR ARMS: THE PROBLEM AND THE PROMISE

I. INTRODUCTION

Nuclear weapons are the problem of the age . . . perhaps of all ages. Nothing facing us is more important than controlling them.

I hope you'll read this newsletter. It's the most important one I've ever written. It concerns nuclear weapons and their control. I've organized it so it reads quickly and understandably. It summarizes my views and conclusions on what is truly the most serious problem and the highest challenge of our age.

After a brief look at the historical environment of arms control, I discuss our relationship with the Soviets, how we negotiate with them, a review of earlier agreements, and some of the problems in dealing with the Soviet society.

Second, I discuss the legacy of SALT I and SALT II, their value, shortcomings and lessons.

Third, I supply an overview of the comparative power of the superpowers.

Then I write a "Conclusion and Hope".

I suppose much of my perspective is shaped by my life and also my father. He had great insight into world events, and we

spent a lot of time talking about them. He lived through what for many people is merely an intellectual exercise in political philosophy or historical analysis. If he were living, he would be 105 (I was a late arrival!) He was 40 at the end of World War I, faced the tyranny of Hitler, arrived in the United States with his family in the midst of the Depression (I was 5), and then came World War II in which much of our family was lost and war was certainly a threat to the continuation of the democratic form of civilization endangered.

But nuclear weapons threaten the continuation of the human experience.

As a Senator, I often feel like a fireman: I respond to emergencies and I travel a lot. The emergencies keep coming up and demand my attention—the budget, environmental problems, farms, education, Central America, defense, taxes, withholding, Social Security, the Korean Airline tragedy, and on and on, plus about 600 letters a day and endless meetings. And then on at least two weekends out of three meetings. And then on at least two weekends out of three (36-40 times a year), I travel back and forth to Minnesota.

So it's easy to lose one's focus, and be caught in the swirl of events and the busy life of the Senate. But I've tried (with mixed success) not to let that happen and this paper reflects that effort in the area of nuclear weapons.

II. SOME EARLY CONCLUSIONS AND PROBLEMS

In the emotionally charged debate over the control of nuclear weapons, some people almost seem to trade on fear. Horrible pictures of death and destruction are outlined and from there the whole subject becomes extremely emotional. Of course all those terrible things are possible, but I believe it is highly unlikely that we or the Russians will ever use nuclear weapons against one another. In fact, I think the chances are remote. Both sides are simply too powerful. If one side unleashes an attack, the other—even after absorbing that attack—could still respond with awesome force. Ironically, the enormous power of both sides creates a standoff and stability.

But we surely have enough power, and so do they. So say the Nuclear Freeze proponents, and I agree (more about that later). Building more weapons adds little and certainly doesn't reduce threats . . . though they may add to stability and the ability to negotiate (more about that later, too). On the other hand, more weapons could add to the possibility of an accident or mistake, and that indeed has to be guarded against.

While the use of nuclear weapons by either of the superpowers is remote, the other half of the problem is nuclear proliferation: That is, that other countries have or are developing the technology to build nuclear weapons. The "Nuclear Club" now includes England, France, India, China, and probably Israel and South Africa. On the way to joining is Pakistan (perhaps Brazil, Argentina, South Korea and Taiwan). Many other developed countries could join the club if they wished.

The technology of making nuclear weapons is proliferating. Colonel Qadhafi of Libya has a current outstanding offer to buy a bomb, the technology, or the technicians. Iraq was on the way to going nuclear before the Israelis destroyed their reactor (for which the Israelis were roundly criticized, though they probably should have been thanked).

If proliferation continues, it is not unlikely that in our lifetime a nuclear weapon will be used (can you imagine what would happen if one of the sides of the Iran-Iraq war had a bomb, or if Colonel Qadhafi gets hold of one). While the use of a weapon in this way would be horrible, indeed, it is unlikely that all of civilization would be threatened.

Hopefully it won't happen. If it does, perhaps it will finally compel us to halt such proliferation and negotiate the number of nuclear weapons down to a level where civilization is not threatened by their presence.

Is is reasonable or realistic to assume that we will negotiate away all nuclear weapons? Probably not, but removing a large portion of the threat through negotiations is entirely possible.

What the future holds we can't chart. My Dad would agree. For the the first 35 years of his life there were only steam engines and horses. When he died in 1974 (at 95) much had changed—mostly for the better—but the enormity of the threat between the superpowers had not been dealt with . . . and it must be.

III. SOME BACKGROUND, BASIC FACTS AND PRINCIPLES

This section will have the following subsections:

A. A Look at History,

B. How Are We Presently Negotiating with the Russians,

C. A Short Review of Earlier Agreements and Negotiations,

D. Some Recent Notes of Optimism,

E. The Russian Society and Verification.

A. A look at history

Sadly, human history is in a large part the chronicling of armed conflicts. The periods between wars get comparatively scant attention. A clear lesson of history is that strong nations are seldom attacked. Another lesson is that a balance of power between nations or alliances mostly keeps the peace (as it did in Europe for the century following Napoleon).

But in Europe in August 1914 a rough balance of power existed between the alliance made up of England, France, and Russian and the other alliance composed of Germany and the Austro-Hungarian Empire. Yet, these great powers still stumbled into war despite the considerable military power they had amassed for the expressed purpose of preventing war.

The course of events might have been quite different if prior to 1914 European leaders had relied not only on amassing armaments but also on diplomatic efforts, such as disarmament negotiations, to lessen tensions among them.

Neither arms alone nor negotiations alone have been sufficient to keep the peace. After World War I, political leaders shifted the focus of keeping the peace from military preparedness to international agreements and disarmament. The Kellogg-Briand Pact, signed by virtually all nations, condemned war and called for peaceful settlement of disputes. In the 1930s European leaders, in particular England's Neville Chamberlain, chose to negotiate and appease Adolf Hitler rather than confront him. As a diversion Hitler himself even convened a disarmament conference in Geneva in the '30s. Chamberlain and the free world stood by and watched the Nazis seize large portions of central Europe in the hope that such a policy would satisfy Hitler and prevent war. As we now know, it did exactly the opposite.

I was a young boy in Germany back in those days. Fortunately, my father read Hitler's intentions far more accurately than did the British Prime Minister. My Dad made his decision to leave Germany the very day Hitler came to power. We left several months later. Chamberlain should have listened to Churchill (or my father!) but, instead, history repeated itself with a war of unmatched horrors.

My point in citing the examples of World War I and World War II, ones which appear on the surface to be contradictory, is that those of us who care about keeping the peace (and who among us is not?) can draw a lesson from these two examples. It is this: Maintaining the military balance so as to deter a potential attack does not contradict or impede disarmament efforts. They complement one another. The European powers in 1914 had plenty of weapons but weren't talking to one another. On the other hand, the democracies could only have gotten Hitler to listen if they had combined diplomatic efforts with military preparedness.

Winston Churchill said it best: "We arm to parley."

George Washington reflected the same thought nearly 200 years ago: "To be prepared for war is one of the most effectual means of preserving peace."

One October 6, 1938, after Hitler's invasion of Czechoslovakia, Neville Chamberlain said in the House of Commons: "Our past experience has shown us only too clearly that weakness in armed strength means weakness in diplomacy."

One final point must be made. Some people in our own country are very distrustful of the intentions of the United States. I am not. For a 25-year period following World War II we had an undisputed nuclear advantage of enormous force. Indeed for a good share of that period we had a nuclear weapons monopoly. Seldom in human history has one country had overwhelming superiority and used it to keep the peace rather than to gain hegemony over others. So I trust our intentions both on the basis of history and also from what I have seen and learned here in Washington. I am sometimes critical of my government's actions, but I trust it.

Would the Russians have kept the peace if they had such a monopoly or overwhelming force? Looking at how they treat stray airliners, their own people, their neighbors—Poland, Hungary, Czechoslovakia, Afghanistan—and their extensive support of world terrorism wherever it appears, I wouldn't be comfortable in a world where Russia was the dominant nuclear force.

B. How we're presently negotiating with the Russians

Of course we have many contacts with the Russians in trade, cultural exchanges and the like, but in addition to normal diplomatic relations we also deal with them in the following four specific negotiations:

1. *The Strategic Arms Reduction Talks (START).* The START talks (in Geneva) replaced the SALT talks (Strategic Arms Limitation Talks) because of President Reagan's desire to shift the emphasis from limiting arms to reducing arms. He named a retired Army General, Edward Rowney, a man with years of experience in arms control (and who also happens to speak fluent Russian) as chief START negotiator. The START talks include those weapons that have intercontinental range. They are also the most powerful and destructive weapons (more details later).

2. *The Intermediate Nuclear Force (INF) Talks.* The INF Talks were initiated by

President Reagan in November 1981, and are also being conducted in Geneva (in fact, in the same building as the START talks). Our negotiator is 76-year-old Paul Nitze, a veteran of the SALT I negotiations, who has been involved in disarmament negotiations longer than anyone else (under Democratic and Republican Administrations) and is perhaps the most highly regarded person in the business. The INF talks involve so-called theatre nuclear weapons, those with shorter ranges than intercontinental weapons and concern principally Europe. The INF talks involve our proposed deployment of Pershing missiles and ground-launched cruise missiles in Europe and the 360 existing SS-20 missiles. The Russians put in one additional SS-20 missile every 5 days.

3. *The Mutual and Balanced Force Reduction Talks (MBFR).* These have been going on since 1973 without much forward progress. The 30th round of talks has just been completed in Vienna. These talks involve conventional weapons and are conducted on our side by Ambassador Morton Abramowitz, a veteran diplomat. Despite the fact that there may not have been much progress, it is important to keep contacts going at all levels. Surprises sometimes happen (or are kept from happening).

4. *The Helsinki Talks.* The Helsinki Agreements are concerned primarily with human rights and are being ably conducted by Max Kampelman, a Minnesotan, long a human rights activist, and an experienced and skilled negotiator. These talks include some elements of arms control and have recently been concluded (at least for now) on a successful and optimistic note.

C. A short review of earlier agreements and negotiations

The number of negotiations in progress and treaties that have been signed will probably surprise you. They certainly indicate the usefulness of continuing such negotiations and being bold and aggressive in our approach.

Every President since Harry Truman has sought a dialog with the Soviet Union and every President (except Harry) succeeded in reaching an agreement. Interestingly that ardent cold warrior, Richard Nixon, was the most prolific negotiator.

In 1946 Truman submitted a proposal called the Baruch Plan (named for its originator, Bernard Baruch) proposed international control over nuclear weapons and energy. The American nuclear monopoly would have been shared with the world for peaceful purposes. The Russians rejected the idea.

The treaties we save entered into with the Russians since then include:

The Antarctic Treaty (1959) pledged that the Antarctic would be used solely for peaceful purposes.

2. The *Limited Test Ban Treaty* (1983) banned the testing of nuclear weapons in the atmosphere, underwater and in outer space (the treaty was concluded within a year of the cold war's coldest moment—the Cuban Missile Crises—and demonstrates that confrontation with the Russians does not prevent negotiations, an important lesson after the recent Korean Airliner incident).

3. The *"Hot Line" Modernization Agreement* (1963) to establish a direct communications link to prevent war by misunderstanding or poor communications.

4. *The "Hot Line" Agreement* (1971) that established satellite contact and multiple terminals in each country. *Treaty* (1967) which bans the placing of nuclear weapons in outer space.

6. *Nuclear Non-Proliferation Treaty of 1968.* Under this treaty, to which 119 nations, including the U.S. and USSR, signed, the nuclear "have not" nations pledge not to obtain nuclear weapons, and the "have" countries promise to supply nuclear technology for peaceful purposes. Secondly the U.S. and the Soviet Union, pledged to pursue good faith negotiations toward nuclear disarmament (that led to SALT I which was postponed initially due to the Soviet invasion of Czechoslovakia in 1968, just as the Russian invasion of Afghanistan in 1979 scuttled President Carter's attempt to get the Senate to ratify SALT II).

7. *SALT I.*

8. SALT II are both discussed in detail later.

9. *The Seabeds Arms Control* (1971) *Treaty,* which prohibits placing nuclear weapons on the ocean floor.

10. *The "Accident Measures" Agreement* (1971) to prevent war in case of the accidental detonation of a nuclear weapon.

11 *The Anti-Ballistic Missile (ABM) Treaty* (1974) perhaps the most significant one negotiated by Nixon and signed in the height of Watergate a month before he resigned, it prevented the arms race from extending into defensive weapons (although unfortunately a major violation by the Russians has been recently reported).

12. *The Vladivlastok Accords* (1975) setting numerical limits on weapons.

In addition, the Senate has not ratified three treaties that have been negotiated: SALT II (due to the Russian invasion of Afghanistan), The Threshold Test Ban Treaty, and The Peaceful Nuclear Explosions Treaty. Further negotiations on verification on the latter two agreements are proceeding.

All in all we've done a lot of negotiating with the Russians, (more probably than you realized). They have been tough negotiations. Almost without exception it has been our country that has taken the lead and made the initial and boldest steps. Negotiations can succeed and must be continued.

(This section on optimism was written before the Korean airliner—with 269 aboard including 51 Americans—was callously and brutally shot from the skies. The President was right in saying that this cruel act should not interrupt arms control negotiations. Interestingly, one of the arms control negotiators who has read this newsletter before it was printed said that progress is sometimes made after the most difficult moments. By the airliner depicts again for us so very graphically what a tough, determined and ruthless foe we face.)

D. Some recent notes of optimism

An election or a change of leadership always causes observers to watch carefully for a policy change. the Harvard Nuclear Study Group in an article entitled "The Realities of Arms Control" (the Atlantic Monthly, June 1983) noted: "Andropov came into office last November at the age of 68. With only a few years to leave his mark, he may wish to move faster in arms-control negotiations."

There have been some recent signs that perhaps are hopeful and could be notes of optimism (in the start-stop business of negotiating with the Russians one has to be cautious about being too optimistic).

Not long ago Yuri Andropov—about six months after assuming power—suggested that in discussing arms controls we count warheads, not launchers (the U.S. made this suggestion some time ago). Since launchers can be verified by satellite (by and large), but warheads presently cannot, perhaps Chairman Andropov has in mind permitting other forms of verification. That could be a breakthrough.

Shortly after that the USSR said they might be amenable to having the International Atomic Energy Agency inspect their nuclear power producing facilities. That kind of inspection has never even been hinted at before.

Then Ambassador Max Kampelman at the Helsinki Talks suggested on-site inspection of Soviet military ground maneuvers anywhere west of the Ural Mountains (1,200 miles inside Russia) when more than 25,000 troops were involved. This was not initially rejected.

Several days after the industrial nations had a successful meeting at Williamsburg the Kremlin proffered what Time magazine called "a sudden and surprising olive branch." The wartime U.S. Ambassador to Moscow, Averell Harriman, met Andropov for 80 minutes and quoted him as saying that "the Soviet Union is ready and interested in searching for joint initiatives, which would make the present situation easier." There was no way of knowing whether Andropov's conciliatory tone "was prompted by Williamsburg, or whether it was genuine," said Time.

But there are many discordant notes. One was reported by Jack Anderson in the Washington Post on April 9, 1983. The Soviet Union was withdrawing from the World Psychiatric Association probably to avoid being expelled or suspended for its practice of imprisoning dissidents as mentally ill. As Yuri Andropov extends olive branches, it must be kept in mind that the pioneered the loathsome practice of imprisoning opponents in mental wards. I don't want to appear cynical—just cautious, but think what we Americans would feel about a person who did this in our society.

It is these kinds of hints and subtle movements that have often been indications of Russian intent. The bold and broad proposals have always come from our side.

In any case some recent events do leave room for guarded optimism. The Korean airliner doesn't wipe out all optimism, but re-emphasizes the need for great caution.

E. The Russian society and verification

Russia is a very closed society. We never saw a picture of Mrs. Andropov. Russian leaders even keep secrets from one another. During the SALT I negotiations one of the Russian generals on their negotiating team told his American military counterpart not to discuss certain weapon systems in the presence of Russian civilian members of their negotiating team. The generals hadn't even told the civilian negotiators about all of their own weapons! That's a closed society!

The normal Russian could not decide one morning to make a trip the distance of the Twin Cities to Duluth. They would have to check with the authorities and use their internal passport. Most Russians have never made a trip that far from home in their lifetime.

The Russians build walls. They build fences. They lay mine fields and build towers to keep their people in.

I remember meeting a Minnesotan at the State Fair who was marrying a Finnish girl. He went over there to meet the in-laws. They lived near the border, and even there—in the northern reaches—it was

fenced, mined and watched from towers. He was horrified. The Russians don't trust their own people. There truly is an "Iron Curtain" around them.

A few years ago the Cuban guards were taken from the front of the Peruvian Embassy in Havana. Within hours 17,000 Cubans crowded the Embassy grounds seeking asylum.

When President Reagan recently appeared in Minneapolis, several thousand people demonstrated—principally about the nuclear freeze. How different it would be in Russia. Two days earlier an article entitled "Peace Activities Gets 3 Years" appeared in the Minneapolis Tribune. It said: "A Siberian who circulated a petition calling on the United States and the Soviet Union to scrap nuclear weapons has been convicted of 'anti-Soviet slander' and sentenced to three years in prison."

I am neither a hardliner nor the last of the cold warriors. I want to negotiate with the Russians and I want a verifiable agreement. But I'm cautious. In our open society with a free press it's hard to keep a secret. Verification is easy. Not so in the Soviet Union and this always must be factored into the equation.

IV. SALT I AND SALT II—THE '70S

The 70's were the decade of SALT negotiations (Strategic Arms Limitation Treaty).

The SALT I got underway in 1969 and was signed by President Nixon in 1972. It was considered an interim agreement that would lead to a fuller negotiation (SALT II). SALT I froze existing levels of strategic offensive weapons, namely, ground-launched intercontinental missiles (ICBM) and submarine-launched missiles (SLBM). This freeze preserved a Soviet numerical advantage in ballistic missiles to 2,347 to 1,710. This was not a freeze on warheads or the actual missiles themselves. Rather it froze the launchers for the missiles. Launchers are large and can be verified by satellite. Furthermore, the agreement did not prohibit modernization of existing launchers (except for certain size limitations). In short, the SALT I agreement did not reduce nuclear weaponry; it merely ratified the existing balance.

The other SALT I agreement was the *Anti-Ballistic Missile Treaty*, referred to as the ABM Treaty. Under its present terms both the U.S. and the USSR are allowed only one site of 100 launchers for defensive anti-missile-missiles, an insignificant number given the number of offensive warheads possessed by both sides. The ABM Treaty was a solid achievement for arms control. It halted a potential defensive arms race between the two superpowers (but regretfully it has been recently violated by the Russians).

After SALT I the Nixon, Ford, and Carter Administrations pushed ahead with SALT II. In 1979 an agreement was signed with the Russians, but the Russian invasion of Afghanistan ended any chance for Senate ratification. Unlike SALT I the new agreement established equal ceilings on the number of strategic launchers for both sides—2,400 initially, and then down to 2,250 a year later. For the first time heavy bombers were included in these ceilings. There was subceiling (within the overall ceiling) of 820 on the number of launchers for ICBMs with multiple-independent re-entry vehicles (MIRVs). MIRVs are multiple warheads carried by a single missile. The missile acts as a carrying agent to get the warheads to the vicinity of their targets. Then each warhead has its own separate target and is separately programmed to hit it. Both the U.S. and the Soviet Union added MIRVs to their arsenals during the 1970s. Before that ballistic missiles each carried single warheads. With MIRVs it has been possible for both sides to increase the number of nuclear warheads without increasing the number of missiles. MIRVs are among the most destabilizing elements in nuclear weaponry (as I'll describe later).

SALT II also focused on limiting launchers, not warheads. Although a limit was established on the number of warheads a single ICBM could carry (10) and on the number a single submarine launched ballistic missile (SLBM) could carry (14), no direct limits were put on the total number of warheads each side could possess. Each side was allowed to deploy one new type of "light" missile (as defined by the Treaty). The MX falls under the definition of a "light" missile. So the Russians (despite their present protests) alway expected us to update our ground-launched missiles and develop the MX. The failure of SALT II to actully reduce nuclear weapons was one of the factors which made the Senate suspicious of the Treaty even before President Carter withdrew it from the Senate after the Soviet invasion of Afghanistan. Objections were heard from the most liberal to the most conservative sources.

Their concern was justified. Since 1972 the Soviets have legally introduced: three new ICBM types (the SS-17, the SS-18, and SS-19, all MIRVed and all more accurate than previous models); four new SLBMs (the SS-N-8, the SS-N-17, SS-N-18 and the SS-N-20, the latter two with MIRV capability); three new types of ballistic submarines (including the Typhoon); and the Backfire bomber.

The U.S. did not stand still either during the decade of SALT. We introduced one new type of submarine missile (the Trident) and a new variant of an existing Minuteman missile, the Minuteman III, with MIRVs and a more accurate MARK 12A warhead. However, we did unilaterally slow or cancel a number of strategic programs during the '70s in the hope that the Russians would respond and restrain their massive buildup. The cruise missile program was delayed. So was the new Trident nuclear submarine. Development of the MX was slowed (indeed our only ICBM production line was closed down.) And President Carter cancelled the B-1 bomber, and mothballed many B-52s. None of these steps was reciprocated by the Soviets in any way. As Carter's Secretary of Defense, Harold Brown, stated: "We have found that when we build weapons, they build; when we stop, they nevertheless continue to build . . ."

But the most glaring deficiency in the SALT process was its failure to halt the growth of the numbers of warheads. In 1970 the U.S. had 3,742 warheads, the Soviets 1,861. By January 1983 these numbers had been increased to 9,662 for the U.S. and about 8,300 for the Soviets. Not much of a victory for arms reduction! And the 3,080 warheads on top of the Soviets new SS-18 missile are so large that they alone pack more punch (megatonnage) than the whole U.S. arsenal of 9,662!

I do not mean to suggest by these criticisms of SALT that the whole effort did not produce some results. The ABM Treaty was a successful agreement. The SALT I freeze was not a bad place to start, and SALT II had the additional useful provision of equal ceilings on the number of launchers for both sides, which served to emphasize the principle of equality. Also SALT II includes a prohibition against either side interfering with the other's "national technical means" of verifying the agreement (surveillance satellites, electronic listening posts, etc.). Even so, any fair analysis of the achievements of strategic arms control in the 1970s would have to conclude that the challenge of actually reducing nuclear weapons and achieving stability remains unanswered. The 1980s had to be better.

V. AN OVERVIEW OF COMPARATIVE POWER—THE U.S. AND RUSSIA—THE TRIAD

To appreciate the realities which disarmament negotiations must address, we must review certain highlights of the military equipment which we and the Russians now possess.

STRATEGIC NUCLEAR FORCES AS OF JUNE 8, 1983

Name	Number of missles	Warheads per missile
United States		
Land-based intercontinental-range ballistic missile launchers (ICBM's):		
Titan II	52	1
Minuteman II	450	1
Minuteman III	550	3
Total ICBM's	1,052	
Total ICBM warheads	[1] 2,100	
Submarine-based [2] (ballistic missiles (SLBM's):		
Poseidon	304	10
Trident I	216	8
Total SLBM's	520	
Total SLBM warheads	[1] 5,000	
Bombers:		
B-52	347	
FB-111	63	
Total Bombers [3]	410	
Total missiles	1,572	
Total missile warheads	[1] 7,100	
Total missiles and bombers	2,007	
U.S.S.R.		
Land-based intercontinental-range ballistic missile launchers (ICBM's):		
SS-11	580	1
SS-13	60	1
SS-17	150	4
SS-18	308	([5])
SS-19	300	6
Total ICBM's	1,398	
Total ICBM warheads	[1] 6,000	
Submarine-based [2] ballistic missiles (SLBM's):		
Golf and Hotel	30	1
SS N-3	396	1-2
SS N-8 & 18	504	1-3
Typhoon	20	
Total SLBM's	950	
Total SLBM warheads	[1] 1,500	
Bombers:		
Bear	100	
Bision	45	
Backfire	200	
Total bomber [3]	345	
Total missiles	2,348	
Total missile warheads	7,500	
Total missiles and bombers	2,693	

[1] Approximately.

[2] Includes on the U.S. side: 20 Poseidon submarines with 320 Poseidon missiles, 11 Poseidon submarines with 176 Trident I missiles and 2 Trident submarines with 48 Trident I missiles. Includes on Soviet side: 1 Golf and 7 Hotel class submarines, 25 Yankee-class submarines with 396 missiles, 36 Delta-class submarines and 504 missiles and 1 Typhoon submarine with 20 missiles.

[3] Chart does not include number of bombs carried on bombers or more than 3,000 air-launched cruise missiles to be deployed on U.S. bombers. Also not shown are several hundred cruise missiles to be deployed on U.S. submarines and battleships.

[4] This total can be higher due to the capability of Poseidon and Trident I to carry up to 14 warheads.

[5] Up to 10.

Source.—U.S. Government unclassified sources.

The above chart is of Strategic Nuclear Forces. Strategic means they are intercontinental weapons capable of long range or that their carriers (submarines or planes)

can take them to another continent. The intermediate nuclear forces (the Russians' SS-4, SS-5, SS-20, or our Pershings, ground-launched cruise missiles, plus shorter range aircraft on either side) are not counted here. They are certainly powerful but the intercontinental weapons are the principal threat to each other's homeland.

You'll note that each country operates with a TRIAD. That is, weapons can be delivered 3 ways: From land bases (ICBM), or from submarines (SLBM) or from airplanes (ALCMs—Air-Launched Cruise Missiles). By having three types of delivery systems (TRIAD) and keeping some airplanes up in the air at all times and some submarines out at sea, each side can always respond if attacked. Since each side has an assured response, the initial attack is discouraged. That's deterrence.

A. Land-based intercontinental ballistic missiles (ICBM)

ICBM's are the most destabilizing weapons of all. They are the most powerful; they have the longest range; they are the most accurate (pretargeted to go thousands of miles—their accuracy is within hundreds of feet of the target); they are often MIRVed (with up to 10 separate warheads on a single missile); they are in fixed, easily targeted silos so that possessors of ICBM's could get nervous if they receive warning that something (another missile?) is coming their way; once fired they cannot be recalled or deactivated in flight. They are the most destabilizing of all nuclear weapons.

We have about 1,052 ICBM's. The Russians have 1,398. But they have almost three times as many nuclear warheads on their ICBM's (our 2,100 to their 6,000). Only one of our ICBM's, the Minuteman III, has more than one warhead per missile. It has three MIRV's (Multiple Independent Reentry Vehicles) warheads. A MIRVed missile carries more than one warhead from one continent to another and then the warheads go off in separate directions.

The Russians have three missiles that are MIRVed—the SS-17, SS-18, and SS-19. They were all put into the ground (deployed) in the mid- to very late-70s. The SS-18 itself is so large and powerful that the 308 SS-18 missiles have more power than all the nuclear missiles we possess combined (whether ICBM's, SLBM's or air-launched).

It was the Russian installation of the SS-17, SS-18, and SS-19 in the middle-late '70s that upset the military balance and has caused such a stir in our country.

Their SS-11s are approaching 20 years in age, the SS-13s 10 years. Our Titans are over 20 years old and ailing, and the Minuteman II average about 20 years, too (missiles like any other mechanical things needs to be replaced). The Minuteman III is 10 years or older.

B. Submarine-launched ballistic missiles (SLBM)

The Russians have 70 missile carrying submarines that carry 950 missiles with about 1,500 warheads. We have 33 such submarines with 520 missiles carrying approximately 5,000 warheads. Because of our warhead numbers and because our submarines are quieter and thus harder to detect, we are thought to have the advantage in this leg of the TRIAD.

SLBMs are neither as powerful nor as accurate as land-based ones. It's obviously harder to precisely aim at a target from a submarine that's moving around all the time (or, for that matter, to aim at a target if the target is moving about). Present SLBMs cannot, therefore, attack an ICBM in its land-based silo. An SLBM is not that accurate. So, an SLBM is considered an anti-population weapon (or other more area-type targets). That is of great concern to our country because 60 percent of our population lives within 200-300 miles of the open ocean and so more vulnerable to Russian submarines. No major Russian city is exposed to the open ocean.

Because of that military planners worry about the following "scenario," as they call it: the Russians launch their overwhelming ICBM force against our ICBMs plus our submarine bases and military airfields. They then reload their own ICBM missile silos. We would be left with the submarines we have at sea and planes that were on alert—not a very formidable force against what they would then have. That's the worst case. That's armageddon, and the Russians know our warning systems are so fine that we would never let that happen.

The 31 Poseidon submarines replaced the Polaris that got old and were phased out. The Poseidon itself is about 15 years old and is due to be phased out in this decade or the early 1990s. The Trident submarine (we presently have two) replaces the Poseidon and the Trident II missile will be as accurate as an ICBM (it will be in service in 1989).

The Russians' 36 Delta-class subs (with the SS-N-8 and 18 missiles) were built in the mid-late '70s, and their newest is the Typhoon which caused such a stir because it is so large and fast (45 miles per hour underwater).

While submarines are presently considered invulnerable (since they can't be found), don't count on this being the case indefinitely.

C. The air arm of the triad

Our air arm is the B-52s and FB-111s. The FB-111 is smaller, very capable, and 10-15 years old. The B-52s are so old (up to 25 years) that we are losing them through accidents. Even the most ardent proponent of the Nuclear Freeze, Senator Alan Cranston, supports the B-1, which would replace the B-52 (there are often these types of voting inconsistencies . . . when a Democratic President, Jimmy Carter, supported the MX, many Democrats supported it though they now oppose it under Reagan).

The Russian Bear airplane is even older than the B-52 and is a turbo-prop. But the Backfire bomber, which would need to be refueled in flight to be truly intercontinental—but so do our B-52s—is much newer (mid-'70s) and has great speed and capacity.

Due to the age of the B-52 (more than one-half of our B-52s have already been decommissioned) and the scope of Russian air defenses (they have 10,000 surface-to-air missiles), this arm of our triad needs prompt improvement.

D. Military conclusion

The Russians have all kinds of problems in their own society. They have trouble feeding themselves (despite their huge land mass); they are becoming a minority within their own country; there is unrest in Eastern Europe; and most significantly their economy functions poorly and they have a declining rate of economic growth. But in one area they have excelled and that's in the military. At great cost and deprivation to their economy and their people, they have focused huge and growing resources on defense. Much more so than we have and with great consistency over many years. We have to be cautious. We had an enormous military advantage for many years, but a great shift in the military balance occurred in the '60s-'70s as our involvement in Vietnam sapped our dollars and our national resolve as well. The Russians engaged in the most massive arms buildup in the history of the world during those decades. A shift in power took place.

Former Secretary of State Henry Kissinger, when testifying on the SALT II Treaty before the Senate Foreign Relations Committee, said about shifting world power: "Rarely in history has a nation [the U.S.] so passively accepted such a radical change in military balance."

VI. WHAT TO DO? HOW DO WE CONTROL NUCLEAR WEAPONS?

There are a number of proposals on controlling nuclear weapons. All are well motivated because who among us does not want to limit or eliminate even the remotest possibility of nuclear war. Being opposed to one plan or the other doesn't mean much. I don't know a single Senator who would not like to reduce, freeze or eliminate tensions and weapons. The five principal proposals for achieving those goals are:

A. The Strategic Arms Reductions Talks (START).

B. The Nuclear Freeze.

C. The Cohen-Nunn Build-Down.

D. The Mighty Midgetman.

E. Other Disarmament Ideas.

They are not mutually exclusive. Each has strengths and weaknesses and what is finally worked out will probably contain elements of all of them (and some other thoughts as well).

A. START—"Reduction" instead of "limitation"

Throughout the 1980 presidential campaign Ronald Reagan criticized the SALT process for failing to reduce the number of nuclear weapons. Limiting growth was not enough, he said. He pointed out that the '70s saw weapons increase in size, scope and number as never before. In order to emphasize this, President Reagan named his strategic arms control efforts START, Strategic Arms Reduction Talks. Critics argue that the President was slow getting off the mark with START proposals. Perhaps he had in mind Jimmy Carter's effort at the very beginning of his presidency. Carter sent Secretary of State Vance to Moscow with a proposal for deep cuts. The Russians rejected them out of hand. Maybe they wanted to size up the new President first. In any event President Reagan wanted to establish his emphasis on defense before he made disarmament proposals.

So it was not until May 9, 1982, nearly a year and four months after assuming office that President Reagan announced his START proposal. It was a two-phased approach to reduce strategic arms. In the first phase each side would reduce the number of ballistic missile warheads (land- and sea-based) by at least one-third, to about 5,000 warheads. No more than half (2,500) would be deployed on ground-launched ICBMs. The number of missiles would also be correspondingly reduced.

The second phase would focus on reductions in missile throw-weight, that is, missile and warhead size and destructiveness (the Russians have a sizable lead over us in this category). Finally, although our proposal does not mention bombers and cruise missiles (where we appear to have a lead) it was said that these items are not excluded from the negotiations.

The Reagan plan has two main strengths. First, not only does it call for real reductions in nuclear arms, it also focuses these reductions on the missiles that are inherently more destabilizing than bombers and cruise missiles. Ballistic missiles have short flight times to targets (on the order of 30 minutes for ICBMs), carry MIRVs, are the most accurate, the most powerful and once launched can't be recalled or deactivated. On the other hand, bombers with cruise missiles have very long flight times (7-10 hours) making them inappropriate weapons for a first-strike attack. Furthermore, bombers can be recalled.

Ground-launched ICBMs are also more destabilizing than submarine SLBMs. First, they are larger and more accurate. Second, ICBMs are deployed in fixed sites and are more vulnerable.

Thus, the traditional Soviet reliance on ICBMs—roughly 80 percent of their total warheads are deployed on ICBMs as opposed to about 20 percent for the U.S.—is most unsettling. The key to avoiding first-strike situations is for neither superpower to place undue emphasis on ICBMs. The Administration's arms reduction package would help achieve this goal.

The second strength of the Reagan idea is that for real arms reduction it makes more sense to concentrate not on launchers but on deployed missiles themselves and their warheads. We have already noted how the SALT launcher limitations in no way prevented the considerable growth in both U.S. and Soviet warhead levels during the 1970s.

What are the prospects for a START agreement? There is evidence that the Soviet Union is not unreceptive to the idea of sizable reductions in nuclear forces. In response to President Reagan's initiative of reduction by one-third, the Soviets have proposed reducing ballistic missiles and bombers to a common ceiling of 1,800. As noted previously, the most stringent SALT II ceiling provided for a launcher limitation of 2,250, so the present Soviet offer represents a 20 percent reduction. Not a bad opening offer.

But the Russian response is not directed at dismantling their ICBMs which they so recently deployed. Critics of the Reagan approach say that by calling on the Russians to deeply reduce ICBMs, their principle advantage, that the President is making unrealistic demands and therefore is not serious about arms control. Similarly the President was again called unrealistic (and so not serious about arms control) when he suggested the "Zero Option" (no nuclear arms at all) in Europe.

It will be hard to negotiate START—or any agreement for that matter. Verification in our open society is easy for the Russians, but tough in their closed society for us. Verification is difficult under SALT, START, a Freeze, or any negotiation. Yet we have to take some risks for peace because an unrestrained arms race creates greater risks and deprivation of human goals in society. This form of agreement—START, similar to SALT but with different objectives, and allowing for modernization of forces, will prevent an unstable situation—seems to be a sound approach.

B. The nuclear freeze

More than anything else the nuclear freeze movement has focused attention on the urgent need to control nuclear weapons. In this regard it has really achieved a lot. However, some nuclear freeze activists would have you believe that the freeze is the only rational or humanitarian way to cope with nuclear weapons. This is clearly not the case. In fact, reasonable people do indeed differ on the freeze. The American Catholic Bishops support the freeze. The position of Catholic Bishops of Germany and France and the Anglican Bishops of England can only be construed as opposing the freeze. Having in mind, perhaps, the events that led to the Second World War, the European Bishops also strongly defend the doctrine of deterrence and don't even rule out first strike.

A careful review of the nuclear freeze is in order.

What are we freezing? Freeze resolutions vary but generally they freeze research, development, production, deployment and testing of nuclear weapons. The Kennedy-Hatfield freeze resolution that is before the Senate calls for a freeze on production, deployment, and testing of all nuclear weapons. The freeze does not propose to reduce nuclear weapons. Negotiations to reduce nuclear weapons would be a second set of negotiations that follow the freeze negotiations. The details of verification and the details of the freeze itself would be part of the first set of negotiations.

Freeze advocates say the time is right because both superpowers are at rough parity (I agree) so a freeze would not make either side worse off.

A freeze has a great deal of political appeal—it appears simple, direct and understandable. But like any other negotiation in the field of nuclear arms, a freeze is anything but simple. A number of considerations arise:

(1) A freeze should not be thought of as something that would happen immediately—it wouldn't (the same criticism applies to START and other negotiations as well). The freeze would be a new and very tough set of negotiations that may go on for years (these kinds of negotiations always have). Nothing is frozen during the negotiations. So during the years of negotiations there would be a rush on both sides to increase armaments so that when the freeze does come, each side will be frozen in the highest possible level with the most modern arms. Ironically, therefore, during the period of negotiations (undoubtedly years) the prospect of a freeze would probably accelerate the arms race. This acceleration is less likely to happen in START or other negotiations which allow for force modernization.

There is a more menacing possibility: that is, that the freeze may accelerate development and production on just one side, the Russian side, and that we find that during the freeze negotiations political pressures arise that prevent military spending on our side. Why spend the money if we're going to freeze, the argument will run, just as it did when we were negotiating SALT.

(2) In an agreeement or freeze, verification is a far easier matter for the Russians than it is for us. We can verify deployment and testing by satellite. But the freeze would also cover production. We can't verify that (just as we can't verify research or development, which are included in some resolutions). We can't see inside their factories (we can see your house and car by satellite but we can't see what you're cooking in the kitchen.) We, therefore, risk a "breakout." That is, they develop and manufacture something without our knowledge. They then quickly test and deploy (put into place) the new weapon. Such a "breakout" could create a dangerous imbalance and a large advantage for the Russians. In our open society with a free press it's hard to imagine our doing the research, development and manufacturing under wraps. If they develop an advantage in a "breakout," it would spell big trouble and be most destabilizing.

Take another example. The Russians have a submarine called the Hotel Submarine (incidentally we give them these names—with their closed society we're not even sure what they call some of their weapons). Suppose they develop a whole new submarine missile technology. Further, suppose that the Russians just plain cheat—but they put their new technology in the same package. The new Hotel Sub looks just like the old one, but what's inside may be entirely different. In their society we'd have a hard time checking it out. In an open society we could never do that. A "breakout" could occur. While these problems exist under any treaty with the Russians, at least under START, technology is not frozen, and technology is our advantage.

(3) Even though research and development are not frozen, if we discover anything we won't be able to put it to use. Clearly, there will be no private sector research under those circumstances. (Can you imagine a business doing research and development on something it could never use?) In any free society like ours where we have to budget government dollars in the open, it will be very hard politically to direct government funds to research (particularly with these deficits) if a freeze is in place. Since research and development cannot be verified, the Russians may go right ahead with their programs. We thereby risk a "breakout" on the Russians' part that can give them an advantage and create a dangerously unstable situation.

Is all this talk of a "breakout" a danger that is exaggerated? Absolutely not. In 1958 we, the Russians and Great Britain voluntarily agreed to suspend nuclear testing. We and the British complied fully. The Russians did not and secretly did the research, development and also production. On August 30, 1961, the Soviets announced they would resume testing. The very next day they began the largest series of nuclear explosions ever conducted—40 tests in a two-month period all in the atmosphere (a cruel environmental blow). This prompted President Kennedy to say: "We know enough now about broken negotiations, secret preparations and long test series never again to offer an uninspected moratorium."

(4) A freeze is not a reduction. As mentioned, it appears the Russians are agreeable to a 20 percent reduction. Why freeze first and reduce later if they want to reduce now?

(5) Eighty percent of our weapons are 15 years or older. Eighty percent of their power is 5 years or newer. We'd be frozen into older technology; they into newer technology. The B-52 bomber (representing technology of the '50s—the planes themselves are often older than the people who fly them) could not be replaced with better technology. The freeze resolution allows each side to replace worn out weapons with exactly the same thing. If the B-52 were an auto, it would be entitled to antique license plates. Is that what we want to replace?

And yet, the freeze resolution does not disallow the development of new submarine technology. Entirely new submarines can be built (although new types of missiles for those submarines cannot be built—a very hard thing to verify). It's extraordinary that the freeze allows force modernization in submarines. If the freeze would allow force modernization of other parts of the TRIAD

plus allow reductions, then the freeze would be the same as START.

(6) The freeze would not prevent the Russians (or us) from developing methods for detecting submarines. Nor would the freeze prevent the Russians (or us) from developing and improving their anti-aircraft defense (theirs is already formidable—they have 10,000 surface-to-air missiles in place dedicated to strategic air defense; we have none). Both are non-nuclear weapons and so are not frozen. As a matter of fact a freeze would allow the Russians to direct more of their resources at anti-submarine and anti-aircraft defense. Technology breakthroughs in both these areas are very possible. In the meantime we can only make old-fashioned B-52s. We cannot upgrade them even though they can upgrade their defenses against them. If they achieve a technology breakthrough and feel they can find our submarines and repel our old airplanes, a very dangerous imbalance and unstable situation can develop (due to their great advantage in ground ICBMs).

(7) If a freeze is negotiated, why in the world would they ever want to negotiate a reduction after a freeze, if with the passage of time their position under a freeze gets stronger?

Even if we freeze where we are, the strategic balance is not a static phenomenon—it never has been. You just can't freeze all technology & development in society in place. Furthermore, it is a mistake to believe that just because a weapons system is new and more advanced, that it is destabilizing. It may well be safer from attack and so give confidence and stability rather than the reverse (more about that later). Freezing in place can be destablizing.

Nationally the freeze—while popular—has received little editorial support. Such publications as the Minneapolis Star and Tribune, the New York Times, the Washington Post, and the New Republic have all editorialized against the freeze. One of the most interesting and thoughtful articles was written by the Harvard Nuclear Study Group. It is entitled, "The Realities of Arms Control." It appeared in the June edition of Atlantic Monthly.

Will the freeze be rejected in the Senate? Perhaps, but in my judgement part of it will—and should—be adopted in the final negotiation. Parts of many ideas, formulas and plans will be incorporated in whatever agreement is finally worked out.

C. The Cohen-Nunn build-down

Senators Bill Cohen (R-Maine) and Sam Nunn (D-Georgia) both serve on the Armed Services Committee and are acknowledged experts in national security. They introduced a resolution, which I have cosponsored, calling for the President to propose to the Soviet Union that the two superpowers build-down their nuclear forces. Under the build-down principle both the U.S. and USSR could modernize and introduce new warheads to their respective arsenals, but for each new one introduced two existing warheads would have to be destroyed. A two-for-one build-down. Its great strength is its flexibility.

It would, like the START proposal, allow modernization programs but would make such modernization costly—for every one warhead added, two must be withdrawn. With the guaranteed build-down both we and the Soviets would deploy more survivable nuclear systems that could not be easily attacked. Hence, they would be more stabilizing. And simultaneously the trend line in the total stock of warheads possessed by both sides would move where it should—downward.

Freeze advocates fear that modernization means more powerful weapons. They could be right, but not necessarily so. The mobility of weapons makes them quite invulnerable to attack. But to be mobile a weapon can't be as large as an ICBM dug into the ground. New arms are likely to be mobile, therefore, they are also likely to be smaller.

But there are problems with Cohen-Nunn, too.

(1) We have older weapons so we have to modernize faster and thereby reduce our numbers faster. Cohen answers this by pointing out (correctly) that despite the fact that the Russians have introduced many new weapons in the last five years, they have more new ones in the works than we do.

(2) We improved the accuracy (the guidance system) of the Minuteman III. Does that count? Do we have to build something else down? Suppose we only increase the destructiveness (megatonnage) of an existing missile. How is that counted? How is this verified (under START, the Freeze, or Cohen-Nunn for that matter!)? The answer is it often can't be. In a freeze if the Russians cheat it would mean real trouble because in our open society we can't make any changes. But under START or Cohen-Nunn we could fashion new survivable weapons not threatened by those kind of secret changes. We could factor in possible cheating.

(3) There are some asymmetries the White House says about Cohen-Nunn. For instance the Russians have 10,000 surface-to-air missiles (SAMs) to defense against our 410 bombers. The SAMs are not nuclear so don't count. Do we have to reduce to 200 bombers to replace the 400? The answers are that perhaps a different build-down formula (one-for-one, four-for-three) could be used for different elements of the TRIAD or use SALT II counting rules (which defined how many cruise missiles a bomber could carry). Or, allow interchangeability, so that if you reduce submarine or ICBM warheads, you could actually increase bombers (Cohen-Nunn is quite flexible).

(4) There is another asymmetry: the 308 Russian SS-18 ICBMs are so large that the total explosive power (megatonnage) of that on Russian missile exceeds our entire nuclear arsenal—land, sea and air combined. The asymmetry is that as the build-down progresses, their megaton advantage grows. I'm not sure how to solve that or all the implications of that unless we were to say that we would still have enough power to act as an adequate deterrence.

There is also a possibility of a compromise Cohen-Nunn build-down. Each side could build down a certain number to a plateau and then renegotiate. In any case, the Cohen-Nunn plan is a principle only, that has to be coordinated with a broader approach. No approach is simple and all have problems like START or the Freeze. Cohen-Nunn reduces weapons and retains stability between the superpowers. That's why I support it.

D. The mighty Midgetman

The Midgetman is mighty not in nuclear power but in achieving the two most cherished goals of arms control—reduced force levels and strategic stability.

The Midgetman is a land-based mobile missile with a single warhead and intercontinental range. It would weigh about 30,000 pounds. So they would be mobile but could only be hauled around on military reservations. How would the other side target them? They would be hard pressed to do so.

If our country had 500 mobile midgetmen, we could feel secure against a Russian first strike. They would know that they couldn't knock out our mobile land-based missiles—the most accurate and powerful—in a first strike. The probability of an attack is thereby lessened, because we have an assured response. That's stability.

Furthermore, midgetmen would not be MIRVed, and MIRVs are destabilizing. Let me illustrate how: Presume that after hard bargaining each side is down to only 5 missiles. Also assume that each missile is MIRVed with 10 warheads (so each side has 50 warheads). The lineup looks like this (each circle represents one missile; each missile has 10 warheads):

United States	Russia
0	0
0	0
0	0
0	0
0	0

The accepted rule is that if you first strike at your opponent you should shoot two warheads at each one of your opponent's missiles.

Great temptations now exist. One of your missiles, with 10 warheads could take out the other side's total of 5 missiles. To be safe let's assume the attacker shoots two missiles with 20 warheads at his opponent's 5 missiles. The attacker would have 3 missiles left, each with 10 warheads! That's terrible. Those MIRVs make an attack very tempting. That's total instability where one side ends up with 30 warheads and the other side has none.

But if each of the 5 missiles had one warhead apiece, and the 5 stood opposite each other (as shown) with single warheads, there could be no attack. The two-for-one rule demands you have two warheads for each missile the opponent has. But each side has only 5 warheads. Single headed missiles in equal number on each side prevent attacks from happening. No one dares attack. That's stability.

Are there any problems with the Midgetman? Yes. Rapid reloading of mobile missiles might become a complication. But small mobile missiles will continue to be hard to track and attack. At the present time they spell stability.

Suppose instead of having 33 submarines with 5,000 warheads, as we presently have, we had instead 300 small subs with 5 single warheaded missiles each, or a total of 1,500 warheads. Which would be harder for the Russians to defend against? How would the Russians plan an attack against all those submarines hidden underwater? If your weapons are secure from attack, they spell stability—for you and for your opponent.

E. Other disarmament ideas

There is no lack of disarmament ideas and plans. Thus far I've mentioned only the principal ones being considered. The Harvard Nuclear Study Group (which arrives at many of the same conclusions that I have in this paper) presented some additional approaches:

(1) "It might be possible to freeze the most destabilizing weapons first, followed by less dangerous weapons," the Harvard Group suggests.

(2) A freeze that allows modernization. For every new one, one must be withdrawn (destroyed). "This would be consistent with the simplicity that is the virtue of the freeze idea," says the Harvard Group. It might lead to a quick agreement and "would avoid the potentially dangerous approach of freezing the modernization of certain forces while letting their countermeasures (anti-submarine technology) run free," notes the Harvard Study Group.

(3) Force restructuring which is an idea to find areas on both sides where agreement can be reached and negotiated in stages and different weapons areas one at a time rather than in a comprehensive manner.

(4) Deal with land-based missiles by providing a schedule by which they would be replaced by mobile midgetman missiles. If this could be achieved, it would be terrific. Henry Kissinger (initially and others since) has suggested going ahead with the midgetman whether or not the Russians agree to it, and thereby render their MIRVs less useful and less destabilizing.

(5) "An agreement for both sides to abandon development of weapons in space, either for satellite destruction or for ballistic missile . . . satellites have become increasingly central to early warning and to command and control of nuclear forces. An attack on them would so threaten to blind the other side that it would be considered an act of war requiring immediate retaliation." I agree with this idea.

(6) Agree to notify each other of missile tests, bomber takeoffs and military exercises. We proposed this in Geneva in March 1983.

(7) Prohibit the close approach of submarines to either the American or Russian coastline. One side could do this voluntarily as it gains confidence in its ability to track the other's submarines. This, too, is a good idea, but presently hard to verify.

(8) Senator Sam Nunn and the late Senator "Scoop" Jackson have suggested (and I agree) a joint crisis management center—jointly manned by Russians and Americans which would examine and analyze all facts relevant to any developing crisis. Such crisis management centers which would be in operation full time, all the time, could also include representatives of the Joint Chiefs of Staffs of the Armed Services of both sides plus civilians. Meetings, contacts, communications between both sides could be confidentially carried on at any time. There could be two such crisis management centers—one in each capital (this would have been most helpful and perhaps even prevented the Korean Airlines tragedy).

Television communication centers in each capital have also been discussed. They would be jointly manned (Russians and Americans) so high level government officials can quickly communicate face to face. The new updated Hotline negotiations (this would be the third agreement) contemplates these kinds of things including communications procedures in the event of international acts of terrorism.

These so-called "Confidence-Building Measures" between the two superpowers are most significant in my judgment and have been endorsed by the President.

While the above ideas and approaches are not as sweeping as freezes or reductions, nevertheless, concludes the Harvard Study Group, they "can be of equal importance in averting nuclear war . . . most important, the beginnings of a process between the two major nuclear adversaries, and the process has weathered very difficult times."

We have indeed concluded many agreements with the Russians, and we must forge onward.

VII. NUCLEAR PROLIFERATION

The Israeli raid on Iraq's nuclear reactor on June 7, 1981 and the subsequent Senate Foreign Relations Committee hearings on this incident, which I chaired, brought home to me another and equally frightening aspect of the nuclear arms issue. That is the issue of horizontal nuclear proliferation, which is to say the proliferation of nuclear armaments to those countries which do not now possess them. So far we have only been discussing vertical proliferation, that is, the escalation of the arms race by the superpowers. At a time when nuclear weapons can be made small enough to fit in a suitcase horizontal proliferation is a challenge of nearly equal proportions.

The U.S. has historically taken the leadership in the problem of horizontal proliferation. We helped devise an international mechanism for halting the spread of nuclear weapons. The Baruch Plan (of 1946) mentioned earlier would have been an intelligent response to the problem had it been implemented. The Nuclear Non-Proliferation Treaty (NPT) of 1968 is probably the next best thing. As noted, this treaty calls for non-nuclear nations to foreswear the development of nuclear weapons in return for a pledge from nuclear nations to supply nuclear technology for peaceful purposes. Signatories agree to periodic inspection of all their nuclear facilities by an international monitoring agency known as the International Atomic Energy Agency (IAEA).

What the NPT seeks to do is control the use of fuel that can be used to make nuclear weapons. One such fuel is uranium that has been highly "enriched." Natural uranium cannot be used for nuclear explosions. It must be enriched with the isotope uranium-235. Low-enriched uranium (generally containing about 3 percent uranium-235) is used in most nuclear reactors. Highly enriched uranium (containing more than 90 percent uranium-235) is used for some research reactions, for power plants in naval ships—and for nuclear weapons. A small nuclear weapon can be made from about 20 kilograms (44 pounds) of highly enriched uranium. Equipment to turn natural uranium into highly enriched uranium is quite technologically advanced. A by-product of most nuclear processes, plutonium, can also by used for nuclear weapons. Ten kilograms (22 pounds) of plutonium is enough for a small nuclear device. Uranium that has been used in a reactor (called "spent fuel") contains a small amount of plutonium. To be useful for explosive purposes the spent fuel must be chemically reprocessed. This procedure, like uranium enrichment, is technologically sophisticated. Consequently, the U.S. and, increasingly, the Europeans dominate the worldwide market for enrichment and reprocessing technology.

Because possession of an enrichment or reprocessing capability gives a nation at least the potential to construct a nuclear device, the export of this technology is one of the key issues of proliferation. The NPT, by forcing its signatories to allow IAEA inspection of all their nuclear facilities, addresses this issue to a degree. But what about nuclear exports to non-NPT members like Argentina or India? The nuclear suppliers are under no obligation not to supply such countries nor are the countries themselves obliged to allow inspection of their nuclear plants.

The U.S. Congress attempted to close this loophole in the global non-proliferation system by passing the Nuclear Non-Proliferation Act (NNPA) in 1978. Under this act any U.S. exports of nuclear materials to nations which do not accept IAEA inspection (also called full-scope "safeguards") are prohibited. The President is permitted to waive this prohibition subject to a Congressional veto. In one major test of the NNPA restriction President Carter in 1980 decided to continue supplying nuclear fuel to India in spite of India's refusal to accept IAEA safeguards on all its nuclear facilities. An attempt to overturn Carter's decision was defeated in the Senate by only two votes. Together with Senator John Glenn, I was a leader in the effort to block the President's action.

What follows is a list of the countries which are widely assumed to have the potential capability or desire to develop nuclear weapons. These countries should, therefore, be a major focus of our non-proliferation efforts.

Argentina: Argentina has neither signed the NPT nor accepted IAEA safeguards on all its nuclear facilities. It possesses a reprocessing capability and has declared its desire to become self-sufficient in all aspects of nuclear energy production. In 1977 the U.S. Energy Research Development Administration (ERDA) reported that Argentina could build a nuclear bomb within one to three years of deciding to do so.

Brazil: Brazil has not signed the NPT but has allowed all but two minor facilities to be placed under safeguards. Like Argentina, Brazil has stated a desire for nuclear independence. It has acquired enrichment and reprocessing facilities from West Germany.

India: India has not signed the NPT and has refused IAEA safeguards for some of its facilities. In May 1974, using plutonium from a Canadian-supplied reactor, India exploded a nuclear device, calling it a "peaceful nuclear explosion." Prime Minister Indira Gandhi has refused to rule out further tests. She spoke about all this in a small meeting with Senate Foreign Relations Committee members (including me). She's a very tough-minded lady indeed about these matters.

Iraq: Iraq has signed the NPT and has all its facilities under safeguards. The Iraqis may have obtained some reprocessing capability from Italy. In 1981 the Israelis were convinced Iraq was moving toward weapons capability and demonstrated their lack of faith in the non-proliferation regime by attacking Iraq's 40-megawatt research reactor. Prior to the bombing Iraq had received a shipment of highly enriched uranium (not necessary for power generation which they say was their objective) from France which, if reprocessed, could have been used for a nuclear bomb.

Israel: Israel has not signed the NPT and has not accepted IAEA safeguards on some of its facilities. Israel is rumored to possess nuclear weapons but it has said it will not be the first to introduce such weapons into the Middle East. It has called for a nuclear weapons-free zone in the region.

Libya: Although Libya has signed the NPT and has accepted IAEA safeguards on all its nuclear facilities, Colonel Qadhafi has been known to make statements about the development of an "Islamic bomb." Libya has bought a small research reactor from the Soviet Union and has negotiated with the Soviets to buy a nuclear power reactor. Libya is widely believed to have a standing offer out to buy nuclear weapon(s) from

anyone who will sell one to them. Wouldn't that be something!

Pakistan: Pakistan has not signed the NPT nor has it accepted safeguards on all its nuclear facilities. It is reported to be clandestinely acquiring both an enrichment and a reprocessing capability. President Zia strongly denied this when he met with us at the Foreign Relations Committee.

South Africa: The South Africans have not signed the NPT and have not accepted full IAEA safeguards. South Africa is building a full-scale enrichment facility. There continues to be a dispute about the cause of a bright flash over the Atlantic Ocean near South Africa in 1979. Some analysts fear this may have been a nuclear explosion.

South Korea: South Korea has ratified the NPT and has accepted full IAEA safeguards. The concern with the South Koreans is that their technological capability is highly sophisticated for a developing country. Further, South Korea faces a serious threat to its security from North Korea.

Taiwan: The Taiwanese have signed the NPT and all their nuclear facilities are safeguarded. However, Taiwan perceives a threat to its security from mainland China, and has said that although it does not intend to develop a nuclear weapon, it has the ability to do so.

In my judgment there are three fundamental weaknesses in the present non-proliferation system which must be addressed if we are to halt horizontal proliferation.

(1) The first is the problem of nuclear exports, particularly the export of enrichment and reprocessing technology, which can give a country a potential bomb-making capability. We have already noted that several potential "problem countries" are acquiring or have such technology. One approach to this problem, employed by the Carter Administration, is to embargo all U.S. exports of reprocessing and enrichment equipment and press our major competitiors in this market to do the same. However, our European "allies" were not persuaded by Carter's admonitions. The President failed to persuade West Germany not to sell reprocessing and enrichment facilities to Brazil or Italy not to sell reprocessing equipment to Iraq. Unilateral U.S. restraint in the absence of European cooperation would therefore appear to be a fruitless policy.

There is a more modest but also a more realistic step the U.S. could take in the nuclear export area. We could convene a meeting of a major nuclear supplier nations (principally ouselves and the Europeans) and urge all of them to at least export only to those nations which accept safeguards on all their nuclear facilities. As noted previously, U.S. exporters are legally bound to this principal policy.

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(2) The second major weakness in the nonproliferation system is the International Atomic Energy Agency (IAEA) itself. The basic idea of IAEA inspections, or safeguards, is to give the world "timely warning" of attempts to divert nuclear material from peaceful uses into nuclear bombs. Nations with safeguarded nuclear facilities are required to account for all nuclear materials (especially fuel) and to submit their facilities to periodic inspections by the IAEA. The inspections are aimed mainly at accounting for nuclear fuel. Each nation must keep track of its fuel and send reports on all fuel to the IAEA. Agency inspectors then make independent checks on the material, but they can check only those facilities that are reported by the host nation to contain nuclear fuel. In addition, the IAEA has about 120 inspectors to cover some 700 nuclear installations, a number the U.S. General Accounting Office in May 1981 reported was quite limited. Further, the IAEA naturally depends on cooperation from nations it is inspecting, but this is not always provided. In testimony before the Foreign Relations Committee hearings on the Israeli raid on the Iraqi reactor, Roger Richter, a former IAEA inspector who resigned after the raid in order to be able to testify in the Senate, maintained that the Iraqis had placed numerous obstacles in the path of Agency inspectors.

The IAEA has to give notice of any inspection, and can inspect only what the host country allows. Further, the host country can virtually choose inspectors. For these reasons, Richter resigned to bring these inadequacies to the world's attention. The Iraqis never allowed inspectors from the West into their facilities; only Communist nations could send inspectors.

Finally, a nation can withdraw from the NPT and drop its adherence to IAEA safeguards with only three-months' advance notice. Regarding the IAEA itself, it is not entirely clear to me how we can make it more effective. One constructive step could be a multinational conference to investigate possible initiatives in this regard.

(3) The final inadequacy which I detect in our nonproliferation efforts is a failure to understand what is at the root of the whole problem—fear. Nations want nuclear weapons partly for reasons of prestige but mainly because they feel their basic security interests require them to obtain such weapons. A look back at the list of "problem countries" cited earlier makes the point: India and Pakistan are at odds; so are Israel and Libya and Iraq; so are South Africa and its neighbors. South Korea and Taiwan feel threatened as well. In terms of their desire to obtain nuclear weapons, it matters very little what the American assessment of the threat these countries face happens to be. What counts is that they feel the threat.

For this reason I think U.S. security assistance has an important role to play in stopping nuclear proliferation. For example, was South Korea more or less likely to consider developing nuclear weapons after President Carter announced his intention to withdraw U.S. troops from the Korean peninsula? I think the answer is obvious. Similarly, the Reagan Administration should, if only because of the proliferation issue, be very careful in its dealings with mainland China. Otherwise Taiwan could come to doubt the U.S. security commitment and act accordingly. I do not mean to suggest here that the U.S. should provide military aid or sell weapons to any nation that asks for such help, but we should always keep in mind that the issue of security assistance has very important implications for proliferation. It is better for us to provide a country with conventional weapons than to see the country resort to nuclear option.

VII. CONCLUSION AND HOPE

I started this paper by saying that nuclear weapons are the problem of the age . . . perhaps of all ages. Nothing is more important than controlling them. I conclude with the same thought.

This paper has reviewed just the highlights of arms control, and the first conclusion is that there is no single formula, no simple answer, but I do believe an answer can and will be found. I believe both sides realize that. The lack of easy answers does not mean that we should despair of mastering the challenge. But it does mean that we must be careful in our thought. We must be cautious. We must look at all sides of every proposal and test each idea against the realities of history and circumstance.

The second conclusion I draw is that we must pursue our national goal of preserving peace through a combination of both strength and diplomacy. We must not let our hopes for disarmament distract us from maintaining adequate military strength to resist and deter agression. At the same time we must not become caught up in an arms race and fail to seize any opportunity to achieve arms control.

The third conclusion concerns our negotiations with the Soviet Union. We have a long history of these negotiations and a lot of experience to draw upon. We have actually achieved many agreements with the Russians. Each of these resulted from lengthy and difficult negotiations. Each covered only one aspect of the total military balance of power. Each was a step toward peace, but none has provided a total solution. We must forge ahead.

A fourth conclusion is that proliferation of nuclear weapons is a great danger that has not received adequate attention, and we should heighten our efforts to see that nuclear weapons not only are reduced, but do not spread to more and more nations.

Finally, a fifth conclusion is one of hope. Negotiations should work. They must. Even the most tough-minded analyst could not argue that the Russians want to risk self-destruction . . . not after all they have been through so many times.

Furthermore, technology—while awesome and destructive—is making weapons that are hard to find, so that the idea of a pre-emptive first strike may well recede. That would create a much more stable situation between the superpowers.

Also, both sides seem intent on negotiating, and a series of communications links and confidence building measures are in place and will be expanded.

Both sides also appear to want to reduce weapons, even as we both build our arsenals. The urgency of serious and intensive negotiations cannot be overstated, and there are a number of most constructive ideas being considered.

My final consluion is that we must be cautious. The agreement I believe will be adopted will include a freeze so that weapons numbers will no longer increase, but modernization of forces will be allowed (to assure stability) and some form of build-down or formula leading to a reduction of nuclear weapons will be invoked. Single-warheaded missiles may also be a significant element of the agreement.

It must be done. There is no option. Decisions must transcend politics, and what is right must displace what is popular or expedient. It is the greatest gift we can give our children.

How would my father have concluded? His long life was a hard one in which he witnessed two world wars and many tragedies. His conclusion would have been more tough-minded. I believe he would have said:

"Stay strong. Never relax your vigilance or let your power slip. Don't place your trust on other countries to maintain your security. Certainly do not rely on a country that prohibits the worship of God, that censors the press, that tramples on human liberty and holds its people in imprisonment. Remember, it is America that embodies the freedoms that we want to preserve. In short, stay strong, and from strength strive for peace. Bargain from your strength to reach agreements that will enhance the prospects of peace."

THE WALL STREET JOURNAL ON ITEM VETO

Mr. DIXON. Mr. President, today's Wall Street Journal contains a strong, cogently argued editorial on the need to create an item-veto power for the President. Modesty would usually prevent me from bringing an editorial such as this one to the Senate's attention, since it mentions me by name in a way that my press secretary views as favorable. However, I believe this subject is of enough importance to take the risk of seeming to blow my own horn just a bit.

I invite my colleagues' attention to this editorial because it makes the case for the item veto so well. It makes many of the same points I have been making on this issue throughout my public career, and makes the points clearly and concisely.

The case for the item veto is a compelling one, and one that should receive serious attention in both the Senate and the House of Representatives. We all know—Democrats and Republicans, liberals and conservatives—that we simply cannot continue to budget the way we do now. We are facing $200 billion deficits as far as the eye can see. It seems clear that patchwork solutions just will not work, and that real, long-term solutions will require fundamental changes in the way we address the Federal budget.

The item veto is such a fundamental change—one that has been proven workable in 43 States. What works at the State level can work at the Federal level, where the item veto is even more crucially needed.

I urge the Senate, therefore, to review this editorial carefully; to begin to consider the questions surrounding the item veto in a serious way; and to join a broad, bipartisan effort to establish the item veto as part of the law of the land.

I ask unanimous consent that the editorial from the Wall Street Journal be included in the RECORD at this point.

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

[From the Wall Street Journal, Oct. 7, 1983]

STOP THE MERRY-GO-ROUND

There now appears to be a very good chance that President Reagan will take the one step that can put Congress out of the misery it brought down on itself by creating the "budget process." He may ask Congress next year to create the power of line-item veto for the president.

The line item was put squarely on the public-policy table this week by Treasury Secretary Donald Regan. "I'll be pushing for it," Mr. Regan said. Moreover, the Journal's Kenneth H. Bacon reported that the president may seek the line-item veto in his budget proposal to Congress next year, raising the possibility that Mr. Reagan will make the item veto a campaign theme in 1984. If so, we suggest the president set his intention in concrete and have it deadbolted to his desk so no one will doubt his resolve.

The growth in federal spending is the single most intractable problem this country has on its hands right now. And the line-item veto is the one—the only—tried and proven management tool ever created in this country to control public spending.

Spending contol is traditionally thought to be the pet project of Republican politics. The corollary, we take it, would be that undermining control of public spending is the pet project of Democratic politics. However, this sort of crude stereotyping is accurate only if limited to the behavior of Congress since the Hansen-Bolling committee reforms of the early 1970s and the Budget Control Act of 1974. Unintentionally, these reforms broke Congress' back, and the members know it.

But the line-item veto, which lets a governor—or president—reject individual items in an appropriation bill, has a history of support among Democrats serving in the executive branch. Both FDR and Harry Truman favored it. And back in 1981, Lloyd Cutler, former counsel to President Carter, spoke in favor of the line-item veto at a conference on the ills of the presidency. Mr. Cutler later told the Christian Science Monitor, "We are the only country where the legislature can vote a larger budget than the executive proposes."

This week, for instance, the Senate voted a single, mind-boggling $91 billion appropriation bill for several departments' domestic spending. The president is supposed to accept it or veto it in toto. Surely the item veto is a more prudent way to deal with sums of this size.

The line-item veto does in fact have support in the current Congress, and it is bipartisan. In the House, Republican Jack Kemp has just introduced a constitutional amendment to give the president the line-item veto. The item veto's leading proponent in the Senate is Alan Dixon, a Democrat from Illinois, which uses the line-item veto, as do 42 other states. Mr. Dixon served in the Illinois State Legislature from 1951-71 and as state treasurer from 1971-77. It's a well-known fact that the "budget process" of the last two sessions has been hell on earth for members of Congress, and someone with Sen. Dixon's experience with the item veto must surely wonder why Congress persists in grinding its gears this way. Sen. Dixon hopes to find out several weeks from now, when he holds hearings on his line-item-veto proposal.

It's becoming evident that the closer members of Congress look at the item veto in the context of their current difficulties, the better it looks. On Wednesday Georgia's Sen. Mack Mattingly introduced his own bill and a call for a constitutional amendment. The Dow Jones News Service also reported this week that House Budget Committee Chairman Jim Jones said that although he hadn't formed an opinion on the item veto, "I have asked for a whole lot of information on it." Chairman Jones's interest indicates the idea may get the serious discussion it deserves.

We're pretty sure what the pro forma objections will be to the line-item veto. It would, as the irrepressible Rep. Jim Wright has said, give the president "dictatorial powers." It's an article of faith among legislators that giving the executive the item veto comes at their expense. But if opponents in Congress of the item veto fear that it will diminish their constitutionally established mandate, they should be challenged to state whether they now regard the primary and proper exercise of that mandate to be finding ways to spend annually larger shares of the gross national product. That is what Congress does now. Can the members of Congress give any reason why the people should not regard them as mainly an automated spending machine?

Before the gentleman and gentleladies of Congress pull themselves up to their full aristocratic height to inveigh against the imperial presidency, we'd like to suggest that they sit down and think a little about what the Congress of the United States has become.

Nearly every aspect of American life has become politicized and now has its own squadrons of lawyers and flacks in Washington. The city—and especially the halls of Congress—has become a permanent circus of lobbyists and public-interest groups cartwheeling through Congress for some of Uncle Sam's cotton candy. Odd, isn't it, how none of them ever seems satisfied? In short, the balance of power has rolled free of both the elected chief executive and the legislature, where it properly belongs, and into the unelected hands of the public-policy specialists.

Congress badly needs some way to get off this merry-go-round. It badly needs to find its way back to a life of serious, constructive politics. A strong campaign by Mr. Reagan on behalf of the line-item veto would be the right step in that direction.

PRESIDENTIAL LINE-ITEM VETO PROPOSAL

Mr. HATFIELD. Mr. President, the Secretary of the Treasury, Donald Regan, was quoted this week as saying that the administration should be granted a "line-item veto" authority because Congress was "unable or unwilling to cut spending" and that "This President is willing to take the tough steps necessary to reducing deficits." Reducing Federal deficits is a goal none of us quarrel with, but the proposal suggested by the Secretary once again illustrates H. L. Mencken's axiom that for every difficult and complex problem, there is an obvious solution which is simple, easy, and wrong.

The proposed line-item veto cannot reach the enormous sums provided for entitlement programs because if those funds are not provided, eligible recipi-

ents can sue the Government for their payments. Neither does there seem to be any inclination on the part of the administration to pare back on congressional appropriations for the Department of Defense or for foreign assistance, especially military aid. We, therefore, are left with that small percentage of the Federal budget, domestic, nondefense discretionary programs, against which the administration has pledged to take its "tough steps necessary to cut spending." But this spending, the core of the bills under the Committee on Appropriations jurisdiction, has precious little to do with the $200 billion deficit. It amounts to $75 billion or only about 9 percent of the Federal budget. The President could veto each line-item in every appropriation bill and still end up with a deficit of well over $100 billion per year.

Beyond the fact that Mr. Regan's proposal does not make budgetary sense, it also erodes the very critical balance of powers between the exeutive and legislative branches. If the President is granted the power to veto in part or in whole individual appropriations accounts, he would be able to virtually dictate to Congress what could be provided for each program and activity of the Government. This is not merely a concern over saving money, but rather over the issue of whether Congress should have a separate and equal voice in making those decisions as to how Federal resources are allocated.

Mr. President, the Secretary of the Treasury knows full well that the President has been very effective in using his current veto power in getting Congress to keep down the size of our appropriations bills. Just look at the Labor-HHS appropriations bill passed by the Senate this week. It was billions within the congressional budget allocation for this subcommittee, and although in aggregate it did exceed the President's budget request, it is a very tight bill. This is so because of direct negotiations with the administration and the explicit threat of a veto unless overall spending was restrained.

The current veto authority of the President is clearly working here, but Secretary Regan wants even more. He advocates a procedure whereby even if the aggregate total of a bill was acceptable to the administration, the President could still use a veto to cut or eliminate appropriations for specific accounts. This is not budgetary restraint, this is actually the old impoundment strategy in different clothing. The President would not be vetoing spending because it was excessive, he would use his veto to kill programs for political or policy reasons.

Mr. President, the real issue here is not money, it is a question of power. The Congress is responsible for writing spending legislation and the President is empowered to veto bills he finds objectionable. This is a sharing of power in which neither party dominates this decisionmaking process. Were the President to be granted line-item veto power, he would on a line-by-line basis be able to "edit" legislation passed by the Congress, and thereby usurp the authority currently held by the legislative branch.

Aside from the institutional problems raised by Secretary Regan's proposal there are a host of issues associated with putting a line-item veto into practice. As an example, how does a President exercise a line-item veto on a spending measure like a continuing resolution where no line-item appropriations are actually written into the legislation? Does the Secretary of the Treasury suggest that the budgetary impact of such legislation as it pertains to certain accounts are the actual object of the veto, in effect an impoundment of budget authority currently prohibited by the Congressional Budget Act? In the case of regular appropriations bills, can the President veto earmarks of appropriated funds, conditions or limitations on the use of funds, or legislative riders enacted in appropriations bills? What about contract authority enacted as part of some authorization bills, can these too be subject to line-item vetos?

Mr. President, I note with some interest that the distinguished senior Senator from Kansas (Mr. DOLE) has endorsed Secretary Regan's proposal. While I have profound respect for his ability as chairman of the Finance Committee, many disturbing questions relative to legislation under his committee's jurisdiction are involved by line-item veto authority. With this power could the President veto portions of social security legislation, which is in effect direct spending of Federal funds? How about individual tax expenditure provisions contained in the revenue bills occasionally moved by his committee, are these costly items of expenditure of tax revenue subject to veto as would be regular appropriations from funds already in the Treasury? If not, why? Tax expenditures, especially refundable tax credits, contribute to the same deficit so often associated exclusively with direct spending.

Mr. President, I do not mean to sound overly negative about Secretary Regan's proposal, but, frankly, I can find almost nothing worthwhile in it. If the Secretary is seeking a procedure with which the President can seek to excise certain spending from the Federal budget, this already exists in the impoundment provisions of the Congressional Budget Act. If those procedures are inadequate, then let us correct that legislation, rather than launch off on a rewrite of the delicate balance of power built into the Constitution. Such restraint is not only prudent, but would better reflect the conservative values ostensibly held in high regard by this administration. If Mr. Regan is truly concerned about achieving savings in a broader array of Federal programs, perhaps it is time that he join me in taking a hard look at excessive military spending and entitlement programs. In any event, while I plainly disagree with the Secretary's proposal, his initiative is commendable and I know we will continue to work together to achieve our mutual goal of deficit reduction.

SECRETARY JAMES WATT

Mr. SYMMS. Mr. President, as the lynch mobs move forward for Secretary Watt's hanging I am reminded of how a coop full of chickens will attack one of their own if a weakness occurs.

The Idaho-Press Tribune in Caldwell and Nampa, Idaho, ran the following article by a well known and highly respected businessman, freedom fighter, and patriot Ralph Smeed.

Mr. President, the printing of this article will probably not slow the lynch mob but it will at least make this Senator feel better—I therefore ask unanimous consent to insert Ralph Smeed's article in the RECORD and I hope my colleagues will enjoy it as much as I did.

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

[From the Idaho Press-Tribune, Oct. 2, 1983]

WATT: HIS CANDOR ENRAGES MEDIA

(By Ralph Smeed)

It looks as though U.S. Secretary of the Interior James Watt has "had it." Why? Well, he's made a lot of special interests angry, that's why. But they are not new interests as the liberal media would have us believe. Of all those who are calling for the gutsy politician's resignation there are none who haven't wanted him out long before his recent off-the-cuff remarks.

As a little background here's what he said with some context added which most of the Watt-hating liberal media censored. Sunday's UPI story on page 6 in the relatively middle-of-the-road Idaho Press-Tribune: "Watt is under fire for telling a group of lobbyists Wednesday about the panel: 'We have every kind of mix you can have. I have a black, I have a woman, two Jews and a cripple. And we have talent.'" In context, it isn't even unkind.

Now then, Watt is so terribly controversial not because he is blunt and outspoken, but because he is perceived to be—for private property, for the free market, for limited government and for capitalism. Oh yes, add one more for good measure: Watt is thought to be vigorously anti-Communist. His is not only courageous and absolutely not intimidated by the left-liberal news media, but he absolutely outrages the media moguls. It's what they think he stands for that they hate.

When the American press sets out to bring a political maverick to his knees they usually get the job done whether said boat-

rocker is an outspoken conservative or a non-statist liberal. But the only time Watt gets on his knees is to pray to his God. His God is definitely, so he claims, NOT the government. By the way, I'm told he does pray quite frequently and quite openly and is deeply religious, whatever that means. Still, whatever it means, it absolutely drives his adversaries up the wall, but did you ever see this in print? I mean this ogre, this representative of the greedy, capitalist-pig coal miners and this rip, rape and ruin-the-forests politician actually praying to some supreme entity—instead of government, that god which the media, generally speaking, almost worship? Of course you have not. And you probably won't. Worship these days, is usually "good news" and the press finds good news ever so difficult to deal with, not to mention conservative personalities in public life who are not easily intimidated.

In fairness one should add that readers do seem more willing to read and devour bad news than good. Still the suspicion lingers, if good news were pursued with the same liberal zeal that they now pursue the bad, we'd all love the be-gooders more than the do-gooders.

Regardless of Watt's actual desires to sell a small portion or a large portion of the greedy government's sprawling millions of acres he is perceived as wanting to "sell off" (a la George Orwell's "newspeak") all he possibly can. I know for a fact that this isn't true, but, again, he must do most of his communicating through a hostile news media.

And last, but not least, according to the Confederation of the Associations for Unity of the Societies of the Americas (CAUSA, International) there are two concepts alongside which Communism cannot exist, namely, private property and God. Watt is perceived by the media to be red hot for both. True or not, this seems to make him a threat.

Furthermore, the theoreticians from CAUSA claim that, "the reason America keeps losing (i.e., their fanny and all the fixtures) is that the theoretical underpinnings of Communism are not understood."

Toward that end I was invited to and did attend one of their theoretical seminars at the Mayflower Hotel in Washington, D.C., a few weeks ago. Let me say their fine presentation would do credit to any that IBM might put on for their high level executives. It was so successful they are presently seeking nationally known media people to attend a similar seminar in two or three cities in Europe. I wish them luck and Godspeed.

I mention all this in the hope of showing conservatives they should give moral support to our leaders who have beliefs they agree with and guts enough to pursue those beliefs against ignorance, cowardliness and sin. Moral support for leadership is something conservatives are too often more stingy with than they are with their money to support ideas. And believe me, they're slow to support new ideas.

Unfortunately, Watt is, I fear, more competent and articulate in religion (God) than he is in free market capitalism (private property). But like it or not he is perceived as a leader of both. So if a decent man is shot down for the above candor with decent if abrupt words, then conservatives everywhere who were stingy as usual with their moral support, publicly, deserve to lose.

MESSAGE FROM THE HOUSE

At 3:19 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3958. An act making appropriations for water resource development for the fiscal year ending September 30, 1984, and for other purposes.

ENROLLED BILLS SIGNED

At 3:26 p.m., a message from the House of Representatives, delivered by Mr. Berry, announced that the Speaker pro tempore (Mr. WRIGHT) has signed the following enrolled bills:

H.R. 1062. An act to authorize the Secretary of the Interior to convey, without consideration, certain lands in Lane County, Ore.;

H.R. 1556. An act to authorize the conveyance of the Liberty ship *John W. Brown;*

H.R. 3379. An act to name a U.S. Post Office Building in the vicinity of Lancaster, Pa., the "Edwin D. Eshleman Post Office Building";

H.R. 3835. An act to designate the U.S. Post Office Building in Oshkosh, Wis., as the "William A. Steiger Post Office Building"; and

H.R. 4101. An act to extend the Federal Supplemental Compensation Act of 1982, and for other purposes.

Under the authority of the order of today, October 7, 1983, the enrolled bills were subsequently signed by the majority leader (Mr. BAKER) on October 7, 1983, during the adjournment of the Senate.

HOUSE MEASURE REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 3958. An act making appropriations for water resource development for the fiscal year ending September 30, 1984, and for other purposes; to the Committee on Appropriations.

ENROLLED BILL PRESENTED

The Secretary reported that on today, he had presented to the President of the United States the following enrolled bill:

S. 1894. An act to designate the Foundation for the Advancement of Military Medicine as the "Henry M. Jackson Foundation for the Advancement of Military Medicine."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 1660. A bill relating to the preservation of universal telephone service (with minority views) (Rept. No. 98-270).

By Mr. HATFIELD (for Mr. MCCLURE), from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 622. A bill to authorize the Secretary of the Interior to undertake feasibility investigations (with additional and minority views) (Rept. No. 98-271).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, without amendment:

S. Res. 239. A resolution relative to expenditures by the Select Committee on Indian Affairs; referred to the Committee on Rules and Administration.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

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

The following-named persons to be the Representative and Alternate Representatives of the United States of America to the 27th Session of the General Conference of the International Atomic Energy Agency:

Representative: Donald P. Hodel, of Oregon. Alternate Representatives: Richard T. Kennedy, of the District of Columbia; Nunzio J. Palladino, of Pennsylvania; and Richard Salisbury Williamson, of Virginia.

(The above nominations were reported from the Committee on Foreign Relations with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. RUDMAN (for Mr. HUMPHREY (for himself and Mr. RUDMAN)):

S. 1944. A bill to allow the obsolete submarine U.S. ship *Albacore* to be transferred to the Portsmouth Submarine Memorial Association, Inc., before the expiration of the otherwise applicable 60-day congressional review period; to the Committee on Armed Services.

By Mr. STAFFORD (by request):

S. 1945. A bill to terminate the authorization for the Lake Brownwood modification project, Pecan Bayou, Tex.; to the Committee on Environment and Public Works.

By Mr. THURMOND:

S. 1946. A bill for the relief of Catherine and Robert Fossez; to the Committee on the Judiciary.

By Mr. SASSER (for himself and Mr. BAKER):

S. 1947. A bill to designate certain lands in the Great Smoky Mountains National Park as wilderness; to provide for settlement of all claims of Swain County, N.C. against the United States under agreement dated July 30, 1943; and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. LUGAR:

S. 1948. A bill to establish a national minimum drinking age of 21; to the Committee on Commerce, Science, and Transportation.

By Mr. HUDDLESTON (for himself, Mr. COCHRAN, Mr. BOREN, Mr. MELCHER, Mr. DIXON, Mr. HEFLIN, Mr.

NUNN, Mr. BAUCUS, Mr. FORD, Mr. SASSER, Mr. BENTSEN, and Mr. HOLLINGS):

S. 1949. A bill to provide emergency drought relief assistance for farmers and others; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MATTINGLY:

S. 1950. A bill to amend the Internal Revenue Code of 1954 to increase the annual contribution limit for individual retirement accounts from $2,000 to $3,000 and to make such accounts more equitable in the case of lesser earning and nonworking spouses; to the Committee on Finance.

By Mr. HATCH:

S. 1951. A bill for the relief of Pedro (Jimenez) Castro and Amalia Conrona De Castro; to the Committee on the Judiciary.

By Mr. BAKER (for Mr. BYRD (for himself and Mr. BAKER)):

S.J. Res. 180. A joint resolution to designate the week of October 23, 1983, through October 28, 1983, as "American Energy Awareness Week"; read twice and placed on the calendar.

By Mr. BENTSEN:

S.J. Res. 181. Joint resolution to provide for the awarding of a gold medal to Lady Bird Johnson in recognition of her humanitarian efforts and outstanding contributions to the improvement and beautification of America; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LEVIN (for himself and Mr. WILSON):

S. Res. 241. A resolution expressing the sense of the Senate that the foreign policy of the United States should take account of the genocide of the Armenian people, and for other purposes; to the Committee on Foreign Relations.

By Mr. HELMS (for himself and Mr. SYMMS):

S. Res. 242. A resolution to obtain Senate access to Federal records on Martin Luther King, Jr; to the Committee on the Judiciary.

By Mr. BYRD (for himself and Mr. BAKER):

S. Res. 243. A resolution to authorize the printing of additional copies of a Senate document entitled "Dangerous Stalemate Superpower Relations in Autumn 1983—A Report of a Delegation of Eight Senators to the Soviet Union"; submitted and placed on the calendar.

By Mr. GORTON (for himself and Mr. HEFLIN and Mr. STEVENS):

S. Con Res. 77. Concurrent resolution expressing the sense of the Congress that Fire Prevention Week, 1983, should be observed with appropriate activities and remembrances; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOUTIONS

By Mr. RUDMAN (for Mr. HUMPHREY and Mr. RUDMAN):

S. 1944. A bill to allow the obsolete submarine U.S.S. *Albacore* to be transferred to the Portsmouth Submarine Memorial Association, Inc., before the expiration of the otherwise applicable 60-day congressional review period; to the Committee on Armed Services.

TRANSFER OF U.S.S. "ALBACORE" TO PORTSMOUTH SUBMARINE MEMORIAL ASSOCIATION

● Mr. HUMPHREY. Mr. President, I introduce today a bill to allow the obsolete submarine U.S.S. *Albacore* to be transferred to the Portsmouth Submarine Memorial Association, Inc., before the expiration of the otherwise applicable 60-day congressional review period.

The *Albacore* was born at the Portsmouth Naval Shipyard. It is only proper that the ship return home to a place of honor in the museum of the Portsmouth Submarine Memorial Association. Beginning on the drawing boards in 1950 to its launching in 1953, the ship was a Portsmouth product. The *Albacore* (SS569) represented a dramatic advance in submarine design. The ship was reputedly the fastest and most maneuverable submarine of the time. The submarine was the result of the Navy's planning far into the future in the field of undersea warfare. The *Albacore* was a unique ship, as she was conceived and designed as a full-scale experimental submarine. These unique features provided the ability to be the first ship with a hull specifically designed for running submerged and even today the *Albacore* would be one of the world's fastest submarines. When the sub was first launched in 1953, she was a breakthrough in hydrodynamic design, which was derived from early research on optimum dirigible hull forms. *Albacore* tests proved so successful that the Navy adopted her design for today's nuclear-powered submarine fleet.

For many years since her launching, the *Albacore* remained in the forefront of new developments. With her the Portsmouth Naval Shipyard has made new and advanced concepts come to life in a sound and practical submarine.

Her motto of "Praenuntius Futuri", forerunner of the future, is very appropriate. It is also equally appropriate that she should return home to the Portsmouth area as a lasting tribute to her many accomplishments.

I recommend this bill be referred to the Armed Services Committee for prompt consideration.●

By Mr. STAFFORD (by request):

S. 1945. A bill to terminate the authorization for the Lake Brownwood modification project, Pecan Bayou, Tex.; to the Committee on Environment and Public Works.

TERMINATION OF AUTHORIZATION FOR LAKE BROWNWOOD MODIFICATION PROJECT

● Mr. STAFFORD. Mr. President, during the last Congress I intoduced a bill on behalf of the administration to deauthorize the Lake Brownwood modification project at Pecan Bayou, Tex. The project would make safety related modifications to a non-Federal dam, projects that have traditionally been viewed as a non-Federal reponsibility.

Because the Congress did not consider this legislation last year and because the administration has renewed its request that such legislation be passed, I am reintroducing this bill. I am pleased that our Committee on Environment and Public Works will be meeting October 19 to begin to markup omnibus water resources legislation, as well as a related infrastructure proposal.

Mr. President, I ask unanimous consent that a copy of this legislation, along with a copy of a letter describing its justificaton, be printed in the RECORD.

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

S. 1945

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the authorization for the Lake Brownwood Modification project, Pecan Bayou, Texas, contained in the Flood Control Act of 1968 (Public Law 90-483), is hereby terminated.

DEPARTMENT OF THE ARMY,
Washington, D.C., September 8, 1983.

Hon. GEORGE BUSH,
President of the Senate,
Washington D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of legislation "To terminate the authorization for the Lake Brownwood Modification project, Pecan Bayou, Texas."

The proposal is a part of the Department of the Army's Civil Works legislative program for the 98th Congress. The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to enactment of this proposal. The Department of the Army recommends that the proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

Congress authorized the construction of a new dam and protective measures for the spillway at the existing earthen dam at Lake Brownwood, Pecan Bayou, Texas, in the Flood Control Act of 1968, Public Law 90-483. At the time of authorization, it was concluded that the existing dam and spillway at Lake Brownwood, which are owned and operated by the Brown County Water Improvement District No. 1, were inadequate for safe operation. Recent investigations of the existing dam, conducted pursuant to the National Dam Inspection Program, have confirmed that safety problems exist. However, recommendations forwarded to the Congress on 16 November 1976 with the report on the National Program of Inspection of Dams made it clear that the regulation of non-Federal dams on non-Federal lands is a State responsibility and that dam owners have the ultimate responsibility for safe structures. Accordingly, when local interests discharge their obligations by correcting the unsafe conditions at Lake Brownwood, there will be no need for additional work by the Federal Government.

In view of the absence of Federal interest in participating in Lake Brownwood modifications, and in order to eliminate the uncer-

tainty created by the authorization for Federal involvement in the project, the Department of the Army recommends that the authorization for the Lake Brownwood Modification project be terminated.

COST AND BUDGET DATA

The enactment of this proposal will cause no increase in the budgetary requirements for the Department of the Army.

ENVIRONMENTAL AND CIVIL RIGHTS IMPACT CONSIDERATIONS

Enactment of the enclosed proposed legislation will not have any significant environmental or civil rights impacts.

Sincerely,

ROBERT K. DAWSON,
Deputy.●

By Mr. SASSER (for himself and Mr. BAKER):

S. 1947. A bill to designate certain lands in the Great Smoky Mountains National Park as wilderness; to provide for settlement of all claims of Swain County, N.C., against the United States under the agreement dated July 30, 1943, and for other purposes; to the Committee on Energy and Natural Resources.

GREAT SMOKY MOUNTAINS WILDERNESS ACT

Mr. SASSER. Mr. President, I rise today to introduce legislation, along with my distinguished colleague, Mr. BAKER. The legislation that we are introducing today, S. 1947 provides for the designation of approximately 467,000 acres of the Great Smoky Mountains National Park as wilderness. In addition, S. 1947 also addresses the longstanding dispute between the Federal Government and Swain County, N.C.

Mr. President, almost 50 years ago, Congress recognized the tremendous beauty, history, and importance of the Great Smoky Mountains. Congress saw fit then to designate this great natural resource, which stretches across the Tennessee-North Carolina border, as a national park.

Now, almost 50 years later, Tennessee, North Carolina, and the Nation prepare for the 50th anniversary celebration of the most visited park in these United States.

Mr. President, I can think of no more fitting nor apt tribute to this great natural resource than the further designation of a portion of the Great Smoky Mountains National Park as wilderness.

The Wilderness Act of 1964 recognized the need to preserve our Nation's wild and rugged land resources. Indeed, the preamble to the Wilderness Act declared it to be "the policy of the Congress to secure for American people of present and future generations the benefits of an enduring resource of wilderness."

Wilderness areas serve as a vivid reminder of our past. Wilderness areas are, essentially, "ecological yardsticks" by which man may measure his progress. The wild and roadless acres of the Great Smoky Mountains sustain these guiding principles of the Wilderness Act of 1964.

Let me share with you briefly some of the outstanding features of the Great Smoky Mountains, recently cited in the National Park Service's general management plan.

For 36 of its 71 miles, the crest of the Great Smoky Mountains stands above 5,000 feet; 16 peaks reach more than 6,000 feet. The majestic and rugged beauty of the Smokies is rare indeed.

Nearly 200,000 acres of the Smokies forest land have never been commercially logged. The Smokies boasts some 130 species of trees and over 1,200 species of plants.

In addition, there are a variety of animal habitats found in the Great Smoky Mountains. There are over 50 species of mammals in the park ranging from the black bear to the pygmy shrew. A variety of fish, reptiles, amphibians, invertebrates, and over 200 species of resident and migratory birds are found in the Smokies. The incredible ecological diversity found in the Smokies recently prompted several observers to concur that the Great Smoky Mountains is an "international biosphere reserve."

Mr. President, I would like to take this opportunity to commend the city of Gatlinburg, the officials and the citizens, for allowing the many visitors to the Smokies to share a great natural resource which, for these fine Tennesseans, is simply "home." The courtesy and hospitality which is so typical of Gatlinburg is second to none. It is with pride that I can say that Gatlinburg truly is the "gateway to the Smokies."

I believe that it is high time that the Congress took the final step and designated these 467,000 acres as wilderness.

Mr. President, the movement toward wilderness designation has been ongoing. Indeed, wilderness designation for the Great Smoky Mountains has been an issue about which I have been greatly interested and actively involved for the past three Congresses.

In the past, Mr. President, there have been those who have been reluctant to join the efforts toward wilderness designation for the Smokies. Today, those who would line up in opposition to the Great Smoky Mountains designation as wilderness are few in number.

One of the problems which has delayed positive congressional consideration of wilderness designation for the Smokies is the longstanding dispute between Swain County, N.C., and the Federal Government. As has been the case in previous legislation introduced in this body, S. 1947 addresses the Swain County situation. I believe that the provisions of S. 1947 providing for a settlement of the Swain County claims are fair and equitable. It is my understanding that officials in Swain County will concur on this settlement.

Mr. President, this Senator is not unmindful that the senior Senator from North Carolina, Mr. HELMS, has some remaining problems with S. 1947. I believe that S. 1947 goes a long way toward accommodating those concerns which the Senator from North Carolina has expressed during this Senator's previous introduction of Smoky Mountain wilderness legislation. S. 1947 goes a long way toward bridging the gap of differences which have, heretofore, delayed the passage of this legislation. I can assure the Senator from North Carolina that I am willing to work with him to iron out any remaining differences.

I believe that it is high time that the Congress took the final step and designated these 467,000 acres as wilderness.

Mr. President, therefore it is with a sense of personal pride and a spirit of national celebration that my distinguished colleague, Mr. BAKER, and I are introducing this legislation. The raw, untainted beauty of the Great Smoky Mountains must be preserved for future generations. The Great Smoky Mountains represents one of the few and vital remaining links which we, as Americans, have with our pioneering past. I urge my colleagues to join Senator BAKER and myself in seeking swift and early approval of wilderness designation for the Great Smoky Mountains.

Mr. President, I ask unanimous consent that the text of the bill appear in the RECORD immediately following my remarks.

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

S. 1947

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

SECTION 1. This Act may be cited as the "Great Smoky Mountains Wilderness Act."

SEC. 2. In accordance with section 3(c) of the Wilderness Act (78 Stat. 892), certain lands in the Great Smoky Mountains National Park, North Carolina and Tennessee, which comprise approximately four-hundred and sixty-seven thousand acres, (including the lands previously owned by Cities Service Company), and which are depicted on the map entitled "Proposed Management Zoning, Great Smoky Mountains National Park, North Carolina and Tennessee," and dated March 15, 1981, are hereby designated as Wilderness, and are made a part of the National Wilderness Preservation System. The map and the description of such lands shall be on file and available for public inspection in the office of the National Park Service, Department of the Interior, and in the office of the Superintendent of the Great Smoky Mountains National Park.

SEC. 3. The lands described are those classified in the January, 1982, General Management Plan for Great Smoky Mountains National Park as Natural Environment Type I Subzone (including the tracts for-

merly owned by Cities Service Company). The classification incorporates most of the area recommended by the National Park Service in 1974 (revised in November 1979) for inclusion in the National Wilderness Preservation System. In this subzone, visitor uses and park management practices are to be of a transient nature and nonmotorized except in extreme emergencies involving either human safety or critical resource protection needs.

Except for special cemetery access provisions for the north shore of Fontana Lake (Appendix D of the General Management Plan), visitor and normal administrative access will be only by foot or by horse, and camping will be of the primitive backcamping type. Park operational facilities will only be necessary for safety, research, and communications. Such facilities will be small and will not be able to be located elsewhere.

SEC. 4. (a) The Secretary of the Interior and the Tennessee Valley Authority are directed to negotiate the transfer of certain legal rights and easements retained by the Authority over lands within the Park, where such legal rights and easements are—

(1) Inconsistent with the provisions of the Wilderness Act; or

(2) Not necessary for the operation and maintenance of Fontana Reservoir and Dam.

(b) The tract of land formerly owned by the Tennessee Valley Authority, comprising approximately forty-four thousand acres, as described in the 1943 agreement referred to herein, shall be designated and administered as Wilderness effective on the date of the enactment of this Act.

SEC. 5. The Secretary of the Interior is authorized to allocate funds and personnel necessary to place a suitable historical market at or near the approach to the Cherokee Qualls Reservation, at Soco Gap, in recognition of the historical importance of Soco Gap and the contribution of the Cherokee Nation.

SEC. 6. As soon as practicable after the date of the enactment of this Act, a map of the Wilderness area and a description of its boundaries shall be filed with the Energy and Natural Resources Committee of the United States Senate and with the Interior and Insular Affairs Committee of the United States House of Representatives. Such map and description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in the map and legal description may be made.

SEC. 7. The Wilderness designated by this Act, including Section 4(b) shall be known as the Great Smoky Mountains Wilderness. It shall be administered by the Secretary of the Interior in accordance with the provisions of the Wilderness Act governing areas designated by such Act as Wilderness areas, except that any reference to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and reference to the Secretary of Agriculture shall be deemed, where appropriate, as a reference to the Secretary of the Interior.

SEC. 8. Swain County, North Carolina, claims certain rights acquired pursuant to an Agreement dated July 30, 1943, between the Secretary of the Interior of the United States, the State of North Carolina, the Tennessee Valley Authority, and Swain County, North Carolina, which provided, on certain conditions, that the Department of the Interior would construct a road along the north shore of Fontana Reservoir to replace a road flooded by the construction of Fontana Dam and the filling of the reservoir, which road has not been completed. In order to settle and quiet all claims arising out of said Agreement, the following provisions are made—

(a)(1) The Secretary of the Treasury shall be authorized to pay to Swain County, North Carolina, the sum of $9,500,000.00.

(2) The sum of $9,500,000.00 shall be deposited in an account in accordance with the rules and regulations established by the North Carolina Local Government Commission; the principal of such sum may only be expended by Swain County under a resolution approved by an affirmative vote of two-thirds of the registered of said county; interest earned on the unexpended principal of said sum may only be expended by a majority vote of the duly elected governing commission of said county.

(b) Swain County, North Carolina, is relieved of any liability to make payments of principal and interest which become due after the date of enactment of this Act with respect to the loan (Case Numbered 3887000271600, Code numbered 9704) obtained on October 12, 1976, from the Farmers Home Administration.

(c) The payment and relief from liability provided for in subsections (a) and (b) of Section 8 of the Act shall constitute full and complete settlement of all claims of Swain County, North Carolina against the United States of America, the Department of the Interior, and the Tennessee Valley Authority arising out of the Agreement of July 30, 1943, and the United States of America, its Departments and Agencies, including the Department of the Interior, the National Park Service, and the Tennessee Valley Authority hereafter shall be deemed to have performed said Agreement in every particular.

SEC. 9. There is hereby authorized to be appropriated any sums necessary to carry out the provisions of this Act.

Mr. BAKER. Mr. President, I heartily congratuate the Senator from Tennessee for his fine work on this bill, and I am both proud and happy to cosponsor it. The Smokies are a fine example of nature's intricate handiwork, and passage of this bill will insure that their quiet beauty is retained for future generations. Mr. President, I should be remiss were I not also to mention at this time the contribution of Governor Alexander of Tennessee and the Tennessee Department of Conservation. Those efforts went a considerable distance toward enabling us to introduce this bill today. I should note, however, Mr. President, that the Senators from North Carolina have chosen not to cosponsor this legislation at this time. Given the circumstances surrounding that part of the park which lies in North Carolina, I find that condition to be understandable.

Yet, it is my hope that the problems which our neighbors have with this legislation will soon be resolved. In that regard, I know the Senators from North Carolina are working on a proposal to address some of the issues that affect their North Carolina interests. I would hope that the Senate Energy and Natural Resources Committee in their consideration of this bill will review their ideas and it appropriate incorporate them in the Senate's final version of this legislation.

Mr. EAST. Mr. President, I regret that I cannot at this time support the legislation introduced by my able colleague Senator SASSER and cosponsored by the majority leader Senator BAKER. I would like to make a few remarks regarding the proposal.

This bill designates certain lands in the Great Smoky Mountains as wilderness and resolves a long-standing controversy between the Federal Government and the citizens of Swain County, N.C. Over the last several weeks, my staff and the staffs of Senator SASSER and others have worked on the legislative language.

An agreement in principle has been reached that would make a few changes regarding lands in North Carolina, access for the handicapped, and other minor matters. Unfortunately, the Columbus Day recess is upon us and these differences have not yet been incorporated into the proposal. Therefore, I must withhold my support for this bill as these details are worked out.

The establishment of an appropriate management and use policy for the public lands of the United States is a matter of great interest to the citizens of North Carolina. I recognize the idea of setting aside areas of Federal lands to be preserved in their natural state. I endorse this concept because it comports with an orderly consideration of the competing values at work for use of public lands.

Moreover, I support provisions in the bill that would settle the 1943 agreement between the Federal Government and Swain County. This issue has been involved in bureaucratic redtape for longer than North Carolinians want to remember.

I am confident that the changes sought by my constituents in North Carolina can be accommodated. I look forward to supporting a final version of this bill.

Mr. HELMS. Mr. President, I regret that I cannot lend my unconditional support to the proposal offered by my colleagues from Tennessee establishing the Great Smoky Mountains Wilderness Area and settling a 40-year-old dispute between the Federal Government and Swain County, N.C.

My hesitancy to endorse this bill should not in any way indicate that I disagree with its purpose. In fact, I commend Senator BAKER and Senator SASSER for the effort they are making to preserve this unique and valuable area for future generations. I had simply hoped a few changes could be made to accommodate some concerns I have heard from North Carolinians living in the area. Indeed, it is my intention to offer a very similar bill.

My staff worked with the staffs of the Senators from Tennessee to iron out a few differences we have, but time ran out. I understand the need to introduce this proposal before the recess so that sponsors of the bill can go home and talk with constituents about it. I had hoped to do the same. But rather than rush to judgment on a bill having only a few details remaining to be worked out for the citizens of North Carolina, I think it prudent to withhold my support and offer my own version after the recess.

Mr. President, let me emphasize that I support the concept of establishing a "core" wilderness in the Great Smoky Mountains National Park, some areas of which are a ideally suited for wilderness. Much of the area is remote and accessible only by foot.

I do have serious concerns about placing 98 percent of the Great Smoky Mountain National Park under wilderness designation. Some areas included by the bill are already used extensively. For instance, trails and primitive roadways along the northern edge of Fontana Lake provide access to cemeteries and other historic sites. Likewise, I am told the Cherokee Indians use a portion of the park near their reservation regularly. I cannot support a proposal that would curtail these uses. Nor could I support legislation that would limit recreational use of Fontana Lake, as this bill might do.

Mr. President, I hope we can improve on the bill offered by my friends from Tennessee by enabling the Secretary of Interior to fight forest fires and insect infestations in the designated wilderness areas. Without that authority, the chances of a catastrophe are obvious.

In my judgment, it is also important to authorize the Secretary of the Interior to provide whatever reasonable access he deems appropriate for handicapped Americans who want to enjoy scenic overlooks and other opportunities for experiencing the wilderness near existing roads that will border units of the wilderness area.

Mr. President, I also have reservations about the manner which this bill purports to settle the so-called North Shore Road controversy. A settlement is long overdue, to say the least. However, the terms outlined in the bill make no accommodation for what I believe were the intended beneficiaries of a 1943 agreement between the Federal Government and Swain County. I support the $9.5 million lump sum payment, as well as forgiveness of the bond debt. However, I hope to authorize the expenditure of a small sum over and above these amounts for construction of a primitive road that will enable citizens to reach homesteads and gravesites north of Fontana Lake.

Again, I extend my congratulations and support to the intent of distinguished Senators from Tennessee, and my regrets that we were not able to iron out the details of certain aspects of the bill that would have allowed me to cosponsor at this time. As soon as possible after the pending Columbus Day recess, I intend to introduce a suitable compromise version that will address the specific areas that I have already mentioned, and I hope that accommodation can be reached regarding the minor differences that yet remain.

By Mr. LUGAR:

S. 1948. A bill to establish a national minimum drinking age of 21; to the Committee on Commerce, Science, and Transportation.

NATIONAL MINIMUM DRINKING AGE

● Mr. LUGAR. Mr. President, today I am introducting a bill to establish a national minimum drinking age of 21. There is overwhelming evidence of a direct relationship between a 21-year drinking age and highway traffic fatalities. Each year, some 50,000 people in America are killed in auto accidents, and hundreds of thousands more are seriously injured. Half of these fatalities are caused by drunk drivers. These drivers are disproportionately young people.

In the past decade, a number of States have experimented with a lower drinking age than 21. Overwhelmingly, these States have experienced sharp increases in fatalities and injuries involving young drivers. A number of these States have since raised the minimum drinking age, with a corresponding decline in fatalities and injuries among young people. Currently, more than half of the States have a minimum drinking age of 21 years.

The evidence is clear that now is the time for a national solution to this problem, based on the experience of the States. The bill which I am introducing today is identical to H.R. 3870, which was introduced in the House of Representatives by Congressman FLORIO of New Jersey on September 13. I invite cosponsorship of this bill by all colleagues, and ask that the text of the bill be printed in full in the RECORD.

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

S. 1948

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

FINDINGS

SECTION 1. The Congress finds that—

(1) consumption of alcohol beverages by those driving automobiles and other vehicles is a major cause of accidents, resulting in numerous fatalities and injuries and in the destruction of property with far-reaching social and economic consequences;

(2) a disproportionate number of accidents caused by intoxicated drivers involves drivers under the age of twenty-one; and

(3) prohibition of the sale of alcoholic beverages in interstate commerce and by establishments in or affecting interstate commerce to those under the age of twenty-one is necessary for the public safety and welfare.

SALES

SEC. 2. No person may sell or offer to sell any alcoholic beverage to any individual who is under the age of twenty-one if the beverage is or has traveled in interstate commerce or if the sale or offer to sell is made in an establishment which is in or affects interstate commerce.

DEFINITION

SEC. 3. For purposes of section 2, the term "alcoholic beverage" means beer as defined in section 5052(a) of the Internal Revenue Code of 1954, wine of not less than 5 per centum of alcohol by volume, or distilled spirits as defined in section 5002(a)(8) of the Internal Revenue Code of 1954.

PENALTY

SEC. 4. (a) Any person who violates section 2 shall be subject to a civil penalty of not more than $5,000.

(b) A civil penalty for a violation of section 2 shall be assessed by the Secretary of Commerce by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order the Secretary shall—

(1) give written notice to the person to be assessed the civil penalty under such order of the Secretary's proposal to issue such an order, and

(2) provide such person an opportunity to request, within fifteen days of the date the notice is received by such person, such a hearing on the order.

(c)(1) In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, any history of such prior violations, the degree of culpability, and such other matters as justice may require.

(2) The Secretary may compromise, modify, or remit, with our without conditions, any civil penalty which may be imposed under this section.

(d) Any person who requested in accordance with subsection (b) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the thirty-day period beginning on the date the order making such assessment was issued.

(e) If any person fails to pay an assessment of a civil penalty—

(1) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with subsection (d), or

(2) after a court in an action brought under subsection (d) has entered a final judgment in favor of the Secretary.

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the thirty-day period referred to in subsection (d) of the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the va-

lidity, amount, and appropriateness of such penalty shall not be in subject to review.

CITIZENS' CIVIL ACTIONS

SEC. 5. (a) Any person (including a State) may commence a civil action against any person who is alleged to be in violation of section 2 to enjoin such person from violating such section.

(b) Any civil action under subsection (a) may be brought in any State court of competent jurisdiction or in a United States district court. An action brought in a United States district court shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action brought in a United States district court process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district.

(c) The court, in issuing any final order in any action brought under subsection (a), may award to the plaintiff costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award to the plaintiff costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(d) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of section 2.

(e) For purposes of this section, the term "State" includes the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.●

By Mr. HUDDLESTON (for himself, Mr. COCHRAN, Mr. BOREN, Mr. MELCHER, Mr. DIXON, Mr. HEFLIN, Mr. NUNN, Mr. BAUCUS, Mr. FORD, Mr. SASSER, Mr. BENTSEN, and Mr. HOLLINGS):

S. 1949. A bill to provide emergency drought relief assistance for farmers and others; to the Committee on Agriculture, Nutrition, and Forestry.

DROUGHT RELIEF ACT OF 1983

Mr. HUDDLESTON. Mr. President, the bill I am introducing today will provide emergency assistance to farmers and others adversely affected by this year's drought.

I seriously considered offering this proposal as an amendment to S. 1529, the dairy and tobacco legislation before the Senate today. However, to insure timely action on S. 1529, I am offering this important drought relief legislation as a measure to be considered separately.

During the past several weeks, I have met with administration officials to discuss the drought situation and the steps that should be taken to provide relief to farmers and others. To date, I have been disappointed in the administration's response to this potential crisis situation. For that reason, I have developed this legislative proposal that I have already shared with the administration.

The drought and 2 consecutive years of record low net farm income have left many farmers facing the prospect of foreclosure or liquidation of their farming operations.

Federal agricultural credit programs and other farm protection programs must be adjusted immediately to provide emergency assistance to farm operators who are experiencing temporary financial hardship through no fault of their own. In addition, many farm-related businesses and rural communities are also in need of assistance.

A significant part of the proposal I am offering today comes from S. 24, the Emergency Agricultural Credit Act of 1983, that several of my colleagues and I introduced earlier this year and that the Agriculture Committee reported on March 18. I have made significant modifications in S. 24, as reported, to reduce possible costs and to address other concerns that have been raised. These modifications have been included in the bill.

Outlays under the other provisions of the bill will be relatively small in comparison to the losses to U.S. agriculture caused by the drought. The bill, for the most part, involves lending activities, with the loans made from revolving funds that are replenished by loan repayments. The advance deficiency payment provision involves only a shifting of the time at which deficiency payments are made—it does not increase the payments. The emergency livestock feed provision, while having a budget impact, involves no outlays. I might note that this particular provision was adopted yesterday by the Senate as an amendment to S. 1529 sponsored by the distinguished Senator from Texas (Mr. BENTSEN).

PROVISIONS OF THE BILL

The bill will require the Secretary to make advance deficiency payments to producers of 1984 crops for which there will be acreage reduction programs and for which deficiency payments are likely to be required.

In terms of credit assistance, there are several provisions in the bill that provide needed assistance through the Farmers Home Administration.

Included in the bill is a deferral provision that will require the Secretary of Agriculture to identify Farmers Home Administration farm loan borrowers who are faced with foreclosure or liquidation for financial reasons. Under the bill, after having exhausted all other servicing tools for such borrowers, the Secretary will be required to grant a deferral if the borrower can show to the satisfaction of the Secretary that:

First, he has exercised good management practices;

Second, due to circumstances beyond his control, he is temporarily unable to continue making payments; and

Third, he has a reasonable chance of repayment of the loan after the deferral period ends.

The bill will make additional changes in Farmers Home Administration programs that include:

Extending discretionary authority to implement the insured economic emergency loan program, with preference to be given to farmers affected by the drought;

Raising the operating loan limits to $300,000 for insured loans and to $400,000 for guaranteed loans;

Requiring that loan funds be made available for the limited resource farmer programs in this fiscal year;

Requiring that certain farm loans be reamortized or rescheduled at the original rate of interest or the current rate, whichever is lower;

Extending the maximum repayment period for operating loans from 7 to 15 years.

Requiring that natural disaster emergency loans be made available based on individual loss;

Requiring the use of funds allocated to the business and industrial loan guarantee program to help small rural businesses adversely affected by the drought and the payment-in-kind program; and

Modifying the rural water and waste disposal facility loan and grant program to provide:

First, a scale of graduated interest rates with more communities made eligible for lower interest rate loans;

Second, a grant distribution formula based on a community's size and median household income;

Third, a project selection system that uses three basic need factors in determining which communities get preference for the available assistance. These factors include: potential threats to community health, community size, and median household income;

Fourth, authorization for a technical assistance program to aid communities in obtaining impartial advice on the type and size of facilities needed; and

Fifth, establishment of a predevelopment fund to help communities with special needs.

EMERGENCY LIVESTOCK FEED

The bill will also require the Secretary of Agriculture to make low-grade corn held by the Commodity Credit Corporation available for sale to drought-stricken livestock producers. The corn would be sold at a price equal to 75 percent of the basic county loan rate.

This provision would be of particular assistance to hard-pressed livestock producers in States, such as Texas and

Iowa, in which the drought has destroyed animal feed crops. In Texas, for example, the Commodity Credit Corporation currently is storing 21 million bushels of grade 4 and 5 corn in warehouses. Another 17 million bushels of low-grade CCC corn is available for immediate use in Iowa.

INDIVIDUAL EMERGENCY LOAN DESIGNATIONS

The provision of the bill requiring that FmHA make natural disaster emergency loans available based on individual loss without regard to area designations, simply makes clear the intent of Congress. Although Congress amended the Consolidated Farm and Rural Development Act in 1978 and deleted all references to area designations, the FmHA continues to make county disaster designations.

A report issued by the Comptroller General stated that this practice was, and I quote "inconsistent with congressional intent and in violation of the act" end of quote. Administration officials have testified that FmHA makes natural disaster emergency loans available to individual farmers not located in a designated county when a small number of farmers in the county suffer losses in excess of 30 percent but the county loss does not exceed 30 percent. If FmHA is in fact making loans available in such cases, this provision in the bill will not result in any additional cost but will eliminate the appearance of inequity and political favoritism.

DEFERRAL PROVISION

Under the deferral provision of this bill, no principal or interest owed to FmHA by borrowers is forgiven. In addition, the bill restricts the number of borrowers who may apply for a deferral and the burden of proof to qualify for a deferral rests solely on the borrower.

According to the Congressional Budget Office, the deferral provision contained in this bill would be much less costly than the original provision in S. 24. CBO estimates the bill would result in a maximum of $700 million in delayed payments if all persons eligible got deferrals. This compares to an estimated maximum of $2.6 billion in delayed payments under the original provision of S. 24.

The bill also addresses the administration's other concern about the deferral provision contained in S. 24. The administration feared that large numbers of FmHA borrowers could have filed law suit seeking loan deferrals. This bill resolves that issue by including a provision that effectively limits the granting of a deferral to borrowers identified by the Secretary as being faced with foreclosure or liquidation.

I share the administration's concern involving the Farmers Home Administration in excessive litigation. FmHA is already being sued in numerous district courts and in several bankruptcy proceedings because its present foreclosure policy is not clear to the public and is too subjective and open to interpretation by FmHA employees at the county level.

In addition, the U.S. District Court for the District of Columbia recently found that the administration acted illegally by not implementing the economic emergency loan program during 1982; and the U.S. District Court for the Western District of Missouri has found that FmHA acted improperly by not making natural disaster emergency loans available based on individual losses.

By adopting the changes in the FmHA programs provided for in the bill, Congress can resolve the existing confusion, eliminate the appearance of inequity, and provide much needed emergency credit assistance to farmers, farm-related businesses, and rural communities.

CONCLUSION

In total, the provisions of this bill provide a comprehensive drought assistance plan. The bill will provide the tangible and sensible emergency drought assistance that our farmers, farm-related businesses, and rural communities need.

I urge my colleagues to join me in supporting this legislation.

I ask unanimous consent that the text of the bill, an explanation of the bill, and the report issued by the General Accounting Office on the issue of county designations be printed in the RECORD.

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

S. 1949

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 "Drought Relief Act of 1983".

EMERGENCY LOAN PROGRAM ELIGIBILITY

SEC. 2. Section 329 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1970) is amended by adding at the end thereof the following new sentences: "Eligibility of an applicant seeking assistance based on production losses shall be determined solely on the basis of the factors designated in this section and shall not be affected by the Secretary's failure to designate a county or counties for emergency loan purposes, except that the applicant must establish to the satisfaction of the Secretary that the production losses were sustained as a result of such disaster. The determinations of the Secretary under this section shall be final unless found by a court of competent jurisdiction, on the basis of the administrative record, to have been arbitrary, capricious, or otherwise not in accordance with law or regulations issued in accordance with law.".

LOAN DEFERRALS

SEC. 3. Section 331A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a) is amended by—

(1) inserting "(a)" after the section designation;

(2) in the second sentence, striking out "section" and inserting in lieu thereof "subsection"; and

(3) adding at the end thereof the following new subsections:

"(b)(1) During the period beginning on the date of enactment of this subsection and ending September 30, 1984, effective with respect to any outstanding loan made, insured, or held by the Secretary for farm ownership purposes under subtitle A of this title, farm operating purposes under subtitle B of this title, disaster emergency purposes under subtitle C of this title, or economic emergency purposes under the Emergency Agricultural Credit Adjustment Act of 1978, the Secretary, at the request of the borrower, shall permit the deferral of principal and interest on the loan and shall forego foreclosure of the loan, subject to the limitations in paragraph (2) of this subsection and under the conditions specified in paragraph (3) of this subsection.

"(2) The loan assistance provided under this subsection shall be available only to borrowers (A) who own or operate not larger than family-size farms, as certified by the county committee, and (B) for whom the Farmers Home Administration (in the normal course of its loan making and loan servicing operations) determines that, absent such loan assistance, there are no loan servicing alternatives available other than foreclosure of the borrower's loan or full or partial liquidation of the farm operation for financial reasons.

"(3) To obtain a deferral of principal and interest and avoid foreclosure under this subsection, the borrower must show, to the satisfaction of the Secretary, that the borrower (A) has followed good management practices, (B) due to circumstances beyond the borrower's control, is temporarily unable to continue making payment of principal and interest on the loan involved when due, and (C) has a reasonable chance of repayment of the loan after the deferral of principal and interest and foregoing of foreclosure.

"(c) At the expiration of any period of deferral of principal and interest and foregoing of foreclosure by the Secretary under subsection (b) of this section, the Secretary shall make available to the borrower, at the borrower's request, procedures whereby the loan may be consolidated, rescheduled, or reamortized to provide equitable repayment terms consistent with the borrower's farm and financial situation, and any loan so consolidated, rescheduled, or reamortized shall bear interest at a rate that is the lower of (1) the rate of interest on the original loan or (2) the rate being charged by the Secretary for loans of the same type at the time of the consolidation, rescheduling, or reamortization.

"(d) The Secretary shall promulgate regulations that provide (1) for notification of all farm borrowers under this title and the Emergency Agricultural Credit Adjustment Act of 1978 of the provisions of this section and all other servicing alternatives offered by the Secretary, (2) clear procedures by which farm borrowers may petition the Secretary for relief under such provisions and alternatives, and (3) for appeal within the Department of Agriculture from a decision that denies relief under such provisions and alternatives.

"(e) Any farm loan, other than a guaranteed loan, deferred, consolidated, rescheduled, or reamortized under any authority of the Secretary under this title other than under subsections (b) and (c) of this section

shall, notwithstanding any other provision of this title, bear interest on the balance of the original loan and for the term of the original loan at a rate that is the lower of (1) the rate of interest on the original loan or (2) the rate being charged by the Secretary for loans, other than guaranteed loans, of the same type at the time of the deferral, consolidation, rescheduling, or reamortization.".

ECONOMIC EMERGENCY LOAN PROGRAM

SEC. 4. The Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. prec. 1961 note) is amended by—

(1) inserting, before the period at the end of the second sentence of section 204(b), a colon and the following proviso: *"Provided,* That, in no case may a loan insured under this title issued during fiscal year 1984 bear an interest rate in excess of 8 per centum per annum";

(2) adding, at the end of section 210, the following new sentence: "During fiscal year 1984, the Secretary, in making financial assistance available under this title, shall give preference to applicants seeking such assistance because their farming or ranching operations have been adversely affected by drought, hot weather, or a related disaster."; and

(3) in section 211, striking out "September 30, 1982" and inserting in lieu thereof "September 30, 1984".

OPERATING LOAN PROGRAM; LIMITED RESOURCE BORROWERS

SEC. 5. (a) Section 313 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1943) is amended by striking out "$100,000, or, in the case of a loan guaranteed by the Secretary, $200,000" and inserting in lieu thereof "$300,000, or, in the case of a loan guaranteed by the Secretary, $400,000".

(b) Section 316(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1946(b)) is amended by—

(1) in the second sentence, striking out "seven" and inserting in lieu thereof "fifteen"; and

(2) in the fifth sentence, striking out "The interest rate" and inserting in lieu thereof "Except as otherwise provided for farm loans under section 331A(e) of this title, the interest rate".

(c) Section 346 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1994) is amended by adding at the end thereof the following new subsection:

"(e)(1) Notwithstanding any other provision of law, not less than 20 per centum of the loans for farm ownership purposes under subtitle A of this title, and not less than 20 per centum of the loans for farm operating purposes under subtitle B of this title, authorized to be insured, or made to be sold and insured, from the Agricultural Credit Insurance Fund during fiscal year 1984 shall be for low-income, limited-resource borrowers.

"(2) The Secretary shall provide notification to all farm borrowers under this title, as soon as practicable after the date of enactment of the Emergency Agricultural Act of 1983, of the provisions of this title relating to low-income, limited-resource borrowers and the procedures by which persons may apply for loans under the low-income, limited-resource borrower program.".

ADVANCE DEFICIENCY PAYMENTS

SEC. 6. Section 107C of the Agricultural Act of 1949 (7 U.S.C. 1445b-2) is amended by—

(1) in subsection (b)(1)—

(A) striking out "1983 crop" in clause (A) and inserting in lieu thereof "1983 and 1984 crops"; and

(B) striking out "1984 and" in clause (B); and

(2) in subsection (c)(4), striking out "(and, in the case of the 1983 crops of wheat, feed grains, and rice, the requirements of the land diversion program involved)" and inserting in lieu thereof "(and, in the case of each of the 1983 and 1984 crops of wheat, feed grains, upland cotton, and rice, the requirements of any land diversion program for such crop)".

EMERGENCY ANIMAL FEED

SEC. 7. (a) As used in this section—

(1) the term "damaged corn" means corn that is classified as U.S. No. 4, U.S. No. 5, or U.S. Sample Grade under section 810.353 of title 7, Code of Federal Regulations; and

(2) the term "eligible farmers and ranchers" means farmers and ranchers who are eligible to receive loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961).

(b) To assist eligible farmers and ranchers, in areas that have been adversely affected by drought, hot weather, or related disaster, to preserve and maintain foundation herds of livestock and poultry (including their offspring) and secondary livestock, the Secretary of Agriculture shall make damaged corn held by the Commodity Credit Corporation available for purchase by such farmers and ranchers in accordance with section 407 of the Agricultural Act of 1970 (7 U.S.C. 1427).

(c) In making damaged corn available to farmers and ranchers under this section, the Secretary shall offer the damaged corn held by the Corporation at a price that is equal to 75 percent of the basic county loan rate for such corn in effect under the Agricultural Act of 1949 at the time of sale (or a comparable price if there is no such current basic county loan rate).

(d) The Secretary shall make damaged corn available for sale, as provided under this section, until September 30, 1984, or such earlier date, as determined by the Secretary, on which the emergency created by drought, hot weather, or related disaster no longer exists.

(e) Effective for the period beginning on the date of enactment of this Act and ending September 30, 1984, the fifth sentence of Section 407 of the Agricultural Act of 1949 (7 U.S.C. 1427) is amended by inserting "and secondary livestock," after "sheep, and goats, and their offspring,".

EMERGENCY BUSINESS LOANS

SEC. 8. Effective for the period beginning with the date of the enactment of this Act and ending September 30, 1984, section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) is amended by adding at the end thereof a new subsection (f) as follows:

"(f) Notwithstanding any other provision of law—

"(1) The Secretary shall guarantee loans under this section to small businesses that—

"(A) are located in rural areas;

"(B) are engaged in furnishing machinery, supplies, and services to farmers and ranchers; and

"(C) establish by substantial evidence that they are experiencing severe economic hardship directly attributable to the adverse effects of drought, hot weather, or related disaster on the business's farming or ranching customers or to the operation of the 1983 payment-in-kind land diversion program.

"(2) A loan shall be guaranteed under this subsection for the purpose of assisting an eligible borrower to continue to operate the business of the borrower during the period of economic hardship described in paragraph (1)(C) of this subsection.

"(3) The principal amount of a loan guaranteed under this subsection may not exceed $200,000.

"(4) The period of repayment of a loan guaranteed under this subsection shall be eighteen months.

"(5) To the extent necessary to guarantee loans to eligible borrowers who have applied for assistance under this subsection, an amount equal to not less than 25 per centum of the funds appropriated under the heading "RURAL DEVELOPMENT INSURANCE FUND" in title II of the Act entitled "An Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1983, and for other purposes", approved December 18, 1982 (96 Stat. 1799), for the purpose of guaranteeing industrial development loans, shall be made available to guarantee loans under this subsection.

"(6) Not later than sixty days after the date of the enactment of the Emergency Agricultural Act of 1983, the Secretary shall issue regulations to carry out this subsection.".

RURAL WATER AND WASTE DISPOSAL PROGRAM IMPROVEMENTS

SEC. 9. (a) Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) is amended by—

(1) adding at the end of paragraph (2) the following: "The Secretary shall fix the grant rate for each project in conformity with regulations promulgated by the Secretary that shall provide for a graduated scale of grant rates establishing higher rates for projects in communities that have lower community population and income levels and that are unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing rates and terms in the area in which the applicant is located for loans for similar purposes and periods of time: *Provided,* That the grant rate shall be the maximum rate permitted under this paragraph for any project in a community that has a population of fifteen hundred or less inhabitants and a median household income level below 80 per centum of the statewide nonmetropolitan median household income and that is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing rates and terms in the area in which the applicant is located for loans for similar purposes and periods of time."; and

(2) adding at the end thereof new paragraphs (16), (17), (18), (19), and (20) as follows:

"(16) In providing financial assistance for water and waste disposal facilities under this section, the Secretary shall use a project selection system to determine which of the applicants for assistance meeting the basic requirements of this section shall be selected to receive assistance. Such project selection system shall provide for the objective and uniform comparison of requests for assistance (in the form of preapplications) on the basis of relative need as reflected by (A) low community median income; (B) low population; and (C) severity of health hazards resulting from inadequate provision for

the reliable supply of potable water or from inadequate means of disposing of waste. For purposes of the project selection system, each of these three factors shall be weighted equally.

"(17)(A) The Secretary may make payments to associations described in paragraph (1) of this subsection that are reasonably likely to receive financial assistance under paragraph (1) or paragraph (2) of this subsection for community water and waste disposal facilities, for predevelopment costs incurred in connection with the planning and design of such facilities. Such costs may include the costs of drilling test wells and of preparing alternative engineering designs to determine the most feasible and economical method to improve the water supply or waste disposal system of the community involved.

"(B)(i) The amount of any payment received under subparagraph (A) with respect to a project by an association that receives, before the expiration of the five-year period beginning on the date that such payment is received, a loan under paragraph (1) or a grant under paragraph (2) of this subsection to finance such project shall be treated as part of the amount of such loan or the amount of such grant, as the case may be.

"(ii) The amount of any payment received under subparagraph (A) with respect to a project by an association that does not receive, before the expiration of the five-year period beginning on the date that such payment is received, a loan under paragraph (1) or a grant under paragraph (2) of this subsection to finance such project shall be repaid to the Secretary as if such payment were a loan made under paragraph (1) unless the Secretary waives the repayment requirement with respect to all or part of such amount.

"(C) The total of payments made by the Secretary under subparagraph (A) for any fiscal year shall not be less than 5 per centum of any funds provided in appropriation acts to carry out paragraph (2) of this subsection for the fiscal year unless the applications for payments received by the Secretary for eligible associations for the fiscal year total less than 5 per centum of such amount.

"(D) For purposes of section 346 of this Act, each payment made under subparagraph (A) shall be deemed to be a loan unless and until such payment is offset against a grant or the Secretary waives the repayment of such payment.

"(18)(A) The Secretary may make grants to private nonprofit organizations for the purpose of enabling them to provide to associations described in paragraph (1) of this subsection technical assistance and training to—

"(i) identify, and evaluate alternative solutions to, problems relating to the development, storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas;

"(ii) prepare applications to receive financial assistance for any purpose specified in paragraph (2) of this subsection from any public or private source; and

"(iii) improve the operation and maintenance practices at any existing works for the storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas.

"(B) In selecting recipients of grants to be made under subparagraph (A), the Secretary shall give priority to private nonprofit organizations that have experience in providing the technical assistance and training described in subparagraph (A) to associations serving rural areas in which residents have low incomes and in which water supply systems or waste facilities are unhealthful.

"(C) The total of grants made by the Secretary under subparagraph (A) for any fiscal year shall not be less than 2 per centum of any funds provided in appropriation acts to carry out paragraph (2) of this subsection for the fiscal year unless the applications for grants received by the Secretary from eligible associations for the fiscal year total less than 2 per centum of such amount.

"(19) In the case of water and waste disposal projects serving more than one separate rural community, the Secretary shall use the median population level and the median community income level of all the separate communities to be served in applying the formulas provided in paragraphs (2) and (16) of this subsection and section 307(a)(3)(A) of this title.

"(20) In providing financial assistance for essential community facilities under this section, the Secretary shall use a project selection system to determine which of the applicants for assistance meeting the basic requirements of this section shall be selected to receive assistance. Such project selection system shall provide for the objective and uniform comparison of requests for assistance (in the form of preapplications) on the basis of the factors of (A) a community median household income level below 80 per centum of the statewide median household income, (B) a community rate of unemployment and underemployment that takes account of individuals employed on a part-time or seasonal basis, or both, and individuals not participating in the work force because of continued inability to find employment (commonly referred to as 'discouraged workers') and that exceeds the national nonmetropolitan average rate thereof by at least 10 per centum of such rate, and (C) a sudden economic dislocation the community has experienced or is about to experience resulting in a loss of jobs that is significant, both in terms of the number of jobs eliminated and the effect on the unemployment rate of the community. For purposes of the project selection system, each of the factors described in clauses (A), (B) and (C) of the preceding sentence shall be weighted equally.".

(b) Section 307(a)(3)(A) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1927(a)(3)(A)) is amended by—

(1) by striking out "the poverty line prescribed by the Office of Management and Budget as adjusted under section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971(d))" and inserting in lieu thereof "80 per centum of the statewide nonmetropolitan median household income";

(2) inserting before the period at the end thereof the following: "; and not in excess of 7 per centum per annum on loans for such facilities that do not quality for the 5 per centum per annum interest rate but are located in areas where the median household income of the persons to be served by the facilities does not exceed 100 per centum of the statewide nonmetropolitan median household income"; and

(3) adding at the end thereof the following: "The interest rate on loans for water and waste disposal facilities and loans for essential community facilities shall be the lower of (i) the rate in effect at the time of the loan approval, or (ii) the rate in effect at the time of the loan closing".

(c) The amendments made by this section shall become effective on January 1, 1984, and shall apply to any association described in section 306(a)(1) of the Consolidated Farm and Rural Development Act without regard to whether the application for the loan or grant involved was made by such association before such effective date.

SUMMARY OF SENATOR HUDDLESTON'S LEGISLATIVE PROPOSAL ON DROUGHT ASSISTANCE, OCTOBER 7, 1983

(1) *Natural Disaster Loans.*—The proposal will require the Secretary to make natural disaster emergency loans available based on individual loss regardless of area designation.

(2) *Loan Deferrals.*—The Secretary of Agriculture, during the period beginning on the date of the enactment of the bill and ending September 30, 1984, will be required to permit family farmers with insured economic emergency loans or insured farm loans under the Consolidated Farm and Rural Development Act, on request, to defer repayment of the loans, if the borrower can show to the satisfaction of the Secretary that he has followed good management practices, is temporarily unable to continue making payments on the loan due to circumstances beyond his control, and has a reasonable chance of repayment of the loan after the deferral.

Deferral assistance under the proposal will be available only to borrowers for whom the Farmers Home Administration (in the normal course of its loan making and loan servicing operations) determines that, absent such assistance, there are no loan servicing alternatives other than foreclosure of the loan or liquidation of the farm operation for financial reasons.

(This provision is similar but less costly than the deferral provision contained in S. 24, the Emergency Agricultural Credit Act of 1983. CBO estimates the provision would result in a maximum of $700 million in delayed payments if all persons eligible got deferrals. This compares to an estimated maximum of $2.6 billion in delayed payments under the original provision contained in S. 24.)

(3) *Economic Emergency Loans.*—The proposal will extend the discretionary economic emergency loan program to September 30, 1984. The proposal will make loans available to family farm operations that meet a test for credit with preference given to farmers adversely affected by the drought. The authorized funding level will be $600 million and loans would bear an interest rate not in excess of 8 percent. (Note: the natural disaster emergency loan program no longer provides credit for future production purposes, but the economic emergency loan program does.)

(4) *Operating Loan Limits.*—The proposal will raise the loan limits for FmHA farm operating loans to $300,000 for insured loans (currently $100,000) and $400,000 for guaranteed loans (currently $200,000).

(5) *Reamortization and Rescheduling.*—The proposal will establish that, for any insured farm loan deferred, consolidated, rescheduled, or reamortized by the Secretary, the interest rate for the remaining balance and term of the original loan will be lower of (a) the rate of interest for the original loan or (b) the current interest rate being charged.

(6) *Limited Resource Farmers.*—The proposal will require that not less than 20 percent of the amounts authorized for FmHA insured farm ownership and farm operating loans in fiscal year 1984 be made available

for the low-income, limited-resource farmer program (under which farmers who qualify for the program receive loans at a reduced rate of interest).

(7) *Advance Deficiency Payments.*—The proposal will require the Secretary to use the discretionary authority provided in the Omnibus Budget Reconciliation Act of 1982 with respect to wheat, feed grains, upland cotton, and rice, to make advance deficiency payments available to producers of 1984 crops for which there will be acreage reduction programs and for which deficiency payments are likely to be required.

(8) *Repayment Period.*—The proposal will extend the maximum repayment period, for FmHA insured farm operating loans that have been consolidated or rescheduled, from seven to fifteen years from the date of the consolidation or rescheduling.

(9) *Emergency Livestock Feed Assistance.*—The proposal will require the Secretary of Agriculture to make available for sale, to drought-stricken livestock and poultry producers, low grade corn held by the Commodity Credit Corporation. The corn would be sold at a price equal to 75 percent of the loan rate.

(10) *Business Loans.*—The proposal will require the Secretary to use existing authorities and authorized funding to issue loan guarantees under the FmHA business and industrial loan program to rural small businesses adversely affected by the drought or payment-in-kind program.

(11) *Rural Water.*—The proposal (similarly to S. 1789) provides for, with respect to FmHA's rural water and waste disposal facility loan and grant program—

(a) a graduated interest rate for water and waste disposal loans, with more communities made eligible for lower interest rate loans;

(b) a grant distribution formula based on a community's size and median household income;

(c) a project selection system based on potential threats to community health, community size, and median household income;

(d) a technical assistance program to aid communities in obtaining impartial advice on the type and size of facilities needed; and

(e) establishment of a predevelopment fund to help communities with special needs.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., January 10, 1983.

Hon. THOMAS F. EAGLETON,
Ranking Minority Member, Subcommittee on Agriculture, Rural Development, and Related Agencies, Committee on Appropriations, U.S. Senate.

DEAR SENATOR EAGLETON: This responds to your letter dated May 25, 1982, requesting our opinion on whether the Farmers Home Administration (Administration) has been unlawfully limiting the availability of natural disaster emergency loans authorized under the Consolidated Farm and Rural Development Act (7 U.S.C. §§ 1013a, 1921 et seq. (1976) (Act)). In your view, the Administration's practice of basing loan eligibility on county-wide, rather than individual, crop losses violates the Act. You asked us to review the loan program's authorizing legislation and advise you as to the legality of the Administration's practice. As explained below, we agree that the Administration is conducting the program in a manner which is inconsistent with Congressional intent and in violation of the Act.

You are concerned that the Administration may be administering the loan program contrary to the letter and intent of the provisions of its authorizing legislation, 7 U.S.C. §§ 1961 et seq. (1976). Generally under the program, the Secretary of Agriculture makes and insures loans to established farmers, ranchers, or persons engaged in aquaculture (or United States businesses engaged primarily in farming, ranching or aquaculture) who have suffered production losses as a result of having been affected by a natural disaster or by a major disaster or emergency designated by the President. 7 U.S.C. § 1961(a).

7 U.S.C. § 1970, provides that,

"[t]he Secretary shall make financial assistance under this subchapter available to any applicant seeking assistance based on production losses if the applicant shows that a single enterprise which constitutes a basic part of the applicants' farming, ranching, or aquaculture operation has sustained at least a 30 per centum loss of normal per acre or per animal production or such lesser per centum of loss as the Secretary may determine as amended by Pub. L. 97-35 § 163, approved August 13, 1981, 95 Stat 378, as a result of a disaster * * *."

Your understanding is that the Administration denies individual farmers emergency loans unless county-wide losses exceed 30 percent of normal production in cases where more than 25 farmers have been affected by a disaster. (If fewer than 25 farmers sustain losses, applications for assistance are considered by Agriculture on an individual basis.)

In your view, 7 U.S.C. § 1970 directs the Secretary to consider each farmer's crop reduction individually when determining if the 30 percent production loss eligibility requirement has been met in cases where more than 25 farmers are affected. Any applicant meeting the 30 percent test should be considered for a loan regardless of the percentage of crop loss of others in his county, under your reading of section 1970. The Administration's practice, however, prevents individual farmers from applying for loans where more than 25 farmers in a county are affected even though they have suffered a 30 percent crop reduction if county-wide losses do not average 30 percent.

Upon receiving your inquiry, we asked the Secretary of Agriculture for his comments on the issues you raise. His response indicates that your understanding of the Administration's practice is essentially correct, although the Department describes it in a slightly different way. The Administration's procedure when a natural disaster occurs is to determine whether a county has suffered a 30 percent loss, and if so the Secretary designates it as a disaster relief area. Upon such designation, the farmers within the county may apply for loans individually. However, farmers not in a designated county may not receive assistance, unless there are fewer than 25 farms in the county which have suffered a 30 percent loss. The area designation procedure is prescribed by regulation. 7 C.F.R. § 1945.20 (1982). A guideline established by the Secretary sets forth the requirements that a designation be made on the basis of county-wide losses.

The Secretary's position is that determination of loan eligibility on a county-wide basis is not contrary to the Consolidated Farm and Rural Development Act. In his view, the Act gives the Secretary sufficient discretion in administering the emergency loan program to allow the Department to use the county designation procedure. 76 U.S.C. § 1961, which provides the Secretary the general authority to conduct the program, states in pertinent part:

"The Secretary shall make and insure loans under this subchapter * * * to (1) established farmers, ranchers, or persons engaged in aquaculture * * * where the Secretary finds that the applicants' farming, ranching, or aquaculture operations have been substantially affected by a natural disaster in the United States * * *".

We recognize that under the statute the Secretary is accorded a degree of latitude in administering the emergency loan program. However, the Secretary does not have the discretion to establish a procedure, such as making an area designation based on county-wide losses, which systematically excludes those farmers which the Congress intended the program to benefit.

The legislative history of section 1961 indicates that Congress does not intend that the Administration follow an area designation procedure in conducting the natural disaster emergency loan program. Before amendment in 1978, section 1961 specified that the Secretary was required to designate emergency areas and make loans in such areas if he found that a natural disaster had occurred in that area which had substantially affected farming. However, in 1978, Congress amended section 1961 by deleting the area designation requirement. (Public Law No. 95-334, § 118, 92 Stat. 426 approved August 4, 1978). Congress altered section 1961's language to its current form, quoted above. The provision deleting the requirement was a Senate floor amendment to the Senate's version of the bill which was later enacted as the Agriculture Credit Assistance Act of 1978. Senator Allen, Chairman of the Subcommittee on Agriculture Credit and Rural Electrification offered the amendment, apparently on the recommendation of the Farmers Home Administration. 124 Cong. Rec. S 12139 (Daily ed. May 2, 1978) (remarks of Sen. Allen). He explained the amendment's purpose as follows:

"The purpose of this amendment, which contains all the present provisions in section 114, is to give the Secretary of Agriculture greater discretion in making available emergency loans. It will permit the Secretary to adopt revised procedures that would make emergency loans more readily available to farmers, ranchers, and aquaculture operators after the occurrence of a natural disaster, therefore making assistance available to disaster victims on a more timely basis." Id at S. 12139.

The explanation of the Conference Committee Chairman, Senator Talmadge, during the Senate's consideration of the conference report also indicates that Congress intended that the Administration determine disaster loan eligibility on an individual basis. Senator Talmadge said:

"In the past, the emergency loan program could not be put into effect without going through the process of having an entire county declared a disaster, under this bill, the emergency program administered by the Farmers Home Administration can be made available to individual farmers on a case-by-case basis. This is a significant improvement over the existing law." 124 Cong. Rec. S 21996 (daily ed. July 20, 1978) (remarks of Senator Talmadge).

Further, Representative Jones, chairman of the House of Representatives Agriculture Committee's Subcommittee on Conservation and Credit during the House of Representa-

tive's consideration of the conference report stated:

"Another change which should go a long way to reducing frustrations of farmers and their Congressmen is natural disaster situations. One of the first actions I took as chairman of the Subcommittee on Conservation and Credit was to hold hearings on our emergency programs especially as they were operating under the drought conditions. This bill makes some changes in the FmHA disaster loan program which will make it operate much more effectively.

"The secretarial emergency designation would no longer be required in order to make disaster loans to farmers. Instead emergency loans would be made when the applicant's farming, ranching, or aquaculture operations have been substantially affected by a natural disaster in the United States or by a major disaster. I feel this simplified procedure will end a lot of the problems with this program." 124 Cong. Rec. H 21752 (daily ed. July 20, 1978) (remarks of Rep. Jones).

For other portions of the legislative history of section 1961 which indicate that Congress intended that the Secretary administer the program on an individual basis, see 124 Cong. Rec. H 21749 (daily ed. July 19, 1978) (remarks of Rep. Foley); 124 Cong. Rec. S 21998 (daily ed. July 20, 1978) (staff summary of conference substitute); and the Joint Explanatory Statement of the Committee of Conference, reprinted in the U.S. Code Cong. and Admin. News at 1185, 1186 (1978).

The cited legislative history shows that Congress believed that the disaster loan program would operate more effectively if the area designation requirement was abolished. Accordingly, in light of the legislative history discussed above, it is clear that Congress intended that the Administration stop following the area designation procedure and begin determining disaster loan eligibility on a case-by-case basis after the 1978 amendment to 7 U.S.C. § 1961.

The Secretary contends that notwithstanding this legislative history, the Act gives him sufficient discretion to continue to use the county designation procedure. He reads 7 U.S.C. § 1961 as setting forth the basic eligibility criteria for emergency loans. He contends that 7 U.S.C. § 1989, which authorizes him to make regulations and to prescribe conditions for making loans permits him to "issue regulations necessary to define a natural disaster along with establishing guidelines as to the manner of determining whether or not an area is substantially affected by such a natural disaster." The Secretary also acknowledges that under his interpretation of 7 U.S.C. § 1989 he has the discretion to make loans available to individual farmers. He informs us, however, that the Department has concluded that the continued use of the county designation process is necessary for "administrative convenience".

The provisions of 7 U.S.C. § 1961 are mandatory, not permissive; the Secretary may not ignore the section's directives. In *Berends* v. *Butz*, 357 F. Supp. 143, 150 (1973), the Secretary of Agriculture made a similar argument to justify terminating an emergency loan program under the previous version of this Act. The United States District Court for the District of Minnesota stated:

"'Shall' is mandatory language * * * The language in the statutes and regulations relied on by plaintiffs is not of a permissive nature, but affirmatively directs defendants to perform. Whereas the Secretary may have a great deal of discretion in the administration of emergency loans, he has no license to act in violation of mandatory language of statutory laws or agency regulations." id. at 150.

See also *Dubrow* v. *Small Business Administration*, 345 F. Supp. 4 (D. Cal. 1972) where the right to apply for Small Business Administration disaster loans was at issue. The Government contended that under the Disaster Relief Act of 1972, the agency had absolute discretion to determine whether or not to make a loan. The Court Stated:

"Whatever the limits on this Court's authority to review denial of an application, they do not preclude judicial review when the SBA has refused to follow its statutory duty to determine whether the loan to a given applicant is necessary or appropriate." *id.* at 8, 9.

Accordingly, as subsection (a) states, if the Secretary finds that an applicant's farming operations, as opposed to designated areas, have been substantially affected by a natural disaster, he must make or insure a loan in accordance with the program's authorizing provisions * * *. In that way the program would be available to all farmers—by county designation in counties where more than 25 farmers have been affected by a natural disaster, and by FmHA State Director authorization in counties where 25 or fewer farmers have been affected.

Sincerely yours,

MILTON J. SOCOLAR,
(For Comptroller General
of the United States).

● Mr. COCHRAN. Mr. President, I am glad to cosponsor Senate bill 1949, the Drought Relief Act of 1983 that will provide farmers with needed assistance to continue in business.

There is great concern in this country about the future of many of our farmers. This concern is not restricted to the producing sector of the agriculture industry, either. Financial interest in all other related support elements of the agriculture industry are just as concerned because should the farmer not survive they know all to well how wide spread the economic impact will be in their area. Furthermore, the drought impact is coming at a time when the farm economy is already depressed due to several years of low income. Many farmers were already faced with the real prospect of losing their farming operation. This year's drought will only make those prospects more imminent.

The bill that I join in introducing today represents a realistic approach to implementing programs designed to provide needed assistance to farmers. When all reports of damage are finalized and assessments are made of the impact on American agriculture, we will likely find that this year's drought, in terms of severity and intensity, will be the worst in over 50 years.

In light of this drought, we find crop production of all major commodities has dropped significantly and many producers have found their crops which are their main source of income severly curtailed. Additionally, our livestock producers have seen the costs of livestock feed skyrocket as a result of the drought.

I praise the administration for their efforts to date, however, there are still needs, resulting from the drought, yet unmet. This package is designed to meet those needs and provide further assistance to our drought-plagued farmers.

The bill will require the Secretary to make advance deficiency payments to producers of 1984 crops for which there will be acreage reduction programs and for which deficiency payments are likely to be required.

In terms of credit assistance, there are several provisions in the bill that provide needed assistance through the Farmers Home Administration.

Included in the bill is a deferral provision that will require the Secretary of Agriculture to identify Farmers Home Administration farm loan borrowers who are faced with foreclosure or liquidation for financial reasons.

The bill will also require the Secretary of Agriculture to make low-grade corn held by the Commodity Credit Corporation available for sale to drought-stricken livestock producers. The corn would be sold at a price equal to 75 percent of the basic county loan rate.

The provision of the bill requiring that FmHA make natural disaster emergency loans available based on individual loss without regard to area designations, simply makes clear the intent of Congress. Although Congress amended the Consolidated Farm and Rural Development Act in 1978 and deleted all references to area designations, the FmHA continues to make county disaster designations.

Under the deferral provision of this bill, no principal or interest owed to FmHA by borrowers is forgiven. In addition, the amendment restricts the number of borrowers who may apply for a deferral and the burden of proof to qualify for a deferral rests solely on the borrower.

I will be chairing a hearing before the Senate Agriculture Committee's Subcommittee on Agriculture Production, Marketing, and Stabilization of Prices on October 20, 1982. At that time we will assess the impact the drought has had on farmers and ranchers, evaluate the assistance provided by the Department, and discuss the proposals that are contained in this measure.●

By Mr. MATTINGLY:

S. 1950. A bill to amend the Internal Revenue Code of 1954 to increase the annual contribution limit for individual retirement accounts from $2,000 to $3,000 and to make such accounts more equitable in the case of lesser earning and nonworking spouses; to the Committee on Finance.

CONTRIBUTIONS TO INDIVIDUAL RETIREMENT ACCOUNTS

Mr. MATTINGLY. Mr. President, I rise today to introduce legislation which will serve two purposes. First, it will increase the amount of money that can be placed tax free in an individual retirement account (IRA) from $2,000 to $3,000. Second, it will eliminate the "non-working" spouse discrimination, and thus allow those individuals who have chosen to work in the home the opportunity of setting up and contributing the maximum allowed to their own IRA.

The individual retirement account provides an attractive incentive for Americans to save. In particular, the IRA is an attractive inducement for individuals to save for their retirement. A recent New York Times article revealed that Americans invested about $30 billion in IRA's during the 1982 tax year. Original estimates by the Treasury Department had predicted only around $18 billion would be invested in such investments. The article further pointed out that nearly one of every five employed adults had opened an IRA during the 1982 tax year. These statistics provide conclusive evidence that the individual retirement account is an attractive incentive for individuals to save.

By providing Americans with an incentive to save, the individual retirement account also has a potentially favorable effect on the Nation's savings pool. At a time when Government borrowing is at an alltime high, the need to increase the Nation's savings pool is presently important to prevent the "crowding out" of private sector credit demands.

Finally, the individual retirement account serves a valuable purpose of tax relief. The amounts invested in an IRA each year are deductible to the individual, while the savings accumulate untaxed until they are withdrawn. Because IRA funds are typically withdrawn after retirement when the saver would be in a lower tax bracket, the investor would pay less tax when the funds are withdrawn.

Because the individual retirement account is providing an attractive incentive for individuals to save, while at the same time increasing the Nation's savings pool and providing valuable tax relief for the American taxpayer, the amount of money that can be placed tax free in the individual retirement account should be increased from $2,000 to $3,000.

The second and most important feature of this legislation will eliminate the nonworking spouse discrimination. Currently, a nonworking spouse is allowed a deduction of only $250 compared to the $2,000 amount that can be placed in an IRA by a working spouse. The need to eliminate this obviously discriminatory feature of the Tax Code is twofold. First, as a matter of simple equity, there is absolutely no justification to penalize those who choose to work in the home. Homemakers play an extremely important role in our society. The fact that the spouse has chosen to work in the home is no reason to prevent that individual from an equal opportunity to save for the future.

Second, a strong argument can be made that those who choose to be homemakers need to save for their future more than their counterparts in the work force. Workers who retire from career jobs in the work force most often have pensions and retirement income to provide for their needs in their later years. Unfortunately, the nonworking spouse does not enjoy such protection. Therefore, the need to provide an opportunity and incentive to those individuals who work in the home is obvious. The nonworking spouse discrimination should be eliminated, and this proposal will accomplish that goal.

Mr. President, I ask my colleagues to join me in cosponsoring this much needed legislation. I ask that the proposal appear in the RECORD at this point.

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

S. 1950

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subparagraph (A) of section 219(b)(1) of the Internal Revenue Code of 1954 (relating to maximum amount of deduction for retirement savings) is amended by striking out "$2,000" and inserting in lieu thereof "$3,000".

(b)(1) Subparagraph (A) of section 219(b)(4) of such Code is amended to read as follows:

"(A) IN GENERAL.—In the case of an individual to whom this paragraph applies, the limitation of paragraph (1) shall not be less than the sum of—

"(i) the amount referred to in paragraph (1)(B), and

"(ii) any qualifying alimony received by the individual during the taxable year.".

(2) The following provisions of such Code are each amended by striking out "$2,000" each place it appears and inserting in lieu thereof "$3,000":

(A) Section 408(a)(1) (defining individual retirement account).

(B) Section 408(b) (defining individual retirement annuity).

(C) Section 408(j) (relating to increase in maximum limitations for simplified employee pensions).

(D) Section 409(a)(4) (defining retirement bond).

(3) Subparagraph (A) of section 408(d)(5) is amended by striking out "$2,250" and inserting in lieu thereof "$3,000".

SEC. 2. Subsection (c) of section 219 of the Internal Revenue Code of 1954 is amended to read as follows:

"(1) IN GENERAL.—In case of any individual with respect to whom a deduction is otherwise allowable under subsection (a) who files a joint return under section 6013 for a taxable year, there shall be allowed as a deduction any amount paid in cash for the taxable year by or on behalf of the individual to an individual retirement plan established for the benefit of his spouse.

"(2) LIMITATION.—The amount allowable as a deduction under paragraph (1) shall not exceed the excess of—

"(A) the lesser of—

"(i) $6,000, or

"(ii) an amount equal to the sum of the compensation includible in the individual's and the spouse's gross income for the taxable year, over

"(B) the sum of—

"(i) the amount allowable as a deduction under subsection (a) to the individual and the spouse for the taxable year (determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b)), and

"(ii) the amount allowable as a deduction to the spouse under paragraph (1) for the taxable year.

In no event shall the amount allowable as a deduction under paragraph (1) exceed $3,000.".

SEC. 3. The amendments made by this Act shall apply to taxable years beginning after December 31, 1983.

By Mr. BENTSEN:

S.J. Res. 181. Joint resolution to provide for the awarding of a gold medal to Lady Bird Johnson in recognition of her humanitarian efforts and outstanding contributions to the improvement and beautification of America; to the Committee on Banking, Housing, and Urban Affairs.

AWARDING A GOLD MEDAL TO LADY BIRD JOHNSON

● Mr. BENTSEN. Mr. President, it is a very special pleasure for me to introduce a Senate joint resolution authorizing the President, on behalf of the Congress, to present a special gold medal to Lady Bird Johnson in recognition of her contributions to our Nation.

Lady Bird Johnson is a remarkable, talented individual who has left an indelible imprint of loveliness on the American landscape. She has enriched the lives of millions of Americans, and provided her many friends with the touch of grace, and warmth, and charm that so many of us associate with Mrs. Johnson.

Lady Bird Johnson has been a successful businesswoman; she was one of the most active and effective First Ladies in the history of America; she has been a loving mother, a valued political counselor, and an active regent of the University of Texas.

There is no question, Mr. President, that Lady Bird Johnson has given generously of her talents and her time to make America a more beautiful and more just land. Her touch is all around us; in the brilliant reds and yellows of tulips in the springtime; in plantings along the Potomac; in vast stretches of highway rendered more beautiful through her efforts.

I think it is only appropriate for America to present Lady Bird Johnson

with a token of our appreciation for her efforts over the years. The medal provided for in this resolution can reflect only a few rays of the light and warmth that Lady Bird Johnson has shared with America, but it is an important symbol for a woman who stands as a symbol of what is finest and most noble in our American experience.

During her tenure in the White House, Lady Bird Johnson took on the tough issues. She helped promote the Head Start program and Lyndon Johnson's War on Poverty by visiting some of the most depressed and needy regions of the Nation. Her efforts to make this land of America even more beautiful took her on a journey of more than 200,000 miles. As Liz Carpenter has remarked, Lady Bird crisscrossed America by "rubber raft, bus, ski lift, surrey, orchard wagon, rail, and foot."

In the process, Lady Bird did more than make our Nation's Capital one of the most beautiful cities of the world. She let millions of Americans know a deeper meaning of beauty; one they could see reflected in the commitment and energy and caring of their First Lady.

President Johnson's decision not to seek reelection removed Lady Bird from the political visibility of the White House, but it did not dampen her concern for the landscape of America and the people who inhabit it. She has worked hard and effectively to improve the education available to the young people of Texas through her service as a regent of the university. She has led the effort to preserve and protect the incredible beauty of Texas wildflowers.

Lady Bird Johnson also finds time to remain active at the LBJ Library and School of Public Affairs; she manages her communications interests, and is involved with the National Park Service. She serves on two bank boards as well of the board of directors of the National Geographic Society. But even with all this activity and devotion to public service, Lady Bird Johnson has not lost sight of what is truly important in life. As she herself puts it, "the core of it all is my two daughters and seven grandchildren."

These days, Mr. President, Lady Bird Johnson claims to be indulging herself, "doing all those things I put on the shelf for so long." Well, I think Lady Bird has a right to indulge herself, but those of us who have known her over the years, those of us who have benefited from efforts and learned from her example, would like to mark that indulgence with a tribute to a great and wonderful woman.

I sincerely believe that the medal for Lady Bird Johnson is richly deserved; it is a medal for inspiration, and beauty, and effective action on behalf of America. I urge the Senate Banking Committee to act favorably on this resolution, and request that the full text of the resolution be printed in the RECORD.

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

S.J. RES. 181

Whereas Lady Bird Johnson represents the finest qualities of American women, having demonstrated exceptional abilities in the fields of government, business, and social justice;

Whereas Lady Bird Johnson's life of service to the Nation covers a generation of change in the status of women;

Whereas the intelligence and devotion of Lady Bird Johnson to the concerns of the family, natural resources, and education have eased the transition of the roles of women and benefited the Nation;

Whereas Lady Bird Johnson in her roles as wife of a United States Representative and Senator, First Lady of the United States, skilled businesswoman, and Regent for the University of Texas, has served as an example of the bridge between the traditional role and the contemporary roles of women in the United States;

Whereas Lady Bird Johnson has received national recognition with the presentation of many awards, including the George Foster Peabody Award, the Eleanor Roosevelt Golden Candlestick Award, the B'nai B'rith Humanitarian Award, the Business and Professional Women's Club Businesswoman's Award, the Ladies Home Journal Woman of the Year Award, the University of Texas Distinguished Alumni Award, the Department of the Interior Conservation Service Award, and the Presidential Medal of Freedom: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the President is authorized to present, on behalf of the Congress, to Lady Bird Johnson a gold medal of appropriate design, in recognition of her humanitarian efforts and outstanding contributions to the improvement and beautification of America.

(b) For purposes of the presentation referred to in subsection (a), the Secretary of the Treasury shall cause to be struck a gold medal with suitable emblems, devices, and inscriptions to be determined by the Secretary of the Treasury.

(c) There are authorized to be appropriated not to exceed $22,000 to carry out the provisions of this section.

SEC. 2. (a) The Secretary of the Treasury may cause duplicates in bronze of the medal provided for in the first section to be coined and sold under such regulations as the Secretary may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, overhead expenses, and the gold medal.

(b) the appropriation used to carry out the provisions of the first section may be reimbursed out of the proceeds of such sales.

SEC. 3. The medals provided for in this Act are national medals for the purpose of section 5111 of title 31, United States Code.●

ADDITIONAL COSPONSORS

S. 476

At the request of Mr. LEVIN, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 476, a bill to amend title II of the Social Security Act to require a finding of medical improvement when disability benefits are terminated, to provide for a review and right to personal appearance prior to termination of disability benefits, to provide for uniform standards in determining disability, to provide continued payment of disability benefits during the appeals process, and for other purposes.

S. 800

At the request of Mr. STEVENS, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 800, a bill to establish an ocean and coastal development impact assistance fund and to require the Secretary of Commerce to provide to States national ocean and coastal development and assistance block grants from moneys in the fund, and for other purposes.

S. 1001

At the request of Mr. COHEN, the names of the Senator from Arkansas (Mr. PRYOR), the Senator from Illinois (Mr. PERCY), the Senator from Mississippi (Mr. COCHRAN), and the Senator from Minnesota (Mr. DURENBERGER) were added as cosponsors of S. 1001, a bill to authorize appropriations for the Office of Federal Procurement Policy for an additional 5 fiscal years.

S. 1197

At the request of Mr. STEVENS, the name of the Senator from Florida (Mr. CHILES) was added as a cosponsor of S. 1197, a bill to admit certain passenger vessels to the coastwise trade.

S. 1511

At the request of Mr. JEPSEN, the name of the Senator from New Hampshire (Mr. HUMPHREY) was added as a cosponsor of S. 1511, a bill to amend title XVIII of the Social Security Act to provide that certain hospice programs may provide nursing care through arrangements with certified medicare providers.

S. 1537

At the request of Mr. DANFORTH, the names of the Senator from Pennsylvania (Mr. HEINZ), and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 1537, a bill to provide additional authorization of appropriations for certain programs for fiscal year 1984, and each of the 4 following fiscal years.

S. 1660

At the request of Mr. PACKWOOD, the name of the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 1660, a bill relating to the preservation of universal telephone service.

S. 1707

At the request of Mr. WILSON, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1707, a bill to provide a moratorium until June 30, 1988, on changes to the Federal Communications Commis-

sion rules regarding network television syndication, network television financial interests, and prime time access.

S. 1716

At the request of Mr. GRASSLEY, the name of the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 1716, a bill to clarify the personal injury and death provisions of section 844 of title 18, United States Code, relating to arson.

S. 1737

At the request of Mr. DOLE, the name of the Senator from Colorado (Mr. HART) was added as a cosponsor of S. 1737, a bill to make permanent section 1619 of the Social Security Act, which provides SSI benefits for individuals who perform substantial gainful activity despite a severe medical impairment.

SENATE JOINT RESOLUTION 160

At the request of Mr. BYRD, the names of the Senator from Rhode Island (Mr. PELL), and the Senator from Connecticut (Mr. WEICKER) were added as cosponsors of Senate Joint Resolution 160, a joint resolution to designate the week of October 17, 1983 through October 24, 1983, as "National Adult Continuing Education Week".

SENATE CONCURRENT RESOLUTION 62

At the request of Mr. MATTINGLY, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of Senate Concurrent Resolution 62, a concurrent resolution to direct the Commissioner of Social Security and the Secretary of Health and Human Services to develop a plan outlining the steps which might be taken to correct the social security benefit disparity known as the notch problem.

SENATE CONCURRENT RESOLUTION 77—RELATING TO THE OBSERVANCE OF FIRE PREVENTION WEEK

Mr. GORTON (for himself, Mr. HEFLIN, and Mr. STEVENS) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 77

Whereas fire is responsible annually for the deaths of more than 6,000 Americans, injury to thousands of other Americans, and destruction of property valued at billions of dollars;

Whereas in recent years there has been a reduction in the deaths and injuries of citizens due to fires, but the number of deaths for firefighters due to fires showed no appreciable change from previous years;

Whereas both career and volunteer firefighters continue to face the threat of serious injury and death in performing their firefighting responsibilities;

Whereas the United States Fire Administration within the Federal Emergency Management Agency is the lead entity for the Federal Government's fire prevention activities and has sought to develop technologies for firefighting, to improve the design of protective clothing for firefighters, and to improve training for firefighters at the National Fire Academy; and

Whereas the President has designated the week of October 9, 1983 as Fire Prevention Week, 1983: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the week of October 9, 1983, designated by the President as Fire Prevention Week, 1983, be observed with appropriate activities, and that the firefighters who have died while performing their official duties be honored appropriately at the Annual National Observance Services for Fallen Firefighters, to be held on October 16, 1983, at the Federal Emergency Management Agency's National Emergency Training Center campus in Emmitsburg, Maryland.

● Mr. GORTON. Mr. President, in the last decade progress has been made in reducing fire deaths and property losses. However, over 6,000 Americans still lose their lives each year in fires, and more than $5 billion worth of property is destroyed each year by fires.

The Nation's fire program has come a long way, Mr. President. The U.S. Fire Administration within the Federal Emergency Management Agency (FEMA) is committed to achieving progress in the design of firefighter's protective clothing and equipment. The National Fire Academy, also within FEMA, provides academic programs for firefighter education.

A special emphasis is placed by both of these agencies on improving the role of local fire service leaders as equal partners in a community's emergency management plan and program. Two of the greatest fire protection advances in recent years are the promotion and acceptance of smoke detectors—now in over 70 percent of our homes—and the development of fast-acting sprinkler heads for residential applications. Used together, these two systems have the tremendous potential to reduce dramatically the loss of life and to reduce property losses and injuries from fire.

Yet, while we applaud the advances in devices which save lives and property, we cannot forget that the number of deaths and injuries for firefighters remains high. The volunteer and professional men and women who face daily the challenge and danger of protecting our lives and property must not be forgotten. For this reason, I am proud to introduce with my colleagues today a resolution, expressing the sense of the Congress that Fire Prevention Week, October 9 to 15, should be observed with appropriate activities and remembrances. The resolution also provides for appropriate honors on October 16 for firefighters who have died while performing their official duties. These ceremonies, the annual national observance services for fallen firefighters, will be held at the Federal Emergency Management Agency's National Emergency Training Center in Emmitsburg, Md.●

Mr. STEVENS. Mr. President, I would like to spend a few moments today commenting on the President's recent proclamation of Fire Prevention Week, 1983. I have long supported an increased awareness of the hazards of fire for the simple reason our Nation continues to have one of the worst fire safety records in the industrialized world.

The Federal Emergency Management Agency estimates that some 7,600 people are killed every year in the United States by fire. In addition, fires are responsible for 230,000 injuries and over $6 billion in property damages annually.

What is particularly sad about these grim statistics is the fact that a method of preventing a great deal of this human suffering and property loss currently exists. Studies have shown that quick-response sprinkler systems are better than 98-percent effective in suppressing fires. The addition of inexpensive smoke detectors should enhance the sprinklers preventive capabilities even more.

The installation of quick-response sprinkler systems also represents a financial benefit to the property owner in many cases. Many construction codes allow greater design flexibility as well as the use of less expensive materials when sprinkler systems are also installed. Insurance companies also often provide substantial premium discounts for fire insurance when a building is protected by a sprinkler system.

Nevertheless, many buildings continue to remain unprotected by either sprinkler systems or smoke detectors. The State of Alaska has taken the lead in encouraging the use of sprinkler systems by allowing a 2-percent reduction in the assessed value of any structure protected by a sprinkler system. The State also provides low interest loans through the small business loan program to any property owner who wishes to install sprinklers.

The benefits garnered through fire prevention extend not only to property owners but to State and municipal governments as well. Any improvement in fire safety may relieve some of the burden upon local governments in providing fire protection.

In addition, I would like to commend the outstanding contributions that professional firefighters have made in protecting us from the hazards of fire.

The Federal Emergency Management Agency has established a Fallen Firefighters Memorial at the National Emergency Training Center located in Emittsburg, Md., which commemorates the actions of these brave individuals and the thousands of others like them through the years that have given their lives in trying to protect millions of Americans from the rav-

ages of fire. Last year alone, 122 firefighters died in serving their communities. I am proud of our Nation's firefighters and what they have done for America.

I therefore applaud the President's designation of October 9 to 15, 1983, as "Fire Prevention Week," for the recognition that it gives to this serious problem. Increased awareness will not only aid us in better exploring the preventive devices available, but it also allows us to recognize the efforts of firefighters everywhere who protect the people of this Nation at the risk of their own lives. I would like to join the President in urging each person to work toward reducing one of our greatest public safety problems.

SENATE RESOLUTION 241—RELATING TO THE GENOCIDE OF THE ARMENIAN PEOPLE

Mr. LEVIN (for himself and Mr. WILSON) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 241

Whereas the Armenian genocide was conceived by the Turkish Ottoman Government and implemented from 1915 to 1923, resulting in the extermination of one and a half million Armenian men, women, and children, the deportation of an additional five hundred thousand survivors, and the elimination of a two thousand five hundred-year Armenian presence in its historic homeland;

Whereas the Armenian genocide is amply documented in the Archives of the United States, as well as of Austria, France, Germany, and Great Britain;

Whereas United States Ambassador to Turkey Henry Morgenthau organized and led protests by all nations, among them Turkey's allies, over Turkey's program of race extermination;

Whereas an organization known as Near East Relief, chartered by an Act of Congress, contributed some $113,000,000 from 1915 to 1930 to aid the Armenian genocide survivors and, whereas, one hundred and thirty two thousand orphans became foster children of the American people;

Whereas the fact of the Armenian genocide was confirmed in Senate Resolution 359, dated May 13, 1920, which stated in part, "the testimony adduced at the hearings conducted by the subcommittee of the Senate Committee on Foreign Relations have clearly established the truth of the reported massacres and other atrocities from which the Armenian people have suffered";

Whereas the fact of the Armenian genocide was also confirmed in House Resolution 148 which stated in part, "that April 24, 1975, is hereby designated as 'National Day of Remembrance of Man's Inhumanity to Man', and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day as a day of remembrance for all victims of genocide, especially those of Armenian ancestry who succumbed to the genocide perpetrated in 1915, and in whose memory this date is commemorated by all Armenians and their friends throughout the world";

Whereas former President Jimmy Carter in a May 16, 1978, speech at the White House stated in part, "I feel very deeply that I, as President, ought to make sure that this (Armenian genocide) is never forgotten";

Whereas the United States, during the March 14 and 16, 1979, sessions of the United Nations Commission on Human Rights, voted in support of paragraph 30 in a report entitled, "Study of the Questions of the Prevention and Punishment of the Crime of Genocide" which stated, "Passing to the modern era, one may note the existence of relatively full documentation dealing with the massacres of Armenians.";

Whereas the United States Holocaust Memorial Council, an independent Federal agency, unanimously resolved on April 30, 1981, that, "the Armenian genocide should be included in the Holocaust Museum Memorial";

Whereas President Reagan in Proclamation numbered 4838, dated April 22, 1981, stated in part, "like the genocide of the Armenians before it, and the genocide of the Cambodians which followed it—and like too many other persecutions of too many other peoples—the lessons of the holocaust must never by forgotten";

Whereas the fact of the Armenian genocide has been documented, affirmed, and reaffirmed for over six decades; and

Whereas, it has been the policy of the United States to acknowledge these historical events: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President and the Secretary of State should, in formulating and carrying out the foreign policy of the United States, recognize and take into account the genocide of the Armenian people.

SEC. 2. It is further the sense of the Senate that the President should direct his representatives, including the Permanent Representative of the United States to the United Nations, to communicate at all appropriate times in international forums the abhorrence of the United States Government to the genocide of the Armenian people.

SEC. 3. The Secretary of the Senate shall transmit a copy of this resolution to the President and the Secretary of State.

● Mr. LEVIN. Mr. President, on April 27, 1983, Senator WILSON and I submitted Senate Resolution 124—a bipartisan resolution to reaffirm the historical realities of the Armenian genocide. However, I am today submitting an updated version of this resolution.

Mr. President, this resolution is necessary because of recent State Department inconsistencies in U.S. policy with regard to the Armenian genocide—the first genocide of the 20th century which resulted in the murder of 1.5 million innocent victims of man's inhumanity to man from 1915 to 1923. This tragic event, which is recorded by eyewitness accounts in historical archives throughout the world, documents the crime perpetrated against the Armenian nation and people by the Turkish Ottoman Government. Whosoever denies it must not be allowed to succeed in rewriting history.

Mr. President, never before has the attention of Congress been so focused on Armenians as it was during a 2-week period in April when 89 Representatives and Senators recognized and honored the 68th anniversary of Armenian Martyrs Day. This congressional participation took place despite efforts by the Turkish Government to still our voices. This congressional participation also prompted the State Department to correct a recent bureaucratic blunder that denied decades of U.S. policy toward the Armenian genocide. This correction should not have been necessary to make in the first place. But it is a positive first step toward the State Department's tacit recognition of this historical record—recognition of the difference between fact and fiction.

The next step should be Senate approval of this updated version of Senate Resolution 124.●

SENATE RESOLTUION 242—ACCESS TO FEDERAL RECORDS ON MARTIN LUTHER KING, JR.

Mr. HELMS (for himself and Mr. SYMMS) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 242

Resolved, That the Senate Legal Counsel, on behalf of the United States Senate, in conjunction with such agencies of the United States as may be advisable, is directed to seek access, by all available legal means, including but not limited to subpena, to the following:

(a) Any and all records, tapes, documents, files, materials, and other evidence relating in any way to Martin Luther King, Jr., in the possession of the Department of Justice, the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency; and

(b) Any and all records, tapes, documents, files, material, and other evidence relating in any way to Martin Luther King, Jr. and sealed by order of the United States District Court for the District of Columbia, dated January 31, 1977, in the cases of *Lee* v. *Kelley, et al.*, Civil Action No. 76-1185, and *Southern Christian Leadership Conference* v. *Kelley, et al.*, Civil Action No. 76-1186; for the confidential examination of the United States Senate;

Resolved, further, that if the above items and materials are too voluminous for confidential examination by the United States Senate in a reasonable time, in the determination of the Senate majority and minority leaders, a Select Committee on Martin Luther King, Jr., shall be established to summarize and present the salient portion of the material for confidential examination by the United States Senate.

Mr. HELMS. Mr. President, this Senator was not oblivious to the fact that his opposition to H.R. 3706, the King holiday bill, would produce sharp adverse reaction. Feelings run high on this issue, and therefore it is doubly important that we approach this matter objectively and dispassionately and with all due deliberation.

It is my sincere hope that by raising the issues of how expensive a new holiday would be, Dr. King's questionable

ties to the far left, his derogatory statements about the United States during the Vietnam war, and the continued secrecy of the FBI records on Dr. King the Senate would pause in its rush to pass this bill. Such a pause would be helpful in assuring reasonable consideration by the Senate—and perhaps even full consideration if the Senate would commit the bill to the Judiciary Committee, hold hearings, and examine the FBI records and other items involving Dr. King.

Mr. President, I believe it is accurate to say my objective in round 1 has been accomplished. The Senate has not yet rushed to pass the bill, and it appears that we will be able to devote some time, either in this body or in the Judiciary Committee, and to focus some public attention on the bill before a final vote.

Mr. President, this Senator is frank to admit that the consent agreement entered into Wednesday, postponing the King bill until October 18, is more than he could have reasonably hoped to accomplished by his engaging in extended debate on the Senate floor. Thus, I applaud the majority and minority leaders for their successful initial efforts at achieving comity and fair play with respect to the time agreement on the King bill.

Mr. President, in the spirit of reasonableness and due deliberation which prevails at the moment, and in hopes that this spirit will continue to prevail from here out, I want to put before the Senate another proposal in connection with the King bill. Again, it is my sincere hope that this proposal will contribute to a more deliberate and effective consideration of this matter by the Senate. The proposal is wholly consistent with the unanimous consent agreement entered into Wednesday.

Mr. President, while I anticipated that some persons would not listen with an open mind to the detailed discussion of Dr. King's philosophy and associates which this Senator discussed on the floor on Monday, I find it strange that no one has yet attempted to present a point-for-point rebuttal of the factual situation. I think that I presented, in a reasoned and carefully substantiated way, the history of Dr. King's associations with persons clearly identified with the Communist Party of the United States.

As I made clear in my remarks, I do not have evidence that Dr. King himself was a Communist. The facts which I presented do show clearly that some of his closest advisers were actual members of the Communist Party or closely identified with furthering the objectives of the Communist Party of the United States.

It seems to the Senator from North Carolina that these facts must be weighed carefully in any consideration of the proposal to make Dr. King's birthday a national holiday. Even if many approve very enthusiastically of some aspects of Dr. King's work, I do not see how Dr. King's ideological associates and activists can be disregarded as merely a negative influence. By making his birthday a holiday, we are holding up Dr. King as a role model for the young people of the United States. And if Dr. King's behavior, in its entirety, is not worthy of his being a role model for the young, then the Senate will be doing a grave disservice to the United States and to future generations in virtually canonizing this individual.

Now, Mr. President, there may be those who are not willing to accept my evidence. I would like to see at least some attempt to deal with that evidence honestly and on its merits. But if no one is willing to do that, there are other sources from which competent evidence may be obtained. If the Senate is not willing to examine my own evidence, then perhaps Senators will be willing to examine evidence that comes from other sources. That is one reason why I propose to move, on October 18, that the bill be committed to the Judiciary Committee for hearings, a thorough review of the evidence, and a comprehensive report to the Senate.

Mr. President, I am hopeful that if the Senate carefully considers the gravity of the King holiday bill and the scant deliberation given it thus far by this Congress, the Senate will agree to commit the bill to the Judiciary Committee before acting on it further. On balance, there really is no other responsible course.

However, as has been evident since early this week, there does exist in the major news media a uniform hypersensitivity with regard to Dr. King which cannot help but intimidate even seasoned Senators. A good example of this occurred when I met with the news media outside on the Senate steps after the debate. It was apparent to anyone present that the media representatives were livid that anyone had had the temerity to say Dr. King did not deserve a national holiday. A raw nerve had obviously been struck by my putting detailed documentation of Dr. King's far left associations and activities into the CONGRESSIONAL RECORD. Dispassionate and objective journalism vanished as quickly as straightfoward criticism of Dr. King was delivered. I learned that day that there are indeed sacred cows in our time which are not to be touched lest one bring down the wrath of the gods of American high journalism.

Because of this media factor, and the atmosphere of fear and intimidation it brings, I am not at all confident that reason will prevail and the motion to send the bill to committee adopted. Instead, the motion may well be rejected out of hand, and the Senate begin again a stampede toward passage. In such event, I intend to put the issues that would have been before the Judiciary Committee before the Senate itself.

Mr. President, it is well known that there is substantial documentary evidence concerning Dr. King in the possession of various agencies of the Federal Government. Everyone in Washington knows that these materials exist. Many of them were ordered and gathered under the direction of President John F. Kennedy and his brother Attorney General Robert F. Kennedy. Transcripts of tape recordings of Dr. King circulated on official levels throughout the Johnson administration. There are many people in Washington today who actually had or may still have official access to these materials.

Perhaps the most notorious are those materials that were locked up for 50 years by a Federal district judge here in Washington in 1977. They are under court-ordered seal at the National Archives until the year 2027. They are apparently so incriminating that the groups favorable to Dr. King have a real fear of their being made public.

What is not widely known, Mr. President, is that according to reliable sources available to my staff, the Department of Justice and the FBI have had and presumably still have extensive investigative files on Dr. King that are not under any protective court order. My staff has also been informed that the intelligence agencies may have files on Dr. King as well. Again, the materials were compiled primarily during the Kennedy and Johnson administrations.

Mr. President, we now have before us this strange specter. On the one hand, Congress is on the verge of enacting a national holiday for Martin Luther King, Jr., with not 1 minute of Senate hearings on the matter and with a corresponding lack of evidence available to us. On the other hand, extensive evidence on Dr. King is now—this day—in the possession of Federal agencies in the executive branch.

Mr. President, it is fair to say under these conditions that, if the Senate fails to commit the King bill to the Judiciary Committee on October 18, it will have proceeded ostrich-like to create a holiday for a man about whom such information existed but which was blissfully ignored. Needless to say, the judgment of the country and of history will not be kind to such slipshod, incomplete, and irresponsible legislative practice.

Mr. President, to help guard against such an eventuality I am today introducing a Senate resolution aimed at getting access for the whole Senate to the materials on Dr. King now in the possession of various executive agen-

cies. If the King bill is not committed to the Judiciary Committee, I intend to have the Senate vote on this resolution in some form prior to the vote on final passage. Then, should the Senate decline to adopt this resolution seeking access to the King materials, it will be doing so directly, not indirectly, and it will be plain to the American public that the Senate is not just blissfully but also willfully and deliberately ignoring the available evidence.

The resolution directs the Senate legal counsel, on behalf of the Senate, to seek access to all the King materials in the possession of the Department of Justice, the FBI, the National Archives, and the intelligence agencies for confidential examination by the Senate as a whole. I stress that the examination sought is confidential. This was done in an effort to bend over backward to accommodate concerns about national security and undue public exposure of Dr. King's private life.

The resolution makes available subpenas if necessary, but in most cases it is not expected they will be needed. The House Select Committee on Assassinations, for example, gained access in 1978 to the materials in the National Archives on Dr. King with the help of the Justice Department without resort to a subpena. The judge modified his order to permit access. although it is not certain how many records and materials will be turned up by this process, in the event they are voluminous the resolution contains a provision to establish a select committee to summarize and present the salient portion of the materials for confidential examination by the Senate. The majority and minority leaders would determine whether they are too voluminous for review in a reasonable time.

Mr. President, if the Senate will, either through committee or as a whole, examine the King materials, it will discharge a singulary important responsibility. It will, in effect, be putting down a straight stick alongside one that now appears crooked, and the American public will be left with no doubts about whether the Senate fully performed its duties in connection with this matter.

SENATE RESOLUTION 243—PRINTING OF ADDITIONAL COPIES OF A SENATE DOCUMENT

Mr. BYRD (for himself and Mr. BAKER) submitted the following resolution; which was placed on the calendar:

S. RES. 243

Resolved, That there shall be printed for the use of the Senate the maximum number of copies of a Senate document (S. Doc. 98-16) entitled "Dangerous Stalemate: Superpower Relations in Autumn 1983—A Report of a Delegation of Eight Senators to the Soviet Union" which may be printed at a cost not to exceed $1,200.

AMENDMENTS SUBMITTED

DEPARTMENT OF STATE AUTHORIZATION, 1984

PROXMIRE AMENDMENT NOS. 2310 AND 2311

(Ordered to lie on the table.)

Mr. PROXMIRE submitted two amendments intended to be proposed by him to the bill (S. 1342) to authorize appropriations for the fiscal years 1984 and 1985 for the Department of State, the U.S. Information Agency, and the Board for International Broadcasting, and for other purposes; as follows:

AMENDMENT NO. 2310

At the bottom of page 48, add the following:

TITLE VII—GENERAL PROVISIONS

PROHIBITION ON CERTAIN ASSISTANCE TO THE KHMER ROUGE IN KAMPUCHEA

SEC. 701. (a) Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this Act or any other Act may be obligated or expended for the purpose, or with the effect, of promoting, sustaining, or augmenting, directly or indirectly, the capacity of the Khmer Rouge or any of its members to conduct military or paramilitary operations in Kampuchea or elsewhere in Indochina.

(b)(1) All funds appropriated before the date of enactment of this section which were obligated but not expended for activities having the purpose or effect described in subsection (a) shall be deobligated.

(2) All funds deobligated pursuant to paragraph (1) shall be deposited in the Treasury of the United States as miscellaneous receipts.

AMENDMENT NO. 2311

At the bottom of page 11, add the following new section:

PROHIBITION ON CERTAIN ASSISTANCE TO THE KHMER ROUGE IN KAMPUCHEA

SEC. 502. (a) Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this Act or any other Act may be obligated or expended for the purpose, or with the effect, of promoting sustaining or augmenting, directly or indirectly, the capacity of the Khmer Rouge or any of its members to conduct military or paramilitary operations in Kampuchea or elsewhere in Indochina.

(b) (1) All funds appropriated before the date of enactment of this section which were obligated but not expended for activities having the purpose or effect described in subsection (a) shall be deobligated.

(2) All funds deobligated pursuant to paragraph (1) shall be deposited in the Treasury of the United States as miscellaneous receipts.

DAIRY AND TOBACCO PRICE SUPPORTS

KASTEN (AND OTHERS) AMENDMENT NO. 2312

Mr. KASTEN (for himself, Mr. TOWER, Mr. JEPSEN, Mr. BOREN, Mr. NICKLES, Mr. BENTSEN, Mr. GRASSLEY, Mr. THURMOND, and Mr. HATCH) proposed an amendment to the bill (S. 1529) to stabilize a temporary imbalance in the supply and demand for dairy products, to enable milk producers to establish, finance, and carry out a coordinated program of dairy product promotion, to adjust the support levels for the 1983 and subsequent crops of tobacco, to make modifications in the tobacco production adjustment program, and for other purposes; as follows:

On page 38, between lines 7 and 8, insert the following new section:

BARTER OF DAIRY AND OTHER COMMODITIES

SEC. 124. (a) It is the sense of the Congress that the Secretary of Agriculture should exchange or barter, to the maximum extent practicable under the provisions of law specified in subsection (b), commodities (especially dairy products) owned by the Commodity Credit Corporation for materials, goods, and equipment produced in foreign countries.

(b) The provisions of law referred to in subsection (a) are—

(1) section 4 (h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b (h)),

(2) section 310 of the Agricultural Trade Development and Assistance Act of 1954 (Public Law 83-480, as amended; 7 U.S.C. 1692), and

(3) section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431).

PRESSLER (AND OTHERS) AMENDMENT NO. 2313

Mr. PRESSLER proposed an amendment to the bill S. 1529, supra; as follows:

On page 20, line 21, insert "and on all milk and milk products imported into the United States" after "use".

On page 27, line 5, insert "and each person importing milk or milk products into the United States" after "the producer".

On page 27, line 7, insert "or the equivalent thereof" after "hundredweights".

On page 27, line 8, insert "or imported by the importer" after "producer".

D'AMATO AMENDMENT NO. 2314

Mr. D'AMATO proposed an amendment to the bill S. 1529, supra; as follows:

On page 2, beginning on line 3, strike out all that follows through line 17 on page 40 and insert in lieu thereof the following new title:

TITLE I—DAIRY

SHORT TITLE

SEC. 101. This title may be cited as the "Dairy Farmer Protection Act of 1983".

Subtitle A—Dairy Production Stabilization

DAIRY PRICE SUPPORT PROGRAM

SEC. 102. (a) Subsection (c) of section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446 (c)) is amended to read as follows:

"(c) (1) The price of milk shall be supported at not less than $11.85 per hundredweight of milk containing 3.67 per centum milkfat.

"(2) The price of milk shall be supported through the purchase of milk and the products of milk.".

(d) Subsection (d) of section 201 of such Act is repealed.

MINIMUM PRICE FOR CLASS I MILK UNDER MILK MARKETING ORDERS

SEC. 103. Section 8c(5)(A) of the Agricultural Adjustment Act, as amended and reenacted by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(5)(A)), is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of this section, in the case of milk and its products, orders issued pursuant to this section shall fix, or provide a method for fixing, the minimum price for milk classified as class I milk under this paragraph at no less than $12.56 per hundredweight.".

SUBTITLE B—DAIRY REPORT

REPORT

SEC. 110. Not later than July 1, 1984, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the effect of applying, nationally, standards similar to the current California standards for fluid milk products in their final consumer form, as they would relate to—

(1) overall consumer consumption trends and total per capita consumption;

(2) nutritional augmentation, particularly for young and older Americans;

(3) implementing improved interagency enforcement of minimum standards to prevent consumer fraud and deception;

(4) multiple component pricing for producer milk;

(5) reduced Commodity Credit Corporation purchases;

(6) consistency of product quality throughout the year and between marketing regions of the United States; and

(7) consumer prices.

CHAFEE (AND JEPSEN) AMENDMENT NO. 2315

Mr. CHAFEE (for himself and Mr. JEPSEN) proposed an amendment to the bill S. 1529, supra; as follows:

On page 7, line 12, strike out "Except as provided in subparagraph (D)," and insert in lieu thereof "Except as otherwise provided in this subparagraph and subparagraph (D),".

On page 7, line 21, insert after the period the following new sentence: "The total amount of payments that a milk producer may receive in a year under this subparagraph may not exceed the greater of $85,000 or the total assessment (not including the assessment for dairy promotion) paid by that producer in that year."

On page 9, line 11, insert "(i)" after "(E)".

On page 9, between lines 22 and 23, insert the following:

"(ii) If the Secretary determines that the reduction required under subparagraph (B) in the quantity of milk marketed by a producer is such that such producer would not elect to enter into a contract with the Secretary under this paragraph, the Secretary may reduce the level of such reduction to the extent the Secretary determines is necessary to encourage such producer to enter into such contract.

HATFIELD (AND OTHERS) AMENDMENT NO. 2316

Mr. HATFIELD (for himself, Mr. MATTINGLY, Mr. RUDMAN, Mr. WILSON, and Mr. PACKWOOD) proposed an amendment to the bill S. 1529, supra; as follows:

On page 2, beginning with line 12, strike out all down through line 2 on page 4 and insert in lieu thereof the following:

"(1)(A) Effective for the period beginning on the date of the enactment of the Dairy Production Stabilization Act of 1983, and ending on September 30, 1985, the price of milk shall be supported at a rate equivalent to $12.40 per hundredweight for milk containing 3.67 per centum milkfat, except that—

"(i) if on October 1, 1984, and thereafter on the first day of each fiscal-year quarter, the Secretary estimates that for the twelve-month period beginning on such date net price-support purchases of milk or the products of milk would be more than six and one half billion pounds milk equivalent, the Secretary shall reduce the price-support rate in effect on such date in the amount of 20 cents per hundredweight, but in no event may the Secretary reduce the price-support rate below the rate equivalent to $11.40 per hundredweight for milk containing 3.67 per centum milkfat; or

"(ii) if on October 1, 1984, or thereafter on the first day of any fiscal-year quarter the Secretary determines that during the three fiscal-year quarters preceding such date net price support purchases of milk or the products of milk were less than 75 percent of the annual equivalent of six and one half billion pounds of milk equivalent, estimates that for the twelve-month period beginning on such day net price-support purchases of milk or the products of milk will be six and one half billion pounds milk equivalent or less, and determines that it is necessary in order to assure an adequate supply of pure and wholesome milk to meet current needs, the Secretary shall increase the price-support rate in effect on such date in an amount not less than 10 cents per hundredweight but not more than 20 cents per hundredweight.

"(B) The price of milk shall be supported through the purchase of milk and the products of milk.

On page 4, line 5, strike out "December 31, 1984" and insert in lieu thereof "the date which occurs two years after such date of enactment".

On page 4, line 9, strike out "59 cents" and insert in lieu thereof "30 cents".

On page 4, line 11, insert after the period the following new sentence: "Notwithstanding the preceding sentence, in carrying out this subparagraph, the Secretary shall provide for a reduction of 15 cents per hundredweight to be made in the price received on all milk marketed in the United States for commercial use by producers who produce any quantity of milk, process such quantity into consumer packages, and market such packages.".

On page 5, lines 10 and 11, strike out "made using funds otherwise available to the Commodity Credit Corporation" and insert in lieu thereof "reduced among producers participating in the milk diversion program on a pro rate basis".

On page 6, lines 1 and 2, strike out "December 31, 1984" and insert in lieu thereof "the date which occurs two years after such date of enactment".

On page 7, line 12, strike out "Except as provide in subparagraph (D)," and insert in lieu thereof "Except as otherwise provided in the second sentence of this subparagraph, paragraph (2)(C), and subparagraph (D),".

On page 7, line 21, insert after the period the following new sentence: "The total amount of payments that a milk producer may receive in a year under this subparagraph may not exceed $100,000.".

ABDNOR (AND OTHERS) AMENDMENT NO. 2317

Mr. ABDNOR (for himself, Mr. RANDOLPH, Mr. BOSCHWITZ, Mr. THURMOND, and Mr. BOREN) proposed an amendment to the bill S. 1529, supra; as follows:

At the end of Title I, insert a new section and number appropriately:

"SEC. . The minimum limitation of 1,250,000,000 pounds provided under subsection (f)(1) of the Meat Import Act of 1979 is hereby suspended for 1984 and 1985."

BOSCHWITZ AMENDMENT NO. 2318

Mr. BOSCHWITZ proposed an amendment to the bill S. 1529, supra; as follows:

(1) On page 2, line 9, insert "(a)" immediately after "SEC. 102.".

(2) On page 2, line 14, strike out "September 30, 1983" and insert in lieu thereof "on the last day of the month of enactment of such Act".

(3) On page 2, strike out lines 18 and 19 and insert in lieu thereof the following:

"(B) Effective for the period beginning on the first day of the first calendar month following the date of enactment of the Dairy Production Stabilization Act of 1983 and ending on September 30, 1985, the price of".

(4) On page 2, line 23, strike out "on January 1, 1985," and insert in lieu thereof "on the date following by fifteen months the date established by the Secretary for the beginning of the diversion program under paragraph (3) of this subsection, but not later than March 31, 1985,".

(5) On page 3, line 3 strike out "shall" and insert in lieu thereof "may".

(6) On page 3, line 12 strike out "shall" and insert in lieu thereof "may".

(7) On page 3, line 23, strike out "shall" and insert in lieu thereof "may".

(8) On page 4, strike out line 3 and all that follows through "1984," on line 5, and insert in lieu thereof:

"(2)(A) Effective for the period beginning with the first day of the first calendar month following the date of enactment of the Dairy Production Stabilization Act of 1983 and ending on the date of termination of the milk diversion program established under paragraph (3) of this subsection,".

(9) On page 4, strike out lines 9 through line 11, and insert in lieu thereof: "duction of 50 cents per hundredweight from the price received on all milk marketed by producers in the United States for commercial use: *Provided*, That enactment of the Dairy

Production Stabilization Act of 1983 shall not affect in any manner the collection or enforcement of any deduction from the price of milk previously implemented by the Secretary under this subsection as in effect for any milk marketed for commercial use prior to the effective date of the reduction provided for in this paragraph, as added by section 102(a) of the Dairy Production Stabilization Act of 1983.".

(10) On page 4, strike out line 23 and all that follows through "Fund are" on page 5, line 8, and insert in lieu thereof "(C) To the extent that funds collected under this paragraph are".

(11) On page 5, line 18, insert "as soon as practicable following the enactment of the Dairy Production Stabilization Act of 1983, but no later than January 1, 1984," immediately after "shall".

(12) On page 5, line 23, strike out "period beginning" and all that follows through "1984." on line 2, page 6, and insert in lieu thereof "fifteen month period beginning with a date determined by the Secretary (not earlier than the date of enactment of the Dairy Production Stabilization Act of 1983, nor later than January 1, 1984)".

(13) On page 6, strike out line 22 and all that follows through line 4, page 7, and insert in lieu thereof the following: "sold, leased, or otherwise transferred to another person after the date of enactment of the Dairy Production Stabilization Act of 1983, unless such cattle are sold for slaughter or sold or transferred to another producer with respect to whom there is in effect a contract entered into under this subsection, except that the Secretary may, to the extent practicable and to the extent deemed consistent with the goals of the diversion program, permit the sale of registered, purebred cattle for breeding purposes subject to such terms and conditions as the Secretary may prescribe based on a history of such sales by the producer;".

(14) On page 7, strike out lines 7 and 8 and insert in lieu thereof "section, including simple interest payable at a rate prescribed by the Secretary which shall, to the extent practicable, reflect the cost to the Commodity Credit Corporation of its borrowings from the United States Treasury, commencing on".

(15) On page 8, line 13, strike out the semicolon and insert in lieu thereof a colon, and between lines 13 and 14, insert the following proviso: "*Provided*, That no payment may be made for any reduction in the quantity of milk greater than 30 per centum of the aggregate quantity of milk marketed by the producer for commercial use during the marketing history period;".

(16) On page 9, line 6, strike out "and", and between lines 6 and 7, insert the following:

"(iii) any reduction in the quantity of milk, marketed for commercial use by a producer who, as determined by the Secretary, was not actively engaged in the production of milk for commercial use as of the date of enactment of the Dairy Production Stabilization Act of 1983; and".

(17) On page 9, line 7, strike out "(iii)" and insert in lieu thereof "(iv)".

(18) On page 9, line 11, insert ", in accordance with such rules or procedures as prescribed by the Secretary," after "may".

(19) On page 9, line 15, strike out "paragraph and the Secretary" and all that follows through line 22, and insert in lieu thereof the following: "paragraph. In the event of such modifications, the Secretary may reduce the required reduction among all contracts on such basis as the Secretary determines will serve to reduce future dairy surpluses: *Provided*, That in no event shall any such reduction be apportioned on the basis of geographic region or area.".

(20) On page 10, strike out line 2 and all that follows through the period on line 10 and insert in lieu thereof "marketing history shall be the marketings of milk by such producer for commercial use during the 1981-1982 milk marketing year (October 1 through September 30) or, at the option of the producer, the average marketings of milk by the producer during the 1980-1981 and the 1981-1982 milk marketing years.".

(21) On page 10, line 13, strike out "or manmade disaster" and insert in lieu thereof "disaster or other condition".

(22) On page 10, line 16, strike out "The Secretary" and all that follows through line 21.

(23) On page 11, line 16, strike out "card".

(24) On page 12, strike out lines 21 through 23, and insert in lieu thereof "such producer.".

(25) On page 13, strike out lines 2 through 19, and insert in lieu thereof "Allotment Act.".

(26) On page 19, line 7, strike out "graph (2) through (5)" and insert in lieu there "graphs (2) and (3)".

(27) On page 19, between lines 9 and 10, insert the following:

"(b) The Secretary shall implement the provisions of section 201(d) of the Agricultural Act of 1949, as amended by subsection (a) of this section, without regard to the provisions requiring notice and other procedures for public participation in rulemaking contained in section 553 of title 5, United States Code.".

HELMS AMENDMENT NO. 2319

Mr. HELMS proposed an amendment to the bill S. 1529, supra; as follows:

On page 3, line 25, insert "than" after "less".

On page 4, line 16, strike out "prerscribed" and insert in lieu thereof "prescribed".

On page 20, line 9, strike out "is" and insert in lieu thereof "are".

On page 28, line 18, strike out "prinicpal" and insert in lieu thereof "principal".

On page 29, line 14, strike out "informatioin" and insert in lieu thereof "information".

On page 31, line 16, strike out "milk fluid" and insert in lieu thereof "fluid milk".

On page 34, line 8, strike out "thrity" and insert in lieu thereof "thirty".

On page 37, line 3, strike out "were" and insert in lieu thereof "where".

On page 38, line 8, strike out "and Cotton".

On page 39, strike out line 22 and all that follows through line 17 on page 40.

On page 40, line 23, strike out "1983" and insert in lieu thereof "1984".

On page 41, line 3, strike out "(e)" and insert in lieu thereof "(f)".

On page 41, strike out lines 5 through 9.

On page 41, line 10, strike out "(2)" and insert in lieu thereof "(1)".

On page 41, line 13, strike out "(3)" and insert in lieu thereof "(2)".

On page 42, line 4, strike out "(4)" and insert in lieu thereof "(3)".

On page 42, line 11, strike out "kind of such" and insert in lieu thereof "such kind of".

On page 42, line 23, strike out "(5)" and insert in lieu thereof "(4)".

On page 44, line 7, strike out "(17 U.S.C. 1445-2(a))" and insert in lieu thereof "(7 U.S.C. 1445-2(a))".

On page 44, line 8, strike out "(1) in paragraph (1), striking out ', except that".

On page 44, line 18, strike out "1983" and insert in lieu thereof "1938".

On page 44, line 23, strike out "price-support" and insert in lieu thereof "price support".

On page 46, line 9, strike out "the" and insert in lieu thereof "this".

On page 48, lines 4 and 5, strike out "any person knowingly failed to comply with the provisions of paragraph (1)" and insert in lieu thereof "the conditions for forfeiture specified in such paragraph exist".

On page 49, line 19, insert a semicolon immediately before "and".

On page 51, strike out lines 11 through 19.

On page 51, line 22, strike out "SEC. 212" and insert in lieu thereof "SEC. 211".

On page 52, line 9, strike out "SEC. 213" and insert in lieu thereof "SEC. 212".

On page 53, strike out lines 1 through 15.

EDUCATION CONSOLIDATION AND IMPROVEMENT ACT AMENDMENTS

HATCH AMENDMENT NO. 2320

Mr. BAKER (for Mr. HATCH) proposed an amendment to the bill (H.R. 1035) to make certain technical amendments to improve implementation of the Education Consolidation and Improvement Act of 1981, and for other purposes; as follows:

STATE PROGRAM DESIGN

SECTION 1. (a) Section 555(b) of the Education Consolidation and Improvement Act of 1981 (Public Law 97-35; 20 U.S.C. 3801 et seq.) (hereafter in this Act referred to as "the Act") is amended to read as follows:

"(b) PROGRAM DESIGN.—State agency program shall be designed to serve migratory children of migratory agricultural workers or of migratory fishermen, handicapped children, and neglected and delinquent children (as described in subparts 1, 2, and 3, respectively, of part B of title I of the Elementary and Secondary Education Act of 1965) in accordance with section 554(a)(2) and the other applicable requirements of this chapter. The Secretary shall continue to use the definitions of 'agricultural activity', 'currently migratory child', and 'fishing activity' which were in effect on June 30, 1982, in regulations prescribed under subpart 1 of part B of title I of the Elementary and Secondary Education Act of 1965. No additional definition of 'migratory agricultural worker' or 'migratory fisherman' may be applied after the date of enactment of this subsection to such subpart 1.".

(b) Section 555 of the Act is amended by adding at the end thereof the following new subsection:

"(e) EVALUATION.—Each State educational agency shall—

"(1) conduct an evaluation of the programs assisted under this chapter at least every two years and shall make public the results of that evaluation; and

"(2) collect data on the race, age, and gender of children served by the programs assisted under this chapter and on the number of children served by grade-level

under the programs assisted under this chapter.".

APPLICATIONS

SEC. 2. (a) Section 556(b) of the Act is amended by inserting "or" at the end of paragraph (1)(A) and by striking out "or" at the end of paragraph (1)(B) and by striking out pargaraph (1)(C).

(b) Section 556 of the Act is amended by adding at the end thereof the following:

"(c) EXEMPTION FROM TARGETING.—The requirements of subsection (b)(1) shall not apply in the case of a local educational agency with a total enrollment of less than one thousand children, but this subsection does not relieve such an agency from the responsibility to serve children under the assurances set forth in subsection (b)(2).".

(c) Clause (2) of section 556(b) of the Act is amended by striking all that follows "areas," in such clause and inserting in lieu thereof "requires, among the educationally deprived children selected, the inclusion of those children who have the greatest need for special assistance, and determines the needs of participating children with sufficient specificity to ensure concentration on those needs:".

(d) Clause (4) of section 556(b) of the Act is amended by inserting before the semicolon a comma and the following: "and that the results of such evaluation will be considered by such agency in the improvement of the programs and projects assisted under this chapter; and".

FLEXIBILITY TO CONTINUE TITLE I TYPE EXPENDITURES

SEC. 3. Section 556 of the Act is further amended by adding at the end thereof the following new subsection:

"(d) LOCAL EDUCATIONAL AGENCY DISCRETION.—Notwithstanding subsection (b)(1) of this section, a local educational agency shall have discretion to make educational decisions which are consistent with achieving the purposes of this chapter as set forth in this subsection, as follows:

"(1) A local educational agency may, with the approval of the State educational agency, designate as eligible (and serve) school attendance areas with substantially higher numbers or percentages of educationally deprived children before school attendance areas with higher concentrations of children from low-income families, but this provision shall not permit the provision of services to more school attendance areas than could otherwise be served. A State educational agency shall approve such a proposal only if the State educational agency finds that the proposal will not substantially impair the delivery of compensatory education services to educationally deprived children from low-income families in project areas served by the local educational agency.

"(2) Funds received under this chapter may be used for educationally deprived children who are in a school which is not located in an eligible school attendance area when the proportion of children from low-income families in average daily attendance in such school is substantially equal to the proportion of such children in an eligible school attendance area of such agency.

"(3) If an eligible school attendance area or eligible school was so designated in accordance with section 556(b)(1)(A) in either of two proceeding fiscal years, it may continue to be so designated for a single additional fiscal year even though it does not qualify in accordance with section 556(b)(1)(A).

"(4) With approval of the State educational agency, eligible school attendance areas or eligible schools which have higher proportions of children from low-income families may be skipped if they are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this chapter, but (A) the number of children attending private elementary and secondary schools who receive services under this chapter shall be determined without regard to non-Federal compensatory education funds which serve eligible children in public elementary and secondary schools, and (B) children attending private elementary and secondary schools who receive assistance under this chapter shall be identified in accordance with this section and without regard to skipping public school attendance areas or schools under this paragraph.

"(5) Educationally deprived children who begin participation in a program or project assisted under this chapter who, in the same school year, are transferred to a school attendance area or a school not receiving funds under this chapter, may continue to participate in a program or project funded under this chapter for the remainder of such year.

"(6) The local educational agency is not required to use funds under this chapter to serve educationally deprived children in greatest need of assistance if such children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this chapter.

"(7) In the case of any school serving an attendance area that is eligible to receive services under this chapter and in which not less than 75 per centum of the children are from low-income families, funds received under this chapter may be used for a project designed to upgrade the entire educational program in that school in the same manner and only to the same extent as permitted under section 133(b) of the Elementary and Secondary Education Act of 1965 (but without regard to paragraph (4) of such section).

"(8) Public school personnel paid entirely by funds made available under this chapter may be assigned limited, rotating, supervisory duties which are assigned to similarly situated personnel who are not paid with such funds, and such duties need not be limited to classroom instruction or to the benefit of children participating in programs or projects funded under this chapter. Such duties may not exceed the same proportion of total time as is the case with similarly situated personnel at the same school site, or 10 per centum of the total time, whichever is less.".

PARENTAL INVOLVEMENT

SEC. 4. Section 556 of the Act is further amended by adding at the end thereof the following new subsection:

"(e) PARENTAL INVOLVEMENT.—For the purposes of complying with the assurances given pursuant to subsection (b)(3) with respect to consultation with parents of participating children, (1) a local educational agency shall convene annually a public meeting, to which all parents of eligible students shall be invited, to explain to parents the programs and activities provided with funds made available under this chapter, and (2) if parents desire further activities, the local educational agency may, upon request, provide reasonable support for such activities.".

AREAS FOR SERVICES TO PRIVATE SCHOOLCHILDREN

SEC. 5. Section 557(a) of the Act is amended by inserting "(1)," immediately after "556(b)".

APPLICATION OF NONSUPPLANTING RULE TO STATES

SEC. 6. Section 558(b) of the Act is amended—

(1) by inserting "State educational agency or other State agency in operating its State level programs or a" before "local educational agency" in the first sentence; and

(2) by striking out "a local educational agency shall not be required" in the second sentence and inserting in lieu thereof "no State educational agency, other State agency, or local educational agency shall be required".

EXCLUSIONS OF SPECIAL PROGRAM FUNDS

SEC. 7. Section 558(d) of the Act is amended—

(1) by striking out "if such programs are consistent with the purposes of this chapter" and inserting in lieu thereof "including compensatory education for educationally deprived children (which meets the requirements of section 131(c) of the Elementary and Secondary Education Act of 1965)"; and

(2) by adding at the end thereof the following new sentence:

"For the purpose of determining compliance with the requirements of subsection (c), a local educational agency may exclude State and local funds expended for—

"(1) bilingual education for children of limited English proficiency,

"(2) special education for handicapped children or children with specific learning disabilities, and

"(3) certain State phase-in programs as described in section 131(d) of the Elementary and Secondary Education Act of 1965.".

OVERLAP IN COUNTY BOUNDARIES

SEC. 8. Section 558(e) of the Act is amended by striking out "In any State" and inserting in lieu thereof "Notwithstanding section 111(a)(3)(C) of the Elementary and Secondary Education Act of 1965, in any State".

PHASEOUT AND TRANSITION EXPENSES

SEC. 9. Section 562(c) of the Act is amended by adding at the end thereof the following: "Until September 30, 1983, such funds may also be used to assist in phasing out programs described in section 561(a) and in promoting an orderly transition to operations under this chapter.".

STATE ALLOTMENTS

SEC. 10. The first sentence of section 563(a) is amended by striking out "not to exceed".

AUDIT REQUIREMENT OF SMALL LEA'S

SEC. 11. Section 564(a) of the Act is amended by inserting after paragraph (7) the following new sentence: "Notwithstanding section 1755 of this Act, local educational agencies receiving less than an average $5,000 each year under this chapter shall be audited at least once each five years.".

REQUIREMENT FOR STATE CERTIFICATION OF LEA APPLICATIONS

SEC. 12. Section 566(a) of the Act is amended by striking out everything preceding paragraph (1) and inserting in lieu thereof the following:

"SEC. 566. (a) A local educational agency may receive its allocation of funds under this chapter for any year for which its application to the State educational agency has been certified to meet the requirements

of this subsection. The State educational agency shall certify any such application if such application—".

SCHOOL LEVEL PROGRAMS

SEC. 13. Section 573(a) of the Act is amended by striking out "chapter" in the first sentence and inserting in lieu thereof "subchapter".

STATE RULEMAKING

SEC. 14. Section 591 of the Act is amended by adding at the end thereof the following new section:

"(d) Nothing in this subtitle shall be interpreted (1) to authorize State regulations, issued pursuant to procedures as established by State law, applicable to local educational agency programs or projects funded under this subtitle, except as related to State audit and financial responsibilities, or (2) to encourage, preempt, or prohibit regulations issued pursuant to State law which are not in conflict with the provisions of this subtitle. The imposition of any State rule or policy relating to the administration and operation of programs funded by this subtitle (including those based on State interpretation of any Federal law, regulation, or guideline) shall be indentified as a State-imposed requirement.".

WITHHOLDING OF PAYMENTS

SEC. 15. Section 592(a) of the Act is amended—

(1) by striking out "on the record" in the first sentence; and

(2) by adding at the end thereof the following new sentence: "A transcript or recording shall be made of any hearing conducted under this subsection and shall be available for inspection by any person.".

JUDICIAL REVIEW

SEC. 16. Section 593(b) of the Act is amended by inserting "and a local educational agency" after "A State educational agency".

APPLICATION OF GEPA

SEC. 17. (a) Section 596 of the Act is amended to read as follows:

"APPLICATION OF OTHER LAWS

"SEC. 596. (a) Except as otherwise specifically provided by this section, the General Education Provisions Act shall apply to the programs authorized by this subtitle.

"(b) The following provisions of the General Education Provisions Act shall be superseded by the specified provisions of this subtitle with respect to the programs authorized by this subtitle:

"(1) Section 408(a)(1) of the General Education Provisions Act is superseded by section 591(a) of this subtitle.

"(2) Section 426(a) of such Act is superseded by section 591(b) of this subtitle.

"(3) Section 427 of such Act is superseded by section 556(b)(3) of this subtitle.

"(4) Section 430 of such Act is superseded by sections 556(a) and 564(b) of this subtitle.

"(5) Section 431A of such Act is superseded by section 558(a) of this subtitle.

"(6) Section 453 of such Act is superseded by section 592 of this subtitle.

"(7) Section 455 of such Act is superseded by section 593 of this subtitle with respect to judicial review of withholding of payments.

"(c) Sections 434, 435, and 436 of the General Education Provisions Act, except to the extent that such sections relate to fiscal control and fund accounting procedures, shall not apply to the programs authorized by this subtitle and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this subtitle.".

(b) Section 406A(a) of the General Education Provisions Act, as added by the Education Amendments of 1974 (relating to responsibility of States to furnish informaton), is amended—

(1) by striking out paragrphs (3) and (4);

(2) by inserting "and" at the end of paragraph (2); and

(3) by redesignating paragraph (5) as paragraph (3).

CONFORMING AND TECHNICAL AMENDMENTS TO TITLE I OF ESEA

SEC. 18. (a) Title I of the Elementary and Secondary Education Act of 1965 is amended—

(1) in section 142(a) by striking out "subpart 3 of part A, other than sections 122, 123, and 126(d) thereof" in paragraph (3) and inserting in lieu thereof "section 556 (other than subsection (b)(1)) and section 558 of the Education Consolidation and Improvement Act of 1981"; and

(2) in sections 147 and 152(a), by striking out "subpart 3 of part A, other than sections 122, 123, 125, 126(d), and 126(e) thereof" and inserting in lieu thereof "section 556 (other than subsection (b)(1)) and section 558 (other than subsection (c)) of the Education Consolidation and Improvement Act of 1981".

(b) The amendments made by subsection (a) shall apply only with respect to funds for use under the Education Consolidation and Improvement Act of 1981.

AVAILABILITY OF TITLE I APPROPRIATIONS

SEC. 19. (a) Section 553 of the Act is amended—

(1) by inserting "(a)" after "SEC. 553."; and

(2) by adding at the end thereof the following new subsection:

"(b) From the amount appropriated to carry out this chapter, not more than 14.6 per centum of such amount for each of the fiscal years 1983 and 1984 shall be available to carry out programs described in sections 141, 146, and 151 of the Elementary and Secondary Education Act of 1965. After the allocations for programs operated by State agencies, the Secretary shall assure that the amount available for allocation under section 117 of such Act bears the same ratio to the amount appropriated in each such fiscal year for this chapter as the amount available for such section in fiscal year 1980 bore to the total amount appropriated for title I of such Act in fiscal year 1980.".

(b)(1) Section 514(a)(2) of the Act is repealed.

(2) Section 514(a) of the Act is amended by striking out "(1)".

EXTENSION OF AUTHORIZATION FOR TITLE VII OF ESEA

SEC. 20. Section 528 of the Omnibus Budget Reconciliation Act of 1981 is amended—

(1) by striking out "and" at the end of paragraph (13);

(2) by striking out the period at the end of paragraph (14) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding at the end thereof the following new paragraph:

"(15) title VII of the Elementary and Secondary Education Act of 1965.".

CONFORMING AMENDMENTS

SEC. 21. (a) Section 565(a) of the Act is amended by striking out "nonpublic" and inserting in lieu thereof "private, nonprofit".

(b) The first sentence of section 1003(a)(1) of the Elementary and Secondary Education Act of 1965 is amended by inserting after "Act" a comma and the following: "or the Education Consolidation and Improvement Act of 1981".

ASSESSMENT OF COMPENSATORY EDUCATION

SEC. 22. Chapter 1 of the Act is amended by adding at the end thereof the following new section:

"NATIONAL ASSESSMENT OF COMPENSATORY EDUCATION ASSISTED UNDER THIS CHAPTER

"SEC. 559. (a) The Secretary shall conduct a national assessment of compensatory education assisted under this chapter, through independent studies and analysis by the National Institute of Education. The assessment shall include descriptions and assessments of the impact of (1) services delivered, (2) recipients of services, (3) background and training of teachers and staff, (4) allocation of funds (to school sites), (5) coordination with other programs, (6) effectiveness of programs on student's basic and higher order academic skills, school attendance, and future education, and (7) a national profile of the way in which local educational agencies implement activities described under section 556(b). The National Institute of Education shall consult with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives in the design and implementation of the assessment required by this section. The National Institute of Education shall report to Congress the preliminary results of the assessment required by this section in January and July of 1986, and a final report shall be prepared and submitted to the Congress not later than January 1, 1987.

"(b) Notwithstanding any other provision of law or regulation, such reports shall not be subject to any review outside of the Department of Education before their transmittal to the Congress, but the President and the Secretary may make such additional recommendations to the Congress with respect to the assessment as they deem appropriate.

"(c) From amounts otherwise available to the National Institute of Education, $2,000,000 for the fiscal year 1984 and $4,000,000 for each of the succeeding fiscal years ending prior to October 1, 1987, shall be made available to carry out the provisions of this section.".

IMPACT AID

SEC. 23. Section 5(c) of the Act of September 30, 1950 (Public Law 874, eighty-first Congress) is amended by adding at the end thereof the following: "In the determination of amounts of payments made on the basis of entitlements established under sections 2, 3, and 4 after March 31, 1983, by reason of any provision of law other than this Act which places any additional restriction on payments based on the concentration of children counted under subsection (a) or (b) of section 3 in the schools of the local educational agency, such restriction shall be applied, in the case of any State (other than a territory or possession of the United States) within which there is only one local educational agency, by treating each administrative school district within such State as a local educational agency (solely for the purpose of computing the amount of such payments).".

EFFECTIVE DATE

SEC. 24. (a) Except as provided in subsection (b), the amendments made by this Act

to the Education Consolidation and Improvement Act of 1981 and title I of the Elementary and Secondary Education Act of 1965 shall be effective July 1, 1983.

(b) With respect to the period beginning July 1, 1982, and ending June 30, 1983, no recipient of funds under the Education Consolidation and Improvement Act of 1981 shall be held to have expended such funds in violation of the requirements of such Act if such funds are expended either in accordance with such Act as in effect prior to the date of enactment of this Act or in accordance with such Act as amended by this Act.

SMALL BUSINESS ACT AMENDMENTS

NUNN AMENDMENT NO. 2321

Mr. BYRD (for Mr. NUNN) proposed an amendment to the bill (S. 1323) to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes; as follows:

At the end of the bill, add the following:

DEVELOPMENT COMPANY DEBENTURES

SEC. 5. Section 503(a)(2) of the Small Business Investment Act of 1958 is amended by inserting before the period at the end thereof the following: ": *Provided*, That the Administration shall not decline to issue such guarantee when the ownership interests of the small business concern and the ownership interests of the property to be financed with the proceeds of a loan made pursuant to subsection (b)(1) are not identical because one or more of the following classes of relatives have an ownership interest in either the small business concern or the property: father, mother, son, daughter, wife, husband, brother, sister: *Provided further*, That the Administrator or his designee has determined on a case-by-case basis that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the small business concern".

DEFENSE PRODUCTION ACT EXTENSION

BAKER AMENDMENT NO. 2322

Mr. BAKER proposed an amendment to the amendment of the House to the bill (S. 1852) to extend the expiration date of the Defense Production Act of 1950, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That the first sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking out "September 30, 1983" and inserting in lieu thereof "September 30, 1988".

SEC. 2. (a) Section 301(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2091(a)) is amended by adding at the end thereof the following:

"(3) A guarantee may be entered into under this section only if the President determines that—

"(A) the guaranteed contract or operation is for a material, or the performance of a service, that is essential to the national defense;

"(B) without the guarantee, United States industry cannot reasonably be expected to provide the capability for the needed material or service in a timely manner;

"(C) the guarantee is the most cost-effective, expedient, and practical alternative for meeting the need;

"(D) the United States national defense demand is equal to or greater than the output of domestic industrial capability which is reasonably determined to be available for national defense, including the output to be established through the guarantee; and

"(E) the material or service of the guaranteed contract has been identified in a specification agreed to by the United States and the contractor.".

(b) Section 302 of such Act (50 U.S.C. App. 2092) is amended by inserting before the period at the end of the second sentence the following: ", and (3) no such loan may be made unless the President determines that—

"(A) the loan is for the expansion of capacity, the development of a technological process, or the production of materials essential to the national defense;

"(B) without the loan, United States industry cannot reasonably be expected to provide the needed capacity, technological processes or materials in a timely manner;

"(C) the loan is the most cost-effective, expedient, and practical alternative method for meeting the need;

"(D) the United States national defense demand is equal to or greater than domestic industrial capability which is reasonably determined to be available for national defense, including the output to be established through the loan; and

"(E) the material or service has been identified in a specification agreed to by the United States and the borrower".

(c) Section 303(a) of such Act (50 U.S.C. App. 2093(a)) is amended by adding at the end thereof the following: "The President may not execute a contract under this subsection unless he determines that—

"(1) the mineral, metal, or material is essential to the national defense;

"(2) without Presidential action under authority of this section, United States industry cannot reasonably be expected to provide the capability for the needed mineral, metal, or material in a timely manner;

"(3) purchases, purchase commitments, or other action pursuant to this section are the most cost-effective, expedient, and practical alternative method for meeting the need;

"(4) the United States national defense demand for the mineral, metal, or material is equal to or greater than the output of domestic industrial capability which is reasonably determined to be available for national defense, including the output to be established through the purchase, purchase commitment, or other action; and

"(5) the mineral, metal or material has been identified in a specification agreed to by the United States and the contractor.".

SEC. 3. (a) Section 301(e)(1) of the Defense Production Act of 1950 (50 U.S.C. App. 2091(e)(1)) is amended to read as follows:

"(e)(1) Except during periods of national emergency declared by the Congress or the President, a guarantee may be made under this section only if the industrial resource shortfall which such guarantee is intended to correct has been identified in the budget, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of subsection (a)(3) of this section, and if guarantees to correct such industrial resource shortfall have been authorized by law.".

(b) Section 302(2) of such Act (50 U.S.C. App. 2092(2)) is amended to read as follows: "(2) no such loan may be made under this section, except during periods of national emergency declared by the Congress or the President, unless the industrial resource shortfall which such loan is intended to correct has been identified in the budget, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of paragraph (3) of this section, and unless such loans to correct such industrial shortfall have been authorized by law".

(c) Section 303(a) of such Act (50 U.S.C. App. 2093(a)) is amended by adding at the end thereof the following: "Except during periods of national emergency declared by the President or the Congress, the President shall take no action under authority of this section unless the industrial resource shortfall which such action is intended to correct has been identified in the budget, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of the preceding sentence, and unless actions to correct such industrial resource shortfall have been authorized by law.".

TRANSFER OF CERTAIN FEDERAL LAND

HOLLINGS AMENDMENT NO. 2323

(Ordered referred to the Committee on Agriculture, Nutrition, and Forestry.)

Mr. HOLLINGS (for himself and Mr. THURMOND) submitted an amendment intended to be proposed by him to the bill (S. 566) to direct the Secretary of Agriculture to release on behalf of the United States a reversionary interest in certain land conveyed to the South Carolina Commission of Forestry, and to direct the Secretary of the Interior to convey certain mineral interests of the United States in such land to such Commission; as follows:

On page 1, line 3, strike all that follows through page 4, line 13 and insert in lieu thereof the following: "That, subject to section 2, the Secretary of Agriculture shall release, on behalf of the United States, with respect to the following described tracts of land, the condition contained in the deed dated June 28, 1955, between the United States of America and the South Carolina State Commission of Forestry, conveying certain tracts of land, of which such described tracts of land are a part, to such Commission, which requires that the tracts of land conveyed be used for public purposes and revert back to the United States should the tracts of land cease to be used for such purposes:

"(a) A tract of land consisting of approximately 1.99 acres in Sumter County, South Carolina, more particularly described as follows: Beginning at an iron pipe located on the west side of the Old Kings Highway and being south 18 degrees and 35 minutes east and 2519.2 feet from Manchester State Forest monument number 2314; thence

south 3 degrees 19 minutes east 417.22 feet to an iron pipe; thence south 86 degrees 41 minutes west 208.64 feet to an iron pipe; thence north 3 degrees 19 minutes west 199.97 feet to an iron pipe; thence north 3 degrees 32 minutes west 214.05 feet to an iron pipe; thence north 85 degrees 47 minutes east 209.27 feet to an iron pipe, the same being the point of beginning.

"(b) A tract of land consisting of approximately 22.715 acres in Sumter County, South Carolina, more particularly described as follows: Beginning at the point of intersection of the center line of the Burnt Gin Road with the center line of Wedgelake Drive proceed South 64 degrees, 41 minutes East a distance of 63.16 feet to the point of beginning. Proceed thence South 88 degrees 0 minutes East a distance of 1454.56 feet to an iron pin, thence South 18 degrees, 57 minutes west a distance of 1059.17 feet to an iron pin, thence North 62 degrees, 15 minutes West a distance of 367.24 feet to a corner, thence along the arc of a curve to the right having a radius of 1031.31 feet a distance of 197.10 feet to a corner, thence North 51 degrees, 18 minutes West a distance of 107.80 feet to a corner, thence along the arc of a curve to the left having a radius of 637.49 feet a distance of 202.13 feet to a corner, thence North 69 degrees, 28 minutes West a distance of 167.47 feet to a corner, thence along the arc of a curve to the right having a radius of 581.69 feet a distance of 146.19 feet to a corner, thence North 55 degrees, 04 minutes West a distance of 163.98 feet to a corner, thence North 18 degrees, 10 minutes West a distance of 39.99 feet to a corner, thence along the arc of a curve to the left having a radius of 781.17 feet a distance of 215.48 feet to a corner, thence North 02 degrees, 00 minutes East a distance of 107.84 feet to a corner, thence North 47 degrees 00 minutes East a distance of 42.50 feet to the point of beginning.

SEC. 2. The Secretary of Agriculture shall release the condition referred to in section 1 of this Act only with respect to land covered by and described in an agreement or agreements entered into between the Secretary and the South Carolina State Commission of Forestry in which the Commission, in consideration of the release of such condition, agrees that the tract of land described in subsection (a) of section 1 of this Act, will not be sold,

"(1) except to the Tiverton Baptist Church of Sumter, South Carolina; and

"(2) unless the proceeds of such disposal are—

"(A) deposited and held in an account open to inspection by the Secretary of Agriculture, and

"(B) used, if withdrawn from such account, exclusively for public purposes.

"SEC. 3. The Secretary of Agriculture shall release the condition referred to in section 1 of this Act only with respect to land covered by and described in an agreement or agreements entered into between the Secretary and the South Carolina State Commission of Forestry in which the Commission, in consideration of the release of such condition, agrees that the tract of land described in subsection (b) of section 1 of this Act will be exchanged for a tract of land consisting of approximately 45.43 acres in Sumter County, South Carolina, to be conveyed to the Commission to be used exclusively for public purposes, more particularly described as follows: Beginning at the intersection of the South right of way of Brohun Camp Road and the West right of way of Tiverton Church Road proceed South 50 degrees, 32 minutes West a distance of 2,214.39 feet to a corner, thence North 40 degrees, 02 minutes West a distance of 414.24 feed to a corner, thence North 5 degrees, 19 mnutes, 30 seconds East a distance of 1627.88 feet to a corner, thence South 73 degrees, 45 minutes East a distance of 1901.55 feet to the point of beginning.

"SEC. 4. (a) Subsequent to any release executed by the Secretary of Agriculture with respect to the tracts of land described in section 1 of this Act, the South Carolina State Commission of Forestry may apply to the Secretary of the Interior seeking to acquire all the undivided mineral interests of the United States in the tracts of land to which such release applied, and the Secretary of the Interior shall, subject to valid existing rights and subject to subsection (b) of this section, convey such mineral interests as requested.

"(b) The Secretary of the Interior shall not convey the undivided mineral interests of the United States in any lands as requested in an application filed by the South Carolina State Commission of Forestry under subsection (a) of this section unless—

"(1) such application is accompanied by a sum of money which the Secretary of the Interior determines is necessary to pay the administrative costs involved in conveying such mineral interests to the Commission, including the costs of determining the mineral character of such lands and the costs of establishing the fair market value of such mineral interests, and

"(2) the Commission, in consideration of such conveyance, pays to the Secretary of the Interior—

"(A) $1, in the case of any such lands determined by the Secretary of the Interior to have no mineral value and to be under no active mineral development or leasing, or

"(B) As determined by the Secretary of the Interior, the fair market value of such mineral interests, in the case of any such lands not subject to clause (A) of this subsection.".

Amend the title so as to read: "A bill to direct the Secretary of Agriculture to release on behalf of the United States a reversionary interest in certain tracts of land conveyed to the South Carolina State Commission of Forestry, and to direct the Secretary of the Interior to convey certain mineral interests of the United States in such lands to such Commission, and for other purposes.".

Mr. HOLLINGS. Mr. President, I am offering today, on behalf of Senator THURMOND and myself, a substitute amendment to S. 566, a bill that I introduced on February 23, 1983.

The amendment would make clarifying changes to the bill, as originally introduced, in addition to providing for a land exchange that was requested by the South Carolina Commission of Forestry.

RELIEF OF DOAN VAN TOAI

HATCH AMENDMENT NO. 2324

(Ordered referred to the Committee on the Judiciary.)

Mr. HATCH submitted an amendment intended to be proposed by him to the bill (S. 517) for the relief of Doan Van Toai; as follows:

On page 1, line 4, after "Doan Van Toai" insert the following: ", his wife Doan Voduc Yvonne and their three children, Doan Minh Quoc Dinh, Doan Minh Quoc Binh, and Doan Minh Quoc Huy".

On page 1, line 10, strike out "one" and insert in lieu thereof "five".

NOTICES OF HEARINGS

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

Mr. WALLOP. Mr. President, I would like to announce for the information of the Senate and the public the scheduling of a public hearing before the Subcommittee on Public Lands and Reserved Water to receive testimony on S. 1504, to provide for protection of historic shipwrecks, structures, and artifacts located on a seabed or in the subsoil of the lands beneath waters of the United States; and S. 1647, to authorize the use of funds from rental of floating drydock and other marine equipment to support the National Maritime Museum in San Francisco, Calif.

The hearing will be held on Friday, October 21, beginning at 9 a.m. in room SD-366 of the Dirksen Senate Office Building.

Those wishing to testify or who wish to submit written statements for the hearing record should write to the Committee on Energy and Natural Resources, Subcommittee on Public Lands and Reserved Water, U.S. Senate, Washington, D.C. 20510.

For further information regarding this hearing you may wish to contact Mr. Tony Bevinetto of the subcommittee staff at 224-5161.

ADDITIONAL STATEMENTS

EMPLOY THE HANDICAPPED WEEK

● Mr. DOLE. Mr. President, October 3-7, 1983, has been designated National Employ the Handicapped Week. Activities throughout this country are helping to increase public awareness of the inequities encountered by disabled Americans in the employment area.

During the past decade, there has been an increased awareness of the problems of disabled Americans, and much progress has been made to address their special needs. Opportunities for health care and rehabilitation, education, employment, and community living have increased but still have a long way to go. Laws have been enacted, but remain to be enforced.

Despite this progress, which represents a great improvement over the prevalent lack of opportunities of past decades, statistical studies have shown that unemployment rates among handicapped people are drastically higher than rates of unemployment

for nonhandicapped people. Only a small percentage of disabled Americans who could work, if given the opportunity, are actually employed. This recession has been cruel to many Americans who now find themselves unemployed after having worked all their lives, but a great toll has been taken on the handicapped as well. Unemployed rates among disabled workers are currently estimated to be between 50 to 75 percent, up from a prerecession rate of 45 percent.

It is unfortunate to discover, as studies indicate, that only in a small percentage of cases is inability to perform a regular full-time job the reason a handicapped person is not employed. Frequently, employer prejudices exclude handicapped persons from jobs. In fact, additional barriers continue to affect disabled Americans in just about every phase of their uphill battle to join the mainstream of community life and the employment world. This kind of attitudinal battle is perhaps the one that is most difficult to wage. Biases can operate in subtle, often unconscious ways to eliminate consideration of disabled people from the job application, hiring, and employment process.

Tax incentives have helped to eliminate architectural and transportation barriers, along with the impact of section 504, but the most difficult barrier—that of attitudes—remains to be transcended, although many are working to chip away at its effects. The majority of unemployed handicapped people are quite capable of taking their places in the job market, if given the chance, but most often, the doors of opportunity are not open to them, because somebody along the way has made erroneous assumptions about their lack of ability. What is perhaps most unfair is that usually the disabled person never knows why he or she did not get the job.

One of the greatest milestones of achievement in the area of handicapped rights was enacted with title V of the Rehabilitation Act of 1973, which establishes civil rights protection for handicapped people as a national policy. Speaking in support of the act at the time, Senator Taft declared:

> Too many handicapped Americans are not served at all, too many lack jobs, and too many underemployed—utilized in capacities well below the levels of their training, education and ability . . . if we are to assure that all handicapped persons may participate fully in the rewards made possible by the vocational rehabilitation program, we must devote more of our energy toward elimination of the most disgraceful barrier of all—discrimination.

The provisions of section 504 prohibit discrimination on the basis of handicap in any program or activity receiving Federal financial assistance—including the areas of employment, education, housing, transportation, and health and human services. Section 504 pertains to the discriminatory practices of the Federal Government, defining discrimination broadly to include practices that directly or indirectly deny opportunities, afford opportunities that are unequal, less effective, or require different or separate opportunities. In furtherance of 504 goals, recipients of Federal funds cannot use criteria or methods of administration that have the effect of discriminating against handicapped persons, regardless of whether they intended to discriminate.

Mr. President, it has been one of my goals in political life to help increase the awareness of the abilities that handicapped people possess. All too frequently, their disabilities are emphasized, and we, as a society, lose. There are 36 million handicapped persons in the United States today, with varying degrees of disability who represent the underutilization of a vast human resource. Most Americans, whether disabled or nondisabled, want only to be able to share their talents with the society which has the potential to make their personal dreams come true. They want to contribute as productive, taxpaying citizens, taking pride in their work. It is time to open more doors to opportunities, building upon the foundation laid in the past decade.

Numerous studies indicate that handicapped workers, when assigned appropriate positions, perform as well as or better than, their nonhandicapped fellow workers. In fact, a U.S. Civil Service Commission study of appointments of severely handicapped workers to Federal agency jobs over a 10-year period concluded that "the work record is excellent." This should tell us something important. Still, those handicapped workers who are able to find a job are twice as likely as nonhandicapped persons to work part time, in spite of the fact that most disabled individuals are able to put in a full, standard 8-hour workday and a normal 5-day work week. Along with this type of discrimination, handicapped employees also tend to be underpaid. It is time to start changing the statistics of inequity so that all Americans will be able to benefit from the talents and abilities of our disabled citizens.●

NATIONAL PORT WEEK

● Mr. WARNER. Mr. President, I rise today as a cosponsor of Senate Joint Resolution 145, to designate the week of October 2 to 8 as "National Port Week."

The Federal interest in a modern harbor system is twofold: To promote America's trade potential and economic strength, as well as to meet our defense commitments.

The United States must be prepared to meet the world demand for its goods by developing a more competitive port transportation system.

Likewise, the constitutional obligation to provide for the Nation's defense demands that the Federal Government continue its strong role in supplying both our allies' and our own energy needs.

The Federal role is further highlighted by our country's commitment to the construction of a 600-ship Navy to bolster our Nation's defenses.

The quick and efficient deployment and servicing of troops and equipment must be assured by modern, well-maintained harbors.

Our national port system annually transports $318 billion in waterborne foreign commerce and generates $7 billion in customs revenues.

A strong port system which increases our capacity to export reduces our balance of trade deficit and makes a positive contribution to employment in every State in the Nation.

It is especially appropriate and important at this time to focus public attention upon the value of our Nation's ports which contribute so heavily to our favorable balance of trade and to the overall prosperity of our economy.

As we celebrate National Port Week, the Congress faces critical decisions about the future of our national port system.

The Subcommittee on Water Resources of the Senate of the Committee on Environment and Public Works has completed hearings on harbor modernization legislation and anticipates markup in the near future.

Enactment of this legislation should be one of the highest priorities of this Congress.

Earlier this year, I joined with Senators HATFIELD, BYRD, THURMOND, and MATTINGLY in introducing S. 865, the Deep-Draft Navigation Act of 1983.

The legislation is cosponsored by Senators TRIBLE, HAWKINS, FORD, RANDOLPH, NUNN, MURKOWSKI, COCHRAN, PROXMIRE, KASTEN, LUGAR, RIEGLE, and SIMPSON.

S. 865 enjoys wide support in my home State of Virginia. I ask that a copy of a resolution of endorsement of S. 865 passed by the Board of Directors of the Virginia State Chamber of Commerce be printed in the RECORD at the conclusion of my statement.

I also ask that a July 17, 1983, editorial from the Virginian-Pilot be printed in the RECORD at the conclusion of my statement.

As the editorial states, it is time to enact a port modernization bill and send a message to the world that the United States has no intention of becoming a second-class industrial nation.

I call on every Member of the Senate during National Port Week to

renew their efforts for passage of legislation to assure that our Nation's harbors will be well-maintained and also have the opportunity for improvements.

The material follows:

RESOLUTION ON DEEP-DRAFT NAVIGATION ACT OF 1983, S. 865, SENATORS WARNER AND HATFIELD

Whereas one of the basic purposes of The Virginia Chamber of Commerce is to promote world trade and development of Virginia Ports, and

Whereas the Port of Hampton Roads and its continued development is critical to Virginia if we are to continue to be a leader in international shipping, and

Whereas Virginia's senior senator, John Warner, has introduced S. 865, the Deep-Draft Navigation Act of 1983, comprehensive ports legislation designed to address continued maintenance of our nation's harbors at their current depth and to establish a Federal Navigation Improvement Account to provide a mechanism for all ports to deepen their harbors: Therefore, be it

Resolved, That the Board of Directors of The Virginia Chamber of Commerce respectfully requests the Congress of the United States to give affirmative consideration to the Deep-Draft Navigation Act of 1983. (S. 865)

Unanimously adopted by the Board of Directors, The Virginia Chamber of Commerce, Windmill Point Marine Resort, July 22, 1983.

A DEEPER CHANNEL?

A Belgian Supercollier, the 140,000-ton Federal Skeena, entered Hampton Roads last week and berthed at Pier 6 in Norfolk to take on a load of metallurgical coal bound for Japan. When the huge ship's hold contained 98,000 tons of Appalachian coal, however, the loading ceased and the ship steamed out of port. If it had taken on any more cargo here it might have run aground. En route to its destination, Federal Skeena will take on an additional 40,000 tons of coal in South Africa.

This scenario illustrates that Hampton Roads needs a deeper navigation channel in order to meet the demand imposed by shippers who are using larger colliers such as this one. That vessel is typical of colliers being built overseas these days. They haul more coal and are much cheaper to operate. But unless Hampton Roads' channels are deepened, such ships can only be partially loaded at local coal piers. The rest of their business will go elsewhere.

Congress, just back from summer vacation, is working on dredging legislation. A river-and-harbor-projects bill containing the 55-foot channel project for Hampton Roads cleared the House Public Works Committee last month. But while the lawmakers were out of town, the Department of Energy issued a report that cast doubt on the wisdom of spending the large sums required to add 10 feet to the depth of the Hampton Roads channels.

The report contends that opening major American ports to deeper-draft supercolliers will increase coal exports only slightly, 3 percent or 4 percent. Energy Department analysts concluded that overseas coal is so much cheaper to mine that a few dollars per ton reduction in the price of U.S. coal made possible by using 100,000-ton vessels instead of 60,000-ton colliers would be little inducement to foreign buyers because competitors would still undersell us. Rather, said the report, the reliability of the supply from U.S. mines is what guarantees markets for this country's coal even though it is more expensive.

That, however, is no argument for killing the dredging bill. No one can predict how the world energy picture may change during the next decade, either because of new fuel sources or swift changes in international political events, particularly in the Middle East. For example, a new source of steam coal will be opening in South America in a few years. Exxon is investing $10 billion in developing mines in Colombia. That coal will surely compete with Appalachian coal for both the export and domestic markets. American interests, including the federal government, can't take for granted that foreign buyers will continue to line up in Hampton Roads to buy coal at premium prices just because it is available.

Moreover, this is no time to hold back in hopes that America can muddle through. American industry is on the defensive in the international marketplace. A new spirit of competitiveness has to imbue our efforts if American products—from our mines, farms and factories—are to reach consumers overseas, or even be bought by American consumers. An aggressive and innovative can-do approach is essential if this nation is to avoid being overtaken by the rising new industrial giants of Europe and Asia.

It would be negligent, then, to shelve the channel project. The House should complete action on the bill, and the Senate should end its wrangling over how user fees are computed and agree on a realistic formula. A bill on President Reagan's desk by the end of the year is in the national interest. Its enactment would send a message around the world that the United States has no intention of becoming a second-class industrial nation.●

NATO CAN REDUCE ITS NUCLEAR WEAPONS ARSENAL

● Mr. BIDEN. Mr. President, last spring a bipartisan group of 14 other Senators joined me in urging President Reagan to begin the withdrawal of substantial numbers of so-called tactical nuclear weapons which have been deployed in Europe under NATO command. We argued that such reductions would be militarily beneficial and would have a positive effect on European confidence in our allied defense posture.

Now, with the deployment of new intermediate-range missiles about to begin amidst public controversy, it is even more important for NATO to demonstrate that it can strengthen deterrence with substantial cuts in nuclear forces as well as with some technological improvements.

The October 7 Washington Post reports that the high level group, which has been studying possible reductions in NATO's nuclear systems, has agreed to withdraw about 1,500 warheads—which would be a one-fourth cut in our current stockpile of about 6,000 weapons. The precise, formal announcement is scheduled for later this month at a meeting of NATO defense ministers.

Mr. President, I welcome this report and hope that it contributes to greater public confidence in NATO's 1979 decision to deploy new missiles while seeking limits and reductions in other nuclear weapons. I ask that the Washington Post article be printed in the RECORD.

The article follows:

[From the Washington Post, Oct. 7, 1983]

NATO REACHES AGREEMENT ON CUTBACKS IN NUCLEAR WARHEADS

(By Priscilla Paintain)

BRUSSELS, October 6—Senior NATO military and political officials agreed late yesterday to a "ball-park" number of cuts in the alliance's arsenal of short-range nuclear weapons, according to NATO sources.

"There's been substantial agreement on all the important points and that includes the question of numbers," said a U.S. official yesterday.

The exact size of the reduction is due to be announced in about three weeks by defense ministers of the 16-nation alliance when they meet as the Nuclear Planning Group in Ottawa.

Unofficial estimates, which could not be confirmed, set the size of the cutback at about 2,000.

[In Washington, State Department officials confirmed that an agreement had been reached but cautioned that "the reductions are more like 1,500" nuclear weapons.]

NATO's high-level group of senior political and military officials has been working for the past four years on a report on how NATO could cut its stockpile of 6,000 nuclear weapons—primarily artillery rounds and bombs but also including atomic demolition mines and nuclear antiaircraft shells—without endangering its deterrence strategy. The group, chaired by Richard Perle, the U.S. assistant secretary of defense for international security policy, met here Tuesday and yesterday to complete the report.

Most of the weapons involved in the cutback are from the first generations of battlefield nuclear weaponry and strategists have been debating their usefulness in light of both changing concepts of the value of such weapons and the development of new technology.

The NATO study of U.S. battlefield nuclear weapons now deployed in Western Europe was first requested by the Netherlands in 1979 as part of its agreement that year to go along with the proposed deployment of new American medium-range Pershing II and ground-launched cruise missiles.

In recent years, as concern over the Pershing and cruise missiles have grown, other NATO nations, such as West Germany, have joined in pressing for reduction in the short-range systems as a means of dampening opposition to the medium-range weapons.

The expected announcement by NATO defense ministers of the unilateral cutback of American short-range nuclear weapons will come on Oct. 22, the same day that large antinuclear protests are planned for West Germany.

The allies agree the arsenal can be reduced, but until this week they disagreed on the extent and the pace of the cuts. Perle said Tuesday in The Hague that it was possible that the size of the reduction would not be firm until the day before the Nuclear Planning Group meeting in Ottawa, when the members of the high-level group plan to discuss the study one last time.

Some West European countries, particularly the Netherlands, have proposed cutting up to half the arsenal. Their position, shared my military specialists at NATO, is that the alliance should move away from short-range nuclear weapons and rely mostly on longer range ones because this will raise the threshold at which nuclear weapons are introduced in any future conflict. Advocates of large reductions also contend that the arsenal is too large and contains weapons that are obsolete or of little use.

According to this view, the weapons lack accuracy, would have to be "used or lost" following an attack, and would then explode on or near NATO territory.

But other voices at NATO say the alliance cannot afford to get rid of nuclear weapons unless conventional forces are improved.

There is also dissention on the question of who should determine the size of the cuts. U.S. and European military officers, including Bernard W. Rogers, NATO's supreme commander in Europe, say they should set the number since they have responsibility for Europe's defense.

Finally, the study group has had to resolve whether NATO should use the nuclear weapons as bargaining chips with the Russians, or should make the reductions unilaterally. Some at NATO argue that the weapons have lost their value as commodities in the diplomatic trade with the Soviet Union because military and political officials, including the former chairman of the high-level group, Lynn Davis, have stated publicly that NATO does not need the entire arsenal.

But Pentagon and NATO officials would also like Warsaw Pact nations to make a comparable cut in their roughly equal nuclear arsenal to avoid risking an imbalance.

The NATO study group, and the alliance's defense ministers, do agree on one thing however: NATO must receive more credit for the planned reductions than it did when 1,000 warheads were unilaterally removed from Europe in 1980. They hope that the cutback will help quell the protests this fall in Europe against the probable deployment of the new medium-range Pershing II and cruise missiles.●

UKRAINIAN FAMINE

● Mr. BOSCHWITZ. Mr. President, this year marks the 50th anniversary of the man-made famine in Ukraine in which the Kremlin planned the destruction of 7 million Ukrainian men, women, and children by starvation.

This famine holocaust was implemented by the Soviet authorities in order to break the resistance of the Ukrainians against the collectivization of their farms and at the same time destroy the roots of Ukrainian national aspirations for freedom and independence.

Because the Ukrainian farmers, conservative in their nature, were the mainstay of Ukrainian traditions and a replenishing source of the Ukrainian intelligentsia, they became the primary target of this crime. The Soviets branded them "kulaks," the class enemy of the Communist society, who had to be dispersed, if not destroyed altogether. Under this pretext, they raged a ruthless war against a large section of the rural population who refused to give up their small private property and to enter the collective farms.

Historians estimate that as a direct result of this famine, mass deportations and executions, Ukraine lost at least 11 million people.

In accordance with the 50th anniversary of the famine in Ukraine, I ask to have printed in the RECORD the following resolutions adopted in connection with the public meeting held in Minneapolis, Minn., on August 21, 1983, commemorating this historic event.

The resolutions follow:

MINNESOTA COMMITTEE FOR COMMEMORATION OF THE 50TH ANNIVERSARY OF THE SOVIET-CREATED FAMINE IN UKRAINE

RESOLUTIONS ADOPTED IN CONNECTION WITH THE PUBLIC MEETING COMMEMORATING THE 50TH ANNIVERSARY OF THE FAMINE

(Minneapolis, Minn., Aug. 21, 1983)

Whereas, fifty years ago, in the years 1932 and 1933, a great Famine occurred in Ukraine in which over 7 million Ukrainian men, women and children, after unspeakably cruel sufferings met a horrible death from starvation; and

Whereas, this Famine and the resulting sufferings and deaths were not the result of any natural causes, such as drought or crop failure, nor of any wartime disruption, the civil war having ended in 1920, and having been followed by 12 years of normal food availability; and

Whereas, the Famine was intentionally and with premeditation induced by the Soviet Government through the confiscation and removal from Ukraine not only of the entire 1932 harvest, but of all stored-up food supplies, including all seed grain for future years; and

Whereas, this was done by the Soviet Government as a means of destroying the independent spirit of the Ukrainian people and their drive for national self-determination and separate nationhood, as well as a means of breaking the resistance of the independent-minded Ukrainian farmers to the confiscation of their lands for collective farms; and

Whereas, we are today commemorating the 50th anniversary of this Famine, intentionally brought about by the inhuman and genocidal policies of a regime which still today subjugates and enslaves the country of our origin, and which has for 50 years covered up and continues to cover up the true facts regarding the Famine; and

Whereas, the Famine of 1932-33 play a role in Ukrainian history analogous to the Holocaust of World War II in Jewish history: Therefore be it

Resolved, That we, Minnesotans of Ukrainian descent, on the occasion of the 50th anniversary of this terrible tragedy, condemn the actions of the Soviet Government in intentionally causing the starvation deaths of over 7 million of our brothers and sisters, including many small children, as a crime against humanity and a clear and premeditated act of genocide;

Be it further resolved, that we call on our fellow Americans to join us in this condemnation and to look through the cover-up and disinformation regarding the Famine and its causes, perpetrated by the Soviet Government and its helpers both behind the Iron Curtain and in the Free World.

Be it further resolved, that we call on our fellow Americans to join us in commemorating and paying the deepest respect to the shining memory of the victims of the Famine in Ukraine, so that their deaths will not be forgotten, and that others will not become victims of such genocide in the future.●

LECH WALESA

● Mr. MURKOWSKI. Mr. President, I rise to applaud the decision by the Nobel Committee to award the Nobel Peace Prize to Lech Walesa. The award is well deserved. It lauds a man for his efforts in the promotion of human rights and of peace that went beyond simple heroism to that higher plane where great men fight for all mankind.

But, Mr. President, this award is not some static symbol of past works, a medal for valor to commend the recipient for great deeds done in some past battle. It can and must act as a catalyst which will impel Mr. Walesa and his supporters to reignite the struggle for freedom in Poland.

Mr. Walesa was a candidate for the prize last year, and when it was awarded to another, many Poles were very disappointed. As one Polish journalist put it, "It left a sense that the world had given up on Poland." The award of the Nobel Peace Prize to Walesa this year came during a period of even deeper disillusionment for the Polish people and will serve to assure them that the rest of the world has not forgotten them. This honor will bolster Walesa's strength and signal to the Communist authorities that the will to resist oppression yet burns brightly.

Mr. President, this award has more immediately tangible benefits as well. Mr. Walesa has declared he will donate his prize money—$190,000—to the Polish Catholic Church's program for agricultural assistance. The church hopes to raise money in Western countries to buy farm machinery and fertilizer, which will be sent directly to individual farmers in Poland.

Walesa's decision to donate the prize is astute for two reasons. First, it will pump money directly into the agricultural sector where it is most needed, evading the bureaucratic bottlenecks and high officials who habitually skim such money or Western products off for their own use.

Second, such a program, which fortifies individual farming endeavors in the country, will provide one more example to the Eastern bloc of the viability of the free enterprise system.

Finally, this award will reinforce Lech Walesa's steadfast insistence on peaceful activism and open dialog with the government.

Mr. President, I congratulate Lech Walesa on his admission to an elite group of world heroes. And I congratulate the Nobel Prize Committee on a choice well made.●

DEATH OF AMBASSADOR MARTIN F. HERZ

● Mr. PELL. Mr. President, I pay tribute to Ambassador Martin F. Herz, whose untimely death gives grief to his old friends and colleagues. We entered the Foreign Service in the same class and we remained friendly as he pursued his distinguished career, which combined diplomacy, teaching, and writing. His book "215 Days in The Life of an American Ambassador" is a remarkable window onto the life of an able Foreign Service Ambassador. Then his recently edited compendium, "The Modern Ambassador—the Challenge and the Search," provides much original thought and treatment of the role of an Ambassador. But, more important, Martin was a man with a sensitive and warm heart and a tremendous loyalty to our country.

I extend my deepest condolences to his lovely wife, Dr. Elisabeth Kremenak Herz. I ask that the obituaries in today's Washington Post and New York Times be inserted in the RECORD.

The obituaries follow:

[From the New York Times, Oct. 7, 1983]

MARTIN HERZ, FORMER AMBASSADOR, DIES AT 66

WASHINGTON.—Martin F. Herz, director of Georgetown University's Institute for the Study of Diplomacy and former American Ambassador to Bulgaria, died of cancer Wednesday at Georgetown University Hospital. He was 66 years old.

Mr. Herz was a Foreign Service officer for over 30 years, and held an important post in Vietnam during the height of American involvement in the Indochina War. He served as minister counselor for political affairs at the United States Embassy in Saigon from shortly after the Tet offensive in 1968 until just before the invasion of Cambodia in 1970.

Before his assignment to Saigon, he served in the State Department as country director for Laos and Cambodia. After his return to Washington in 1970 he became the senior Deputy Assistant Secretary of State for International Organization Affairs and held that post until 1974.

He was appointed Ambassador to Bulgaria in 1974 by President Gerald R. Ford, and served in Sofia until 1977, when he became a senior research fellow at the Ethics and Public Policy Center in Washington.

AUTHOR OF SIX BOOKS

From 1978 until his death, Mr. Herz was the director of Georgetown's Institute for the Study of Diplomacy. He wrote six books and contributed many articles to professional journals, magazines and newspapers. Among his books are "The Prestige Press and the Christmas Bombing, 1970"; "Images and Reality in Vietnam" and "215 Days in the Life of an American Ambassador," based on his experiences in Bulgaria.

Mr. Herz joined the Foreign Service in 1946, and in his first 20 years served in American embassies in Vienna, Paris, Phnom Penh, Tokyo and Teheran. While in Iran from 1963 to 1967, Mr. Herz drafted a report titled "Some Intangible Factors in Iranian Politics," which pointed to the instability of the regime of Shah Mohammed Riza Pahlevi.

He was born in New York City in 1917, the son of Gustave L. and Edith Flammerschein Herz. He attended Oxford University and received a Bachelor of Science degree from Columbia University in 1937. During World War II, Mr. Herz served in the Army, rising from the rank of private to major. He received the Purple Heart and the Bronze Star for action at Anzio Beach in Italy in 1943.

He is survived by his wife, Dr. Elisabeth Kremenak Herz, and a brother, Stephen V. Hart of San Francisco. A memorial service will be held Friday, Oct. 14, at 12:15 P.M. in Dahlgren Chapel at Georgetown University.

[From the Washington Post, Oct. 7. 1983]

MARTIN F. HERZ, ENVOY, TEACHER, DIES AT AGE 66

(By Anne Koch)

Martin Florian Herz, 66, a career Foreign Service officer who retired from the State Department as ambassador to Bulgaria and who has been director of Georgetown University's Institute for the Study of Diplomacy since 1978, died Oct. 5 at Georgetown University Hospital. He had cancer.

Mr. Herz entered the Foreign Service in 1946 and over the years he was stationed at embassies in Austria, France, Cambodia and Japan. From 1963 to 1967, he was counselor for political affairs at our embassy in Tehran. During that time, he cabled State with his doubts about the stability of Iran's Pahlavi monarchy.

Shortly after the 1968 Tet Offensive, Mr. Herz was ordered to Saigon, again as political affairs minister-counselor. He left that post two years later. He served as senior deputy assistant secretary of state for international organizational affairs before becoming ambassador to Bulgaria in 1974.

He returned from Bulgaria and retired from the Foreign Service in 1977. He joined Georgetown University in 1978. In addition to his administrative duties, he was a research professor for diplomacy in Georgetown's School of Foreign Service and taught courses dealing with the Cold War, modern diplomacy and communication.

Mr. Herz was the author of "215 days in the Life of an American Ambassador," a 1981 book about his years in Bulgaria, and the editor of "The Modern Ambassador—The Challenge and the Search," a book published earlier this year. He also wrote technical works dealing with the Cold War and the war in Southeast Asia. He contributed articles to the Foreign Service Journal, Public Opinion Quarterly, Encounter, and Commentary.

He was a recipient of the State Department's Superior Honor Award, and had served as vice chairman and a director of the American Foreign Service Association.

Mr. Herz, who lived in Washington, was a native of New York City. He attended Oxford University and earned a bachelor's degree at Columbia University. He served in the Army in World War II, participating in the Anzio landings in Italy and attaining the rank of major. His decorations included Purple Heart and Bronze Star.

Survivors include his wife, Dr. Elisabeth Kremenak Herz of Washington, and a brother, Stephen V. Hart of San Francisco.●

CENTRAL AMERICA

● Mr. WEICKER. Mr. President, I am proud to bring to the attention of my colleague two fine articles written by a distinguished citizen of Connecticut, Donald W. Davis, chairman and chief executive officer of the Stanley Works of New Britain.

Mr. Davis recently completed a fact-finding trip to Central America and has returned with many valuable insights. He was struck with the need to expand the horizons of our diplomatic efforts in the region, especially with regard to Cuba and the Contadora Group initiatives. I not only strongly agree with his conclusions but urge my colleagues to consider the perspective of an outstanding private sector leader on these matters.

I ask that two articles appear at this point in the RECORD.

The articles follow:

[From the Hartford Courant, July 29, 1983]

THE TIMING IS RIGHT FOR A TRILATERAL, NORTH AMERICAN SUMMIT

(By Donald W. Davis)

We must recognize that both Mexico and Canada have long established love/hate relationships with the United States. These relationships are certainly understandable in view of the disparity in culture and power between neighboring countries with common borders.

For various reasons, including the public's lack of interest, it is not well known how close Mexico came to repudiating its overseas loans last August. Had it repudiated the $82 billion indebtedness owed primarily to U.S. banks, the shock waves throughout the world financial community would have been colossal.

There is clearly much at stake in having sound, mutually beneficial economic and trade relations between the United States and Canada, between the United States and Mexico, and, to some lesser degree, between Canada and Mexico.

To this end, it would seem most timely to have a three-nation North American summit with a focus on economic and trade matters.

Canada, the United States and Mexico are all blessed with great natural resources. We are dealing with three countries which (in spite of economic stresses and intermittent antagonisms) have special feelings of closeness. With 3,000 miles of common borders to the north and 2,000 to the south, logic tells us that for the sake of economic well-being and security, we must have friendly relationships.

All three have recently been through unusually difficult economic times caused by a worldwide recession; the dislocations caused by volatile oil prices; inflation, ranging from double digit in the United States and Canada to 100 percent in Mexico; historically high interest rates and dramatic devaluation of the peso from 25 to the U.S. dollar to 150.

The resulting unemployment and political and social stresses have swung from serious in the United States and Canada to nearly catastrophic in Mexico. The United States and Canada seem to be on the verge of economic recovery, whereas Mexico is in the early stages of massive austerity. It will take, at best, two to three years to produce positive results in terms of increased employment or improved living conditions.

One symptom of Mexico's crisis is the illegal immigration of millions of Mexicans into the United States over the past few years. The political and emotional overtones for a

neighbor with major unemployment problems of its own are obvious.

Over the past few years, these three North American neighbors have had a litany of economic confrontations. We all remember the headlines of tariff disputes with Canada on automobile parts; objections to U.S. investment in key Canadian industries—particularly of national resources, such as oil and mining.

We can recall our problems with Mexico over the price of its oil, when the U.S. government was sufficiently insensitive to offer less favorable prices for Mexican oil than for Canadian oil.

It is clearly in the best interests of all three countries to move away from this kind of myopic scrapping toward a new level of discussions based on mutually advantageous economic objectives.

The timing appears right to make such an effort through a trilateral summit. One agenda item could have as its focus something as primitive as barter.

Mexico clearly needs our agricultural products, products for which our supply greatly exceeds present market demand.

And, in spite of a seemingly adequate supply of oil and gas in the United States at the moment, greater use of Mexican oil vs. Mideast oil, and of Mexican gas—some of which is still being flared off at no benefit to anyone—would make sense for both the United States and Mexico.

How agricultural products could be exchanged for gas and oil—and how similarly advantageous trading arrangements between the United States and Canada and Canada and Mexico could be facilitated—could make up an important part of such a North American summit agenda.

It would be very important that a call for such a summit not be dominated or even initiated by the United States, but rather some means be found for a joint initiative.

Among the three countries, every effort should be made to keep the summit at a level of equality and respect.

While bilateral discussions between the United States and Canada or between the United States and Mexico generally are interpreted as having patronizing overtones, tri-partite discussions between the three North American countries could avoid such negative connotations.

Getting Mexico to recognize that it is part of North America would be the first hurdle. With the present disarray in Central America and Mexico's obvious need for more support and trade with the United States, this would seem to be surmountable.

We do not want Mexico to be drawn into the Central American malaise. It is important for all three North American countries to meet soon, on equal terms to ensure our friendship and to establish sound and equitable econmomic ties.

RAPPROCHEMENT BETWEEN THE U.S. AND CUBA—BEST BET FOR A STABILIZED CENTRAL AMERICA

(By Donald W. Davis)

Regardless of one's political perspective or geographic focus, it is obvious to most people that relationships between countries in the western hemisphere are in dangerous disarray and seem to be worsening.

Looking at the most volatile area—Central America—most recent diplomatic efforts seem to have been directed toward encouraging bilateral and multilateral negotiations. Such proposed negotiations include talks between the various elements within El Salvador and Nicaragua, and eventually between the countries in the region.

Even the appointment of special envoy Richard Stone and the establishment of a bipartisan commission on Central America headed by Henry Kissinger are intended to do little more than clarify the situation and move toward negotiations in the region. In fact, both efforts have been criticized as attempts to "sell" President Reagan's program of military support for the area.

Clearly, what is needed now is a lucid foreign policy initiative that will have an appeal to all parties in the growing Central American maelstrom, and get right to the source of the biggest obstacle to peace in Central America. That needed initiative is a move toward normalization of relations between the United States and Cuba, because only these two countries have the tangible means to end the tensions and conflicts in Central America.

Cuban leader Fidel Castro has demonstrated his ability to destabilize the region by acting as the conduit of Soviet-bloc arms shipments and his own battle-hardened military "advisors." And President Reagan has clearly demonstrated the ability to project significant U.S. military power into the region with the recent assignment of naval task forces to both Atlantic and Pacific coasts of Central America, augmented by extensive ground maneuvers in Honduras.

It's my belief that a new diplomatic initiative is urgently needed. Discussions of various peace plans are already underway among the "Contadora" countries (Mexico, Panama, Colombia and Venezuela), so named because of the four-nation conference they held in January on the Panamanian island of Contadora to explore ways to end militarization and foreign intervention in the area. Hence, as a prelude to formal discussions between the U.S. and Cuba, the first step in this new foreign policy initiative would be to have these four countries issue a joint, strong call for the cessation of interventions in Central America by all outside nations, very specifically Cuba and the United States. Such an appeal should be a comfortable position for these four countries to take, since each proclaims "non-intervention" as a foreign policy keystone.

Since Cuban President Castro has obvious concern about his relations with these four countries, such a public appeal should certainly get his close attention and provide some real leverage toward a positive response.

While it may be argued that the United States has far from a clean record of non-intervention in Central American affairs, certainly the primary motivation of any current involvement is responsive to Cuban interventions in the region. Therefore, it should be quite reasonable to expect that the President and Congress could agree to such a call for the cessation of intervention.

Castro's first reaction would almost certainly be to disclaim any involvement. Even if the "Contadora" initiative were successful in getting an admission of involvement, there would likely be such a foot dragging response as to be tantamount to no response.

On the other hand, if the initiative for non-intervention produced nothing more than these two reactions—positive from the U.S. and negative from Cuba—much would have been accomplished in making clear to the region and the world the real source of destabilization in the area.

Beyond this, however, I see the possibility for a real move toward reduced interventions on the part of Cuba. This part of the process is, admittedly, highly controversial, as it involves a willingness on the part of the U.S. to move toward gradual normalization of its relations with Cuba at the same rate of speed that intervention activities are reduced on all sides. Because this is so controversial, let me quickly list a number of assumptions and convictions that tend to support this process:

It seems fair to say that two countries with the geographic proximity and cultural ties of the U.S. and Cuba will, sooner or later, normalize relations.

Even accepting this, based on the depth of the gulf between our two countries, it will take tremendously strong motivation for the U.S. to move toward normalizing diplomatic and economic relationships with Cuba.

But the important question is: What more meaningful motivation could the U.S. have than the "prize" of a stabilized Central America? And, clearly, there would be more chance of a national consensus on this issue with a conservative administration in the White House; after all, it took a conservative Richard Nixon to pull off the normalizing of relations with the People's Republic of China.

How great an attraction for Castro's Cuba such gradual normalization of relations with the U.S. would prove to be, set against Cuba's all-encompassing Soviet connection, is all but impossible to evaluate.

But it could just be that the years of nearly total dependency on the Soviet Union have caused a deeper disenchantment than we realize. Castro's role as a Soviet "proxy" in the Angolan civil war and other military adventures exacted a price both in Cuban casualties and credibility among the Third World nations he tries to dominate as an elder statesman.

There is no doubt that Castro is ready to approach the subject of improved relations with the United States. He has already suggested talks on the subject as part of a deal to dissuade Cuba-bound skyjackers by returning them to the U.S. for prosecution.

It may be that the prospects of legitimizing his regime, renewed trade with the U.S., the benefits of greater independence, and the chance to go down in history as a Cuban "Simon Bolivar" and genuine Third World revolutionary hero rather than a Soviet minion would be enough, all together, to begin to move Fidel Castro away from Soviet dependence and domination.

While there are obvious differences, there are also similarities in South Yemen's relationship with the Soviet Union from 1967 to 1982. And yet, as we know, last November, South Yemen opted for a rapprochement with Oman, closest friend of the U.S. in the Persian Gulf area. This was, of course, at the expense of their Cuban-type dependency on and domination by the Soviet Union. It would appear that South Yemen had become increasingly restive under Moscow's yoke and this disenchantment was exacerbated by the Soviets' move into Afghanistan three years ago.

No matter what odds one might quote on the success of a rapprochement with Cuba, whatever degree of success is achieved would at least aim toward the removal of a root cause of destabilization in the area. The currently favored approach of encouraging bilateral and later multilateral negotiations, first within El Salvador and Nicaragua and later between countries in the region, cannot result in lasting solutions to this dangerous instability as long as Cuba

and the U.S. continue to act and react with new types of intervention in the area.

So it is perhaps all the more important that the initial appeal for the cessation and removal of Central American interventions come from the four "Contadora" nations. That way, both the U.S. and Cuba could exercise elements of understanding and compromise at the suggestion of mutually-acceptable third parties. Such a foreign policy initiative seems to be both timely and realistic.●

ROSS MILLER

● Mr. MURKOWSKI. Mr. President, I rise to note the passing of a true Alaskan. Ross Miller died very suddenly on September 30. He left his wife Mary Jeanne and his eight children, Roxena, Creighton, Maria, Jeffre, Tracey, Travis, Alexis, and Talya.

Tally, Ross' youngest child, is a staff assistant in my Washington office. For her constant good humor and generosity she is well loved. My staff would like to join me in expressing our deep sorrow at her loss.

Ross Miller was a man with many interests. In Fairbanks he was director of public relations and information at the University of Alaska; then executive director of the Fairbanks Chamber of Commerce. In 1962 he moved with his family to Juneau and served as an industrial and tourism development specialist for the Bureau of Indian Affairs. His work in native affairs is well known and much appreciated.

But closest to Ross Miller's heart was athletics. He and Jeanne started the first little league baseball team in Fairbanks. The love of sports as well as the sense of sportsmanship that they instilled in their children has been amply displayed to us by Tally in our intramural baseball games here in Washington.

But in Juneau Ross founded the association that was to be the principal enterprise of his life. Indeed, he was, if anything, busier after his retirement.

The idea behind the Southeast Alaska Athletic Association was to promote athletics at the University of Alaska in Juneau. It did more than that. It encouraged sports and sportsmanship among youth throughout southeast Alaska.

The project blossomed under Ross' loving care. The generations of students that come through the program will serve as the highest tribute we might give to his efforts. Even more, the scholarship fund that has been established in his name will insure that those youngsters who have the potential but not the means can have the opportunity to pursue athletic excellence.

We shall all miss Ross Miller, none more than his wife and children. But we can be secure in the knowledge that what he did in his lifetime will be a gift that will last for generation after generation of Alaskan youth.●

PROFILES OF THE GERMAN PEACE MOVEMENT

● Mr. BIDEN. Mr. President, political movements abroad are often depicted in U.S. publications in journalistic shorthand, usually "leftwing" or "rightwing," "pro- or anti-American." Rarely are we given a feeling for the human diversity behind these caricatures.

The peace movement in the Federal Republic of Germany is a significant factor in the politics of that country, particularly now that the time is approaching for the deployment of new nuclear missiles in accordance with NATO's decision in 1979. It is thus in our interest to know more about the members of this movement, their motivations, and their views on other issues than just the pending controversy.

Joyce Lasky Shub, a talented and perceptive observer of European affairs for many years, has performed a valuable public service by writing profiles of many Germans involved in the peace movement which appeared in the July 31 Outlook section of the Washington Post. Ms. Shub provides a missing human dimension to this political phenomenon.

It is not pleasing to read many of their criticisms of American policy, nor reassuring to learn of their naivete about the Soviet Union. But it is important for us to understand what these people think and how strongly they feel about these issues.

Mr. President, I ask that the full text of Ms. Shub's article be reprinted in the RECORD.

The article follows:

WHO ARE THESE GERMANS WHO BEAT THE PEACE DRUM?

(By Joyce Lasky Shub)

BONN.—In West Germany, "peace" is in fashion. The new peace movement has 5 million members, and nearly everybody wants to get on the bandwagon. "Nobody can afford not to," a conservative member of the German parliament told me. "We are all for peace today."

The peace movement is the most powerful populist force to emerge in post-war Germany, but its prospects are uncertain. It might radically and permanently change German society. Or it might fade away in 1984.

Its future will depend largely on events this autumn, when huge demonstrations are expected to protest the deployment of new American missiles on West German soil. What these demonstrations will be like is unclear. Until now the peace movement has fostered all kinds of demonstrations. Where one is peaceful, another on the next street may erupt into violence—also in the name of peace.

I have been traveling all over Germany talking to people who consider themselves part of this movement. They are a loose and diverse coalition united for the moment by the stationing of new American missiles on their territory. The peace movement has no national leadership. Yet it has provided a grass-roots base for the tiny Green Party, which recently was elected to parliament.

Marieluise Beck-Oberdorf, in her mid-30s, is one of the new Greens in parliament. She spent the '70s "doing good." She protested against atomic plants, organized self-help programs for junkies, and developed selfawareness groups to heighten sensitivity to social inequities. "I was concerned with poverty," she said, "but I was no Marxist. Their harsh tone offended me."

Beck-Oberdorf is a gentle person. She dresses for her working day in parliament in a peasant skirt and flat-heeled space sandals, She talks about her father, who was a member of the Nazi Party. "He wasn't courageous enough." As for the church, "It stood silent during the Third Reich while Jews—even their own faithful—were slaughtered. I had to look outside the church for spiritual values."

Many pastors of the church agree with her. "We stood by and watched during the Hitler years. We will not be irresponsible again. Today we speak out for peace," a Bonn prelate said.

Beck-Oberdorf has come to the missile issue only recently. "I am educating myself. It's part of my self-awareness program. I am also in psychotherapy.

"I do not believe that guns should defend a system. It's better to be overrun by the Soviet Union than to be defended by atomic weapons. But it wasn't the Russians who invaded in the past. We Germans did it. Twice. I am not afraid of the Russians. They are not placing missiles here.

"I have a view of society. I want to see fewer cars, more green landscape, people working less but earning more. And no weapons. If we have a Green government one day, you'll see it all happen." She then smiled, for the first time. "And maybe a woman chancellor in Germany, too."

Neither Beck-Oberdorf nor any other member of the peace movement mentioned the Soviet Union until questioned specifically. "They've decided," Prof. Richard Lowenthal of Berlin's Free University explained, "that the Russians no longer are coming. The Russians are neither feared nor of any ideological interest. The Soviet Union has somehow become for them both boring and irrelevant."

But "peaceniks" talk a good deal about the United States and of their disappointment that America is no longer their model. Also, they say, American soldiers in Germany behave badly, and Americans are too casual about war.

"How can you accuse us of being anti-American?" Jurgen Schmidt, a language teacher in Frankfurt, asks as we sit in a disco near the university. He wears jeans and a T-shirt and sports almost shoulder-length hair. "Look at me. My clothes. My hair cut. It's the way all of us of my generation learned to dress and eat and play. The music we're listening to. It's all American. We have all become American."

"Of course I march with the peace demonstrators. But to criticize American missiles is not to be anti-American. It is to argue with a member of your family."

A rosy-cheeked slip of a girl with exalted green eyes, Evelyn Butter-Berking tells me she is a communist. Two years ago she organized a peace group in the suburbs of Hamburg. "But only four or five of us are communists, and there are about 30 or so in our group."

Butter-Berking is neither interested in the United States ("You treated your Indians so badly") nor the Soviet Union ("I never read Lenin"). My hero is Che Guevera. In 1977, I finally went to Cuba. It was so exciting.

They bring up their children without violence. They don't want material things. Just to learn and study. I'd like us to become more like them. When I came back from Cuba I joined the Communist Party."

She invited me out the following evening to her weekly peace group meeting. Between 8:00 and 8:30 p.m., with the late June sun shooting between the heavy drapes in a second-floor meeting room of the community church, nearly 35 people pull up hard-backed chairs to form a circle. They are mostly girls in their 20s. One pretty one has an amenable boyfriend rubbing her neck. The bearded assistant rector is present. Some young men are there, and a few more-than-middle-aged ladies. Mostly, different people show up each week, I am told.

No one seems to lead the discussion, yet an agenda emerges. It takes an hour to decide who will prepare the sandwiches, make the placards and buy the tickets for the group's next peace demonstration. (It would be 75 miles away, in Hanover, for the annual Evangelical Church convention.) Close to 10 o'clock, a report is given on German arms sales, and a discussion follows on how to persuade arms manufacturers to convert to products of peace. Someone volunteers to write to the uncle of a friend who is on the board of directors of a local weapons factory, inviting him to speak before the peace group.

Only one individual in the group approaches me as we stroll out into the street. He tells me that the CIA-supported Pakistani in Afghanistan do not fight the Russians so much as burn the local schools and shoot Afghans who lie wounded in the hospital.

Dorothee Solle is a tall, spare church lady in her 50s. She is a professor of theology at the University of Hamburg (and an annual exchange professor at Union Theological Seminary in New York). We met in her sun-drenched living room, filled with books and paintings and musical scores. She wore a hand-embroidered Indian silk blouse.

"The peace movement did not start yesterday, nor even three years ago. We started to protest in the 1950s when the Allies stationed the old short-range nuclear missiles in Germany. It was our own chancellor who sold us Germans out. Konrad Adenauer agreed to make Germany a military power again. That was the price he paid for our economic miracle.

"We lost the battle against the deployment of the short-range missiles in the '50s, but we did win our campaign for alternatives to compulsory military service.

"Pacificism is an honorable tradition in the church. Bishop Martin Niemoller condemned Hitler's militarism and went to jail for it. He started our pacifist movement, Aktion Suehnezeichen (Signs of Atonement), where our young people can gather and do good things and atone for the past.

"We in the church don't actively encourage the peace movement. Every time there is an American article sent to us by American friends on how a nuclear war can be won or be limited, we have 10,000 new friends of peace in this country. The Soviet Union has foresworn the first use of nuclear weapons. Have you?

"There are many more women in the peace movement than men. [The ratio is estimated to be 3 to 1.] We women are mostly a class that is overeducated and underpowered. I have a daughter in the peace movement. We are not a movement of the moment. We represent a new political culture—and there is no generation gap."

More than a dozen young students gathered in casual charis in the community room of the Aktion Suehnezeichen. It was a slow-tempoed Sunday morning after church, and the large villa in the Berlin outskirts was open to all peace groups for sandwiches and coffee, volleyball in the garden and discussions.

A young man, recently returned from a year of working in Chicago, spoke perfect English. "I could never live in America," he said. "There are too many differences between rich and poor. And so much racism. I prefer to live in Germany."

Three of the group had worked in Israel. ("I had never met a Jew before.") Two others had visited the Nazi concentration camp at Auschwitz. ("I couldn't believe we did such terrible things to them.") Another had just returned from Spain. ("I wanted to see how another new democracy worked.")

In a small town in southwest Germany where the Pershing missiles are to be deployed, a mother and daughter sat together with the local pastor and offered me coffee. "It makes no difference to us that the Pershings will be stationed here," the older woman said. "It makes these weapons no more dangerous here than anywhere else in Germany. This is not a world I brought my daughter up for."

The daughter agreed: "It's against all the teachings of Christ. Have you read the Sermon on the Mount?"

Mothers and daughters as political activist pairs are a phenomenon of the peace movement. So are young people making common cause with the middle-aged and the retired. In 1968, the student movement was an attempt to break with the past: antiestablishment, antisociety, antieverything that was behind them. They wanted a clear break with the generation that they held responsible for the Nazi years.

Today, 15 years later, the younger generation in their 20s no longer sports the uniform of the '60s, the tight blue jeans and T-shirts. The burning eye of the radical is rare among them. Their easy ways and engaging manner are reflected in their softer dress.

"These kids are neither pro-American nor pro-Soviet," a journalist from Der Spiegel magazine explains. "They seem to hark back to another century. Before Hitler. Even before Bismarck. They seem to yearn for a pastoral life, for a Germany before it became centralized and industrialized.

Friedl Drautsberg once felt he was in the eye of history. He rode the wave of the 1968 student rebellion. Working among Social Democrats, together with best-selling novelist Gunter Grass, he helped elect Willy Brandt chancellor in 1969. "We changed society," he said. There could be no peace movement today if we hadn't destroyed the old Germany."

Drautsberg is in his 40s. He still wears tight jeans and sounds weary beyond his years. He looks every inch the species of handsome radical of yesteryear still conserved near Big Sur. Drautsberg runs a Kneipe—a neighborhood restaurant and bar with a special political atmosphere—in downtown Bonn.

"It's a pluralistic Kneipe," he says. "I even have a CDU (Christian Democratic) couple that drops in regularly. In the old days only radicals could come to my place.

"We didn't get what we wanted then, but the issues we fought for are accepted today. There are no more ex-Nazis running the government, like the ex-Chancellor [Kurt Georg] Kiesinger. It's we who made them change the school system that educated the kids today. And we made the sexual revolution, too. We got women their liberation, and look what they went and did—they got rich and independent and voted in the conservatives last March.

"The kids today in the peace movement are softer than we were. But maybe they're good for Germany. Of course I marched with them—I'm still a left-socialist."

In a daily newspaper published in Hamburg, 1½ columns were devoted to the evening's schedule of meetings in and around town. Of the 52 notices, on a single day only three—Alcoholics Anonymous, an art exposition and a health club—could be described as having nothing to do with the peace movement. There were neighborhood groups, Doctors for Peace, Housewives for Peace, Trade Unionists for Peace, Liberated Women for Peace. These meetings took place on Tuesdays. The next day's newspaper would have a different column of notices.

"What did Germans do before they started attending all these peace meetings?" a university student asked. Having grown up abroad, he was out of the mainstream of German life. The young professor responded, "There was television, sex and spending money. But for us Germans, there must be a less passive, more meaningful life."

The only national organization among the peace groups is the one devoted to women's issues. Christal Berger's group adopted the peace issue in 1981, and it found that the antimilitary posture implicit in the protest against modernized missile deployment made some of the women uncomfortable. After all, until 1981, they had campaigned long and hard—though unsuccessfully—to be drafted into the German army. Today they are silent on the issue.

"But the peace movement is not antimilitary," Col. Dieter Kellein says. He was a former defense attache in Washington and is now in the German ministry of defense in Bonn. He is also a member of the peace movement.

"Most of us do not think that Germany should get out of NATO. Or that the Americans should go home. We have compulsory military service, and there is no stop-the-draft movement as you have sometimes in America. Most of us are not against weapons per se. We are against the stationing of these particular nuclear missiles on German soil because it is not in Germany's best interest.

"We will stand up to the Soviets. We believe in a realistic war-fighting capability. These missiles are not weapons with which you win a war. They are political symbols."

In response to criticism from within Germany itself that the peace movement is only concerned with restraining American missiles and not Soviet ones, leaders of the Green Party crossed over from West to East Berlin. Emerging from the train station at Alexanderplatz, they set up a soap box and drew a crowd. Fifteen minutes passed before they were arrested by the East German police, detained and, a few hours later, released.

Among those leaders was Lukas Beckmann, who is generally found at the Bonn national headquarters of the Greens, a white house with a dark green door on Beethovenstrasse. "There were some objections to our crossing over, by the militants in the peace movement, the Alternatives. But we got hundreds of letters in favor. It was our first trip into the East, but not the last."

Beckmann had been a church activist in his village of 500 inhabitants, mostly farmers. "It was the only political place for miles around. I'm still a religious man but no longer in the church. God is no longer in the church. He lives in men like Martin Luther King and Nobel-Prize-winning poet Pablo Neruda."

"We Greens are the voice of the peace movement, but what we represent is more important than our organization. It's an attitude toward freedom and equality. Toward human rights. We are a certain kind of people."

In Berlin, the younger son of former chancellor Willy Brandt sits in his cool basement study surrounded by half-filled bookshelves and some unopened book cartons. Peter is barely past 30. He is a member of the Alternatives Party of youngish militant radicals who seem to dominate the Greens of Berlin and Hamburg. Half a lifetime ago he embarrassed his father—then the foreign minister—by demonstrating in the streets for peace. ("There are worse things Germans have demonstrated for," his father later said.) Less demonstrative now, Peter sits and writes tracts of political philosophy.

"East Germany is irrelevant for most of the peace movement. But not for me. Most Germans don't believe that reunification is possible. Hardly anyone in the peace movement even thinks about East Germany. I find it intolerable that our nation is divided, and I feel closer to people in the other half of my city than to the peace movement in Stuttgart!

"What disturbs me most is that both the American and Soviet armies occupy both Germanys for their own interests, not for ours. That is what ties me to the East German peace movement, as small as it is. If war between the superpowers takes place, it will destroy both halves of our nation."

I found no official in Bonn who doubts that the American missiles will be installed as scheduled. They feel reassured that the peace groups, although visible and voluble, do not constitute an active majority of the German people. Many are troubled over the role of the militant far left, which has not eschewed violence and which recently attacked Vice President Bush's car in Krefeld.

Recent public opinion surveys indicate that "most Germans" are against the deployment of the missiles—but also that most Germans are against neutralism in East-West relations. Most young people are "very much concerned," while many elderly "don't care at all." The surveys do not measure the intensity of public sentiments.

Nor can the "loss" to the peace movement be measured if the missiles are deployed. Whether this mass movement reemerges as a more tightly knit organization or sinks into the German social landscape as a frame of mind depends on how people and political parties confront each other in the next months.

"You must feel compassion for our people," a Hamburg television commentator advised me. "If we Germans organize—for peace or anything—every European fears that 'German nationalism' is reawakened. If Germans are indifferent, we are accused of being 'materialistic.' If we favor deployment of weapons against the Soviet Union, we get tainted with 'militarism.' And we Germans care very much what others think of us. . . .

"Just look at the case of my old mother. She was brought up in a Nazi household. Then she was reeducated by the Americans to be pro-NATO. Now when her grandchildren speak in her presence of fighting against American weapons, she keeps silent. . . .

"We have a hard time coming to terms with out history," he continued, "and with our geography, too. Germans don't like the fact that they are on the front line between East and West. If we could," he concluded, "we would move our country out of Central Europe."

SUPPORT FOR HIGHWAY SAFETY ACT OF 1983

● Mr. DANFORTH. Mr. President, each year, nearly 50,000 American men, women, and children are killed on our roads and highways. Thousands of our loved ones, our friends, and our fellow citizens need not die. We can save thousands of lives each year by building safer automobiles, by doing a better job against drunk and drugged driving, and by intensifying our efforts to improve truck safety.

Just a few days ago, the arguments on behalf of the Highway Safety Act of 1983 (S. 1108), reported by the Commerce Committee on September 20, were made with powerful eloquence by the Eldon, Mo., Advertiser. I express the greatest appreciation to Mr. Kim Green, editor, and ask that the Advertiser's discussion of highway safety be printed in the RECORD.

The article follows:

AVERTING ANOTHER TRAGEDY

After the tragedies over the weekend which resulted in two deaths, one in Miller County and another in the nearby Eugene Cole County R-5 school district, it's time for more area citizens to speak up and support U.S. Senator Jack Danforth and his fight for the U.S. Highway Safety Act of 1983.

The 24-year-old Iberia man and the teenage Eugene student who died this weekend cannot be saved, but the bill Danforth is fighting to pass includes some safety features that cannot help but save lives.

Under the bill, air bags on all cars manufactured on or after Sept. 1, 1985 would become mandatory. By Sept. 1, 1984, all car bumpers would be required to be able to withstand a crash at five miles per hour.

Some other requirements would be nonlacerative windshields, child passenger safety seats, upgrading of the National Highway Traffic Safety Administration's standards for side-impact passenger cars, light trucks and vans, and requiring the Department of Safety to issue booklets and safety standards for car crash worthiness.

Danforth faces strong opposition in Congress, President Reagan and the always powerful auto lobby groups. Title 1 of his bill, which includes those improvements listed above, may stand in the way of the bill's final passage.

Title 2 concerns drunken- and drug influenced-driving and additional federal grants going to states which crack down on these problems. Title 3 improves motor carrier safety, and Title 4 provides more grants to states to support enforcement of their hazardous materials transport regulations and emergency response programs.

It seems ironic to me that Title 1 may cause all the uproar, since increased federal spending for grants alarms me much more than paying more for a safer car. Yet so goes the power of the auto industry whose lobbyists have amassed behind Michigan Democratic Representative John Dingell.

As much as I question any increase in federal grants for any purpose as much as I dislike federal regulations forces on individual states, it is a price I feel the government can afford if the new legislation act can further cut into the number of traffic fatalities every year.

There is little hope that the entire bill can pass both House and Senate, but given Danforth's record for tenacity, I have to believe some improvements will result from this legislative effort.

Will the cost be worth it? Ask yourself if you have the money to replace a loved one, and I think you have your answer.●

ACID RAIN EDITORIAL

● Mr. BAUCUS. Mr. President, I have long recognized the need to do something about the problem of acid precipitation in the Northeast and Canada. As a westerner, I know the value of clean air.

Montana is proud of being known as Big Sky country. Its high air and water quality make it a unique place to live. Montanans are committed to preserving our State's air and water quality, and, therefore, empathize with the concerns of our neighbors to the north and east.

However, all of us know that clean air and water cannot be preserved without cost. Montanans have already agreed to pay that cost. Our State's constitution states that Montanans have "the right to a clean and healthful environment."

I believe that other areas also must be willing to contribute to cleaning up the air and water. Any acid rain solution must recognize the efforts of individual States. Areas that are responsibly managing their environment should not be forced to subsidize other areas that have been dragging their feet.

I am particularly concerned that the Waxman-Sikorski bill would penalize areas like Montana that are already taking actions to prevent acid precipitation.

Montana's utilities are already contributing their fair share to clean air. Montana Power Co., an investor-owned electric and gas utility that serves the western two-thirds of Montana, relies on coal-fired electrical generation for 53 percent of its total capacity.

Montana Power Co. plants utilize both low-sulfur coal and scrubber technology and produce only 0.07 to 0.3 pound of sulfur dioxide per million Btu. This level is well below the Federal new source performance standard of 1.2 pounds of SO_2 per million Btu.

I applaud Montana Power Co.'s commitment to controlling SO_2 emissions. I know achieving these levels was not easy; 25 percent of the current average retail price of residential power is de-

voted to technology designed to protect the environment.

These costs—borne by Montanans—protect Montanans. But they also protect down-wind States. We do not ask these States to pay our environmental protection costs.

For that reason, we do not believe other States should force us to pay their clean-up costs. Any national solution to acid rain must meet this fundamental criterion or I shall do all I can to defeat it.

The Waxman-Sikorski bill fails to meet this principle. It would force us to pay the clean-up costs that other States should rightfully pay.

The High Country News, a regional newspaper that focuses on Western natural resource issues, recently published an editorial that focuses on the current acid debate. I urge my colleagues to consider the editorial. I ask that the editorial be printed in the RECORD.

The editorial follows:

[From the High Country News, Sept. 19, 1983]

ACID RAIN CONSIDERED

At long last the nation has decided that acid rain falling on Canada and New England must be reduced. Unfortunately, this long-sought consensus may be negated by an attempt at a quick fix.

The quick fix is the Waxman-Sikorsky-Gregg bill, which would tax the nation's electric power users so that the Midwest's foulest power plants could have wet scrubbers tacked onto them.

The bill's worst feature is that it rewards the Midwest for its largely successful 13-year effort to avoid obeying the Clean Air Act. By means of air pollution variances, high smokestacks, political pressure, and delaying law suits, the Midwest has kept its power plants emitting 22 million tons a year of sulfur dioxide.

The Waxman bill would tax the nation to clean up the fifty dirtiest of those power plants. The bill's political underpinnings are the preservation of the jobs of approximatley 75,000 miners who produce high-sulfur coal in the Midwest. Those miners are a potent force, especially when joined by the owners of the high-sulfur coal. So the Waxman bill stands the world on its head to preserve those jobs. The political logic behind the bill is that a more flexible law couldn't pass this Congress.

If the Waxman bill is judged on any basis but short-term political expediency, it is found wanting. The bill would not even create or preserve jobs. It would only keep jobs from migrating from high-sulfur coal fields in the depressed Midwest to low-sulfur coal fields in depressed Appalachia.

To prevent this migration, the bill would use a national tax to build the very expensive scrubbers. That way, the plants could keep on burning high-sulfur local coal. The Waxman bill is regional legislation of the worst sort. It would take money from the entire nation—including mining communities in Appalachia that have low-sulfur coal—to keep mining jobs in the Midwest.

It can be argued that acid rain is such a crisis that immediate action is needed, whatever the political means by which action is achieved. Unfortunately, the Waxman bill fails even as a quick fix. The scrubbers it mandates wouldn't have to start operating until 1990. Until then, the Midwest would continue to send large amounts of sulfur dioxide on to New England and Canada.

But if Waxman passes, it will have an effect long before the scrubbers go into operation. The mandating of scrubbers would discourage alternative approaches to the problem. There is no sense in developing flexible, cheaper ways of dealing with sulfur dioxide emissions if the U.S. Congress mandates scrubbing.

The bill should be allowed to die a natural death. It shouldn't even become the basis of a compromise between the House and Senate. It makes much more sense to fight for a good law—one which uses American greed and ingenuity to cut emissions in a fair and flexible way.

The basis for that law must be that polluters pay to clean up their pollution. The Midwest, with the lowest power rates in the nation, shouldn't be subsidized by people using higher priced, cleaner electricity. On a family basis, the money involved is trivial—a few dollars a year. But the principle behind the Waxman tax is astoundingly bad.

If dropping Waxman and working for a fair and logical bill means there will be no acid rain legislation this session, so be it. It took America a decade to decide that acid rain had to be controlled. It makes sense to wait a year or two now, rather than go with a bad bill. It is clear that the public's commitment to a clean environment is long term. The concern we feel today about acid rain will be even stronger a year from now. There is nothing to be gained from haste.●

CONGRATULATIONS FOR INDIO COMMUNITY HOSPITAL

● Mr. WILSON. Mr. President, today I wish to enter into the RECORD a brief recognition for Indio Community Hospital.

Indio Community Hospital has been serving the health needs of the Coachella Valley, in my home State, for more than 10 years. During the past year, the hospital has received over $18 million in renovations.

The hospital is owned and operated by National Medical Enterprises, Inc., a nationwide provider of health care services. During the week of October 10 through 16, special ceremonies will mark the grand reopening of this outstanding health care facility.

I urge my colleagues to join with me in extending congratulations and best wishes to all associated with Indio Community Hospital.●

TAKING THE LAW INTO HER OWN HANDS

● Mr. PACKWOOD. Mr. President, I want to share with you an intriguing news item that appeared in the October 6 edition of USA Today:

In Dallas, Oregon, a woman is accused of kidnapping her ex-husband and threatening him at gunpoint if he didn't pay her $2,000 a month in alimony.

In most cases, divorce is traumatic for both parties, but the woman often carries a heavier burden. Many times she has to assume total responsibility for running and maintaining a house, caring for and disciplining her children, and, on top of everything else, scraping together enough cash to pay the bill.

It is disheartening that a woman might become so desperate to receive her alimony check that she feels she must take the law into her own hands. Unfortunately, when there is no effective mechanism to enforce the law, whether in alimony or child support or other court-ordered judgments, many people, and especially this Dallas, Oreg., woman, feel they have no other choice.

There are many solutions that could be used to resolve this problem. Tougher State laws—possibly jail terms for nonpaying ex-husbands. Stricter enforcement and follow-through of the laws we have on the books now. Attach the ex-husband's paycheck, if that is what it takes to get the money each month.

Hopefully, as more and more women achieve economic parity with men—an issue that I am working on at the Federal level—this sort of crisis will not occur. In the meantime, however, we are interested in the end result—the ex-wife's financial security without, quite literally, holding a gun to her former husband's head.●

THE FIREARMS OWNERS PROTECTION ACT

● Mr. BAUCUS. Mr. President, I am a strong supporter and original cosponsor of S. 914, the Firearms Owners Protection Act. I hope that the recent Judiciary Committee hearing on the bill will lead to immediate consideration and enactment of S. 914. In my view, we have already delayed much too long in passing legislation to restore the legal and constitutional rights of the gunowners of this country.

In 1968, Congress enacted the Gun Control Act, which sets forth a comprehensive system for regulating the distribution of firearms in America. The primary purpose of this legislation was to curb the rising rate of criminal activity involving the unlawful use of guns.

The authors of the Gun Control Act realized that their efforts to curtail criminal conduct should not impair the legal rights of American gunowners. They therefore stated specifically in section 101 of the act that it was not their purpose to discourage or unnecessarily restrict the private ownership and use of firearms by law-abiding citizens.

Unfortunately, this statement of intent has not been sufficient to protect the rights of those who wish to own and sell guns for lawful purposes. The lack of clarity in the Gun Control Act itself and the often misguided enforcement policies of the last 15 years

have instead discouraged legal gun ownership in America.

One of the major problems under current law is that enforcement efforts are all too often being directed toward ministerial and procedural errors that are made by unsuspecting and noncriminal firearms owners and dealers. Criminals continue to commit violent crimes using guns and other weapons. Meanwhile, noncriminals are subjected to harassing enforcement tactics, overly broad searches and seizures, and unwarranted prosecutions for technical violations of the law.

S. 914 would amend the Gun Control Act to eliminate many of these abuses and uncertainties. In doing so, it would also reemphasize and rearticulate the original intent of the act—to put an end to the use of firearms in the perpetration of crime.

For instance, the bill would clarify the applicability of the act's licensing requirements. This section would provide dealers, manufacturers, and importers of guns with a clear understanding of their duties and liabilities under the law and would enable them to avoid violations that now occur merely from confusion and lack of knowledge.

The bill would also set clear limits on the permissible seizures of firearms. Currently, law enforcement officials are allowed to seize all guns belonging to an individual accused of a violation of Federal firearms laws. The bill would restrict official confiscation to those firearms that have actually been involved in the alleged criminal transaction. For cases in which prosecution results in acquittal, the bill would provide for the speedy return of all seized firearms and, in some circumstances, the recovery of attorneys' fees.

In my view, the most important provisions of S. 914 are those that would specifically and properly redirect law enforcement policies toward criminal activities. Under the bill, the Gun Control Act would be amended to permit prosecutions and convictions only for "willful" violations of Federal firearms statutes, thereby restricting enforcement to conscious criminal activity. Likewise, the bill would significantly strengthen existing criminal laws by establishing mandatory sentences without parole or probation for persons convicted of using firearms in the commission of violent crimes.

The right of law-abiding citizens to be free from unwarranted governmental regulation and restriction has been ignored for too long. Although I agree that Congress must do all it can to keep guns out of the hands of criminals, I cannot accept or sanction overly broad firearms statutes and policies that unjustifiably infringe upon constitutional freedoms and legal rights.

I, therefore, support enactment of S. 914. In my view, its provisions would insure that the rights of gunowners are given the legal recognition and protection they deserve.●

PROPOSED ARMS SALES

● Mr. PERCY. 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 $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is available to the full Senate, I ask to have printed in the RECORD at this point the notifications which have been received. The classified annexes referred to in two of the covering letters are available to Senators in the office of the Foreign Relations Committee, SD-423.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., October 6, 1983.

In reply refer to I-03711/83.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 84-04 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter of Offer to Norway for defense articles and services estimated to cost $460 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

WALTER B. LIGON,
Acting Director.

Attachments—Separate cover: Classified annex.

TRANSMITTAL NO. 84-04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

(i) Prospective purchaser: Norway.

(ii) Total estimated value:

	Millions
Major Defense equipment[1] (then year)	$400
Other (then year)	60
Total (then year)	460

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) description of articles or services offered: Up to 24 F-16 A/B aircraft with associated coproduction.

(iv) Military department: Air Force (SVI).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: 6 Oct. 1983.

POLICY JUSTIFICATION

NORWAY—F-16 A/B AIRCRAFT

The Government of Norway has requested the purchase of up to 24 F-16 A/B aircraft with associated coproduction at an estimated cost of $460 million (in then year dollars).

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Norway; furthering NATO rationalization, standardization, and interoperability; and enhancing the defenses of the Western Alliance.

These aircraft will be used by the Norwegian Air Force as an attrition reserve for its F-16 A/B aircraft and will be needed in the 1990-1991 delivery timeframe. Norway has the capability to absorb these aircraft.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the General Dynamics Corporation of Fort Worth, Texas.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel to Norway; however, contractor technical representatives will probably be required.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., October 5, 1983.

In reply refer to I-04293/83ct.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 84-11, concerning the Department of the Army's proposed Letter of Offer to Lebanon for defense articles and services estimated to cost $61 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

WALTER B. LIGON,
Acting Director.

Attachments.

TRANSMITTAL NO. 84-11

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

(i) Prospective purchaser: Lebanon.

(ii) Total estimated value:

	Millions
Major defense equipment[1]	$46
Other	15
Total	61

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: A quantity of 253 M113A2 armored personnel carriers with communications equipment, M2 .50 caliber machine guns, spares, and ancillary support equipment.

(iv) Military department: Army (UVJ).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: None.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: 5 Oct. 1983.

POLICY JUSTIFICATION

LEBANON—ARMORED PERSONNEL CARRIERS

The Government of Lebanon has requested the purchase of a quality of 253 M113A2 Armored Personnel Carriers with communications equipment, M2 .50 caliber machine guns, spares, and ancillary support equipment at an estimated cost of $61 million.

This sale will contribute to the foreign policy objectives of the United States by enabling Lebanon to increase its capability to provide for its own security and defense. As the Lebanese Government reasserts itself in the wake of recent hostilities, well equipped and trained armed forces are essential to assure the nation's sovereignty.

These M113A2 Armored Personnel Carriers will be used to continue upgrading the brigades of Lebanese Army. The build-up of the Lebanese Army has been accelerated from a mid-term to a near-term requirement. The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the FMC of San Jose, California.

Implementation of this sale will require the assignment of 20 additional U.S. Government personnel to Lebanon for 120 days.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., October 8, 1983.

In reply refer to I-04294/83ct.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 84-12 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Army's proposed Letter of Offer to Lebanon for defense articles and services estimated to cost $102 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

WALTER B. LIGON,
Acting Director.

Attachments—Separate cover: Classified annex.

TRANSMITTAL NO. 84-12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

(i) Prospective purchaser: Lebanon.

(ii) Total estimated value:

	Millions
Major defense equipment [1]	$57
Other	45
Total	102

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: Munitions consisting of 5.56mm, 7.62mm, .50 caliber, 40mm, 81mm, 105mm, and 155mm ammunition; mines; flares; and hand grenades.

(iv) Military department: Army (UVV).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: October 6, 1983.

POLICY JUSTIFICATION

LEBANON—MUNITIONS

The Government of Lebanon has requested the purchase of munitions consisting of 5.56mm, 7.62mm, .50 caliber, 40mm, 81mm, 105mm, and 155mm ammunition; mines; flares; and hand grenades at an estimated cost of $102 million.

This sale will contribute to the foreign policy objectives of the United States by enabling Lebanon to increase its capability to provide for its own security and defense. As the Lebanese Government reasserts itself in the wake of recent hostilities, well equipped and trained armed forces are essential to assure the nation's sovereignty.

This sale will provide the required munitions for the tracked vehicles, towed artillery, and crew served weapons previously purchased and being purchased by the Lebanese Army from the U.S. Government under Foreign Military Sales agreements. The sale of this equipment and support will not affect the basic military balance in the region.

There will be no prime contractor for this sale. The munitions will come from various U.S. Army Ammunition Plants and Depots.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Lebanon.

There will be minimal impact on U.S. defense readiness as a result of this sale.●

THE COMMEMORATION OF THE CONSTITUTION'S ANNIVERSARY

● Mr. HATCH. Mr. President, September 17, 1987, will be the 200th anniversary of the approval in Convention of the Constitution of the United States of America. The commemoration of this anniversary should serve the purpose of making the citizens of our Republic more cognizant of the roots and origins of the constitutional principles that have provided and guaranteed our freedoms for nearly two centuries. At the tme of Constitution's centennial commemoration, President Grover Cleveland remarked:

> If the American people are true to their sacred trust, another centennial day will come, and millions yet unborn will inquire concerning our stewardship and the safety of their Constitution. God grant they may find it unimpaired and as we rejoice today in the patriotism and devotion of those who lived 100 years ago, so may those who follow us rejoice in our fidelity and love for constitutional liberty. (Public Papers of President Cleveland, address of Sept. 17, 1887, in Philadelphia.)

We are now swiftly approaching the second centennial of the Constitution when President Cleveland promised that "millions yet unborn" would "rejoice" because the American people have been "true to their sacred trust." Just as the United States paused a century ago under the ledership of President Cleveland to examine the "patriotism and devotion of those who lived 100 years' earlier and to chart a course for "those who follow," the bicentennial of the Constitution offers anew an opportunity for the Nation living under that document to rededicate itself to the timeless principles of ordered liberty.

On January 26, 1983, all Senators on the Subcommittee on the Constitution joined me in the introduction of S. 118, a bill to establish a commission to coordinate the commemoration of the bicentennial of the Constitution. Having passed in both the House and the Senate, S. 118 became public law on September 29, 1983, when it was signed by the President. S. 118 contemplates a commemoration consisting of more enduring activities than a series of pyrotechnic displays and parades.

A few years ago, we celebrated the bicentennial of the Declaration of Independence, which is a statement of intent and purpose; we now look forward with great anticipation to the celebration of the Constitution's bicentennial which is the people's contract to carry out the declaration. This bicentennial commemoration draws nigh at a time when it is desperately needed to reinvigorate our national understanding.

In the two national assessments of public high schools performance on citizenship, made first in 1969 and the second as recently as 1976, it was disturbing to find that test scores declined. Only a little more than half of the 17-year-olds and 32 percent of the 13-year-olds knew that each State has two Senators. Less than half of the 17-year-olds and less than one-fourth of the 13-year-olds knew that appointments to the Supreme Court must be confirmed by the Senate, while a big majority of the 17-year-olds felt that a two-thirds vote by the Justices of the Supreme Court was necessary to declare a law unconstitutional.

This bicentennial offers an opportunity to correct this educational problem. Because ours is a "Government of the people, by the people, for the people," its function and survival very directly depend on the capacity of the people to convert an understanding of our constitutional system into self-government and citizen participation. Without a working knowledge of our charter of freedoms and voluntary activities in conjunction with such understanding, our participatory Government would soon perish. Our Government is only as strong as the understanding and will of the people who comprise it. In a very real sense, the educational aspect of this bicentennial commemoration is a "national defense" program.

During this period of reflection on the origins of the Constitution, I would anticipate that we would use every medium at our disposal to increase the understanding of students of all ages about the basic institutions created by our Constitution. This commemoration, even more so than the commemoration of the Declaration of Independence, should have a studious and educative theme. In order to undertake an education project of this scope, however, we must get underway immediately.

Recently, the Senate Judiciary Subcommittee on the Constitution, of which I am chairman, held a hearing in which we listened to the speeches of four students who participated in, and won first place, in an essay contest regarding the separation of powers and the Constitution. As future leaders of this Nation, these students displayed a remarkable understanding and concern for those constitutional principles established by our Founding Fathers.

I would like to submit for the RECORD the essay of each first-place winner, as well as those essays of the second- and third-place winners from the States who participated in the essay contest. At this time, I would like to recognize the judges from my home State of Utah who were involved in selecting the winners. They are as follows: Justice Christine Durham; Dr. W. Cleon Skousen, president of the Freeman Institute; Dr. R. J. Snow, vice president of university relations, University of Utah, and Representative James Witucki, Democrat, Salt Lake.

The essays follow:

SEPARATION OF POWERS IN THE U.S. CONSTITUTION

(By Jenefer Rowley, Layton, Utah, first-place winner, constitutional essay competition)

I. HISTORICAL OVERVIEW

In 1783, in response to abuses of power, the people of what was to become the United States of America had rejected their king. By 1785, they had formed a loose coalition of democratic States. Under this democratic system, the people of these States enjoyed a great deal of freedom, but they also experienced tremendous problems. In their sovereign independence, the States became quarrelsome rivals. Travel and commerce were interrupted. Each State had to coin its own money. Inflation was running rampant. The people of America were following the same chaotic road to anarchy and self-destruction that democracies of the past had traveled. There were even those Americans who had been asking for a king again.

It was in response to this difficult situation that leading men of the former colonies gathered themselves together in May 1787 to consider possible ways of remedying the defects of their present confederation. It was no easy problem they faced. How could they make democracy decent, especially when it had never worked for very long in the past? How could they form a system of government that was both free and just, and one that would be a balance between human liberty and the restraint of man's unruly passions? To be able to do these things would mark the beginning of a radical change in the saga of the political history of mankind.

II. SEPARATION OF POWERS

The American Founders, at the time of the framing of the Constitution of the United States, were keenly aware that liberty is extremely fragile and that it seems to move inexorably toward tyranny, because it is in constant danger of destroying itself. They knew that liberty can be demolished by an excess of liberty as well as by an excess of power. They had to make liberty more durable by preserving freedom from tyranny and anarchy.

Too much power concentrated in too few hands leads inevitably to tyranny. Too much power concentrated in too many hands leads inevitably to anarchy. Because of human nature, a balance in government must be found between the many, the few and the one. (John Adams, "On the Principles of a Political Science," pp. 52-72.) Separation of powers is, therefore, prerequisite to the proper functioning of free government.

The principle of separation of powers is the fundamental institutional feature of American Government. The Founders viewed it as the main protection of liberty, but they also understood that it is the only practical way to strengthen the Government in general and assure its effectiveness. This knowledge resulted in the division of the powers of the National Government not only once but three times.

SEPARATE AND INDEPENDENT BRANCHES

The triple equipoise refers to an executive, a legislative and a judicial branch that are separate and independent from each other. This is one division of the powers and liberties of the State. It is so essential to liberty that James Madison wrote:

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. . . . three great departments of power should be separate. . . ." (The Federalist Papers, No. 47, p. 301)

Once these powers are dispersed, they tend to act as checks upon each other. The power of one balances the power of another, yet the branches must also cooperate with each other (because the power of no one branch is complete) or else nothing would ever be fully accomplished and the Government would cease to function.

BICAMERALISM

If free and representative government, an extension of the division of the three branches is applicable because of the problems created by legislative supremacy. That is, in republics, powers naturally tend to accumulate in the legislative branch. This increases the probability that the legislature will gain control of the executive branch, the judicial branch, or both. In order to remedy this problem, the power of the legislative branch must be divided a second time. This second separation of powers is bicameralism—the division of the legislative branch into two separate bodies referred to as "houses." Examples of such a division exist in the governments of both Great Britain and the United States. In the former, the national legislature consists of the House of Lords and the House of Commons. In the latter, the two Houses are called the Senate and the House of Representatives.

In order for bicameralism to function as a restraint upon legislative power, two conditions must be met. The first is that there should be different modes of election for the two Houses (including differences in the length of tenure of officeholders). The second is that there should be a difference in function and principles of action between the two divisions. These two measures act as constraints upon the two legislative bodies. However, it should be remembered that the Houses should not be so hindered that they cannot harmonize on the proper measures of Republican government such as the passage of laws. If the legislature is too restrained, it will be unable to function and the purposes of good government will be frustrated.

FEDERALISM

A third division of power exists between the National Government and the governments of the states. This is the Federal principle that was established by the Founders as a protection against factions and the loss of freedom.

The most essential part of federalism is the doctrine of enumerated powers. That is, all powers that are not specifically delegated to the National Govenment are reserved in the States and the people. Therefore, if the people want to remain in a state of liberty, they should not delegate any powers to the Government that they can handle better themselves. These powers may be improper for Government to use, and besides, it is always easier for the rights of the people to be injured when the power to do so is placed in the hands of those they trust most.

III. SUCCESSES AND FAILURES

The distribution of the powers of Government seems so familiar and natural to Americans that they cannot understand reasonable people looking at the matter in any other light. But separation of powers was still a novel idea when the American system was created and it is not universally accepted today.

Even in America, where the doctrine seems firmly entrenched, separation of powers, particularly the division of the three branches, has been challenged. It is a credit to the wisdom and foresight of the Founders that the system they set up has worked so well that it has at least twice been able to preserve itself from destruction.

The most noteworthy of such incidents occurred in 1868 when the "Radical Republicans" then in control of Congress tried to impeach President Andrew Johnson. Even though President Johnson's battery of attorneys was extremely able, while the House prosecutors bungled their flimsy, trumped-up case, President Johnson was saved from impeachment by a margin of only one vote. Seven Republican Senators courageously put country above party and voted "not guilty." Not one of these seven Senators was reelected to another term in the Senate.

The well-known historian, Thomas A. Bailey, had the following to say about the attempted impeachment and its implications:

"Unquestionably, the outcome of the trial was a triumph for good government. If a hostile two-thirds majority in Congress can remove the President at will, then there is a breakdown of the traditional separation of powers between the executive and the legislative branches. The Radicals were evidently determined to handcuff the Presidency,

and possibly also the Supreme Court. Had they done so, they might have established a kind of congressional dictatorship." (*The American Pageant*, pp. 506, 507.)

The danger to separation of powers posed by the Johnson impeachment trial arose from the legislative dominance that the constitutional designers feared might one day demolish balance between the three branches of the U.S. Government. However, a second potential threat to this same balance arose from a completely different quarter, an idealogical quarrel between the President and the Supreme Court.

In 1937, President Franklin D. Roosevelt began his second term in office backed by majority control in both Houses of Congress by his political party. Roosevelt interpreted his reelection as a mandate to continue New Deal reforms, but the conservative members of the Supreme Court thought otherwise. In seven out of nine major cases involving the New Deal, the administration was defeated by the Court.

Believing that the Supreme Court ought to get in line with public opinion, Roosevelt bluntly asked Congress for legislation that would permit him to appoint a new member to the Supreme Court for every existing member over 70 who refused to retire. The maximum membership could then be 15.

Congress and the public were shocked. They regarded the proposal as a scheme to "pack" the Supreme Court by means of a "dictator bill." The President was condemned for attempting to break down the delicate separation of powers among the three branches of Government.

In the two previously cited cases, the doctrine of separation of powers was challenged, but it was ultimately successful. There have been other examples during the last quarter of a century when this delicate system has been challenged and has appeared to fail. For example, so-called "executive agreements" and police actions (Korea and Vietnam) have been used by the executive branch to circumvent the constitutional right of the Senate to ratify treaties and the responsibility of Congress to officially declare war. In addition, many citizens and experts of Government argue that the Federal courts, especially the Supreme Court, have become too activist, setting themselves up as unelected legislators through decisions on such issues as busing and abortion. (This could be a failure on the part of the legislative branch to accept responsibility for dealing with these issues.)

Through these and other crises, the U.S. Constitution has provided a workable base from which democracy might be able to become both decent and durable. From the time of its conception, the document was an "experiment" in the eyes of its creators. This experiment was designed to answer one of the most difficult questions of human history—that of whether or not people are capable of governing themselves. Trying to answer the question of self-government has had and continues to have tremendous universal implications for mankind. The Founding Fathers realized this fact. They drafted a document that represents the most serious and well-planned endeavor to give the political idealogy of self-government practical application, and it answers the question of man's self-government affirmatively.

TYRANNY, ANARCHY, AND SEPARATION OF POWERS

(By David Cherrington, Orem, Utah, second place winner, 1983 Constitutional Essay competition)

Almost 200 years ago, a group of political pioneers met and composed ". . . the most remarkable work known to man in modern times in its application to political affairs," [1] which has been called ". . . The most wonderful work ever struck off at a given time by the brain and purpose of man." [2]

The Constitution of the United States is a legal document—not merely a set of laws, but basic and fundamental principles of law. It forms the legal framework upon which all other laws rest. The Constitution, with its laws and procedures, is the basis for the operation of our government.

Our founding fathers met in Philadelphia in the summer of 1787 to amend the Articles of Confederation with a thorough understanding of the elements which could lead to the abuse of government; thus they were able to devise a masterful piece of legislation which works as well today as in the early days of the republic. They realized that everything written into law giving power to government restricts the freedom of the individual; it is also true that anything which guarantees freedom to the individual limits the power of government. Those delegates who participated in the Constitutional Convention were aware that if the freedom of the individual is emphasized beyond reasonable bounds, then anarchy develops; on the other hand, extending the powers of government beyond its function of ensuring individual freedom would ultimately lead to tyranny. Having learned historically that gross abuse of power leads to oppression of the people. That the governed become slaves to the government rather than served by it, our founding fathers saw the need for a balance in the system of government they were designing. They understood that they held the authority to construct a government that would be as strong or as weak as they chose. They wanted a government which was strong enough to insure personal freedom, while avoiding the extremes of anarchy and tyranny. It was their duty to see that government was strong enough that anarchy would not prevail, while the controls on government were sufficiently strong to avoid dictatorship. It needed to be strong enough to function effectively, but not so strong that it limited the freedom of individuals. The solution to these many demands was provided by the doctrine of separation of powers.

The primary purpose in creating the doctrine of separation of powers was to preserve and protect individual freedom, thus avoiding tryanny and establishing an effective government. A major characteristic of a tyranny is its ineffectiveness: inability to act, inability to make wise decisions, inability to execute decisions in a just and fair manner, and inability to reach the goals designed by the decision. Tyrannies also are characterized by a lack of balance. Any effectiveness they may have benefits only the tyrant and his interest; the people are victims of the government. Tyrannies lack other characteristics which are highly desirable in government. Not only do they deliberately deny freedom to the individual, they lack stability. The transition of power often results in the bloodshed of innocent people.

When the Constitution was conceived, considerable care was exerted to achieve a delicate balance between the three branches of government—executive, legislative, and judicial. This was critical so that no one branch would be able to dominate the others. Realizing that an imbalance between any of the three branches could result in major abuses, the founders gave meticulous care of establishing specific guidelines limiting the power and authority of each branch. If the executive branch usurped excessive control of the system, a tyranny would result. If the legislative branch became too powerful, the eventual outcome would create anarchy. And if the judiciary took control to itself, the result would be a tyranny of oligarchy. Thus, our founding fathers wrote into the Constitution a series of safeguards by which we are guaranteed the safety of our political system. These safeguards today are termed the doctrine of separation of powers, more commonly known as the system of checks and balances.

In our system of checks and balances, each branch of the government has been given specific tools to prevent the domination of one branch over either of the others. Although some of these tools have collected a layer of political dust because of the infrequency with which they have been used, a majority are in frequent use. These devices, written into the Constitution, continue to protect us from our governmental system and protect our government from itself even today. Recent examples indicate that our political process is functioning properly, as prescribed by the doctrine of separation of powers.

The most frequently exercised check under the doctrine of separation of powers is a tool of the executive branch, the president, to curb the legislative branch, the congress. This is, of course, the veto, the president's prerogative to approve a bill and sign it into law, or to veto it and send it back to Congress for further consideration. By exercising his veto power, the president prohibits Congress from passing a law that fails to have strong popular support, thus reducing the likelihood of anarchy. However, if the president had the ability to kill every bill, tyranny would again be the eventual outcome.

To balance this situation, Congress has the power to override a veto. To override veto and enact a bill into law, Congress must obtain a more difficult two-thirds majority rather than the simple 50 percent majority needed to send the bill to the president in the initial stage of legislation. The most recent example of this intricate constitutional procedure is the story of the Supplemental Appropriations Act of 1983 (H.R. 6863). While this piece of legislation was being introduced to Congress by Congressman Whitten, President Reagan voiced his opposition and threatened to veto it if it were passed because it would make drastic changes in the budget he has proposed earlier. Despite the President's warning, liberal Democrats were able to pass the bill and send it to the White House where, true to his word, President Reagan vetoed the bill on August 28, 1982 and sent it back to Capitol Hill, expecting it to die an early death. However, the veto was overridden by the House of Representatives 301-117 and by the Senate 60-30, which achieved the two-thirds majority needed. Therefore, Congress exercised its power of checks and balances and in so doing passed the Supplemental

[1] Quoted from William E. Gladstone, in "Review of American History," p. 57.

[2] Ibid.

Appropriations Act of 1983 (Public Law No. 97-257).

Another method by which the president has power over the legislative branch is his right to appoint to federal positions those qualified people who he feels will best support his policies. Yet again, Congress has been furnished a check of its own to protect itself in this instance. In some of the federal appointments the president is required to receive the approval of the Senate. Therefore, the legislative branch has an input into who occupies some federal positions. A recent example of the President's power to nominate and the Senate's power to advise and consent is President Reagan's appointment of William Ruckelshaus as the head of the Environmental Protection Agency. Although the Senate theoretically holds the power to refuse approval of a Presidential appointee, they rarely use this power. The last time the Senate did not approve a presidential appointment was June 13, 1973, when the Senate did not approve Robert H. Morris as a member of the Federal Energy Commission by a vote of 51-42. However, as in most cases, William Ruckelshaus was approved by the Senate and took the reins of the Environmental Protection Agency.

The checks against the judicial branch of our government, the Supreme Court, are limited, giving the high court the stability needed to make wise decisions without being pressured by the executive or legislative branches. The President appoints members of the court, with approval from the Senate. In that way the President and Senate control the type of justice allowed to be seated. Once they have been approved and sworn in, however, they receive permanent tenure. All other efforts to place checks upon the Supreme Court have proved to be not worthwhile. A classic example of this was the Supreme Court's declaration in 1894 that the federal income tax was unconstitutional. In response, Congress proposed a Constitutional amendment, the Income Tax Amendment of 1913, which made income taxes legal. A check that takes nineteen years to operate, however, is hardly a check at all.

While checks against the Supreme Court are ineffective, checks levied by the high court can have a far-reaching impact on society. They have the power to declare a law of Congress unconstitutional and, in so doing, cancel the work of both Congress and the President. The Court may even declare an act of the President unconstitutional. Through these powers the Supreme Court has theoretically been given the responsibility to be the primary watchdog over the other two branches.

One of the best historical examples of the Supreme Court exercising this power occurred recently. On Thursday, June 23, 1983, the Supreme Court handed down the decision which now prohibits Congress from using the "legislative veto." The legislative veto was a method by which Congress took upon itself the authority to oversee executive actions. This type of legislation was most often used in simple cases involving federal regulations on interstate commerce. However, some laws involving legislative veto were complex and relevant to our nation's domestic security and foreign policy. For example, the President has the authority to send troops anywhere he deems necessary without going to Congress and asking for a declaration of war. Congress exercised its legislative veto by passing the War Powers Act of 1973. This law allowed the President to deploy troops but gave Congress the right to bring them home after 60 days, thereby placing checks on the President's authority.

Supreme Court Justice Byron White stated, while speaking for the minority about the unconstitutionality of the legislative veto: ". . . this kills more laws (over 200) in one single action than have ever been nixed in the history of the Supreme Court." However, making the statement for the 6-3 majority, Chief Justice Warren Burger stated: ". . . excessive power was being held by Congress, causing a dangerous misbalance of power. . . . Our constitution is devised in such a way so as the President vetoes Congress, Congress shouldn't veto the President."

This classic example illustrated the doctrine of separation of powers. As soon as one of the branches of government, in this case the legislative, began to assume more power than was originally bestowed upon it, the system of checks and balances restored power to its ideal balance, as it has for 200 years.

A careful examination of our consititutional history shows that the doctrine of the separation of powers is alive and well and functioning effectively in our political process. The dream of our founding fathers envisioned two centuries ago, the dream of a free people served by an effective government, has become a reality.

The people of the United States are fortunate to have had founding fathers who had a clear understanding of the obstacles to democracy. These wise men supplied posterity with a balance framework that provide an effective and powerful government while protecting the rights of individuals. By maintaining the doctrine of separation of power our government will remain strong and avoid becoming grossly distorted. This doctrine will help to assure coming generations of an effective government.

SEPARATION OF POWERS FOR THE UNITY OF THE NATION

(By Bill Connors, Ogden, Utah, third-place winner, 1983 constitutional essay competition)

"No man should be both a judge and legislator, nor should a governor have the powers to make the laws."—Francis L. Broderick

In the Wabash case of 1886, the Supreme Court ruled that individual states had no jurisdiction concerning the regulation of interstate commerce. The jurisdiction lay with the federal government, the Court declared. However, President Grover Cleveland was opposed to governmental regulation. Regardless of the President's opposition, Congress passed the Interstate Commerce Act of 1887.[1]

Shortly following his second inauguration in 1937, President Franklin D. Roosevelt decided that the Supreme Court needed an alteration in its composition. The ultra-conservative Court had defeated seven out of nine major cases involving Roosevelt's New Deal. The announcement expressing his desire to add to the Supreme Court took the country and Congress by surprise. The public and Congress saw the Court as being almost sacred; consequently, they were extremely opposed to even the slightest tampering with it. Eventually, Congress did pass a court reform bill, but the watered-down version only applied to the lower courts. Because President Roosevelt aroused the ire of the conservatives of both parties in Congress, few New Deal reforms were passed after 1937, the year that FDR tried to tamper with the Supreme Court.[2]

On Sunday, June 26, 1983, an article appeared in the Ogden Standard Examiner entitled, "Loss of veto (a) setback for Congress." An excerpt from the article reads:

"Congress, stripped of its legislative veto power by the Supreme Court, may move to assert tighter control over some executive branch functions by rewriting the laws, legislators say.

"The court's ruling scrapped a device legislators had come to rely on as a convenient way to keep a tight rein on the President and regulation writers. . . .

"In this instance, the third branch—the judicial—decreed that the legislative had grabbed an advantage over the executive that the Constitution never intended." [3]

These three events demonstrate a major philosophy that the United States Constitution embodies. It is referred to as separation of powers. Basically, this means that the powers of the federal government are divided among three different branches within the structure of the federal government. These three branches are:

The executive—the President and that which he oversees;

The legislative—the Senate and the House of Representatives, or Congress;

The judicial—the Supreme Court.

This essay will take an in-depth look at the separation of powers—its origin, its history, its effects on the United States, its substructure, and its value.

The Constitution of the United States of America, in articles I, II, and II, delineates each branch's specific duties. Many times these duties overlap. However, one must remember that only a basic separation exists; each branch must continually coordinate with the other branches for the federal government to be effective. "Even today, the idea of complete separation (of function, branch and person) has elements of absurdity if projected as an ideal for existing governments, for at one point or another government powers meet and overlap." [4] One can see the separate branches and a few of their functions and also the coordination between branches in the process of lawmaking. Congressmen present bills they wish to become laws (often the President will have a congressman present a bill for him) to the house of which the congressman is a member. To become law, a bill must pass a complicated procedure in each house. If this is accomplished, then the President receives the bill. He can either veto it, sign it, or let it sit and automatically become law. If he vetoes it, then it is dead unless Congress overrides his veto. If he signs it, then it becomes law. However, the Supreme Court can rule that the new law is unconstitutional and consequently invalid. This is a demonstration of how each branch has its own, separate powers from the other branches, but that all three have a necessary correlation.

The philosophy of separation of powers did not originate with the formation of the United States. Although "hinted at by Plato, rather clearly recommended by Aristotle, almost defied by Polybius, the classic idea of balance involved not the functions of government, but the proper mix of classes or estates and of their appropriate governmental expression—monarchy, aristocracy, and democracy. A much more modern tool of limited government—the separation of powers or such governmental functions as

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Footnotes at end of article.

legislation, execution and adjudication—did not mature until the eighteenth century." [5]

Many great men continued to give credence to the separation of powers that Aristotle affirmed. Men such as Thomas Aquinas in the high middle ages and Calvin in the reformation period supported Aristotle's views. James Harrington had a large effect on many early Americans through his book "Oceana," which was a novel of a ficticious nation which was a Utopia with separation of powers. Two men of colonial times who were strong advocates of mixed government were Thomas Jefferson and John Adams. Thomas Jefferson's "first two drafts of a proposed Virginia constitution emphasized the bicameral principle as a requisite of balance." [6] "But it was John Adams who became the symbol of mixed government." [7] In his "Defense of the Constitution of the United States of America," Adams made a defense for a balanced constitution and attacked all simple forms of government.

"Above all other writers, Montesquieu came to symbolize separation of powers." [8] He was the first to give separation of powers its presently accepted meaning—a separate executive, legislative and judicial branch. He felt, however, that when separation and balance were in conflict, that balance had to have priority. ". . . Once the proper mix or balance is secured, once government reflects consensus of concurrence in its legislature, then a degree of separation is a necessary but additive principle." [9]

Following the Revolutionary War, the colonies selected representatives to create a constitution for the new country. Because of the colonists' poor relationship with the king of England and with the English governors, the founding fathers set up a weak federal government. When they returned to Philadelphia to "revise" the Articles of Confederation, they did not have any intention of writing a new constitution. When they returned to their respective states, however, they returned with a constitution that countries throughout the world have attempted to duplicate. A large percentage of the provisions within the Constitution were based upon the experiences of the founding fathers as colonists. Ernest S. Griffiths made these remarks in his book, "The American System of Government":

"Hence it was clear, when the new Constitution was to be framed, that its basis was to be tripartite—legislative, executive, judicial. This had been the familiar experience of the 13 colonies—with their locally-chosen legislatures, and with the English common law under the guardianship of the courts." [10]

Richard H. Pear agrees with Griffiths:

"The experience of the American colonists in the field of government is so important that it is tempting to attribute all that is new in the American system of government to the lessons the colonists learnt whilst under British rule . . . we might well add the 'separation of powers' as an experience as well as a theory. The hostility between the legislative and executive branches of government did not always work to the disadvantage of the colonists. If the governor were unpopular, at least he could be controlled to an important extent by the assembly's powers over finance." [11]

One of the most important, if not the most important reason that the founding fathers placed the doctrine of separation of powers in the Constitution was to prevent tyranny from occuring in the United States as it had in countries throughout the world. The colonists were mainly concerned with preventing a re-creation of the same situation that had developed in England. Not only does separation of powers keep one group or person from receiving total control, but it also sets up a system whereby there is a force that has the power to stop anyone who does try to take too much power—it provides for a system of checks and balances. This is very clearly demonstrated in the case of Richard Nixon. When he thought himself above the law and instigated what was later termed the Watergate scandal, Congress was able to threaten him with impeachment and cause him to resign. Obviously if Nixon had had total control over the government, he would have been left free to do his "dirty work." The fact that separation of powers prevents tyranny or the accumulation of too much power in the hands of too few people is again seen in the recent ruling by the Supreme Court scrapping the legislative veto, preventing Congress from having an excessive amount of power over the president.

Within the superstructure of separation of powers are three important substructures which enable the whole structure to stand. The first of these very important substructures is the presidential system. To better understand the presidential system, it is best to first explain its counterpart—the parliamentary system. Under the latter system, the people elect a parliament, as in Britain. The members of the parliament then choose the executive leadership for the country. This executive leadership is called a cabinet and is headed by a prime minister. One of the strongest disadvantages of this system is that the prime minister must always act in a manner pleasing to the parliament, not necessarily to the people of the country, for when he loses the support of the majority in parliament, he is replaced. This occurred a short time ago in West Germany when Chancellor Schmidt (West Germany has chancellors rather than prime ministers) was replaced by Helmut Kohl.

In the presidential system, the voters elect a president independent of their decisions for the legislature. The president maintains his position regardless of the support, or lack of it, he receives from Congress. Problems have arisen when Congress has not given its support to the president, such as the blockage of Democratic President Truman's legislative program by a Republican Congress and as with President Kennedy, who was thwarted by a Congress dominated by his own party. However, the advantages to this system far outweigh the few instances when disruptions have arisen. With a presidential system, closer examination of important issues is mandatory, as exemplified by the extended debate over the United States' involvement in the League of Nations. Also, it prevents undue concentration of political power. And the presidential system gives the people two types of representation—legislative and executive. A very good example of the benefits of this system is seen in the government of the state of Utah. Although the state is basically Republican, there is a Democratic governor. The citizens get their political party representation while also getting the person they feel is best qualified for the job and best suited to represent them. This relationship would be virtually impossible in a parliamentary system. [12]

A second very important substructure of separation of powers is judicial review. This phrase means that the Supreme Court has the ultimate decision regarding the constitutionality of all matters. This principle was the result of the 1803 Supreme Court case, *Marbury* vs. *Madison*. Judicial review is important because this process keeps both the executive and legislative branches from appropriating more authority to themselves than the Constitution delegates.

The third and most important substructure of separation of powers is checks and balances. This is one of the major differences between European governments and the United States Constitution. As was stated previously, separation of powers keeps tyrants from emerging. This is accomplished by not only giving any person or group too much power, but also by providing a means for stopping anyone who would attempt to assume too much power. This is called checks and balances. Each branch can observe the operation of the other two branches, or check them, but no branch has more power than the other two (in the ideal situation), providing a balance of power. This is demonstrated in the format for passing laws (mentioned previously). Another example is found in the military aspect of the government. The president is commander-in-chief of the armed services, but only Congress has the power to declare war. These three substructures have had a tremendous impact on the success of separation of powers.

The Constitution encompassing the philosophy of separation of powers has provided multiple benefits to the United States. First, as has been stated repeatedly, it prevents any one person or group from getting too much power and becoming tyrannical. If this were to occur, it would certainly mean the destruction of our country as it has for all previous countries. Second, it keeps our country from being run on the whims of people who did not sufficiently discuss important issues. One of Adolph Hitler's biggest downfalls was that he did not listen to or heed the advice given him by his aides. In the U.S., the president has no choice but to act on the decisions of Congress. Issues of great importance are researched and discussed to the finite detail so that maximum benefit for the country can be achieved. Third, separation of powers gives the U.S. the advantages of quick and decisive action in times of emergency through the president, without having to give him dictator-type authority. And fourth, the people of the United States have better representation and are allowed to choose whom they think is best for the job of president.

Many aspects of the philosophy of separation of powers have been discussed in this essay—its definition, its origin, its history, its effects on U.S. government, its substructure and its value. It is clearly seen that this multi-faceted concept has found new form within the Constitution of the United States not to be found anywhere else in the world but on the pages of textbooks. If the United States continues its application of separation of powers, it will continue to be a country of unity.

FOOTNOTES

[1] Bailey, Thomas A. and David M. Kennedy, "The American Pageant," Lexington, Mass. & Toronto, D.C. Health, 1979, p. 491.

[2] Ibid, pp. 785-787.

[3] Ogden Standard Examiner, June 26, 1983.

[4] Conklin, Paul K., "Self-Evident Truths," Bloomington, Indiana University Press, 1974, p. 153.

[5] Ibid, pp. 144-145.

[6] Ibid, pp. 151.

[7] Ibid.

[8] Ibid, p. 156.

[9] Ibid, pp. 156-157.

[10] Griffith, Ernest S., "The American System of Government," New York, Frederick A. Praeger, 1965, pp. 8-9.

[11] Pear, Richard H., "American Government," London, Macgibbon and Kee, 1963, p. 31.

[12] Fincher, Ernest B., "The Government of the United States," pp. 11-12.

[Constitutional Essay Contest Winning Entry]

THE DOCTRINE OF SEPARATION OF POWERS

(By Nathan Sheets, Arizona)

The Constitution was designed by the Founding Fathers to promulgate political liberty and to ensure the existence of social, religious and personal freedoms. Upon this thesis, the Constitution becomes a series of barriers and restraints preventing one power or social force from exerting an inordinate control over the framework of government. The first of these barriers was Federalism: the division of power between national and state government. Another was the concept of limited authority: there were express boundaries that no division of government could overstep. Perhaps the most significant barrier was the doctrine of separation of powers and its necessary corollary—the system of checks and balances. James Madison attached great importance to this concept: "If there is a principle in our Constitution, indeed in any free Constitution, more sacred than another, it is just that it separates the legislative, executive, and judicial powers.[1] The analysis of the separation of powers doctrine is a journey into the center of the Constitution. To be adequate, such an analysis encompasses the philosophical beliefs of the Founding Fathers and their perception of government, the mechanics of the Constitution, the ebb and flow of power within the three separated branches, and the status of this doctrine in modern government.

In its most simplistic and idealistic form, separation of powers advocates that different governmental functions be performed by different governmental entities. The Constitution of New Jersey expresses what is implicit in the Federal Constitution:

"The powers of the government shall be divided among the three distinct branches, the legislative, executive and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others except as expressly provided in this Constitution."[2]

Although the separation principle can be roughly attributed to Aristotle and Polybius,3 it was Montesquieu who had "the merit . . . of displaying and recommending it most effectually to the attention of mankind.4" Montesquieu's Spirit of the Laws published in 1748 was a strong influence on the Constitutional Convention.

The desirability of separated powers was a matter of near unanimous agreement. So too was Madison's assertions ". . . a mere decoration on parchment of the Constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a concentration of all the powers of government in the same hands." 5 After analyzing various methods of achieving this end, Madison concluded in Federalist No. 51, "The defect must be supplied by as contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.6" With this justification, the checks and balances system was established; with this in mind, the duties of the three branches were determined.

Through past experience the Founders deemed the legislative branch inherently most powerful and potentially most dangerous—"one hundred and seventy-three despots would surely be as oppressive as one." 7 For this reason, the legislative power was split into two distinct and theoretically dissimilar bodies. The lower house was empowered to initiate all appropriations measures and the upper body was granted the right to "advise and consent" on executive appointments and approve treaties. Collectively the Congress could declare war and was given the ultimate check: the power to impeach and remove negligent and incompetent members of the other branches.

The executive branch was largely an enigma when the Constitution was ratified. There was a diversity of opinion concerning how much power the chief executive should be granted. The spectrum ranged from those who advocated a weak executive to Alexander Hamilton who argued for an American monarch.[8, 9, 10]

Exactly how fully the American doctrine of separation of powers meets this criteria i.e., controlling the governed and controlling itself is an issue of both heated and appropriate dispute. To address this question, it is necessary to review the evolution of the three branches of government. Just as the Founding Fathers predicted, Congress was originally the most powerful section of the federal government. It was in the legislature that the great issues of the growing Republic were addressed and statesmen such as Clay, Calhoun, and Webster molded public opinion. During this period, the Presidency was still attempting to define and solidify its position in the new Republic. Jefferson's embargo battle and the turbulent Presidency of Andrew Jackson were two of only a handful of exceptions. Finally, the Court under the direction of Marshall and Taney was both solidifying itself and the new government by defining the relationship between state and nation, guaranteeing the sanctity of contract, and ensuring equal opportunity under the law—with the conspicuous exception of the Dred Scott decisions.

During the Civil War, Lincoln assumed more power than previous executives had dreamed of: he became the first President to actively function as Commander-in-Chief; he suspented the hallowed writ of habeus corpus; and he orchestrated a legislative revolution which left a permanent stamp on the country. Additionally, Lincoln nominated Salmon Chase, his primary competition for the 1864 Republican Presidential nomination, for the position of Chief Justice—thus leaving his mark on the Supreme Court.

Following the assassination of Lincoln and the rise of the Radical Republicans, the fulcrum of power shifted dramatically toward the legislature. The attempted impeachment of Andrew Johnson nearly emasculated the Presidency. During that nadir of American History the wisdom and foresight of the checks and balance system was evident. In the words of Edmond G. Ross, the legislator who saved the Presidency:

In a large sense, the independence of the executive office as a coordinate branch of government was on trial. If the President must step down . . . a disgraced man and a political outcast—upon insufficient proofs and from partisan consideration, the office of President would be degraded, cease to be a coordinate branch of government, and ever after subordinated to the legislative will . . . This government has never faced so insidious a danger.[11]

The Gilded Age saw the corruption of government on almost every level and a restructuring of the political base. Perhaps the relative weakness and mediocrity of both the executive and legislative branches precipitated the period of judicial activity which commenced in the mid-1890's. "In a matter of months it (the Supreme Court) killed the national income tax, emasculated the Sherman Antitrust Act as well as the Interstate Commerce Commission, and it approved the labor injunction as well as Separate-But-Equal." [12] Judicial power continued to expand so that in 1907 Charles Evans Hughes could legitimately assert. "The Constitution is what the judges say it is."[13]

If the nineteenth century illustrated the teeter-tottering of power between the three branches that the founders had envisioned, the twentieth century has seen the relative stabilization of these relationships. With few exceptions, the executive has been supreme, the court respected, and the congress declining in influence. With the simultaneous advent of the "strong president" and communicative technology the executive has become the foremost molder of public opinion. Vibrant leaders such as Theodore Roosevelt, Woodrow Wilson, Franklin Roosevelt and John F. Kennedy have solidified the Presidency as the most powerful branch of government. "Great initiatives of domestic and foreign policy were approved without legislative leadership. FDR's New Deal, Truman's Fair Deal and Johnson's Great Society were all presidential programs, and the key actions preceding the two World Wars and the Viet Nam War were taken with minimal congressional input." [14] Even the Watergate debacle was a short-lived boost to legislative power. Instead of turning toward Congress for leadership, the public developed an apathetic distrust of government.

During the past century, the Court has expanded its influence by further clarifying the separation of powers doctrine. In *Schechter Poultry* v. *United States*, the Court declared the NIRA (National Industrial Recovery Act) unconstitutional because it allowed excessive delegation of legislative powers. This ruling invalidated one of the key planks of FDR's New Deal and was a substantial check on Presidential power. In *Myers* v. *United States*, the President was given power to remove executive officials without consent of Congress. However, in *Youngstown Sheet and Tube* v. *Sawyer*, the Court again checked executive power when it ruled that President Truman was infringing on legislative authority when he ordered the seizure of a steel plant: "The President's order does not direct that a congressional policy be executed in a manner prescribed by Congress—it directs that a presidential policy be executed in a manner prescribed by the President." [15] Most recently, in *Chadha* v. *Immigration and Naturalization Service*, the Supreme Court overturned governmental expediency in the name of constitutional purity. By declaring the legislative veto unconstitutional, the Court exercised a check on Congressional power. Speaking for the majority, Chief Justice Warren Burger stated, "The veto . . . doubtless has been in many respects a convenient shortcut (for Congress) but it is clear that the framers ranked other values higher than efficiency." [16] These cases and several others, illustrate that the Supreme Court has become an influential—some

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Footnotes at end of article.

would say too influential—part of the checks and balances system.

As a general statement, the doctrine of separation of powers has been instrumental in achieving the primary goal of the Founding Fathers—protecting liberty. However, the future holds grave questions. Since the Constitution was written, the American population has increased over fifty times; the power and pervasiveness of government has greatly expanded; the country has become increasingly pluralistic; and the development of technology has made instant decision-making a necessity. At one time governmental functions could be neatly divided into three categories; today, it is no longer possible. Many agencies e.g. the Federal Reserve, the National Labor Relations Board, and the Interstate Commerce Commission maintain great power but seem to nearly fall outside of the checks and balances system. Furthermore, when world and national events mandate decisive governmental action, the United States is faced with a decreasingly powerful legislative branch. According to Sam Ervin, then Chairman of the Senate Subcommittee on Separation of Powers:

"Congress increasingly abdicates its responsibility to determine policy, to set standards, and to make policy decisions. Typically, it announces a broad goal, and then gives a blank check to the courts or the Executive Department or to an administrative agency to administer that goal 'in the public interest.'" [17]

These grants of power have expanded and increased the scope of the executive branch so substantially that it is impossible for the Chief Executive to administrate his own bureaucracy.

The separation of powers doctrine has successfully endured two centuries of molding and adaptation. The challenge, as the third century commences, is to limit the executive bureaucracy so that it can be controlled by the President. This eventuality requires two transformations: first, the American people must become less accustomed to big government; second, the Congress must re-assert itself. Perhaps these trends have already started. As to the former, both of the last two Presidents hailed themselves "outsiders to Washington" and "opponents of the system." Over the last several years, a majority of Americans have been willing to endure some pain as governmental services have been trimmed. It can honestly be said that the nation no longer feels a "Great Society" infatuation for government. Concerning the latter, the Chadha decision may very well have been a blessing in disguise for Congressional power. Disarmed of the legislative veto, Congress may be forced to abandon its "blank check" legislation and deal more directly with the details of government. According to Stanley Brand, counsel to the House of Representatives, "Every time the President wants something he's going to have to come up here, hat in hand." [18] Perhaps the Chadha decision will activate Congress to become less political and more efficient. If so, the prescience of the Founding Fathers and system they established will again be affirmed. If not, that system may be strangled by grants of legislative power to an overburdened judiciary and to an amorphous, growing, and increasingly uncontrollable executive bureaucracy.

ENDNOTES

[1] James Madison, quoted by Senator Charles H. Percy in "Separation of Powers," NEA Journal, May 1971, p. 38.

[2] New Jersey Constitution article 3, paragraph 1, quoted by Worall F. Mountain in "The Role of Judicial Activism: Neither Sword Nor Purse?" Seton Hall Law Review, 10 (1979), p. 6.

[3] Richard Hofstadter, The American Political Tradition, Twenty-fifth Anniversary Edition (New York: Alfred A. Knopf, Inc. 1973), p. 8.

[4] James Madison, "The Federalist No. 47," The Federalist Papers (Garden City, New York: Anchor Books Doubleday & Company, Inc., 1966), p. 139.

[5] Madison "The Federalist No. 48," Ibid., pp. 150-151.

[6] Madison "The Federalist No. 51," Ibid., p. 159.

[7] Madison "The Federalist No. 48," Ibid., pp. 149.

[8] Alexander Hamilton, "The Federalist No. 78," Ibid., p. 228.

[9] Hofstadter, op. cit., p. 1.

[10] Madison "The Federalist No. 51," op. cit., p. 160.

[11] Edmund G. Ross, quoted by John F. Kennedy in "Profiles in Courage, Memorial Edition (New York: Harper & Row, Publishers, Inc., 1964), p. 161.

[12] "Separation of Powers," Indiana Law Journal, 52 (Winter 1977), 318.

[13] Charles Evans Hughes, quoted in The Meaning of the Constitution (Woodbury, New York; Barron's Educational Series, Inc., 1974), p. 5.

[14] Norman Dorsen, "Separation of Powers," Albany Law Review, 41 (1977), 55 (Note: Professor Dorsen refers the reader to The Imperial Presidency by Arthur Schlesinger in a footnote attached to the quoted passage).

[15] Youngstown Sheet and Tube v. Sawyer, 343 U.S. 579, 72 Sup. Ct. 863, 96 L. Ed. 1153 (1952).

[16] Chief Justice Warren Burger, quoted in Newsweek, 4 July 1983, p. 16.

[17] Sam Ervin, "Separation of Powers: Congressional Interest," (address delivered at the 73rd Congress of American Industry), 6 December 1968, printed in Vital Speeches, 1 January 1969, p. 190.

[18] Stanley Brand, quoted in Newsweek, op. cit., p. 17.

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DOCUMENT OF POWER AND RESTRAINT

(By Cherie Miller, Arizona)

(CONSTITUTIONAL ESSAY CONTEST, SEPARATION OF POWERS, RUNNER-UP)

"In framing a government, which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself." The problem facing the constitutional convention was in those words stated by one of its leading minds, James Madison.

The framers of the constitution faced a problem that has vexed every constitutional system: how to combine strong, effective government with individual liberty. Without a strong and effective government, liberty may easily wither and fade away, just as effective government without liberty may easily degenerate into a dull source of force.

The men who drew up the constitution were not dreamers; they were men of substance and great political experience in law, politics, education, business and farming. In addition, they were accustomed to managing and to being leaders. The brief experience of the colonies under the Articles of Confederation had shown these men that without a strong and effective National government, there would be no United States of America as one united nation. At the same time, they all believed in liberty; many of them had fought in the War of Independence, willing to sacrifice their lives for the cause of this liberty.

Federalism is the basic principle of our Constitution, "a great discovery in modern political science," as Alexis de Tocqueville called it. The main idea of federalism is to divide governmental power between a nation (that is, a central or federal) government and a number of territorial subdivisions called states in the United States, cantons in Switzerland, provinces in Canada, and Laender in West Germany. A written constitution generally prescribes (as does our Constitution) which powers belong to the federal government exclusively, which to the territorial subdivisions, and which to both; which powers are denied to either the Federal or the state governments or to both; and finally, the constitution usually stipulates how conflicts of power between the national government and the state governments are to be settled.

In most federal systems, such distributions and divisions of powers between the federal and the state governments cannot be changed by ordinary legislative action but must go through the more difficult process of constitutional amendment. Also, in most federal systems, conflicts between the federal and the state governments are resolved by federal courts.

The framers of the Constitution sought to diffuse and break up power in two basic ways: (1) by dividing power between different territorial units, that is, between the federal government and the states; (2) by establishing three separate branches of government—legislative, executive, and judicial. As James Madison said, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly

be pronounced the very definition of tyranny."

Article One of the Constitution begins with the words "All legislative power herein granted shall be vested in a congress of the United States." Article Two opens with the words, "The executive power shall be vested in a President of the United States." Article Three begins with the words, "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." The first words in each of the three Articles show that the framers, using the most distinct and clear style, made plain and unmistakable the principle of separation of powers.

One of the supporting bases of the principle of separation of powers is a general principle of law: delegated power may not be transferred. The framers of the Constitution, brought up to believe the political ideas of John Locke, were familiar with Locke's statement on the subject of delegated power in his second Treatise on Civil Government (1660): "The legislative cannot transfer the power of making laws to any other hands; for it being but a delegated power from the people, they who have it cannot pass it over to others."

The independence of the executive and legislative is further strengthened by the different terms of office for which they are elected: the President and Vice President for four years, members of the House of Representatives for two years, and members of the Senate for six years. Also, each represents a different constituency: the President is elected by the whole nation, the senator by his entire state, and the representative by his own district. Thus, each has his own obligations and loyalties. Finally, the judiciary is independent of both the executive and the legislative, since acts of both the President and Congress may be held unconstitutional by the Supreme Court.

The solution to the problem that the framers of the Constitution sought created new problems. Separation of powers seemed to the framers a way to prevent concentration of all power in one branch of the government. Still, they realized that if even successful; if each of the branches of government were completely separate and independent of the other two; each might choose to go its own way, making its own decisions, and chaos of the single most powerful branch might be the result. Therefore, the authors of the Constitution provided checks and balances for the three branches of government: "Ambition must be made to counteract ambition".

For example, Congress makes laws, but the President can veto them. Congress can override this veto with a two-thirds vote in each house—a check on a check. Also, laws passed by Congress can be held unconstitutional by the Supreme Court, another check in the legislative power. The President is in charge of foreign affairs, but he is checked by Congress through its power to appropriate funds and by the Senate's power to refuse to ratify treaties with other countries. In his conduct of military affairs as well, the President depends on Congress for funds and on the Senate for consent in appointing high officers such as generals in the Army. The President also has the important power to appoint members of the Supreme Court and of other federal courts, but he is checked by the constitutional requirement of senatorial approval of his nominations.

The judiciary, too, is checked. Although a federal judge is independent, he must, to get his job, receive presidential appointment and senatorial confirmation. In addition, the Supreme Court is the only court that exists as a result of the Constitution itself. Therefore, all other federal courts are products of congressional legislation and can be regulated accordingly. Congress can also change the number of justices on the Supreme Court and can impeach federal judges.

In many respects, however, "separation of powers" is a most misleading description of the American government. More accurately, the United States constitution provides for a government of separated institutions sharing powers. The process of government requires that these separate institutions work together with some measure of effective cooperation, and this is perhaps the key problem of the Constitutional system of the United States. If every presidential appointment of a judge or military officer, as well as every treaty, were rejected by Senate; if every act of Congress were vetoed by the President or if it were held unconstitutional; if congress refused to set up federal courts, working under the control of the Supreme Court—if all these possible checks were fully exercised, government in the United States would stop.

Thus, in practice, the principles of separation of powers and checks and balances are kept alive through cooperation.

In conclusion, we see that the Constitution expects the three branches of government to be independent of each other, to check and balance each other, and yet to work together harmoniously. Doing all of these things at the same time appears to be difficult. Yet this complexity is no more than part of the fundamental objective of the whole Constitution: On the one hand, its purpose it to set up a strong, effective government able to cope with critical and swift developments at home and abroad; on the other hand, the constitution seeks to restrain and limit government so that the individual citizen may enjoy his liberties. Bringing together the elements of power and restraint in the Constitution requires great skill and faith in the democratic ideals that strength need not degenerate into force, or liberty into chaos.

As we near the upcoming bicentennial of this great Constitution of ours, there is no sign that it will ever wear out. As a seventeen-year-old I have come to see how wisely and well the men at the Constitutional Convention did their work for the benefit of all the other Americans coming after them. At times the citizens in American society seem to take the precious gift of liberty for granted, not realizing what our forefathers did in the past to make America what it is today. The United States once small and weak, has become a large and powerful nation; but more important than its size and strength, our country is a land of freedom and justice, which has been kept alive and protected for two-hundred years by the remarkable document of power and restraint: The Constitution of the United States of America.

THE SEPARATION OF POWERS: OUR GOVERNMENT'S FOUNDATION

(By Ruth C. Howell, Runner-up, Prescott, Ariz.)

As the United States Constitution approaches its 200th birthday, more and more people are examining it for flaws which might hinder its success in the next 200 years. The separation of powers is one of the main areas of scrutiny. The doctrine has an extensive background and is very intricate in itself. Does it really work for us today, or is it just a high-sounding collection of words which is quickly passing into obsolescence? To answer these questions, one must understand the separation of powers and evaluate its role in our government.

The separation of powers calls for a division of authority between the executive, legislative, and judicial bodies of government. Its purpose is to prevent one person or group from taking control of the nation. As James Madison wrote in "Federalist No. 47":

"The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

Having just escaped the tyranny of British monarchs, the Framers were anxious to protect their freedom. The separation of powers was considered:

". . . the means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided.[1]

The doctrine was embraced by one and all.[2]

The idea of distributing authority was borrowed by the Framers from "The Spirit of the Laws," by Charles de Montesquieu.[3] According to Montesquieu, the separation of powers "is the fundamental constitution of a free government."[4] Working from this principle, the Framers established three separate, co-equal departments which were to check and balance each other. The legislative body, our Congress, is the law maker. Its power can be checked by either an executive veto or a judicial declaration of unconstitutionality. Congress balances these powers by maintaining the rights of Senate approval for presidential appointments and treaties, of overriding vetoes by majority vote, and of determining the number of federal judges. These stipulations allow the legislative process to work effectively without becoming all-powerful. They are examples of the separation of powers theory in practice.

The separation of powers tenet, as outlined in the Constitution, has been reasonably successful in the past. During President Andrew Johnson's time, it withstood the attacks of a vengeful and power-hungry legislature. The Reconstruction Congress, eager to punish the prodigal South, tried to nullify the influence of the executive and judicial branches, whose members were not as vindictive. Congress passed the Tenure-of-Office Act to cripple the president. When Johnson continued to exercise his executive rights, there was an attempt to remove him from office through impeachment. The Constitution, however, took precedence with a few honest men, who realized the gravity of their actions.[5] Thwarted, first by the foresight of those Congressmen who voted against impeachment and later by Supreme Court action, the Reconstruction Congress was turned from its unconstitutional course. The separation of powers had

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[1] Alexander Hamilton, Federalist No. 9, Federalist Papers, Chicago, Great Books Foundation, p. 49.

[2] Bernard Schwartz, "The Reins of Power," New York, Hill and Wang, 1963, p. 37.

[3] Richard H. Leach, "Constitutional Government in the American Setting", pamphlet, New York, Robert A. Taft Institute of Government, 1978, p. 18.

[4] Ibid.

[5] Op. Cit., "The Reins of Power," pp. 112-113.

proved its worth by preventing tyrannical action which would have injured the Union.

Other examples of success can easily be found. Every time the president vetoes a bill or the Supreme Court rules a law unconstitutional, the separation of powers is being put to work. The investigation and planned impeachment of President Nixon were part of a legislative check on the unorthodox activities of the executive. When the Supreme Court handed down its recent ruling on the legislative veto,[6] it was exercising its power over Congress, and President Reagan uses his veto pen on legislation he opposes. Although there will always be those who warn of the monarchy of the presidency or the Supreme Court's "activism run rampant,"[7] the separation of powers is still potent and very much in use.

There have been times when the checks and balances have been thrown out of order, and the results have been explosive. Our nation's undeclared wars are good examples. Several executives have taken military action without Congressional approbation. John Adams kept up a war with France from 1798 to 1800 even though a formal declaration of war was never made.[8] Harry S. Truman sent troops into Korea, never consulting Congress on the issue.[9] The legislative and judicial branches could do little to stop the bloodshed and hostilities. they were equally powerless when President Johnson sent the armed forces into Vietnam and when President Nixon took action in Cambodia.[10] The controversial conflicts enraged and frustrated many, but the fact remains that each president acted within constitutional limits. The balance was threatened because there were not enough checks for a weak Congress to use against a strong and active president.

It is worthwhile to note that the checks and balances did not fail in principle. The separation of powers was not at fault in the situations just cited. The strength of governmental powers is determined by those who wield them. A Congress which is weak and spiritless cannot hope to control an executive who is willing to use all his constitutional authority.

There remains the question of relevance. Are the successes great enough to outweigh the failures and to make the doctrine worthwhile? The answer is a definite "yes." Without the separation of powers, this country would be as vulnerable to dictatorship as the unstable countries of South America. What citizen would want to be the victim of malicious legislators? The separation of powers insures that laws are not made as punishment. Who would want a criminal as executive or judge? The separation of powers provides a safeguard against officials who flout the law. Humans do not become gods when they achieve positions of power. If anything, their human imperfections become more prominent. Checks and balances are the means by which our very human executives, legislators, and judges are protected from their own flaws, and what improves our government improves the nation as well.

No one plan can ever hope to solve every problem faced by a nation. Whenever liberals and conservatives meet, there will be differences to iron out. One man's key to success may be another man's downfall. The separation of powers cannot eliminate these things. Human wisdom is merely a faulty tool. It cannot speed up the arguments in Congress, nor was it meant to. Louis D. Brandeis expressed it best when he said:

The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency, but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.[11]

By limiting and controlling the various branches of government, the positive aspects of human wisdom are promoted while its failures are minimized. The United States government is founded on solid ideas so that when men fail and their institutions tumble, there will be a foundation on which to build again. Our basic doctrine is the separation of powers, and on it we can build for another two hundred years.

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FREEDOM OF SPEECH: THE RIGHTS AND RESPONSIBILITIES OF U.S. CITIZENS

(By Margaret Sanchez, First Place Winner, Middlebury, Vt.)

The Constitution of the United States, written by past leaders, has governed the 13 original colonies and new states since ratified. This Constitution, a written series of statements outlining guidelines for the formation of a democratic government and system of ruling, was amended twenty-six times when deemed necessary. Of these amendments, the first ten include certain undeniable rights which led to the group being labeled the Bill of Rights. The rights of freedom of religion and freedom of speech are guaranteed to every United States citizen in the first Article of the Bill of Rights.

The ratification of the Bill of Rights had a large impact on the people of the United States and the nation's industry. The idea that every citizen could freely express himself was well known, but the First Amendment allowed for the individual's rights to be protected when challenged. In 1735, fifty-six years before the Bill of Rights was adopted, John Peter Zenger was charged with seditious libel. Zenger was freed from jail and allowed to continue his printing press. As his attorney, Andrew Hamilton, said to the jury at the time of the trial, "It is not the cause of a poor printer, nor of New York alone . . . It is the best cause. It is the cause of liberty!" Hamilton continued to speak of the "noble foundation for securing to ourselves . . . the liberty . . . by speaking and writing truth." Even though Zenger could not be protected by the First Amendment, his refusal to submit to the laws concerning the criticism of government was the beginning of a foundation being laid for the freedom of speech.

The first Amendment to the Constitution has a great influence on all types of people in the United States. The right of the people to peaceably assemble has guaranteed that the voice of America's people can always be heard when speech or press fail. Martin Luther King was able to peacefully assemble mass numbers of people in public places because of the First Amendment. Freedom of speech permitted King to express his view on how justice in the United States was not being upheld. "We shall overcome" was heard by Americans because of freedom of speech. Martin Luther King could speak to any group of people on a limitless number of topics with the exception of advocating the violent overthrow of the government. However, King wasn't advocating such change. He was pressing the government and the United States citizens not to accept social injustice.

Freedom of speech not only means speaking, but it also includes other means of expression such as the wearing of black armbands to protest the Vietnam War. These were the facts in the case of *Tinker* v. *Des Moines School District*, where the Supreme Court ruled in favor of the student, Tinker, saying that prohibiting the wearing of an armband would be a violation of the First Amendment. Similarly, peaceful sit-in demonstrations and rallies are all legal if they do not violate the rights of others. The right of peaceful assembly has led to many demonstrations and rallies in which United States citizens express their views on what matters need to be changed.

The spearhead movement created in Vermont was also the result of freedom of speech. Groups of people who strongly opposed the creation of more life-destroying nuclear weapons took advantage of freedom of speech and press to inform the world of the now well-known immediate dangers that are caused by nuclear weapons. Pressure, in the form of freedom of speech through rallies, lobbying and printed information, was strongly applied to governments of numerous nations. The campaign for a nuclear freeze and disarmament has left the boundaries of Vermont and leapt across the world into Europe and the Soviet Union. However, persons campaigning in the Soviet Union have a more difficult time since there is no freedom of speech or press to protect their rights.

Not only has freedom of speech affected America's people, but also its businesses. Freedom of speech allows for advertising of the corporations' products or services. A business can advertise in a limitless number of places using the type of advertising it chooses. Full-page ads can be placed in the newspapers or air time can be purchased on

[6] Aric Press, "The Court Vetoes the Veto", Newsweek, vol. CII (4 July 1983) p. 16.

[7] Ibid., p. 18, Norman Ornstein.

[8] Robert Sherrill, "Why They Call It Politics," New York, Harcourt Brace Jovanovich, Inc., 1974, p. 20.

[9] Adrian A. Paradis, "Government in Action," New York, Julian Messner, Inc., 1965, p. 20.

[10] Op. Cit., "Why They Call It Politics," p. 19.

[11] *Op. Cit., The Reins of Power*, pp. 40, 41.

radio and television to expose the world to the businesses' products or services.

Freedom of speech can be misused in advertising just as well as it can be abused by the general public. Rival companies sometimes use advertising as a method of destroying their competition by lying about each others products. However, advertising—and other Commercial speech"—is limited by the First Amendment in order to protect the rights of others. Again, freedom of speech can be used to the extent that it does not infringe upon the rights of other people. But when used properly, the First Amendment rights of freedom of speech and press can benefit a company in advertising.

Entertainment is another field in which freedom of speech and press is used. Producers have the right to create the type of movies they wish. Thay are, however, voluntarily limited to whom they may show the movies by the rating placed on them by a private group, the Motion Picture Association of America.

Publishers also have the right to print the material they wish to in books or periodicals. Their rights of publishing are restricted by the fact that they can only print that which does not infringe upon the rights of others, and that a publication that does infringe can result in a lawsuit.

The freedom to freely express oneself is a right that can not be overlooked because it is also a responsibility. It is the responsibility of any person knowing information that could be vital to the wellbeing of others to use their freedom of speech to make sure the information is known. It is the responsibility of a person to share information with others using any means that is possible. In some cases a meeting of those affected would work, but other times nationwide speeches, books, newspapers, radio or television need to be considered. President Reagan's address to the nation is one example of freedom of speech being used to fill the responsibility of informing the United States citizens of his plans. Senator Leahy fills his responsibility through information contained in newsletters that are sent to all Vermonters.

The numerous toxic waste dumping sites were one important item that was made known to the public through freedom of speech. Radio and television broadcasted reports concerning the locations and the dangers of toxic waste sites, while the newspapers printed information about what government officials were doing to solve this increasing problem.

America's citizens use freedom of speech to lobby Congress in order to enforce the present laws against dumping of toxic wastes and to toughen the laws so no more waste sites will be created.

Voting is another part of the responsibility of freedom of speech. It is the obligation of United States citizens to vote for government leaders and on vital issues once they have been informed. By reading newspapers and documents concerning the topic to be voted on a citizen can better perform his duty of voting. In addition to using other rights secured by the Constitution, when voting, a citizen is using freedom of speech to inform the public of which candidate he feels is qualified or which side of the issue he is taking.

Electing a President is one of the major responsibilities of all voters. Every four years citizens have the opportunity to use their freedom of expression by voting for the presidential candidate they feel will do the best job. In past elections the winning candidate has won by receiving less than fifty percent of the votes. This could easily be changed if more of the citizens who claim that their vote makes no difference would vote.

Once a candidate is found for public office, the responsibility of the citizen does not end. If the new governor or congressman is not doing the job properly, the public needs to be informed so that changes can be made. The citizen who disagrees with an action being made by a public official should also use his freedom of speech to inform the public of his opinions.

Twenty years ago the Supreme Court ruled against prayer in public schools because it violated the First Amendment right of freedom of religion. Since it is prohibited for Congress to make a law respecting the establishment of religion, it could not force schools to open each morning with a reading from the Bible. Now, the same issue is being rediscussed. Many people feel that school prayer is not a violation, and that the lack of it would violate the rights of students.

Whatever the case may be, the fight for First Amendment rights is still going on. Today's fights may be directed to the rights of different minorities, like homosexuals, but it always is a fight for justice. With the oldest national Constitution in the world still in use, the United States' First Amendment rights of freedom of speech, religion, and assembly are the most important and meaningful rights known to man.

THE FIRST AMENDMENT: WHAT IT MEANS TO ME AND HOW IT HAS AFFECTED MY LIFE

(By Sally Keefer, Runner-up, Woodstock, Vt.)

To me, the first clause of the First Amendment means that I have the freedom to belong to any religion I like and worship it however I please. I should not feel compelled by my government to chose any single one. I should not have to worship in school, for my school is a government supported institution. Because of this freedom, I have had the opportunity to attend different church services and to decide which religion, if any, is right for me. Even my parents respect my freedom to make my own choice.

The First Amendment also guarantees that I have the freedom of speech. It means that I have the right to speak my thoughts in public and to let people know how I feel about something. It means that even if people don't like what I say or they disagree with it, I am still under the protection of the law and may not be harmed for what I say. I realize that what I say must be reasonable and truthful. I may not falsely yell "fire!" inside a building full of people, for someone may get hurt in the panic. I also realize that I must not interfere with the rights of others, such as the right to peace and privacy in their own homes. I have exercised this right many times during class meetings and student council meetings in school. During these meetings, many controversial discussions arise and everyone gets a chance to speak his or her opinion. I have told people exactly how I feel about the issues we bring up, and in some cases they listen and agree.

Also under the First Amendment, the press has a certain freedom to print and sell whatever it pleases. It may print anything, but what it prints must be truthful. It may also print information about our government. I believe that this is very important. It gives the people of our country a chance to learn things about the government that the government would not necessarily come right out and tell us, whether it be bad news of something worthy of praise.

The First Amendment also guarantees the freedom of the American people to petition. This means that if I am not happy with the government or something that the government has done, or have a suggestion to make, I start a petition to gain support for my position. I may then present the petition to the proper government official who must then read it. This does not mean that the government has to do something about it, but it must read and consider the point brought forward.

The First Amendment also gives the right to assemble and organize a group. Many times a person will come up with a good idea but can't do much about it alone. Everyone knows that there is power in groups. The Constitution gives me the right to assemble a group to get something accomplished. The Student Council is one group that I have joined to get things done. We represent the student body and as a group, we influence the School Board and faculty in their action. The student body comes to us with its complaints and suggestions, and we in turn devise a solution and carry it out.

The Student Council has made many attempts to change things in the school system. We didn't exactly petition, but we write letters to the principal and to the school board requesting that they consider changing the final exam policy. As it turned out, the School Board did consider our proposal but turned it down. This is still a good example of the use of the First Amendment under the freedom to petition.

We also had a problem with the discipline in our school and the Student Council decided to do something about it. I was sent to the principal as a representative of the Student Council. I informed him of the problem and how the students felt about it. I also proposed a solution to the problem, which he gladly accepted. This was our solution:

MEMORANDUM

To: All Members of the Faculty.
From: The Student Council.
Re: The Problem of Smoking and Unpleasant Conditions in the Bathrooms.
Date: May 11, 1983.

DEAR FACULTY MEMBERS: We have received a number of complaints about the conditions of the bathrooms, particularly the girls' bathrooms in the senior high wing. There is a lot of smoking going on in there, which gives it an unpleasant smell and an uncleanly appearance. We believe that a bathroom should not be a place that students should have to avoid, and that something should be done about the problem.

We would like to ask that you (especially the ladies) please go in there on a regular basis and check to see that no one is smoking. It is against the discipline policy to smoke in the building, and the penalty on the first offense is immediate suspension.

We hope that through a stricter enforcement of the rules, the problem should cease to exist.

Thanks for your help.

Sincerely,

THE STUDENT COUNCIL.

The principal told me that he was glad that we did this. He said that he had tried to get the faculty to check the bathrooms regularly, but many of them refused because they didn't like the task of suspending

people. When the faculty found out how the students felt and saw that we were willing to do something about it, they were willing to help out. Since this letter was sent out, the problem has gotten better. This is another example of the advantage of the freedom to assemble and to petition and how it can work.

The First Amendment was added to the Constitution of the United States of America, because it is a very important part of the American way. Its purpose is to give the people the rights that their ancestors came here for. It guarantees these certain liberties so that the government may stay a "people's government."

I believe that the First Amendment is a very important part of my life. It affects me almost every day. I am very lucky and thankful to have these rights. I will be attending the Green Mountain Girls State Program this summer and will hopefully learn how to become a better citizen.

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THE MEANING AND IMPORTANCE OF THE FIRST AMENDMENT

(By Christopher Fleury, runner-up, Burlington, Vt.)

The First Amendment to the Constitution of the United States is perhaps the most important, and taken-for-granted foundation of American society. Americans reap the benefits of the First Amendment on a daily basis, too often forgetting how fortunate we are such an amendment exists. Many people do not stop to think of the profound impact on our lifestyles the absence of those 45 words would have.

Since its inception nearly two centuries ago, many disputes have revolved around the First Amendment, as people with varying interpretations of it have tried to manipulate it according to their understanding of its meaning. It is inevitable that the paragraph in the Constitution in which some of our most cherished rights are secured would spark a never-ending debate as to its application to modern-day life.

When the Constitution was written in 1787, and the Bill of Rights in 1789, they were written according to the needs of the 3 million people living in the young agricultural nation. But as it expanded and evolved into a world superpower in many respects, that is 225 million people strong, interpretational updating of the First Amendment became necessary.

As new problems and challenges continue to surface in our democracy, new understandings of the First Amendment will always be needed to replace the increasingly outdated application to conditions in 1789. Because such a sacred amendment is viewed from different perspectives by so many people, the Supreme Court is overworked in dealing with the First Amendment cases. However, as time-consuming and at times frustrating those disputes about the meaning of the First Amendment are, they are rewarding exercises of Constitutional principles that are made possible by the First Amendment itself.

A fundamental principle of American society that is stated in the First Amendment is the ability to discuss beliefs with other citizens and express political opinions to the elected representatives who are to execute them. Without the freedom to speak with only minimal inhibitions, society would be robbed of its most democratic resource: ideas. While other countries are devastated by the lackluster morals of its populace, the First Amendment has helped the United States avert this problem. People do not feel frustrated, because they have an outlet for their complaints, and they have the ability to use their democracy to alter unsatisfactory conditions.

Because religion holds a sacred place in the hearts of many people, it is imperative that the First Amendment continue to protect the free exercise of religion. The freedom of religion clause ensures that all religious expression will be voluntary, and each person's spirituality will be respected equally and not be restricted.

The freedoms of speech and press included in the First Amendment are the basic principles that guarantee all the diverse viewpoints and interests a forum. Too often, people watch the evening news and read the morning newspaper and do not realize how privileged they are to take advantage of the work of independent journalists who are free to supply their patrons with whatever type of reporting they want.

Not too long ago, the Congress was discussing the issue of a nuclear arms freeze, an issue which was brought to national attention becuase of a grassroots effort utilizing its First Amendment rights. On the steps of one side of the Capitol a group demonstrated its support for a nuclear freeze, while on the other side of the building a group lobbied in support of President Reagan's defense policies. This was a textbook example of the First Amendment in action. People of both persuasions on the issue being discussed that day simultaneously exercised their right to peaceably assemble.

The final clause in the First Amendment enables citizens to petition their government for changes in policy that better suit the needs and desires of the people. While it is assumed that the victorious candidate will pursue the issues that dominated the campaign once in office, it is possible that people will change their demands on that official midway between elections. This clause of the Amendment allows people the right to demand officials to amend their policies if the majority of his or her constituents feels the official is unrepresentative. While the regularly scheduled elections are the most systematic method of sending a mandate to the government, it is important that the First Amendment recognizes the need for people to use other methods of petitioning to persuade their representatives to be accountable, regardless of how soon the next election is.

Unfortunately, but inevitably, many people have exploited the First Amendment by quoting it in justification of their unsavory actions. Such abuses do tarnish the First Amendment, but not to as great an extent as any attempt to restrict a particular person's or group's access to the freedoms it grants. Any misuse of the First Amendment is in the eyes of the beholder, and in order to avoid leaving the door open to the possibility that the positive benefits of the First Amendment would be sacrificed by arbitrary censorship, such abuse must be tolerated.

It is the duty of our elected officials, our judges, and every citizen to ensure that nobody's First Amendment rights are censored in any way, because as Professor Alan Dershowitz of Harvard University once wrote, "to advocate censorship is to choose not to be able to choose at all."

The First Amendment has played a major role in the development of this nation, and it is too vital to be spoiled by becoming an arbitrary tool for censorship.

THE DOCTRINE OF SEPARATION OF POWERS: A VITAL COMPONENT OF U.S. SOCIETY

(By Birgit Grimlund, Iowa)

"The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes license."—Heraclitus of Ephesus

The answer to the above problem is, in essence, what has challenged statesmen for centuries. Law, characterized by government, inherently conflicts with individual liberty; yet, without mutual coexistence, disorder results—either in the form of anarchy or tyranny. Good government must, therefore, contain some mixture of liberty and law so that neither dominates. This leads to the fundamental question: What is the proper mixture to insure the best system of government? Over the centuries, numerous systems of government have been proposed and debated in an attempt to address this question.

Today the debate concerning one such system, known as the doctrine of separation of powers, still continues and questions the very foundations of our Constitution. While the average American may view the discussion as purely intellectual and only of interest in scholarly circles, he/she is gravely mistaken. The nature of government as it is today and as it affects us is directly related to the guidelines in the Constitution based upon separation of powers. Criticisms, ranging from an ineffective foreign policy to an uncontrollable budget, find their root in the doctrine of separation of powers; few Americans would deny their importance. Yet despite many criticisms and allegations that the doctrine is no longer more than just a phrase, experience has shown that it remains the best system available and major Constitutional changes to it would not be in the best interests of Americans.

Basically, the doctrine, as developed in America by the Founding Fathers, consists of a separation of the three major functions of government, executive, legislative, and judicial, in order to limit the power of government. In its purest form, this theory of government restricts each branch to its respective functions and contends that simply by existing the branches will temper each others' power. However, this provides no active method of control should one branch overstep its realm of power. The Founding Fathers modified the "pure doctrine" in our Constitution by introducing a companion theory of checks and balances which today is virtually synonymous with separation of powers. Through a wide variety of checks and balances, including judicial review, Presidential veto power, and legislative approval of governmental appointees, the

three branches can actively restrain the other branches and consequently, prevent a concentration of power. The obvious value of this is, of course, the prevention of totalitarian rule.

The doctrine of separation of powers had its origins in England during the 17th and 18th centuries. It evolved from an older theory of mixed government which contended that all major interests in society must be involved in the functions of government together to prevent any one from controlling another. During this time, the English government developed three separate branches, the monarchy, House of Lords, and House of Commons, although their functions remained essentially the same. Gradually, however, the monarchy came to mean the executive power, and the Parliament concerned itself with legislative matters.

The real boon which increased the influence of powers came in 1748 with the publication of Charles Louis de Secondat, Baron Montesquieu's book, "De L'Esprit des Loix" (The Spirit of Laws). Previously, the doctrine had been purely English in nature, but with Montesquieu's endorsement, it was transformed into a universal criterion for successful government.

Great statesmen of America's early history were influenced by Montesquieu's work and incorporated the doctrine of separation of powers into many of the origial states' constitutions. The Constitution of Virginia, ratified on June 29, 1776, was a prime example when it stated, "The legislative, executive and judiciary departments shall be separate and distinct so that neither shall exercise the powers properly belonging to the other . . ." However, most states modified the "pure doctrine" in some way such as with a bicameral legislature or executive veto; the experience of states which did not modify the doctrine showed that the "pure doctrine" led to a dominant legislature and an extremely weak executive.

Because of this experience and tradition of separation of powers, by the time of the Constitutional Convention in 1787, most members already trusted in the main tenets of the doctrine of separation of powers. As John Adams said, "It is by balancing each of these three powers against the other two, that efforts in human nature toward tyranny can alone be preserved in the Constitution." And indeed, this attitude expressed itself clearly in the adoption of a Constitution which delineates a system of three main branches. The Founding Fathers also realized that separation of powers alone would not insure a division of power, but tha additional measures to limit the powers were necessary. As a consequence, a system of checks and balances was also included within the Constitution.

Since our Constitution's inception, the three branches have varied in relative importance. Until the Civil War, the legislative branch was generally thought of as being predominant in influence. During the next half century, the courts, in turn, were considered dominant. Currently, the trend seems to be toward greater executive power; a rise signaled by President Franklin Delano Roosevelt's wide array of federal programs initiated during the Depression and expanded since. Many of the social, educational, and regulatory programs and agencies that make up the national government today have heads appointed by the President and under his control. And very recently, the executive branch was given a tremendous increase in power when the Supreme Court ruled that the legislative veto was unconstitutional according to the separation of powers doctrine in our Constitution. This procedure had provided a mechanism for Congress to block actions by the President and regulatory agencies with a Congressional vote. Congress had written the veto into over two-hundred laws, including legislation as significant as allowing some Congressional control over American troops abroad (War Powers Resolution of 1973) and legislation insuring that the Congressional budget is actually spent as appropriated (Congressional Budget and Impoundment Control Act of 1974).

Although the latest judicial decision on the separation of powers doctrine, as well as the doctrine itself, has been criticized, it is important to be aware of some potential consequences that are possible without precautions such as those embodied in the doctrine of separation powers. The horrors of the Third Reich in German are well-known, and few believe that such tyranny could occur in America. And hopefully nothing so blatantly despotic will ever happen again in a democratic society. Yet, the power of a very charismatic, dynamic leader or group of leaders should never be underestimated which is why the doctrine of a separation of powers is so precious in our Constitution.

Hitler's rise to power during the 1930's can be directly corresponded to defects in the German Constitution which effectively eliminated separation of powers. Under the Constitution of the Weimar Republic in Germany, the President could, in a national emergency, invoke Article 48 to suspend basic rights; although, the Reichstag could restrain the President if it so demanded. These rights included personal freedom, freedom of speech, freedom of assembly, and secrecy of communications. In addition, the Constitution allowed the President to dissolve the Reichstag and call for new elections at any time. Article 48 led to the downfall of a democratic nation when President Hindenburg appointed Adolf Hitler Chancellor. Hitler used Article 48 to influence elections by curtailing the right of assembly for opposition parties and outlawing the Communist Party and thus, gaining a working majority of 44 percent. Continuing using Article 48's power, Hitler then arrested all Communist members of the Reichstag in the name of national security. With the resulting majority, he passed a law which gave the executive branch the right to act upon Article 48 without check by the Reichstag; in effect, giving legislative authority to the executive branch and destroying separation of powers. This led to the totalitarian government headed by Adolf Hitler. It seems clear that a stricter Constitution which would have insured separation of powers might have prevented Hitler's rise to power legally, and perhaps, the insanity of his rule would not have occurred.

Another society which rejects the separation of powers doctrine, and should serve as a warning to us, is the Soviet Union. Andrei Vyshinsky, a leading authority on Soviet law, explains:

"From top to bottom the Soviet social order is penetrated by the single general spirit of oneness of the authority of the toiler. The program of the All-Union Communist Party rejects the bourgeois principle of separation of powers."

Undeniably, the result of this "oneness" is far less individual liberty for society. In the Soviet Union, all power emanates from the Communist Party in the Politburu which holds de facto power of making laws and enforcing them in other words, it controls legislative and executive power. In addition, the Party can review and check all judicial decisions which, in effect, also gives it judicial authority. The lack of separation of powers has cost a society many basic freedoms we take for granted.

These two examples of the Nazi experience and of the Soviet Union are important to keep in mind when proposing change to the Constitution and the doctrine of separation of powers. Without some degree of separation, power can become concentrated in one branch, and a gradual erosion of freedom can be the result; perhaps, this would include anything from regulations on businesses to restrictions on a women's personal freedom.

A major criticism of the doctrine of separation of powers is that the division between the executive and legislative branch prevents the Chief Executive from initiating a "balanced" program. Instead, policy originates from a wide array of sources with varied opinions that often conflict with each other. Consequently, critics contend that the resulting policies are simply a hodgepodge of solutions which are often redundant or conflicting and do not deal with problems in an efficient manner. Woodrow Wilson was particulary critical of the separation between the President and Congress because the powerful standing committees of the era diminished Presidental power. He proposed that members of the Cabinet would also serve as members of Congress, thereby, increasing communication between the branches, as well as increasing effectiveness.

Ideally, a coordinated, "balanced" program which would effectively deal with all the nations problems would be in the best interests of all Americans. However, what is a "balanced" program? In the realm of Presidential proposals, both Salt II and Reaganomics were touted as balanced programs; in either case, a significant percentage of the population did not perceive these programs as balanced and rejected them. And even assuming that there were much closer links between the executive and legislative branches, would a majority of Congress ever accept an entire program as "balanced" as long as there was even a semblance of democracy? Probably it would be impossible to create any program which addressed all the nation's problems in a coordinated manner, since it would never be entirely satisfactory to all.

Creating closer ties, such as with a Cabinet-style government as Woodrow Wilson proposed, would only run the risk of power being concentrated in, perhaps, the Cabinet. Possibly the majority of decisions would be made in the Cabinet and then echoed in Congress. Although it is tempting to opt for increased efficiency by decreasing the amount of decisionmakers to just the "good" decisionmakers, that is not the purpose of a democratic society. With the diversity of ideas in the United States, any major increase in ties between the branches would only concentrate power among a smaller group of people and diminish the representation of the diversity of ideas found in our society.

Specifically, a major problem which illustrates the lack or coordination has been the budgetary process. Each Congressperson is influenced by special interest groups located in his/her district, as well as each having a wide variety of different political philosophies. Some say increasing Presidential coordination by reducing the separation of

powers between the branches would solve the problem. However, why risk destroying a delicate balance of power between governmental functions that our forefathers devised, when there are numerous other options available which would not affect the basic political theory our nation was founded upon. At the city and state level, potential solutions are being exercised; many state governors have line by line veto power over the budget, and in many city governments, the legislative body cannot increase the monetary amount of the executive's budget proposal. And there is a proposed amendment to the Constitution, the Balanced Budget Amendment, which could potentially solve the budget crisis, if adopted, without affecting the foundations of the Constitution. All these are ideas that should be considered before reducing separation of powers and running the risk that entails.

James Wilson, Professor of Government at Harvard University summarized the doctrine of separation of powers when he stated, "To paraphrase Winston Churchill, the separation of powers is a poor philosophy, except in comparison with all others." There are flaws in any system, and there will always be problems facing a nation that make Constitutional change seem necessary. Before tampering with separation of powers, however, it is important to study all alternatives. It is difficult to find the best balance of liberty and law in any system of government, but the doctrine of separation of powers has achieved more than any other system of government and should remain precious to Americans today.

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HAS OUR SAFETY VALVE OF CONSTITUTIONAL LIBERTY BECOME OUTDATED?

(By Celeste C. Cook, 2d Place Winner, Iowa City, Iowa)

PART I

Our forefathers came to the New World with the hope of acquiring riches, land and personal freedoms. After achieving these goals, these voyagers felt something was lacking. Their need was a form of government. The main questions involved were: who would rule over the people and who would make laws and decisions? Different attempts were made at finding the right form of government. The Founding Fathers in the *Federalist Papers* specified they wanted to guard our liberty by preventing the accumulation of all powers into the same hands. "The great security consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of others. Ambition must be made to counteract ambition."[1] James Madison stated in the *Federalist Papers*, "If men were angels, no government would be necessary."[2] John Adams, in *The Life and Work of John Adams* revealed, "It is by balancing each power against the other two that tyranny alone be checked and restrained and any freedom preserved in the Constitution."[3] With knowledge, wisdom, and incite these men and additional inspirational leaders created the Constitution.

The first three articles of the Constitution reveal the doctrine of the separation of powers. Article I states that all legislative powers shall be vested in Congress. Article II provides for the executive power in government. Article III reveals the judicial power of one Supreme Court and inferior courts. The principle of the separation of powers was contained in the Declaration of Rights in the Massachusetts Constitution of 1780 where it was stressed that, "This should be a government of laws and not of men." Six of the original states affirmed the doctrine of the separation of powers. Today this concept is approved by 40 state constitutions.

There are three branches of government that arise from the separation of powers: the executive, legislative, and judicial. The executive branch has many functions: initiating policies, although Congress often proposes legislation; recommending legislation, but only a member of Congress can introduce a bill that embodies a law; reporting to Congress on the State of the Union; recommending laws be considered necessary and expedient; convening and adjourning Congress in special sessions; appointing ambassadors, ministers and consuls to represent our country abroad; conducting foreign relations; reducing and adjusting tariffs; and nominating federal judges and other public officers. A large number of public offices can be filled by the President alone. Officials named by the President may be removed at will unless protected by Civil Service. Those confirmed by the Senate have special immunity unless removed by an Act of Congress. The President has the power of pardon or reprieve. He is also commander-in-chief of the army and navy. Control by the executive branch is not unlimited. There are some matters that must be confirmed by the Senate.

The legislative branch is involved with many duties: making laws; levying taxes; raising revenue; controlling broad powers of investigations; and participating with its committees in various executive sessions. However, this last function has been disputed in the past and just recently. In 1944 Congress provided that the Navy shouldn't undertake certain construction without the approval of congressional committees. This was an example of the struggle for power by the legislative branch at the expense of the executive branch. Truman, Wilson, Hoover and Eisenhower were all former Presidents who vetoed bills such as this one saying they violated the doctrine of the separation of powers. According to Dagehot, in The English Constitution, "A legislative chamber is greedy and covetous. It acquires as much. It concedes as little as possible—it will take the administration if it can take it."[4] Thomas Jefferson also felt that "the tyranny of the legislative is really the danger most to be feared."[5]

On Thursday, June 23, 1983, the Supreme Court made a crucial separation of powers decision by banning the use of the "legislative veto" to check executive decisions. By a six-to-three vote Congress can no longer rely on this device to set aside government regulations to Presidential orders. The one-house veto and the two-house veto allowed Congress to exert more influence on rule-making by the executive branch's agencies. The Court decided it was not the Founding Fathers' intention to give Congress that much power. The only Constitutional procedure was to have proposed laws passing through both houses of Congress and then be signed by the President. If the President decides to veto, a ⅔ vote in each house is needed to overrule the veto within a ten day period. the two-house veto recently involved President Reagan's proposed sale of AWACS radar airplanes to Saudi Arabia. The President should execute the laws that Congress enacts in the manner which he decides is most feasible. This is a Presidential prerogative. "The restraints on legislative departments are more numerous than those on the executive because of the broad sweep of powers granted the Congress by the Constitution."[6]

From Article III, Section 1 of the Constitution comes "the judicial power of the U.S. in one Supreme Court and inferior courts." James Wilson, one of the authors of the Constitution, spoke of the evils of a union of legislative and judicial powers—also of the executive and judicial power being united. The judicial branch has the power to interpret and apply the laws. Independence of the judiciary is protected by making the removal of the judges difficult. This is a reality which some see as a real concern for our government. Also federal judges cannot receive diminished compensation while still in office.

In discussing the value of the three branches of government, Lawrence N. Silberman, former deputy attorney general states, "I believe today, as people believed 200 years ago that the separation of powers doctrine is an enormously important protection for American citizens. It makes it difficult for the government to accrue power, a potential threat to the well-being of citizens."[7]

PART II

This section of my paper will deal specifically with the question, "Has the doctrine of the separation of powers, our safety valve of Constitutional liberty, become outdated? Several frustrations in domestic and foreign affairs plus a desire to have a more efficient government have renewed the question of whether the separation of powers still works. Lloyd Cutler, former counsel to President Carter, states, "If we believe that government should do the very least possible in domestic and foreign affairs, the framers had a good system for doing that!"[8] Cutler also feels that this separation is an "anachroism" and definitely needs revision especially between the executive and legislative branches of government. He would support fusing these two branches and thus creating a greater power. Cutler continues by saying, "The President and elected majority in Congress should share the same political fate and take joint responsibility for forming a balanced program carrying it out or living and dying politically by the results."[9] He definitely wants to prevent any "deadlock of democracy." Cutler supports a constitutional convention with the purpose of dealing with the separation of powers.

Henry Brandon, Washington Bureau Chief of the London Sunday Times agrees that a reform of the present American political system is needed as it is one of the oldest and least changed in the world. He reveals, "The office held today by the Amer-

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[1] Footnotes at the end of article.

ican President is far more like the office held by President Washington than that held by Queen Elizabeth II is like that held by George III."[10]

Senate Republican Howard Baker would like to see an official liaison Presidential officer on Capitol Hill. The cabinet members of the houses would then meet at regular intervals to answer questions about executive policy.

There are some individuals who feel strongly that the United States should switch to the parliamentary form of government. With the American system of power distribution there is an institutional independence of the Presidency, freedom of representative assemblies and constitutional separations. With the parliamentary cabinet there is a deliberate integration of legislative and executive leadership. The parliamentary system exists in England, Australia and India. However, in the United States, "No person holding any office under the U.S. shall be a member of either House during his continuance in office."[11] Former President Woodrow Wilson was one who denounced the absolute power of the committees of Congress and the political parties to which the majority in Congress owed allegiance. He supported a cabinet government.

The concept of the separation of powers has often been considered "The most hallowed concept of constitutional theory," and "The very character of the American political system."[12] James Q. Wilson, professor of government at Harvard said, "The separation of powers has brought about the capacity to engage in great national commitments where emergencies arise and has permitted a union to be created out of great diversity by providing separate Constitutional places on which individuals could focus loyalties."[13] Wilson believes strongly that there are no simple changes in the Constitution. Also that the British parliamentary system could not be applied in the United States because of the diversity of our society.

In addition to the suggestion of changing to a parliamentary type of government, there is a recommedation that there should be four coordinating government branches—congressional, presidential, judical and administrative. The point being that Presidents come and go but continuing officials of the administrative bureaucracy remain. There are separate presidential and administrative forces and the bureaus and the agencies have their own political sources and act independently of Presidential wishes. Agency administrators are responsible to the President, Congress, their clients, staff and themselves. They have five masters.[14]

With the Civil Service Act this created a dichotomy within the executive branch between the career and non-career administration. With the non-career people their work span is often four years, but with top Civil Service administrators their experience record can be twenty years or more. They obviously show less partisanism.

Some politicians feel "It is the agency heads, not the President, who have the men, money, material and legal powers."[15]

CONCLUSION

The United States is admired by countries all over the world. We are looked upon as a great nation because of our prosperity, fairness, values and ability to relate to others. The separation of powers makes these qualities possible when the branches of government work within their limits. Our executive, legislative and judicial branches learn to work together through our checks and balances system.

Some people feel we should change our way of government, but if it has worked this long it will continue to serve the people. I feel our safety valve, the separation of powers, has worked successfully in the past and will bring our country more honor and happiness in the future.

FOOTNOTES

[1] Forum, A.E.I., "President vs. Congress—Does The Separation of Powers Still Work?", page 1.
[2] Douglas, William O., *The Anatomy of Liberty*, page 54.
[3] Douglas, opus cited, page 54.
[4] Ibid, page 84.
[5] Ibid, page 85.
[6] Douglas, opus cited, page 84.
[7] Forum, A.E.I., opus cited, page 3.
[8] Ibid, page 9.
[9] Ibid, page 10.
[10] Ibid, page 3.
[11] Douglas, opus cited, page 55.
[12] Merry, Henry J., *Constitutional-Function of Presidential-Administrative Separation*, page 24.
[13] Forum, A.E.I., opus cited, page 5.
[14] Merry, opus cited, page 25.
[15] Merry, opus cited, page 10.

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THE SEPARATION OF POWERS DOCTRINE—A DISCUSSION OF ITS ORIGIN, PERFORMANCE, AND POSSIBLE REVISIONS

(By Jerald Lee Bogart, third place winner, Iowa)

In this essay, I will discuss the separation of powers doctrine in three manners. The first will be to present the background of the doctrine and the form which is used in the United States Constitution. The second will be to analyze the doctrine, as used in our Constitution, after two hundred years of experience. The final manner will be to present my views on the subject of whether the Constitution should be amended in the area of power separation.

The idea of separating government into distinctive branches can be traced back to Aristotle. In his book, "Politics," he advocated a tripartite division of powers into deliberative, executive, and judicial elements. His proposal differs from our system in that his deliberative branch was not a true legislature and his judicial branch consisted of a system of lower courts. Despite these differences, it is clear that Aristotle is the father of power separation.

In "The Spirit of Laws," in 1748, Baron de Montesquieu expanded upon Aristotle's theory. Montesquieu wrote, ". . . it is necessary from the nature of things that power be a check to power . . . In every government there are three sorts of power: the legislative, the executive, and the judiciary . . . When the legislative and executive powers are united in the same person or body of magistrates, there can be no liberty . . . Again, there is no liberty if the judiciary power be not separated from the legislative and executive."

The delegates to the Constitutional Convention were heavily influenced by their own experiences and fears, as well as by these philosophers. The suggestion that the powers invested in government must be balanced was reinforced by two things. The first was the oppression of the colonists by powerful British governors. The second was that the colonists felt legislatures often acted hastily, and thus in an unwise manner, when under emotional pressures. Cynics contend, however, that the true reason for the use of separation of powers was the distrust between the delegates who supported states' rights and those who favored a strong national government. Whatever the reason, or combination of reasons, the idea of dividing the responsibilities of government found its way into our Constitution.

How are the powers separated in the Constitution? Each branch is assigned duties, which are the responsibility of that branch only, as follows:

The legislative branch (Congress) is granted the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare, and many other specified duties.

The executive branch (President) is responsible for executing the laws, making of treaties, and serving as commander in chief of the armed forces.

The judicial branch (Supreme Court) shall have authority in all cases arising under the Constitution, laws, and treaties of the United States.

All responsibilities not designated to a federal branch are to be the domain of the states. A system of checks are also included to keep the balance between the branches. The major provisions are as follows:

Legislative vs. Executive—The President may veto legislation, but Congress can override the veto and the measure becomes law.

Executive vs. Judicial—The Supreme Court may rule that a Presidential action is unconstitutional. The President appoints members of the Court when vacancies occur.

Legislative vs. Judicial—The Supreme Court may rule that legislation is unconstitutional. The Congress controls the number of members of the Court and their salaries.

In order to determine the success or failure of separating the powers of government, the purpose for such a system must be looked at. The reason for dividing the responsibilities is to prevent the accumulation of power by a person or group. The means to this end are constant conflicts between the branches through the system of checks. George Will, in "Statecraft as Soulcraft," best described the purpose of our safeguards when he wrote, "All this is designed to channel and manipulate self-interestedness into a social equilibrium."

Has the Constitution succeeded in preventing power from gathering in one branch? The answer to this is a qualified yes. The qualification is that this success has been achieved through trial, error, and necessity instead of explicit directions in the Constitution.

The Constitution was probably sufficient for a country with three million people. The United States, however, has exploded to approximately 234 million citizens. This expansion and the fact that the Constitution has not been changed with respect to the powers designated to the branches have combined to make this portion of the Constitution obsolete. The demands of this growth have forced the branches to create

powers for themselves which were not accounted for in the Constitution. This creation of power, in itself, is not bad. In fact, some of the additional powers have been of great benefit.

It can safely be said that no branch is excessively more powerful than any other. One branch may be slightly more dominating than the others at this moment, but the checks on it by the other two will bring it back into equilibrium. This balance, however, would not be so easily kept if our government was exactly as the Constitution said it should be. The Constitution, in this area, had one major flaw. It made no part of the government responsible for the interests of the nation as a whole. The members of Congress were to be more concerned with their constituencies than with the nation. Since these concerns often conflicted, the Congress could not be relied upon to serve as a caretaker of the national interest. The President was only to be an enforcer of the laws and a representative to foreign states. In practice, the President found it necessary to become responsive to the needs of all the people. As a result, the President became a major source of legislation pertaining to the entire country. This is probably the most beneficial expansion of power which has occurred. Without it, as the Constitution is, our nation could not have survived as a union. The United States would have broken into many regions with more closely related interests.

I will now present my views on the subject of amending the Constitution. It is important to leave the checks exactly as they are. They are the foundation on which our current government is based. To try to improve upon them would be to risk what we have already achieved. I feel that the current balance between the branches is ideal. However, since our government is not that which the Constitution outlines, it is necessary to bring the Constitution up to date. An amendment to redefine the powers of the branches to reflect their actual condition is needed. The duties assigned in the Constitution should represent the current situation rather than those which were deemed necessary over two hundred years ago. This would mean increasing the power of all the branches, especially those of the President in the area of national responsibility.

Once the Constitution is updated, another two hundred years should not pass before we make additional adjustments. It is important, though, that the government be stable after any changes which occur in the future before those alterations are made. This is in reverse order of the proper way to increase the powers of government. It must be realized, though, that no Constitution can anticipate the future in terms of governmental responsibility. Therefore, the government should adapt to the new situation as it has done in the past. Once the government is settled and it is realized that this is a permanent transformation in our government, then it should be added to the Constitution. This procedure is necessary because it is unwise to amend the Constitution, only to find out that it is a temporary requirement of our dynamic society. We must also guard against attempts to "overhaul" the Constitution. The present one has served its purpose of guaranteeing the freedom of the people. It would be foolish to make drastic changes, for the risks far outweigh the rewards.

I think it is important that we use the convention provision for the purpose of amendment. The reason for this is to provide our leaders with the opportunity to take part in a convention so that they would know what to do if an emergency required changes in the Constitution.

In conclusion, the bases for separating the powers of government were the writings of Aristotle and Montesquieu. The delegates adapted the doctrine to their experiences and fears in framing the United States Constitution. The Constitution has succeeded in forbidding the accumulation of power in a single branch but should not receive all the credit. The best thing we can do is redefine the powers of the branches into the form which they presently exist. The system of checks should not be changed. Finally, the best way to amend the Constitution is by convention because of the valuable experience it would provide.●

ADVANCE NOTIFICATIONS OF PROPOSED ARMS SALES

● Mr. PERCY. 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 $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales 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 two such notifications have been received.

Interested Senators may inquire as to the details of these advance notifications at the offices of the Committee on Foreign Relations, room SD-423.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., October 6, 1983.

Dr. HANS BINNENDIJK,
Professional Staff Member, Committee on Foreign Relations, U.S. Senate, 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 $50 million.

Sincerely,

WALTER B. LIGON,
Acting Director,
Defense Security Assistance Agency.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 28, 1983.

Dr. HANS BINNENDIJK,
Professional Staff Member, Committee on Foreign Relations, U.S. Senate, 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 Northeast Asian country tentatively estimated to cost in excess of $50 million.

Sincerely,

WALTER B. LIGON,
Acting Director,
Defense Security Assistance Agency.●

ON THE PASSING OF TERENCE CARDINAL COOKE

● Mr. D'AMATO. Mr. President, I rise this afternoon to express my heartfelt sadness at the passing of Terence Cardinal Cooke.

It is no wonder that Catholic and non-Catholics alike feel as if a member of the family has been lost with word of the passing of Terence Cardinal Cooke. His genuine affection for people, regardless of religious affiliation, touched the hearts of millions in New York and around the world. His flock included everyone.

With easy grace and an unaffected style, Cardinal Cooke provided spiritual inspiration and encouragement to New Yorkers for the better part of 38 years. Those who first knew him, as a parish priest in the South Bronx. In the late 1940's soon realized that Father Terence Cooke was very special.

Cardinal Cooke epitomized the qualities that history has taught us to make a great spiritual leader.

He shared that uncanny ability to communicate to any and everyone he came in contact with and to let people know he truly cared.

His openness and the way he shared his thoughts with others made you want to listen and understand more.

While practicing a ministry extending well beyond the Catholic Church, the cardinal demonstrated a special love for children, the elderly and the handicapped.

He never hesitated to help those who were less fortunate than others.

If one had a problem, Cardinal Cooke shared it with you and made you feel it was his problem, too.

He strove to follow the example of Christ, and in so doing, set the high standards for his own ministry, one that stands as an example to us all.

A man of great strength and power, the cardinal was more known for his gentleness and humility.

He not only could put people at ease but would instill in them a great confidence to tackle problems head on. Through his own inner peace and strength, he encouraged many.

His spiritual leadership was matched by the practical leadership he brought to the church. Under his stewardship, New York Catholic charities distributed more than $74 million of funds and services to the needy and construction was completed on five nursing homes for the aged.

Because of him, there has been greater participation in the church by lay ministers and a concerted effort to reach out to New York's large black and Hispanic communities.

Cardinal Cooke was the conscience of New York. He taught us to love one another and to dedicate ourselves to helping each other. Even in his final months, fully cognizant of the seriousness of his own illness, the cardinal dedicated himself to others.

In what was to be his last public appearance in August, his own problems took a back seat to the love and care he demonstrated for the mentally retarded and deaf children of the Project Hands program at Cardinal Spellman High School in the Bronx. He taught us that on Earth, God's work must truly be our own.

Terence Cardinal Cooke was special and those of us who were fortunate enough to have known him were genuinely touched by the way he demonstrated all the principles of Christian charity in his daily life.

Cardinal Cooke will be sorely missed.●

NIKOS KAZANTZAKIS

● Mr. TSONGAS. Mr. President, the week of October 10-16, 1983, will mark the centennial birthday celebration of the renowned Greek author Nikos Kazantzakis. In Massachusetts a committee has been organized to sponsor various cultural and educational events to commemorate Nikos Kazantzakis' contributions. Among the highlights will be exhibitions, cultural celebrations, and a lecture entitled "Kazantzakis and Freedom" by the author's widow, Helen. On October 13, Gov. Michael Dukakis will officially proclaim Nikos Kazantzakis Week in Massachusetts.

Nikos Kazantzakis, who died in 1957, is recognized throughout the world as a philosopher, poet, novelist, playwright, and essayist. He expressed the universal struggle for human dignity. As a champion of freedom, truth and social justice, he was awarded the 1956 Peace Prize in Vienna.

In his art, Nikos Kazantzakis made creative use of his extensive travel. His works reflect an energy and sincerity that have enriched the lives of peoples throughout the world.

Greeks from ancient to modern times have been bound by common beliefs in a strong family, in education, and in respect for human rights. The Greek people have struggled continually for independence, social justice, peace, and intellectual freedom. These very beliefs are deeply rooted in Greek thought. Nikos Kazantzakis firmly held to these beliefs. He fought with the power of his pen for freedom and peace.

We Greek-Americans are very proud of Nikos Kazantzakis. During the week of October 10-16, many of us will pause to honor this remarkable man. We hope that those Americans who cherish his works and philosophy will join us in this celebration.●

FORMER SENATOR HARRY FLOOD BYRD, JR., ADDRESSES SOCIETY OF THE SONS OF THE AMERICAN REVOLUTION

● Mr. WARNER. Mr. President, on June 21, my distinguished colleague and the longtime senior Senator from Virginia, Harry Flood Byrd, Jr., addressed the National Congress of the Society of the Sons of the American Revolution in Atlanta, Ga.

Senator Byrd, himself a member of the Sons of the American Revolution, spoke on several important and timely concerns with which we are concerned in this body. Senator Byrd and I enjoyed sitting together as members of the Senate Armed Services Committee, and my deep respect and admiration for his character and his opinion deepens each year.

I would like to share with my colleagues now some of his wisdom and insight into several issues currently before us. A great fiscal conservative, Senator Byrd stressed the importance of his well-remembered and much-needed cautions regarding the expanding national deficit, a concern that I certainly share.

Senator Byrd also offered his perspective on the sensitive situation in Central America. He gained firsthand insight on the struggle going on in many parts of Central America through his trip to the Nicaraguan-Honduran border. Mr. President, I believe his points are well worth review.

I ask that Senator Byrd's speech be printed in full at this point in the RECORD.

The speech follows:

SPEECH BY SENATOR HARRY F. BYRD, JR. TO THE NATIONAL CONGRESS OF THE NATIONAL SOCIETY OF THE SONS OF THE AMERICAN REVOLUTION

I am greatly honored to be invited to address the National Congress of The Sons of the American Revolution.

Meeting with this fine group so dedicated to the ideals and principles of the American Revolution brings to mind how remarkable it is that this nation has survived two centuries of upheaval and transformation with its basic principles largely intact.

In this same period, the world has seen the collapse of Europe's monarchical system, the rise and fall of various emperors, kaisers and czars and the advent of fascist and communist totalitarianism.

Yet America has remained true to the democratic ideals proclaimed in 1776—ideals proclaimed by men who entrusted the fate of this nation to the collective wisdom of the people. Their new republic was widely ridiculed 200 years ago. But surely history has vindicated their faith.

The United States of America is 207 years old. No democratic republic in human history has endured as long.

Perhaps that is because democracy is the hardest form of government to sustain. It requires an uncommon degree of wisdom, patience and participation from the people, from whom all power flows. It is often a slow, arduous, maddening and dangerous way to run a country.

But if democracy is unruly and awkward, its legitimacy is not in question. What communist state, buttressed by secret police, fear and intimidation, can say the same?

The Founding Fathers, of course, were not the first to realize that democracy is a different proposition. The ideal of self-rule has classical origins, and I believe the Greek philosopher Plato accurately captured its spirit. He described it like this:

"Democracy, is a charming form of government, full of variety and disorder, and dispensing a sort of equality to equals and unequals alike."

The great contribution to democracy made by those who fought the Revolution and by those who immediately followed—and the greatest proof of their genius—was their insistence on the supremacy of law. Upon this principle a Constitution and Bill of Right were built.

These laws hold our society together in adversity as well as property. In the midst of change and evolution, these are the fundamentals which never change.

To keep our moral bearings in a changing world, we Americans must refer ceaselessly to these laws. And we must turn back to the vision of those men—Washington, Jefferson, Madison, Franklin and the rest—whose wisdom provides the nation with a noble and common heritage.

Remember that our nation was born in a revolution fought to free the colonies from the tyranny of King George III and the excesses of the British Parliament.

Bitter experience taught the American colonists in the 18th Century that remote and absolute power destroys all liberty.

Indeed, a deep mistrust of governmental power is a recurrent theme in early American history. According to James Madison, a chief architect of our Federal system: "All men having power ought to be mistrusted".

Another noted Virginian, Thomas Jefferson, agreed. He maintained that there must be strong constitutional provisions to prevent undue concentration of power in the government.

In a statement which I feel should be graven in stone in the Senate, the House of Representatives, the Supreme Court and the Oval Office of the White House, Jefferson declared:

"In questions of power, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution".

In recent decades, we have seen the rise of a belief in more government power, a desire to loosen the restraints on those who wield power. It does not matter that those advocates or more government power have good intentions. What matters is that expanding

government control of our lives mean the erosion of our precious freedoms.

Let us recall the words of yet another Virginian, George Mason, who said:

"Let us never lose sight of this fundamental maxim, that all power was originally lodged in, and consequently is derived from, the people".

But how to preserve the power of the people? How to protect the citizen from the endless encroachment of government?

The answer, as Jefferson suggested in his eloquent plea for a strong Constitution, was the supremacy of law.

The fundamental laws fashioned by those far-seeing men in Philadelphia, have proven remarkably durable. We have survived a civil war and dozens of lesser challenges to our unity and our liberties.

But that does not ensure our survival in the years to come.

In order for this nation to survive, and indeed, prosper, in the coming years, we must rededicate ourselves to the lasting principles and "self-evident truths" upon which this nation was founded.

There is, indeed, a definite, long-term trend toward concentration of power in the central government—and that trend is dangerous.

President Reagan has clearly identified this trend and has made substantial progress in combating it. I hope that he will succeed in reversing the flow of power and that his Presidency will not turn out to be an aberration in an era of growing centralization. I am frank to say that I fear centralized government.

Turning once more to Jefferson, who foresaw so much of what was to come to pass in this country, we find that in 1821 he wrote:

"When all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided of one government to another . . ."

The centralization of the recent past has been costly in many ways.

It is costly in dollars, because the citizens pay twice—and heavily—for excessive federal regulation. As taxpayers, they pay the costs of the government's regulatory operations; and as consumers, they pay in price increases the expenses incurred by business in complying with the ever-multiplying volume of rules and regulations.

It is costly in good government because it transfers the center of decision making, even in such a traditionally local matter as education, from local officials to remote and faceless bureaucracies in Washington. And the farther government is from the people, the less responsive it is to the people.

And most tragically, centralized government is costly in human liberty, because the scope of decision open to individual citizens is steadily narrowed by the often arbitrary actions of remote officials.

As I said earlier, President Reagan, more than any other recent president, has recognized this dangerous trend and has done the most to stem it. He has made progress—but the battle is not yet won.

While fighting this battle at home, the President is leading a national effort to resist the infiltration of Communism into our own back yard, namely central America.

El Salvador is the current hot spot in a calculated, coordinated plan for Communists to take over one country after another.

Nicaragua, which adjoins El Salvador, is a marxist dictatorship. Cuba and Russia are furnishing that government both arms and money.

Nicaragua has the strongest military force in Central America. Last year I was in Honduras which borders Nicaragua.

The present Marxist government in Nicaragua is, I am convinced, committed to forcing its Marxism on both El Salvador and Honduras. If those two countries fall to the Communist orbit, Costa Rica and Panama are only a short distance away—as is Mexico.

So I agree with the President. It is very important that Nicaragua not be permitted to export its Communism to its neighbors.

In Honduras I was impressed with the fact that both the people and the government of Honduras are at once friendly to the United States and fearful of a Nicaraguan invasion. While I was at the American Embassy there word came that 103 Nicaraguan farmers had fled their own country and crossed the border into Honduras.

The Embassy asked me if I'd like to fly by helicopter to the area where the refugees were and interrogate them on conditions in Nicaragua.

I accepted (but after going to the airfield and seeing the dilapidated helicopter I must admit I had second thoughts). Nevertheless I flew to the Honduras-Nicaraguan border and spent the day talking through interpreters to the six leaders of those who had flew from Nicaragua.

The refugees described to me a society torn by economic deterioration, forced militarization and a relentless assault on human rights. The refugees said two of their number—a 12 year old boy and his 30 year old father—had been shot and killed by Nicaraguan militia during the pre-dawn escape. All of the refugees were farmers, some growing beans, coffee and corn and others raised cattle. The decision to flee was precipitated when the men of the group were given an ultimatum either to join the Sandinista militia and accept Communism or go to jail.

Conditions appear worse today than they were a year ago.

Communist takeovers almost invariably result in mass flight from the new terror that is imposed. Make no mistake: The strategic interests of the United States are very much at issue in the struggle in Central America. Another Communist take-over in Central America—and that is what Nicaragua, Cuba and the Salvadoran rebels aim at—would propel a tide of refugees through Mexico and across the Caribbean. Our social services and our economy would be severely taxed.

Yet there is a strong element in the Congress of the United States which is seeking to tie President Reagan's hands and prevent him from giving support to the governments of El Salvador and Honduras. There is the same type of thinking today on the part of the liberal news media and on the part of the liberals in Congress that prevailed 24 years ago when Castro took over Cuba. We were told then by The New York Times and those of like thinking, that Castro was not a Communist and that he merely wanted to give to Cuba the same type of New Deal that Franklin Roosevelt brought to the United States.

Castro took over Cuba January 1, 1959, and I spent a great deal of time in Cuba during that year. But before the year was out Fidel Castro himself proclaimed that he not only was a Communist, but had always been a Communist and always would be a Communist. The delightful little island of Cuba has been under the iron thumb of Castro and the Russians ever since.

Yes, I support President Reagan's effort to prevent other Caribbean nations from suffering a similar fate.

Now, finally, I want to mention a subject—and present a few figures—which I feel is the number one problem facing our nation today.

I refer to runaway federal spending. It is totally out of control. The Congress is totally without discipline when it comes to spending.

I do not want to give many figures, but let me give a few.

For the year ending December 1976, the federal government spent $375 billion. Last year the federal government spent $740 billion. Thus, government spending virtually doubled in six years.

The government has balanced its budget only once since Dwight D. Eisenhower left the presidency 22 years ago.

Congress is not willing to say "no" to the pressure groups. Not only has spending not been reduced, but the rate of increasing in spending remains approximately the same each year. For the past six months of fiscal 1983 government expenses skyrocketed by 12.3%—yet inflation is approximately 5%.

I realize there is no political sex appeal in government finance, but it influences the lives of every man, woman and child in the United States.

I am deeply concerned with the accumulated and accelerated deficits of the federal government.

Consider these facts:

1. Last year's deficit for the first time exceeded $100 billion.

2. This year's deficit will exceed $200 billion.

3. The national debt will nearly double between May 1982 and September 1986, a period of four and a half years.

4. The interest costs on the debt this year—this year—will equal one-half of our total national defense expenditures.

5. Federal spending this year will be 25.2% of the gross national product—the highest ever. It was 23% when Ronald Reagan took office.

Let me pose two questions and try to answer them:

One, can this nation take five years of deficits totaling $950 billion?

My answer is that it probably can—but not without severe repercussions and upheaval.

Two, What will be the effect on interest rates and inflation?

I answer that in one word—devastating.

Three years from now the accumulated deficits will require the government to go into the money market for 80 percent of all of the lendable funds. Even today the government is borrowing 54 percent of available funds. You may say, interest rates have declined, but the significant fact is this: Because of the recession, business expansion has been restrained. As the recovery continues business borrowing for expansion and modernization will increase.

The huge deficits added to the already staggering debt are certain to increase interest rates and stimulate inflation. It will not come immediately—perhaps not until 1985—but it will certainly come.

Unsound financial policies in Washington are mortgaging the future of our young people—and jeopardizing home ownership and property ownership.

Deficits also jeopardize our national defense. Military strength in years to come must go hand in hand with economic strength. We cannot in the long run have a

strong military position unless we have a strong economy.

Steady economic growth cannot be assured unless real long term interest rates are brought down to reasonable levels—and that cannot be achieved unless the budget deficits are drastically—drastically—reduced.

In my judgment, the President must moderate his proposed increase in defense spending—and the Congress must cut domestic spending.

But when the Congress completes the budget process I predict defense spending will be less than President Reagan wants, but unfortunately total spending will be substantially more.

I say again, Congress is totally without discipline when it comes to spending.

I hate to leave you on such a gloomy note. But, these are conditions that do exist, and the voters of this country, people like you and me, can do something to improve them. That, as I see it, after 18 years in Washington, is the great challenge of our generation if we are to continue to enjoy the blessings of a free economy and free government.

HONORING THE LEGIS FELLOWS PROGRAM

● Mr. D'AMATO. Mr. President, I rise today to pay tribute to a highly successful program, operated by the Office of Personnel Management, which has proved beneficial to many of us, both in this body and in the House of Representatives. The LEGIS fellows program, in existence since 1980, provides opportunities for some 60 executive branch employees each year to work in the legislative branch. Mid- and senior-level employees, selected by their individual agencies, gain firsthand experience working with a Representative, a Senator, or a committee for from 5 to 6 months. Equally important, each participant brings unique experience and knowledge to the congressional staff office, which is of enormous value to our ongoing functions.

Since early May of this year, I have had the good fortune to have two LEGIS fellows assigned to my personal staff. Ms. Beatrice Disman, of the New York Regional Commissioner's Office of the Social Security Administration, Department of Health and Human Services, and Mr. Edwin E. Urie, of the Department of Defense at Fort Meade, Md., have become valued and fully participating members of my Washington personal staff. Ms. Disman, with 17 years of experience in social security issues and line management, has provided essential knowledge of complex social security and medical matters. Mr. Urie, with 20 years of experience with the Department of Defense, was able to provide valuable insight and background to challenging foreign affairs policy issues. However, other members of my staff have been able to pay them back by giving both of them a broad spectrum of practical experience in the day-to-day operation of the office of a U.S. Senator.

Since both Ms. Disman and Mr. Urie demonstrated wide-ranging interests, we provided them with assignments in a variety of areas. For example, Ms. Disman, in addition to her responsibilities for all aspects of legislation, correspondence, media, and constituent relations related to social security and medicare, was instrumental to my efforts on legislation concerning such disparate subjects as the celebration of the 100th anniversary of the Metropolitan Opera and the preservation of the Railroad Retirement System. Mr. Urie, in addition to his responsibilities related to Foreign Affairs, became deeply involved with a significant refugee immigration issue, as well as some difficult trade problems. Both of these talented individuals were constantly willing to learn and take on new problems and to apply their considerable abilities toward their resolution. I have no doubt that the arrangement has been as profitable to Ms. Disman and Mr. Urie as it has been to me.

I would like to express my sincere appreciation, and the appreciation of my entire staff to Ms. Disman and Mr. Urie. They made significant individual contributions to my office and performed at an outstanding level. I am sure that their experience in my office will be of considerable value to them as they progress in their careers in the executive branch. In short, BeeBee and Big Eddie will be sorely missed when they depart our family. I am certain that we will keep in touch, as I have with several other former fellows, from various programs who have worked in my office in the past.

Mr. President, I urge other Members of Congress to participate in this excellent program.●

MARITIME INDUSTRY WINNING THE DEBATE OVER EXPORTING ALASKA OIL TO JAPAN

● Mr. MURKOWSKI. Mr. President, the Senate will soon consider legislation to amend and extend the Export Administration Act, which contains a provision continuing restrictions on the export of Alaska oil. Oil export is an issue which has stimulated considerable passion in the Congress. Unfortunately, that passion has tended to emphasize political rhetoric over dispassionate and objective analysis.

The October 1, 1983, edition of the National Journal contains an article by Lawrence Mosher, entitled "Maritime Industry Winning the Debate Over Exporting Alaska Oil to Japan," which ably summarizes this complex issue. This piece deserves the attention of all students of public policy, and I commend it to my colleagues for their review and reflection.

Mr. Mosher's article provides a capsule overview of the politics of oil exports and highlights the two stumbling blocks that I have encountered in my efforts to gain limited export of Alaska crude oil in U.S.-flag tankers.

First, not many politicians seem willing to speak up for the taxpayer or the broad public interest in this debate. In his article, Mr. Mosher quotes an administration official as stating that: "The ban benefits a small group with a lot of political clout. On the other hand, it is causing a number of economic distortions that are hurting everyone." Mike Sieminski, energy analyst and vice president of Washington Analysis Corp., goes one step further: "Almost everyone would be better off if the oil could be sold to Japan but those who would benefit—the taxpayers—are not easily identifiable, while those who would be hurt—the maritime industry—are. Who wants to tangle with that?"

The American taxpayer stands to gain $10 billion over the next two decades if Alaska oil can be exported. I do not believe that we should foresake the interests of American taxpayers and consumers by continuing the export ban just because, as one Senate Banking Committee staffer said, "too many people are making money because of the way the system is now."

Second, Mr. Mosher highlights a common misperception which leads to erroneous conclusions about the wisdom of exporting Alaska oil. Many people believe that restricting Alaska oil for domestic consumption will make us—American farmers, commuters, power plant operators—immune, in an oil crisis, to sharply rising world oil prices and will guarantee us all the oil we need at precrisis levels. Nothing could be further from the truth. The sooner we expose the fallacy of this public misperception, the more realistic our energy policies will be.

In the next oil supply disruption, the U.S. farmer, the U.S. commuter, and the U.S. utility operator will be paying the world price for oil, regardless of whether Alaska oil is exported or not. However, if we allow export, oil companies will be given a greater incentive to develop more secure domestic reserves in the high-risk Alaska frontier.

Developed, secure non-OPEC production will help America and the world weather the next crisis. Maintaining the ban will discourage it and increase our long-run reliance on OPEC oil, with the attendant risks we know too well. Exporting Alaska oil will encourage such development and production by increasing the well-head value of Alaska oil.

Mr. President, I ask that Mr. Mosher's article be printed in the RECORD.

The article follows:

MARITIME INDUSTRY WINNING THE DEBATE OVER EXPORTING ALASKA OIL TO JAPAN

(By Lawrence Mosher)

After almost a year of discussion and debate, Congress appears ready to continue the 10-year-old ban on exports of Alaska oil to Japan that was adopted during the height of the past decade's energy crisis.

To supporters of the ban, that outcome bodes well for national defense, for energy security and for the domestic consumer.

To its critics, it is a continuing blow to the Treasury and a deep blow to a maritime industry that depends on the capitve Alaska oil trade, which by law is reserved to U.S.-flag tankers.

Even this country's trade disputes with Japan have been cited to press the point that Alaska's oil should stay at home.

The Japanese "obfuscate everything we try to do with every kind of phony barrier," Rep. Stewart B. McKinney, R-Conn., complained at an April hearing. "Maybe someone will now wake up downtown and realize we are not playing by the Marquess of Queensbury's rules."

On the other side of the argument, Marshall Hoyler, a research fellow at the Logistics Management Institute, called the ban "a scandal." In a new study for the Georgetown University Center for Strategic and International Studies, Hoyler calculated that federal revenues would jump $10 billion over the next quarter-century if the Alaska oil export ban were lifted.

"People have to get beyond the energy security non-issue," he said in an interview. "They think it's a bid idea to ship oil to the Japanese, who have been beating us economically. What they don't realize is that the Japanese won't benefit financially; they'll still have to pay world prices. It's the maritime industry that will suffer. Japan will not be getting a break at our expense."

Both sides of the debate appear to share the assumption that U.S. tankers cannot compete with ships flying under other flags in the world shipping trade.

Critics of the ban thinking that allowing Alaska oil to be shipped to Japan at competitive transportation prices would ultimately reduce the worldwide price of oil, to the benefit of U.S. as well as other consumers. They say it would cost only 60 cents a barrel to ship oil from Valdez, Alaska, to Japan and other Far Eastern markets, compared with $4.50 a barrel to transport the same oil to the U.S. Gulf Coast in American ships.

But McKinney, along with Rep. Howard Wolpe, D-Mich., and other supporters of the export ban say that allowing Alaska's oil to be sold in Asia would drive up the price of oil products in this country by an estimated $1.5 billion a year. This is based on a questionable assumption that the replacement oil for the exported Alaska oil would cost more; a delivered price of about $29 a barrel for the imported oil and about $26 for oil from Alaska.

TO BAN OR NOT BAN

Sen. Frank J. Murkowski, R-Alaska, held hearings on the ban on July 19-20 before the Foreign Relations Subcommittee on East Asian and Pacific Affairs, which he heads. Murkowski is pressing for a partial relaxation of the prohibition that would allow some of his state's oil to be exported but require that it be carried on U.S.-flag tankers.

"The question is whether or not now is the time to allow prevailing market forces to dictate the distribution of Alaska oil," he said. "Is it fair that Alaska is the only state in the nation that has such severe restrictions on exporting oil?"

Alaska produces about 1.7 million barrels a day, or 11 per cent of the nation's annual oil consumption. Half is shipped to the West Coast and half ends up at refineries on the Gulf Coast, Puerto Rico, the Virgin Islands and the East Coast. Murkowski's amendment would allow up to 200,000 barrels a day to be exported.

During Murkowski's hearings and those held by the Senate Banking, Housing and Urban Affairs Committee and the House Foreign Affairs Subcommittee on International Economic Policy and Trade, lobbyists favoring the ban overwhelmed its critics. The imbalance in the testimony was so apparent that Don Bonker. D-Wash., chairman of the House Foreign Affairs panel, felt obliged to apologize for the "lopsided" hearing he held on April 12.

"The effort to remove the ban went nowhere," said Paul Freedenberg, a staff economist for the Senate Banking panel. "Nobody was particularly interested in making a change. Too many people are making money because of the way it is now."

Energy analyst Adam E. Sieminski, vice president of Washington Analysis Corp., described the "non-debate" on the ban as a good example of where the political process has "not operated very efficiently."

"In general, almost everyone would be better off if the oil could be sold to Japan," Sieminski said in an interview. "But those who would benefit—the taxpayers—are not easily identifiable, while those who would be hurt—the maritime industry—are. So who wants to tangle with that?"

The answer, it seems, is hardly anyone. The Reagan Administration has been noticeably ambivalent over the issue. Behind the scenes, the Defense, Interior and Transportation Departments have argued to retain the ban, while the Energy and State Departments and U.S. Trade Representative Bill Brock have argued to remove it.

For the record, William T. Archery, deputy assistant Commerce secretary for trade administration, told Bonker's panel that while the Administration wanted to remove the ban, it had not "made a decision to export Alaskan oil to Japan or any other country."

Snorted Wolpe, "That is disingenuous." Wolpe has cosponsored a bill (HR 1197) with McKinney to make the ban permanent.

The Administration's fear that the ban might be made permanent, in fact, is a major reason that those who oppose the ban have trodden so softly on Capitol Hill. "The ban benefits a small group with a lot of political clout," said an Administration official. "On the other hand, it is causing a number of economic distortions that are hurting everyone."

The ban's legislative origins are in the 1969 Export Administration Act, which gave the President the authority to deny exports of scarce domestic natural resources. But it was the 1973 statute authorizing the Trans-Alaska Pipeline from Prudhoe Bay to Valdez on the Gulf of Alaska that acutally forbade the export of Alaska oil.

That law, as well as subsequent amendments to the Export Administration Act in 1977 and 1979, restricted Alaska oil to domestic consumption unless the President could show that the exports were in the national interest and Congress concurred in a joint resolution. The 1977 and 1979 laws also required a showing that such exports should benefit the consumer within three months.

The prevailing national concern then was energy security, growing out of the oil crisis of 1973-74, which triggered the first world oil price shock when the price for oil sold by the Organization of Petroleum Exporting Countries (OPEC) jumped from $3.39 a barrel to $11.28.

Along with other supporters of the ban, McKinney and Wolpe also contend that removing it would, in McKinney's words, "drydock nearly half the U.S. tanker fleet and idle 20,000 workers" in the shipping industry and related jobs. In addition, they say, the Treasury would lost at least $800 million through loan defaults by shipowners.

The ban's critics counter that only 1,500 full-time maritime jobs would be lost and that the federal government could buy all 26 laid-up tankers for $200 million.

The maritime unions obviously would suffer job losses if Alaska oil could be freely shipped to Japan. U.S.-flag tankers currently monopolize the transportation of Alaska crude oil to West Coast and Gulf ports under the 1920 Merchant Marine Act (also called the Jones Act), which limits coastal shipping to U.S.-built, U.S.-manned vessels. *(See 4/16/83, p. 793.)*

The transportation costs saved by allowing the more efficient marketing of Alaska oil, on the other hand, is one of the reasons why critics of the export ban say it should now be removed.

The cost differential has allowed the ban to "enrich a small number of individuals and corporations, who have formed a vocal interest group in its behalf," acccording to Hoyler. In his study, "The Politics and Economics of Alaskan Exports," Hoyler uses Transportation Department data to show that American seamen's wages are three times higher than those paid in other industrialized countries and six times higher than those paid by less developed countries.

An American second mate, for example, earns $60,550 for six months of work, compared with $17,500 in wages and benefits paid to Western European second mates. Most American sailors work only half a year, which makes the role of the maritime unions primarily that of rationing highly sought-after jobs.

Hoyler noted that the export ban helped to revive "a shrinking U.S. tanker industry" that had been losing business following the Vietnam war. And, as the pro-ban lobby grew richer and more powerful, it prevailed on Congress to add more restrictions on Alaska oil, such as a requirement that the President show that exporting the oil would lower oil prices in the United States within three months.

American consumers would benefit from lifting the export ban, its critics argue, but this long-term effect would take longer than three months to realize. This is because the price efficiency gains from allowing the export of Alaska oil would take five to eight years to generate new Arctic oil production, which in turn would act to lower world oil prices.

Hoyler, Sieminski and Energy Department officials contend that the ban's supporters either do not understand how world oil prices are set or prefer to obfuscate the issue. To them, the contention that American consumers would pay more for gasoline if Alaska sent its oil to Japan is more rhetoric than fact.

The "marker price" for all oil is set by the price of Saudi Arabian oil plus the transpor-

tation costs to a particular port. This price, in turn, is influenced by the supply of oil from non-OPEC sources such as Britain and Mexico. Differences in quality (weight and sulfur content) are also noted.

In his study, Hoyler compares the spot price of Alaska oil to Mexican oil on the Gulf Coast from February 1981 to September 1982. During this period, the Mexican price dropped from $37.32 a barrel to $28.56, while the price of Alaska oil dropped from $37 to $32.86.

After adjusting for their quality difference (on which basis Alaska oil is worth about $1 a barrel more because it is easier to refine), this meant that during that 21-month period, the price of Alaska oil shifted from $1.23 cheaper to $3.30 more expensive than Mexican oil. Thus Gulf Coast refiners could have saved money by buying the closer Mexican oil.

AT THE WELLHEAD

The one area where some consumers might not benefit from lifting the ban is the West Coast, where the Atlantic Richfield Co. is out-selling its rivals by "discounting" the price of its Alaska oil to its own refineries. Much of Arco's ability to do this, its critics contend, stems from the company's tax accounting process, which is now under investigation by the Internal Revenue Service.

The Arco case, regardless of who is right, offers a good example of the way oil price arguments can become slippery. Computing the price of oil, it seems, often depends on who is doing the calculating.

OPEC has acted as a cartel to set the world price politically. But increased oil production by non-OPEC countries, conservation practices and a recession have forced OPEC to drop its price to below $30 a barrel.

Alaska oil, on the other hand, is costlier to produce than Persian Gulf crude, and its quality is poorer. But its wellhead price is about $20 a barrel, a price that bears no real relation to cost.

Arco, for example, computes its Alaska North Slope wellhead price by starting with the price of equivalent "West Texas Sour" crude oil and then deducting tanker and pipeline transportation costs. If West Texas Sour sells for $30 a barrel (its 1982 average was $30.74), then Arco's wellhead price is that less $4.50-a-barrel shipping costs from Valdez to Houston and $6-a-barrel pipeline costs from Prudhoe Bay to Valdez, or $19.50 a barrel.

What bothers the IRS is that Arco uses this artificially low wellhead price to calculate all its taxes for its Alaska oil, although 80 percent of that oil goes to the West Coast, where its transportation costs are only $1.50 a barrel. Thus Arco writes off an additional $3 of shipping costs for most of its Alaska oil.

This accounting procedure allows Arco to pay lower federal "windfall profits" taxes, federal income taxes and Alaska income and severance taxes and royalties. All of these taxes are calculated on the basis of wellhead prices in Alaska.

The consequences of this pricing system are twofold. One is that it allows Arco to "discount" the cost of its oil to its own refiners and thus undercut its competitors on the West Coast. The other is that it motivates Arco to prefer paying the higher shipping costs to the West Coast and the Persian Gulf rather than selling its North Slope oil to such East Asian markets as Japan at a higher wellhead price.

"Because a sale to the Japanese at Valdez would create a real transfer price," argued Jack A. Blum, a Washington lobbyist for the Independent Gasoline Marketers Council, "it would significantly raise Arco's windfall profits tax payments. The irony of this situation is that even though the Japanese would pay more for the crude at Valdez than the companies now make on product, because of the way they do their tax calculations their net profit would be lower."

Arco's president, James S. Morrison, denied this assessment to the House Energy and Commerce Subcommittee on Oversight and Investigations last Feb. 23, calling it "farfetched." Yet Arco continues to support the export ban, unlike Standard Oil Co. (Ohio), another major Alaska producer, which now has called for its lifting.

"There is no perfect answer," Sieminski said. "But in general, everyone would be better off if the oil could be sold to Japan because they would pay more for it. Only the maritime unions would be hurt."

Critics of the ban, however, have a harder time dismissing the energy security issue. If foreign oil supplies were again disrupted, the idea of exporting U.S. oil makes little sense to the ban's supporters, which include such groups as the National Farmers Organization and the American Public Power Association.

Charles L. Frazier, director of the farmers' Washington office, said his organization is still "bitter" over the past oil price increases. Thus his group favors "retaining control" of Alaska oil.

To experts such as Hoyler, however, the United States will remain just as vulnerable to another oil crisis even if the Alaska oil export ban is kept. Hoyler argues that regardless of this country's desire to be energy independent, is still part of the world oil market and will remain so. When oil supplies are disrupted, Hoyler maintained, "the price of oil goes up everywhere."

In the long run, he contends, permitting the export of Alaska oil would actually improve this country's energy security by increasing the world oil supply from a politically stable area. Thus when another supply disruption occurred, there would be less need by such consumers as Japan to panic and bid up the price, which is what happened in 1973-74 and again in 1979.

The Administration agrees, but its spokesmen are still muffling their views. In an interview, however, William J. Silvey, the Energy Department's associate director for planning and analysis, went this far:

"The congressional perception does not yet appreciate the fact that there is one world petroleum market and that we are part of it. By keeping the Alaska oil export ban, we are just charging ourselves more than we need to. Only the windfall this time is going to the shipping industry instead of the oil companies."●

RHODE ISLAND'S DEPARTMENT OF ELDERLY AFFAIRS

● Mr. PELL. Mr. President, I would like to note for the RECORD and for my colleagues the excellent work done for Rhode Island seniors by the Rhode Island Department of Elderly Affairs. This agency is the sole statewide unit in my State for the delivery of Older Americans Act programs, and it has provided those services with nothing but excellence and innovation since the creation of the Older Americans Act in 1965.

The Visitor, the newspaper of the Diocese of Rhode Island, carried a short but descriptive article about the department of elderly affairs in its September 29, 1983, issue. So that my colleagues and others interested in senior affairs can learn more about this effective Rhode Island agency, I ask unanimous consent that the Visitor's article be printed in the RECORD.

The article follows:

DEA ANSWERS QUESTIONS AND OFFERS PROGRAMS FOR ELDERLY

(By Joyce Reynolds)

"We make it our business to know a little bit about everything," says William J. Speck, information planner for the Department of Elderly Affairs. And a little bit about everything is what you can find through the department which is the official representative of the state's 176,373 citizens age 60 and older.

Whether your question concerns food stamps, social security, a problem with aging parents, energy, legal services, or a part-time job, the Department of Elderly Affairs is ready to answer.

According to Speck, the information and referral unit (277-2880) responds to over 30,000 calls each year from throughout the state in addition to receiving collect calls from more distant residents.

The department was established in 1977, and is the single organizational unit that is solely responsible for the administration of federal funds under the 1965 Older Americans Act.

According to Anna Tucker, director, "The Department of Elderly Affairs works to secure and maintain maximum economic and personal independence to preserve independence and dignity for older Rhode Islanders by providing supportive services and removing individual and social barriers to that independence."

Programs and services offered through the department touch on every avenue a senior might travel.

At the 42 senior centers throughout the state, the elderly are offered health services, recreational services, social services, and in most cases the centers serve as meal sites.

The centers are open from 9 a.m. to 5 p.m. Monday through Friday, Speck explained, adding that a few are open seven days a week. "Many of the centers offer outreach services—they are busy hubs in their communities," he said. There are also 52 elderly meal sites throughout the state.

The Community Service Employment unit, places older workers in subsidized jobs in nonprofit community agencies. This is a two-point program, according to Speck. The first, funded by a grant from the U.S. Department of Labor, subsidizes job slots in local government agencies, city hall, and community action programs. The second works to find jobs for persons 55 years or older by contacting private employers. Part-time and shared jobs can be found for seniors through this program.

Speck said that the Senior Community Service Employment unit is not the only agency in the state to offer this type of program. He said the National Council of Senior Citizens has offices in Providence and East Providence, and the American Association of Retired Persons has offices in Providence, North Kingstown, Woonsocket, and Newport.

The In-Home Service Program operates through a small grant from the Rhode Island General Assembly, and offers homemaker services to persons 65 and older who are homebound and in need of regular medical assistance, and are enrolled in the state Medicaid Program. A homemaker will spend one to two hours a week helping the homebound individual, according to Speck. He said the program has proven its need, and its success by the number of people waiting to use the program.

The Senior Companion Program continues into its ninth year of providing employment and volunteer opportunities for low-income older people. Many elderly people are lonely living in their own home, Speck said. They need regular contact with people. The program works by having senior volunteers visit the elderly in their homes in addition to working with long-term care patients in state institutions. Senior Companions receive a $2 stipend per hour for a 20-hour week.

Terri Pare is a pre-planning retirement expert, who offers pre-retirement courses, through the department, such as the two currently being offered at the Pawtucket Public Library and the D.E.A. office in Providence. "She offers a multifaceted approach to pre-planning retirement," Speck said. "She doesn't only look at retirement in general, but at housing issues, health issues, and consumer problems.

Ms. Pare, according to Speck, promotes the need for people of all ages to think about retirement, "as a stage of life, not a leftover."

Other programs offered through the Department of Elderly Affairs include transportation funding to provide door-to-door service for routine medical trips, transportation to senior luncheon programs, and to critical treatment facilities for dialysis or cancer patients.

And for those seniors who have fitness on their minds, Dolores Bergeron has initiated walking clubs at senior centers and aquatic exercise classes at pools throughout the state and coordinates the Senior Olympics held annually.

Home energy assistance funds for the elderly are also channeled through the department, and the Long-Term Care Ombudsman Program responds to requests for information and complaints about nursing home care and shelter-home care in Rhode Island.

The Elderly Abuse unit investigates elderly abuse, both physical, psychological, neglect or exploitation.

A Legal Service Developer sees that old people have access to legal services . . .

The Mental Health unit assures elderly persons of access to mental health care services . . .

And the list goes on and on. If you want to spend a day at Rockey Point or to represent your community by participating in the Silver-Haired Legislature, the Department of Elderly Affairs is the office to contact. Whatever your need the department is there to serve you at 79 Washington St., Providence, or by calling 277-2880.●

THE DEPLOYMENT OF SS21 BATTLEFIELD MISSILES

● Mr. D'AMATO. Mr. President, I rise today to voice my grave concern over reports appearing in this morning's newspapers regarding the deployment of SS21 battlefield missiles in Syria. The SS21 missile is one of the newest and most advanced surface-to-surface missiles produced by the Soviets. These sophisticated weapons have the potential of carrying nuclear warheads and have a range of more than 70 miles. Their transfer to the Syrians only serves to enhance that nation's extensive arsenal. It contributes to the further destabilization of the region. The shipment of these advanced weapons by the Soviets represents a concerted effort by the Kremlin to gain a more secure foothold in the Middle East.

The U.S.S.R. has virtually armed the Syrians to the teeth. In addition, more than 5,000 Soviet military personnel are operating in Syria. The placement of SS21 missiles in Syria poses a direct threat to the security of Israel. Military analysts have concluded that their deployment significantly increases Syria's military position, particularly in light of the missile's greater range and accuracy. This enhancement has improved the combat capability of the Syrians, giving them the potential of striking a number of strategically important airfields and other targets located in northern Israel. The timing of the deployment is especially alarming, as it comes during a period of great volatility in Lebanon.

Today, the Syrians maintain the largest army in Lebanon—a force in excess of 40,000 men. At the same time, thousands of PLO terrorists are being redeployed in Lebanon and have been joined by so-called volunteer soldiers from Iran. These forces are providing critical military and moral support to Lebanese factions sworn to the overthrow of the legitimate government of President Amin Gemayel.

In reality, Syria, with the backing of the Soviet Union, has been, and continues to be, the major obstruction to a peaceful resolution of hostilities in the region. Syria has repeatedly rejected U.S. and other initiatives designed to secure a just and lasting peace in the Middle East. President Assad has refused to withdraw his troops from Lebanon, despite the signing of the Lebanon-Israel withdrawal agreement.

The continued presence of Syrian troops in Lebanon only exacerbates the serious tensions which exist in that country. The time has come for all foreign troops to be withdrawn from Lebanon. Lebanon should be returned to the Lebanese.

The transfer of Soviet SS21 missiles to Syria seriously upsets the military balance in the region. We must recognize the significance of this escalation. We must realize the threat which it poses to peace in the Middle East, in general, and, in particular to the security of Israel, a proven ally.●

ORDERS DURING ADJOURNMENT

Mr. BAKER. Mr. President, finally in a moment I intend to ask the Senate to adjourn. Before I do so I shall propound a unanimous-consent request in this form:

Mr. President, I ask unanimous consent that during the adjournment of the Senate over until Monday, October 17, messages from the President of the United States and the House of Representatives may be received by the Secretary of the Senate and appropriately referred, and that the Vice President, the President pro tempore, or the majority leader may be authorized to sign duly enrolled bills and joint resolutions.

I further ask unanimous consent that during the adjournment of the Senate over until Monday, October 17, committees may be authorized to file reports on October 12, between the hours of 9 a.m. and 3 p.m.

Finally, I ask unanimous consent that when the Senate reconvenes on Monday, October 17, the reading of the Journal be dispensed with, no resolutions come over under the rule, that the call of the calendar be dispensed with, and following the recognition of the two leaders under the standing order there be a period for the transaction of routine morning business not to exceed 1 hour in length, with Senators permitted to speak therein for not more than 10 minutes each; provided further that the morning hour be deemed to have expired.

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

PROGRAM

Mr. BAKER. Mr. President, may I say that when we convene on October 17, after the period for the transaction of routine morning business has expired, it is my understanding that the State authorization bill which is the unfinished business will recur and be placed before the Senate; is that correct?

The PRESIDING OFFICER. The majority leader is correct.

Mr. BAKER. Mr. President, I do not anticipate a busy legislative day on Monday.

On Tuesday and Wednesday the Senate will be committed to the debate and disposition of the Martin Luther King holiday bill. But after that is disposed of, the State authorization bill will once again recur as the unfinished business.

And I fully expect, Mr. President, to ask the Senate to complete action on the State authorization bill during that week if possible.

Mr. BYRD. Mr. President, will the majority leader yield at that point?

Mr. BAKER. I yield.

Mr. BYRD. The State authorization bill which is the unfinished business will come before the Senate on Monday. I will not be here part of the day Monday at the request of our former colleague, Senator Javits, who has asked me to appear in New York on Monday to speak and I felt compelled to accept this invitation. I will not be here on Monday at least most of the day and I hope that the majority leader will request that no action be taken on my amendment on Monday at least while I am not here.

Mr. BAKER. Mr. President, I will be happy to do that. I was prepared to say that in view of the fact that the majority leader will be absent for a part of that day, as will I for the same meeting, it would be well, I think, for us to announce that there will not be a disposition of that measure on Monday and that it will go over until at least Wednesday afternoon, perhaps Thursday. I would be happy to propound a unanimous-consent request to that effect if he wishes.

Mr. BYRD. That would be very satisfactory with me.

Mr. BAKER. Very well.

Mr. President, then I ask unanimous consent that notwithstanding that the unfinished business, the State authorization bill, will recur as the pending business at the close of the time for the transaction of routine morning business on Monday, October 17, no action be taken on or in respect to the Byrd amendment in the first degree or in the second degree.

Mr. BYRD. Would the majority leader just include the entire bill?

Mr. BAKER. Very well. Mr. President, that is simpler. Mr. President, I ask unanimous consent that no action of any sort occur on the bill, the State authorization bill, after it recurs as the pending business on Monday and that nothing in this request will jeopardize the status of the bill as the unfinished business.

Mr. BYRD. Or the amendment.

Mr. BAKER. The bill or any amendments as the unfinished business.

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

Mr. BYRD. Further, if the majority leader will yield, it would appear that when final action occurs on the Martin Luther King bill on Wednesday, the unfinished business, the State Department authorization bill, would again come down.

Mr. BAKER. Yes.

Mr. BYRD. Now, can we alert our colleagues that there will be a vote in relation to the Byrd amendment on Wednesday at that point?

Mr. BAKER. Mr. President, I cannot do that. I do not know how much debate there will be on it, but I fully expect a vote on the Byrd amendment Wednesday or Thursday certainly that week but I would guess Wednesday or Thursday.

Mr. President, there is one other matter that has been brought to my attention that I might announce. The export administration bill has been extended by action of the House of Representatives and Senate until midnight on October 14. Since the Senate will not reconvene until noon on October 17, that act will expire for a period of 3 days. I wish to say to Senators that I fully expect that in the meantime active negotiation will be conducted looking toward a further extension of the Export Administration Act. I would expect that action will be taken on that on Monday. I do not anticipate, however, a rollcall vote on that measure. But because of the urgent necessity to try to deal with that subject I felt that I should put Senators on notice of the likelihood that that measure will be taken up on Monday.

Mr. President, let me put another request for the convenience of Senators and it would certainly help me with my schedule on Monday since I, too, have accepted an invitation to speak for our former colleague, Senator Javits, at a nonpolitical function in New York, as has the minority leader.

ORDER FOR EXTENSION OF MORNING BUSINESS

I ask unanimous consent that the time for the transaction of routine morning business be extended under the same terms and conditions as ordered for Monday, October 17, until the hour of 3 p.m., in which Senators may speak for not more than 5 minutes each.

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

Mr. BYRD. Mr. President, would the majority leader also point out that there are other Senators who will be attending that same function other than he and I?

Mr. BAKER. Yes. Mr. President, a number of other Senators both Republicans and Democrats, and may I say that it is in the nature of a seminar, a political seminar at Stony Brook, N.Y., sponsored by the former colleague, the former Senator from New York, Senator Javits. And it really is not only an important event from that standpoint but it is important in terms of human circumstances as well.

It will not take me but a minute to say this but I cannot overstate my admiration for Senator Javits not only as a man, as a great former Senator, but also because under the most severe physical handicap he has continued his interest in the national affairs of this country, witnessed by the fact that he is conducting this seminar on October 17.

His breathing must be assisted 24 hours a day by a respirator. His energy level is not always very good. He must struggle occasionally to breathe and finds it very difficult to move and is confined to a wheelchair. But none of that has dimmed the activity and the alertness of that great mind of his and I, for one, am delighted to have a chance to go there and not only to participate in this civic event but also pay tribute to a great American.

Mr. BYRD. I associate myself, Mr. President, with the remarks that have been made by the distinguished majority leader.

Mr. BAKER. Mr. President, if the minority leader has nothing further, I am prepared to adjourn.

Mr. BYRD. I am halfway out the door.

ADJOURNMENT UNTIL MONDAY, OCTOBER 17, 1983

Mr. BAKER. Mr. President, I move, in accordance with the provisions of Senate Concurrent Resolution 184, that the Senate now stand in adjournment until the hour of 12 noon, October 17, 1983.

The motion was agreed to; and at 3:49 p.m., the Senate adjourned until Monday, October 17, 1983, at 12 noon.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 7, 1983:

UNITED NATIONS

Alan Lee Keyes, of California, to be the Representative of the United States of America on the Economic and Social Council of the United Nations, with the rank of Ambassador.

DEPARTMENT OF COMMERCE

Clarence J. Brown, of Ohio, to be Deputy Secretary of Commerce.

UNITED NATIONS

The following-named persons to be Representatives and Alternative Representatives of the United States of America to the 38th Session of the General Assembly of the United Nations:

Representatives

Jeane J. Kirkpatrick, of Maryland.
John Langeloth Loeb, Jr., of New York.
Joel Pritchard, U.S. Representative from the State of Washington.
Stephen J. Solarz, U.S. Representative from the State of New York.
Jose S. Sorzano, of Virginia.

Alternate Representatives

Constantine Nicholas Dombalis, of Virginia.
Alan Lee Keyes, of California.
Charles M. Lichenstein, of the District of Columbia.
Lyn P. Meyerhoff, of Maryland.
William Courtney Sherman, of Virginia.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Hugh W. Foster, of California, to be U.S. Alternate Executive Director of the International Bank for Reconstruction and Development for a term of 2 years.

INTERNATIONAL ATOMIC ENERGY AGENCY

The following-named persons to be the Representative and Alternate Representatives of the United States of America to the 27th Session of the General Conference of the International Atomic Energy Agency:

Representative

Donald P. Hodel, of Oregon.

Alternate Representatives

Richard T. Kennedy, of the District of Columbia.

Nunzio J. Palladino, of Pennsylvania.

Richard Salisbury Williamson, of Virginia.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

DEPARTMENT OF JUSTICE

Francis M. Mullen, Jr., of Virginia, to be Administrator of Drug Enforcement.

ENVIRONMENTAL PROTECTION AGENCY

A. James Barnes, of the District of Columbia, to be an Assistant Administrator of the Environmental Protection Agency.

Josephine S. Cooper, of Virginia, to be an Assistant Administrator of the Environmental Protection Agency.