SENATE—*Thursday, July 26, 1984*

(Legislative day of Monday, July 23, 1984)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our prayer will be offered by Dr. Don Benton, pastor of Lovers Lane United Methodist Church, Dallas, TX. He is sponsored by Senator LLOYD BENTSEN.

PRAYER

The Reverend Doctor Don Benton, pastor, Lovers Lane United Methodist Church, Dallas, TX, offered the following prayer:

God of each of us and to all of us, God of our Nation and of all peoples in all the world, we bow humbly to claim and to acknowledge Your presence with us and to contemplate Your mystery and majesty.

You are one. We are many. You have chosen, therefore, to be in our lives and to work through us to fulfill Your purposes in the world. We are not our own. We are Yours. Grant us humility to claim that and to see ourselves in proper perspective. Grant us grace and power to be faithful.

Especially for these upon whom great responsibility rests and to whom many doors of opportunity are open, we pray for vision to see Your will for each of their lives, for those of us who trust them, and for the world. Give them courage for that which is right in Your sight and in the inner confirmation of peace that they have sought it rather than what is expedient, popular, or temporary.

In the unfinished task of freedom, may they pass laws and create opportunities which may increasingly free us and all peoples of the world to know the limitless blessings of liberty and justice for all.

Hear us, then, as we claim Your presence; thank You for all Your blessings in the past and as we report for duty for the future which unfolds to us, for Your glory and the fulfillment of each of our lives. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. BAKER. I thank the Chair. Mr. President, I yield to the acting minority leader.

Mr. BENTSEN. I thank the distinguished majority leader.

REV. DON BENTON

Mr. BENTSEN. Mr. President, I am delighted to have Dr. Benton with us this morning to deliver the prayer. After listening to the message and the content of it, I know that feeling is shared by all of us. Dr. Benton is not only my good friend; he happens to be married to a very beloved cousin of mine. He is a graduate, as I am sure the majority leader would be interested, of the Presbyterian seminary, he was reared in a Baptist family, and he received his doctorate from Southern Methodist University. So he is somewhat ecumenical.

He is not a flamboyant preacher, but he is a man of deep and sincere convictions. He is articulate, and he is persuasive. I think his messages are inevitably thought provoking; they are very sincere and to the point.

But he is much more than a sermonizer. He does not just stand on the pulpit on Sunday and talk good works. This man performs them. He does not just talk about helping the poor, the meek, and the heavy hearted. He puts out a helping hand.

For several years he has been pastor of the United Methodist Church in Dallas. It is one of the largest Methodist congregations in our Nation—in fact, the third largest in the entire world. Under Don's leadership for these many years, the church has been actively involved not only in spreading the word of God but also in reaching out to the community to help those in need, to help those who are less fortunate.

Don is a man of great compassion, with a concern for children. Don Benton helped start one of the very early homes for runaway children. He has been very active in it and has been very helpful in doing what can be done for these troubled young people, in many cases helping reunite them with their families. He is an officer of the International Board of the Methodist Church for Refugee Relief. He has filled a major role in assuring that the money raised for this program gives the most good to the greatest number of those seeking to escape oppression. I am very proud of Don, of his wife and his children. Rose Marie Benton is a very invaluable member of this team. She has filled a difficult role of preacher's wife with charm and patience and enthusiasm.

Mr. President, I am very honored that Dr. Benton has shared this time with us, and I am most appreciative of the majority leader yielding me time.

Mr. BAKER. Mr. President, I thank the Senator from Texas, who is one of our most valued Members on either side of the aisle, and we express our gratitude to him for giving us the opportunity to pray with Dr. Benton today.

Dr. Benton perhaps does not know, but Senator BENTSEN does, that I find it almost irresistible after the prayers of our good Chaplain and frequently of our visiting chaplains, to make comments always flattering and complimentary because they are always good, and this is no exception. It was an excellent prayer, and I thank him for it. I cannot resist the temptation of pointing out that the Methodist Church which he pastors in Dallas must be one of the most straightforward, practical groups I ever saw to put a church right there on Lovers Lane. I cannot also resist saying I am a Presbyterian, my mother was a Baptist, and my father was a Methodist, so I understand fully the business of cross-affiliations. I have always felt in my family that it was in the nature of taking no chances.

I thank the distinguished clergyman who is with us this morning. I congratulate him on his prayer, and I express the gratitude, I am sure, of the entire Senate to Senator BENTSEN for making it possible for us to participate with him in this service this morning.

SENATE SCHEDULE

Mr. BAKER. Mr. President, may I say, in the nature of the agenda of business today, that after the special orders are executed—there are two of them—there will be a period for the transaction of routine morning business until noon. After that, Mr. President, there is no unfinished business and we have not laid down any other measure, but it is the intention of the leadership on this side to ask the Senate to go into executive session for the purpose of considering the nomination of Judge Wilkinson to be a judge of the Fourth Circuit Court of Appeals.

Mr. President, I have no illusions about finishing that matter today, but I do anticipate that a cloture petition will be filed. I have advised the minority leader of that situation.

After that, Mr. President, it is possible that the leadership on this side will ask the Senate to resume legislative session and we may consider a number of measures, but three come

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

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to mind at the moment: The child abuse bill, the hydroelectric powerplants bill, and perhaps the antitrust R&D bill. These matters are not cleared, and I make the announcement now so that all Members will be aware of the possibility and that the leadership on this side is attempting to prepare these matters for consideration.

Mr. President, there is a small possibility that we might get another appropriation bill today or tomorrow. I am told that the Milcon bill and the D.C. bill may come out of committee without a report. I do not know that yet. However, as Members know, the leadership on this side is anxious to do as many appropriation bills as soon as possible. So now I do not add that to the list of things I would like to see us do today, but I urge Senators to consider that if we can qualify another appropriation bill this week, the leadership on this side will attempt to do so.

We will be in session tomorrow. I do not expect the Senate to be in session on Saturday.

Mr. President, I ask unanimous consent that the time for the minority leader under the standing order may be reserved for his use at any time during the course of this calendar day.

The PRESIDING OFFICER [Mr. MATTINGLY]. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I thank the acting minority leader. Does he have any further remarks to make at this time?

Mr. BENTSEN. I have no further remarks.

Mr. BAKER. Mr. President, I do not see the special order recipients on the floor. I ask unanimous consent that it may be in order for me to suggest the absence of a quorum, without the time being charged against their special orders.

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

Mr. BAKER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Assistant Secretary of the Senate proceeded to call the roll.

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

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

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized for 15 minutes.

YES, "STAR WARS" WILL CARRY NUCLEAR WAR INTO SPACE

Mr. PROXMIRE. Mr. President, this is the third in my series of speeches in response to Gen. Daniel Graham's letter to me supporting the administration's strategic defense initiative or "Star Wars." General Graham has phrased his support of "Star Wars" in the form of rebuttals of the arguments be considers the most significant against this administration program. Mr. President, I ask unanimous consent that General Graham's third rebuttal in support of "Star Wars" be printed in the RECORD at this point.

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

3. IT MILITARIZES SPACE: CREATES A SPACE ARMS RACE

Answer. Space is already "militarized." 85% of all Soviet satellites are military and 50% of ours are also. If there ever were a nuclear war, space would be full of the most awesome of military machines going in both directions. Further, the Soviets have already developed two generations of space weapons, antisatellite systems.

As far as "arms race" in space is concerned, High Frontier would indeed change the nature of the strategic competition between the superpowers. Today the competition is in the field of more and better offensive nuclear weapons. High Frontier would shift that competition to non-nuclear defensive systems in space, designed to kill weapons, not people. Who can say that would not be an improvement?

Mr. PROXMIRE. General Graham argues that extending the nuclear arms race into space would be "nothing new"—that "space is already militarized." Is General Graham right? Is space already militarized? If so, have there been documented charges that either of the superpowers have violated the Anti-Ballistic Missile Treaty? One purpose of that treaty is to prevent the militarization of space. This Senator is not aware that the Soviet Union has made any charges of violation against the United States that have been documented or have persuaded neutral observers that we have failed to observe that treaty. It is true that we have challenged the Soviet Union to defend a new Siberian radar that is not located on the periphery of the U.S.S.R. as required by the ABM Treaty. The Soviets claim that their radar does not meet the treaty definition as any part of an ABM system because its purpose is to detect hostile aircraft penetration, not missile activity.

Of course, we can and should pursue this potential violation thoroughly. But General Graham does not even raise this question. Nor does the general in his argument recognize the treaty agreed to by both superpowers prohibiting placing in orbit or in outer space any nuclear weapons or weapons of mass destruction. We have not challenged any Soviet activity as a violation of this treaty—if there has been such a violation, General Graham does not cite it. If he cannot show any violation of a treaty that has been in force for years prohibiting the deployment of nuclear weapons in outer space, what happens to his argument that space is already militarized?

General Graham supports his sweeping generalization that "space is already militarized" by a single assertion, again back up with no documentation whatsoever. He contends that 85 percent of all Soviet satellites and 50 percent of all American satellites are military. What he fails to say is that these satellites are the basis for our arms control verification. These are arms control satellites. They carry no nuclear warheads. They carry no conventional munitions or military projectiles of any sort. They have a single purpose: To determine the military activities, especially the strategic that is nuclear military activities of the adversary. In this sense, they are, indeed, military satellites, absolutely essential to enable this country and the Soviet Union to have any reliance on arms control. These satellites are designed to limit military weapons. And for many years to come they will constitute the absolutely essential sentinels of verifiable arms control agreements. To call them a militarization of space turns their purpose on its head.

General Graham offers one other argument to rebut the contention that Star Wars would create a space race. He contends it would shift the competition from offensive nuclear weapons designed to kill people to defensive weapons designed to kill offensive nuclear weapons and save lives.

What is wrong that? That certainly sounds good. It has only two defects. It almost certainly will not work. As I have said previously, if I were convinced that this would work, would save lives, would give us an effective defense against offensive missiles, I would be willing to spring for $1 trillion to pay for it. But the odds that it will work are overwhelmingly against it.

The second defect goes to the heart of the problem. General Graham contends that Star Wars will shift the arms race from offensive to defensive missiles. That is a nice dream, but only a dream. Under General Graham's plans the defensive arms race would move ahead. But why would the offensive arms race stop? Indeed, why wouldn't the offensive arms race move ahead even faster? After all, offensive missiles would face a brand new challenge. That challenge is, how do they match and overcome the new defensive technology? Neither the United States nor the Soviet military establishment could resist the challenge. On the basis of all past experience, as the defense becomes more efficient

and more complex, the offense becomes not only more efficient and more complex but also far more expensive and far more effective. The offensive technology will not up and disappear. It will rush ahead like gang busters, costing hundreds of billions along the way. But will "Star Wars" advance our security? Will it make nuclear war less likely? No. It will raise the possibility that deterrence may not work. It will, therefore, tempt our adversary to take the supreme chance. We will not hammer down or defeat our adversary this way. We will certainly hammer down and defeat our Treasury and our taxpayers.

THE ULTIMATE HOLOCAUST

Mr. PROXMIRE. Mr. President, for over a year I have been rising on the floor of the Senate to talk about the overwhelming danger of the nuclear arms race and about the steps we must take to stop it. Hundreds of billions of dollars have been devoted to building our nuclear arsenal and we plan to spend hundreds of billions more in the next few years. At the same time the Soviet Union speeds along with the same nuclear buildup.

Many proposals have been introduced to restrain or even reverse this insane march toward nuclear armageddon. I have repeatedly called for a comprehensive, mutual, verifiable United States-Soviet freeze on the testing, production, and deployment of nuclear weapons. But, for a variety of reasons, we seem to always run into a dead end when it comes to actually taking action on the most important challenge facing man today—the survival of the human species on this planet.

There is no more dangerous threat to the survival of our Nation and of civilization itself than the possibility of nuclear war. A nuclear war would be the ultimate holocaust involving all mankind.

But for the last 17 years, every day on the Senate floor, I have also been urging my colleagues to take action against another threat to humankind. It is called genocide, the systematic extermination in whole or in part a national, racial, ethic, or religious group.

There are no quick and easy answers to diminishing the threat of nuclear war or to halting the practice of genocide throughout the world. But that should not stop us from doing all we can to prevent such holocausts.

One obvious step that the Senate has refused to take for over 35 years concerning the crime of genocide is the ratification of the Genocide Convention.

Thank heaven that a thermonuclear war has not occurred in this world. But unfortunately the same cannot be said of the atrocities associated with genocide. When it comes to the practice of genocide, the 20th century has undoubtedly been the most bloody and ruthless. And the potential for it still exists today.

This is why it is so important for the United States to join the 97 other nations of the world that have already ratified the Genocide Convention. The treaty makes the crime of genocide not just a violation of the international norms of decency but also a violation of international law.

The threat of nuclear war and the crime of genocide must be resolved. We cannot afford to further our delay in finding the solutions to these two crucial issues. The time to act is now. The Senate must begin by ratifying the Genocide Convention.

Mr. President, I yield the floor.

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

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

RECOGNITION OF SENATOR LEAHY

The PRESIDING OFFICER. Under the previous order, the Senator from Vermont is recognized for not to exceed 15 minutes.

Mr. LEAHY. I thank the Chair.

S. 2869—TO PROVIDE A TAX CREDIT FOR TELEVISION SUBTITLE EQUIPMENT FOR USE BY HEARING-IMPAIRED INDIVIDUALS

Mr. LEAHY. Mr. President, I rise today to introduce legislation to aid those with hearing impairments to acquire television captioning decoder equipment by providing a tax credit toward the expense of purchasing the equipment. I am introducing this important legislation concurrent with a House companion bill introduced by Congressman BONIOR and others.

This is an age in which television has become the most popular information medium in the world. Yet for many of the more than 15 million Americans who are either deaf or hearing impaired, that world is still mute. For them, television has sight, but no voice.

New technology can open up this world through "closed captioning," a method of translating the spoken dialogue into a running script appearing on the television screen. But the words can be seen only on sets equipped with captioning decoders. The cost of these devices is such that many hearing impaired individuals, and their families cannot afford them.

A captioning decoder costs about $250. Television sets equipped with built-in decoders run as high as $500. For the hearing impaired, whose incomes are generally 15 to 20 percent below the incomes of other Americans, these costs are prohibitive. The price of decoder equipment is an obstacle which continues to isolate these Americans from the mainstream of society.

The legislation I introduce today, amends the Internal Revenue Code of 1954, providing a 50-percent tax credit for the purchase of the decoders, with a maximum tax credit of $250. All three commercial networks, ABC, NBC, and CBS; the Public Broadcasting System; the National Association of the Deaf; the National Captioning Institute; and Gallaudet College acknowledge that this legislation would be of great service to those with hearing impairments and have pledged their support.

Today, only 85,000 households have captioning decoders. Only these few have access to the nearly 60 hours of captioned television provided each week by the National Captioning Institute. To reemphasize, Mr. President, that means if one watches a television program without the decoder, it looks and sounds like any other television program. But if the decoder switch is turned on a line appears showing the dialog as it is being spoken. So quite often, any one of us watching television at home in the evening has probably seen these closed-captioned programs without realizing it. If we had a decoder attached to the television, we would see subtitles appearing on the bottom of the screen. I do not believe there is anyone in this body who needs this special equipment.

But there are still an estimated 3.7 million households with hearing impaired members, which do need these decoders. With decoders, these people can enjoy a privilege which the rest of us often take for granted. I find it unacceptable that the technology is available but not accessible to families with hearing impaired members.

Many of these people are elderly, and the shut-in whose only access to the outside world is often through television. With decoders, these people can enjoy the privilege which the rest of us often take for granted. It is unfortunate that this technology is available but not accessible to families with hearing impaired members.

In my home State of Vermont, the third smallest State in the Union, there are 31,000 hearing impaired citizens who do not have full access to this Nation's airwaves. To them, television has only provided further isolation and estrangement from the surrounding community.

I hope you will join me in supporting this legislation. Let's break the barriers which stand in the way of a fuller

life for hearing impaired individuals across the country. The time has come to make the Nation's airwaves available and accessible to the entire population. Would it not really be good if we did just that?

We first started talking about this legislation with CBS, ABC, and NBC officials 4, 5, or 6 years ago. I recall each one of the major networks was unwilling to even try it at that time. Now all three networks are involved. I find more and more producers telling me, both in New York and in Hollywood, that they are perfectly willing to involve themselves in the really minor cost of captioning a program. But all of them have expressed the wish that there were more people receiving the program once it has been captioned. This can go a long way toward helping them.

Mr. President, I ask unanimous consent that this legislation be introduced, appropriately referred, and printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered, and without objection, the bill will be received and appropriately referred.

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

S. 2869

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

SECTION 1. CREDIT FOR TELEVISION SUBTITLE EQUIPMENT.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

"SEC. 44I. TELEVISION SUBTITLE EQUIPMENT FOR USE BY HEARING-IMPAIRED INDIVIDUALS.

"(a) CREDIT ALLOWED.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the television subtitle equipment expenses paid or incurred by the taxpayer during the taxable year.

"(b) MAXIMUM DOLLAR AMOUNT LIMITATION.—The amount of the credit allowed under subsection (a) for any taxable year shall not exceed $250 ($125 in the case of a married individual filing a separate return).

"(c) DEFINITIONS.—For purposes of this section—

"(1) TELEVISION SUBTITLE EQUIPMENT EXPENSES.—The term 'television subtitle equipment expenses' means any amount paid or incurred by the taxpayer for the purchase and installation of any television subtitle equipment for use by any hearing-impaired individual who is an individual described in any paragraph of section 152(a) with respect to the taxpayer.

"(2) TELEVISION SUBTITLE EQUIPMENT.—The term 'television subtitle equipment' means equipment—

"(A) which is used in connection with a television,

"(B) which permits subtitles (which, but for such equipment, would not appear on the television screen) to appear on the television screen, and

"(C) the original use of which commences with the hearing-impaired individual referred to in paragraph (1).

"(3) HEARING-IMPAIRED INDIVIDUAL.—The term 'hearing-impaired individual' means an individual whose audible, aural perception is not functional at 70 decibels or lower in the better ear without a hearing aid."

(b) CONFORMING AMENDMENT.—The table of sections for subpart A or part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 44H the following new item:

"Sec. 44I. Television subtitle equipment for use by hearing-impaired individuals."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 1983, in taxable years beginning after such date.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a time for the transaction of routine morning business, not to extend beyond the hour of 12 noon, with statements therein limited to 5 minutes each.

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

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

Mr. BYRD. Mr. President, I believe the distinguished majority leader reserved my time under the standing order.

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I thank the Chair.

WHICH SOVIET POLICY?

Mr. BYRD. Mr. President, today's news reports carry the story of a White House decision to lift the ban on Soviet fishing in American waters. Apparently, this is part of an election year push to improve relations with the Soviets.

In fact, this decision is in keeping with existing administration policy toward the Soviets—or, at least, one half of that policy. I say this because the past 3 years have convinced me that there are two administration programs with respect to the Kremlin. The first of these is a highly visible and vocal policy of dangerous rhetoric and provocation. This is the evil empire policy that encourages a war of words with the Soviets—trading bellicosity for bellicosity.

But there is another track to the policy. This one is much less conspicuous, and often goes unnoticed. It might be referred to as the policy of business as usual. It manifested itself in the decision to rescind the Soviet grain embargo imposed by President Carter following the Soviet invasion of Afghanistan.

That was the policy that hurt the Soviets, and then President Brezhnev stated before the world that the agricultural policies of the Soviet Union were not working and that the Soviet Union had very real problems in agriculture. The administration, nevertheless, proceeded to lift the grain embargo and not only did not secure any quid pro quo for lifting it but also apparently did not even ask for a quid pro quo. To the contrary, the administration proceeded to conclude a major grain deal with the Soviet which ties the United States into higher sales levels.

In March of this year, business as usual meant approving the sale of $40 million in oil and gas equipment to the Soviets.

As Members will recall, the administration was quite visible in beating our European friends over their heads in the effort to get them to restrain themselves in connection with the sale of oil and gas equipment to the Soviets.

Oil and gas exports account for more than half of all Soviet foreign exchange earnings, so this meant that we were financing the most important sector of the Soviet economy. Nonetheless, business as usual required that the sale be made.

Now, we learn that the administration is prepared to allow the Soviets to resume fishing in American waters. This may seem a strange decision, given the Soviets' peculiar and deadly fixation for the integrity of borders. Coming less than a year after the brutal and senseless destruction of Korean Air Line flight 007, some of my colleagues might wonder why we are opening our territory to Soviet commercial exploitation.

Perhaps some have forgotten that the Soviets refused to let our ships and the ships of other nations into the waters where it was believed the Korean airliner went down. The Soviets would not let us into that area to look for bodies and the little black box from the ill-fated plane. But now we are going to open our waters to Soviet fishing fleets.

What kind of message does this send? Does this lend certainty and predictability to our policy with the Soviets?

I am sure there are those in the Kremlin who find themselves confused by these very mixed signals. But, after nearly four years, I am sure that many have reached the same conclusion I have reached about our policy. They understand that this administration draws a sharp line between what it says and what it does. And once they understand this approach, the

Soviets can afford to take some satisfaction in what it means for them.

The business as usual policy permits a Soviet economy dependent upon foreign sources for its food supply to rely upon regular grain shipments and a commitment to allow fishing in U.S. waters. Access to vital Western technology will allow the expansion of Soviet oil and gas production, with a resulting increase in foreign exchange earnings to finance Soviet adventurism and a military buildup.

At the same time, the public diplomacy that decries the evil empire will permit the Soviets to make a credible claim that this American administration is insincere about limiting nuclear arms. This gives the Soviets the cover they need to back out of arms talks and accomplish a major goal of their foreign policy; avoiding a mutual, verifiable arms control agreement that restrains Soviet military expansion and development.

Thus, the two policies seem to be giving us the worst of both worlds. They provide the Soviets with dependable and regularized economic relations with the United States, while the Soviets are able to deny us the mutual, verifiable arms limitation agreement that is in America's interests, and in the interest of the Soviet Union as well, for that matter.

I appreciate that there are some Americans who stand to benefit from business as usual, and they are understandably pleased with the grain deal, the gas equipment deal, and the fishing agreement, which requires the Soviets to purchase from the United States an amount of fish equal to their catch. I am not eager to deny those Americans a business opportunity. But I am deeply concerned that a commitment to provide the Soviets with what they most want and need from our food and grain resources is a policy that benefits a few at the cost of interests which we all share.

Finally, I wonder what the people of Afghanistan think as they see one sanction after another lifted against their Soviet oppressors. Much of the economic restraint that characterized our relations with the Soviet Union came about in response to the 1979 invasion of Afghanistan. The Soviets have not left Afghanistan. There is no indication that they will leave soon. There are still some 105,000 Soviet troops in that war-torn country, and the people there continue their brave resistance. Does the situation in Afghanistan now warrant the economic favors we bestow on the Soviets? What does business as usual say about our commitment to the struggle of the Afghan people?

Mr. President, I yield back the remainder of my time and I suggest the absence of a quorum.

The PRESIDING OFFICER [Mr. KASTEN]. 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.

FLOOD OF HEROIN AND COCAINE CHANGING PATTERNS OF DRUG USE

Mrs. HAWKINS. Mr. President, it has been said about drug abuse in our Nation that the worst is yet to come.

But, I ask you, how can it be worse than is reported in the article reprinted below?

When cocaine use reaches every level of our society; when the number of cocaine addicts increases by one-third in 1 year; when the supply of cocaine and heroin becomes so extensive the price drops 60 percent in 1 year; when drug-related murders increase 50 percent in 1 year; when the increased purity level of the cocaine on the streets causes strokes and seizures in its unsuspecting young users; it is time to put a stop to it.

Personal histories of those whose lives were devastated by drugs are included in the first of this series of articles on drug abuse. To see a young man ruin a promising career on Wall Street and decimate his savings because of cocaine; to see a young woman fall victim to cocaine addiction thereby losing her job and her husband; to see a ghetto-escapee turn to crime to feed his narcotics addiction; to see a young immigrant break his family's heart by dropping out of school and turning to crime to support his need for drugs; it is time to put a stop to it.

Mr. President, the amount and accessibility of cocaine and heroin in this country have increased to such an extent that law enforcement officials have virtually ceased large-scale investigations into marijuana trafficking to turn their attention to these "more dangerous" drugs. Cocaine and heroin are available in such quantity that former users of only one type of narcotic are turning into "garbage heads"—the street term for users of more than one drug.

It is not as if efforts are not being made to put a stop to this situation. Numerous crackdowns against drug traffic, both on the part of New York City drug enforcement officials and Federal authorities, have been made, as have many seizures of drug and arrests of dealers.

But there is so much money to be made, and so many drugs available, that the dealers who do escape these raids just move to another place to ply their trade. There is another phenomenon that is occuring in New York right now, and that is that average middle-class people, once only intermittent users of drugs, are becoming dealers of cocaine and heroin. Again, the risk is worth it to them because of the tremendous amount of money to be made. The use of heroin and cocaine thus rises in the areas outside the city, as these new kinds of pushers take their wares home with them to the suburbs.

While the situation that is described in this article about drug abuse in New York is particularly horrifying, I think we would be making a mistake to think that these problems are limited to our Nation's largest city. In my home State of Florida, many urban areas are as affected by increased supply and use of drugs as is New York City. The problem drug abuse is our Nation's No. 1 problem, and articles like the one reprinted below point this out in graphic terms.

Mr. President, it is time to put a stop to it.

I ask unanimous consent that the article entitled, "Drug Flood Altering Patterns of Use," of the New York Times, dated May 20, 1984, be printed in the RECORD.

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

DRUG FLOOD ALTERING PATTERNS OF USE

(By Selwyn Raab)

Supplies of illegal heroin and cocaine have grown so plentiful in the New York City area that drug experts see a dissolving of the traditional lines between people who use the two drugs as well as between people who sell them.

Heroin addiction, while still more prevalent among the poor, has recently risen among members of the white middle class, rehabilitation experts say. And cocaine appears to be contributing to the increase. A state study has found that some cocaine abusers have become addicted to heroin after experimenting with that drug to overcome the mental anxieties created by cocaine.

At the same time, cocaine, once the exclusive preserve of wealthy drug users, has become a popular street drug. High-priced cocaine with a purity level as high as 40 percent is still sold for $100 a gram and $1,000 an ounce to affluent users. But for the first time, the drug, with purity levels of 5 to 10 percent, is being widely sold in small units called bags or tins for as little as $10.

Dozens of cocaine and heroin addicts, from all segments of society, from bank executives to admitted shoplifters, described in interviews how with little difficulty they managed to get both drugs. Wealthy cocaine users, whose habits cost more than $50,000 a year, told of using the telephone to arrange direct deliveries to their East Side apartments.

And in the Bronx, a longtime heroin addict who tells of financing his $100-a-day habit by shoplifting and burglaries said that "the dope situation has never been better." He said the recent flood of cocaine at low prices had allowed him to "speedball"—or inject a combination of heroin and cocaine.

Moreover, the difficulties in combating two hard-core drugs have severely strained the police and rehabilitation agencies. And because heroin and cocaine are so much

more health-threatening than marijuana, law-enforcement agencies have virtually ceased large-scale investigations into marijuana trafficking, although the drug is openly sold on street corners.

Until several months ago, few dealers handled both heroin and cocaine. But with the surge in illegal use and trafficking in the New York metropolitan area, officials say the two drugs are now being offered together in abundant quantities. New York dealers have coined a name for multiple drug customers—"garbage heads."

GOING INTO DRUG DEALING

"There is so much money to be made that average middle-class people are going into coke and heroin dealing," said Sterling Johnson, Jr., the city's special narcotics prosecutor. "They know the odds are on their side, that most dealers who take care of friends and neighbors don't get caught."

The surge has occurred despite crackdowns by the city's Police Department and Federal authorities against trafficking on the Lower East Side and in Harlem, two of the most notorious areas in the city for narcotics sales. Most officials, including Police Commissioner Benjamin Ward, say that in the wake of the police campaigns many of the dealers have simply moved their operations indoors or to other neighborhoods.

Deaths attributed to narcotics overdoses—mainly heroin—have more than doubled since 1978, to about 500 in the city last year. And the Police Department's last homicide analysis in 1981 estimated that at least 393 slayings in the city, or 24 percent of the total, were drug-related, principally involving heroin or cocaine users and dealers.

"Coke and heroin are probably at an all-time high," said the director of the state's Division of Substance Abuse Services, Julio A. Martinez. "Previously, coke and heroin dealers dealt to different classes of people. Now what you have is a department store—you can get all types of drugs from any one dealer."

The recent police drives seem to have had little effect on experienced heroin users.

"Even if they clean up Avenue D, it doesn't matter," the Bronx addict said of the notorious drug-selling on the Lower East Side. "There's always somewhere else—in East Harlem, College Avenue in the Bronx, Bed-Stuy and Williamsburg. They can't stop it. Too many junkies, too much money. Nobody's worried about it."

With the changing patterns of heroin and cocaine use in the New York area have come other significant trends, according to Federal and local law enforcement agents, rehabilitation counselors, drug addicts and former drug addicts, and public and confidential reports on narcotics problems.

The experts cited these key changes in cocaine abuse:

Use of the drug is rising in the city and the suburbs, according to a study by the state's Substance Abuse Services Division. The study estimated that at least 750,000 of the state's residents have used cocaine, almost double the number in a 1981 survey. About 400,000 people in the state are believed to use cocaine at least once a week.

More patients in drug-treatment programs are citing cocaine as their major problem. Last year, a record number of patients cited cocaine abuse problems when applying for admission to state-financed drug treatment programs. Outside of the city, about 9 percent of the patients who sought help listed cocaine as their major problem, compared with 4 percent in 1981. In the city, the proportion of patients with cocaine problems in state-financed programs rose to 9 percent last year from 6 percent in 1981.

Cocaine is making inroads among low-income populations. For example, a state study found that 26 percent of the residents in the city's single-room-occupancy hotels—many of whom are on welfare—are users of cocaine.

As many women as men are using cocaine, Dr. Arnold M. Washton, a psychologist and drug researcher, said a recent survey of cocaine abusers in the metropolitan area had found that about half were women, up from one-third a year ago. The growing rate among women, Dr. Washton said, stemmed partly from the changing roles of women in society and increased stress faced by those who work.

"Women also are being introduced to cocaine through courtships," Dr. Washton added. "Instead of candy or roses, men bring cocaine as a gift."

Because of apparently abundant supplies, the price of cocaine for large-scale dealers has fallen in New York. According to officials of the Federal Drug Enforcement Administration, in the last year importers have dropped their price to middle-level distributors from $40,000 a kilogram, or 2.2 pounds, to $30,000.

The lower prices have also made it easier for teen-agers in the city and the suburbs to purchase and to try cocaine, drug counselors said.

Many drug experts are concerned that the increasing use of high-purity or more potent cocaine may lead to medical as well as psychological problems among abusers. Because large-scale cocaine use is relatively new, reliable studies on the possible long-term physical side effects have not been made. But Dr. Robert B. Millman, director of drug research at New York Hospital, said there are "ominous signals."

"We are getting a large number of anecdotal reports of young people who use cocaine and who are having seizures, strokes and premature heart attacks," he said.

With heroin, the picture is somewhat different.

The number of heroin addicts in New York State has risen slightly in the last year to about 247,000, Federal and state officials estimate. Most—190,000—live in the city. About 32,000 heroin users live in Long Island and the northern New York suburbs. About 20,000 come from northern New Jersey.

Heroin addicts are still believed to be more heavily involved in violent crime than are cocaine users, who generally are more affluent. Researchers said about 20 percent of frequent cocaine users admitted having committed crimes to support their habits. Most crimes were white-collar offenses, such as embezzlement and theft.

The typical, or daily, heroin addict in the city, in addition to buying, selling and using drugs, commits 209 nondrug crimes each year, according to a study recently completed by the state's Substance Abuse Services Division.

Based on interviews with 201 addicts, the study found that the average addict, who spends between $50 and $100 a day on heroin, had been involved in 12 robberies, 34 burglaries and 91 other types of thefts each year. The typical crime netted $41, the report said.

MOST CRIMES WERE NONVIOLENT

Dr. Bruce D. Johnson, a sociologist who was in charge of the study, said the vast majority of crimes committed by heroin addicts were nonviolent, such as shoplifting, check forgeries and prostitution.

Another sign of heroin use and its link to crime has been noted by officials through a sharp increase in the number of newly arrested inmates in city jails who require detoxification or medical aid for withdrawal symptoms. From 1980 to 1983, the number of inmates who underwent detoxification rose from 7,679 to 13,046.

The proportion of blacks addicted to heroin in the city and the state appears to be falling. Since 1980, black patients in state-supported treatment programs dropped from 48 percent to 38 percent. Meanwhile, the number of Hispanic patients rose from 32 percent to 35 percent and the number of whites from 20 percent to 27 percent.

Experts attributed the drop among blacks partly to vigorous anti-heroin educational programs directed at black youths. The rise in use among Hispanics, the experts said, may have resulted from the easy availability of heroin in Hispanic neighborhoods, including the Lower East Side, Williamsburg, East Harlem and the South Bronx

An increase in heroin use by whites—mainly men and women in their 30's—resulted largely from a relapse problem, rehabilitation experts said. Many former addicts, they said, stopped using the drug in the mid-1970's when it was hard to get but had been lured back by its greater availability and purity.

In the 1970's, purity was usually below 2 percent. Recent Police Department laboratory tests have shown purity, especially on the Lower East Side, as high as 17 percent.

Cocaine, which pharmacologically is not a narcotic but a stimulant of the central nervous system, has also been blamed for an increase in the use of heroin. Heroin is a narcotic that numbs the senses. A state study of new heroin users found a large number who said they had turned to the drug in an attempt to relieve psychological stresses caused by cocaine.

"They get so wired, so hyper-stimulated by chronic cocaine use that, they can't sleep or function," explained Dr. Douglas S. Lipton, research director in the state's Substance Abuse Services Division. "They resort to heroin to avoid the depression which normally happens when cocaine is cut off, only to become addicted to heroin."

In analyzing the recent trends, Dr. Mitchell S. Rosenthal, the president of the Phoenix House Foundation, which runs the largest private drug rehabilitation program in the metropolitan area, said that 20 years ago less than 4 percent of the population had used any illicit drug.

"Today, more than 35 percent of the population has used an illicit drug," Dr. Rosenthal said. "It is no longer a phenomenon of the minority poor, the underclass. Over 20 years, there has been a de facto decriminalization of drug use. Our culture, in effect, has said, you want to get high, then get high."

Dr. Washton, who is director of substance abuse research and treatment at Regent Hospital in Manhattan, said: "What we have is the baby boom generation of post World War II that has shifted from marijuana to cocaine. Many of them got comfortable with the idea of so-called recreational drugs in the 60's and 70's and they are smack dab in the middle of life, dealing with problems they never thought they would have to deal with."

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DRUG USERS, RICH AND POOR, TELL OF THE COST AND THE ANGUISH

Some grew up in wealth and comfort in New York City, the suburbs and upstate. They went to private schools and Ivy League universities before moving almost effortlessly into well-paid executive jobs in finance or the fashion industry.

Their lives in New York City involve business deals in the garment district and Wall Street, fashionable Gramercy Park apartments, expensive restaurants and parties.

Others grew up in middle-class Brooklyn and shabby inner-city neighborhoods. Most of them are school dropouts who worked briefly as teen-agers. Now they support themselves and their families by mugging, shoplifting and selling illicit drugs.

All of them—the wealthy, the blue-collar workers and the criminals—are heroin or cocaine addicts.

Some affluent addicts began using drugs, mainly cocaine, often because it was considered a harmless diversion. They could afford it, even if it cost $50,000 a year.

For poorer addicts, cocaine and heroin are sometimes an escape mechanism, a way, they say, of temporarily forgetting their daily plights. And crime is the only way they know of supporting addictions that can cost more than $100 a day.

They described their experiences with drugs and the consequences in taped interviews on the condition that their names be withheld. Whether rich or poor, they spoke of an easy availablity of drugs in the city and often of misplaced confidence that they could occasionally use cocaine or heroin without becoming addicted.

"A DIFFERENT WORLD"

He is a 29-year-old investment banker, a native of upstate New York who graduated from an Ivy League college and moved to the city six years ago. He recently entered a private rehabilitation program.

Like most people of my generation, I started with pot in high school. I experimented with cocaine in college, but it was too expensive then. When I got to the city, a lot of people in my social and business lives were doing it.

I was part of being accepted, like drinking. It was there, and I did it along with everyone else.

It was a form of release at the end of the day. It didn't trouble me because it was illegal. As long as I wasn't selling it, I didn't feel I was committing a crime.

The first couple of years, I was snorting two or three grams a week, costing me $200 or $300, but I could afford it. I was making $50,000 in my job, and I have a considerable outside income, another $50,000.

The people I know are deep into six-and seven-figure incomes. When you make half a million a year, you can afford a cocaine life style. After a deal, you say, 'Let's celebrate, get a couple of suites in a hotel, girls from an escort service, a couple of limos, a case of Dom Perignon and an ounce of cocaine.' It's just part of that good life.

In 1982, I had a lot of business pressures. I wanted to leave the company I was with and start my own investment-consulting company. I was unhappy at work, and at the same time I became friendly with a group of people in the commodities exchange who do it in massive quantities.

I stopped buying a gram or two from friends and started to meet with real hardcore dealers. I needed larger and larger quantities—$2,000 a week. I could afford it, but it was hitting my savings, not coming out of my paychecks.

Last year, I also got married, and there was the pressure of work, and a fight with my landlord. Coke put me in a different world. I didn't care anymore. I was going downhill at work. All I was looking forward to was the next high.

I thought I was concentrating, but I wasn't. I'd go to Lutece for a business luncheon and not eat a thing. There were a couple of deals that I definitely blew.

Last October, I confessed to my wife I was doing it in large quantities. I went to a psychiatrist and stopped for two months. Then it started again, worse then ever. I felt wired, but not in a frenzied condition. My hands shake, and you're always blowing your nose; it's like having a chronic cold.

I was spending money faster than I was making it. In the last year and a half, it cost me more than $100,000. Emotionally, it was tearing me apart. I was losing my temper, losing my shrewdness. I was talking too much when I should have been discreet. I tortured my wife—started fights with her just for the fun of it.

Sometimes I was so high I'm lucky I didn't kill myself by stepping in front of a bus.

"A JOB ONCE A WEEK"

A 35-year-old who grew up in Little Italy and the East Bronx.

I come from a good family. My father was a postman; my brothers and sisters all have good jobs.

When I was 13, a friend had some heroin. He asked if anyone wanted to get high. It was a big thing back then. I said, 'I'll try.' I mainlined, and I've been screwing up ever since.

My parents were immigrants. They didn't know anything about drugs, and they didn't realize I was screwing around until I got arrested for burglary when I was 16.

All in all, I spent about 10 years in prison, for robberies and burglaries. I used to push drugs, and I made $1,000 a week. But I would spend it all on heroin.

I'm married and have two sons, 12 and 7. My wife doesn't know what I'm doing. I never go into the house high, and she never sees my arms. She thinks I'm straight and that I'm a cabby.

I got out of prison about a year ago, after four years for armed robbery. Heroin is costing me about $60 a day. I'm shooting five or six bags.

I pay for it, I pull a job once a week, usually a stickup. Most of the time I don't even know what I'm doing. I wake up and find I have $3,000 or $4,000 in my pocket. Then the picture would come back to me that I stuck somebody up.

My parole officer never looks at my arms. He asks if I'm working and says keep looking. They don't care, as long as you come in and keep the appointments.

It's a bitch out there, getting a job. Certain jobs you have to be bonded. With my record, I can't even get a super's job. I want to stop, but I don't know how. I've been trying to get into a methadone program, but they say come back in three or four weeks, and they still ain't got no room.

It's a hell out there. I get so depressed that instead of looking for a job, I buy a bag of that poison.

"TAKES THE TENSION OFF"

A 35-year-old woman with two children who has always lived in Harlem.

I started messing with drugs when I was 15. It was the last day of school in Washington Irving High School, and a friend gave me a snort of heroin. 'Take a blow, you're going to love the high,' she told me. And she was right.

When I was 17, I dropped out of high school and got a job in the post office. I worked there for about a year, when I found another way of making money—bagging heroin.

You can make about $100 a day in one of the mills. And the bosses always have some cocaine to keep you perky and to stop you from dozing off because of the heroin fumes.

It's hard to get those jobs in the mills, and it cost me $100 to $150 a week to get heroin. I'm on welfare, but that's not enough. I get money in various ways, sell pills, make a heroin run for someone else and get paid by the customer. The one thing I won't do is prostitute myself. I also won't sell drugs to any children.

I've only been arrested once, I was with three other people when the cops caught us shooting up in a hallway. I've tried going cold turkey, but it doesn't work. I have a lot of problems, pressures, finding enough money to raise my kids. If I can't handle something, I have to get high. It takes the tension off of me.

I have this fantasy that someday there will be detoxification centers where you can kick the habit and get good medical attention and then they help you find a good job. That's why so many of us hang out on the streets—because we have no jobs.

"ALL GONE UP MY NOSE"

A 22-year-old fruit and produce wholesaler in Brooklyn. He is married and has two children, and he says he is planning to seek help in a therapeutic program.

My first contact with drugs was while I was a student at Madison High School. Back then it was pot and ludes. After I graduated and started making some money, I had friends in business and in nightclubs who had cocaine connections.

All the rich people, the politicians and the show-biz people were using coke. I was just a working kid, so it was a big thing for me to try something that was a rich man's high.

About a year and a half ago, it got to be a habit for me. I had extra money and time to do it. If there was pressure at work, I'd run and get a gram of coke. I never cheated on my wife, but cocaine became my lover.

In the last six months, it's become unbearable. I've become paranoid. I can't go out of my house without looking behind me to see if I'm being followed. I break out in a cold sweat. I think people are watching me in my living room, that someone will jump through the window and take my cocaine.

I smoke an occasional joint, but nothing helps. I can hardly sleep. I go to work without sleeping, come home to get more cocaine to wake myself up.

The general situation with coke is very bad. You can get it in Flatbush, Bensonhurst, all over Brooklyn, not just Manhattan. Kids are copping half a gram for $40. It's cheaper than it's ever been. Maybe it started out as a rich man's high, but gradually it will be a welfare high.

I make about $30,000, but over the last year I spend about $50,000 on cocaine. I've gone through most of my savings and borrowed from all the people I know. It's all gone up my nose and through my brain.

"INTO TOTAL REVERSE"

A 26-year-old secretary who grew up in Tenafly, N.J., attended a junior college and has been living in Manhattan for the last six years.

I was going out with an older man, about 35, and his entire group was into coke. We used to go to bars on the East Side. They'd hand you a vial, you'd go to the ladies room and snort out of the vial. My boyfriend was paying for it, but when we broke up, I got in touch with his dealer.

At first, I was able to handle it recreationally, only on weekends, and I didn't have constant cravings. Then it got worse. I needed a gram a day. I was paying $100 a gram, but I was such a good customer my dealer lowered the price to $90. My net pay was $260 a week, and I was spending $110 a day. I used a credit card to draw $2,500 from a bank and sold jewelry left to me by my grandmother for $7,000.

In the beginning, it was social. I'd love to go out, gab away, meet people. It made me feel confident, euphoric, that I could conquer the world.

Then it went into total reverse. I couldn't go out, I couldn't walk in the street. I felt everyone was looking at me through the window in my apartment, that the neighbors were spying on me. I really became a wackadoo.

I've lived in the Gramercy Park area and the Upper East Side, and coke is all over. I'm living with someone now, and I'm in a therapy program, and I hope I've licked the problem. But most of the tenants in my building, all they talk about is drugs. They say my floor has got the best drugs in the building. Now that I'm off drugs, I've probably got dealers living right next to me.

"CENTER OF EVERYTHING"

A 32-year-old buyer in the garment center. She attended private schools while growing up in Brooklyn and in Mercer County, N.J., and graduated from the University of Miami. Trying to relieve the anxieties of cocaine use, she suffered an overdose of sedatives and entered a rehabilitation program.

In 1981, everybody started doing coke—in homes, in limousines on the way to theater. The first time I tried it was on July 4, 1981, while watching the fireworks on the West Side. It's strange to say it now, but at first I didn't like it.

Six months later I was in Florida, and all my dates were using it. I tried it again, and what I did like about it was that it gave me the energy to dance until 4 in the morning.

The next time I danced with cocaine was in June 1982, when I met my future husband. We used it once a month, on the anniversaries of our first meeting. My husband had been a cocaine dealer for many years. He started selling coke when he needed money to complete his doctorate, but once he saw how easy it was to make money selling coke, he dropped out of the doctoral program.

When we decided to get married, he got a legitimate job. But as I starting using it more and more, I enjoyed the high. I'm a very up person, and it sped me up. It gave me more security—an 'I don't give a damn' attitude.

By March 1983, I was using it every day. When we got married in September, I stopped. My husband said, 'I'm not in the business; I don't want you involved in it.' As a substitute; I started drinking, but I missed coke. I had been used to living alone, total independence, never having to answer to anybody. Now here somebody was invading my space.

Last November, I made connections with people in the garment center. I couldn't resist the high coke gave me. When I did coke, I was the center of everything. I put everything on the back burner. I forgot about everybody and everything. In one month, I did $4,600 worth, two to four grams a week. I'd phone a dealer, and the coke was delivered to my door. Because I paid out of my savings, my husband had no idea what I was up to.

But my life was becoming totally uncontrollable. It was an effort to get up in the morning to do a food shop. I always had dinner on the table when my husband came home. But those last few hours before he came home, when I stopped using coke, were the most horrible of my life. That crash was the worst thing I've ever been through.

"DEAD TIRED"

A 42-year-old who was paroled last October after serving six years in prison for shooting a man during a quarrel in a bar. He is living in the Yorkville section of Manhattan.

When I was 19, I was a doorman on Park Avenue and doing fairly well. A friend bought a $5 bag of heroin, and four of us tried it. We all thought we could handle it. We all thought we were pretty clever. Once I started using it, it got heavier and heavier, and I didn't know I was hooked.

I lost my job and started stealing little things, first $5 from my mother or from someone else in the family. When I was 20, I got arrested for armed robbery and served four years.

Since then, I've also been arrested for breaking into cars and boosting out of supermarkets. I've never been able to hold a full-time job, because getting enough money for heroin is a full-time occupation. I'd occasionally spend 60 or 90 days in jail, and clean up my habit for a brief time.

When I got out of prison last October, three days after I got home I started using heroin again. I was bored. There was nothing to do and I couldn't resist it. I told my parole officer, and he said go into a methadone program or go back to prison for four years.

I've been on methadone since December, and that takes care of my heroin problem. But I still need something, so I'm using coke. I'm shooting it. Coke allows me to escape momentarily. It's not a habit. It's something to do, instead of sitting around, thinking of my miseries.

Coke cost me $100 sometimes as much as $300. I get $108 every two weeks from welfare.

I pay for it by breaking into cars. I don't want to do anything violent. I walk around town at night, looking for cars with open doors. I'll take a tape cassette, a radio or whatever is there.

I wouldn't be doing this if I could get a decent job and there was no coke around. I know my head is in garbage can, but I can't stop.

THE READINESS AND SUSTAINABILITY OF THE UNITED STATES ARMED FORCES

Mr. GOLDWATER. Mr. President, last week the Defense Subcommittee of the House Appropriations Committee included, as a part of its report, the results of an Appropriations investigative staff study critical of the readiness and sustainability of the U.S. Armed Forces. The release and attendent coverage by the media given what is, I consider, a biased and outdated study, does a serious disservice to the efforts of this administration and is a slap in the face of the military services. In my view, and those of every military expert I know, by virtually every measure, the U.S. Armed Forces are substantially better off today than in 1980. The efforts of this administration to correct the longstanding and well-documented problems caused by the neglect of the previous administration have clearly started to pay off. We are not out of the woods yet, by a long shot, but I am absolutely convinced we have made great strides toward correcting those deficiencies and if we continue the programs now in being, we will see even greater improvements in the near future. Problems still exist and they are being addressed and the most important need right now is continued support from the Congress. There are entirely too many self-styled military experts here in the Congress who, for their own parochial reasons, just love to criticize the military in order to discredit the administration's program. They are wrong and those who prepared this study, the data of which is at least a year or more old, simply followed directions.

Mr. President, I would like to quote some of our commanders in chief, those who are directly responsible for fighting in a war we may become involved in and are vitally concerned with readiness and sustainability on a daily basis on this issue. These military leaders understand the problem far better than anyone in Washington and their remarks underscore the inaccuracy of this report.

General Rogers, Commander in Chief, U.S. European Command:

There is no question that USEUCOM, across the board, is more capable today than it was in 1980.

General Ryan, Commander in Chief, Military Airlift Command:

I appreciate your concern over allegations that the substantial investments in our defense establishment over the past three years have gone for naught and that somehow we are less capable militarily than we were in 1980. I want to assure you that is not the case in the Military Airlift Command.

We have made substantial progress along an ever-steepening, upward curve and are better off today than we were three years ago.

General Gorman, Commander in Chief, Southern Command:

The American people have indeed received proper return on defense investments since 1980. Among the improvements I have observed, the following are salient: better people, better training, better materiel, better strategic mobility, better joint command communication and control, better integration of the reserve components, and better sustainability.

I am convinced that readiness, a function of personnel, equipment, training, doctrine and commitment has never been higher.

Admiral McDonald, Commander in Chief, U.S. Atlantic Fleet:

A principal reason for this increased readiness status has been the retention and procurement of better qualified personnel.

I am firmly convinced that the U.S. military's war fighting capability has increased steadily during this period and personal observations of units within my command assure me of this conviction and reinforce my subjective judgment that our readiness has increased across the board in areas difficult to evaluate objectively.

General Nutting, Commander in Chief, U.S. Readiness Command:

In my view, we have a substantially greater war fighting capability today than we had in 1980. Our personnel are of higher quality; individual and units are better trained. Morale of our troops in the field is high and they have much better equipment. The M-1 tank, Bradley Fighting Vehicle, the Blackhawk helicopter, F-15 and F-16 fighter aircraft, to name a few, have made us a much more capable fighting force.

General Davis, Commander in Chief, Strategic Air Command:

Our real war fighting capability has improved substantially as a result of defense investment provided by Congress in the force structure modernization and sustainability accounts.

Mr. President, I can add to the testimony by these commanders by testifying of my personal visits around the world to different commands. I know a little bit about what I am talking about because I spent 37 years of my life in and out of the uniform. I have never known the forces of our country to be in better shape.

And, finally, Mr. President, I feel the real reason for the timing of this release smacks of nothing more than blatant, partisan politics. For the very committee in Congress that has cut defense spending the most in recent years to come out with a report of this nature is not only hypocritical but nearly criminal. I think that the comments of the commanders in chief that you have just heard obviously point this out.

ORDER EXTENDING MORNING BUSINESS UNTIL 12:45 P.M.

Mr. BAKER. Mr. President, I ask unanimous consent that morning business be extended until 12:45 p.m., under the same terms and conditions.

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

Mr. BAKER. Mr. President, there are negotiations and deliberations going on now on the arrangement of the schedule for the balance of today, tomorrow, and perhaps the first part of next week. While we try to complete that, unless some other Senator is seeking recognition—and I see none—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. KENNEDY. 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 NOMINATION OF JAMES HARVIE WILKINSON III

Mr. KENNEDY. Mr. President, if there is an opportunity to work out a satisfactory time agreement on the consideration of the nomination of Mr. Wilkinson for the fourth circuit, I ask unanimous consent that my statement on that particular nomination be printed in the RECORD at that particular time as if given. I am prepared to take the time to go through the statement, but I am quite prepared, if the arrangements are worked out, to have this statement appear in the RECORD for reference of my colleagues stating my position in opposition. And then I will look forward to working out with the leader an appropriate opportunity for a limited but hopefully important debate on the issue.

So I ask unanimous consent that, if there is such an agreement that is worked out by the majority leader, subsequent to that agreement in the RECORD my full and complete statement in opposition to Mr. Wilkinson's nomination also be printed in the RECORD.

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

Mr. BAKER. Mr. President, if the Senator from Massachusetts wants me to go into executive session now, I can assure him I will not file a cloture motion until we resolve our negotiations if he wishes to speak at this point.

Mr. KENNEDY. I can speak on it if there is no other business before the Senate. I would be glad to have the opportunity under the agreement to do whatever the leader suggests.

Mr. BAKER. Mr. President, I do not think I need to stir troubled waters, so I will just refrain from that.

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. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

EXTENSION OF TIME FOR MORNING BUSINESS UNTIL 1 P.M.

Mr. BAKER. Mr. President, it is going to take a few more minutes than I had thought to locate Members who have to clear a proposed agreement.

I ask unanimous consent that time for morning business be extended until 1 p.m. under the same terms and conditions.

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

Mr. BAKER. 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. 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.

UNANIMOUS-CONSENT AGREEMENT—WILKINSON NOMINATION

Mr. BAKER. Mr. President, I am advised by the minority leader that the request I am about to put has been cleared, I believe. It has been on this side. I will now state it. As in executive session, I ask unanimous consent that during the session of the Senate today it be in order for me to file a cloture motion on the nomination of James Harvie Wilkinson III, to be a U.S. circuit judge.

I further ask unanimous consent that the cloture vote pursuant to that motion occur on Tuesday, July 31, at 3 p.m., and that the mandatory quorum required by rule XXII be waived.

Finally, Mr. President, I ask unanimous consent that the Senate resume consideration of the Wilkinson nomination in executive session at 2 p.m., Tuesday, July 31, and that the control of the time between 2 p.m. and 3 p.m. be equally divided between the Senator from Massachusetts [Mr. KENNEDY] and the chairman of the Judiciary Committee [Mr. THURMOND] or their designees.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, I will not object. This agreement meets with the suggestions by Mr. KENNEDY earlier to me. Mr. KENNEDY and I subsequently discussed it with the distinguished majority leader, and being sure that Mr. KENNEDY has no objection, and having had our telephones in the cloakroom activated so as to contact other Senators, and hearing no objection on this side, I have no objection.

Mr. BAKER. I thank the minority leader.

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

CLOTURE MOTION

Mr. BAKER. Mr. President, pursuant to the authority granted under the order just entered, I send to the desk a cloture motion and ask that it be stated by the clerk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provision of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of James Harvie Wilkinson III, of Virginia, to be United States Circuit Judge for the Fourth Circuit.

Senators Howard Baker, Ted Stevens, Strom Thurmond, Jeremiah Denton, Pete Wilson, Alphonse D'Amato, Jesse Helms, John Danforth, Roger W. Jepsen, Dave Durenberger, Chic Hecht, Paul Laxalt, William Armstrong, Bob Kasten, Thad Cochran, Bob Dole, Alan Simpson, John East, Paul Trible, Don Nickles, Dan Quayle, Orrin G. Hatch, Steve Symms, Slade Gorton, James Abdnor, Paula Hawkins, Jake Garn, Mark Hatfield, Nancy Landon Kassebaum, Frank H. Murkowski, James A. McClure, Malcolm Wallop, Pete Domenici, Rudy Boschwitz, Edward Zorinsky, Gordon Humphrey, Daniel J. Evans, and Chuck Grassley.

Mr. BAKER. Mr. President, I remind Senators now that because this motion is filed today, the vote ordinarily would occur on Monday, but by unanimous consent it is set for 3 p.m. on Tuesday.

STATEMENT IN OPPOSITION TO NOMINATION OF JAMES HARVIE WILKINSON III TO BE U.S. CIRCUIT JUDGE

(The following statement is printed at this point in the RECORD pursuant to unanimous consent order entered earlier today:)

Mr. KENNEDY. Mr. President, I strongly oppose Senate action on the nomination of J. Harvie Wilkinson to the fourth circuit.

More than 4 months have passed since I joined other Senators from both sides of the aisle in requesting a further hearing on this nomination in the Judiciary Committee.

More than 2 months have passed since my colleagues and I raised significant questions on the Senate floor about the qualifications of Mr. Wilkinson to be a Federal judge. And during all that time, no hearing has been held. The Senate has a right to know why Mr. Wilkinson has not been invited back to the Judiciary Committee to set the record straight on the numerous questions that have been raised. These questions are no less troubling today than they were 2 months ago or 4 months ago.

It is true that two hearings were held on this nomination—one in November 1983, and another in February 1984. But these two hearings were entirely pro forma—until major allegations against Wilkinson's qualifications and ethics were suddenly made at the second hearing.

There are numerous allegations against Wilkinson; they are serious allegations; and they deserve serious answers.

In my view, the stonewalling attitude of the Judiciary Committee with respect to these allegations is indefensible. The persistent refusal of the chairman of the Judiciary Committee to hold another hearing on this nomination strongly suggests that the nominee has no satisfactory answers.

The Senate should not vote to confirm a judicial nominee who has been under a dark cloud of allegations of impropriety for months, and has done absolutely nothing to dispel the serious doubts about his fitness to serve on the Federal bench.

Mr. Wilkinson presents a formidable combination of inadequacies.

He is the least qualified nominee ever submitted for an appellate court vacancy. Many academics have been appointed to the Federal appellate bench in the past, but all have had at least limited—and often substantial—practical legal experience. Wilkinson has zero experience—no clients, no trial court experience, no appellate court experience, no clinical legal courses in his teaching.

Mr. Wilkinson's lack of qualifications stand in sharp contrast to other Virginians who are on the fourth circuit. If confirmed, Wilkinson would take the seat once held by John Butzner, who has taken senior status. At the time of his appointment, Judge Butzner had 5 years experience as a U.S. district court judge, 4 years experience as a State circuit judge, 17 years of legal experience in private practice, and had been a member of the bar for 26 years.

Senior Judge Albert Bryan died recently after 23 years of service on the fourth circuit. At the time of his nomination, Judge Bryan had served 14 years as a U.S. district judge, and 19 years as a Commonwealth's attorney. He had been a member of the bar for 41 years.

The only Virginian currently on the fourth circuit is H. Emory Widener. When he was appointed to the appellate bench, Judge Widener had been a judge on the U.S. district court for 3 years, had spent 16 years in the private practice of law, and had been a member of the bar for 21 years.

Mr. Wilkinson, who was admitted to the bar in 1972, in fact has fewer years as a member of the bar than any circuit court nominee from the creation of the circuit courts of appeal in 1891 through the end of 1980. And 3 of those years were actually spent outside the field of law, as an editorial writer for the Norfolk Virginian-Pilot newspaper. And in an editorial of July 29, 1983, the Virginian-Pilot, his own newspaper, opposed the nomination.

In addition to his lack of experience, Mr. Wilkinson's one brief foray into public service at the Department of Justice during this administration was a source of serious embarrassment and concern. For example, as reported in the June 1984 issue of Commonwealth magazine of Virginia, while serving as Deputy Assistant Attorney General for Civil Rights, Wilkinson's ignorance of court procedures resulted in the Department of Justice having to pay court fines because Wilkinson caused the Department to miss a court deadline for responding to interrogatories. The article quotes a former Justice Department attorney's observation that "It's sort of unheard of for Department attorneys to be fined for not answering interrogatories."

In another case reported by Commonwealth, involving treatment of inmates and prison conditions, the Justice Department objected to a county's plans for housing only 30 percent of the jail population in single cells. Suspecting that more than 30 percent of the inmates were high risk and should be in single cells, Justice Department attorneys wanted to request that the county conduct a professional study to determine what percentage of the inmates were high risk. Instead, Wilkinson arbitrarily ordered the Department attorneys to use 55 percent as the recommendation for the inmate population that should be in single cells. There was no evidence to support the 55-percent figure. Wilkinson persistently refused requests by staff attorneys to drop the unsupportable 55-percent recommendation. He finally abandoned the phony number—but only after his special assistant intervened.

In yet another matter, Wilkinson defended Assistant Attorney General Bradford Reynolds' refusal to cite a key Supreme Court precedent that was directly on point in a Department of Justice brief on rights for the handicapped. Wilkinson explained to an attorney on the case that the precedent was ignored because "Brad doesn't like that case." And then Wilkinson added: "Besides, you're lucky you got what you did. Some people appointed by this administration don't think section 504—of the Civil Rights Act—requires any affirmative obligations at all."

It is true that a number of law professors with limited trial experience have been appointed to the Federal appellate courts in recent years. But each of them clearly met at least the minimum standards of the ABA on trial experience. There is no comparison between Wilkinson's zero experience and the obvious qualifications of other academics who had at least limited—and often substantial—trial experience and who have been approved by the ABA for appellate judgeships.

The ABA guidelines recommend at least 12 years in law. Wilkinson had 8 at the time he was nominated. The ABA guidelines also recommend "substantial trial experience" or "similar experience" for both trial and appellate judges. Wilkinson has gone.

Other nominees have had less than 12 years at the bar, and other academics have had limited trial experience. But no nominee has had Wilkinson's unique combination of less than 12 years at the bar and zero practical experience.

In the case of Professor Stephen Breyer, for example, who was nominated by President Carter to the First Circuit Court of Appeals in 1980, the nominee so clearly met the experience standard that the issue for the ABA evaluation committee was whether to give Breyer the minimum rating of "Qualified" or to give him the higher rating of "Well Qualified." He received a rating of "Qualified," but in its letter of approval, the ABA committee informed the Senate:

> As a result of our investigation, a majority of our committee is of the opinion that Stephen G. Breyer is qualified for this appointment. A substantial minority found him well qualified.

By contrast, in the case of Wilkinson, the initial ABA evaluation found him "Unqualified," A "Qualified" rating was achieved only after the confidential results of the negative evaluation were leaked to Wilkinson, who then orchestrated an intensive and unprecedented lobbying campaign against the members of the ABA committee before they cast their votes. Subsequently, the committee informed the Senate:

> A substantial majority of our committee is of the opinion that Mr. Wilkinson is qualified for this appointment. The minority found him to be not qualified.

At the time he was nominated, Breyer had written numerous appellate court briefs; he had presented the oral argument personally in at least one case in a court of appeals; he had interviewed witnesses, questioned potential defendants, and prepared criminal grand jury and trial materials as Assistant Special Prosecutor in the Watergate Special Prosecution Force; he had participated, including testifying as an expert witness, in administrative hearings; he had served as chief counsel of the Senate Judiciary Committee and conducted major sets of Senate hearings; he had represented numerous private clients, including a major steel company seeking to merge with a failing steel firm, a chain of supermarkets trying to cut their prices, tenants organizations challenging rent control regulations, and a grocery chain seeking to sell milk; he had prepared briefs and trial materials for the law firms of Wilmer, Cutler & Pickering in Washington; Brown, Rudnick, Freed & Gesmer in Boston; and Cahill, Gordon in New York City; and he had taught courses in the law of evidence and in administrative law at Harvard Law School.

Wilkinson has nothing comparable in his background—no trial court experience, no appellate court experience, no administrative law experience, no associations with law firms, no trial-related courses in his teaching. His experience is zero—and as the article in Commonwealth makes clear, his lack of experience was a continuing series of embarrassments in the year he spent in the Department of Justice attempting to supervise practicing attorneys.

Extraordinary allegations have also been raised that Wilkinson conducted an unethical and excessive lobbying campaign aimed at the American Bar Association Committee on the Federal Judiciary, in order to secure a "qualified" rating from the committee.

Officials of the Justice Department obtained and improperly divulged the results of the confidential preliminary ABA investigation to the nominee, informing him that the ABA Investigation Committee members were in disagreement, that a vote was about to be taken, and that his approval by the committee was in jeopardy.

Wilkinson used the information improperly obtained from Justice Department officials to organize an intensive and unprecedented lobbying campaign to persuade the ABA Committee to rate him "qualified."

Officials of the Justice Department who were supporters of Mr. Wilkinson conducted their own high pressure lobbying campaign to secure enough votes for a rating of "qualified" by the ABA Committee.

Even Supreme Court Justice Lewis F. Powell, Jr., was part of the lobbying campaign. And from legal experts I have talked to, it seems likely that Justice Powell violated judicial ethics by his direct lobbying for Wilkinson. He has been a family friend of Wilkinson's father for many years, and Wilkinson served as a law clerk to Justice Powell in the 1970's. But the incident does illustrate the extreme lengths to which Wilkinson was prepared to go in abusing Justice Powell and the ABA Investigating Committee.

Powell had initially been contacted by the two ABA Committee investigators. The second investigator told Powell that the first investigator was compiling a negative report on Wilkinson. Powell then initiated a contact with a third member of the committee whom Powell knew, and lobbied him for Wilkinson.

His relationship with Justice Powell was not the only relationship that Wilkinson misused in approaching the ABA.

Wilkinson also unfairly and unethically pressured his own students at the University of Virginia Law School. Some of the students refused. But Wilkinson succeeded in persuading a black student to lobby the black member of the ABA Committee on Wilkinson's behalf. At the time, the student had taken a course from Wilkinson, and Wilkinson had written recommendations for him for his future career.

The ABA Committee was concerned enough about the lobbying campaign for Wilkinson, that it summoned Justice Department officials to the ABA midwinter meeting in Las Vegas to reprimand them. The chairman of the committee admitted that "it was the timing of these calls which was objectionable."

Notwithstanding the ABA Committee's written guidelines which recommend substantial trial experience and specify at least some trial experience as a minimum requirement for approval, the committee found Wilkinson to be qualified. The committee has never before given a qualified rating to such a nominee.

Finally, in addition to his improper activities during his confirmation process, Mr. Wilkinson, while at the Justice Department, participated in interviewing at least one candidate for the fourth circuit vacancy he has been nominated to fill, after he himself expressed interest in being nominated to fill that vacancy.

These allegations raise serious questions which the Senate needs answered before it votes on Wilkinson's nomination. Many of us raised these questions in the Senate Judiciary Committee months ago. Yet we have received absolutely no response on these serious issues, including the following:

Why was Wilkinson's nomination in trouble with the ABA Committee before the intensive lobbying campaign was launched by Wilkinson and others?

Why did Justice Department officials violate the trust of their special position as liaison between the Federal Government and the ABA Committee to provide Wilkinson with confidential inside information about the deliberations of the ABA Committee?

What else did Mr. Wilkinson do with the information that his nomination was in trouble, which he obtained improperly from Justice Department officials?

Whom else did Mr. Wilkinson ask to contact ABA Committee members?

What effect did the boiler room operation conducted by Mr. Wilkinson and Justice Department officials have on the ABA decision to find Mr. Wilkinson qualified?

What do Wilkinson's actions in furtherance of his nomination reveal about his suitability and temperament to be a Federal appellate judge?

What effect did lobbying by Justice Powell have on the decision of the ABA to find Mr. Wilkinson qualified?

Why did the ABA discard its guidelines concerning trial experience to find Mr. Wilkinson qualified?

How would the ABA have rated Mr. Wilkinson absent the lobbying campaign?

Can it be fairly said that Mr. Wilkinson is qualified to be a Federal judge?

Why is the Senate Judiciary Committee unwilling to conduct a complete investigation of this matter?

Why is the chairman of the Judicary Committee stonewalling this nomination?

Why hasn't Mr. Wilkinson, in the months since these issues came to light, been willing to appear before the Judiciary Committee and tell us his side of the story?

Why does the nominee need to be protected from questioning under oath by committee members about these allegations?

What is Wilkinson trying to hide?

The integrity of the judicial selection process is fundamental to the integrity of our judicial system. We must not abdicate our responsibility to assure that the Senate confirmation proceedings are full, fair and unbiased. I urge the Senate to delay action on this nomination until the Senate Judiciary Committee does its job, and conducts an adequate hearing to address these questions. In its present posture, the Wilkinson nomination is an embarrassment to the State of Virginia, to the fourth circuit, to the Supreme Court, and to the U.S. Senate, and Wilkinson should not be confirmed.

Mr. President, I ask unanimous consent that the following materials relating to this nomination be printed in the RECORD:

First, qualifications of other circuit court nominees who have been described as lacking trial experience.

Second, letter dated May 23, 1984, from the Leadership Conference on Civil Rights to each Senator urging that the nomination be recommitted to the Judiciary Committee for further hearings.

Third, letter dated June 1, 1984, from Senators KENNEDY and METZENBAUM to Senator THURMOND renewing their request for additional hearings on the nomination, with the following attachments:

Washington Post article dated May 27, 1984, "Judge Candidate Enlisted Student To Lobby for Him";

"J. Harvie Wilkinson's Judgment Day," by Lisa M. Antonelli, Commonwealth Magazine of Virginia, June 1984.

Fourth, "Dear Colleague" letter dated May 17, 1984 urging that the nomination be recommitted to the Judiciary Committee for further hearings with the following attachments:

Allegations of questionable activities relating to the Wilkinson nomination and unanswered questions on the Wilkinson nomination;

Editorials: Asheville (North Carolina) Citizen, Norfolk (Virginia) Virginian-Pilot;

ABA letter rating Wilkinson;

Excerpts from ABA "Guidelines for Judicial Nominees."

Fifth, letter dated March 5, 1984, from Senators KENNEDY, METZENBAUM, and BIDEN to Frederick G. Buesser, Chairman, Standing Committee on Federal Judiciary, ABA, expressing concern about the procedures used by the ABA to rate Wilkinson, and response from Mr. Buesser, dated March 12, 1984.

Sixth, letter dated March 9, 1984, from Senators KENNEDY, METZENBAUM, and BIDEN to Hon. Lewis F. Powell, Jr., requsting information about his contacts with ABA committee members regarding this nomination, and response from Justice Powell dated March 12, 1984.

Seventh, the following news articles:

"Wilkinson, Racing for Top, Reaches Key Hurdle Today," from the Washington Post, February 28, 1984;

"Bar Association's Standards Disputed," from the Washington Post, March 8, 1984;

"Senators Want ABA Word on Judge Choice," from the Washington Post, March 9, 1984;

"Powell Says He Lobbied Member of ABA Panel for Wilkinson," from the Washington Post, March 13, 1984;

"ABA Panel Complained Justice Aides Lobbied for Wilkinson," from the Washington Post, March 15, 1984;

"Senate Panel Approves Wilkinson for U.S. Judgeship," from the Washington Post, March 16, 1984;

"Critics Question Experience of Reagan's Choice for Judgeship," from the New York Times, April 1, 1984;

"Senate Gets Hung Up on a Would-Be Judge's Ambition," from the Baltimore Sun, June 17, 1984.

Eighth, letter dated September 9, 1983, from Kathy Wilson, national chair, National Women's Political Caucus, to Senator JOHN WARNER.

Ninth, testimony at a hearing of the Senate Judiciary Committee on the Nomination of James Harvie Wilkinson III, February 22, 1984:

Edythe C. Harrison of the National Women's Political Caucus;

Elaine R. Jones of the NAACP Legal Defense Fund;

Bobby B. Stafford, President of the Old Dominion Bar Association;

Helen C. Gonzales, Associate Counsel, Mexican-American Legal Defense and Educational Fund;

Joseph Michael Trevino, Director of Legislation, League of United Latin American Citizens (LULAC);

Armand Derfner.

Tenth, news article from Washington Post, July 17, 1980, on Republican Senate opposition to further proceedings on nominations by President Carter.

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

QUALIFICATIONS OF OTHER CIRCUIT COURT NOMINEES WHO HAVE BEEN DESCRIBED AS LACKING TRIAL EXPERIENCE

STEPHEN G. BREYER BACKGROUND

Sixteen years out of law school when appointed to the first circuit.

As a lawyer in the Antitrust Division of the Department of Justice, he prepared the brief, argued the case and won a favorable antitrust decision in the sixth circuit.

Acting Chief of appellate section in Antitrust Division for 1 year; in charge of all appeals

Two years interviewing witnesses, preparing criminal cases on the staff of Watergate Special Prosecutor Archibald Cox.

While professor at Harvard Law School, consultant on antitrust matters with Wilmer, Cutler & Pickering law firm in the District of Columbia.

Chief Counsel to Senate Judiciary Committee for 2 years.

RICHARD POSNER BACKGROUND

Nineteen years out of law school when appointed to the seventh circuit.

Clerked for U.S. Supreme Court Justice William Brennan.

Served for 2 years as legal assistant to the Commissioner of the Federal Trade Commission.

Two years as an attorney at the Department of Justice in the Office of the Solicitor General.

General Counsel to the President's Task Force on Communications Policy

Faculty at Stanford Law School for 1 year, followed by 12 years at the University of Chicago Law School.

RALPH WINTER BACKGROUND

Twenty-one years out of law school when appointed to the Second Circuit.

Clerk at district court level and then for Second Circuit Court of Appeals Judge Thurgood Marshall.

Professor at the Yale Law School for 19 years.

Along with his teaching duties at Yale, Judge Winter was a senior fellow of the Brookings Institution for 2 years and an adjunct scholar at the American Enterprise Institute for 9 years.

Lead counsel in Buckley against Valeo litigated up to Supreme Court.

PATRICIA WALD BACKGROUND

Twenty-eight years out of law school when appointed as U.S. Circuit Judge for the District of Columbia.

Clerked for the Second Circuit Court of Appeals.

As an attorney she had worked at the Justice Department, the National Council on Bail and Criminal Justice, the Neighborhood Legal Services law reform unit, and the Center for Law and Social Policy.

Codirector of the Ford Foundation drug abuse research project.

Served as legal consutant to the National Conference on Law and Poverty, the President's Commission on Crime in the District of Columbia, the President's Commission on Law Enforcement and the Administration of Justice, National Advisory Commission on Civil Disorders, and the National Commission on the Causes and Prevention of Violence.

Four years working for mental health law project as well as the Council for the Mentally Impaired.

Returned to Justice Department in 1977 to be the Assistant Attorney General, a post she held until her appointment to the bench, in 1979.

RUTH BADER GINSBURG BACKGROUND

Twenty-seven years out of law school when appointed to the Court of Appeals for the District of Columbia.

Clerked at Federal district court.

Faculty of Rutgers Law School for 1 year and at Columbia Law School for 10 years.

While teaching, she also engaged in extensive litigation promoting the cause of equal justice for both men and women.

LOUIS POLLAK BACKGROUND

Thirty years out of law school when appointed to the Eastern District of Pennsylvania.

Served as clerk to Supreme Court Justice Wiley Rutledge and as special assistant to Ambassador-at-Large Philip Jessup.

Spent 2 years as assistant counsel with the Amalgamated Clothing Union.

Nineteen years as a professor at Yale Law School, including 5 years as the dean of Yale Law School.

Served as visiting professor of law at Columbia Law School, Howard Law School, and the University of Michigan Law School.

Dean of the University of Pennsylvania Law School, where Mr. Pollak was also the Albert Greenfield Professor of Human Relations.

Over 30 year career, authored over 30 articles on American legal system which appeared in major legal and scholarly journals.

KENNETH STARR BACKGROUND

Ten years out of law school when appointed to the District of Columbia circuit.

Clerked at both the U.S. Court of Appeals and the Supreme Court.

Four years at the Los Angeles law firm of Gibson, Dunn & Crutcher.

Two years at the U.S. Department of Justice as Counsellor to the Attorney General.

ANTONIN SCALIA BACKGROUND

Twenty-two years out of law school when appointed to District of Columbia Circuit.

Associate for 3 years at Jones, Day, Cockley & Reavis.

Professor of law for 4 years at the University of Virginia Law School and 5 years at the University of Chicago Law School.

Visiting professor at both Georgetown and Stanford Law Schools.

General counsel in the Executive Office of the President for Telecommunications Policy.

Two years as chairman of the Administrative Conference of the United States.

Three years as an Assistant Attorney General at the Office of Legal Counsel in the Department of Justice.

Harvard University Sheldon Fellow—1 year; resident scholar American Enterprise Institute—1 year.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, DC, May 23, 1984.

DEAR SENATOR: We strongly urge you to vote to recommit the Wilkinson nomination to the Senate Judiciary Committee for further hearings. Important questions, questions that have been raised since the last day of hearings, which bear directly on the nomination must be addressed and answered before the full Senate exercises its advise and consent responsibilities.

With warm regards,

Sincerely,

BENJAMIN L. HOOKS,
Chairperson.
RALPH G. NEAS,
Executive Director.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 1, 1984.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We are writing to renew our request for an additional day of Judiciary Committee hearings on the Wilkinson nomination in light of two recent articles which raise serious new questions about the nomination and the qualifications of Mr. Wilkinson to be a federal appellate judge.

The first article, from the Washington Post of May 27, 1984, adds another disturbing and highly questionable incident to the accumulating story of the improper lobbying campaign directed by Wilkinson at the ABA. According to this report, Wilkinson pressured a third year black law student at the University of Virginia Law School to make an urgent call to the black member of the ABA screening committee just before the critical ABA committee vote last fall. If the facts as set out in this article are correct, it seems clear that Mr. Wilkinson's action violated the proper boundaries of the faculty-student relationship, and he does not deserve to be confirmed. At the very least, the Committee should investigate this incident to determine the full circumstances involved.

The second article, from the June, 1984 issue of Commonwealth Magazine, raises serious questions about Wilkinson's impartiality and judicial temperament, based on repeated examples of arbitrary conduct during his year as Deputy Attorney General in the Civil Rights Division of the Department of Justice. These allegations require further investigation by the Committee if we are to fulfill our responsibility to the Senate on this nomination. Among the most disturbing of these allegations are the following:

(1) Wilkinson's inexperience in legal procedure caused the Department of Justice to miss deadlines in litigation and to be fined by the courts for unwarranted delays in answering pleadings. According to one allegation relating to litigation over the rights of handicapped persons at Baylor Medical Center, Wilkinson did not understand basic pleadings and complained that Justice lawyers were harassing defendants by filing interrogatories in the case, when in fact the Department attorneys were merely—but necessarily—responding to interrogatories served by the defendants. An attorney in the Department is quoted in the article as saying "It's sort of unheard of for Department attorneys to be fined for not answering interrogatories. The other part of that is that he didn't understand what was going on."

(2) Wilkinson's anti-civil rights bias prevented him from objectively dealing with important legal issues before the Civil Rights Division. The article cites two cases from Ohio and Texas involving prisoners' rights in which Wilkinson arbitarily attempted to force Department attorneys to draw unsubstantiated conclusions in order to deny such rights, regardless of the evidence in the case.

(3) The article refers to "thirty to forty instances" where Wilkinson participated in refusals to enforce civil rights laws in cases involving allegations of discrimination because of race, sex, or handicap. In one egregious case on rights of the handicapped, a Department lawyer was ordered to delete a citation to a controlling Supreme Court precedent in a friend of the court brief the lawyer was drafting.

In light of these new allegations and information, the full Senate should not be asked to vote on Wilkinson until the many questions surrounding this nomination are asked and answered by the Committee.

Sincerely,

EDWARD M. KENNEDY.
HOWARD M. METZENBAUM.

Attachments to Kennedy, Metzenbaum letter:

1. "Judge Candidate Enlisted Student to Lobby for Him," (from the Washington Post, May 27, 1984)

2. "J. Harvie Wilkinson's Judgment Day," by Lisa M. Antonelli, Commonwealth Magazine of Virginia, June 1984, p. 44.

[From the Washington Post, May 27, 1984]

JUDGE CANDIDATE ENLISTED STUDENT TO LOBBY FOR HIM

(By Philip Smith)

University of Virginia law professor J. Harvie Wilkinson III enlisted a black student to lobby the only black member of an American Bar Association committee last fall on the eve of a confidential ABA vote on Wilkinson's qualifications to become a federal appeals judge.

Melvin (Butch) Hollowell, head of the law school's black student association before his recent graduation, said last week that Wilkinson, a conservative Republican, summoned him to his office and asked him to help by calling the black ABA member, a Michigan attorney.

"Jay told me time was of the essence," Hollowell said in an interview. "He knew the vote was the next day, or maybe that I had a day [to make the call]." Hollowell, who contacted the lawyer, said "Jay told me three days later that it had helped."

Wilkinson last week declined comment. The lawyer, Stuart J. Dunnings, Jr., said yesterday that he "did receive such a call from a black student" but could not recall the student's name. Asked if he was influenced by the call, Dunnings said, "My mind was already made up. And nothing changed it." Dunnings declined to elaborate, citing ABA rules on confidentiality.

Allegations of improper lobbying on behalf of Wilkinson's nomination for a seat on the 4th U.S. Circuit Court of Appeals in Richmond are now the focus of a bitter fight on the floor of the Senate, where the nomination was debated for several hours last week. The Senate defeated 54 to 36 a move to send the nomination back to committee and is generally thought likely to approve it when it comes back up for a vote June 4.

Supreme Court Justice Lewis F. Powell Jr. has acknowledged that he contacted an ABA member in New Orleans to support Wilkinson, a family friend and one of Powell's former law clerks. A former deputy attorney general also said that he and a second senior Justice Department official had contact with ABA panel members on behalf of Wilkinson, who had worked under both men at Justice.

Wilkinson, who was found unqualified by one ABA investigator, but qualified by a second, ultimately was rated qualified by the 14-member ABA panel. The rating is

considered crucial for candidates for the federal bench.

Several members of the Republican-controlled Senate Judiciary Committee, including Sen. Edward M. Kennedy (D-Mass.), maintained last week that the Wilkinson episode illustrates that the ABA process, on which the Senate normally relies heavily in confirming judgeship candidates, is neither impartial nor confidential.

Kennedy and others, including three Republican senators, argued in floor speeches that the incident raises questions about whether Wilkinson, who is 39 and has no trial exerience, might have been rejected by the ABA without extensive private lobbying.

Republican defenders of the Reagan nominee, notably Sens. Paul S. Trible of Virginia and Judiciary chairman Strom Thurmond, scoffed last week at charges the contacts were improper. Trible said such conversations with ABA screening committee members is "routine."

Senate foes of the nomination also have charged that Wilkinson benefited from inside information, allegedly furnished by the senior officials at Justice, that his candidacy might be in trouble in the ABA committee and that he was improperly kept abreast of the timing of the confidential ABA vote.

Hollowell, who started a new job as an associate of a Detroit law firm last week, said he was asked by Wilkinson last fall whether he "had any familiarity" with the ABA committee member from Michigan. Wilkinson also solicited Hollowell's opinion about how Wilkinson dealt with minority students in his classes.

Hollowell, who said he had "participated pretty vigorously" in Wilkinson's class on constitutional law a year earlier, said he told Wilkinson he regarded him as "fair" to minorities. "Jay said would I mind calling [Dunnings] and telling him that."

Hollowell, who said he saw a piece of paper on Wilkinson's desk with what appeared to be the names of the ABA committee members, said that Wilkinson was eager for him to make the call—"no doubt about it." Asked whether he believed that Wilkinson had targeted some ABA members for lobbying, Hollowell said: "I would say yes."

Hollowell said his conversation with Dunnings lasted about 15 minutes, less than 10 of it on the subject of Wilkinson. "The first thing he said was, 'What's he going to do for black people?'" Hollowell said last week. "He said that regarding blacks and women, [Wilkinson] was not very favorable at Justice, and I said I knew that was a problem."

Wilkinson was a deputy assistant attorney general in the civil rights division of Justice from 1982 to 1983.

Hollowell said that Dunnings seemed eager to talk to him about Wilkinson, in part because the time to vote was so close. The former student said he told Dunnings that he had found Wilkinson, whom he described last week as "a personable guy, very likable," to be "fair" in his dealings with black students.

"Jay had a very good knowledge of what the [nomination] situation was," Hollowell said. "He knew [the ABA vote] was going to be close, that every vote would count." He said Wilkinson told him that making the call "would mean a great deal to me."

Although he made the call as a favor to a friend, Hollowell said, he also had "strong disagreements with things Wilkinson did as a deputy assistant attorney general" in the Reagan Justice Department. "I had deep philosophical differences of opinion regarding his judicial politics," he said.

Last fall, after Reagan sent Wilkinson's name to the Hill, Hollowell said Wilkinson approached him again and asked him to testify on his behalf at his Senate confirmation hearings—"to be ready to go." Hollowell said he declined.

When Wilkinson asked him a few days later to reconsider, Hollowell said he refused. "I didn't think it would be in his interest or in my interest," he said. "I could say he was fair in class, but I would also have to say that I disagreed with things he'd done at Justice" regarding minorities.

Hollowell said he saw no conflict of interest in being asked by a faculty member to support his judgeship. Hollowell was not enrolled in Wilkinson's courses at the time, he said. "Pretty much everything was cemented for me, job-wise, by then," he added.

He said that a year earlier, Wilkinson had written a three-paragraph recommendation for him in connection with a possible summer job as an intern in the office of Atlanta Mayor Andrew Young. The job was offered to him, Hollowell said, but he went elsewhere.

Former assistant attorney general Jonathan Rose, one of the two senior Justice officials who, foes charge, helped in the lobbying for Wilkinson, last week said he did not recall doing so. "Although I wouldn't have been embarrassed" to support Wilkinson, he said.

"This idea that the ABA is some judicial body with whom ex parte contacts are inappropriate is a novel concept invented by opponents of Wilkinson," Rose said.

While at Justice, Rose was involved in handling dozens of Reagan administration candidates for the federal bench, all of whom required ABA screening.

"If we thought there were facts favorable to an administration candidate, we tried to get it to [the ABA committee]," Rose said. "Or if they were not favorable. We didn't view the ABA as a separate tribunal."

"We tried to be as protective as we could," he added, "at keeping the committee from getting a lot of super pressure."

J. HARVIE WILKINSON'S JUDGMENT DAY

(By Lisa M. Antonelli)

He breezes into the University of Virginia Law School at 9:10 a.m., nearly an hour before his first class. An umbrella might make him look more his age, the shy side of 40. Instead, he opts for a baseball cap and a royal blue Windbreaker with yellow and red racing stripes. He shuns professorial tweeds and corduroy in favor of a sleeveless blue and pink cardigan with a ski design over a white shirt and striped tie, and gray pants that hit just above the ankle, U.Va.-style.

Zipping noiselessly down the carpeted corridor, heels first, he turns into his office and swings shut the door, but not in time to muffle a "goddawgit." He might have just missed a phone call from the White House. Or his current favorite baseball team might have just lost a game. Either would be cause for despair, close friends say.

When a person has run as hard and fast as J. Harvie Wilkinson III, one might expect to see some signs of road wear. He has run for Congress, published three books, been a Supreme Court clerk, a newspaper editor, a Justice Department official and three-time professor. But not only does he still look like one of the Hardy Boys, he also shows no signs of slacking the pace.

Since November, he has been embroiled in more than the normal share of headaches that accompany landing a Federal judgeship. He has been accused of using family connections and lobbying to gain the American Bar Association's lowest rating—"qualified"—necessary for appointment to the United States Circuit Court of Appeals for the Fourth District in Richmond. He has been attacked publicly by three prominent members of the United States Senate who declare that his nomination to the Federal bench is evidence of a double standard in judicial appointments.

And while his quest for the judgeship was still mired in confirmation battles in mid-May, friends were quick to note that the Federal bench is likely just another supporting role in Wilkinson's quest for real stardom. In the next script, many believe Wilkinson plans to be playing the role of the United States Supreme Court Justice.

Says one confidant: "Jay's a person who has a very clear sense of his long-range goals and a single-mindedness in pursuit of those goals. He's an ambitious and somewhat restless person who gets tired of doing the same thing, so he is regularly motivated to try something else. At the same time, he has a very clear timetable, a very clear sense of what he wants and what he needs to do to get it."

Robert Smith, a former editorial writer under Wilkinson at The Virginian-Pilot, is more succinct: "Jay has tried to position himself for the Supreme Court. He felt that if he were in the right place at the right time, along with his connections to Justice [Lewis F.] Powell, he'd have a good shot at an appointment. By getting on the Fourth Circuit Court of Appeals, he'll have that shot."

At just a hairbreadth over 5-foot-8 and not an ounce over 140 pounds, J. Harvie Wilkinson appears a man who would be easy to dismiss. On the stage where he teaches Federal Courts class, the short and wispy professor seems dwarfed by his larger students. A true Virginia blue blood, he is deferential, self-deprecating about accomplishments and goals. He has the kind of face that new acquaintances are likely to forget in 30 seconds. That fact has served him well.

Notes one close friend: "He's neither charismatic nor intimidating. Part of the reason that Jay is so successful is that people repeatedly underestimate him."

To underestimate the real Jay Wilkinson is to commit serious error. Behind the gosh-golly, aw-shucks facade is a man close observers call "calculating." Genuine graciousness is certainly his most striking feature, the kind of gentlemanly charm on which Rhett Butler built a gunrunning business. And onlookers say that the similarities don't end there, that Wilkinson, like the ambitious Captain Butler, is willing to mash a few toes if they tend to be standing in the way.

"Jay does tend to evaluate people, not only in terms of common interests, but in terms of his own orientation," says one friend. "He's quite subtle about it. He's not a sycophant in any sense of the word, but he's almost instinctively aware of who can help him and who can't."

Those who can't had better mind their toes. Consider the track record:

In 1970, at the age of 25 and while still enrolled in law school, Wilkinson ran for Congress against David E. Satterfield III (D-3rd), a man he had worked to elect just six years earlier. Wilkinson had been persuaded into the Republican camp by former Republican Gov. Linwood Holton, only to be mer-

cilessly crushed by Satterfield in the election.

Following graduation from law school, Wilkinson accepted the invitation of a family friend, Supreme Court Justice Lewis F. Powell Jr., to a spot as a Supreme Court clerk, a position normally reserved for law graduates who have clerked in the lower courts.

In 1978, Wilkinson allegedly parlayed another friendship into the position of editorial page editor for The Virginian-Pilot in Norfolk, a powerful seat that allowed him to remold the paper's moderately liberal editorial philosophy to his own conservative bent. He not only lacked a professional newspaper background, he couldn't even type.

In 1982, while a deputy assistant attorney general in the U.S. Department of Justice, Wilkinson's critics charged that he engineered cases to bolster his conservative world view.

Now that Wilkinson is up for a Federal judgeship, his critics are quick to point out that he's never even practiced law.

Jay Wilkinson does indeed have a penchant for sticking his nose where others think it doesn't belong, of winding up in places where he has no prior experience and where experience is a must 99 time out of 100.

But where experience fails, Wilkinson has the brilliance, the Southern charm and the savvy to pull him through. "I set a great deal of store by intelligence and education," says Robert Mason, his predecessor at The Virginian-Pilot. "Certainly, Jay abounds in both."

Men like Jay Wilkinson, those who are both brilliant and brilliantly successful, gather detractors almost as quickly as they gather new challenges. What irks Wilkinson's critics even more is the fact that he generally performs well under fire. But a Federal court judgeship is not a deanship of a law school. The U.S. Circuit Court of Appeals is just one step removed from the Supreme Court, and it is a place where constitution law is molded and life-and-death decisions are made. Wilkinson's judicial quest has brought him under a scrutiny that court clerks and newspaper editors rarely feel, and as a potential launching pad for the Supreme Court, the hot seat grows even warmer.

"At this point, only a select number of people [within the Fourth Circuit] are concerned" about his nomination, says Chan Kendrick, executive director of the Virginia chapter of the American Civil Liberties Union. "If he were to be considered for the Supreme Court, [his record] would be of concern across the board, across the country."

Longtime friends like Linwood Holton flatly dispute any contentions that Wilkinson is plotting a path to the Nation's highest court. "Apointment to the Federal bench is a lifetime appointment," Holton says. "Anybody who goes on the Court of Appeals at his age has a chance to be placed on the Supreme Court, but that is a very remote possibility with anybody. There are only nine every generation. In the sense of being a candidate, I can't imagine anybody would go on the Court of Appeals with 'aspirations' for candidacy for the Supreme Court. You're just not candidates for the Supreme Court. That's not the way it's done."

But Jay Wilkinson never backsteps, does not play bit parts and is rarely satisfied with one achievement for very long. If he wins the seat on the Court of Appeals, it probably will not be his final curtain call. Suddenly, it dawns why Professor Wilkinson looks so out of place in his University of Virginia classroom. The state is too small. Yes, much too small.

The U.S. Department of Justice is a staggering bureaucracy of 4,416 attorneys that both tantalizes with its promise of power and terrifies with the threat of instant anonymity for those haplessly buried by its power maze. Jay Wilkinson was just one more forgettable face when he first appeared at the Justice Department two summers ago. He was on leave from the U.Va. law school, having been named a deputy assistant attorney general in the civil rights division under Assistant Attorney General William Bradford Reynolds. David Vanderhoof, a senior trial attorney in Justice at the time, has trouble recalling his first meeting with Wilkinson: "He made such a small impression on me that when I encountered him again later that same day I didn't know who the hell he was," Vanderhoof says. "He was blah."

He was also Vanderhool's new boss. The senior attorney and others at Justice would soon come to realize that of the many things they might call Jay Wilkinson, blah would not be one of them.

Though Wilkinson's stay in Justice was relatively brief (he left in August 1983), it was memorable. In fact, several cases that came under Wilkinson's jurisdiction are now legend in the department. They also are the source of complaints that the law became a tool to suit Wilkinson's philosophical preferences and political ambitions.

Says Timothy Cook, an attorney whose liberal views often clashed with Wilkinson's when the two worked at Justice, "He writes decisions based on how he thinks a case should turn out politically, not on the basis of the law."

One afternnon, Cook was in his office busily researching a case that grew out of a dispute over services provided to handicapped patients at Baylor University Medical Center when he received an urgent call to report to Wilkinson's office for a group discussion on the case.

In his hand, Wilkinson waved a fistful of paper, "Why are we doing this?" Cook says Wilkinson demanded of his attorneys. "Why are we serving interrogatories on them? Why are we harassing defendants like this?"

Cook exchanged a disbelieving glance with the other attorneys gathered in Wilkinson's office. Wilkinson had failed to note that he was reviewing his own department's answers to interrogatories filed by the other side.

"He didn't understand that the other side had filed the interrogatories on us, and that we had to answer them," says Cook. "On his qualifications to be a judge? He doesn't understand basic pleadings."

According to Cook, Wilkinson's naivete resulted in court fines to the department for the delay in answering the interrogatories. "It's sort of unheard of for department attorneys to be fined for not answering interrogatories," says Cook. "The other part of that is that he didn't understand what was going on."

"There were a number of situations where there would be a court deadline imposed and, in effect, it was of no concern to Wilkinson," says Vanderhoof. "I'm not sure what the reasons were. A portion of it may have been inability to manage time.

"It did not carry well with court officials, and the respect that we may have attained in the past by our pleadings or by our motions was somewhat lost as a result."

If Wilkinson's seeming naiveté about court proceedings frustrated some of his Justice colleagues, they were even more nonplused by his particular style of reasoning. More than an attorney, more than a professor, Wilkinson is a philosopher, a theoretician. Theory is his governing inner voice. When life demands an answer, it is the theoretician in Wilkinson that responds. the trouble, his critics say, is that he reasons from the bottom up. He doesn't decide what the questions should be until he already has decided the answers.

Wilkinson and Reynolds took the Reagan Administration's anti-Federalist policies into their Justice posts, angering other attorneys, many of whom had been in Justice through less conservative administrations, with a blatant reluctance to involve the government in civil rights cases. "These were the same types cases, raised similar issues, in which the Jusitce Department historically participated in the past," noted Vanderhoof. "Not only did Reynolds and Wilkinson avoid venturing into new areas, they ran backwards, reusing to participate in cases that the Administration normally would've taken."

Stephen A. Whinston, former senior trial attorney now in private practice in Philadelphia, says: "The bottom line would always be the most restrictive interpretation possible, one that would afford people that we were supposed to be representing the least rights possible. It was their very philosophical view that the government shouldn't be involved in civil rights enforcement," when in fact, civil rights enforcement was their department's raison d'detre, Whinston says.

"It's hard to know who was really the source," Whinston continues. "They took a very specific philosophical viewpoint on various civil rights issues and tailored arguments and briefs to be consistent with that."

Perhaps one of the most notable examples involved the San Antonio, Texas, jail case, revolving around the treatment of inmates and jail conditions, including the number of single cells provided.

The county's plans called for housing 30 percent of the jail population in single cells, the minimum requirement under Texas jail standards. Suspecting that a much higher percentage of the San Antonio inmates were high risk and should be in single cells, Justice Department attorneys wanted to request that county officials conduct a professional study to determine a valid percentage. Wilkinson ignored their suggestion, instructing the attorneys to use 55 percent—an arbitrary number—as the department's recommendation. The trial attorneys didn't want to be responsible for defending Wilkinson's figure in court, since it basically had been plucked out of thin air. When such a number is chosen, explains one former Justice Department attorney now employed in the private sector, it usually is based on a piece of solid information—a prior case, an expert opinion, a state statute or a consent decree, which, in this case, stated that only low-risk inmates could be placed in multi-inmate housing. "But Jay pulled that number [55] off the top of his head," the attorney aruged, "and the trial attorneys were expected to back it up."

Said another, "It would've been difficult for the Administration to support Wilkinson's fifty-five percent figure."

According to a number of sources employed in the civil rights division at the time, the trial attorneys asked Wilkinson to omit the 55 percent recommendation as being unfounded. Wilkinson refused to bend. Only when the attorneys persuaded

Wilkinson's youthful legal assistant, Frank Atkinson, to intervene did Wilkinson back down. No numerical recommendation was offered.

Wilkinson refused to be interviewed, as he has refused all interviews since the confirmation proceeding began for the Federal judgeship. (He had also earlier refused to defend himself against criticism at Senate confirmation hearings.)

Atkinson does not deny the incident, but his recollection of it, he says, "is clouded."

In still another case, Stewart v. Rhodes, an Ohio case regarding prison overcrowding, the initial memo prepared by the Justice Department declared the double-celling of prisoners in less than 50 square feet unconstitutional.

"The cells in this prison happened to be 48 square feet," recalls Whinston, "so under that initial memo, the prison would have been unconstitutional. But Jay crossed out 'fifty' and penciled in 'forty-five.' By changing it, it was obvious to me that he simply didn't want to argue that the prison was unconstitutional."

It should be noted that the ruling precedent in this case was Rhodes v. Chapman, a Supreme Court decision handed down in 1981, which rejects setting a specific floor-space requirement per inmate. It does, however, require that overall prison conditions be considered when determining if prisoners' rights are being violated. But in Stewart v. Rhodes, Ohio officials wanted to know what the Justice Department would consider permissible in terms of space.

Whinston was rankled. "Both numbers—forty-five and fifty—were arbitrary," he explains. When viewed in the context of the case, a different picture of the department's stance on prisoners' rights emerges. "The first arbitrary designation, 'fifty,' would say that double-celling in that prison was unconstitutional. The second arbitrary designation, 'forty-five' would say that the double-celling was unconstitutional. Therefore, it is logical to draw the conclusion that his arbitrary figure of 'forty-five' was not based on a study of the law. Rather it was what is known as 'result-oriented.' Wilkinson wanted to make a certain argument, and he shaped his reasoning based on the conclusion that he wanted to come to rather than logically reasoning the case and finding out where that reasoning would lead. In other words, he worked from the bottom up."

Although attorneys were unsure in other cases whether the source of restriction was Wilkinson or Reynolds, Wilkinson is severely chastised by colleagues for going to bat for his boss at times when Reynolds clearly appeared to be throwing sticks into the spokes of the wheels of justice.

In one case involving rights for the handicapped, Nelson V. Thornburgh, the department was expected to file a "friend of the court" brief. Reynolds argued that the case could not be reviewed in time to file within the court deadline. Anxious for some statement of views from the department, the court allowed for a late filing. Cook drafted the brief and submitted it to Reynolds.

"It was edited beyond recognition," charges Cook. The most obvious and disturbing deletion was a ruling decision of the Supreme Court.

"It appeared to me that he was once again attempting to throw a case," Cook later stated in a lengthy resignation letter. Dismayed, Cook confronted Wilkinson. "That was Reynold's order," Cook says Wilkinson responded. "Brad doesn't like that case."

"You mean to tell me that we've left out a decision of the U.S. Supreme Court, never overruled, directly on point, merely because Mr. Reynolds doesn't agree with it?" Cook exploded.

Wilkinson defended his superior. "Brad thinks it's too broad," he replied, according to Cook. "Besides, you're lucky you got what you did. Some people appointed by this Administration don't think Section 504 [of the Civil Rights Act] requires any affirmative obligations at all."

Cook became so disgruntled he resigned from the department, but not before he submitted a letter to Attorney General William French Smith citing what he considered extreme laxness in enforcement—"thirty to forty instances where Reynolds and Wilkinson refused to enforce civil rights laws, mostly relating to the rights of the handicapped, because that was my area," says Cook, now director of the Western Law Center for the Handicapped, located at Loyola University. "But I also spoke to a good number of lawyers in the department and learned that it went on in other areas such as in suits involving sex and race discrimination as well."

Still, Vanderhoof does not believe what he considers "improprieties," such as the changes in the San Antonio jail case, will affect Wilkinson's chances for a Federal judgeship. "In this Administration, if you do well and don't cause much of a problem, you may be considered for judicial appointment," says Vanderhoof.

No one is exactly sure how the name of J. Harvie Wilkinson III made its way to the sanctity of the White House, but it was on the tip of the President's tongue when time came for a Presidental recommendation for the seat on the U.S. Circuit Court of Appeals, Fourth District, which encompasses Virginia, West Virginia, North and South Carolina and Maryland. "He was pleased," notes one observer, "but obviously not surprised."

As much as his meteoric rise surprised some observers, it never surprised Wilkinson or those who watched him grow up. In Richmond, there is a West End, that ever-growing expanse extending toward Goochland and populated by the upwardly mobile, and then there is *the* West End, a much smaller, exclusive, confined, refined area that lies just north of the James River and includes Windsor Farms and Westmoreland Place, Wilton and the E. Claiborne Robins estate. The elder of two sons of a bank president, Jay Wilkinson grew up on Richmond's most sacred breeding ground, that West End recognized by multigeneration Richmonders.

(Eventually, he married from within the area. Lossie Noell spent her early years in the West End, attending St. Catherine's School before going off to the all-female Mary Baldwin College.)

When Jay and his brother, Lewis, were ready for school, St. Christopher's was the logical choice. Both grew up with a cultivated interest in sports for which Lewis credits his mother. Country clubbers often caught glimpses of Letitia Wilkinson batting balls to her boys on the tennis courts on summer mornings. While Lewis diversified his sports skills, taking up baseball and other sports, Jay bore down and developed a mean game of tennis, playing on school teams through college and serious social games thereafter.

By his sophomore year, Wilkinson had done just about all there was to do at St. Christopher's. As a freshman, his extracurricular activities included Student Council, Honor Council, Missionary Society and president of the Lee Literary Society. Clearly, it was time to move on, so Jay went to board at Lawrenceville School in New Jersey.

In the early 60's, when seeds of revolution were sprouting in Ivy League colleges and large universities alike, the prep school counterparts were as yet untouched. Lawrenceville boys wore coats and ties to class, went to sports in the afternoons and looked forward to the three or four tea dances spaced through the school year.

In Boarding school, only the strong survive. When you're small for your age and smarter than most of your classmates, like Wilkinson, it can be a harrowing experience—unless you're extremely charming and an all-around good guy, that is.

At Lawrenceville, Wilkinson emerged as a quiet leader, excelling in tennis and academics, eventually becoming editor of the school newspaper.

"Jay was a great success at school," says Richard Quintal, a New York banker who shared a six-bed suite with Wilkinson for three years in Lawrenceville's Griswold House.

"He was bright, but not a jerk," adds former classmate John H.W. Crinell of Washington. "He was one of the few people I knew who wasn't that way. He was quiet in an outgoing way. Not boisterous and crazy, but bright, easy to get along with."

Wilkinson picked up speed at Yale. Although he claims that his undergraduate grades showed room for improvment, he managed to be elected to Phi Beta Kappa and to graduate magna cum laude.

His senior year, Wilkinson was named one of 14 Scholars of the House, a distinction which carries with it the latitude to refuse all classes in the fourth year to pursue one avenue of study. Wilkinson's choice was to write a paper on the Byrds and Virginia politics. What was initially completed as a 50-page manuscript entitled "Harry Byrd and the Changing Face of Virginia Politics" was soon published into a 12-chapter documentary and analytical history of state politics spanning the 22 years of the Byrd reign between the mid-40's and mid-60's. By the age of 23, Jay Wilkinson had published his first book. It caught the eye of Linwood Holton, then soon-to-be Governor Holton.

"I looked him up specifically because he sounded like a bright young man who was ready to break out of the Democratic establishment, which I knew he was bound to be with his family background, and into something new, the Republican competitive system of two parties, that I was working on," Holton says. "He sounded from his book like he would be open to new ideas."

When Holton first contacted him, Wilkinson was serving a year in the Army reserves. "As soon as he was out of the service and back in law school, I went up to Charlottesville and had dinner with him," Holton says. That was the start of a long-term friendship.

It was through that friendship that Holton met Jay's father, United Virginia Bank president J. Harvie Wilkinson Jr. As governor, it was Holton's job to appoint the University of Virginia Board of Visitors of which the elder Wilkinson was a member. "I had gotten to know Harvie Junior pretty well," recounts Holton. "I suggested to him that if he did not want to be reappointed to the board that I was going to consider appointing Jay in his place." It was unprecedented to appoint a law student to the Board of Visitors, but Holton did not hesitate: He appointed J. Harvie Wilkinson III.

The governor nurtured the mentor-protégé relationship. Wilkinson was a major draftsman of Holton's 1970 inaugural address, and later that same year, Holton convinced the 25-year-old student to run against Satterfield for the third Congressional seat. Just six years earlier, in 1964, Wilkinson had worked to elect Satterfield, a longtime family friend, and the following summer, Wilkinson was an intern in Satterfield's office.

Now, the Congressman discovered that his intern was opening up a campaign office and digging in to do battle against him. "Clearly, this one is one we're going to write up as a win," a confident Holton was quoted as saying.

"He was a personable young man," Holton said recently. "He obviously had potential in politics. That was certainly evidenced in his book, in his participation in my campaign as an advisor and speechwriter. I felt that with his background in Richmond, he probably could win."

Satterfield claims he was somewhat surprised. "I didn't think he'd be running against me, but you don't think about those things. I did feel like he was being pushed rather rapidly."

Wilkinson was crushed under Satterfield's landslide victory. One political analyst called it "the biggest misstep of Jay's career." Concurs Satterfield, "I thought he had a future in politics. I'm afraid he got pushed faster than he should have been. Who was pushing him? The Governor of Virginia, Linwood Holton."

Perhaps it was the congressional defeat that led Wilkinson to replace his fervor for politics with a fascination and obsession with the Supreme Court. In his final year of law school, he applied for clerk positions with Justices Byron White and Potter Stewart and was invited along with a handful of other applicants to come to Washington for interviews. He was not chosen by either.

Shortly thereafter, President Richard M. Nixon announced on national television that Lewis Powell had been chosen to fill the vacancy left by the death of Justice Hugo Black.

Jay was jubilant. "Lewis Powell!" he wrote in Serving Justice, his 1974 book reflecting on his year at the Supreme Court. "The Supreme Court had, I felt, been saved and along with it, I could not help thinking, my chances for clerkship." Justice Powell was confirmed in December 1971.

"'Dear Jay,' his letter to me began," wrote Wilkinson. "'I have ascertained that one of Mr. Justice Black's three clerks will not remain at the Court after the first of the year. Accordingly. . . .' Already, I had begun writing my acceptance."

It appeared that family connections had once again paved the way. Unlike most Supreme Court law clerks, Wilkinson had never clerked at any court. "It's ordinarily a two-step process," notes Larry Hammond, another of Justice Powell's clerks at the time. "Jay came straight to the Supreme Court. He may have been the only person to do that, or maybe there was one other. Basically, he had no experience base of his own to rely upon from having been a law clerk."

But once in position, Wilkinson responded true to form. Says Justice Powell, "Of my forty-five law clerks, Jay was certainly among the best." Notes Hammond: "Even with that very modest handicap [no experience], he did quite a splendid job. Of course, he knew Lewis Powell, and Powell knew him and his family, so he had no difficulty getting to know the Justice or developing a rapport. But one of the things that I most admired Justice Powell for was that he never drew any lines of demarcation among his clerks. he treated all of us as if we were part of his family," even, Hammond recalls, when it came to gently chiding Wilkinson to take home the basketball shoes and running shorts that had stayed a bit too long under his desk.

Hammond says Wilkinson took no liberties or advantages of his personal ties to Powell." Indeed, there were some cases where I felt the temptation to have Jay involved in looking at a particular question, or trying to decide how it ought to come out, just because I had the mistaken notion that if Jay were persuaded that it was right, then maybe the Justice would be. It never turned out to be true or to make any difference one way or the other."

Wilkinson returned to Charlottesville after the clerkship to begin the first of three professional stints at U.Va.'s law school. He stayed the first time for five years, until 1978 when he took a leave of absence to join the staff of The Virginian-Pilot. If it seemed an odd detour for someone with judicial aspirations, it was a perfect grandstand and one that allowed Wilkinson to hone his conservative philosophies and share them with thousands of daily readers, including periodic railings against forced busing to achieve racial desegregation.

It was yet another foray into the unknown, and it was immediately obvious to those around him that the Pilot was just one more stopover. "He couldn't even type," remarks Smith. worse yet, he refused to learn.

"It became a cynical joke in the newsroom," says one former editor. "He had no understanding of how a newspaper works. He'd write his piece and go home."

Wilkinson had another habit that sometimes irked co-workers. He would take off in the middle of the day for a jog. "It didn't matter what was happening in the world," recalls former editorial writer Smith.

Perhaps he was using the time to think. In the evenings of that first year at the Pilot, Wilkinson turned his attention back to the court, completing his third book, From Brown to Bakke, focusing on the Supreme Court and school integration from 1954–78.

Not untypically, his entree to the Pilot reportedly was a friend. Attorney John O. Wynne, then on the corporate staff of Landmark Communications, is thought to be responsible for Wilkinson's emergence as an editorial page editor.

"I do not think Jay would have come to the Pilot as editor if not for Wynne," said one former Pilot news executive. "Wynne became his champion. He backed him to [then-publisher] Perry Morgan and [Landmark chairman] Frank Batten."

It was a grand match. Before long, Wilkinson was beating Morgan and Batten in tennis at Princess Anne Country Club. He apparently was also very persuasive off the court. Under Wilkinson's flourish, many of the paper's long-held editorial stands were overthrown. In one such change, its longstanding opposition to the death penalty was reversed. The overall position of the editorial page policy went from moderately liberal to conservative. But such changes, radical as they may seem, are within the domain of the editorial page editor, which Wilkinson was.

Not everyone, Smith included, agreed with the stands suggested by Wilkinson. "All of us editorial writers were expected to express our opinions in a rational, persuasive way," Smith comments. "Having been reporters at some time in our careers, we were trained to analyze things objectively and then to draw conclusions based on where the facts led us. I felt that Jay came at it from a different discipline: partisan politics. I felt that he always couched his opinions in such a way that would protect his political future."

"He showed a lack of compassion in his editorial positions," said his predecessor Robert Mason. "I thought Jay lacked sensitivity about the poor and downtrodden."

But it is Wilkinson's editorials on political influence and experience that add a touch of irony to his quest for the Fourth Circuit judgeship. During Wilkinson's Pilot tenure, an editorial entitled "Choosing Judges on Merit" was published, which criticized the politics involved in the selection of Virginia judges. A later editorial, which Wilkinson either wrote or at least approved, began: "Judges ought to be selected on the basis of merit, not on the basis of political ties."

His most assertive maneuvering came when William Rehnquist was named to the Supreme Court leaving Rehnquist's job as the Justice Department counsel vacant. "When they were filling all the slots in the Justice Department, Jay picked out the job he wanted," says Smith. "It was the one Rehnquist had held. His theory was that it was a good launching pad for the Supreme Court."

According to Smith, Wilkinson was told that the spot as Assistant Attorney General had been filled. "He came back and told me that they'd offered him two other jobs. He said he'd turned them both down because he wasn't sure that either would be advantageous down the road."

The following summer, 1982, Wilkinson took the deputy's job in Justice. Less than a year later, he was jockeying for the Fourth Circuit seat. He made his desires known "to several people," including Rep. G. William Whitehurst (R-2nd), as early as last summer. In a conversation with the Congressman, he indicated that "he wanted it," says David Bushnell, a Whitehurst aide. "The Congressman informed him that he respected that, but that he was supporting someone else."

Whitehurst's was not the last opposition Wilkinson would face in his court bid. Civil rights groups launched salvos against his candidacy based on Wilkinson's lack of legal experience, saying he was no more qualified to be a judge than some of their own counterparts who had been overlooked. In February, a handful of witnesses argued before the Senate Judiciary Committee that his approval would be unfair when blacks, women and other minorities have been denied Federal court appointments for lack of legal experience.

Their hue and cry was later taken up by three United States senators who tried to block Wilkinson's confirmation. In March, when the committee ended three months of speculation over the confirmation by voting to recommend him, Senator Edward M. Kennedy, D-Mass., protested. "By ramming this through, you're sending a message to millions of women in our society, women with better recommendations and experience than Mr. Wilkinson has. It's a dual standard, my friends," he shouted.

What Senators Kennedy, Joseph R. Biden Jr. (D-Del.) and Howard M. Metzenbaum (D-Ohio) most stridently objected to was the American Bar Association's rating of "qualified." Although the rating is normally

awarded to those who have been admitted to the bar for 12 years or more, exceptions have been made. Wilkinson hit the 12-year mark on Feb. 1, three months after his nomination. ABA president Frederick G. Buesser Jr. responded to their protests in a letter pointing out that several candidates have been found qualified with fewer years at the bar than Wilkinson, including two women and one Hispanic male.

More dust was raised when it was revealed that Justice Powell, in what has been described as an unusual move for a sitting justice, had personally contacted an ABA committee member and friend and put in a good word for Wilkinson. Justice Powell denied any wrongdoing. At the ABA's request, he also had written a letter of evaluation to Democratic members of the Senate Judiciary Committee in which he called Wilkinson "an exceptionally gifted legal scholar and a compassionate and thoughtful human being."

There are some who believe that politics has had a role in delaying confirmation, that if Democrats can stall a vote until after the election, there might be a new President, with a different preference. For, while liberals rail against Wilkinson's lack of experience, what really frightens them are his philosophies.

Chan Kendrick, of the American Civil Liberties Union, says his group hasn't taken an official stand. However, notes Kendrick, "If I were among the people opposing his nomination who believe he is bright enough and articulate enough to be appointed to the Supreme Court, I would oppose it now and every step of the way. The record [of opposition] should be built now; the controversy should be created now."

For now, it is still Federal Courts class, not the Federal court, that is occupying Wilkinson's attention.

To watch Wilkinson here is to see him at home base, the stage he has returned to three times since he first took up teaching in 1973. To watch him here also is to see a bit of the relentless quality, the dogged pursuit that has driven Wilkinson these nearly 40 years.

"He's lively and aggressive," says one third-year student who's glad to be getting out of Wilkinson's class. "He goes after students for their ideas. And if they're unprepared, he lets them know, in front of the class, that they'd better be prepared next time. Other professors don't do that in third year classes."

Federal court class has let out for the summer. The auditorium is empty, his students having gone on to permanent jobs. Permanence: It's a value lacking in Jay Wilkinson's life. Perhaps a lifetime appointment to the Federal bench would harness him. Perhaps not. It's a new stage, a bigger stage. Another opening, another show.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, May 17, 1984.

DEAR COLLEAGUE: We are writing to express our concern over the nomination of J. Harvie Wilkinson III of Virginia to be a judge of the U.S. Court of Appeals for the Fourth Circuit. Mr. Wilkinson is currently Associate Professor of Law at the University of Virginia Law School, and briefly served as a deputy attorney general in the Civil Rights Division of the Department of Justice during this administration.

The nomination was reported favorably to the Senate by the Judiciary Committee by a vote of 11-5 on March 15 and is now on the Senate calendar. The Majority Leader has announced his intention to proceed to the consideration of the nomination shortly.

This nomination is not ready for action by the Senate.

The nomination was submitted to the Senate on November 10, 1983. A Judiciary Committee hearing was held on November 16, at which Wilkinson was the only witness. The nomination lapsed at the end of the First Session of the 98th Congress, and was resubmitted to the Second Session on January 30, 1984. A further hearing was held on February 22, 1984, at which Wilkinson also appeared and at which numerous public witnesses testified in opposition to his nomination.

At the second hearing and in subsequent published reports, substantial and disturbing questions were raised for the first time about the nomination, including the procedures used by the American Bar Association's Standing Committee on Federal Judiciary to evaluate Mr. Wilkinson, and the role of the Justice Department, the nominee himself and others in the evaluation process.

The initial confidential in-depth investigation of Wilkinson by the ABA Committee member for Virginia assigned to carry out the investigation raised serious concerns about his qualifications. Under the Committee procedures, a second member was then named to assist in the investigation. A single formal report was prepared for the 14-member Committee, with the first investigator concluding that Wilkinson was "Unqualified" and the second investigator finding him "Qualified."

Wilkinson has zero trial experience. If confirmed, he would become the first judge to take a seat on a Circuit Court of Appeals with no trail experience.

A double standard is being applied by the ABA Committee for the benefit of Wilkinson. During the previous Administration, the Committee guidelines on trial experience were enforced inflexibly to disqualify women and minority candidates who actually had substantial trial experience. Two cases illustrate the point:

(1) Carin A. Clauss was the Department of Labor Solicitor responsible for supervising the litigation of the Department's three hundred attorneys. In a preliminary finding, she was rated "Unqualified" by the ABA to be a federal district judge and her nomination was not submitted.

(2) Joan Krauskopf, a member of the bar for 20 years, had been in private practice in Colorado, had supervised a legal aid clinic in Missouri, and had handled cases as a court-appointed attorney and in a pro bono capacity. After an initial investigation, she was rated "Unqualified" by the ABA to be a federal appellate judge for the Eighth Circuit, and her nomination was not submitted.

Wilkinson, who was admitted to the bar in 1972, in fact has fewer years as a member of the bar than any Circuit Court nominee from the creation of the Circuit Courts of Appeal in 1891 through the end of 1980. And three of those years were actually spent outside the field of law, as an editorial writer for the Virginian-Pilot newspaper. In an editorial of July 29, 1983, the Virginian-Pilot opposed the nomination.

Numerous requests by several Senators for an additional Judiciary Committee hearing on the nomination to clear up these allegations have been unsuccessful. A proposed hearing on ABA procedures, tentatively scheduled for May 17, 1984, by the Judiciary Subcommittee on Courts, was indefinitely postponed on May 10 to avoid addressing the Wilkinson nomination prior to consideration of the nomination by the full Senate.

The Senate has a responsibility to have the full record on this nomination before it, in advance of the vote on whether Wilkinson should be confirmed as a judge with life tenure on the Fourth Circuit Court of Appeals. Also, the nominee has the right to refute the allegations and answer the questions—set out fully in the attachment hereto—which have been raised about his qualifications and fitness since the Committee hearing. It would be extremely embarrassing if negative answers to the questions surrounding this nomination were revealed after the nominee is sitting on the federal appellate bench. We believe that the record can be completed by a one day hearing at which Wilkinson, ABA Committee members, and Justice Department officials would be invited to testify.

There is no doubt that J. Harvie Wilkinson III, who is 39 years old, is a bright young lawyer and a popular professor at the University of Virginia Law School. But the unanswered questions that have been raised about his nomination cast grave doubts on his fitness, maturity, and temperament to serve as a judge of the Fourth Circuit Court of Appeals.

The Senate's duty to advise and consent means more than rubber-stamping a nominee. The Senate should not be bound by the investigation or the recommendation of the ABA. Until the many questions surrounding the Wilkinson nomination are responsibly addressed, the Senate should withhold action on the nomination.

For these reasons, when and if the Senate turns to the consideration of the Wilkinson nomination, we intend to offer a motion to recommit the nomination to the Judiciary Committee for the purpose of holding another hearing.

The integity of the judicial selection process is fundamental to the integrity of our judicial system. We must not abdicate our responsibility to assure that the Senate confirmation proceedings are full, fair and unbiased. We urge you to join us in supporting the motion to recommit the Wilkinson nomination to the Judiciary Committee.

Sincerely,

EDWARD M. KENNEDY.
JOSEPH R. BIDEN, Jr.
HOWARD M. METZENBAUM.

ATTACHMENTS TO KENNEDY, BIDEN, AND METZENBAUM LETTER

1. Allegations of Questionable Activities Relating to the Wilkinson Nomination and Unanswered Questions on the Wilkinson Nomination.
2. Editorals—Asheville (North Carolina) Citizen, Norfolk (Virginia) Virginian-Pilot.
3. ABA Letter Rating Wilkinson.
4. Excerpts from ABA Guidelines for Judiciary Nominees.

ALLEGATIONS OF QUESTIONABLE ACTIVITIES RELATING TO THE WILKINSON NOMINATION

Officials of the Justice Department obtained and improperly devulged the results of the confidential investigation to the nominee, informing him that the ABA investigating committee members were in disagreement, that a vote was about to be taken by the Committee, and that his approval by the Committee was in jeopardy.

The nominee used the information improperly obtained from Justice Department officials to organize an intensive lobbying

campaign on his behalf to persuade the ABA Committee to rate him "Qualified."

Officials of the Justice Department who were supporters of Wilkinson conducted their own lobbying campaign to secure enough votes for a rating of "Qualified" by the ABA Committee.

Supreme Court Justice Lewis F. Powell, Jr. was also part of the lobbying campaign. Wilkinson served in the 1970's as a law clerk to Powell, who had known the Wilkinson family well for many years. Powell has initially been contacted by the two ABA Committee investigators. The second investigator told Powell that the first investigator was compiling a negative report on Wilkinson. Powell then contacted a third member of the Committee whom Powell knew, and lobbied for Wilkinson.

Key votes on the ABA Committee were changed because of the lobbying campaign and telephone calls directed by the nominee and others. The Chairman of the Committee stated that "it was the timing of these calls which was objectionable."

The ABA Committee was concerned enough about the lobbying campaign on Wilkinson, that it summoned Justice Department officials to the ABA midwinter meeting in Las Vegas in February, 1984 to reprimand them.

Notwithstanding the ABA Committee's written guidelines which recommend substantial trial experience and specify at least some trial experience as a minimum requirement for approval, the ABA Committee found Wilkinson to be "Qualified." The Committee has never before given a "Qualified" rating to such a nominee.

Other academics nominated for federal appellate judgeships and found "Qualified" by the ABA Committee in fact had far more distinguished credentials than Wilkinson, far more years at the bar, and at least limited trial experience.

In addition to his improper activities during his confirmation process, Wilkinson participated in interviewing at least one candidate for the Fourth Circuit vacancy he has been nominated to fill, after he expressed interest in being nominated to fill that vacancy.

UNANSWERED QUESTIONS OF THE WILKINSON NOMINATION

The questions which the Senate needs answered before it votes on the Wilkinson nomination include the following:

What did Wilkinson do with the information that his nomination was in trouble, which he obtained improperly from Justice Department officials?

Whom did Wilkinson ask to contact ABA Committee members?

What effect did Wilkinson's lobbying have on the ABA Committee decision to find him qualified?

What do Wilkinson's actions in furtherance of his nomination reveal about his suitability to be a federal appellate judge?

Why was Wilkinson's nomination in trouble with the ABA Committee before the intensive lobbying campaign was launched by Wilkinson and others?

What effect did lobbying by Justice Department officials and Justice Powell have on the decision of the ABA to find Wilkinson qualified?

Why did the ABA discard its guidelines concerning time at the bar and trial experience to find Wilkinson qualified?

How would ABA have rated Wilkinson absent the lobbying campaign?

Can it be fairly said that Wilkinson is qualified to be a federal judge?

[From the Asheville (N.C.) Citizen, Apr. 3 1984]

REAGAN COURT CHOICE LACKS QUALIFICATIONS

One of the enduring measurements of a president is the quality of his judicial appointments. So if President Reagan's choice of J. Harvie Wilkinson III to fill a vacancy on the 4th Circuit Court of Appeals is indicative of this chief executive's record, then he and the public are in deep trouble. The court hears cases from the Carolinas, the Virginias and Maryland.

Wilkinson, a University of Virginia law professor, should not have been appointed. He lacks the basic credentials of an appeals court judge.

His lack of qualifications is staggering. He has no judicial experience. He has never had a private client. He has yet to argue a case in court. He has never drafted a legal brief by himself. He has been in the law for only eight years. He is not even entitled to practice before either the appeals court or any of the trial courts it supervises.

What happened to the American Bar Association standards that appointees to the appellate courts have at least 12 years of legal experience and "substantial" trial experience?

Some powerful people are asking that question. They should ask it.

Fact is, there is just enough evidence available to believe the ABA, self-appointed guardian of the nation's courts and law, caved in to political pressure on the Wilkinson nomination. ABA screening committee members now admit to being contacted by two of Wilkinson's friends prior to the panel's vote on the nomination. The committee decided to waive the requirements cited above regarding legal and trial experience.

What do you think would have happened if a woman or black with Wilkinson's lack of legal credentials had come before the august ABA? The ABA would have found the woman or black unqualified. The Senate Judiciary Committee would have balked. The President would have been forced to withdraw the nomination.

A double standard is at work in this case. There is one standard imposed for women, blacks, and most white nominees to appellate courts. There is another standard for nominees in the Reagan ideological mold. A Washington lawyer did not exaggerate much when he said: "This nomination is symbolic of a con game. The administration talks of merit selection, but Mr. Wilkinson is probably the least experienced appellate nominee ever seen."

Wilkinson's nomination brings to mind the story involving House Speaker Sam Rayburn's visit to the Kennedy White House and his introduction to "the best and brightest."

Mr. Sam returned to his protege, Lyndon Johnson, and offered, "Lyndon, I'd feel a lot better if one of those fellas had run for sheriff."

If Wilkinson becomes a member of the 4th Circuit bench, some lawyers and clients appearing before him may harbor thoughts similar to Mr. Sam's: "If only this guy had tried a case . . ."

A scholarly temperament indeed is a necessary requirement for an appellate judge. Wilkinson, because he teaches law, may possess that ability. But his lack of judicial experience disqualifies him for this position. President Reagan should withdraw the nomination, or the Senate Judiciary Committee should reject it. This man has no business on a court that is one heartbeat away from the Supreme Court, and one heartbeat away from a trial court to which he is a stranger.

[From the (Norfolk) Virginian Pilot, July 29, 1983]

WILKINSON AS JUDGE?

News reports indicate that the Reagan administration is going to nominate J. Harvie Wilkinson III, a former editor of The Virginian-Pilot, for the vacant judgeship on the U.S. 4th Circuit Court of Appeals. If so, it is further evidence that the administration, in selecting federal judges, does not place judicial experience high on its list of criteria.

What should those criteria be? Certainly an administration would want to consider a potential judge's (1) judicial philosophy, (2) age, (3) intellect and (4) experience.

As far as the Reagan administration is concerned, Mr. Wilkinson fits categories (1), (2) and (3) perfectly. He is a conservative. He is young enough, 38, to serve on the bench for many years and thus inject his philosophy into the federal judiciary. And he has shown a powerful intellect in his years as author, law-school professor and editorial writer.

On experience, however, Mr. Wilkinson comes up short. As a law clerk at the U.S. Supreme Court and as a professor of law, he has learned the legal process. But that is not the same as actually participating in trials.

This is the same drawback that faced the administration's first choice for the judgeship, Kenneth W. Starr, who was opposed by Virginian Sen. John W. Warner and now has been nominated for a seat on U.S. Court of Appeals for the District of Columbia.

In March, writing about the possibility of the Starr nomination, we noted his limited experience and added: "Obviously, he is a bright young man in a hurry, and no doubt his time will come—but what's the rush?

The same question applies to Mr. Wilkinson. His credentials are substantial. Without a doubt, the Reagan administration could make a far worse choice. The question that should be considered, however, is whether the administration can find a judge with all Mr. Wilkinson's attributes—plus experience in the courtroom.

AMERICAN BAR ASSOCIATION, STANDING COMMITTEE ON FEDERAL JUDICIARY, 33 WEST MONROE STREET, 7TH FLOOR, CHICAGO, IL. 60603,
January 31, 1984.

Re James Harvie Wilkinson III, C.A., Fourth.

Hon. STROM THURMOND,
Chairman, U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR THURMOND: Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of James Harvie Wilkinson for appointment as Judge of the United States Court of Appeals for the Fourth Circuit.

A substantial majority of our Committee is of the opinion that Mr. Wilkinson is qualified for this appointment. The minority found him to be not qualified.

With kind regards, I am

Sincerely,

FREDERICK G. BUESSER, Jr.,
Chairman.

AMERICAN BAR ASSOCIATION—STANDING COMMITTEE ON FEDERAL JUDICIARY

Chairman and Member-at-Large: Frederick G. Buesser, Jr., 4190 Telegraph Road, Bloomfield Hills, MI 48013.

John M. Harrington, Jr., 225 Franklin Street, Boston, MA 02110.

Robert B. Fiske, Jr., One Chase Manhattan Plaza, New York, NY 10005.

Lewis H. Van Dusen, Jr., 1100 Philadelphia, National Bank Bldg., Broad & Chestnut Streets, Philadelphia, PA 19107.

James A. Howard, Sr., 1700 First Virginia Bank Tower, 101 St. Paul's Blvd., Norfolk, VA 23510.

Gene W. Lafitte, One Shell Square, 50th Floor, New Orleans, LA 70139.

Stuart J. Dunnings, Jr., Duncan Building, 530 South Pine Street, Lansing, MI 48933.

Steven E. Keane, Suite 3800, 777 E. Wisconsin Avenue, Milwaukee, WI 53202.

James W. Hewitt, P.O. Box 80268, Lincoln, NE 68501.

Victor E. Chavez, Suite 575, Beneficial Plaza Building, 3700 Wilshire Boulevard, Los Angeles, CA 90010.

John Gavin, P.O. Box 2249, 120 N. Naches Ave., Yakima, WA 98907.

John S. Pfeiffer, 1200 American Natl. Bank Bldg., 818 17th Street, Denver, CO 80202.

M. Roland Nachman, Jr., P.O. Box 668-8 Commerce St., Montgomery, AL 36101.

John D. Lane, 1666 "K" Steet, N.W., Washington, D.C. 20006.

Board of Governors Liaison: Marion Edwyn Harrison, 6th Floor, 1000 Thomas Jefferson St., NW., Washington, DC. 20007.

Staff Assistant: Diane Livingston, 33 W. Monroe Street, 7th Floor, Chicago, IL 60603, 312/621-9576.

EXCERPTS FROM EVALUATION CRITERIA OF THE AMERICAN BAR ASSOCIATION ON APPOINTMENTS TO THE DISTRICT COURTS, THE COURTS OF APPEALS AND THE OTHER LOWER FEDERAL COURTS

* * * * *

As to experience, the Committee believes that ordinarily a prospective appointee to the federal bench should have been admitted to the bar for at least twelve years. Substantial trial experience (as a lawyer or a trial judge) is important for prospective nominees to both the appellate courts and the trial courts. Additional experience which is similar to court trial work—such as appearing before or serving on administrative agencies or arbitration boards, teaching trial advocacy or other clinical law school courses, etc.—is considered in evaluating a prospective nominee's trial experience qualifications. In exceptional cases, when there is significant evidence of distinguished accomplishment in the field of law, an individual with limited trial experience may be found qualified.

In evaluating experience, the Committee recognizes that women and members of certain minority groups have entered the profession in large numbers only in recent years and that their opportunities for advancement in the profession may have been limited.

The Committee believes that political activity and public service are valuable experience, but that such activity and service are not a substitute for significant experience in the practice of law.

* * * * *

Recognizing that an appellate judge deals primarily with records, briefs, appellate advocates and colleagues (in contrast to witnesses, parties, jurors, live testimony and the theater of the courtroom), the Committee may place somewhat less emphasis on the importance of extensive trial experience as a qualification for the appellate courts. This same contrast in day-to-day experience may also cause the Committee to evaluate temperament for the appellate courts in slightly different terms.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington. DC, March 5, 1984.

Mr. FREDERICK G. BUESSER,
Chairman, Standing Committee on Federal Judiciary, American Bar Association, 1800 M Street, NW., Washington, DC.

DEAR MR. BUESSER: We are writing as members of the Senate Judiciary Committee to inquire about the method by which the Standing Committee on Federal Judiciary has interpreted the American Bar Association's guidelines in assessing the qualifications of Mr. J. Harvie Wilkinson III, who has been nominated to be a member of the United States Court of Appeals for the Fourth Circuit.

As we understand it, the ABA guidelines suggest that nominees for federal appellate courts should have been admitted to the bar for at least 12 years and should have substantial trial experience. We are concerned about two issues relating to the application of these guidelines in the Wilkinson case.

First, there is the appearance that the Standing Committee's action in this case is unprecedented, and that the committee has applied a double standard in rating Mr. Wilkinson "qualified." We are particularly concerned about testimony that, on numerous occasions in recent years, the committee has applied the guidelines inflexibly, and has advised Administrations that women and minority nominees who do not meet the twelve year/trial experience tests would not be found "qualified" by the ABA, with the result that such candidates were not even considered for nomination to the federal judiciary.

Second, we are concerned about published reports of lobbying activities designed to influence members of the Standing Committee in their application of the ABA guidelines and in their assessment of Mr. Wilkinson's qualifications.

We would appreciate your detailed response to these concerns, so that as we consider Mr. Wilkinson's nomination, we may have a complete understanding of the procedures followed by the Standing Committee.

Sincerely,

EDWARD M. KENNEDY.
JOSEPH R. BIDEN, JR.
HOWARD M. METZENBAUM.

AMERICAN BAR ASSOCIATION, STANDING COMMITTEE ON FEDERAL JUDICIARY, 33 WEST MONROE STREET, 7TH FLOOR,
Chicago, IL, March 12, 1984.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: I respond to the March 5 letter from Senators Kennedy, Biden and Metzenbaum with reference to the pending nomination of Mr. James Harvie Wilkinson, III. In doing so, it may be helpful to review the Committee's standard operating procedures.

The process begins when the Justice Department asks the Chairman that a candidate be investigated for a particular vacancy. Ordinarily the matter is referred to the Committee member for the circuit in which the vacancy exists, assuming that such member is readily available and nor already overburdened. At the same time the Justice Department sends the Personal Data Questionnaire to the candidate with instructions to complete it and furnish a copy to the Chairman, the circuit member and the Justice Department.

The circuit member conducts an in-depth investigation. If in the course of that investigation concerns develop, he advises the Chairman and suggests that a seconds Committee member become involved to assist in the investigation. This is not an uncommon occurrence.

Such was the case in the Wilkinson matter and a second Committee member was designated to assist in the investigation. The two members worked together and interviewed the candidate. A single report on his qualifications was prepared. It was accompanied by separate statements of the two investigators in which each cited the conclusions he had reached. One member found the candidate qualified. The other found him not qualified. The report was circulated to all members together with the differing opinions of the two circuit members. A substantial majority of the Committee found Mr. Wilkinson qualified; a minority found him not qualified. When Mr. Wilkinson was nominated both the Senate Judiciary Committee and the candidate were advised of the ratings. The Committee does not reveal how its members voted but the term "subsantial majority" has been adopted to indicate that the candidate has strong, but not unanimous, endorsement.

It must be understood that when a Formal Report has been prepared by one or more circuit members and circulated to the entire Committee, each circuit member considers the matter privately and makes his own decision as to the rating he believes appropriate. Such ratings are promptly conveyed to the Chairman and tabulated. Decisions are a matter of individual judgment and it is impossible to know the precise rationale which prompted each one.

Our guidelines provided "that *ordinarily* a prospective appointee to the federal bench should have been admitted to the bar for at least twelve years" (emphasis added). Our records indicate that Mr. Wilkinson was admitted to the Bar of the State of Virginia on February 1, 1972. When his name was sent to us for investigation at the end of July of 1983, he then had virtually, and certainly by now, satisfied the 12 year requirements.

Your letter states that "We are particularly concerned about testimony that, on numerous occasions in recent years, the Committee has applied the guidelines inflexibly, and has advised The Administration that women and minority nominees who do not meet the twelve year/trial experience tests would not be found 'qualified' by the ABA. . . ." Several years ago the Committee, in recognition of the relatively recent influx of substantial numbers of women and minorities into the legal profession, amended its standards to provide:

"In evaluating experience, the Committee recognizes that women and members of certain minority groups have entered the profession in large numbers only in recent years and that their opportunities for advancement in the profession may have been limited."

The suggestion that in recent years the Committee "has applied the guidelines inflexibly" to the detriment of women and minority nominees is not borne out by the

facts. Of the eleven candidates with less than twelve years at the bar who were rated qualified or better by our Committee during the Carter Administration, time at the bar ranged from five years in one instance to eleven years in six instances. Two candidates had been admitted eight years, one nine years and another ten years. These included four women, one of whom was a member of a minority; five men who were members of minorities and two Caucasian men.

During the Reagan Administration there have been five candidates admitted to the bar less than twelve years who the Committee found qualified. Two of these were women, one was an Hispanic male and two were Caucasian males.

Our evaluation criteria further provide:

"Substantial trial experience (as lawyer or a trial judge) is important for a prospective nominee to both the appellate courts and the trials courts. Additional experience which is similar to court trial work. . . ., *teaching trial advocacy* or other clinical law school courses, etc.—is considered in evaluating a prospective nominee's trial experience qualifications. *In exceptional cases, when there is significant evidence of distinguished accomplishment in the field of law, an individual with limited trial experience may be found qualified.*" (emphasis added).

Our records, indicate that Mr. Wilkinson taught at the University of Virginia Law School from 1973 to 1978 and again in 1981/82 and that he regularly taught the following courses:

Federal Courts—Subjects covered include case or controversy, federal question jurisdiction, implied remedies and rights of action, federal common law, pendent jurisdiction, abstention, adequate and independent state grounds, section 1983, and federal habeas corpus.

Criminal Procedure—Topics covered are Fourth, Fifth and Sixth Amendment rights at different stages of the criminal process—search, arrest interrogation and line-up, bail and preliminary hearings, grand jury proceedings, and trial.

Constitutional Law—Subjects included the reach of congressional authority under Article I, Section 8, substantive and procedural due process, the equal protection clause, state action, and the speech and religion clauses of the First Amendment.

In addition thereto the experience of clerking for a Justice of the United States Supreme Court has to be given much weight, and in the opinion of prominent appellate justices, makes up for a lack of practice experience. A clerk to an appellate judge sees the best and the worst briefs and listens to some of the finest and some of the poorest arguments. In this process he should learn quickly to distinguish those things that are important and critical to the decisional process.

The guidelines further state—

"Without demeaning the scholarly qualities necessary for the trial courts, the Committee nonetheless looks for an especially high degree of scholarship and academic talent in prospective nominees for the appellate courts. The abilities to write lucidly and persuasively, to harmonize a body of law and to give guidance to the trial courts in future cases are matters of great concern for the evaluation of prospective nominees for the appellate courts.

Recognizing that an appellate judge deals primarily with records, briefs, appellate advocates and colleagues (in contrast to witnesses, parties, jurors, live testimony and the theater of the courtroom) *the Committee may place somewhat less emphasis on the importance of extensive trial experience as a qualification for the appellate courts.*" (emphasis added).

Mr. Wilkinson's extensive writings were furnished to the Committee and show him to be an unusually able writer and legal scholar with the apparent capacity to become an outstanding appellate judge. A number of law professors were among those whose views were solicited with respect to this nomination, and they were uniformly of the view that his legal scholarship was of a very high order.

It is apparent that all of the criteria set forth in the Standing Committee's brochure were taken into account by a substantial majority of the Committee in reaching the decision that Mr. Wilkinson was qualified. I want to assure you that I do not personally believe the Committee applied a double standard in rating Mr. Wilkinson nor that its action was unprecedented. In support thereof we have reviewed recent nominees to the various courts of appeal whom we have found qualified or better who had very limited trial experience. At least four of these had teaching backgrounds and had demonstrated intellectual accomplishment and writing ability. I believe that the action of a substantial majority of the Committee in finding Mr. Wilkinson qualified was entirely consistent with our action in the cases of the academics referred to above.

You have also expressed concern about reports of lobbying activities on behalf of Mr. Wilkinson. It is important to know that in this case there was only one vote taken. At about the time the Former Report was circulated to the Committee, several Committee members called me in accordance with our practice to advise that they had received telephone calls on behalf of the candidate. I was personally concerned that it had apparently become known that the investigating Committee members were not in agreement and that vote was being taken. I took up that concern with the Justice Department. I'm convinced that such calls made on behalf of the candidate did not influence any vote in his favor. It is not unusual for individuals with special information about a candidate under investigation to voluntarily supply this to the investigating Committee members. The members of the Committee are experienced in the handling of this kind of information and indeed welcome it. In this particular case, it was the timing of these calls which was objectionable.

It should be made clear that the investigating Committee members sought the views of several members of the Supreme Court, including Justice Powell for whom Mr. Wilkinson had clerked. These gentlemen had a unique opportunity to judge his performance and his abilities. The Justices contacted were uniformly enthusiastic.

In closing, let me say on behalf of the Committee that for more than thirty years it has sought to bring the independent good judgment of knowledgeable lawyers to the judicial selection process. We never have candidates. Our sole responsibility is to evaluate those names sent to us. The integrity of the process depends upon the integrity of each Committee member, and I am proud to be associated with thirteen people of great character.

Respectfully,

FREDERICK G. BUESSER, Jr.,
Chairman.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 9, 1984.

Hon. LEWIS F. POWELL, Jr.,
Associate Justice, U.S. Supreme Court, Washington, DC.

DEAR MR. JUSTICE POWELL: We are writing as members of the Senate Judiciary Committee, which is currently considering the nomination of one of your former law clerks, Mr. J. Harvie Wilkinson III, to be a judge of the United States Court of Appeals for the Fourth Circuit.

According to published reports, you were contacted by two members of the ABA Standing Committee on Federal Judiciary in the course of its review of Mr. Wilkinson's qualifications, and you in turn contacted a third member of the ABA committee.

In light of the issues raised about Mr. Wilkinson's nomination and the procedures followed by the ABA committee in applying its guidelines to this case, we would appreciate your assistance in informing us of the specific contacts in circumstances of those contacts.

We are enclosing for your information a copy of the letter we sent earlier this week in the ABA committee.

Respectfully,

EDWARD M. KENNEDY.
JOSEPH R. BIDEN, Jr.
HOWARD M. METZENBAUM.

SUPREME COURT OF THE UNITED STATES, CHAMBERS OF JUSTICE LEWIS F. POWELL, Jr.,
Washington, DC, March 12, 1984.

Senators KENNEDY, BIDEN, and METZENBAUM,
Committee on the Judiciary, U.S. Senate, Washington, DC.

GENTLEMEN: This is in response to your letter of March 9, received by me at about 4:30 p.m.

The press reports I have seen are substantially accurate as to my conversations with three members of the ABA Judiciary Committee. It also is true that Mrs. Powell and I have known the Wilkinson family well for many years.

Mr. James Howard, a Committee member from my State of Virginia, called me last summer and asked my opinion as to the qualifications of J. Harvie Wilkinson, III, who clerked for me here. I responded favorably, noting the difference in the qualifications appropriate for a District Court judge and those for a Circuit Court Judge.

Mr. Lane, the Committee member for DC, called me later (in November, I believe). As I recall, he stated he was calling me as a Virginian, and because of the negative report from Mr. Howard, I repeated the substance of what I had said to Mr. Howard. Also, responding to Mr. Lane's inquiry, I agreed that my name could be used. I wrote Mr. Howard informing him of Mr. Lane's call.

I was concerned by what Mr. Lane had said about the report from my State. This prompted me to call Gene W. Lafitte, of New Orleans, on my own initiative. Mr. Lafitte is a Committee member and friend with whom I have been associated in the America College of Trial Lawyers. In a brief conversation with him, I told him of Mr. Lane's call, and repeated my view as to the qualifications of Mr. Wilkinson. I did not inquire where he stood; nor do I know how he voted.

I have had no other occasion to speak to members of the Committee. It is, of course, not unusual for federal judges to be asked their opinion as to the qualifications of per-

sons under consideration for appointment to the federal bench.

In view of your inquiry and your proper interest in Mr. Wilkinson's qualifications. I can say with confidence that of the some 45 fine clerks I have had in my 12 years on the Court, J. Harvie Wilkinson, III, ranks among the best. he is an exceptionally gifted legal scholar, and a compassionate and thoughtful human being. In my opinion, he is fully qualified to serve on a Court of Appeals.

Sincerely,

LEWIS F. POWELL, Jr.

[From the Washington Post, Feb. 28, 1984]

WILKINSON, RACING FOR TOP, REACHES KEY HURDLE TODAY

(By Philip Smith)

When J. Harvie Wilkinson III was editorial page editor of The Virginian-Pilot in Norfolk, his colleagues noted that Wilkinson wrote his articles longhand on legal pads and had a secretary type them into the newspaper's computer system.

That practice led some to conclude that a man who did not type also did not intend to stay long in the newspaper business. "He had no experience as a newspaper editor and seemed disinclined to learn it," says former Virginian-Pilot editorial writer A. Robert Smith.

Indeed, Smith says, Wilkinson once confided to him a desire to succeed his old Richmond family friend, Justice Lewis F. Powell, Jr., on the Supreme Court—"in no uncertain terms."

The impression that the 39-year-old Wilkinson is a young lawyer in a hurry is likely to be reinforced today when the Senate Judiciary Committee is expected to approve President Reagan's nomination to make Wilkinson one of the youngest federal appeals court judges in the nation.

Driven by social ties, wealth, educational distinction and old family connections that reach with ease into the Supreme Court itself, Wilkinson's campaign for a seat on the 4th Circuit Court of Appeals in Richmond is likely to clear the GOP-controlled Senate Judiciary Committee.

It appears unlikely that a host of bitter complaints by spokesmen for minorities and women—that Wilkinson's premier qualities are that he is bright, rich, Republican, white and male—will do more than dent Wilkinson's prospects.

"He's a wonderful teacher," says fellow University of Virginia law professor Steven Salzberg, "and a fine, traditional constitutional scholar." Wilkinson's boss, law school dean Richard A. Merrill, said, "Students berate us when we move him into a smaller classroom. His leaving would be a major loss for us."

Wilkinson's critics concede his intellect—he graduated magna cum laude from Yale—but they have protested that he falls short of the American Bar Association's guideline that federal appeals court judges should have at least 12 years' experience in law-related activities. Wilkinson, who won the ABA's backing anyway, has nine.

"It is a formidable combination of inadequacies," testified Elaine Jones, an NAACP Legal Defense Fund lawyer and former law school classmate of Wilkinson, at Senate hearings last week. "If a minority or a woman, with the amount of experience Mr. Wilkinson has, had been interested in an appellate judgeship, she/he would not have gotten to first base."

Since graduating in 1972 from law school in Charlottesville, he has clerked for Powell in Washington; served three years at The Virginian-Pilot; taught law at Virginia for six years and served a year in the Reagan Justice Department as deputy assistant attorney general in the Civil Rights Division. In 1970 he ran for Congress as the GOP's nominee in the conservative Richmond-area district, but was overwhelmed by incumbent Rep. David Satterfield, a Democrat.

He wrote speeches for Republican Linwood Holton's successful 1969 campaign for governor, and as recently as 1982 he worked with a Virginia group promoting former Fairfax County legislator Wyatt B. Durrette, another Republican, for governor in the state's 1985 elections.

Still, his bid for the appeals court lacks the strong endorsement of Sen. John W. Warner, Virginia's senior Republican, who initially supported older and more judicially experienced candidates for the position.

Warner said last week that if the Judiciary Committee backs Wilkinson, he will vote for his confirmation. The senator has said the White House wanted Wilkinson because it has wanted to name young lawyers to appeals court seats.

In a 1979 Virginian-Pilot editorial being circulated by his critics, who say it demonstrates hypocrisy, Wilkinson wrote that "the [Virginia] Bar Association took the correct position when it insisted . . . that merit should rule judicial selections . . . It is never too soon to begin stressing merit over connections. . . ."

When it came time for Wilkinson's bid for the bench, his opponents note, connections, including Powell, were not entirely absent. Powell—a wealthy ex-Richmond lawyer and longstanding friend of Wilkinson's father, a former chairman of United Virginia Bank—acknowledges that he told two members of the ABA rating committee who called him that he "strongly favored Jay." When asked by one of the callers to contact a third committee member, Powell did so.

Wilkinson ultimately won a luke-warm rating of "qualified."

[From the Washington Post, Mar. 8, 1984]

BAR ASSOCIATION'S STANDARDS DISPUTED

(By Philip Smith)

Three Senate Democrats, accusing the American Bar Association of a double standard in rating judicial nominees, have asked the ABA to explain why it found a University of Virginia law professor qualified for a federal appeals court judgeship.

Sens. Edward M. Kennedy of Massachusetts, Howard M. Metzenbaum of Ohio and Joseph R. Biden, Jr. of Delaware said in a letter to the ABA they were concerned that J. Harvie Wilkinson III was rated qualified even though he does not have 12 years' legal experience, the standard that the organization recommends for appellate judges.

"We are particularly concerned about testimony that, on numerous occasions in recent years, the [ABA] committee has applied the guidelines inflexibly and has advised . . . that women and minority nominees who did not meet the [standard] would not be found 'qualified,'" the legislators said.

The three senators also said that they were "concerned about published reports of lobbying activities designed to influence members" of the ABA's Standing Committee on the Federal Judiciary, which investigates and rates White House nominees for the bench.

Supreme Court Justice Lewis F. Powell Jr. told The Washington Post recently that he had been approached about Wilkinson by two ABA committee members and assured them that he "strongly favored Jay." Powell said that he was asked by one of the callers to contact a third committee member and did so.

"I have no apologies whatsoever for supporting [Wilkinson]," Powell told The Post.

Powell is a longtime family friend of Wilkinson, 39, a wealthy Republican attorney and teacher whose father is a former chairman of United Virginia Bank in Richmond.

It was unclear whether the Democrats' request for more details on Wilkinson's ABA endorsement would delay a Senate vote on his nomination by President Reagan to a vacancy on the 4th U.S. Circuit Court of Appeals.

The GOP-controlled Senate Judiciary Committee, of which Kennedy, Metzenbaum and Biden are members, is to take up the Wilkinson nomination today. Detroit attorney Frederick G. Buesser Jr., chairman of the ABA committee, said yesterday that it will take at least a week to reply to the letter.

[From the Washington Post, Mar. 9, 1984]

SENATORS WANT ABA WORD ON JUDGE CHOICE

The Senate Judiciary Committee won't vote on the nomination of University of Virginia law professor J. Harvie Wilkinson III to a judgeship on the 4th U.S. Circuit of Appeals until the American Bar Association explains why it found Wilkinson qualified for the post, congressional aides say.

Three Democrats on the panel—Sens. Edward M. Kennedy of Massachusetts, Joseph Biden of Delaware and Howard M. Metzenbaum of Ohio—have asked why Wilkinson apparently was not held to the ABA's standard that nominees for federal appeals courts have substantiated trial experience.

Wilkinson has no trial experience.

The Virginia State Bar Association pronounced Wilkinson "qualified" for the nomination, despite the fact that he does not meet the ABA's minimum standard for federal judicial nominees of 12 years of legal experience.

[From the Washington Post, Mar. 13, 1984]

POWELL SAYS HE LOBBIED MEMBER OF ABA PANEL FOR WILKINSON

(By Philip Smith)

Supreme Court Justice Lewis F. Powell, Jr., acknowledge yesterday that he telephoned a member of an American Bar Association investigating committee last fall to voice support for the controversial nomination of his former law clerk, J. Harvie Wilkinson III, to a federal appeals court judgeship.

The action is considered unusual for a sitting judge and is likely to become an issue Thursday when the Senate Judiciary Committee is scheduled to vote on the nomination of Wilkinson, a University of Virginia law professor, to the 4th Circuit Court of Appeals.

Separately, a Capitol Hill source said yesterday that Reagan administration lobbying on Wilkinson was so intense that it angered some members of the ABA committee and later drew an apology from a former senior Justice Department official.

The source said Jonathan C. Rose, former assistant attorney general in the Reagan administration, delivered a "semi-mea culpa" at the ABA's midwinter convention in Las Vegas last month to irritated members of

the organization Standing Committee on the Federal Judiciary.

Rose could not be reached yesterday for comment. Wilkinson declined to comment.

Sources also said that a surge of last-minute lobbying by Wilkinson backers in the Justice Department, where Wilkinson once worked, may have cost the 39-year-old former newspaper editor some votes among ABA committee members who were annoyed by the administration's telephone campaign.

Spokesmen for women's and minority groups have charged that Wilkinson lacks sufficient legal experience to meet the ABA's guidlines for appellate Judges and have accused the ABA of employing a double standard for white male nominees.

Powell's statement yesterday came in response to a request for details about his role from three Democratic members of the GOP-controlled Senate Judiciary Committee. It is common for ABA investigators to contact judges who know a nominee, but it is considered questionable practice for a sitting judge to initiate such contacts, according to several lawyers.

In a letter to Sens. Edward M. Kennedy (D-Mass.), Howard M. Metzenbaum (D-Ohio,) and Joseph R. Biden Jr. (D-Del.), Powell called press reports that he had initiated such a call "substantially accurate."

Powell said he became concerned about the prospects for Wilkinson, a family friend from Richmond, after he learned that an ABA investigator, lawyer James Howard of Norfolk, was compiling a "negative report."

"This prompted me to call Gene W. Lafitte of New Orleans [another ABA committee member] on my own initiative," Powell said, "in a brief conversation with him, I . . . repeated my view as to the qualifications of Mr. Wilkinson. I did not inquire where he stood, nor do I know how he voted."

Powell said he had been queried last year by Howard and another ABA investigator, District Lawyer John D. Lane, about Wilkinson's qualifications before he contacted Lafitte.

The 14-member ABA committee, which investigates and rates judicial nominees, subsequently found Wilkinson "qualified" to fill the 4th Circuit vacancy. The vote tally that led to that rating has not been disclosed.

The ABA committee chairman, Frederick G. Buesser Jr. of Michigan, confirmed yesterday that Rose attended last month's convention at the committee's invitation.

[From the Washington Post, Mar. 15, 1984]

ABA PANEL COMPLAINED JUSTICE AIDES LOBBIED FOR WILKINSON

(By Philip Smith)

An American Bar Association screening committee complained to the Justice Department last fall after two senior Justice officials pressured committee members to rate a former colleague "qualified" for a federal appeals court judgeship.

The ABA said this week the complaint came after the two officials—former deputy attorney general Edward C. Schmults and former assistant attorney general Jonathan C. Rose—divulged details of a confidential ABA investigation of J. Harvie Wilkinson III during their contacts with committee members.

Some committee members found the timing of the officials' lobbying—on the eve of balloting on Wilkinson—objectionable, the ABA said. The committee subsequently rated Wilkinson qualified.

Supreme Court Justice Lewis F. Powell Jr. said earlier this week that, in an unusual action for a sitting judge, he also contacted a member of the ABA committee to encourage a favorable vote on Wilkinson, his former law clerk.

Details of the lobbying efforts are likely to fuel attempts by Democrats on the GOP-controlled Senate Judiciary Committee to scuttle the White House's nomination of Wilkinson, 39, a conservative University of Virginia law professor, for a vacancy on the 4th U.S. Circuit Court of Appeals in Richmond. The committee has the nomination on its agenda today.

Sens. Edward M. Kennedy (D-Mass.), Howard M. Metzenbaum (D-Ohio) and Joseph R. Biden Jr. (D-Del.) have held up Wilkinson's nomination pending explanations of the lobbying from Powell and Frederick G. Buesser Jr. of Michigan, chairman of the ABA's Standing Committee on the Federal Judiciary.

Wilkinson was investigated last year by two members of the ABA committee. One, James Howard of Norfolk, submitted a negative recommendation. The other, John D. Lane of the District, rated him qualified.

Those confidential findings were circulated in a 75-page report to the 14 ABA committee members nationwide prior to balloting.

In a letter this week to the three Democrats, Buesser said he became "personally concerned that it had apparently become known that the investigating committee members were not in agreement and that a vote was being taken. I took up the concern with the Justice Department."

Buesser said he also complained to Justice that several committee members had received telephone calls, timed to coincide with the secret ballot, urging approval of Wilkinson. "In this particular case, it was the timing of these calls which was objectionable," Buesser said.

Former deputy attorney general Schmults said yesterday that he was the Justice official to whom Buesser complained. Schmults also acknowledged that he and Rose had made calls to several committee members, mentioning the fact that Howard and Lane were split on Wilkinson's qualifications for the bench.

"I regretted that and I wrote that to Buesser," Schmults said. "How they [the two investigators] were leaning should be confidential."

Schmults said he and Rose made the telephone calls because they had not been consulted by the ABA investigators on Wilkinson's qualifications. Wilkinson served from 1982 to 1983 as deputy assistant attorney general under the two men.

"We were surprised," Schmults said. "We had worked with Jay a long time and had a good idea of his qualifications. . . . We did no more than give [the committee] additional information so they could make a better decision."

One former Justice official, who asked not to be identified, said yesterday that there was "a rather inbred Virginia view" that the judgeship should be filled by a member of the Virginia bar. That would have excluded Wilkinson, whose nomination has been attacked because he lacks courtroom experience.

Schmults yesterday praised Wilkinson as someone who would make "a fine federal judge." The ABA's Buesser also said that several judges, including members of the Supreme Court, were "uniformly enthusiastic" about Wilkinson.

In a letter to the Democratic members of the Judiciary Committee, Justice Powell said he had found Wilkinson, an old family friend from Richmond, "an exceptionally gifted legal scholar and a compassionate and thoughtful human being."

[From the Washington Post, Mar. 16, 1984]

SENATE PANEL APPROVES WILKINSON FOR U.S. JUDGESHIP

(By Philip Smith)

The Senate Judiciary Committee approved the embattled nomination of J. Harvie Wilkinson III to a federal appeals court judgeship yesterday amid renewed complaints by Democrats that the 30-year-old Virginia law professor is unqualified for the post.

The 12-to-4 vote followed unsuccessful attempts by Sen. Edward M. Kennedy (D-Mass.) to persuade the committee's Republican majority to reopen hearings on Wilkinson, who has been attacked by minority and women's groups in Virginia as much less experienced than some female and black lawyers.

"What's very clear is that there's a dual standard," Kennedy said angrily. "[Wilkinson] has never had one client, never. By ramming this through, you're sending a message to women in this society, as well as countless minorities. It's a dual standard, my friends."

If the chairman, Sen. Strom Thurmond (R-S.C.), "wants to hammer this through," Kennedy added, "he has the ability to do it."

Thurmond rejected Kennedy's request for further delay, noting that Wilkinson has been waiting for Senate confirmation since November. The nomination, for a vacancy on the 4th U.S. Circuit Court of Appeals in Richmond, now goes to the Senate floor. Once approved by the Judiciary Committee, such nominations are rarely rejected by the Senate.

Wilkinson, on the faculty at the University of Virginia law school, is a former newspaper editorial writer and served from 1982 to 1983 as deputy assistant attorney general in the Justice Department's civil rights division. He declined to comment yesterday.

One of Wilkinson's harshest critics, Edythe Harrison of Norfolk, an official of the National Women's Political Caucus, blamed Sen. John W. Warner (R-Va.) for yesterday's pro-Wilkinson vote. Harrison is a Democratic candidate for the seat held by Warner, who is up for reelection this fall.

"I don't admire Senator Warner's lack of courage," Harrison said. "His silence was consent. As long as he gave tacit approval [of Wilkinson], the die was cast."

Warner, the state's senior Republican, has had no comment on the Wilkinson controversy and has said he would vote for Wilkinson if the nomination reached the Senate floor.

The fight over Wilkinson has centered on charges he was found qualified by an American Bar Association screening committee even though, his critics say, he does not meet ABA standards for appeals judges. The ABA recommends a minimum of 12 years' experience. Wilkinson joined the bar in 1972, but spent three years as editorial page editor of The Virginian-Pilot in Norfolk.

"The bar obviously changed the rules for Mr. Wilkinson," Harrison said yesterday. "If we [women's groups] had put forward such a candidate, you can imagine the outcry."

Kennedy yesterday cited the cases of two female attorneys who he said were more

qualified than Wilkinson but who were rated as unqualified by the ABA for other court seats. "It would appear there is one set of standards in this case," Kennedy said, "and a different set with regard to women."

In his request for more hearings, Kennedy also recalled recent statements by Supreme Court Justice Lewis F. Powell Jr. and former deputy attorney general Edward C. Schmults that they contacted ABA committee members on Wilkinson's behalf before the voting.

Sen. Arlen Specter (R-Pa.), saying he was concerned about those actions, called on Thurmond yesterday to hold hearings on the ABA's procedures in investigating and rating federal judicial candidates. Thurmond promised to do so.

Sen. Orrin G. Hatch (R-Utah) joined in the criticism of the ABA, accusing the organization of waging a "vendetta" against the late Sherman E. Unger. The ABA rated Unger unqualified in his bid last year for a seat on the U.S. Court of Appeals for the Federal Circuit, touching off a bitter fight in the Judiciary Committee.

"Senator Kennedy's point was well taken against the ABA," Hatch said yesterday. "It was not well taken against this nominee," referring to Wilkinson.

The 4th Circuit has jurisdiction over Virginia, West Virginia, Maryland and North and South Carolina.

[From the New York Times, Apr. 1, 1984]

CRITICS QUESTION EXPERIENCE OF REAGAN'S CHOICE FOR JUDGESHIP

(By David Margolick)

WASHINGTON, March 31.—J. Harvie Wilkinson 3d, President Reagan's choice to fill a Federal appellate court vacancy in Virginia, is in many ways an unorthodox candidate for the bench.

Mr. Wilkinson, a 39-year-old law professor at the University of Virginia, has worked in jobs related to his profession for only eight years. He has never had a private client, argued a case in court or written a legal brief by himself. He has no judicial experience and is not entitled to practice before either the court he hopes to join or any of the trial courts it supervises.

An American Bar Association screening committee, despite sharp internal disagreements, found Mr. Wilkinson, a onetime law clerk for Justice Lewis F. Powell, Jr., of the Supreme Court, "qualified" for the seat.

Earlier this month the Senate Judiciary Committee voted 11 to 5 in favor of the appointment of Mr. Wilkinson to the United States Court of Appeals for the Fourth Circuit, which hears cases from Virginia, West Virginia, Maryland and the Carolinas.

CRITICISM OF THE NOMINATION

Normally, the Senate would ratify the Judiciary Committee's choice. But in the past few weeks, criticism of the nomination has both intensified and broadened beyond groups representing women and minorities who are critical of what they perceive as his limited legal experience, insensitivity and parochialism.

In a brief appearance before the Judiciary Committee last November, Mr. Wilkinson cited a yearlong stint in the Justice Department under Mr. Reagan, scholarly activities and three years as editorial page editor of a Norfolk newspaper as experiences that qualified him for the appellate bench. Other law professors, he observed, had been named to the bench and made "marvelous" contributions despite their limited legal practice.

At least two Senators, Edward M. Kennedy of Massachusetts and Howard M. Metzenbaum of Ohio, both Democrats, have temporarily blocked a vote by the full Senate on the nomination. In addition, Mr. Kennedy, joined by Senators Charles McC. Mathias Jr., Republican of Maryland, and Patrick J. Leahy, Democrat of Vermont, have called on Senator Strom Thurmond, a South Carolina Republican who is chairman of the Judiciary Committee, to hold additional hearings on the nomination bench.

The senators critical of the Wilkinson nomination hope to scrutinize his performance as a Deputy Assistant Attorney General as well as the role played by the Justice Department and Mr. Wilkinson's former mentor, Justice Powell, in lobbying for his nomination.

At the same time, they want to examine the role of the bar group's standing committee on the Federal judiciary, which screens candidates for Federal judgeships. Critics of the nomination have charged that the criteria normally used, notably that candidates be lawyers for at least 12 years and have "substantial" trial experience, were unjustifiably waived for Mr. Wilkinson. The critics say the same criteria sometimes disqualify women and members of minority groups.

"This nomination is symbolic of a con game," said Armand Derfner, a Washington lawyer who testified against the nomination. "The Administration talks of merit selection, but Mr. Wilkinson is probably the least experienced appellate nominee ever seen."

While the Republican-controlled Senate still seems likely to confirm Mr. Wilkinson, some people are hedging their bets.

It's too early to say what the final outcome of the Wilkinson nomination will be," said Peter Loomis, press secretary to Senator John W. Warner, Republican of Virginia. "It could dangle for a month or two and die on the vine."

Mr. Warner, whose own choices for the vacancy were rejected by the White House in favor of Mr. Wilkinson, has offered him only token support.

But a Reagan Administration spokesman, who requested anonymity, said, "We're confident that he'll be confirmed after this thing plays out."

BORN TO AFFLUENT SURROUNDINGS

The term most frequently used to describe Mr. Wilkinson is "to the manner born." His father, J. Harvie Wilkinson, Jr., was president of one of Virginia's largest banks, and he grew up in Richmond's affluent West End, long a seat of power in the state.

A graduate of Lawrenceville School and Yale University, Mr. Wilkinson harbored political ambitions, and while a student at the University of Virginia Law School in 1970 he ran unsuccessfully for Congress.

Two years later, however, he won a clerkship with Justice Powell, also from Richmond and a longtime friend of the Wilkinson family. Mr. Wilkinson spent the next five years teaching law at the University of Virginia in Charlottesville, when he left to become the editorial page editor of The Norfolk Virginian-Pilot. He served as Deputy Assistant Attorney General in the civil rights division of the Justice Department from 1982 to 1983, when he returned to teaching.

At hearings in February, witnesses from the NAACP Legal Defense and Educational Fund, the National Women's Political Caucus and several other groups said Mr. Wilkinson was insensitive to minority concerns and had less experience than some women and minority candidates that the bar screening committee had found unqualified.

"If a minority or a woman with the amount of experience Mr. Wilkinson has had been interested in an appellate judgeship she/he would not have gotten to first base," Elaine R. Jones of the legal defense fund testified.

Senator Kennedy and others have suggested that in finding Mr. Wilkinson "qualified" the bar screening committee may have bowed to political pressure. The other designations are "exceptionally well qualified," "well qualified" and "not qualified."

Two former high-ranking Justice Department officials, Edward C. Schmults and Jonathan C. Rose, made telephone calls to committee members before the vote on Mr. Wilkinson. The two admit, moreover, that they divulged details of a confidential negative, preliminary report on Mr. Wilkinson to others. They said they had hoped that, by demonstrating the nomination might be in jeopardy, they could enlist supporters of Mr. Wilkinson to petition the committee on his behalf.

Frederick G. Buesser Jr. of Bloomfield Hills, Mich., chairman of the bar screening panel, said Mr. Schmults and Mr. Rose "used poor judgment on behalf of a friend." He asserted, however, that "not one vote" had been altered by their action.

Moreover, earlier, this month, Justice Powell acknowledged that he had grown concerned over Mr. Wilkinson's prospects and called one committee member on his own initiative. He has described his former clerk as "an exceptionally gifted legal scholar and a compassionate and throughtful human being" who is "fully qualified" for the court seat.

Mr. Wilkinson's critics have based their judgments largely on the editorials he wrote for The Virginian-Pilot. Last July the newspaper, which had been one of the state's more liberal organs before Mr. Wilkinson's tenure, came out against his appointment. Mr. Wilkinson, it said, "came up short" on experience.

"Obviously, he is a bright young man in a hurry, but what's the rush?" it said in an editorial titled "Wilkinson as Judge?"

[From the Baltimore Sun, June 17, 1984]

SENATE GETS HUNG UP ON A WOULD-BE JUDGE'S AMBITION

(By Ernest B. Furgurson)

Someday soon the Senate may vote on a nomination that involves several serious issues, but turns on point unaddressed by the Founding Fathers: Should overweening ambition disqualify a citizen from service as a high federal judge?

The nominee is 39-year-old J. Harvie Wilkinson III—bight, brash law professor, son of a prominent Virginia banker, family friend and former clerk of Justice Lewis F. Powell, Jr., briefly deputy assistant for civil rights in Ronald Reagan's Justice Department.

Although he has never practiced law a day in his life, the administration put him up for a seat on the Fourth U.S. Circuit Court of Appeals, which covers Maryland, Virginia, West Virginia and the Carolinas.

The circuit court, of course, is the next thing to the Supreme Court itself. Last year the circuits decided nearly 29,000 cases, and fewer than 1 percent of those will ever be reviewed by the Supreme Court. The Fourth Circuit decided nearly 2,300, and

during that year only 21 of its decisions were granted review by the Supreme Court.

Thus this nomination is of weighty importance to people in this part of the nation.

But long ago, before his name was ever mentioned for the Fourth Circuit, young Jay Wilkinson already was looking beyond it, telling friends with characteristic immodesty that he was aiming at the highest court in the land.

This and much more has seeped out since last fall when Mr. Wilkinson appeared unexpectedly before a Judiciary Committee hearing chaired by Maryland's Charles McC. Mathias, Jr., sitting in for chairman Strom Thurmond.

That day went smoothly, but rather superficially. After interested parties had time to learn about the nomination, another committee session in February heard a series of opponents, mostly objecting to the Virginian's inexperience. Despite them, the committee reported out the nomination.

Only after that did allegations arise that Mr. Wilkinson himself had inspired a lobbying campaign that brought him a barely favorable recommendation from the American Bar Association after the first lawyer assigned to check his background found him unqualified.

Also since the hearings, further concerns have been voiced about his strongly conservative political record. As Justice Department aide and newspaper editorialist, he created fears that he would come to the bench with his mind already made up in civil rights and other cases.

Citing all this, a group of senators from both parties has pressed for another hearing, to focus on the "possible undue influence" brought to bear when Mr. Wilkinson learned his nomination was in danger. But Mr. Thurmond, while willing for his committee to look into the overall ABA judiciary recommendation process separately, is against linking it to the Wilkinson case. He insists on a vote first by the full Senate, before the July 2 recess.

What happened is that when officials in the Justice Department learned that the bar association committee was undecided on the nomination, they improperly told Mr. Wilkinson about it.

Former Deputy Attorney General Edward Schmults and former Assistant Attorney General Jonathan Rose both made calls to ABA committee members boosting Mr. Wilkinson. So did Justice Powell, whose old Richmond law firm represented Mr. Wilkinson's father's bank.

How many others joined this effort is uncertain, but it was conspicuous enough for the ABA committee chairman to reprimand the Justice Department officials about it. Mr. Powell acknowledged that he not only had responded to inquiries from the ABA but had initiated contact with another member of that committee.

Senators Mathias and Arlen Specter (Pa.) both want to know more about this. Senator Warren Rudman (N.H.) and Majority Whip Ted Stevens (Alaska) spoke against confirmation. All these are Republicans. But predictably, it is a Democrat, former Judiciary chairman Ted Kennedy (Mass.), who has used the strongest language.

He called the Wilkinson lobbying a "boiler room" operation, as if it were in an election campaign. "Did the Justice Department officials violate the trust of their special position as liaison between the judiciary and the ABA?" he asked. "Why is not the Senate of the United States permitted to know whether this nominee was found 'qualified' on the basis of a lobbying effort or on the basis of his own merits?"

Conservatives like Mr. Thurmond (R, S.C.), John P. East (R, N.C.) and Jeremiah Denton (R, Ala.) have carried most of Mr. Wilkinson's Senate defense. Virginia's freshman Republican Paul Trible has spoken for him but John W. Warner, some of whose own candidates were passed over in favor of Mr. Wilkinson, has been quiet.

The nominee's friends note that despite the ABA committee chairman's displeasure at the lobbying, he wrote that "I'm convinced that such calls . . . did not influence any vote in his favor."

They also argue that although the ABA's judiciary guidelines call for extensive trial experience, it is less necessary in an appellate judge reviewing decisions of lower courts. Mr. Wilkinson's demonstrated scholarship and writing talent offset his lack of practical legal background, they say.

But some of the most interesting input into the debate has come from outside the Senate. The Norfolk Virginian-Pilot, where Mr. Wilkinson was editorial page editor briefly before joining the Reagan administration, has come out against his confirmation.

While there, Mr. Wilkinson wrote about how "Judges ought to be selected on the basis of merit, not on the basis of policital ties. . . ." He not only had a kind word for experience, he said "It is never too soon to begin stressing merit over connections."

One opponent said his style "has the forensic tone of a campaigning politician or an adversary lawyer before a jury, not the mediating tone of an impartial judge." She quoted his editorial asserting that compulsory school busing is "madness."

A former Justice Department lawyer documented how enthusiastically Mr. Wilkinson implemented the policy of Bradford Reynolds, head of the civil rights division, in cutting government's role in trying those cases.

What will happen when the Wilkinson nomination comes to a showdown roll call is unclear. When opponents tried to send it back to committee last month, they lost 54-36. But if Majority Leader Howard H. Baker, Jr. (Tenn.) seeks cloture to cut off debate, it will be close: he needs 60 votes.

Frequently, when a judicial confirmation becomes this uncertain, the name is withdrawn. But the White House may issue a party call on this one, because if Mr. Wilkinson's ambition is realized, an aggressively conservative new judge will be positioned to ascend to the Supreme Court and stay for generations—to become the next William H. Rehnquist.

Whatever the outcome, the closeness of the Senate situation grows out of the controversy over inexperience, lobbying and use of outside influence. And all those grew out of the brilliance, the impatience and the ego of J. Harvie Wilkinson III.

NATIONAL WOMEN'S POLITICAL CAUCUS,
Washington, DC, September 9, 1983.

Hon. JOHN W. WARNER,
U.S. Senate,
Washington, DC.

DEAR SENATOR WARNER: I am writing to express the National Women's Political Caucus' serious concern over the probable nomination of J. Harvie Wilkinson III to the U.S. Fourth Circuit Court of Appeals.

Mr. Wilkinson's lack of experience in the legal arena is well known. In the 11½ years since graduating from law school, he has never practiced law, and has been involved in legal matters for only about eight years. This background falls short of the minimum 12 years experience recommended by the American Bar Association. Surely you will agree that this country, and the State of Virginia, deserves better than that.

In November, 1982, the National Women's Political Caucus forwarded to the Justice Department the names and résumés of four highly qualified women for this position. Each of our recommended nominees has broad experience in the court system, and any one would be an admirable choice for the position under consideration.

It is unfortunate that not one of these women, nor any other of the many equally qualified women attorneys in your state, was included in your list of recommended nominees sent to the president. Your failure to choose a single woman is all the more disturbing in light of the fact that, of 21 Circuit Court nominations made by President Reagan as of September 1, 1983, not one has gone to a woman.

I strongly urge you to bring your influence to bear to see to it that Mr. Wilkinson is not nominated and that a qualified woman is named for this very important post.

Sincerely,

KATHY WILSON,
National Chair,
National Women's Political Caucus.

TESTIMONY AT A HEARING OF THE SENATE JUDICIARY COMMITTEE ON THE NOMINATION OF JAMES HARVIE WILKINSON III, FEBRUARY 22, 1984

STATEMENT OF EDYTHE C. HARRISON

Mr. Chairman, I am Edythe C. Harrison, a resident of Norfolk, Virginia, speaking for the National Women's Political Caucus. I am a past member of the Virginia General Assembly, and have been a community activist in a variety of projects in the arts, education, and community development for many years.

I came to know Mr. Wilkinson personally when he resided in Norfolk as the Editorial Page Editor of the Virginia-Pilot. I am well acquainted with his beliefs and modes of expression through his writings and personal conversations. I am here to comment on Mr. Wilkinson's judicial temperament as believed in his own writings while at the newspaper and in his books.

It is with some uneasiness that I testify due to what I consider a good personal relationship with Mr. Wilkinson. However, as the Chair of the 2nd District Women's Political Caucus and as a concerned citizen, I feel obligated to share with this committee my knowledge on this appointment.

Mr. Wilkinson lacks experience representing clients whether in or out of court. He lacks experience either as a lawyer sweating out a case with a client whose life, liberty, or fortune are at risk, or as a judge called upon day after day to render discriminating opinions about often difficult matters. In view of these facts, it is more than relevant to consider his performance as an editorial writer to glean insight into this man as a journalist, lawyer and as a person. This is essentially so, in view of the fact that Mr. Wilkinson cites his three years as an editorial writer in support of his experience for this appellate judgeship. I must ask if he was temperate in his judgments? Did his editorials reveal the writer as a person of depth, learning, and mature insight, or someone deficient in these qualities? Was he arrogant? Was his language precise and

thoughtful? Did he enlighten as well as provoke? Did he liken his responsibilities in the post of Editor to those of a judge, who must give due weight to all sides of a controversy, examine and state carefully the arguments on all sides of a controversy, and make his decision from the best evidence available to him?

Unfortunately, my conclusion is that Mr. Wilkinson falls short in all aspects. An editorial writer does what a judge does. Editorial writers, like judges, confront controversial issues and both should be fair minded, look at both sides of the question, and pose reasonable solutions. Since Mr. Wilkinson is relying heavily on his editorial experience as a basis for his appointment, it is appropriate that we look at his editorial writings for the qualities that would indicate judicial temperament. In evaluating his editorials we look for evidence of fair mindedness, compassion, and one who understands complexities and practical applications inherent in legal disputes.

A judge may be a political appointee but judges are not politicians. Mr. Wilkinson's style has the forensic tone of a campaigning politician or of an adversary lawyer in front of a jury, not the mediating tone of an impartial judge. His discourse suggests a prejudgment that would obstruct his ability to judge fairly. Mr. Wilkinson obviously is intelligent and aware of the problems of this society. In his editorials he asks all the provocative rhetorical questions—often inflammatory in style but he offers no solutions to these problems. This is acceptable for a teacher or writer who can deal in hypotheticals, but it is not appropriate for a judge—or even an editorial writer who must feel a responsibility to the community who looks to him for enlightenment—but it is certainly not appropriate for a judge who must take responsibility for his words knowing they will become law.

His editorials cover a number of highly controversial subjects. A look at his editorial language tells us something about his ability to be fair minded. The issues are arguable. Mr. Wilkinson does not argue the case if arguing means weighing the arguments for and against and coming to one's own conclusions. His adversarial style forces the argumentation to move exclusively between two absolute extremes. I give a couple of examples: Through emotionally laden lexical choices such as, and I offer as direct quotes from his editorials the following language: "nightmares of the Holocaust; malignant mobs; stalking presidents; sanctity of innocent live; heinous crimes," he forces the reader into these extremes and then concludes that there is no other choice. This crystallization into two irreducibly opposed viewpoints is more the discourse of a lawyer than that of a judge. In fact, his adversarial rhetoric repeatedly defies logic. Indeed he deals ruthlessly with the very principles of logical argumentation, all the while maintaining a facade of logical structure.

Mr. Wilkinson is given to extravagant, misinformed, intemperate, inflammatory, sterotypic statements. For example: Regarding one minority group, Mr. Wilkinson very unsympathetically writes, "their rhetoric was that of the maligned. The march urges an end to all social economic, judicial, and legal oppression of lesbian and gay people. Their demands," said Mr. Wilkinson, "should be resisted because the last thing we need is a fresh wave of lawsuits whenever some employee is allegedly dismissed or passed over because of 'sexual preference'" Does Mr. Wilkinson define justice in terms of a reduced caseload? Is justice a matter of convenience for the judges? Is this what we mean by judicial economy? All that most people ask of government is that they be accorded the same legal rights as other citizens, being held accountable for what they are as individuals, not because of their minority differences. This is a point that should not have to be explained to a man who may sit on the bench.

It should also not have to be explained that while it may be appropriate to support capital punishment, it is inappropriate to support capital punishment because, quoting Mr. Wilkinson, "I just don't trust parole agencies." That kind of injudicious statement casts aspersions of a whole class of hardworking public servants and is certainly a dubious reason for supporting this issue.

We all know what the problems are. As an editorial writer, he inflamed us with the problems but never enlightened us with solutions or even attempts at solutions. A judge does not have the luxury of avoiding solutions to important, complex legal problems. Professors and editorial writers, for all the useful work they do, have the luxury of approaching problems from an ivory tower perspective. I am not an attorney but I understand why the American Bar Assocation requires a particular number of years out of school—and legal practice for a number of years. I understand the reasons for this standard. Mr. Wilkinson's youth, lack of experience and immaturity are impediments to wise decision making.

On the most agonizing questions of race, education, and equal opportunity, Mr. Wilkinson offers not enlightenment, but empty rhetoric with a scholarly intellectual gloss which is useless as a guide to reasonable resolution of fundamental social problems.

"Compulsory busing is madness, compulsory busing between city and suburb is madness multiplied," writes Mr. Wilkinson. Is this the best thinking of a legal scholar who has explored the complex issues involved in dismantling separate but unequal racially identifiable schools? Is all busing "madness"? Is busing in conjunction with paired and magnet generally upgraded schools, teaching and educational programs "madness"? Is busing to remedy state caused inequitites in the financial support of schools invariably "madness"? Is judicious busing, not for the purpose of racial balance but for the purpose of good libraries, good order, and good learning programs in all of a city or regions schools "madness multiplied"?

In the controversial and highly emotional subjects of busing, capital punishment, bilingual education, and in vitro fertilization Mr. Wilkinson used the editorial page to confuse and inflame rather than explain. These are issues that beg for discourse and reason and not inflamatory rhetoric that never solves problems. Unfortunately these are not the only subjects that received the same type of treatment.

As if Mr. Wilkinson's lack of judicial temperament were not enough, there is some serious question as to how he achieved this nomination. Achieved is the right word because he engaged actively in the process of getting himself nominated. He lobbied for his own position. A Congressional aid was quoted, "he did everything except take out a billboard." This is especially distressing when in editorial after editorial, Mr. Wilkinson has been harshly critical of the role of politics in judicial appointments. But even all this lobbying does not explain the American Bar Association endorsement. By their own rules he is clearly not qualified but he received the endorsement anyway. It is generally understood that Justice Powell "permitted his name to be used" in support of Mr. Wilkinson's nomination and this may have turned the tables in so far as the ABA endorsement is concerned.

I am not saying there is anything improper, but the Committee should be aware there is a long standing connection between Justice Powell and Mr. Wilkinson. He was clerk for Justice Lewis Powell. The relationship of these two men is well know. Justice Powell's law firm represented the bank that Mr. Wilkinson's father headed. Mr. Wilkinson even worked at the Powell law firm in high school. After clerking, Mr. Wilkinson wrote about Mr. Powell in his book "Serving Justice" and said in that book that when Mr. Powell was appointed to the Supreme Court Mr. Wilkinson felt the Supreme court had been saved and "I could not help thinking my chances for clerkship."

This inside track to a judicial nomination runs counter to everything Mr. Wilkinson has written about merit appointments to the bench. Writing on the theme of merit versus raw political selection of judges was a recurrent theme during his editorship. Concerning the selection of judges by the Virginia General Assembly he writes, "judges ought to be selected on the basis of merit, not on the basis of political ties. At present, the choice of new judges rests, in practice, with the legislative delegations form jurisdictions involved. The temptations are great—at times irresistable to elevate to the bench the law partners, colleagues, and cronies of legislators." Mr. Wilkinson expressed hope that the proposed Bar Judicial Nomination Commission which would have been appointed by the Bar Association would provide a "high grade and less political review of the character, temperment, intelligence, mental and physical fitness, education, legal ability, experience, general interest and past conduct of each person considered." Mr. Wilkinson said, "It is never too soon to begin stressing merit over connections." We agree.

TESTIMONY OF ELAINE R. JONES OF THE NAACP LEGAL DEFENSE FUND

Mr. Chairman, my name is Elaine R. Jones and I am an associate counsel with the NAACP Legal Defense Fund. I am a native Virginian; I attended law school with Mr. Wilkinson, and I have practiced law in the federal courts, including the Fourth Circuit, for over thirteen years.

I have testifed before this Committee serveral times on subjects of mutual interests, subjects ranging from the voting rights act to procedures for evaluating judicial nominees.

Yet at no time have I been more reluctant to appear than today. But as a matter of fairness and principle I have little choice.

Since he has been President, Mr. Reagan has nominated more than 125 persons to the Federal bench, many of whose philosophy and views on fundamental social issues might differ from mine. However, prior to this appearance I have not appeared before this Committee to testify on a single one of Mr. Reagan's nominees. Mr. Wilkinson's is my first appearance on a judical nominee during this administration.

After having read Mr. Wilkinson's submissions, having interviewed and talked with people with whom he has worked and reviewing his overall record, I have concluded

that it would be fundamentally unfair for this committee to confirm Mr. Wilkinson.

There is a fundamental question of fairness here that must be raised. And that is the issue of fairness with regard to the judicial selection process. It is a question that runs to the American Bar Association's Standing Committee on the Federal Judiciary.

We have before us a nominee who, when viewed objectively, is facially unqualified for appointment to the appellate bench.

At the time of his nomination he had been in the field of law barely eight years, six of those as a law professor. Even adding the three years of his newspaper experience, at the time of nomination Mr. Wilkinson did not have twelve years at the bar which is the requirement of the American Bar Association (ABA). A very strong argument can be made that 12 years at the bar, which is the ABA standard, means for an appellate nominee 12 years of law-related work, in which case Mr. Wilkinson has only 8. For the six years that he has taught law school we understand that Mr. Wilkinson is highly regarded as a law professor, yet we do not think that that qualifies as "significant evidence of distinguished accomplishment in the field of law," which is the applicable language in the ABA standards when one has limited trial experience (p. 3). However, Mr. Wilkinson has no trial experience, nor any out of court experience representing the interest of a client. Nor, we understand, is he even a member of the Circuit court to which he has been nominated to serve. It is then quite confusing to see how, if one uses principles of merit selection, that Mr. Wilkinson merits this appointment. In his testimony before this Committee on Wednesday, November 16, 1983 Mr. Wilkinson refers to the nomination of Stephen Breyer (1st Circuit), Ralph Winter (2nd Circuit), Antonia Scalia (D.C. Circuit) and Richard Posner (7th Circuit) for the proposition that academics can serve ably on the appellate courts. That is true.

However, the issue is not whether academics can serve (they certainly can and should), the issue is the qualifications of Mr. Wilkinson to serve, with 8 years of law-related experience and only 6 years in academic life with no advocacy experience whatever.

At the time of his nomination, Stephen Breyer had 16 years of law-related experience, 12 of those as a law professor at Harvard; Ralph Winter had 22 years teaching experience and taught at Yale Law School; Antonio Scalia had been a member of the bar over 20 years, had taught law for nearly 12 years at the University of Chicago, Stanford and the University of Virgina, an additional 6 years in the actual practice of law and 6 more years in government service. Richard Posner had over eighteen years at the bar, 11 years in academic life and more than six years in government service. Mr. Wilkinson's comparisons simply do not hold up when one reads the record. Much has been made by Mr. Wilkinson himself of his similarity to other "academics" who were successfully appointed to the bench. A survey of those appointed in the last few years to the appellate bench shows that there is no other member of any Circuit Court of Appeals who has been out of law school such a short period of time, has so little law-related experience, and who has no courtroom or advocacy experience. It is a formidable combination of inadequacies.

Minorities and women have often been reminded that as a general proposition they do not hve the requisite experience to serve on the appellate bench because they have only graduated from law schools in significant numbers over the past 10-15 years. Every minority and woman appointed to the appellate bench in the last two administrations has objectively met and/or exceeded the applicable ABA standard.

If a minority or a woman, with the amount of experience Mr. Wilkinson has, had been interested in an appellate judgeship she/he would not have gotten to first base. First, they would have most certainly been found unqualified by the ABA; secondly, they would not have received the nomination; and thirdly, if they had received the nomination, I do not believe they would have ever passed the scrutiny of this Committee.

If no advocacy experience and limited teaching experience is enough to earn a qualified rating for the appellate bench, then the ABA standard is meaningless, as is the selection process.

The Committee now considers the nomination of a white male from a privileged background who has connections of power and who does not meet the qualification standards now met by every federal appellate jurist in the Country. We urge the Committee to act on principle. If Mr. Wilkinson is confirmed it will tell the world more clearly than anything else, that there is a double standard: one for minorities, women and all other appellate judges and another for Mr. Wilkinson.

We ask now only for fairness: that the standard that applies to all other federal appellate jurists in the Country be applied to Mr. Wilkinson. It that is done, this nominee will not be confirmed.

STATEMENT OF BOBBY B. STAFFORD, PRESIDENT OF THE OLD DOMINION BAR ASSOCIATION

Mr. Chairman, I am Bobby B. Stafford, President of the Old Dominion Bar Association ("ODBA"). The Old Dominion Bar Association (ODBA) is a statewide bar organization which has existed since 1941 in the Commonwealth of Virginia. I am pleased to have this opportunity to appear before the committee; however, it is with significant pain and reluctance that the ODBA expresses its opinion respecting the nomination of Mr. J. Harvie Wilkinson as a judge for the United States Court of Appeals for the Fourth Circuit. However, as attorneys who practice before the U.S. Court of Appeals for the Fourth Circuit, it is ODBA's obligation to come forward and speak up on this nomination. The ODBA firmly believes that the appointment of Mr. Wilkinson to the United States Court of Appeals for the Fourth Circuit would diminish the respect of the bench and bar for the quality of judicial experience on the court and for the appointment and selection process for judicial judges.

As practitioners before this court, we are keenly aware of the need for and the expectation that the judges who adjudicate our cases will possess exemplary judicial qualifications who have been carefully selected from the most experienced and able members of the bench or bar. We again wish to emphasize that there are tremendous risks for a bar association to oppose a lifetime judicial appointment. However, in the event the Senate confirms Mr. Wilkinson for appointment to the Fourth Circuit, the high quality of the judiciary could be seriously compromised.

The constitutional importance of an independent and able federal judiciary is unquestioned. And, the Senate's duty to confirm each nominee for the federal judiciary is clear evidence of the profound public interest in assuring that qualified persons are entrusted to the powerful position of a federal judgeship.

To facilitate the public interest, the American Bar Association Standing Committee which evaluates judicial nominees, long ago established minimum evaluation criteria a nominee for the federal bench should possess. The ABA criteria clearly require (1) admission to the bar at least a minimum of twelve years, (2) substantial trial experience as a lawyer or federal judge, and (3) in exceptional cases limited trial experience will suffice where the nominee has distinguished accomplishments in the field of law. Mr. Wilkinson is believed not to possess any of these qualifications. The ODBA has recently learned that Mr. Wilkinson is not even admitted to practice before the U.S. Court of Appeals for the Fourth Circuit for which he seeks an appointment, nor any of the federal district courts in the Circuit. This is alarming.

Notwithstanding its evaluation criteria, the ABA has expediently and miraculously found Mr. Wilkinson qualified for appointment as a federal judge. In your consideration of the ABA's departure from its evaluation criteria, it should be noted that the ABA evaluation criteria and its recommendation are merely an aid to the Senate and not a supplement nor substitute for the judgment of this committee or the United States Senate. The ODBA considers the ABA's finding that Mr. Wilkinson is qualified to be a federal judge an affront to deserving and qualified practitioners and jurists of all races and both sexes in the Commonwealth of Virginia. Mr. Wilkinson has not had any practical legal experience to carry to the bench. Practical legal experience is not limited to trial experience, but may be derived from client contact, motion practice, administrative proceedings, or other advocacy experience.

Attorneys who argue cases before judges of the Fourth Circuit must have unquestioned confidence in the ability of the judges to understand quickly, soberly and intelligently the issues presented. Attorneys generally have only thirty (30) minutes to argue their cases, whether legal issues raised are procedural or substantive or whether such issues involve preservation of life, liberty or property. The judges must often resolve issues presented based on the law cited in a short brief as well as based on their prior experience as a jurist and/or practicing attorney. There is no time—and there should be no need—to explain to the judges the exigencies of a legal practice, whether plaintiff's or defendant's counsel or as a defense attorney or prosecutor in order to assure that the judges evaluate the issues in the proper framework. Accordingly, in view of Mr. Wilkinson's lack of practical experience at the bar or on the bench, he would be substantially disadvantaged as an appellate judge and this would inure to the profound detriment of the lawyers who will appear before him. It must not be forgotten that these lawyers will be representing clients who have important legal and factual disputes.

At the time of his nomination, Mr. Wilkinson has been a member of the bar not quite twelve years, he also has not had the benefit of having attorney-client relationships. An attorney derives significant growth through the wide breath of attorney-client relationships. The attorney-client relation-

ship critically affects the decisions that counsel makes and directly influences and shapes the posture of counsel's case as it appears before the appellate court. Absent practical experience derived through attorney-client relationships, Mr. Wilkinson would be required to make his decisions by vicariously considering or hopelessly speculating about practical considerations that affect legal issues and inferences. These practical considerations which are so vital to the appellate bench in the fair resolution of important controversies would be "second nature" to an experienced lawyer or judge. Such a glaring deficiency in Mr. Wilkinson's qualifications can only lead him to apply mechanically principles of law to resolve legal issues, while failing to comprehend or perceive practical considerations that will impact on his opinions. The federal bench, the bar and the public deserve and expect a truly qualified appointment who has the requisite experience and depth to consider justly those disputes which will come before the bench.

In conclusion, having had no attorney-client relationships, no trial experience, no distinguished accomplishments in the field of law and/or no judicial experience, Mr. Wilkinson is clearly unsuited for the federal appellate bench. Given his record of achievement in various and sundry endeavors, with time Mr. Wilkinson may be able to obtain the requisite legal experience to qualify for appointment to federal bench.

Mr. Chairman, the ODBA respectfully requests this committee on behalf of its members and all the trusting citizens of the Fourth Circuit to give Mr. Wilkinson an opportunity to obtain the requisite legal experience before being thrust into the position of a federal appellate judge. It is our considered opinion as practitioners in the Circuit that this nomination should not be confirmed.

Thank you.

TESTIMONY OF HELEN C. GONZALES, ASSOCIATE COUNSEL, MEXICAN-AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Good afternoon, I want to thank the Chairman and the distinguished members here today for allowing me to testify on behalf of the Mexican American Legal Defense and Educational Fund [MALDEF]. My name is Helen Gonzales and I am the Associate Counsel for the Washington, D.C. office. MALDEF is a national legal and educational organization devoted to protecting the civil rights of close to fifteen (15) million Mexican Americans and other Hispanic Americans. Currently, we have offices in San Francisco, Los Angeles, Sacramento, Denver, San Antonio, Chicago and here in Washington, D.C.

I appear before you today to express our opposition to the nomination of J. Harvie Wilkinson to the U.S. Court of Appeals for the Fourth Circuit. Our opposition, Mr. Chairman, is based on the fact that Mr. Wilkinson does not meet the threshold qualifications for appointment as a federal judge. Thus, it becomes clear that the nomination is premised solely on the conservative political philosophy which Mr. Wilkinson shares with this Administration. If this nomination is approved it will be but another slap in the face to minorities and women alike who are repeatedly told that they cannot be given judicial or other appointments because they lack the qualifications necessary for those positions.

Federal appellate judges serve a very important role in our society. Their decisions can have a tremendous impact on individuals and communities. It is, thus, critical that individuals appointed to these positions be of the highest professional caliber.

In order to promote this goal, the American Bar Association (A.B.A.) has developed minimal criteria for evaluating a nominee to the federal bench. An individual should be admitted to the Bar a minimum of twelve years, have substantial trial experience as a lawyer or federal judge, and, in exceptional cases, limited trial experience will suffice where the nominee has distinguished accomplishments in the field of law.

Since leaving law school J. Harvie Wilkinson served one year as a U.S. Supreme Court law clerk, six years as a law professor, and one year in the U.S. Department of Justice. He also spent three years as an editorial page editor for the Virginian-Pilot. Thus, Mr. Wilkinson has only a total of eight years of legal experience, none of which includes trial work. While the A.B.A.'s minimal criteria calls for "substantial trial experience," this standard has been broadened, in its application, to include advocacy work, generally. However, even under this broader view, Mr. Wilkinson fails to meet the A.B.A. standard. He is not even admitted to practice before the Court of Appeals to which he has been nominated nor to any of the federal district courts within that Fourth Circuit.

Mr. Wilkinson's positions at the University of Virginia Law School and at the Justice Department left him completely unexposed to either client representation or practical advocacy experience. Thus, the record clearly shows that he lacks the experience necessary for appointment to the appellate bench.

It is also interesting to note that during Mr. Wilkinson's tenure as an editor to the Virginian-Pilot, a number of editorials were published which criticized the judicial selection process for being unduly political.[1] One such editorial concluded that, "it is never too soon to begin stressing merit over connections."[2] In this case, however, since "merit" is lacking one must presume, as a recent editorial by the Virginian-Pilot did, that Mr. Wilkinson's greatest qualification to serve on the bench is his conservative philosophy.[3] Based on this lack of practical, legal experience even his former employer had to admit that his nomination should not be confirmed.

It is ironic, then, that Mr. Wilkinson would seek a position for which he lacks sufficient credentials to meet his own "merit" standard. In the selection of Judges he, understandably, supported review of such criteria as legal ability and experience.[4] As indicated above, however, he falls short on these two key prerequisites.

It is also ironic that despite Mr. Wilkinson's insistence that appointments be based on merit and not political considerations, he has apparently been lobbying extensively on his own behalf.

This point is reflected in the comment attributed to a Virginia congressional aide who described Mr. Wilkinson's political lobbying for the judgeship: "He's made phone calls, visited Congressmen's offices, and done everything except take out billboards and airplanes with streamers."[5]

Thus, one has to surmise that Mr. Wilkinson believes that he need not follow his own advice.

The Reagan Administration has consistently denounced the use of affirmative action on the ground that it leads to the appointment, or hiring, of unqualified individuals. Mr. Wilkinson, himself, wrote, or approved, editorials during his tenure as an editor strongly raising this same implication.[6] Yet, both he and the Administration now appear willing to subvert their own "merit selection" philosophies when it concerns the appointment of a white male.

Therefore, allowing Wilkinson to become a federal judge is fundamentally unfair to the many qualified Hispanics, Blacks, and women who have been repeatedly denied federal judgeships because they, allegedly, failed to meet the A.B.A.'s minimal standards. Appointment of Mr. Wilkinson, despite his current lack of more than eight years of legal experience, would create a double standard. Clearly there must be others including, women and minorities, who are, in fact, qualified under the A.B.A.'s standards for this appellate judgeship. The A.B.A.'s minimum standards, under which others are judged, should not be waived merely because a candidate is of the correct political philosophy.

TESTIMONY OF JOSEPH MICHAEL TREVINO, DIRECTOR OF LEGISLATION, LEAGUE OF UNITED LATIN AMERICAN CITIZENS [LULAC]

Good afternoon, Mr. Chairman, distinguished members of the Senate. First, I would like to thank you on behalf of the League of United Latin American Citizens [LULAC] for allowing me, Joseph Michael Trevino, LULAC Legislative Director, to present our views regarding the judiciary generally and Mr. J. Harvie Wilkinson's nomination to the 4th Circuit Court in particular. LULAC is the oldest and largest Hispanic organization with a membership of over 100,000 members in 43 states recently established councils in Mexico, Central America, West Germany, and Okinawa. Founded in Corpus Christi, Texas, LULAC's central concerns are for full social, political, economic, and educational rights for Hispanics in the United States.

Mr. Chairman, let me begin by stating that the League's interest in the certification process is longstanding and in keeping both the responsibilities of an informed citizenry and advocating for an independent judiciary which administers the law in a fair, evenhanded and effective manner. Speaking about the judiciary system in this, our country, brings to mind a conversation I had with Mr. Jim Range, formerly legislative director for Senator Howard Baker. Mr. Range recounted to me conversations he

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[1] "Choosing Judges on Merit," The Virginian-Pilot, Feb. 9, 1979; "Change It," The Virginian-Pilot, Feb. 21, 1980; "Was It Really Racist," The Virginian-Pilot, March 8, 1980.

[2] See, e.g. "Politics Behind the Robe," The Virginian-Pilot, Jan. 18, 1979.

[3] "Wilkinson as Judge?" The Virginian-Pilot, Jul. 29, 1983. Mr. Wilkinson's published views on a number of issues paralled those of this Administration. See, e.g. "Busing Embers," The Virginian-Pilot, Sept. 15, 1978; "Busing Blues," The Virginian-Pilot, Feb. 11, 1980 (editorials during Wilkinson's tenure at The Virginian-Pilot opposing busing); See also Former Pilot Editor Named To Top U.S. Civil Rights Post, The Virginian-Pilot, June 6, 1982 (quoting Wilkinson for his opposition to court-ordered busing and numerical quotas.)

[4] "Choosing Judges on Merit," The Virginian-Pilot, Feb. 9, 1980.

[5] "J. Harvie Wilkinson's Inconsistencies," The Virginian-Pilot, Nov. 15, 1983.

[6] "Politics Behind the Robe," Supra, and "Hire Faculty for Quality," The Virginian-Pilot, Dec. 22, 1980.

had had with persons whom he encountered while traveling abroad. Mr. Range was surprised to hear that the one aspect of American life which was most respected and was admired in fact the U.S. judicial system, which in their mind was and continues to be free, independent, and above all, just. We, at LULAC, actively support and advocate for a free, independent and just judiciary. Regarding Mr. J. Harvie Wilkinson's nomination to the bench for the 4th Circuit Court, LULAC urges this body to reject his nomination on the following grounds:

Mr. Wilkinson is guilty of "intellectual dishonesty." While the nominee was editor of the editorial page of the Virginian-Pilot during 1979 through 1981 a public debate ensued regarding the selection of judges for four newly created federal judgeships. It can be assumed that the editorials published during that time carried the approval of the nominee. Several editorials referring to the then present day procedure for selecting judgeships were published (attachments 1, 2, & 3).

Among the conclusions reached by these editorials was the fact that "the secrecy of the whole process darkens public distrust." (Attachment 1.) But of particular interest is the editorial entitled "Choosing Judges on Merit" (Attachment 2). This editorial supported the notion of a Judicial Nominations Commission in the hope "that the Commission will provide a high-grade and less political review of "the character, temperament, intelligence, mental and physical fitness, education, legal ability, experience, general interest, and past conduct of each person considered."

Were we to hold Mr. Wilkinson to the same standard the editorial suggested, we must conclude that the nominee does not meet those standards. For example, with respect to the criterion of experience Mr. Wilkinson does not nearly meet the level of experience which most nominees to the appellate level bench. Mr. Wilkinson does not have any significant or noteworthy advocacy experience which could compensate for not meeting the American Bar Association's minimum of 12 years post-law school experience for judgeship nominees. While Mr. Wilkinson is an author and editor for the editorial page, neither of these literary experiences could be construed to compensate for the absence of evidentiary, procedural, trial or advocacy experience. At best, his literary interest, as reflected in the editorials, is one of posing present day social problems and criticizing the government and courts for implementing alternatives and solutions where he has not supported one solution over another, much less pose an alternative himself.

With respect to his character, Mr. Wilkinson's activities in pursuit of his self-interest cast a shadow of doubt on this most important of judicial traits. For example, Mr. Wilkinson in a published comment attributed to a Virginia congressional aide has "done everthing except take out billboards and airplanes with streamers." (Attachment 3.) If accurate, this report raises serious questions about Mr. Wilkinson's perception of a federal appellate level judgeship. LULAC asks, does the nominee perceive the bench as a position to be lobbied for, or one which is deserved on the basis or merit?

Of all the editorial attributed to Mr. Wilkinson during his tenure at the Virginian-Pilot, which were researched, the one entitled "Capital Punishment Is Necessary," April 23, 1981 is particularly troubling, Mr. Wilkinson supports capital punishment on the basis that "I just don't trust parole agencies." (Attachment 4.) The nominee supports capital punishment and questions whether this irreversible penalty serves as a deterrent. His response, "Maybe it does. And maybe it doesn't. But let's at least give the innocent the benefit of this doubt." Mr. Wilkinson is prepared to sentence people to death despite studies which indicate that the murder rate per 100,000 population in non-death penalty states has been consistently lower by about 100% than in states which have the death penalty. (CONGRESSIONAL RECORD, February 9, 1984 at 2459 Attachment 5.) On the grounds that the nominee distrusts parole agencies, he supports capital punishment despite the "Bureau of Justice Statistics reports that for all of calendar year 1982, 'about half the 64 persons who left death row by means other than death had both their convictions and their sentences vacated.'" (CONGRESSIONAL RECORD, February 9, 1984 at 2462 Attachment 6.) Given this example of the danger of error and that almost six percent or 66 of the 1276 men and women on death row are Hispanics, it is troubling to seek support for a nominee that has exhibited a pre-disposition of opting for such dire and irreversible punishment on such grounds.

Finally, from LULAC's perspective and with respect to bi-lingual education, Mr. Wilkinson has displayed both ignorance and a callous disregard for the contribution of Hispanics both to this country's industrial development and military efforts, Mr. Wilkinson, in the editorial "Bilingual Madness," September 5, 1980, asks, "What feelings and loyalties will they [Spanish-Speaking Americans] develop toward a country whose dominant tongue many but dimly understand." (Attachment 7). It seems Mr. Wilkinson is unaware that Hispanics have the highest number of medal of honor winners of any ethnic group in our country. Is Mr. Wilkinson unaware that during each of the major world conflicts it is the Mexican of yesterday who is the Hispanic-American of today that has and does work where most Americans wouldn't. Further, it seems that Mr. Wilkinson is unaware that the 1980 census report found that well over 75% of the Hispanic-American families claim English as the language spoken at home, Clearly, Mr. Wilkinson's opposition to bilingual education does not reflect a well informed nor well reasoned opinion, both skills considered prerequisites to a judicial appointment.

In summary, Mr. Chairman, Mr. Wilkinson has, through his editorials, provided us a window into his mind. From our vantage point, Mr. Wilkinson is a bright man, but he lacks the advocacy experience which contributes to the overall requirements of an appeallable level judge. While he must be given and fairly deserves credit for his accomplishments, LULAC questions why someone with Mr. Wilkinson's credentials has been chosen above other white males, minorities, and women who are qualified and should be considered by this committee?

In closing, it is LULAC's position that confirmation of this nominee would be tantamount to implementing on-the-job training at the Federal appellate level branch.

Thank you.

TESTIMONY OF ARMAND DERFNER

For most cases in the federal courts, the circuit courts of appeal are effectively the law of the land. They decided 28,000 cases last year. In about 2,500 of these cases, the Supreme Court was asked to hear a further appeal, but it could so in only about 100.

The responsibility of the circuit courts is carried out by fewer than 150 judges in thirteen circuits. J. Harvie Wilkinson III, of Virginia, has been nominated to fill one of those seats. He would sit on the Fourth Circuit, which hears all the appeals from the States of Maryland, Virginia, West Virginia, and North and South Carolina. Last year the Fourth Circuit decided 2,700 cases.

Mr. Wilkinson is 39 years old and has been out of law school for 11-plus years.

The American Bar Association's standards for federal judicial nominees call for a minimum of 12 years experience. No person in recent memory has been nominated for the appellate bench with less. The ABA has three levels of acceptable recommendation—exceptionally well qualified, well qualified, and qualified. Mr. Wilkinson received a rating of qualified, the lowest acceptable rating. It is reported that even the decision to give Mr. Wilkinson the rating of "qualified," rather than "not qualified," was a subject of considerable controversy on the ABA committee.

The problem with Mr. Wilkinson is not simply the short time he has been out of law school, but his dearth of experience since that time. His résumé may be that of a bright young man with promise for the future, but there is nothing to suggest that he is ready now for a judgeship, especially on the United States Court of Appeals. Such positions, as the ABA points out, should be reserved for those men and women who meet not only the stringent criteria required of any federal judges but in addition "have an unusual degree of overall excellence that would provide an inspiration and an example to trial judges."

Since leaving law school, Mr. Wilkinson's 8 years of legal experience consists of a year as a Supreme Court law clerk, 6 years as a law professor, and a year in the Justice Department. The other 3 years since law school graduation were spent as a newspaper editor in Norfolk.

During his 8 years of law-related work, it does not appear that he has ever represented a client, tried a case, written a brief, or argued an appeal, whether for a paying client or in a pro bono matter. Indeed, it appears that even today he is not admitted to practice in the very court on which he is to sit, nor in any district court in the circuit (or any other district court).

His sole experience came during his single year in the Justice Department. There he screened the work of lawyers engaged in cases, but could hardly do any real supervising, and took virtually no active role in any cases himself. The closest he got to a case appears to have been a simple motion he presented in the Baton Rouge school desegregation case.

Of course there have been first-rate judges who had little litigation experience before going on the bench, but these others at least had experience in other types of law practice, whether in advising clients, negotiating transactions, engaging in administrative proceedings, or any of a large number of other ways that lawyers can gain experience.

Likewise, some of our finest judges have had academic backgrounds, but they have been distinguished teachers of long-standing, and have generally leavened their academic experience with exposure to other aspects of the law. For example, the Fourth Circuit has another judge who came from a law school, U.S. Circuit Judge J. Dickson

Phillips. had been Dean of the School of Law of the University of North Carolina for 15 years at the time of his appointment in 1978. He had been admitted to the Bar for 30 years, and in addition to his eminence as a teacher, had also been in private practice a dozen years. At the first hearing on Mr. Wilkinson's nomination, a comparison was made to Justice Felix Frankfurter—but of course there is no real comparison. When Justice Frankfurter was nominated in 1938 he had been a law professor for a quarter of a century, and in addition to his nationwide preeminence in the academic world, his other experience was extraordinarily varied, beginning with his five years as an Assistant United States Attorney in the Southern District of New York, and never stopping after that. Finally, Mr. Wilkinson mentioned several other former law teachers—Judges Winter, Posner, Scalia, and Breyer—but again a short look at their careers shows just how far different their situations are from Mr. Wilkinson's.

The paucity of Mr. Wilkinson's experience is all the more curious in light of his own steadfast insistence on pure merit selection of judges—in the past. His newspaper editorials include at least a dozen repeatedly criticizing the selection of judges on any basis other than merit. His criticism extends not only to appointment for political reasons, but also to appointment of people without sufficient experience, particularly women and blacks. In light of these editorials, perhaps it is not surprising that his own newspaper, the Norfolk Virginian-Pilot, has criticized his nomination.

The lack of experience is not a technical issue. We appoint our judges not to be theoretical philosophers of the law, but to decide cases, great and small, that raise live issues between live litigants. We also insist that those cases be decided not on the basis of abstractions, but on factual records consisting of evidence produced at trials. Circuit judges, especially, need to be sensitive to that fact because they will not see the witnesses, but will be confronted with cold records and will have to try to put themselves in the shoes of the district judges who have been there. While litigation experience may not be absolutely essential for a judge, some awareness of the problems of proving and defending a case is essential. That awareness can be gained in many ways, none of which Mr. Wilkinson has ever gone through.

His Justice Department service—essentially reviewing drafts of briefs and memoranda to make certain they did not contradict the policy goals of the Attorney General—illustrates the problems created by his inexperience. Apart from displaying a great unfamiliarity with the problems of presenting cases, two good, specific examples of his failure to understand the realities of litigation involve the questions of remedies and intervention.

Remedies.—The Administration claims that it has sought more effective remedies for discrimination—for example, dealing with employment discrimination by emphasizing recruitment of qualified minority applicants rather than specific hiring goals. Yet Mr. Wilkinson has consistently bluepenciled efforts in specific cases that are necessary to make recruitment an effective remedy. Any litigator knows that recruitment will not work unless there are incentives such as recruitment goals (not to be confused with hiring goals), or reporting provisions. Such provisions were and remain a standard approach in cases in other sections of the Civil Rights Division, and they do not raise whatever philosophical problems some people have with hiring goals; yet Mr. Wilkinson refused to allow their use, even when a school district was willing to agree. The net result is to make it impossible for recruitment to do the job claimed for it, which means either going to a more stringent remedy or more likely (since Mr. Wilkinson is apparently unwilling to adopt any stronger remedy under any circumstances) just giving up on any remedy of any kind.

Intervention.—In many areas of the law, enforcement suits can be brought by both the Justice Department and by private citizens. Frequently, the Justice Department will intervene in an ongoing private suit, or vice versa. Until two years ago, it was virtually unheard-of for the Justice Department to oppose intervention by private citizens where those citizens had a direct interest in the controversy (for example, black parents intervening in a Justice Department suit to desegregate their school district). Yet, in recent cases supervised by Mr. Wilkinson, the Department has adopted the position that intervention by black parents should be denied on the ground that the Department adequately represented their interests—even while Department personnel said privately the reason they opposed intervention was because they regarded the intervenors as their adversaries. These cases have resulted in great embarrassment to the Department because, in addition to the transparency of the claim that the Department was adequately representing the intervenors' interests, there were several cases about the same time where the Justice Department supported the intervention of white petitioners for intervention. Moreover, in one of Mr. Wilkinson's cases (Charleston County, South Carolina) the Department stood alone in its anti-intervention position because even the school board defendants did not oppose intervention; in the other case (Choctaw County, Mississippi) Mr. Wilkinson redrafted a memorandum, turning it from one supporting intervention into one opposing it on the ground that the Department could do everything the intervenors were complaining about. The net result is that (1) the intervenors have been kept out of the case, (2) they have been prevented from filing their own case, under a fifth circuit rule—which Mr. Wilkinson was either unaware of or unconcerned about—providing that only one lawsuit may be filed in such circumstances, and (3) more than a year later, not one thing has been done in the case.

Mr. Wilkinson's editorials reflect the same attitude; a preoccupation with opposition to remedies for problems. He says he is opposed to certain remedies—school busing and hiring quotas. If that were all he was opposed to, he would obviously have some company. In fact, though, there is little sign that he has ever supported any remedy. Thus, he has written editorials saying hiring goals should be scrapped in favor of encouraging recruitment—only to oppose effective recruitment when the opportunity came his way in the Justice Department. Likewise, among his editorials and his Justice Department tenure, the list of his dislikes includes bi-lingual education and effective remedies for discrimination against handicapped people.

How he would propose to solve any of these problems he does not say. Yet these are precisely the problems that a federal judge, especially a circuit judge, must grapple with.

Mr. Wilkinson is probably the least experienced appellate nominee ever seen. For many years, efforts to appoint qualified minority people and women to the federal bench were stymied by claims that there were few potential nominees with enough experience. Only in the past few years have numbers of blacks and women had the experience necessary to meet the exacting standards of the ABA and the United States Senate. Ignoring the standards for Mr. Wilkinson, after all the talk over the years, is simply unfair.

If a black or a woman with his qualifications were nominated, Mr. Wilkinson would be the first to write an editorial insisting on merit selection rather than "affirmative action." Mr. Wilkinson does not meet the standards for confirmation as a United States Circuit Judge. If he is confirmed, that will send us all a clear message that the standards don't really mean anything after all.

ARMAND DERFNER,
ATTORNEY AT LAW,
Washington, DC, November 25, 1983.

Re: J. Harvie Wilkinson.

ELAINE R. JONES, Esq.,
NAACP Legal Defense Fund, Inc.,
Washington, DC.

DEAR ELAINE: Enclosed is a copy of a 33-page letter of resignation (with 36 documents attached), dated October 18, 1983, by a Justice Department lawyer named Timothy Cook. It is a long list of recent Justice Department actions to undermine civil rights enforcement. It goes into detail about the internal decision-making process, and refers at a number of places to J. Harvie Wilkinson.

It goes into most detail about matters involoving handicapped people (which is apparently the section that Cook was in), but there are numerous descriptions of situations in other areas. To get a real assessment of Wilkinson's role, each of the incidents would have to be looked at by someone who is familiar with the particular area of the law. Also, it is not always clear just what his role in a particular incident was, because there are a number of incidents where he may have been involved but in which he is not mentioned by name, and there are others where his name comes up but he may not have done anything other than receiving a memorandum or passing on a message. As a start, though, the following are the places in the resignation letter where Wilkinson is mentioned by name:

(1) Page 6—W explains Reynolds' decision not to intervene in St. Louis State Hospital case involving mistreatment of mentally retarded patients.

(2) Page 12—W hopes for a way to get out of the *Baylor* case ("I recall vividly the sadness I felt at seeing Deputy Assistant Attorney General for Civil Rights J. Harvie Wilkinson rejoice at the news that the federal judge for the case had threatened to rule against the government for failing (due to intentional delay in the front office) to file pre-trial papers on time—it was a way out, and it could be blamed on the judge.")

(3) Page 14—W explains Reynolds' decision to delete a citation in a brief to a Supreme Court case which supports agency powers to adopt broad regulations.

(4) Pages 21-22—W opposes use of recruitment goals in employment discrimination cases.

In addition, Wilkinson's name comes up in a number of the appendices:

(1) Appendix A, an earlier memo from Cook to Attorney General Smith, refers to W several times in discussing enforcement of laws protecting handicapped people. See especially pp. 4-5n.3, suggesting that Reynolds and W were jointly responsible for certain policy proposals.

(2) Appendix D, a memo from a department lawyer to W, asks whether it is true that a settlement conference was held in a case without the knowledge of the line lawyers on the case. (The significance of this memo depends on whether W participated in or was responsible for the secret settlement conference, or whether he just happened to be the Deputy to whom this inquiry went.)

(3) Appendix E, a memo from W to Reynolds, recommends certain provisions in a proposed settlement.

(4) Appendix K-1, a memo from a Department lawyer to W, objects to a draft brief in which a twisted legal argument is advanced in order to undercut agency enforcement regulations. (Was W responsible for the twisted legal argument?)

(5) Appendix Q, a set of documents drafted by W to oppose intervention by black parents in a school desegregation case which had been brought by the government some years earlier, may be very significant. It argues against intervention on the grounds that the parents cannot show their interests are not being adequately represented by the Justice Department, even if the Department and the parents differ as to relief. Essentially, this is a slick pleading designed to keep black school children and their parents from interfering with the Justice Department's efforts to make sure that the relief afforded them is sharply limited in keeping with the ideology of current Justice Department officials. Wilkinson is certainly entitled to hold those views, as he does, but pretending that that position adequately represents the interests of the school children and parents is not very honest.

(Appendix Q, should be read together with Appendix P, a similar document filed a short time earlier in the Charleston, S.C., school case, and also arguing against intervention on the grounds that the Justice Department adequately represents the interests of the school children and parents. The Charleston case is the one where Reynolds is reported to have instructed the line lawyers to make "those bastards . . . jump through every hoop" because he regarded the intervenors as adversaries; it is also a case where the Department has been guilty of the worst foot-dragging, which is what prompted the motion to intervene in the first place. Arguing in court that you adequately represent the interests of people whom you privately refer to as adversaries is a fraud on the court. Was Wilkinson involved in the Charleston case, or in the development of a general approach to intervention petitions?)

In addition to the specific references to Wilkinson cited above, the resignation letter and appendices refer to a number of legal and enforcement debates within the Department, including the debate over whether particular anti-discrimination statutes or regulations require proof of discriminatory purpose; whether agencies have the authority to adopt anti-discrimination regulations; whether the sanctions for violations should be program-specific or institution-wide; whether certain forms of financial assistance trigger coverage under anti-discrimination laws: whether particular laws authorize private rights of action; and finally, recurring disputes over the scope of remedies appropriate in particular cases. In most of these issues, it is not clear whether Wilkinson played a major role, but it is likely enough to make it worth looking into.

Overall, this material suggests some serious questions about J. Harvie Wilkinson's qualifications to sit on a court that plays a critical role in the interpretation and enforcement of this Nation's civil rights laws.

First, a serious question is raised about the way he treats legal authority in dealing with the interpretation of civil rights laws. It is not simply a question of his views; he is obviously entitled to believe what he wants. The question is what he will do to make those views seem like the law of the land. The attached material shows a willingness by someone to twist precedent, legislative history, and other source of statutory construction in order to cut the heart out of civil rights statutes. The people who have been involved in this process were essentially using tricks to smother the law, and seem to believe that they were perfectly free to ignore the law—a hypocritical view coming from people who claim to believe that legislation is the job of Congress. We do not know from these materials what role Wilkinson played in these matters but if he was involved to any significant degree, he is certainly not the kind of person we ought to trust to be a judge.

Second, a serious question is raised about his apparent opposition, in case after case, to virtually any remedy that is likely to be effective. He is of course entitled to oppose specific remedies (such as bussing or quota hiring), but if so he has an obligation to find other remedies that will work. He apparently recognizes this, because he has been quoted as saying he prefers other remedies. Yet the enclosed pages show him repeatedly opposing other remedies, such as numerical recruitment goals, reporting requirements, and basically any remedy other than a Biblically simple "thou shalt sin no more" injunction. I do not see any indication of his support for any remedy except in one case where he argues in favor of including a remedy because the State of Connecticut has agreed to. The question is whether his opposition is just to bussing and quotas or whether it is to all effective remedies.

This issue also relates to Wilkinson's lack of experience, because it appears that his complete lack of experience has left him with no sense of the frustration of trying to get an effective remedy. Instead, he simply rejects remedy after remedy, without ever saying what the remedy ought to be or what remedy will work.

As I noted at the beginning of this letter, the enclosed materials are too skimpy to form final judgments, but they raise some alarming questions and tell us where we ought to look deeper.

Because I borrowed someone's only copy, I would appreciate your copying whatever you need and returning the set.

Sincerely,

ARMAND DERFNER.

[From the Washington Post, July 17, 1980]

REAGAN MAY SEEK TO BAR NEW CARTER NOMINATIONS

DETROIT, July 16.—Sen. Strom Thurmond (R.-S.C.) said today that Ronald Reagan has agreed to ask Republican members of the Senate to block presidential appointments to federal posts until after the Nov. 4 election.

Thurmond said he told Reagan that he should contact Minority Leader Howard H. Baker Jr. (R.-Tenn.) and all other Republican members of the Senate in an attempt to withhold Senate confirmation of appointments.

"He said he would be glad to do that," Thurmond said.

Thurmond noted that the terms of various officials nominated by President Carter would extend far beyond Carter's presidential term.

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that the time for the transaction of routine morning business be extended until not past 1:45 p.m., under the same terms and conditions.

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

SENATE SCHEDULE

Mr. BAKER. Mr. President, it is the hope of the leadership on this side that we can reach a message from the House on certain hydroelectric powerplants. I will not attempt to do that at this time because certain Senators on both sides of the aisle who are interested in this matter are not presently available. But I do anticipate that such a request will be made sometime after the time for morning business has expired or until morning business has otherwise been closed.

The leadership hopes that that matter can be disposed of today and that we can proceed sometime later this afternoon to the so-called "Baby Jane Doe" bill and dispose of that as well.

While the leadership on this side does not anticipate that we will be in session much past the regular adjournment or recess hour, Members should be aware that if it is necessary to stay somewhat past that time in order to accomplish these two measures, the leadership is prepared to ask the Senate to do that.

Once again, Mr. President, we will be in session tomorrow, as I presently see it. I hope to have a further announcement to make on the agenda and schedule of the Senate later in the day.

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

The PRESIDING OFFICER [Mr. ARMSTRONG]. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has expired, and morning business is closed.

HYDROELECTRIC POWERPLANTS

Mr. BAKER. Mr. President, as I indicated earlier, it is the hope of the leadership on this side that we can proceed now to the matter which is at the desk. I refer to a message from the House on S. 268, relating to certain hydroelectric powerplants. I ask the Chair to lay that message before the Senate.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 268) entitled "An Act to authorize the Secretary of the Interior to construct, operate, and maintain hydroelectric powerplants at various existing water projects", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. This Act may be cited as the "Hoover Power Plant Act of 1984".

TITLE I

SEC. 101. (a) The Secretary of the Interior is authorized to increase the capacity of existing generating equipment and appurtenances at Hoover Powerplant (hereinafter in the Act referred to as "uprating program"); and to improve parking, visitor facilities, and roadways and to provide additional elevators, and other facilities that will contribute to the safety and sufficiency of visitor access to Hoover Dam and Powerplant (hereinafter in this Act referred to as "visitor facilities program").

(b) The Secretary of the Interior is authorized to construct a Colorado River bridge crossing, including suitable approach spans, immediately downstream from Hoover Dam for the purpose of alleviating traffic congestion and reducing safety hazards. This bridge shall not be a part of the Boulder Canyon project and shall neither be funded nor repaid from the Colorado River Dam Fund or the Lower Colorado River Basin Development Fund.

SEC. 102. (a) Section 403(b) of the Colorado River Basin Project Act of 1968 (82 Stat. 894, as amended, 43 U.S.C. 1543) is amended by inserting "(1)" after "(b)" and adding the following new paragraph at the end thereof:

"(2) Except as provided in subsection 309(b), as amended, sums advanced by non-Federal entities for the purpose of carrying out the provisions of title III of this Act shall be credited to the development fund and shall be available without further appropriation for such purpose.".

(b) Paragraph (1) of section 403(c) of the Colorado River Basin Project Act of 1968 (82 Stat. 894, as amended, 43 U.S.C. 1543(c)) is revised to read as follows:

"(1) all revenues collected in connection with the operation of facilities authorized in title III in furtherance of the purposes of this Act (except entrance, admission, and other recreation fees or charges and proceeds received from recreation concessionaires), until completion of repayment requirements of the Central Arizona project;".

(c) Paragraph (2) of section 403(c) is revised by inserting immediately preceding the existing proviso: "*Provided, however*, That for the Boulder Canyon project commencing June 1, 1987, and for the Parker-Davis project commencing June 1, 2005, and until the end of the repayment period for the Central Arizona project described in section 301(a) of this Act, the Secretary of Energy shall provide for surplus revenues by including the equivalent of 4½ mills per kilowatthour in the rates charged to purchasers in Arizona for application to the purposes specified in subsection (f) of this section and by including the equivalent 2½ mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented: *Provided further*, That after the repayment period for said Central Arizona project, the equivalent of 2½ mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section:".

SEC. 103. (a) The Boulder Canyon Project Act of 1928 (45 Stat. 1057, as amended, 43 U.S.C. 617 et seq.), as amended and supplemented, is further amended:

(1) In the first sentence of section 2(b), by striking out "except that the aggregate amount of such advances shall not exceed the sum of $165,000,000", and by replacing the comma after the word "Act" with a period.

(2) In section 3, deleting "$165,000,000." and inserting in lieu thereof "$242,000,000, of which $77,000,000 (October 1983 price levels) shall be adjusted plus or minus such amounts as may be justified by reason of ordinary fluctuations of construction costs as indicated by engineering cost indices applicable to the type of construction involved herein. Said $77,000,000 represents the additional amount required for the uprating program and the visitor facilities program.".

(b) Except as amended by this Act, the Boulder Canyon Project Act of 1928 (45 Stat. 1057, as amended, 43 U.S.C. 617 et seq.), as amended and supplemented, shall remain in full force and effect.

SEC. 104. (a) The Boulder Canyon Project Adjustment Act of 1940 (54 Stat. 774, as amended, 43 U.S.C. 618), as amended and supplemented, is further amended:

(1) In section 1 by deleting the phrase "during the period beginning June 1, 1937, and ending May 31, 1987" appearing in the introductory paragraph of section 1 and in section 1(a) and inserting in lieu thereof "beginning June 1, 1937".

(2) In section 1(b) by deleting the phrase "and such portion of such advances made on and after June 1, 1937, as (on the basis of repayment thereof within such fifty-year period or periods as the Secretary may determine) will be repayable prior to June 1, 1987" and inserting in lieu thereof "and such advances made on and after June 1, 1937, over fifty-year periods".

(3) In section 1 by deleting the word "and" at the end of subsection (c); deleting the period at the end of subsection (d) and inserting in lieu thereof "; and", and by adding after subsection (d) the following new subsection (e):

"(e) To provide, by application of the increments to rates specified in section 403(c)(2) of the Colorado River Basin Project Act of 1968, as amended and supplemented, revenues, from and after June 1, 1987, for application to the purposes there specified.".

(4) In section 2:

(i) by deleting the first sentence and subsection (a) and inserting in lieu thereof: "All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available, without further appropriation, for:

"(a) Defraying the costs of operation (including purchase of supplemental energy to meet temporary deficiencies in firm energy which the Secretary of Energy is obligated by contract to supply), maintenance and replacements of, and emergency expenditures for, all facilities of the project, within such separate limitations as may be included in annual appropriations Acts;" and

(ii) by amending subsection (e) to read as follows:

"(e) Transfer to the Lower Colorado River Basin Development Fund established by title IV of the Colorado River Basin Project Act of 1968, as amended and supplemented, of the revenues referred to in section 1(e) of this Act.".

(5) By deleting the final period at the end of section 6 and inserting in lieu thereof the following: ": *Provided*, That the respective rates of interest on appropriated funds advanced for the visitor facilities program, as described in section 101(a) of the Hoover Power Plant Act of 1984, shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the program during the month preceding the fiscal year in which the costs of the program are incurred. To the extent that more than one interest rate is determined pursuant to the preceding sentence, the Secretary of the Treasury shall establish for repayment purposes an interest rate at a weighted average of the rates so determined.".

(6) In section 12, in the paragraph beginning with "Replacements", by deleting "during the period from June 1, 1937, to May 31, 1987, inclusive" and inserting in lieu thereof "beginning June 1, 1937".

(b) Except as amended by this Act, the Boulder Canyon Project Adjustment Act of 1940 (54 Stat. 774, as amended, 43 U.S.C. 618), as amended and supplemented, shall remain in full force and effect.

SEC. 105. (a)(1) The Secretary of Energy shall offer:

(A) To each contractor for power generated at Hoover Dam a renewal contract for delivery commencing June 1, 1987, of the amount of capacity and firm energy specified for that contractor in the following table:

SCHEDULE A

Long Term Contingent Capacity and Associated Firm Energy Reserved for Renewal Contract Offers to Current Boulder Canyon Project Contractors

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
Metropolitan Water District of Southern California	247,500	904,382	387,592	1,291,974
City of Los Angeles	490,875	488,535	209,658	698,193
Southern California Edison Company	277,500	175,486	75,208	250,694
City of Glendale	18,000	47,398	20,313	67,711
City of Pasadena	11,000	40,655	17,424	58,079
City of Burbank	5,125	14,811	6,347	21,158
Arizona Power Authority	189,000	452,192	193,797	645,989
Colorado River Commission of Nevada	189,000	452,192	193,797	645,989

SCHEDULE A—Continued

Long Term Contingent Capacity and Associated Firm Energy Reserved for Renewal Contract Offers to Current Boulder Canyon Project Contractors

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
United States, for Boulder City	20,000	56,000	24,000	80,000
Totals	1,448,000	2,631,651	1,128,136	3,759,787

(B) to purchasers in the State of Arizona, Nevada and California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing June 1, 1987, or as it thereafter becomes available, of capacity resulting from the uprating program and for delivery commencing June 1, 1987, of associated firm energy as specified in the following table:

SCHEDULE B

Contingent Capacity Resulting From the Uprating Program and Associated Firm Energy

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Arizona	188,000	148,000	64,000	212,000
California	127,000	99,850	43,364	143,214
Nevada	188,000	288,000	124,000	412,000
Totals	503,000	535,850	231,364	767,214

Provided, however, That in the case of Arizona and Nevada, such contracts shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada, respectively, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon project: Provided further, That in the case of California, no such contract under this subparagraph (B) shall be offered to any purchaser who is offered a contract for capacity exceeding 20,000 kilowatts under subparagraph (A) of this paragraph.

(C) To the Arizona Power Authority and the Colorado River Commission of Nevada and to purchasers in the State of California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing June 1, 1987, of such energy generated at Hoover Dam as is available respectively to the States of Arizona, Nevada, and California in excess of 4,501,001 million kilowatthours in any year of operation [hereinafter called excess energy] in accordance with the following table:

SCHEDULE C

Excess Energy

Priority of entitlement to excess energy	State
First: Meeting Arizona's first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours: Provided, however, That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatthours, inclusive of the current year's 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in the amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered.	Arizona.

SCHEDULE C—Continued

Excess Energy

Priority of entitlement to excess energy	State
Second: Meeting Hoover Dam contractual obligations under schedule A of section 105(a)(1) and under schedule B of section 105(a)(1)(B) not exceeding 26 million kilowatthours in each year of operation.	
Third: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States.	Arizona, Nevada, California

(2) The total obligation of the Secretary of Energy to deliver firm energy pursuant to schedule A of section 105(a)(1)(A) and schedule B of section 105(a)(1)(B) is 4,527,001 million kilowatthours in each year of operation. To the extent that the actual generation at Hoover Powerplant in any year of operation [less deliveries thereof to Arizona required by its first priority under schedule C of section 105(a)(1)(C) whenever actual generation in any year of operation is in excess of 4,501,001 million kilowatthours] is less than 4,527,001 million kilowatthours, such deficiency shall be borne by the holders of contracts under said schedules A and B in the ratio that the sum of the quantities of firm energy to which each contractor is entitled pursuant to said schedules bears to 4,527,001 million kilowatthours. At the request of any such contractor, the Secretary of Energy will purchase energy to meet the contractor's deficiency at such contractor's expense.

(3) Subdivision E of the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" published in the Federal Register May 9, 1983 [48 Federal Register commencing at 20881], hereinafter referred to as the "Criteria" or as the "Regulations" shall be deemed to have been modified to conform to this section. The Secretary of Energy shall cause to be included in the Federal Register a notice conforming the text of said Regulations to such modifications.

(4) Each contract offered under subsection (a)(1) of this section shall:

(A) expire September 30, 2017;

(B) not restrict use to which the capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California: *Provided,* That to the extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California shall use such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water; and

(C) conform to the applicable provisions of subdivision E of the Criteria, commencing at 48 Federal Register 20881, modified as provided in this section. To the extent that said provisions of the Criteria, as so modified, are applicable to contracts entered into under this section, those provisions are hereby ratified.

(b) Nothing in the Criteria shall be construed to prejudice any rights conferred by the Boulder Canyon Project Act, as amended and supplemented, on the holder of a contract described in subsection (a) of this section not in default thereunder on September 30, 2017.

(c)(1) The Secretary of Energy shall not execute a contract described in subsection (a)(1)(A) of this section with any entity which is a party to the action entitled the "State of Nevada, et al. against the United States of America, et al." in the United States District Court for the District of Nevada, case numbered CV LV '82 441 RDF, unless that entity agrees to file in that action a stipulation for voluntary dismissal with prejudice of its claims, or counterclaims, or crossclaims, as the case may be, and also agrees to file with the Secretary a document releasing the United States, its officers and agents, and all other parties to that action who join in that stipulation from any claims arising out of the disposition under this section of capacity and energy from the Boulder Canyon project. The Attorney General shall join on behalf of the United States, its officers and agents, in any such voluntary dismissal and shall have the authority to approve on behalf of the United States the form of each release.

(2) If after a reasonable period of time as determined by the Secretary, the Secretary is precluded from executing a contract with an entity by reason of paragraph (1) of this subsection, the Secretary shall offer the capacity and energy thus available to other entities in the same State eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act.

(d) The uprating program authorized under section 101(a) of this Act shall be undertaken with funds advanced under contracts made with the Secretary of the Interior by non-Federal purchasers described in subsection (a)(1)(B) of this section. Funding provided by non-Federal purchasers shall be advanced to the Secretary of the Interior pursuant to the terms and conditions of such contracts.

(e) Notwithstanding any other provisions of the law, funds advanced by non-Federal purchasers for use in the uprating program shall be deposited in the Colorado River Dam Fund and shall be available for the uprating program.

(f) Those amounts advanced by non-Federal purchasers shall be financially integrated as capital costs with other project costs for rate-setting purposes, and shall be returned to those purchasers advancing funds throughout the contract period through credits which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for the uprating program.

(g) The provisions of this section constitute an exercise by the Congress of the right reserved by it in section 5(b) of the Boulder Canyon Project Act, as amended and supplemented, to prescribe terms and conditions for the renewal of contracts for electrical energy generated at Hoover Dam. This section constitutes the exclusive method for disposing of capacity and energy from Hoover Dam for the period beginning June 1, 1987, and ending September 30, 2017.

(h)(1) Notwithstanding any other provision of law, any claim that the provisions of subsection (a) of this section violates any rights to capacity or energy from the Boulder Canyon project is barred unless the complaint is filed within one year after the date of enactment of this Act in the United States Claims Court which shall have exclusive jurisdiction over this action. Any claim that actions taken by any administrative agency of the United States violates any right under this Title or the Boulder Canyon Project Act or the Boulder Canyon Project Adjustment Act is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one year after final refusal of such agency to correct the action complained of.

(2) Any contract entered into pursuant to section 105 or section 107 of this Act shall contain provisions by which any dispute or disagreement as to interpretation or performance of the provisions of this title or of applicable regulations or of the contract may be determined by arbitration or court proceedings. The Secretary of Energy or the Secretary of the Interior, as the case may be, if authorized to act for the United States in such arbitration or court proceedings and, except as provided in paragraph (1) of this subsection, jurisdiction is conferred upon any district court of the United States of proper venue to determine the dispute.

(i) It is the purpose of subsections (c), (g), and (h) of this section to ensure that the rights of contractors for capacity and energy from the Boulder Canyon project for the period beginning June 1, 1987, and ending September 30, 2017, will vest with certainty and finality.

SEC. 106. Reimbursement of funds advanced by non-Federal purchasers for the uprating program shall be a repayment requirement of the Boulder Canyon project beginning with the first day of the month following completion of each segment thereof. The cost of the visitor facilities program as defined in section 101(a) of this Act shall become a repayment requirement beginning June 1, 1987, or when substantially completed, as determined by the Secretary of the Interior, if later.

SEC. 107. (a) Subject to the provisions of any existing layoff contracts, electrical capacity and energy associated with the United States' interest in the Navajo generating station which is in excess of the pumping requirements of the Central Arizona project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, as amended (hereinafter in this Act referred to as "Navajo surplus") shall be marketed and exchanged by the Secretary of Energy pursuant to this section.

(b) Navajo surplus shall be marketed by the Secretary of Energy pursuant to the plan adopted under subsection (c) of this section, directly to, with or through the Arizona Power Authority and/or other entities having the status of preference entities under the reclamation law in accordance with the preference provisions of section 9(c) of the Reclamation Project Act of 1939 and as provided in part IV, section A of the Criteria.

(c) In the marketing and exchanging of Navajo surplus, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (or its successor in interest to the repayment obligation for the Central Arizona project), for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project. The Secretary of the Interior, in concert with the Secretary of Energy, in accordance with section 14 of the Reclamation Project Act of 1939, shall grant electrical power and energy exchange rights with Arizona entities as necessary to implement the adopted plan: *Provided, however,* That if exchange rights with Arizona entities are not required to implement the adopted plan, exchange rights may be offered to other entities.

(d) For the purposes provided in subsection (c) of this section, the Secretary of Energy, or the marketing entity or entities under the adopted plan, are authorized to establish and collect or cause to be established and collected, rate components, in addition to those currently authorized, and to deposit the revenues received in the Lower Colorado River Basin Development Fund to be available for such purposes and if required under the adopted plan, to credit, utilize, pay over directly or assign revenues from such additional rate components to make repayment and establish reserves for repayment of funds, including interest incurred, to entities which have advanced funds for the purposes of subsection (c) of this section: *Provided, however,* That rates shall not exceed levels that allow for an appropriate saving for the contractor.

(e) To the extent that this section may be in conflict with any other provision of law relating to the marketing and exchange of Navajo surplus, or to the disposition of any revenues therefrom, this section shall control.

SEC. 108. Recognizing the expiration of Colorado River storage project (CRSP) contracts in 1989, prior to final reallocation of CRSP power pursuant to existing law, and within one year after enactment of this Act, the Secretary of Energy, acting through the Western Area Power Administration, shall report, to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, on all Colorado River storage project (CRSP) power resources, including those presently allocated to the Lower Division States, which may be used to financially support the development of authorized projects in the States of the Upper Division (as that term is used in article II of the Colorado River Compact) of the Colorado River Basin.

SEC. 109. The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) and in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) is authorized to design, construct, operate, and maintain fish passage facilities within the Yakima River Basin, and to accept funds from any entity, public or private, to design, construct, operate, and maintain such facilities.

TITLE II

SEC. 201. (a) Each long-term firm power service contract entered into or amended subsequent to one year from the date of enactment of this Act by the Secretary of Energy acting by and through the Western Area Power Administration (hereinafter "Western"), shall contain an article requiring the development and implementation by the purchaser thereunder of an energy conservation program. A long-term firm power service contract is any contract for the sale by Western of firm capacity, with or without energy, which is to be delivered over a period of more than one year. The term "purchaser" includes parent-type entities and their distribution or user members. If more than one such contract exists with a purchaser, only one program will be required for that purchaser. Each such contract article shall—

(1) contain time schedules for meeting program goals and delineate actions to be taken in the event such schedules are not met, which may include a reduction of the allocation of capacity or energy to such purchaser as would otherwise be provided under such contract; and

(2) provide for review and modification of the energy conservation program at not to exceed five year intervals.

(b) For purposes of this life, an energy conservation program shall—

(1) apply to all uses of energy and capacity which are provided from any Federal project;

(2) contain definite goals;

(3) encourage customer consumption efficiency improvements and demand management practices which ensure that the available supply of hydroelectric power is used in an economically efficient and enviromentally sound manner.

SEC. 202. (a) Within one year after the date of enactment of this Act, Western shall amend its existing regulations (46 Fed. Reg. 56140) to reflect—

(1) the elements to be considered in the energy conservation programs required by this title, and

(2) Western's criteria for evaluating and approving such programs.

Such amended regulations shall be promulgated only after public notice and opportunity to comment in accordance with the Administrative Procedure Act (5 U.S.C. 551-706).

(b) The following elements shall be considered by Western in evaluating energy conservation programs:

(1) energy consumption efficiency improvements;

(2) use of renewable energy resources in addition to hydroelectric power;

(3) load management techniques;

(4) cogeneration;

(5) rate design improvements, including—

(i) cost of service pricing;

(ii) elimination of declining block rates;

(iii) time of day rates;

(iv) seasonal rates; and

(v) interruptible rates; and

(6) production efficiency improvements.

(c) Where a purchaser is implementing one or more of the foregoing elements under a program responding to Federal, State, or other initiatives that apply to conservation and renewable energy development, in evaluating that purchaser's energy conservation program submitted pursuant to this title, Western shall make due allowance for the incorporation of such elements within the energy conservation program required by this title.

Amend the title so as to read: "An Act to authorize the Secretary of the Interior to construct, operate, and maintain certain facilities at Hoover Dam, and for other purposes.".

Mr. BAKER. Mr. President, I move that the Senate concur in the House amendments.

AMENDMENT NO. 3418

Mr. METZENBAUM. Mr. President, I send an amendment to the desk, and the amendment is to the House amendment.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 3418:

At the end of the House amendment, add: notwithstanding any other provision, no contract authorized in this bill shall prescribe terms and conditions for the renewal

of contracts for electrical energy generated at Hoover Dam beyond the period ending December 31, 1988.

Mr. METZENBAUM. Mr. President, I think we ought to understand where we are on this legislation, and I want my colleagues who are obviously not on the floor but at the other end of the devices which are used to report back to the offices to recognize that what we have before us today is an extremely important measure, a measure that can very well set the policy of this country for years into the future—30 years in this bill, perhaps longer with respect to other measures.

Many of the public power facilities that have been built over the years were built with agreements that would extend for a period of 50 years. The Hoover Dam, which was originally the Boulder Dam, was in exactly that posture. Its contract actually does not expire—or, rather, the terms with respect to it do not expire—until May 31, 1987. Therefore, there is no sense of urgency whatsoever with respect to this measure. This issue actually is not one until May 31, 1987, and we are a long way from that.

However, my colleagues should understand that there have been no hearings, no hearings whatsoever, in connection with the issue that is before us today. There has been no markup. The Senate has not had an opportunity to consider this in due course, and yet it is a major policy issue.

I, for one, have great difficulty in understanding why, in this short session, it is so important that we bring up this measure, which, at very best, could not have an impact until May 31, 1987. It affects three States in the Union—California, Nevada, and Arizona. What we are talking about is whether or not 47 other States in the Union are going to subsidize the power source, the electricity, for the people of those three States.

The fact is that the original bill that left the Senate did not contain anything like this. It provided for only the matter of certain new projects, no pricing, and no allocation as to who would get the electricity, who would get the power. When it went to the House, they added these provisions, and the House had a vote on the question of whether or not the power that is produced at the Hoover Dam should be auctioned off to the highest bidder.

That is not the issue before the Senate. That is not the issue I am standing here today advocating. But that is the issue that was before the House; and on that issue the House voted, by a vote of 214 to 176, that it should be auctioned to the highest bidder.

Mr. President, I want to correct something I said previously. I was correct in saying there have been no hearings. There has been no markup with respect to the pricing provisions, but I am informed by my staff that the pricing provisions were added on the floor, without a record vote. It was accepted, as I understand it, by unanimous consent, and I would guess that most of us did not know that it was even being accepted.

For 50 years, Hoover customers have received incredibly cheap hydropower. Let me tell the Senate exactly how cheap it has been. Hoover power now costs less than a half-cent per kilowatt-hour—less than a half-cent per kilowatt-hour.

The average cost of energy elsewhere in the Southwest is 2 to 7 cents per kilowatt-hour. That means that they are getting it and the other people in the area who are not getting the benefit of this Hoover Dam power source are paying 400 to 1,400 percent higher than that which the Hoover power recipients are paying.

Cut it any way you want, call it anything you want, that is purely and simply a giveaway of the Federal resources. What logical reason can anyone give to ask this of the U.S. Government that was involved in the development of the Hoover power facility, a magnificent facility, I might say, and the Government helped to build it. It has been repaid, and there were low interest rates in connection with the repayment. Now we own it and now we are being asked to renew the contract for 30 years for nothing more than the cost of operating and maintenance.

Where are all those conservatives who talk about Government doing business as a business firm would do it? Where are all of those who make the speeches about the need to balance the budget when it comes to giving away the power developed at the Hoover Dam?

This is a giveaway. It is a throwaway. It is illogical. It is absurd. There have been no hearings as to why to do it, nothing having to do with the merits. Just let us do it.

The National Taxpayers Union opposes this proposal. They can understand it and so can every one of my colleagues within reach of my voice. And the American people can understand it. When you own something and you sell it for far less than it is worth, then it is giving away the taxpayers' money.

This bill would extend the Hoover power giveaway for another 30 years.

Now, it may be inappropriate to say that the Hoover power giveaway for the past 50 years is a giveaway because there was repayment of the cost of the construction of the dam.

But the fact is it is owned by the Federal Government and this bill binds the United States to sell Hoover power at these cheap rates for 30 more years.

Do not worry about the $200 billion deficit. Never mind that it encourages waste of a precious resource because when you make it that cheap no one is worried about conserving it. Never mind that everyone else pays much more for power. Take care of those who are now using it and let them buy it at these submarket rates.

I want to make it clear: My amendment that I am proposing is not an amendment to propose that it be sold at market rates. I do not know what the answer is. I do not know what is fair. I know that it is wrong to extend it for 30 years without Congress really deliberating upon the rights and the wrong. I know that it is not the right way for a governmental body to proceed.

The Environmental Defense Fund has estimated that the loss to the Treasury from selling Hoover power at cost against selling it at the marginal cost of energy is $3.5 billion over 10 years and the New York Times says it would be $6 billion.

Whatever, $3.5 billion or $6 billion, in neither case should that power be given away in this manner.

Why do we have to do it in 1984 when the contract does not expire until 1987?

Let me read you what the New York Times editorial said about this subject on March 21, 1984, "Greedy for Power." "Greedy for Power" is the title of the editorial.

If a giant oil reserve were discovered under the Pentagon, would the Government give it away to voters who live in nearby Maryland and Virginia? That, in effect, is what President Reagan and many Members of Congress want to do with the more than $400 million worth of electricity generated annually by Hoover Dam. The last hope of stopping that 30 year sign-away of a public resource rests with the House.

When it was finished in 1937, the giant hydroelectric facility on the Colorado River was still called Boulder Dam. Its size and power output made it one of the seven wonders of the modern world. The Federal Government signed 50-year contracts to deliver the power, at cost, to public and private power authorities in California, Nevada, and Arizona.

This electricity was always a bargain: It sold over the decades at an average price of one-sixth of the cent per kilowatt-hour. Wholesale power in the same region now sells for as much as 7 cents a Kwh. Hoover Dam power at half a cent is virtually a steal. No wonder that three benefiting States are pressing for legislation that would lock in the bargain through the year 2017.

The Environmental Defense Fund, perceiving that the underpricing of hydropower discourages conservation and increases demand for coal and nuclear power, argues that Hoover's electricity should be auctioned off to the highest bidders. San Diego, paying very high electricity costs and denied any portion of Hoover power, supports the auction alternative. But these appeals have so far been ignored.

The administration's budget office might have been expected to oppose such a giveaway of Government resources. But the

President is apparently unwilling to upset his Western supporters in an election year.

The sign-away bill breezed through the Senate with bipartisan support. House Democrats, too, seem reluctant to end up on the wrong side of the politics of cheap hydropower. In this case their reluctance is probably reinforced by the fact that Representative Morris Udall, the Tucson Democrat who chairs the House Interior Committee, is a sponsor of the bill.

There are many ways to rationalize support for the measure: It only continues the existing system of power distribution . . . it's too late for effective opposition . . . millions will benefit from the low-cost electricity. But beyond these rationalizations lies a simple truth. It's just not fair to treat national resources as pork to be sliced up for the neighbors. When California, Nevada, and Arizona don't pay their share of energy costs, someone else must.

Mr. President, this bill sets a disastrous precedent for the future costs of Federal hydropower. It is one of the first Federal dams to reach the end of the original 50-year repayment period during which the construction and O&M costs have been repaid.

The question now is what price should be charged once the 50 years is over? This bill says the price of Hoover power should be only adequate to cover O&M costs. That is simply poor public policy. It commits the Federal Government to a policy of under pricing its water, not only at Hoover, but everywhere.

There is a lot of talk about how the Federal Government is only supposed to sell power at cost, that it should not profit from the sale of power, but there is nothing in the law that says that and there is nothing that establishes a cost-based pricing policy for the period beyond the initial 50-year cost recovery.

In fact, the Hoover authorizing legislation explicitly states that once the 50 years expire charges shall be on a basis hereafter prescribed by Congress.

If you pass this bill, you establish a cost base pricing policy that is bad economics; it is bad business and it is bad policy. Supporters might say, "You can't change things now. This is the way we have always done business." I say to you that our job is not to preserve the status quo, particularly when the status quo is bad policy.

Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. METZENBAUM. Is the Senator from Ohio correct that I may modify my amendment but I may not send a second-degree amendment to the desk?

The PRESIDING OFFICER. Under the rules of the Senate, the Senator may not present an amendment to his own amendment while he retains the right to modify it. At the present time, the Senator has a right to modify his amendment.

Mr. METZENBAUM. 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. HECHT. 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. HECHT. Mr. President, it gives me great pleasure to speak on behalf of S. 268, a bill authorizing additional hydroelectric development at Hoover Dam, as the original sponsor of the Senate amendment which now is the main body of this House-passed bill, I want to briefly describe the history and some of the innovative features of this legislation.

By way of a background, the 50-year power allocation contracts for Hoover Dam are due to expire in 1987, less than 3 years from now, this bill will provide for a 30-year extension to those contracts, subject to new terms and conditions which are the product of years of court battles and negotiations between Nevada, Arizona, California, and the Federal Government.

One key element to this negotiated package is the authorization in S. 268 for the uprating or retooling of Hoover's 50-year old powerplant generators. Once completed, this project will provide an additional 500 megawatts of capacity at Hoover Dam.

A second element in this package is the authorization of much-needed visitor facilities and safety improvements at Hoover Dam. There are now over 1 million visitors at the dam each year, and conditions are such that it will only be a matter of time before a serious accident occurs there.

A third important element in S. 268 is the provision that dedicates a fixed amount of post-1987 Hoover power revenues to the completion of the central Arizona project and the Lower Colorado Basin salinity control projects, both of which are vital to the future agricultural, environmental, and economic well-being of the Southwest. A 4½-mil-per-kilowatt-hour surcharge will be applied to power sold in Arizona for repayment of the CAP, while a 2½-mil surcharge in Nevada and California will finance the vital Salinity Control Program.

These are the major features of S. 268. Despite the fact that this bill passed the Senate unanimously once before, there are those among us who think that S. 268 is some kind of monumental giveway to the American Southwest. This is nonsense. In closing, let me briefly outline some of the truly innovative features in this bill that benefit every Federal taxpayer in the United States.

First, the Hoover uprating program authorized here will be entirely financed by the power users. This is the largest single front-end-financed hydroproject ever undertaken by the Federal Government.

Second, the safety and visitor facilities will be fully repaid, with interest, by the power users. This is a major precedent for Federal hydroprojects.

Third, the bill requires that the yield interest rate will be attached to all repayment obligations. This is something that the OMB has been pushing for years.

Fourth, the bill requires that the Western Area Power Administration institute a conservation program for all utilities, who buy and then resell Federal power.

Fifth, the bill establishes a surcharge to be paid by power users to ensure the repayment of other Federal projects in the Southwest. This too is an innovative, and I think necessary, concept in these days of Federal fiscal austerity.

Mr. President, I think we can all agree that the hour is too late for us to go back to ground zero and engage in some abstract debate about Federal power marketing and pricing in this country. It is time to get on with the business of the Senate and pass S. 268 in the form that it was passed by the House of Representatives. I urge my colleagues support for this legislation.

Mr. McCLURE. Mr. President, today the Senate considers for the second time the provisions of S. 268, a measure which provides for the uprating of Hoover Dam and which resolves difficult issues relating to the power which that dam generates. This bill originally passed the Senate without a dissenting vote, and I want to underscore that fact. It passed the Senate before without a dissenting vote. This is not the first time we have seen this matter. At that time, S. 268 also provided for retrofitting seven other existing Bureau of Reclamation hydroelectric projects including three which were of particular interest to me. However, during consideration by the other body, these projects were deleted.

While I regret this action, and intend to pursue the deleted projects vigorously, I strongly urge the Senate to pass what remains of the original bill relating to the Hoover Dam. I do so, because the Hoover Dam provisions are extremely important to the people of the States of California, Arizona, and Nevada, as well as the rest of the Colorado River Basin States.

The version of the bill currently before us is the product of a thorough examination during the legislative process and is a compromise which reflects that review. The major provisions of the bill are as follows:

Authorization for the uprating of the capacity of Hoover Dam with 100-percent upfront financing by the power customers.

Authorization for improvement of the visitor facility at the dam and for the construction of a new bridge. Money advanced for the visitor facility will be repaid with interest at standard Treasury rates.

Provision for the allocation of power from the dam thereby resolving potentially costly litigation.

Imposition of a fixed surcharge on power supplied to California and Nevada to be used to carry out the purpose of the Colorado River Basin Salinity Control Act.

Imposition of requirement for conservation on recipients of power from the Hoover Dam.

Mr. President, this is a good bill and I wish to commend my distinguished colleagues from Arizona, Nevada, and California for the work they have done in bringing this bill before the Senate in an acceptable form. I believe an overwhelming majority of the Senate supports this measure. I hope we can pass S. 268 expeditiously without amendment so that it can be forwarded to the President for signature.

I would take a moment to express my own continued support for the concept behind title I of the Senate version of the bill and, in particular, two of the projects that were approved by the Senate.

As my colleagues will recall, the Senate version included an authorization for the replacement of the existing powerplant at the Minidoka Dam in my home State of Idaho. I will not delve deeply into the history of the matter, but I would point out that the authorization was for the replacement of an existing powerplant which is over 70 years old. The feasibility report prepared by the Bureau of Reclamation includes an extensive program for fish and wildlife mitigation and enhancement in conjuction with the project which would include additional generation capacity.

The other project that I would call to the attention of my colleagues was the authorization for the installation of a powerplant at the Yellowtail Afterbay Dam in Montana. Here again, in addition to the development of a clean renewable energy source was also the opportunity to provide a beneficial impact on the environment by reducing nitrogen supersaturation in the waters below the Afterbay Dam.

My colleagues from Montana have addressed the need for further study of the Yellowtail Afterbay project by including $100,000 in the energy and water appropriations bill for a feasibility level study, and I share their strong interest in the project and I support their efforts.

It is my hope that the Congress will be able to further address these two projects as well as others in the very near future.

I appreciate the efforts of all those concerned with this legislation, and I would particularly express my gratitude to Senator NICKLES, chairman of the Subcommittee on Water and Power of the Senate Energy and Natural Resources Committee, before whose subcommittee this bill was heard.

Mr. President, in addition, let me make one or two comments about the amendment that has now been offered to the House amendments. As I said in my prepared remarks, the House action has stricken title I. Title I authorized the retrofitting of seven other Federal hydroelectric projects throughout the West. These projects were in the original bill to which the Hoover Dam Act was attached by amendment.

I want to correct one impression that may have been left in the remarks that have been made thus far. In addition to the fact that this bill was before the Senate and acted on by the Senate before, the subject matter of the Hoover Dam Act was discussed before the Subcommittee on Water and Power Resources during hearings on S. 268. So it is not totally without background or new to us here at all.

Mr. METZENBAUM. Mr. President, would the Senator yield?

Mr. McCLURE. Let me get back to that, if I may.

As I indicated before, this bill passed on August 4, 1983—at the time we had action in this body before. It has been pending in the other body since that time. The bill does not need to be passed. I do not think the Senator from Ohio or any others say that it does not. He has focused on the need to look at the question of power revenues, power rates, and the sale of power structure. But there are other reasons that I have outlined in the bill that give us some sense of urgency with respect to working on the legislation.

In that context, I should also note that even though contracts for the distribution and sale of the power may not need to be extended until 1987, there are reasons you do not wait until the last minute before you move forward. I recognize that the Senator's proffered amendment would extend that period for 1 year so that we would have more time to discuss what he thinks should be discussed more fully at this time, or at some later time with respect to the sale of power.

But let me address just very briefly—I know we will get into this more before we finish this—the question of what should the power sale be? The Senator from Idaho does not get any power from that generated at Hoover Dam. The power that is generated is generated by water that is flowing in a stream that has been dammed and which runs through generators that have been installed in that dam. The power is distributed. The people who have consumed that power have paid enough for that power to pay for all of the initial construction costs—or will have by the end of the license period—all of the original construction cost that was attributed to the power facilities. It is now being urged that indeed that power was too cheap even though they paid back what was invested, and besides that they ought to pay more in the future. Why? Simply because it is there? Simply because as a matter of fact the Federal Government may have the authority to require a payment that is above any cost to the taxpayers of this country? Where is the equity in that?

It seems to me that it is what somebody might term laissez-faire economics—the public be damned.

We have the power to cost you money. We are going to break the taxpayers because we are the Government. We are going to sock it to the consumers because we have the authority.

It does not seem to me that is a position this Senate wishes to take at this or any other time. But I see an all-too-often reiteration of the notion that there should be a market test, see what the traffic will bear, and let us extract from the consumers all that the traffic will bear. That seems to me to be a little strange coming particularly from a self-styled consumer protection advocate on the floor of the Senate that on many, many other occasions has risen to vigorously defend consumers' interests against the rapacious appetite of those who had something to sell.

But it appears in this instance since it is the Federal Government that might be the beneficiary, it is the Federal Government that might have something to sell, suddenly the consumers' interests should be subjected, and subverted to the authority and the greed of the Federal Government.

As I said at the outset, the Senator from Idaho does not represent a State that gets power from this dam. I have no claim on that power. I have no direct interest in the power sale contract. But that great dam would never have been built in the first place if we had the attitude prevailing in the Congress at that time which is being urged upon the Senate this afternoon. We could have none of that investment. We would have none of the benefit of that economic growth. We would have none of the human benefit that has accrued to people through a wide area of this country as the result of the investment of money in the 1930's which has since been repaid.

I hope that the amendment of the Senator from Ohio will be rejected, and that we can then get on with the business of passing the bill for all of the reasons which have been outlined and more which will be outlined further.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, I rise to join my colleague from Idaho in urging defeat of this amendment, and the support of the underlying legislation, S. 268. I will not repeat the importance to the States of Arizona, Nevada, and my own State of California of achieving the compromise that this legislation represents. Suffice it to say that the upgrading of the Hoover Dam facility will provide Nevada and Arizona with power which they did not need in an earlier, simpler time, which their burgeoning populations, now require; it will additionally guarantee California power upon which it relied for many years, and make available new power to new users in California.

This amendment is totally unnecessary. Beyond that, it is destructive.

What is being proposed here is the increase in capacity of the facility which has historically paid its cost. It has been a self-liquidating facility from the standpoint of Federal taxpayers.

The amendment that is being proposed would destroy this historical basis of cost recovery for Federal power, not just for the recipients of power from this project, but as a precedent it threatens all Federal power users, and there are some 30 to 35 States, I am told, which are in a position not dissimilar to that of California, Arizona, and Nevada. What the Senator from Ohio proposes is that we depart from that historical basis of cost recovery and instead ask that the Federal Government go into business to make a profit.

Well, what that means, of course, is that those who do not have the courage to do the things required to lower the deficit, as indeed I think we will next spring after the election, are looking to this as a means of trying to foist upon water users an unfair share of the burden that should be the responsibility of all Federal taxpayers.

Mr. METZENBAUM. Will the Senator from California yield for a question?

Mr. WILSON. No; not at this time, but I will at the conclusion of my remarks. I will be happy to do so.

Mr. METZENBAUM. I thank the Senator.

Mr. WILSON. The fact of the matter is that this is a departure not only from the historical basis of charging for Federal power but for private power as well. What we are doing is saying that we wish to completely leave that tradition, a tradition that sought not a profit for the Federal Government, not to sell to the highest bidder, but to provide power to those who needed it only at the costs that were required.

What this does is to send a message to OPEC that we are not going to seek energy self-sufficiency. What this amendment would do if accepted, unfortunately, would be to reward those utilities who have high rates and punish those with low rates. What it would do is punish ratepayers not just in these three States immediately affected as the recipients of Federal power from the Hoover project, but it threatens, as a precedent, all Federal power users.

Why do we wish to depart from what has been a successful history? Why, when this legislation affords the opportunities to adjust rates to recover fully all costs, including the costs of congressionally mandated purposes, do we need this amendment?

We need it only if we are to engage in some social and fiscal engineering for which there is not only no legitimate defense, but which indeed works a penalty upon those who are least in a position to be able to suffer it.

I have here, Mr. President, a list of all of the purchasers of federally generated hydropower in States that run from Alabama clear through the end of the alphabet, to Washington. There are more than 30 States listed here. The ultimate customers are municipalities, public utility districts, irrigation districts, cooperatives, and a very few investor-owned utilities as well. The vast, vast majority are public power consumers and public power retail marketers.

Mr. President, there will be more to say, although not much more is really required other than to remind people that the three States involved, after some years of multi-State litigation, have come to an agreement. It is an equitable agreement for power sharing, for the allocation of both the old and the new power to be provided by the upgraded Hoover project.

Very simply, there is no legitimate reason to support this amendment. I would have to say that if it is adopted, it will set back not only the settlement but the construction of the improvement that is required if Hoover is to continue its historic task of flood control and the generation of hydroelectric power. This is in no one's interest, not in California, not in Nevada, not even in Ohio, though I note that State is not included in my list.

Mr. President, I urge defeat of the Metzenbaum amendment and the adoption of the underlying amendment, without which the litigation that now can be settled will not be settled.

I yield now to my friend from Ohio for a question.

Mr. METZENBAUM. I thank the Senator from California.

Will the Senator from California advise the Senator from Ohio as to whether he read my amendment?

Mr. WILSON. Yes.

Mr. METZENBAUM. Would the Senator from California be good enough to advise how that will increase rates, affect energy self-sufficiency, and affect all Federal power users? I cannot find anything in the contract for a term of 1 year that will affect those things. The Senator from Ohio does not come to the floor and indicate what rates should be. I do not know what the rates will be. I do know it is a matter that should be given consideration. I do know that it is a matter that should not be handled without hearings ever having been held. I am not suggesting the proper pricing. I am not suggesting selling to the highest bidder. I am suggesting that we set what is the proper pricing policy for this power.

The fact is that there is no policy and there is no tradition for hydropower pricing once the project costs have been recovered. Congress said 50 years ago at the end of 50 years Congress should deal with that issue. What is wrong with taking a year, which really is more than a year because this is 1984 and I am willing to go to 1988, to examine the issues? What is the Senator afraid of? Why should we not examine into it and decide what the right policy is? I might say in passing—well, that is enough for a question.

Mr. WILSON. To go for 50 years would be consistent with financing a utility of this kind. I am sure the Senator in his experience would assure us that is the case.

Mr. METZENBAUM. But this has already been financed and paid for.

Mr. WILSON. The improvement most certainly has not been.

Mr. METZENBAUM. Let me make that clear. The Senator from Ohio is perfectly willing to sit down and discuss the language of the House bill as it returned from the House absent the pricing and allocation aspects, and I might even be willing to take a look at the allocation matter.

I have no problem or fault to find with the House bill absent the pricing and the allocation aspect. I am making it clear that I am willing to take a look at the allocation issue.

Mr. WILSON. With all due respect, that kindly offer is not one we feel necessary. The allocation has been agreed upon by the parties involved.

Mr. METZENBAUM. Who are the three States who have the right to tell the rest of the Nation how we should divide the power that all States own? They do not own this power. The people of this country own the power.

So they sat down and they negotiated what 47 other States are going to give them? That is not the way we normally negotiate. Normally somebody is there for the other side of the issue. Those three States are only con-

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cerned about how they would divide it among themselves.

Mr. WILSON. I think they are entitled to do that. That has been the history of public power and properly so because the cost recovery is paid by the users. Why should not the three States involved be the ones that make that allocation?

Mr. METZENBAUM. Because they do not own the power.

Mr. WILSON. They are the ones who pay for it.

Mr. METZENBAUM. They pay for the power on special terms arranged over 50 years ago when we provided that facility, and we provided specifically that at the end of the 50 years Congress would arrive at a determination as to what policy should prevail.

All the Senator from Ohio is saying is that Congress ought to bite the bullet and face up to its responsibility. I am not saying what the price should be, but Arizona, Nevada, and California do not have the right to tell the rest of the country what the price should be and certainly without any hearings having been held in the U.S. Senate.

Mr. McCLURE. Will the Senator yield?

Mr. WILSON. I am happy to yield to my distinguished colleague from Idaho.

Mr. METZENBAUM. Mr. President, I object to the procedure of one Senator yielding to the other. I have no objection whatsoever to the Chair recognizing the Senator from Idaho.

Mr. McCLURE. I would hope the Senator from Ohio who has indulged himself in the advantage of having the Senator from California yield, would not now find it unnecessarily abrasive to have the Senator from California yield to the Senator from Idaho.

Mr. METZENBAUM. No. The Senate rules provide for that.

Mr. McCLURE. Certainly the Senate rules provide for that, and I will not abuse it. I am not certain whether the Senator from Ohio objected to the Senator from California yielding.

Mr. METZENBAUM. I am only really suggesting that which I think is a simple procedure and ask that the Chair recognize the Senator from Idaho rather than——

Mr. McCLURE. The Senator from California, I think, has the floor.

The PRESIDING OFFICER [Mr. GORTON]. The Senator from California has the floor.

Mr. METZENBAUM. I do not think much of the idea of one yielding to the other, but I do not want to deny the Senator from Idaho being heard.

Mr. McCLURE. I thank the Senator from Ohio for withholding objection and I thank the Senator from California for yielding.

Mr. President, the Senator from Ohio has, I think, phrased it well when he said it is his belief that this is not just a matter for the concern of the people who pay for the power; that in his view the power is owned by all of the people of the United States. but I would point out that under the bill—and the Senator from Ohio asked if, indeed, the Senator from California had read his amendment. I wonder if the Senator from Ohio has read the bill, because—unfortunately, apparently he does not realize that the bill provides that there will be some enhanced power provisions at this installation and that that project financing will be 100 percent up front, financed by the users. Am I not correct?

Mr. WILSON. The Senator is correct.

Mr. McCLURE. And that the bill is not asking the people of the United States to finance the enhancement; it is to permit the people who are the users of the power to finance the enhancement; am I not correct?

Mr. WILSON. The Senator is absolutely correct again.

Mr. McCLURE. It seems to me that under those circumstances, had the Senator from Ohio read the bill before he criticized it, he would have known that, indeed, there is the need for more than a 1-year extension in order that the people who are going to pay for the power can get the financing to avoid the necessity of asking the people of the rest of the country to put up the money to finance the additional facilities at that installation. I thank the Senator from California for yielding.

Mr. WILSON. The Senator is absolutely correct, and I think that is a very valid point. What we are doing with this legislation is avoiding going to the Federal Government and asking them to finance it. I am sure the Senator from Ohio would not want us to do that. We are not doing that. We are going to the marketplace; the market bonds will be based upon reasonable cost recovery.

Mr. HECHT. Mr. President, will the Senator from California yield?

Mr. WILSON. I ask that the Chair recognize my colleague from Nevada. I have nothing more. I thank the Chair.

Mr. HECHT addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. HECHT. I would like to refer to the CONGRESSIONAL RECORD, S11642 dated August 4, 1983, so that we can clear the record. The Senator from Ohio stated earlier that the Hoover Dam compromise in title 2 of S. 268 was added by an amendment without any notice to the Senate prior to passage. Mr. President, I wish to correct the record. On June 21, 1983, 2 weeks before the Senate passed this bill, I submitted to the Senate a printed amendment, No. 1424, with the Hoover Dam compromise. Two weeks later on August 4, 1983, the Senate passed this bill with that amendment. At that time, before the August recess of 1983, we all recall that the Senator from Ohio carefully monitored all legislation and consent agreements. Consequently, it is completely clear that all Members of the Senate had full and complete notice of the Hoover Dam amendment well before the Senate acted and acted without the objection of the Senator from Ohio.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. CRANSTON. Mr. President, it is a pleasure to rise in support of S. 268, the Hoover Dam legislation. This legislation is the result of a delicate settlement reached after 5 years of public hearings and compromises reached by the many involved parties.

The bill provides for enlarging the capacity of Hoover powerplant by approximately 500 megawatts. This will be accomplished by modernizing the existing generating units. There will be no environmental impact. The total capital will be paid in full by the power users as contributed funds—there will be no cost to the Federal Government.

The power users will pay not only the construction cost, including interest plus operations and maintenance costs, but will also pay the costs for federally mandated purposes such as desalination and river augmentation.

Colorado River developments have a long history of protracted lawsuits. Lawsuits have been filed with regard to Hoover power marketing. These lawsuits will be dropped and the situation cleared up when the legislation is passed.

In California, a tremendous effort has been made to reduce the dependence of the utilities on oil for electric generation. Passage of S. 268 will assure the availability of a reasonable amount of Hoover energy to California, and will reduce the need to burn oil to provide electricity.

In summary, this bill provides a very balanced approach to utilization of Federal resources. It provides for the beneficiaries to pay all costs and allocate the resource for the good of all people in the region.

The amendment offered by the Senator from Ohio to change the term of the Hoover contract to less than 30 years should be opposed, I submit, in order for the utilities to put up the capital to enlarge the Hoover powerplant. They must have a reasonable period to amortize their investment. Assuming a 15-year leadtime to develop a new resource and a 5-year period to reallocate the resource—present process has taken over 5 years—if a contract term of 20 years was used, a new marketing process would need to start on the same day that the new contracts take effect.

For these reasons, Mr. President, I urge our colleagues to join in rejecting the amendment of the Senator from Ohio and in adopting the legislation before us without change.

Mr. GOLDWATER addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. GOLDWATER. Mr. President, I have listened to my friend from Ohio with a great deal of interest. I have that strong suspicion that when he was taking some conservatives to task for backing this particular piece of legislation, he was aiming his arrows at me. I am very happy to receive them. The bow is rather weak so I am able to withstand the impact.

Mr. President, so the Senator from Ohio might have a better idea of our problem, Arizona is the fastest growing industrial State in the Nation. Arizona is a very young State. In fact, I am older than the State of Arizona, and I am not very young. But we have had phenomenal growth. Now, I remember when the first dam was completed that provided some electricity. We now call it the Salt River project. It was then the Salt River Valley water users. That system was paid for by private money under bond. That was the source of really our first power. After that time, steam generation was used. It was privately developed power. Today we get power from Hoover Dam. It is a very small percentage of the total electricity that we use. In fact, without falling water power, whether it is privately developed or publicly developed, there would be no real West as we know it today. Now, for example, the utility in Phoenix is building a $3.5 billion nuclear plant that we hope will provide electricity for our growing population. We are not sure that even this $3.5 billion investment will suffice. So we look to the sources on which we are now depending, and this one source, not a major source, is Hoover Dam.

Everyone is aware that electric rates have increased dramatically during the last several years because of cost increases resulting to a large extent from the actions of the OPEC cartel. One resource that has helped in at least moderating the wild increases in cost by OPEC is power from Federal projects. Power users have historically paid cost based rates for Federal power. At Hoover, power is priced—and I hope my friend from Ohio understands this—to return the construction cost allocated to power with interest along with operation and maintenance costs, and costs associated with federally mandated purposes such as flood control, desalinization, river augmentation, and in this particular case, although I would not argue it too strongly, a navigable stream. That was one of the major navigable streams in the West until the construction of the dam.

This type of pricing policy generally applies to Federal power projects which provides power to consumers in 35 States. Recently, attempts have been made to raise the price of Hoover power to reflect so-called market or marginal rates with the excess revenue being used to solve the Federal deficit problems. Put another way—the proposal would tax electric consumers to solve the Federal budget problems.

I might say that the construction of hydroelectric dams by the Federal Government or by private money has certainly not added to the deficits under which we are laboring in this country today.

S. 268 is an outstanding example of people working together to solve problems rather than attacking each other. The primary purpose of the bill is to authorize enlargement of the Hoover powerplant to provide additional environmentally sound electric generation to meet the needs of the people without the use of any money from the Federal Government. The bill is the culmination of a 5-year public process by the Department of Energy and negotiations among the affected parties. There now appears to be an effort to delay passage of this legislation. Let me explain in some detail.

S. 268 was passed in 1983. The House version of S. 268 (H.R. 4275) was approved by the House committee with very little opposition in the spring of 1984. However, when the bill reached the floor an amendment was introduced which would throw out the agreements reached during the last 5 years and have Hoover power sold to the highest bidder. Recognizing that such an amendment would, first, destroy the historic concept of selling federally generated electric power on a cost-of-service basis; second, abolish the concept of public preference in the sale of federally generated electric power; third, completely destroy the orderly marketing process required by law; fourth, reward utilities who have high rates and punish those with low rates; and, fifth, eliminate any possibility providing stable power costs to the consumers, the House rejected the amendment and passed the bill in May 1984.

If any of my friends listening to the lower power rates quoted by the Senator from Ohio think that we people who live in Arizona are living high on the hog on power rates, my monthly bill last month was $482. I will match that against any bill paid in Ohio, Maine, New York, or any other place.

S. 268 is now before the Senate for concurrence in the amendments made by the House. It is understood that additional amendments will be offered in the Senate in order to either kill the bill by delay or interject amendments to reopen the pricing issue. It is obvious that if any amendments are accepted, the bill will have to go back to the House, where further delays are possible.

S. 268 as written provides for new contracts with a term of 30 years. Provisions are in place to adjust rates to recover fully all costs, including the costs of congressionally mandated purposes. No changes are necessary. The contract term of 30 years was chosen by the Department of Energy only after lengthy hearings.

With respect to the suggestion made by the Senator from Ohio that we have a short extension of the Hoover contracts which expire in 1987 rather than the needed 30 years, he is a very successful businessman, and he knows that 5 or 10 years is not sufficient to develop an alternative resource. Power from Hoover Dam is a sole source for many irrigation districts in Nevada and Arizona; 5 or 10 years would not allow time to find other power at a reasonable price. In fact, I can say that there is no more power in Arizona for any purposes. The utility business is a long leadtime business.

We may hear arguments that the contracts should be subject to rate changes in the future. The contracts will be subject to revision to reflect changes in costs. To go beyond that will destroy the basis for long term contracts. Problems with the concept of allowing for major midstream price adjustments include:

First, in selling bonds to pay the costs of enlarging Hoover, the utilities must show that the costs of power during the bond repayment period are reasonable. This cannot be done if they do not know what the power will cost.

Second, the concept of allowing major midterm contract price adjustments is not a Federal policy and should not be considered on a spur of the moment basis.

Third, arguments that Congress may want to consider other price provisions in the future are not germane. If Congress wants to adopt new policies in the future it, of course, can but they should not be retroactively applied.

Fourth, the Federal Government should help bring stability to the cost of power to the consumer, not leave the people wondering what they may have to pay.

S. 268 relates to Hoover power. However, if it is amended as to pricing, similar provisions will undoubtedly be proposed for other Federal power projects soon thereafter. Once Federal power is compromised in this way perhaps a tax, over and above costs, could be proposed for water, sewage effluent, and other items such that the consumers of this country could all pay more to balance the budget. The precedent that is being proposed would in the end affect every State.

To set such a precedent without benefit of even one committee hearing is irrational. S. 268 should be passed immediately. I have no doubt that, under the chairmanship of my friend from Idaho, any necessary changes in power rates would be very hurriedly agreed to, not only by him but by his committee as well.

Mr. President, if necessary, I will have more to say on this subject. I urge the defeat of the proposed amendment by my friend from Ohio.

Mr. METZENBAUM. Mr. President, I think we ought to understand that there are two separate parts to this bill.

One part has to do with new projects, concerning which I have no objection. They are projects for which I believe an appropriate formula is provided for repayment, and I agree with the Senator from Arizona that you cannot finance those new projects with 5-year contracts. I am not saying that. We are talking about those projects most of which I think were in the original bill as it left the Senate, and I believe there is merit to the inclusion of those projects as spelled out by the House. I have no problem with respect to the matter of term concerning those contracts, those new facilities.

Then, we have the other part of the subject, and that has to do with the Hoover Dam as it is at the moment, the one that was built 50 years ago. That has been repaid, and now it is a question of renewing the contract or renewing the term with respect to the matter of those facilities.

I think we have to recognize that they are totally different issues. One has to do with whether or not we are fairly paid as the Federal Government for that which is in place and that which is paid off or whether we sell it for rates that are about one-fourth to one-fourteenth of the going rate for electricity in the area.

I have said previously that I do not know if those are the correct rates, or I do not know what are the correct rates, but I think it is appropriate that the Federal Government concern itself with the subject before it goes about renewing the term for 30 years.

The argument is then made when the distinguished manager of the bill, the Senator from Idaho, talked about some of the projects that are needed and that are provided for in this legislation. This is to advise him and the Senator from Arizona and all others who are interested in this legislation that I am prepared to work out arrangements or legislation having to do with the new projects because our differences do not result from the legislative language concerning the new projects.

Where we are in disagreement has to do with the Hoover Dam, the one that was built 50 years ago, and the question of what rates will be charged in the future concerning those facilities.

That is a fair issue to be determined, and again I repeat I am not the one who says what those rates should be. When the matter was before the House of Representatives and it was urged that the rates be set at market, the measure was defeated by a rather narrow margin. I think the figure—and I mentioned it before—was 214 or 212 to 176.

The Senator from Ohio was not offering that kind of amendment here. My amendment is far more modest than that.

My amendment would only provide for a 1-year extension rather than a 30-year extension, and I am realist enough to understand that that does create some problems with respect to the new projects. I am willing at any time that the sponsors of the legislation want to do so, to sit down to draft appropriate language to separate the new from the old.

I am frank to say that it was not my understanding that this measure was coming to the floor today, and I am told by a number of others that they were taken by surprise as well. I do not fault the majority leader in that connection. It is certainly within his prerogative. But I believe that as a consequence the separation which they would seek was not worked out in advance with them or their representatives.

But if at any time or overnight the managers of the bill want to work out language dealing with the new projects being separated from the old projects, the Senator from Ohio and his staff will certainly be very cooperative.

I have no more to say. I see the junior Senator from Arizona on the floor waiting for an opportunity to be heard. I have been heard several times previously and I have no problem at all in yielding the floor in order that he might be recognized by the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I thank the distinguished Senator from Ohio.

Let me start off by saying that the Senator from Ohio has met with some Members of this body who have an interest in this bill. We did so roughly 1 week ago last Sunday, and we discussed it at great length and the Senator from Ohio just reiterated his willingness to divide the bill at that time. He also talked about the 1-year extension and I think it was adequately explained at that time that this would substantially hinder the ability of a number of States who share in the power of Hoover Dam to be able to raise funds through bonding and the surcharges that would be attached to the power that they will receive under it.

I well realize that the Senator from Ohio knows this because we went into it at great length, and I understand his strong commitment here.

I do hope that we can have a vote on this particular amendment.

As has been pointed out by the senior Senator from Arizona, both Senators from California, but the senior Senator from California, who I happened to be listening to, indicated that there is a great deal hinging on the passage of this bill including litigation by all the States involved and that includes Arizona and California, and the other border States in the area, that of necessity this is a solution that has passed the House of Representatives that would forgo perhaps 1 year or more of litigation, and there is so much on this that I hope my colleagues will defeat the Senator's amendment and we will have an opportuanity to vote on the amendment so we can get on with the bill.

As far as splitting the two areas of new power facilities and old ones, that really is not before us here, and I see no reason why we should dwell on that and I think we have a bill that has been put together with thoughtful consideration. This is a victory for what I think the Senator from Ohio wants to achieve and that is an increase in the cost and what will be paid for the power from public facilities or generators at Hoover Dam because it is a substantial increase. It also provides in this bill that States can add a surcharge and Arizona intends to add a surcharge in order to pay for some of its needs for other projects within the State.

So it is my hope that we can defeat this amendment.

I will be glad to yield the floor.

Mr. HECHT. Mr. President, the Senator from Ohio seems to imply that Hoover Dam is different; that this is the first big project in the original 50-year retainment period that ran its course, that we should not pass S. 268 until we have had time to review pricing policies for projects that have been fully paid out.

First of all, Hoover has not been fully paid out. Certain features of Hoover will not be repaid until well after 1987.

Many other dams across the country are in the same situation as Hoover. Roosevelt Dam in Arizona and Wilson Dam on the TVA system are older than Hoover.

Moreover, there are hydroelectric and thermal power projects all across this country that have been fully amortized by both private and public utilities. These companies are not allowed to earn a profit on these dams; every Public Utility Commission in the Nation requires that power from these projects be sold at cost.

There is nothing new or novel in the issue you raise. Utility regulators and even Congress have spoken on this issue repeatedly in the past. Why, just a few weeks ago, the Senate unanimously approved an amendment to the energy and water appropriations bill prohibiting the use of Federal funds to study market based or other alternative pricing criteria for Federal power.

I think it is absurd that all this cheap power goes to an exclusive group of utilities, the so-called Hoover Club.

The Hoover Club consists of those States and utilities who were willing to participate in the construction of what was then the largest dam project in history. Power is allocated as follows: 18 percent to the State of Arizona; 18 percent to the State of Nevada; 36 percent to the Metropolitan Water District—for pumping water; 24 percent to the city of Los Angeles; and 4 percent to the Southern California Edison Co.

These companies serve more than 15 million people in the American Southwest. It could hardly be said that the benefits of Hoover power go to some exclusive club.

Mr. President, I yield the floor.

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

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

The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I rise in opposition to S. 268, the Hoover Dam bill, and in support of the amendment which I understand the Senator from Ohio will offer in connection with the bill.

Frankly, I find it much easier to explain my reasons for opposition than to understand why anyone could support this bill.

Why do I oppose this bill? First, look at the economics. We face a $175 billion deficit this year. The Congressional Budget Office estimates that unless we change our ways that deficit could exceed $300 billion by 1989.

One of the best ways to make a change, to reduce the deficit is to eliminate subsidies which are now obsolete. A subsidy which may have served a useful purpose 50 years ago may well be obsolete today.

This bill continues a subsidy begun 50 years ago and continues it for another 30 years, another 3 decades. That subsidy is the sale of power from the Hoover Dam at a price which is about one-tenth its market value.

Think of that, Mr. President, in this day and age. We face a staggering deficit. Reducing that deficit is going to require sacrifices on the part of everyone, except those who buy Federal power generated at the Hoover Dam. Delay cost-of-living adjustments for those on Social Security—no problem. Cut money for food stamps—again no problem. But ask those who use electric power to pay a fair price—no way.

This subsidy is no nickle and dime, affair. If we asked those who use this power to pay a reasonable price, the Federal Government would earn an additional $6 billion over the next decade. That is the $6 billion we would not have to take from the wallets of the American taxpayer or out of the hides of Social Security recipients.

The President of the United States yesterday deplored the tendency on the part of the Federal Government, especially under the Democrats, to encourage, and I quote, a "deeper dependency" of citizens on the Government. Well, dependencies come in many varieties. Here, we have a $6 billion dependency, started during the Depression, and today we are being asked to continue that dependency for another 30 years.

Where is the administration? Where are all the fiscal conservatives who serve in this body? For once, let us end a subsidy when it should be ended.

Mr. President, reducing the deficit is not the only reason to end this subsidy. The electric power generated at Hoover Dam is grossly underpriced and that leads to a misallocation of resources. Those with access to this power can irrigate and farm lands where such farming would otherwise be uneconomical. Industry builds plants which would otherwise be located elsewhere. This type of misallocation is not free—not by any stretch of the imagination.

Who pays for these boondoggles? First, the taxpayers do because they have to make up the cost of this subsidy. Second, farmers, workers, and small businesses in other sections of the country pay once again because they have to compete against those who use this cheap power—cheap courtesy of Uncle Sucker. Finally, our environment suffers. Regions and communities shut off from this power will try to compensate. How many extra dams will be built. How many beautiful whitewater streams will be ruined as a result?

Mr. President, I said earlier that I could not understand why anyone would support this bill. That statement was exaggerated a little. Certainly, those who benefit from this cheap power want to retain their advantage. They number perhaps 4 to 5 million people. Simple arithmetic, however, shows that perhaps 220 million people lose.

Yet those 4 to 5 million may prevail over 220 million. If you want a textbook example of how an organized, small special interest can win over the chaotic, numerically dominant majority, this bill provides the text for that lesson.

The 4 to 5 million stand immediately to lose something tangible—cheap power. But for the unorganized majority their losses—factories moved, jobs lost, streams destroyed, prices increased—are vague and indefinite.

Mr. President, if we pass this bill we will set a precedent that will come back to haunt us. Over the next 2 to 3 years we are going to have to cut the deficit.

It is going to be very painful, and very difficult for every Member of this body. It is going to be unpopular. We are going to have to do it. We do not have any real alternative, and we know it.

I prefer to reduce that deficit by cutting spending to the extent possible and only as a last resort raising taxes. I am sure most Members of this body feel the same way. But if we are going to cut spending, we are also going to have to take a hard look at all of the subsidies, all of the spending programs built into the budget.

We now have an opportunity to do just that. We know that food stamps go to the needy, that Social Security and medicare help the elderly, many of who are needy. Who benefits from this power subsidy? Only those in one small region. If we cannot cut this subsidy, is it fair to cut spending for food stamps? Of course it is not.

Let us be honest—we are going to have to raise some taxes. My preference is to try to raise the minimum amount of taxes required. But if we cannot eliminate an obsolete subsidy, what chance do we have to hold down the inevitable tax increase. I say "very little."

What we have here is a fundamental issue of fairness. This bill continues a 50-year-old subsidy. It costs the taxpayer at last $6 billion over the next 10 years. It benefits one small region of the country at the expense of every other section of the country.

Mr. President, I wish that the leadership had not brought this bill to the floor at this time. They may see it as a relatively noncontroversial continuation of a 50-year-old policy.

But this bill is far more than that. It is the opening shot in the battle of the budget which will carry over into next year. What we do today will echo again and again throughout this Chamber.

Do we have the courage to take a look at every subsidy in the Federal budget? Then let us start here.

Do we have the sagacity and wisdom to recognize change and to eliminate obsolete programs? Then let us start here.

Do we have the foresight to reduce the deficit by $6 billion over the next 10 years? Then let us start here.

Do we have the endurance to start cutting back on what the President called a "deeper dependency?" Then let us start here.

If we do not, if we miss this opportunity, we will have taken a giant step backward. We will have set a precedent which will haunt us next year.

Mr. President, it is my understanding that my distinguished colleague from Ohio, Senator METZENBAUM, has an amendment to extend the terms of this contract for 1 year. That would give us time to take a closer look at this issue. I think it is certainly a reasonable and prudent action.

It seems to this Senator that is the absolute minimum we should do.

I commend my good friend from Ohio for once again acting as a sentinel on the floor of the Senate against a giveaway program, as he has done so often and so very effectively over the years.

I earnestly hope that the Senate will see fit to adopt his amendment.

Mr. President, I yield the floor.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I want to thank my colleague and good friend from Wisconsin. Almost without exception, or I have no recollection of any exception, he has never failed to protect the Treasury and the people of this country. The Senator from Wisconsin has made himself known as that one person who would expose before the Senate the improprieties and giveways of the Federal Government.

He now rises to support a position I have taken in this matter, and I am very grateful to him in this regard.

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

The PRESIDING OFFICER [Mr. SPECTER]. Without objection, it is so ordered. The Senator from Washington is recognized.

Mr. EVANS. Mr. President, I have listened with considerable interest to the debate this afternoon and, of course, have had a good deal of experience with this whole subject during my term as chairman of the Pacific Northwest Power Council and in previous debates on this floor and in reading very carefully the debate in the House of Representatives during the so-called Boxer amendment.

While I am very much aware of the particular nature of the amendment before us, I think that everyone knows what the real rationale is. I would like to for a few moments discuss the concept of subsidy which has been raised so many times this afternoon, a strained one, I might add, and the extension of this same principle the Senator from Ohio would institute to other parts of the infrastructure of this Nation.

My idea of subsidy is the supplying of money or other resources to a project which is unable to carry its own cost by itself. It is a strained view, indeed, of a subsidy which says here in an area served by public power we ask the ratepayers to pay all of the costs of construction, all of the costs of operation and maintenance, and all of the costs of any enhancement during the life of the project but then in addition any other amount that you can get out of the ratepayers who are captive to that particular utility. And if you do not get every last penny out of the ratepayer, somehow that is subsidy. That in my view is a strained view indeed of a subsidy. But if we want to talk about a subsidy, let us look at some other parts of the infrastructure of this country.

The St. Lawrence Seaway is a good example, and I suspect that the Senator from Ohio has some particular knowledge of that particular construction project.

The original authorization in 1954 required repayment of construction, the cost of construction, the principal, the interest, and the operation and maintenance costs, as is properly the case. But there has been an interesting and checkered history since.

In 1970, the act was amended to forgive interest rates. In 1983, in the Department of Transportation appropriations bill, we forgave principal to the extent of $110 million. The tolls now are reduced to supplying only operation and maintenance, and I suspect that there may well be some proposal in the future to eliminate one or the other or both of those remaining charges.

If we are going to expand this concept of "market rates" for captive customers, that is not my view of a market rate. The market rate should be where there are competitors on both sides, where there are alternatives on both sides. But when a monopoly exists, it is difficult indeed to use the concept of market rates.

I suggest that it might be useful, if this Nation wants to cut the deficit in this fashion, to offer up for bids some of the key locks on the Saint Lawrence Seaway, to see whether in fact someone is willing to bid sufficiently for those, to pay the Federal Government some fee, in order to charge higher tolls—what "the market would bear." Perhaps we could; perhaps we could not.

Nonetheless, we are likely to get ourselves to a point, if we extend this concept logically to the many other places in the country where it could be extended, to literally auction off the infrastructure of the United States to the highest bidder. I think that is bad policy.

We could, for example, with substantially the same logic, to cut the deficit, ask that the interstate highway system, particularly some key bridges or sole routes through the mountains, be auctioned off, so that a successful bidder could place tolls on those stretches and charge "what the market would bear."

Again, we would perhaps reduce the deficit of the Federal Government, but at great cost and with little alternative to the many users of that system.

Some may say that my interest is particularly in maintaining the low power rates of the Pacific Northwest through the Bonneville Power Administration. I suggest that the market is already effective in the Pacific Northwest. Currently, we are seeing the shutdown of one aluminum plant after another because electricity prices are too high, not too low.

The concept applied just to one area such as this does not make sense, especially in the field of electric energy, where there are few, if any, alternatives, where we have established the concept of monopoly both for publicly owned as well as investor-owned utilities. We do not suggest in either case that the customers pay "market rates." We limit the price charged by an investor-owned utility; and every State with an investor-owned utility has a regulatory commission to ensure that the prices charged by that utility are no more than enough to cover operation and maintenance, new construction, and a small profit to the shareholders in order to ensure that there can be continuing financing, particularly through the equity of that company.

So we do not use it for investor-owned utilities. We have not used it for publicly owned utilities. We have not used it, so far as I know, in any other significant part of the infrastructure of this Nation; and I suggest that it is bad policy, especially in an amendment on this bill, to start such a radical change in activity in this Nation.

Mr. GORTON. Mr. President, will my colleague from Washington yield for a question?

Mr. EVANS. I am delighted to yield.

Mr. GORTON. As I have listened to what the Senator has said, do I correctly interpret his point to be that the word "subsidy" can be used in at least two different senses, and the so-called subsidy which is being attacked by the amendment of the Senator from Ohio is not a subsidy which paid for either the construction or the operation and maintenance of Hoover Dam, the facility in question? Is that correct?

Mr. EVANS. That is correct.

Mr. GORTON. And that the only fashion in which the word "subsidy" is

used or attacked here is in the sense that because the Hoover Dam has what amounts to a captive set of ratepayers, the market would bear a higher price for power than that which is charged by the Hoover agency?

Mr. EVANS. That is correct. Or there may well be alternative ratepayers who would engage in bidding, seeking to raise rates to the maximum degree possible, and the losers would be out. The winners would pay considerably higher prices; but, in any case, there would be a monopoly, with no competition then allowed.

Mr. GORTON. Do I take it that the subsidy which the Senator from Washington has pointed out attaches to the Saint Lawrence waterway is a subsidy of quite a different and more drastic nature and now, by action of Congress, amounts to a subsidy not only for the principal cost of construction of those facilities but for the interest on that principal cost as well?

Mr. EVANS. That is correct, and that is my view of what constitutes a normal definition of subsidy—when you start out a project knowing what it costs or what you expect it to cost, and then find out, when you are part way through, that you cannot pay for it.

Mr. GORTON. And that subsidy is not being attacked by this amendment?

Mr. EVANS. No; not at all.

Mr. GORTON. My colleague from Washington also pointed out that the rationale for this amendment could also quite logically be applied to at least key portions of the Interstate Highway System, where theoretically the taxpayers of the United States could recover significant amounts of their investments if those key portions were put out to the highest bidder. Is that not correct?

Mr. EVANS. I do not think it would be a case of recovering the key portions of their investments, because it could be suggested logically that those stretches of interstate systems were built through gas taxes and weight fees on trucks. But they certainly could gain a substantial income to the Federal Government and to the taxpayers which would go to reduce the deficit, simply because they could get it from people who had no other choice than to cross a bridge which is now free and which could be tolled, and they would have little other alternative than to pay the toll.

Mr. GORTON. Would not the same logic which is behind this amendment logically be extended to charging what the traffic will bear for visitors to the national parks of the United States?

Mr. EVANS. Well, I had not thought of that as an example, but that certainly could be a logical extension of this. I think that, in the true sense of the word, we are subsidizing, through general taxpayer funds, the costs of operation and maintenance of our National Park System. We have done it deliberately, as we have done all these other things deliberately. I do not think anyone would suggest now, because we could currently reduce the national deficit, that we should charge what the traffic would bear and reserve the national parks to the rich.

Mr. GORTON. It is the point of my colleague from the State of Washington that it is appropriate national policy that we subsidize the operation of a national park; that it is appropriate national policy that we not charge what the traffic will bear for the use of key bridges of the Interstate Highway System; and that it is equally appropriate public policy that the Hoover Dam, having paid off the cost of its construction and interest charges on that construction, should not now be subject to a quasi-monopoly set of charges to its ratepayers for the future production of power from that facility.

Mr. EVANS. That is correct.

I think it makes perfectly good sense to insist that we ask the beneficiaries of projects such as Hoover Dam to pay for that initial cost, to pay for operation and maintenance, to pay for enhancement and not expect direct subsidy as is the case in the Saint Lawrence Seaway, but not ask for any more than that, any more than we would ask a person who 30 years ago bought a home, made a deal with the bank, paid the mortgage, the principal cost, the interest, the operation and maintenance of that home and having paid the mortgage, now has the bank come back and say, "Well, we would like you to pay some more, just because it is possible for you to pay some more."

Mr. GORTON. And because perhaps the value of the house was now greater than it was when he purchased it.

Mr. EVANS. That is correct.

Mr. GORTON. I thank my colleague, the Senator from Washington, for his enlightened discussion.

Mr. EVANS. I yield the floor.

CALL OF THE ROLL

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

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

The bill clerk resumed the call of the roll.

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

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk resumed the call of the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 7 Leg.]

Cranston	Gorton	Metzenbaum
DeConcini	Hecht	Specter
Evans	McClure	

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of absent Senators.

Mr. BAKER. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, and I ask for the yeas and nays on the motion.

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. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Colorado [Mr. ARMSTRONG] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES], the Senator from Illinois [Mr. DIXON], the Senator from Colorado [Mr. HART], the Senator from Hawaii [Mr. INOUYE], and the Senator from Massachusetts [Mr. TSONGAS], are necessarily absent.

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

The result was announced—yeas 92, nays 2, as follows:

[Rollcall Vote No. 197 Leg.]

YEAS—92

Abdnor	Glenn	Mitchell
Andrews	Goldwater	Moynihan
Baker	Gorton	Murkowski
Baucus	Grassley	Nickles
Bentsen	Hatch	Nunn
Biden	Hatfield	Packwood
Bingaman	Hawkins	Pell
Boren	Hecht	Percy
Boschwitz	Heflin	Pressler
Bradley	Heinz	Pryor
Bumpers	Helms	Randolph
Burdick	Hollings	Riegle
Byrd	Huddleston	Roth
Chafee	Humphrey	Rudman
Cochran	Jepsen	Sarbanes
Cohen	Johnston	Sasser
Cranston	Kassebaum	Simpson
D'Amato	Kasten	Specter
Danforth	Kennedy	Stafford
DeConcini	Lautenberg	Stennis
Denton	Laxalt	Stevens
Dodd	Leahy	Symms
Dole	Levin	Thurmond
Domenici	Long	Tower
Durenberger	Lugar	Trible
Eagleton	Mathias	Wallop
East	Matsunaga	Warner
Evans	Mattingly	Weicker
Exon	McClure	Wilson
Ford	Melcher	Zorinsky
Garn	Metzenbaum	

NAYS—2

Proxmire	Quayle

NOT VOTING—6

Armstrong	Dixon	Inouye
Chiles	Hart	Tsongas

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. RANDOLPH. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The majority leader.

CLOTURE MOTION

Mr. BAKER. Mr. President, I send to the desk a cloture motion and ask that it be stated by the clerk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provision of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Baker motion to concur in the House amendment to S. 268, the Hoover Powerplant Act of 1984.

Senators Howard Baker, Ted Stevens, James A. McClure, Pete Wilson, Daniel J. Evans, Chic Hecht, Barry Goldwater, Alan Cranston, Orrin Hatch, Jeremiah Denton, John East, Dennis DeConcini, Mark Hatfield, Thad Cochran, Mack Mattingly, Paul Trible, Paul Laxalt, Max Baucus, Pete Domenici, Jeff Bingaman, John Melcher, and Jake Garn.

Mr. BAKER. Mr. President, I anticipate that the distinguished assistant minority leader will shortly——

Mr. BYRD. Mr. President—I beg the majority leader's pardon—may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

The majority leader.

Mr. BYRD. Mr. President, the Senate is not in order yet. May we have order in the Senate?

The PRESIDING OFFICER. Will Senators please take their seats and clear the well?

The majority leader.

Mr. BAKER. I thank the Chair, and I thank the minority leader.

Mr. President, I anticipate that in a few moments the distinguished acting minority leader may make a motion to table the Metzenbaum amendment to the House amendment in which the motion seeks to concur. Before that, however, I understand that the distinguished Senator from Ohio wishes to speak.

Could I inquire of the Senator from Ohio how long he wishes to speak?

Mr. METZENBAUM. Very briefly.

Mr. BAKER. Mr. President, I certainly wish to accommodate the Senator in that respect, and in just a moment I am going to yield the floor so the Senator from Ohio can seek recognition for that purpose.

Before I do that, Mr. President, I announced earlier that I thought we would be out by 6 p.m. I would like to rescind that estimate.

Mr. President, we still have the so-called Baby Doe bill that I had announced we would do tonight. I am told that we believe that a time agreement on that measure has been cleared, and if the minority leader is prepared for me to do so, I am prepared to put that unanimous-consent request at this time.

Mr. President, I think that may be just a bit premature. But may I say to my colleagues that we are going to try to finish the unanimous-consent request providing for time on that bill. I estimate that if we get the agreement, it will take about an hour. And it would be the intention of the leadership on this side to ask us to finish that bill tonight, if we get that agreement, and I hope we do.

Mr. President, I now yield the floor.

Mr. BYRD. Mr. President, before the distinguished majority leader yields the floor, if the Senator from Ohio and the Senator from California will indulge me, would the distinguished majority leader indicate what the plans are for tomorrow?

Mr. BAKER. Yes, Mr. President. May I say, first of all, that if we do not do the Baby Doe matter tonight, it would be my intention to go to that tomorrow. I have a strong preference for doing it tonight, if possible. If we could do that tonight, I am not sure what we can clear for tomorrow. If we cannot do it tonight, we will be here, and on that, tomorrow. I am not now saying we will not be in session tomorrow because there are other matters that we might deal with. If the manority leader would let me pursue this matter, I will try to have another announcement.

Mr. BYRD. I thank the majority leader.

AMENDMENT NO. 3418

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, speaking for my colleagues so you may understand what this issue is about, the Senator from California is about to make a motion to table the amendment of the Senator from Ohio. The Hoover Dam has had a contract for a term of 50 years. That contract will expire on May 31, 1987. My amendment would extend that 1 additional year. The legislation before you without the amendment would extend it for 30 years.

When this matter was in the House, the House voted on the question of setting the rates at the market figure. That would be anywhere from 400 percent to 1,400 percent higher than the present rate. People in Arizona, California, and Nevada who are presently served by the Hoover Dam are paying about half of a cent per kilowatthour. The average rate throughout the country for electrical power is about 13 times that amount, 6½ cents per kilowatthour, according to the advice given to me today by the CRS.

The issue before the House was whether the rate should be set, and whether or not the power should be available to all of the States. I have no issue about that—in other words, whether it could be publicly bid. It lost in the House by a vote of 212 or 214 to 176.

My amendment does not address itself as to what the rate should be, nor am I concerned about the question of allocation. I am perfectly agreeable to having the power allocated to the three States that presently get it. Nor do I have any fault to find with that part of the legislation that has to do with the upgrading of a number of additions to the Hoover Dam. That is not the issue. The issue is whether or not Congress will do that which we were expected to do 50 years ago when it was indicated that at the end of the term—this is in the law—that Congress would decide what the rate should be. I do not know what the rate should be. But I would propose that either Congress or an independent commission give the Congress some indication as to what the rate should be.

So I am asking you to vote for a 1-year extension instead of a 30-year extension. That would take it up to May 31, 1988, and during that period of time we would have an adequate opportunity in order to resolve and determine what the rate should be. The opponents will say to you, and those who are offering the amendment, that they need the longer term for the upgrading of the new facilities; for the upgrading of the additions. I have made it clear—we have practically come to an agreement on that point—that I am not at issue on that. We are not at issue on that point. I am willing to agree to whatever language is necessary in order to make the upgrading, and to provide the lengthened term. I am willing to accept the language of the House which I understand is acceptable to most parties. I also am not challenging the question of the three States getting the electricity or the power.

So I would hope that when you consider this issue that you keep before you the question of what is the right thing to do with these dams that have been paid for that are not owned by the Federal Government; whether or

not the power should be sold at greatly subsidized rates, which also in my opinion makes it possible and causes a good deal of waste in connection with that power.

I thank you for listening to me. I am ready for the Senator from California, whenever he wishes to make the motion to table.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I will be even briefer than the Senator from Ohio in presenting the other side of this issue. The Hoover Dam facilities need to be upgraded. The bill provides for such upgrading at full cost to the users. The bill provides for a 30-year contract fixing the price of power at full cost. the Metzenbaum amendment would amend to limit the contract to 1 year.

Mainly, the users do need a long-term contract to assure the economic viability of their investment in upgrading Hoover, which is going to cost $77 million. If we wait 1 year, go to a 5-year, or 10-year, or some other shorter term, bonds cannot be sold, and the improvements cannot occur. The upgrading would increase the generating capacity of Hoover by one-third. It is plainly in the national interest to make maximum use of hydroelectric power.

Mr. McCLURE. Mr. President, would the Senator yield for a question?

Mr. CRANSTON. Of course.

Mr. McCLURE. The Senator from California referred to the fact there is going to be some upgrading and referred to the amount of money to be paid. The Senator used the term "the full cost of the ratepayers." Is it not a fact that that the ratepayers will put up the entire cost and that it will all be done without cost to the Federal Government?

Mr. CRANSTON. Yes; the Federal Government puts up not 1 penney.

Inherent, let me say, in the approach of the Senator from Ohio is the concept of going to market rates for power. If the market value concept for Federal power rates was applied across the board nationwide, it would increase customer charges by at least $4.5 billion over a 3-year period, according to an analysis that has been quite carefully made. In the earlier debate, the Senator from Washington, [Mr. EVANS], made, I think, a very telling point when he stated that the infrastructure that we develop in our country should not be used to make a profit.

It should be used to meet the needs of our economy and our people. If we are going to depart from that concept, we basically change what our democracy and our society has done in providing an infrastructure—to enable our economy and our society to grow and flourish.

Let me finally say the bill is supported in its present form without the Metzenbaum amendment by, among others, the American Public Power Association, the National Rural Electric Co-ops Association, and the Consumer Federation of America.

Unless someone else has a question—I gather no one has—I move to table the amendment of the Senator from Ohio.

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.

Te PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from California to lay on the table the amendment of the Senator from Ohio. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Colorado [Mr. ARMSTRONG] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES], the Senator from Illinois [Mr. DIXON], the Senator from Colorado [Mr. HART], the Senator from Hawaii [Mr. INOUYE], and the Senator from Massachusetts [Mr. TSONGAS] are necessarily absent.

The PRESIDING OFFICER [Mrs. KASSEBAUM]. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 56, nays 38, as follows:

[Rollcall Vote No. 198 Leg.]

YEAS—56

Abdnor	Gorton	Percy
Andrews	Grassley	Pressler
Baker	Hatch	Pryor
Baucus	Hatfield	Randolph
Bingaman	Hecht	Sasser
Boren	Heflin	Simpson
Burdick	Helms	Stafford
Cochran	Hollings	Stennis
Cranston	Jepsen	Stevens
DeConcini	Kassebaum	Symms
Denton	Kasten	Thurmond
Dole	Kennedy	Tower
Domenici	Laxalt	Trible
East	Matsunaga	Wallop
Evans	McClure	Warner
Exon	Melcher	Weicker
Ford	Murkowski	Wilson
Garn	Nickles	Zorinsky
Goldwater	Packwood	

NAYS—38

Bentsen	Glenn	Metzenbaum
Biden	Hawkins	Mitchell
Boschwitz	Heinz	Moynihan
Bradley	Huddleston	Nunn
Bumpers	Humphrey	Pell
Byrd	Johnston	Proxmire
Chafee	Lautenberg	Quayle
Cohen	Leahy	Riegle
D'Amato	Levin	Roth
Danforth	Long	Rudman
Dodd	Lugar	Sarbanes
Durenberger	Mathias	Specter
Eagleton	Mattingly	

NOT VOTING—6

Armstrong	Dixon	Inouye
Chiles	Hart	Tsongas

So the motion to lay on the table amendment No. 3418 was agreed to.

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

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

The motion to lay on the table was agreed to.

● Mr. LAXALT. Mr. President, I feel it imperative that I contribute a few thoughts to the debate developing on S. 268. This bill has been passed by both the Senate and the House of Representatives and we are dealing with the House version today. S. 268, as passed in both Chambers is consistent with historical practice for the marketing of hydroelectric power and is in conformity with public policy created by the Congress on numerous occasions in the past. The Senate has spoken four times in recent years to strongly support cost-based power marketing of hydropower. Those statements prohibit the expenditure of appropriated funds to study a market rate system. The acts include:

First. Section 166 of the First Continuing Appropriations for Fiscal Year 1983, Public Law 97-276;

Second. Section 114 of the Second Continuing Appropriations for Fiscal Year 1983, Public Law 97-377;

Third. Section 506 of the Energy and Water Development Appropriations, 1984, Public Law 98-50; and

Fourth. Section 506 of the Energy and Water Development Appropriations, Act, 1985, Public Law 98-360.

Mr. President, the Senate has consistently maintained that system because electrical energy has been deemed a resource of the Nation, a part of the commonweal and to prevent gouging by natural monopolies.

Mr. President, there have been statements made about Hoover power being a subsidy to certain ratepayers. Subsidy is a nasty word, one which will be used if it can in order to make an argument. I hope we can lay that spurious argument to rest. There is no subsidy involved in this question, none whatever. Hoover Dam is being repaid with interest. The power users are making those payments in the rate they pay.

The uprating provided by S. 268 will be paid for up front. The funds will be appropriated but they will be repaid from the existing replacement funds also created by the Hoover power customers.

The argument seems to be that a subsidy is involved simply because hydropower rates will continue under the new contracts and that those rates are lower than market rates for coals or gas fired utility power. Two things must be kept in mind: Hoover Dam was built in the Depression; therefore its cost was low relative to costs today. If Hoover Dam were replaced today it would cost many billions of dollars and

repayment rates would be correspondingly high. The second point to keep in mind is that the fuel used to create the power is water, and water is cheaper than oil. There is no subsidy in this. Hoover ratepayers will continue to pay for the cost of generating power, for the cost of increased power capacity, for desalination, for portions of the Central Arizona project, and for the safety and visitor facilities provided by the bill. Any other add-ons simply to bring rates more in line with market rates would constitute something of a subsidy for other regional ratepayers.

I wonder, Mr. President, just what such funds created by additional add-ons to the cost-based power would be used for. Would these profits be used in the highway program? To help retire the national debt? What? It seems to me that is a singular departure from present policy. It involves a public policy question which will, and should, affect the total power marketing system in this country. It is a question that deserves considerable time and attention, not something that we change on the Senate floor. Make no mistake, the objections being raised to the bill suggest a departure from present public policy—not the bill. S. 268 follows time-honored practice.

But not only will a move away from cost based pricing destroy the historic concept of power marketing, it will abolish the concept of public preference in the sale of federally generated electric service, severely inhibit the orderly marketing of such power as required by law, and destabilize power costs to customers.

If a change in such fundamental policy is to occur it must be fully considered. Heaven knows I want to see the national debt retired as much as anyone in the Congress, but I must object if my constituents are to be asked to shoulder a portion of that burden through their power rates that is not asked of similar ratepayers elsewhere. If the Congress is to make such fundamental change, such change must apply, in equity, to Bonneville Power, to the Southeast Power Administration, to the Southwest Power Administration, to the Alaska Power Administration and to TVA.

The only difference, I see, Mr. President, between Hoover and the other power administrations is that Hoover is first in line for renewal. Its contracts expire in 1987. S. 268 provides for the uprating at the powerplant which, in turn, facilitates agreement among the power customers for the next contract period. If we are to move away from cost-based power for Hoover let us consider the matter in the context of the full public policy implications and the impact on all other similar projects in the Nation. And, Mr. President, let us not burden this project with unrealistic contract terms and contingencies which make the project less efficient pending a review of that public policy. That serves no purpose but to thwart the already agreed to uprating and power division provisions of S. 268.●

UNANIMOUS-CONSENT REQUEST—S. 1003

Mr. BAKER. Madam President, I am prepared now to present a unanimous-consent request which I believe has been cleared all around and will not be objected to.

I ask unanimous consent that when the Senate proceeds to the consideration of Calendar No. 171, S. 1003, the Child Abuse Prevention and Treatment and Adoption Reform Act Amendments of 1983, it be considered under the following time agreement:

Thirty minutes on the bill, to be equally divided between the chairman of the Committee on Labor and Human Resources and the ranking minority member or their designees.

That the following three amendments be the only amendments in order; that they be first degree amendments and limited to the following time for debate: Thirty minutes on an amendment to be offered by the Senator from Utah [Mr. HATCH] and the Senator from Connecticut [Mr. DODD] and others, dealing with Baby Doe; 30 minutes on an amendment to be offered by the Senator from Utah [Mr. HATCH], dealing with striking the provisions regarding the role of States for intervention where parents withhold medical treatment from children for their religious reasons; 15 minutes on an amendment to be offered by the Senator from Alaska [Mr. STEVENS] dealing with domestic violence; 5 minutes on any debatable motion, appeal, or point of order to be submitted to the Senate; and that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. MOYNIHAN. Reserving the right to object, I wonder if the majority leader would include an amendment I will offer. I can make it 20 minutes equally divided or 30 minutes equally divided.

Mr. BAKER. What would the amendment deal with?

Mr. MOYNIHAN. It would deal with Social Security.

Mr. BAKER. Madam President, I cannot do that at this time. I will have to go through the clearance process on that.

I think that the bill as described here can be done in an hour. There will be all sorts of opportunities to offer Social Security amendments, I think. But if the Senator persists in his request, all I can do at this time is to withdraw the request and to proceed otherwise.

Mr. MOYNIHAN. I am sorry, but I do not make many such requests.

Mr. BAKER. Does the Senator object to the request?

Mr. MOYNIHAN. I ask the majority leader: Will I retain the right to offer an amendment under those circumstances?

Mr. BAKER. Not in the form of this request.

Mr. MOYNIHAN. In that case, I will have to object.

The PRESIDING OFFICER. Objection is heard.

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

Mr. LONG. I object.

The PRESIDING OFFICER. There is an objection heard.

The clerk will resume the call of the roll.

The bill clerk resumed the call of the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. I object.

Mr. McCLURE. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will resume the call of the roll.

The assistant legislative clerk resumed the call of the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. McCLURE. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will resume the call of the roll.

The assistant legislative clerk resumed the call of the roll.

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

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

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Will the Senator from Ohio suspend just a moment for an appointment?

Mr. METZENBAUM. Provided that the Senator from Ohio does not lose his right to the floor.

The PRESIDING OFFICER. No. The Senator has been recognized.

APPOINTMENTS TO JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES

The Chair, on behalf of the Vice President, in accordance with Senate Concurrent Resolution 122, 98th Congress, appoints the Senator from Tennessee [Mr. BAKER], The Senator from Maryland [Mr. MATHIAS], and the Senator from Kentucky [Mr. FORD] to the Joint Congressional Committee on Inaugural Ceremonies.

The Senator from Ohio.

AMENDMENT NO. 3419

Mr. METZENBAUM. 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 Ohio [Mr. METZENBAUM] proposes an amendment numbered 3419.

At the end of the House amendment add: Notwithstanding any other provision, all provisions of this bill shall become effective upon date of enactment; *Provided, however,* That no section of this bill or the Boulder Canyon Project Act of 1928 regarding the price of power generated at Hoover Dam shall be effective after May 31, 1987.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Madam President, if I could have the attention of the Senate, it appears to me that we are not going to be able to get to the Baby Doe bill tonight for a variety of reasons. It also appears that we are not going to finish the Hoover Dam bill tonight. Cloture has been filed on the bill, and a vote will occur on Monday, assuming that we are going to be in tomorrow, and we are.

If the minority leader, who is on the floor, has no objection, it would be my purpose at this point to ask for a period for the transaction of routine morning business, and go out until 10 o'clock in the morning.

Madam 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. BAKER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BAKER. Madam President, it does not appear that we can get a time agreement on the child abuse bill. But there seems to be a desire on the part of many Senators to get on it anyway for a while. I am willing to try that.

Let me say in advance, however, that we are not going to spend a lot of time on it. At least the leadership on this side will attempt to get at it in a timely way tonight so that we will be on it tonight. If we can finish the Baby Doe bill, that is fine, but if we are going to stay past 7:30, I do not think it will be useful time. Without a time agreement, I am willing to give it a try.

Madam President, I ask unanimous consent that the Senate temporarily lay aside the pending business, the Hoover Dam bill, and turn to the consideration of S. 1003.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Reserving the right to object, Madam President, I ask if the majority leader will restate his request.

Mr. BAKER. Madam President, I put the unanimous-consent request that we temporarily lay aside the Hoover Dam bill and go to the Baby Doe bill. I indicated it would not be my desire to stay on the Baby Doe bill much past 7:30 this evening. It would be the expectation on this side, if we have not finished it shortly after that, that I would ask the Senate to go out until tomorrow and intend to go back to the Hoover Dam bill, which was messaged from the House.

Mr. BYRD. Madam President, I remove my reservation.

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

CHILD ABUSE PREVENTION, TREATMENT, AND ADOPTION REFORM AMENDMENTS

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1003) to extend and revise the provisions of the Child Abuse and Prevention and Treatment Act and the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978.

The Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources with an amendment to strike out all after the enacting clause, and insert the following:

That this Act may be cited as the "Child Abuse Prevention and Treatment and Adoption Reform Act Amendments of 1983".

TITLE I—EXTENSION OF CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION OPPORTUNITIES PROGRAMS

PART A—CHILD ABUSE PREVENTION AND TREATMENT

THE NATIONAL CENTER OF CHILD ABUSE AND NEGLECT

SEC. 101. (a) Section 2(a) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101(a); hereafter in this part referred to as "the Act") is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services".

(b) Section 2(b)(6) of the Act is amended to read as follows:

"(6) study and investigate the national incidence of child abuse and neglect, including a determination of the extent to which incidents of child abuse and neglect are increasing in number and severity and a determination of those incidents of child abuse and neglect which involve the denial of nutrition, medically indicated treatment, general care, or appropriate social services to infants at risk with life-threatening congenital impairments, and to submit such findings to Congress together with such recommendations for administrative and legislative changes as are appropriate within one year after the effective date of the Child Abuse Prevention and Treatment and Adoption Act Amendments of 1983; and".

(c) Section 2(c) of the Act is amended by striking out "The Secretary may carry out his functions under subsection (b) of this section" and inserting in lieu thereof "The functions of the Secretary under subsection (b) of this section may be carried out".

SEXUAL ABUSE DEFINITION

SEC. 102. Section 3 of the Act is amended—

(1) by striking out "this title the term" and inserting in lieu thereof the following: "this title—

"(1) the term";

(2) by striking out the period at the end thereof and inserting in lieu thereof a comma and the word "and"; and

(3) by adding at the end thereof the following:

"(2) the term 'sexual abuse' includes the obscene or pornographic photographing, filming, or depiction of children, or the rape, molestation, incest, prostitution, or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary.".

DEMONSTRATION OF SERVICE PROGRAMS AND PROJECTS

SEC. 3. Section 4(b)(2)(E) of the Act is amended by striking out "his" and inserting in lieu thereof "and the child's".

AUTHORIZATION OF APPROPRIATIONS

SEC. 4. Section 5 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 5. There are authorized to be appropriated $27,500,000 for fiscal year 1984, $34,000,000 for fiscal year 1985, $35,500,000 for fiscal year 1986, $37,080,000 for fiscal year 1987, to carry out the provisions of this Act. Of the sums appropriated for each fiscal year $9,500,000 shall be available in each fiscal year to carry out the provisions of section 4(b)(1) of this Act, relating to State grants, and $4,000,000 shall be available in each such year for the identification, treatment, and prevention of sexual abuse.".

ADVISORY BOARD ON CHILD ABUSE AND NEGLECT AND ADOPTION OPPORTUNITIES

SEC. 105. (a)(1) The first sentence of section 6(a) of the Act is amended by striking out "including" and all that follows thereafter through "Administration,".

(2) Section 6(a) of the Act is amended by inserting at the end thereof: "The Advisory Board shall be available, at the Secretary's request, to assist the Secretary in coordinating adoption related activities of the Federal Government.".

(b)(1) Section 6(b) of the Act is repealed.

(2) Subsection (c) of section 6 of the Act is redesignated as subsection (b).

COORDINATION

SEC. 106. Section 7 of the Act is amended by striking out "between" and inserting in lieu thereof "among".

SAVINGS PROVISION

SEC. 107. The Act is further amended by adding at the end thereof the following new section:

"SAVINGS PROVISION

"SEC. 8. Nothing in this Act shall be construed to limit the right of a State to determine the health care and treatment a parent may provide his child in the exercise of the parent's freedom of religion.".

PART B—ADOPTION OPPORTUNITIES

FINDINGS AND DECLARATION OF PURPOSE FOR ADOPTION REFORM

SEC. 121. (a)(1) The first sentence of section 201 of the Child Abuse Prevention Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5111; hereafter in this part referred to as "the Act") is amended by inserting after "finds that" the following: "the welfare of thousands of children in institutions or foster homes, infants at risk with life-threatening congenital impairments, and infants born to teenaged unmarried individuals may be in serious jeopardy, and that some such infants and children are in need of placement in permanent, adoptive homes; that".

(2) The first sentence of such section 201 of the Act is further amended by inserting after "should not" the following: "become victims of a denial of medically indicated treatment or nutrition, nor".

(b)(1) The second sentence of section 201 of the Act is amended by inserting after "special needs" a comma and the following: "including infants at risk with life-threatening congenital impairments,".

(2) The second sentence of such section 201 of the Act is further amended by striking out clause (2) and inserting in lieu thereof the following:

"(2) providing a mechanism for the Department of Health and Human Services to—

"(A) promote quality standards for adoption services, including pregnancy counseling which presents adoption as a positive alternative, preplacement, post-placement, and post-legal adoption counseling, and standards to protect the rights of children in need of adoption;

"(B) coordinate with other Federal departments and agencies, including the Bureau of Census, to provide for a national adoption and foster care information data-gathering and analysis system; and

"(C) maintain a national adoption exchange to bring together children who would benefit by adoption and qualified prospective adoptive parents who are seeking such children.".

STATE ADOPTION LEGISLATION

SEC. 122. Section 202 of the Act is amended to read as follows:

"STATE LEGISLATION FOR ADOPTION OPPORTUNITIES

"SEC. 202. (a) The Secretary shall take such steps as the Secretary deems necessary to encourage and facilitate the enactment in each State of comprehensive legislation for the adoption of infants and children in need of adoption.

"(b) The Secretary shall—

"(1) review all model adoption legislation and procedures for the purpose of proposing such changes as are considered appropriate to facilitate adoption opportunities for infants at risk with life-threatening congenital impairments; and

"(2) coordinate efforts to improve State legislation with national, State, and local child and family services organizations, including organizations representative of minorities and adoptive families.".

INFORMATION AND SERVICES

SEC. 123. (a)(1) The first sentence of section 203(a) of the Act is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services".

(2) Section 203(a) of the Act is further amended by inserting before the period at the end thereof a comma and the following: "including services to facilitate the adoption of children with special needs and particularly of children with life-threatening congenital impairments; services to couples considering adoption of children with special needs, couples with infertility problems and other prospective adoptive parents; and services to individuals, including pregnant teenaged children, who are considering adoption as a plan for their infants, and pregnancy counseling, particularly of unmarried minors, which presents adoption as a positive alternative".

(b)(1) Section 203(b) of the Act is amended by striking out in the matter preceding clause (1) "subsection (a) of this section" and inserting in lieu thereof "this title".

(2) Section 203(b)(1) of the Act is amended to read as follows:

"(1) provide (after consultation with other appropriate Federal departments and agencies, including the Bureau of the Census) for the establishment and operation of a Federal adoption and foster care data-gathering and analysis system;".

(3) Section 203(b) of the Act is further amended—

(A) by striking out "parent groups" in clause (4) and inserting in lieu thereof "adoptive family groups and minority groups";

(B) by striking out "and" at the end of clause (4);

(C) by redesignating clause (5) as clause (7) and by inserting immediately after clause (4) the following new clauses:

"(5) encourage involvement of corporations and small businesses in supporting adoption as a positive family-strengthening option, including the establishment of adoption benefit programs for employees who adopt children;

"(6) continue to study the nature, scope, and effects of the placement of children in adoptive homes (not including the homes of stepparents or relatives of the child in question) by persons or agencies which are not licensed by or subject to regulation by any governmental entity, including the legal status of surrogate parenting; and"; and

(D) by striking out "Health, Education and Welfare" and inserting in lieu thereof "Health and Human Services" in clause (7) as redesignated by clause (C) of this paragraph.

AUTHORIZATION OF APPROPRIATIONS

SEC. 124. Section 205 of the Act is amended by striking out "and" after "1978," and inserting after "fiscal years" the following: ", and $5,000,000 for fiscal year 1984, and for each succeeding fiscal year ending prior to October 1, 1987,".

TITLE II—PROTECTION OF SERIOUSLY ILL NEWBORNS

ADVISORY COMMITTEE ON SERIOUSLY ILL NEWBORNS

SEC. 201. (a) There is established within the Department of Health and Human Services an advisory committee on seriously ill newborns which shall conduct a comprehensive study of decisionmaking procedures in health care facilities involving the medical management of seriously ill newborns, and make certain recommendations, as required under section 2.

(b) The advisory committee shall be comprised of fifteen members appointed by the Secretary of Health and Human Services (hereafter in this title referred to as the "Secretary") as follows:

(1) Two employees of the Department of Health and Human Services.

(2) Five members of the general public who are distinguished in the fields of law, medicine or ethics, as such disciplines apply to decisionmaking procedures involving seriously ill newborns.

(3) Three individuals selected on the basis of written nominations submitted by national organizations, which persons are broadly representative of the hospital industry, medical and nursing professions, one of whom shall be a medical doctor.

(4) Five individuals selected on the basis of written nominations submitted by national organizations, which individuals are broadly representative of handicapped, parents of handicapped, and other individuals concerned with the care and treatment of seriously ill newborns.

(c) Members of the committee who are not officers or employees of the United States shall receive for each day they are engaged in the performance of the functions of the committee compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

REGULATIONS

SEC. 202. (a) No later than six months after enactment of this title, the committee shall—

(1) conduct a comprehensive study of local decisionmaking procedures involving the medical management of seriously ill newborns within health care facilities including childrens' hospitals and tertiary care centers;

(2) based on such study, make recommendations concerning appropriate procedural mechanisms to be utilized by health care facilities which treat seriously ill newborns; and

(3) issue a report on its recommendations which shall be submitted to the Secretary.

Within sixty days after receiving the report the Secretary shall transmit such report to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives together with such comments as the Secretary may deem appropriate, including whether the Secretary accepts the recommendations of the committee.

(b)(1) Not later than one hundred and twenty days following receipt of the committee's report, the Secretary shall publish in the Federal Register proposed regulations, if deemed necessary by the Secretary, for the establishment of local decisionmaking procedures within each health care facility as to medically indicated treatment of a seriously ill newborn, which shall at a minimum require that all seriously ill newborns be provided relief from suffering in-

cluding feeding, and medication for pain and sedation as appropriate.

(2) The Secretary shall conduct a rulemaking proceeding on such proposed regulations in accordance with section 553 (b) and (c) of title 5, United States Code.

(c) Regulations prescribed under subsection (b) shall provide that failure by a hospital to comply with such regulations shall result in the loss of Federal financial assistance, including payments made under titles XVIII and XIX of the Social Security Act, to the hospital until it complies with such regulations.

(d) Nothing in this title shall be construed to authorize the prescription of standards of medical care by the Secretary, or other governmental entity, except to the extent such standards implement or interpret other laws or regulations.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I ask unanimous consent that the following Senators be added as cosponsors to the amendment in the nature of a substitute: Senators GRASSLEY, RANDOLPH, JEPSEN, HUMPHREY, CHAFEE, KASTEN, and GOLDWATER.

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

Mr. HATCH. Madam President, distinguished colleagues, I have requested these next few minutes in order to commend to your attention an urgent matter directly affecting the welfare of many Americans. These Americans are the children of our country—infants, toddlers, youngsters, and teens. Today we will consider and, I hope, pass S. 1003, the Child Abuse Prevention and Treatment and Adoption Reform Act which reaffirms our national commitment to prevent and treat the insidious threat of child abuse. This legislation further reaffirms our support for children, precious children whose needs for loving families will be met through the adoption provisions of this important legislation.

Last year, Senator DENTON and I, along with several other Senators, introduced S. 1003, the Child Abuse Prevention and Treatment and Adoption Reform Act. Our purpose in doing so was to insure the continuation and improvement of many already established and successful Federal programs which fund child abuse prevention and treatment and adoption.

This bill was important then. It is critical today. I recently learned from the National Child Abuse Coalition that statistical reports of abused and neglected children continue to climb each year, with over 1 million reported cases of children abused annually. Between 1967 and 1982, the number of reported cases rose by 120 percent.

We now know about the reality of child abuse—that the victims of abuse at home turn into the children who run away from home, who are often pulled into prostitution and pornography, and who suffer from drug and alcohol abuse. I am talking about the 80 to 90 percent of our Nation's male prison population who were abused as children, the children of parents who were themselves abused as children. Given what we now know, we cannot afford to ignore the importance of prevention. Not when we have within our grasp legislation which can stem the suffering and turn the tide once again in favor of all that is good, true, and enduring about family life in our country.

We as Senators have an obligation to serve the needs of all Americans, and those needs must include the children pleading for a permanent home and family. The Census Bureau reports that as many as 100,000 children are legally free for adoption. These are children who are adoptable, but who remain in foster care and institutions due to various public and private barriers coupled with a lack of awareness of the part of potential parents. The majority of these children have special needs. These are children with physical, emotional, and mental handicaps; they are children who have already reached school age. They are children of varied races; children with brothers and sisters who want to retain their identity. And as children, they have a basic right as well as a fundamental need for a permenent, secure, and loving home.

In my own home State of Utah, I have become aware of many couples who have included in their families children with special needs. I would like to share with my colleagues one story from United Press International. It concerns a couple in Pleasant Grove, UT, Aaron and Bonnie Card, who have adopted 12 children. The are the natural parents of 10 children and have been foster parents, of 12. In every day of their lives, this family is a living expression of perfect love and charity, and without even trying, they serve as our national community's beacon for the homeless and downtrodden who wander in search of that which is best about the human spirit.

The Cards were named "Utah Family of the Year," and the justification for their selection as recipients of this commendation is obvious. The UPI article describes the Card family, saying:

When the Cards, who were named "The Utah Family of the Year" last year, go out in their 15-seat van, people ask them what club or troop they are, said Mrs. Card, 65.

"When we had our third homemade child, as we call them, we had a very strong feeling that we should reach out and gather an orphaned child," Mrs. Card said.

All of the adopted children are special-needs children—children who are difficult to place because they are minorities, are over 6 years old, are handicapped or have been adopted and then rejected by other foster parents.

The family includes youngsters from India, Samoa, Mexico, and Guatemala, two brothers from Texas and a Navajo girl.

Several of the children have "had experiences that are very sad, very traumatic, and yet you've got to bring them in and make a family unit," said Mrs. Card.

Their daughter from India, Rina, adopted last summer, was living as a beggar in Calcutta.

Their Korean daughter, Trin La Chere, now 16, remembers her father taking her to another man's house. That man took her on a bus ride and lost her in Seoul. She ate out of garbage cans until she was taken to an orphanage.

Mrs. Card contended that "nobody has to work very hard in a big family."

She has organized the children to help with the housework. "People have the idea that when you have a big family, you have to have a messy house," she said. "You can have it as clean and pretty and nice as you want it."

Mr. Card was a public school teacher for 24 years and is now an administrator with the Mormon Church Educational System. The family income is modest, and the children know "they're limited to certain activities because of the financial situation."

"There are a lot of people out there trying to figure out why we're doing it," said Mrs. Card. "Some say it's to bring glory and honor. It sure is a hard way to get glory and honor."

Not everybody accepts racially mixed families, she added. Once a man approached her at church and accused her of "polluting the blood around here."

Some people who want to adopt are even jealous of the Cards. But Mrs. Card said, "there are still plenty of children out there. If you want them, you've just got to pay the sacrifice. There are 150,000 special-needs children in America alone."

Let us hope that S. 1003, with the increased authorization level, will raise the awareness of all Americans about our need to place adoptable children into permanent homes.

Our discussions today will have an immediate bearing on the dramatic and difficult decisions regarding the treatment of disabled infants born with life-threatening conditions. On June 26, I, along with Senators DENTON, DODD, NICKLES, CRANSTON, and KASSEBAUM, presented an alternative in the form of an amendment that, I believe, is a reasonable solution to the"Baby Doe" portion of our bill. I am pleased to offer this amendment which is intended to provide protection for newborn handicapped infants. I am pleased to offer this amendment which is intended to provide protection for newborn handicapped infants.

At this time, I would like to extend my sincere appreciation to Senator DENTON for his leadership on this issue. He brings to the Senate Labor and Human Resources Committee an incomparable commitment to achieving better ways to assure that these children have an opportunity for life, liberty, and happiness. I would also like to thank Senators DODD, CRANSTON, NICKLES, and KASSEBAUM, for their continued commitment to children in assisting in the development of this entire legislative package, and especially the "Baby Doe" portion. Fur-

ther, I want to thank many organizations who have been willing to develop what I regard as landmark legislation protecting the rights of handicapped children.

At this time, in addition to expressing my deep and heartfelt gratitude to the Senators who worked closely with me on the "Baby Doe" compromise; Senators DENTON, DODD, CRANSTON, NICKLES, and KASSEBAUM, I would like to express a similar gratitude to the staff and organizations who worked so hard to make this compromise possible. I would like to thank: David Yensen of Senator DENTON's staff; Marsha Renwanz of Senator DODD's staff; Susanne Martinez and Jon Steinberg of Senator CRANSTON's staff; Laura Clay of Senator NICKLE's staff; Susan Hattan of Senator KASSEBAUM's staff; Susan Arnold of Senator STEVENS' staff; Wes Clark, Debbie Curtis, and Andrea Young of Senator KENNEDY's staff; Rick Valentine of Senator EAST's staff; and Debbie Turner, Nancy Taylor, and Steven Grossman of my own staff.

Among the many individuals and organizations, I would like to particularly thank: Jan Carroll and Doug Johnson of the National Right to Life Committee; Jack Bresch of the Catholic Hospital Association; Paul Marchand of the Association of Retarded Citizens; Alex Calcagno, Ann Weisman, and Stephan Lawton of the American Academy of Pediatrics; Doug Badger of the Christian Action Council; Patti Goldman of the American Hospital Association; Tom Birch of the National Child Abuse Coalition; and Martin Gerry.

As I earlier stated, we as Americans recognize the inherent responsibility of adults to ensure the physical, mental and emotional well-being of children and young adults. We would never abandon a child injured in an accident. We aggressively protect children from adults who would abuse them. Why is it then that any of us would turn our backs to those children born seriously ill, but for whom medical care today offers the gift of life? Our legislation reassures this commitment. I urge immediate adoption of this amendment, numbered 3385.

Now I turn to my second amendment which strikes section 107 from S. 1003. All States receiving funds under the Child Abuse and Neglect Prevention and Treatment Act must have in place systems for the reporting of abuse and the provision of proper medical care.

There are families in the United States who, as a matter of religious belief, rely on spiritual means for healing. Most of these people are responsible citizens who love their children and respect public authority. They are not members of what is popularly called "cults," and they have exemplary records as citizens and as parents.

Should such families, when their children are sick, be automatically reported to the authorities? Should such parents be totally exempt from public scrutiny and governmental regulation of their health needs because of their religious convictions? Most Americans would say "no" to both these questions. Somewhere in between lies the balancing point between the inherent rights of family and religion on the one hand, and the protection of health standards for childen on the other.

In drafting S. 1003, efforts were made to include a section addressing these sensitive issues, but the various interested parties have not reached an accord. In the interest of not impeding progress on this legislation, I am withdrawing the so-called "savings provision." I do not wish it to be assumed, however, that the problems dealt with in section 107 have been solved or will be forgotten.

More study needs to be directed on the matter of children whose parents, in the exercise of religious freedom, choose for then a responsible method of spiritual treatment. I urge the groups who have expressed interest in section 107 to continue refining the ideas that have been put forward. The National Center for Child Abuse and Neglect should review the regulations under the child abuse and neglect programs to assure that they are giving due consideration to parents, children and State law dealing with this aspect of religious freedom. I urge adoption of this amendment.

Finally, I would like to commend Senators STEVENS for his valuable and appreciated work to develop a consensus on programs addressing the issue of family violence. Each of us is deeply committed to taking whatever action is proper and effective to end this social aggression against those who should be most loved and cherished. Family violence is for the most part a disease, as well as a crime. In the past, it was often endured but kept secret. Today, through more extensive education, family violence is no longer a secret. And now, having been brought to the public's attention, it has become a matter of social concern; and society has demanded a response.

President Reagan agrees. On September 19, 1983, he directed the Attorney General of the United States to develop a task force on family violence. Chaired by Lois Harrington, the task force has traveled our Nation in search of the root causes of family violence and to encourage local efforts to prevent and treat the abusers as well as the victims. Some of what they learned in conjunction with the Department of Justice can be summarized as follows:

Battery is the single major cause of injury to women in America, according to a National Institute on Mental Health study.

Seventeen percent of all murders involve family relationships and 8.2 percent involve husband/wife [FBI].

Reluctance of victims to report incidents is a major difficulty in assessing extent of family crime.

Family violence victims generally are more hurt and humiliated than outraged.

Victims often do not want their attacker punished; they simply want the violence to stop.

Inadequate methods of recording these crimes at local, State and national levels also contribute to difficulty in measuring extent of family crime.

Definitions of abuse, measures of severity and enforcement policies vary widely among local law enforcement and protective services agencies.

Murder is the only crime for which the relationship between the offender and victim is recorded.

Arrest data is the only indication of family-related offenses, nonsupport, neglect, desertion, and abuse. Unreported incidents cannot be measured, and reported incidents that do not result in arrest are not recorded.

Basic assumptions about family violence may no longer be valid. For example, a recent study by National Institute of Justice indicates that the most effective intervention in domestic violence cases may be arrest and overnight incarceration.

This contradicts the popular belief and law enforcement practice of mediation and referral to counseling.

Arrest for family-related offenses are down 24 percent between 1973 and 1982.

The amendment Senator STEVENS is offering is in the spirit of compromise. The amendment varies in several significant ways from a domestic violence bill of 1980. Basically, it establishes a demonstration authority to provide funds for immediate shelter and other related programs in accordance with existing State laws. Significant money is earmarked for research as well as training for law enforcement officers. It also includes a requirement for a Federal/State match. As I have said, I endorse its passage as an essential part of the critically important legislation to which it is attached.

At this time, I would like to draw special attention to two leaders in Utah who provide valuable services to prevent abuse and treat victims of family violence. Mrs. Betty Tatum is director of the Utah YWCA program providing shelter and other services to victims of family violence. She continues to generate both financial and community support for her nationally recognized program. Also, I would like to commend the fine work of Ann Curran, director of the Spouse Abuser Treatment Program. The mission of this program is to develop and expand an effective service model for the pur-

pose of intervening with spouse abusers and violent couples to achieve the long-term cessation of violence. Both these programs have been very successful. I salute both of these individuals for raising the public awareness of the various methods of obtaining local support.

At this time, I ask unanimous consent that a letter of support from the Secretary of Health and Human Services, Mrs. Margaret Heckler, for S. 1003 and Senate amendment 3385 be included in the RECORD. Secretary Heckler should be commended for her leadership on behalf of the Reagan administration in supporting the compromise legislation addressing the needs of handicapped newborn infants. I also ask unanimous consent that a letter from the National Right to Life Organization be included in the RECORD as well as letters from the National Child Abuse Coalition and the Christian Action Council which urge prompt enactment of S. 1003.

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

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, July 26, 1984.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to your letter of July 18 requesting the Department's views on amendment No. 3385 to S. 1003, I wish to assure you that the Administration continues to support statutory language to create a focus on the needs of disabled infants with life-threatening conditions. I always have been, and continue to be, a committed advocate of protecting the rights of handicapped infants.

With regard to amendment No. 3385, I commend you and your colleagues for your leadership in developing compromise langauge which will help parents, with the advice of their doctors, to ensure that proper decisions are made about the treatment of seriously ill newborns. We support amendment No. 3385 and urge you to bring S. 1003, the "Child Abuse Prevention, Treatment and Adoption Reform Act amendments of 1984", to the floor promptly so that this important legislation can be signed into law.

The Office of Management and Budget has advised that there is no objection to the transmission of this report from the standpoint of the Administration's program.

Sincerely,

MARGARET M. HECKLER,
Secretary.

NATIONAL RIGHT TO LIFE COMMITTEE, INC.,
Washington, DC, July 24, 1984.

Senator ORRIN HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: Earlier this month, The Washington Times publishing an illuminating five-part series on infanticide by Pulitzer-winning journalist Carlton Sherwood. Sherwood quoted Dr. Gunter Dybwad, an internationally respected authority on handicapped issues, as saying: "In a city the size of metropolitan Washington, you could reasonably expect at least one 'Baby Doe' case a week. There have been some published reports which put the yearly figure in the U.S. at about 5,000—but that, in my view, would be conservative."

Dr. Dybwad's statement underscores the urgency of immediate decisive action by Congress to protect handicapped newborns.

The National Right to Life Committee participated in the lengthy and difficult negotiations which last month produced the "Baby Doe" amendment which you have now sponsored as Printed Amendment No. 3385. Janet Carroll of our Legislative Office staff tells me that your representatives, Nancy Taylor and Debbie Turner, played very positive roles during those arduous negotiating sessions.

We believe that the agreed-on amendment will go far towards curbing the practice of denying ordinary medical treatment, and even food and water, to handicapped infants on the basis of subjective, non-medical, "quality-of-life" judgments. The amendment explicitly states that physicians are not required to provide treatment which would "merely prolong dying" or "otherwise be futile in terms of the survival of the infant," provisions which are fully consistent with NRLC's position on this issue.

Some senators have expressed concerns regarding extensive federal involvement in the "Baby Doe" area. Your amendment places the primary responsibility for investigating these cases in the hands of state authorities. If the provisions of the amendment are properly applied, federal intervention would be a last report and unnecessary in most cases.

We believe that Section 504 of the Rehabilitation Act, properly construed, provides substantial protection for the civil rights of handicapped newborns. However, the U.S. Court of Appeals for the Second Circuit recently ruled that Congress "never contemplated" that Section 504 would apply "to treatment decisions involving defective newborn infants."

It is our hope that this judgment will be reversed by the Supreme Court. If not, it may be necessary to amend Section 504 at some future date. While Amendment 3385 does not attempt to address the Section 504 issue directly, enactment of the amendment would send a message to the courts that Congress intends that handicapped infants receive medically indicated treatment, and that such treatment should not be denied on the basis of non-medical factors.

As you know, the Baby Doe amendment has been endorsed by most of the major pro-life, disability-rights, and medical organizations—although not, unfortunately, by the American Medical Association. Agreement between these diverse groups was achieved with great difficulty, and the coalition is somewhat fragile. If action on the Child Abuse Act is further postponed, the chances for enactment of satisfactory Baby Doe language may be sharply diminished.

NRLC regards immediate enactment of the Baby Doe amendment as an urgent necessity. We understand that there are other amendments to the Child Abuse Act which are controversial, and that there is therefore some resistance to bringing the bill to the floor. We hope that in weighing these considerations, you will recognize the paramount importance of immediate Senate approval of the Baby Doe language—preferably this week.

In closing, may I express my deep appreciation for the leadership role which you have played, and continue to play, on the right-to-life issues. The unborn and newborn children of America are fortunate to have an advocate of your stature, skill, and dedication.

Respectfully submitted,

DAVID N. O'STEEN,
Executive Director.

NATIONAL CHILD ABUSE COALITION,
Washington, DC, July 24, 1984.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the National Child Abuse Coalition let me express our appreciation for your efforts in reaching an agreement on the Baby Doe provisions in S. 1003.

The future of the federal child abuse program has been mired too long in the controversy over Baby Doe. With the compromise settled it is time now to move ahead with passage of the authorizing legislation for the National Center on Child Abuse and Neglect. Your concern and leadership and the hard work of your staff have freed the legislation for the vote of support it deserves on the Senate floor. We encourage your efforts now to achieve the prompt passage of S. 1003.

Thank you for your attention and keen interest in the welfare of children. We look forward to working with you toward enactment of S. 1003.

Sincerely,

THOMAS L. BIRCH,
Legislative Counsel.

Sen. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We are most appreciative of the work that you, Senators Cranston, Dodd, Denton, Kassebaum and Nickles have done to achieve an historic agreement on the Baby Doe amendment to S. 1003, the Child Abuse Prevention and Treatment Act.

This extraordinary compromise has won the support of an array of divergent groups representing the medical community, as well as advocates of the rights of the disabled and pro-life organizations.

Senator Hatch, you and the other sponsors of this provision are to be applauded for taking this significant step in assuring that disabled newborns are not denied medically necessary treatment. Every American who is involved in working to secure basic rights for the unborn and for disabled citizens owes you a profound debt of gratitude.

Sincerely,

W. DOUGLAS BADGER,
Legislative Director,
Christian Action Council.

Mr. HATCH. I urge my colleague to support S. 1003 and the attached amendments and ask for its immediate consideration.

Madam President, I am happy to yield to the distinguished Senator from Alabama.

Mr. DENTON. Madam President, I thank my distinguished chairman of the Labor and Human Resources Committee.

Madam President, as the prime sponsor of S. 1003 I am pleased that at

last this important bill is before the Senate.

Madam President, along with Senators HATCH and GRASSLEY, I introduced S. 1003 on April 6, 1983. You can imagine how pleased I am that the legislation has finally come before the Senate for consideration. S. 1003 would reauthorize the Federal Child Abuse Prevention Program and the Federal Adoption Opportunities Program through fiscal year 1987.

Child abuse is a national tragedy, and there is no doubt that its traumatic effects linger long after the bruises heal. The Subcommittee on Family and Human Services, which I chair, has heard sobering testimony about the prevalence of child abuse and about the mental and physical scars it leaves.

I do not believe for a minute that merely reauthorizing funding for the Federal Child Abuse Prevention Program will solve the tragic problem in this country. Indeed, after serving as chairman of the Subcommittee on Family and Human Services for 3 years and addressing a myriad of problems involving family and human services, I find that many of our programs are addressing symptoms rather than causes. Simply put, we are facing a fundamental crisis: the values of love and respect for the dignity of other human beings and for the institution of marriage are declining. Tragically, the brunt of the crisis is being borne disproportionately by the most innocent and vulnerable members of our society, our children.

Developing realistic policies to reverse the trend toward familial dissolution will take both time and renewed commitment to traditional values. In the interim, child abuse will continue, and more and more children will suffer from it. The programs authorized to be funded under the bill seek to help both the children and the parents who abuse them. Some organizations funded under the program, like Parents Anonymous, have impressive records in treating abuse while keeping the family unit intact. I sincerely hope that extending the authorization of the Federal Child Abuse Program will enable effective programs to continue, spur new prevention initiatives, and spare many children the misery of child abuse.

The bill also would increase the authorization for the Federal Adoption Opportunities Program. That program seeks to facilitate the adoption of so-called hard to place children, those who, because of age, race, or handicap, are more difficult to place than healthy infants and who often languish in the foster care system for years without knowing the joy of a permanent home and parents. There are loving couples who are waiting to adopt them; the problem has been one of matching those couples with adoptable children. Through its operation of the Adoption Exchange Network, the program seeks to expedite the matching process. Hundreds of children have been successfully placed since 1981, and I hope that the increased authorization will enable the placement of many more.

In addition, Madam President, Senator HATCH will offer an amendment to prevent the withholding of medically indicated treatment from infants born with mental or physical impairments. Hearings I chaired in April 1983 revealed that there are numerous cases where handicapped infants have been denied treatment for correctable impairments, and there have been widely publicized instances where handicapped infants did not receive medically indicated treatment, were denied food and water, and died.

Those events aroused justifiable concern across this country. Disability rights groups, prolife groups, and national medical organizations have all engaged in the debate about how best to deal with the complex and emotional issue. I believe that the amendment to be offered today, which Senators DODD, NICKLES, KASSEBAUM, CRANSTON, and I have joined as cosponsors, offers a sensible approach to the issue. It is the result of months of negotiation among Senate staff and with representatives of medical, disability, and prolife organizations. It is supported by 21 organizations.

The amendment encourages the establishment, within health care facilities, of committees to educate hospital personnel and the families of disabled infants, to recommend institutional policies and guidelines about the withholding of medically indicated treatment from disabled infants, and to offer counsel and review in cases involving those infants.

The amendment also would require each State to have in place, within its State child protective services system, procedures or programs to respond to reporting of instances of withholding medically indicated treatment. The procedures must include authority, under State law, for the State child protective services system to pursue legal remedies to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

Additional funds would be authorized to train child protective services personnel to respond effectively to reports of medical neglect, and the Secretary of Health and Human Services would be authorized to make grants to develop and implement information and education programs to improve the provision of services to disabled infants and their families.

The amendment seeks to ensure that all available information about the disabling condition and about services available to the child and the parents is made available to the physician and the family. I am confident that the approach embodied in the amendment does not intrude unduly in the practice of medicine, yet provides protection to handicapped infants.

I want sincerely to thank the original cosponsors of the amendment—Senators HATCH, CRANSTON, NICKLES, DODD, and KASSEBAUM—and the representatives of the organizations that participated in the negotiations leading to the agreement. The negotiations were long and often frustrating. Compromises were offered and accepted by all parties, and the negotiations were carried out in good faith. I believe that the final compromise is a very good one, and that it will go far in preventing the withholding of medically indicated treatment from handicapped newborn infants.

Finally, Madam President, there will be an amendment offered by Senator STEVENS to authorize funding for demonstration programs to prevent family violence and to conduct research into its causes. I know that the issue caused controversy in this body in 1980. I was not a Senator in 1980 and therefore did not participate in that debate, but I do know that the amendment to be offered by my distinguished colleague from Alaska is substantially different from the measure proposed in 1980. I must confess, however, that I still have serious reservations about authorizing additional Federal funding for domestic violence programs at this time.

Additional information about the causes and solutions of the problem of family violence has emerged recently. As Senators know, the President's task force on domestic violence is scheduled to release its report in September. The task force spent many months holding hearings on the problem at various locations across the country. I believe that it would be prudent to review the recommendations of the task force before authorizing new Federal funds.

In addition, there are numerous Federal programs currently in operation that address the problem of domestic violence, as well as State and local programs. It makes sense to me that we should attempt better to coordinate the ongoing efforts before we authorize new expenditures.

Madam President, bringing the bill to the floor required a delicate compromise. The domestic violence amendment still troubles me, but a majority of my colleagues believe that it is proper to consider it at this time. Although I do not favor the amendment, I will not attempt to prevent the Senate from considering it. I believe that it is more important for us to act on S. 1003.

In sum, I hope that the Senate will act promptly on this important bill so that it can be signed into law.

Briefly, bringing this legislation before the Senate required delicate compromise. The negotiations leading to this agreement were long and often frustrating but were carried off in good faith. I would like to thank my chairman, Senator HATCH, and the ranking member, Senator KENNEDY, Senator DODD, and the other Senators who have actively participated in these negotiations on S. 1003.

I congratulate the staffs of all involved and hope that S. 1003 will be passed and enacted promptly into law.

Mr. DODD. Madam President, will the Senator yield?

Mr. HATCH. I am happy to yield.

Mr. DODD. Madam President, we now address one of the most pressing problems facing this country today; namely, the abuse and neglect of our Nation's children.

Madam President, I commend my colleague from Utah, Senator HATCH, my colleague from California, Senator CRANSTON, my colleague from Alabama, Senator DENTON, my colleague from Oklahoma, Senator NICKLES, my distinguished colleague from Kansas, Senator KASSEBAUM, and all others for joining me in the hard-fought efforts to bring this child-abuse reauthorization to the floor before the August recess.

Working closely with a wide range of organizations we have been able to resolve the controversies which had previously impeded Senate consideration of this child-abuse legislation for so very long.

We have put together what we think is an effective package in this regard.

Given the virtual epidemic of child abuse now confronting this Nation, I urge my colleagues to join us in passing S. 1003 without delay and accompanying compromise amendments related to first, family violence, and second, the care of disabled infants with life-threatening conditions.

CHILD-ABUSE REAUTHORIZATION

First and foremost, the bill before us restores essential funding for child-abuse prevention and treatment programs. The authorization levels had been cut virtually in half during action on the Omnibus Reconciliation Act of 1981. I am particularly indebted to Senator HATCH, the distinguished chairman of the Labor and Human Resources Committee, for accepting my provision to restore this critical funding. Given skyrocketing abuse rates, such restoration is needed now more than ever before.

At a recent forum of the Senate Children's Caucus, I cochair, witnesses verified that childhood sexual victimization is dramatically on the rise. By even the most conservative estimates, a child is sexually abused someplace within this country every 2 minutes. Since 1980, the number of suspected child-sexual-abuse victims in my State of Connecticut has increased by over one-fifth. And, between 1982 and 1983, reported cases in the State of Maine increased by 126 percent.

The budget actions of 1981 abolished any separate funding for sexual-abuse prevention, identification, and treatment programs. This reauthorization restores that funding. Given that childhood sexual abuse can cause victims to run away and fall prey to prostitution, or alcohol and drug abuse, the funding is returned none too soon.

Social service agencies from my State of Connecticut across to California have also reported an alarming upsurge in cases of physical abuse and neglect. Yet more disturbing is the news that in the last year alone, the death rate from such acts of violence in many States has soared by more than 40 percent. In Connecticut, the number of children dying as a result of abuse tripled between 1930 and 1982. In Utah, the number quadrupled.

Likewise, nonfatal instances of abuse and neglect have skyrocketed. A 2-year study conducted in Wisconsin showed that in counties with the highest unemployment rate, cases of child abuse jumped by more than 70 percent. Other studies have demonstrated that children whose parents are unemployed are now three times more likely to suffer physical abuse than those whose parents have jobs.

At the same time that the rate of child abuse is soaring, budget cuts have forced States to restrict services. Some local agencies say they are unable to investigate abuse cases involving children over age 12, due to lack of staff and funds. Restoring Federal funding for service improvement grants will help sorely overtaxed agencies cope more effectively with ever-increasing caseloads.

In short, Madam President, this reauthorization is an important step toward ensuring that abused younger Americans or those in danger of abuse will not be ignored or forgotten. To do any less for the one out of every three Americans who are children not only seriously jeopardizes their future, but that of the Nation as well.

I am pleased to cosponsor the compromise amendments accompanying this reauthorization of the Federal Child Abuse Prevention and Treatment Act. Both were arrived at after exhaustive discussions and negotiations with organizations representing a broad spectrum of concerns. I applaud these organizations and the Senate staff who worked with them for their diligent efforts to reach responsible and workable compromises.

FAMILY VIOLENCE AMENDMENT

Like child abuse, family violence is a problem which is reaching crisis proportions in this country. Between 1980 and 1982, shelters offering emergency refuge to battered spouses reported a 50-percent increase in the incidence of such assaults. Organizations such as the Junior Leagues and the YWCA who sponsor shelters tell us they cannot accommodate an astounding 80 percent of all those who need immediate refuge. And the FBI reports that 4 out of every 10 women in this country who are murdered are victims of domestic violence.

Shelters represent an essential means of preventing spouse abuse. Law enforcement officials from across the country agree that the incidents of family violence diminish after a victim has visited a shelter. A top priority must be given to assisting shelters to operate if we are to have any serious effect in preventing and coping with emergencies posed by domestic violence.

The compromise amendment offered by Senator STEVENS today moves in the right direction by establishing family violence as a problem which we can no longer wait to address. I commend Senators CRANSTON, KENNEDY, and STEVENS for their leadership and long-term commitment to addressing the problem of family violence. I would have favored stronger provisions to cope with the pressing issue of domestic violence, in line with my previous cosponsorships of bills introduced by Senator KENNEDY and Senator STEVENS. However, I am pleased we have worked out a compromise measure with Senators HATCH and DENTON and thank them for their cooperation.

CASE OF DISABLED INFANTS WITH LIFE-THREATENING CONDITIONS

Last but not least, I must emphasize again my appreciation for the hard work of everyone involved in reaching the compromise on the provision of care to disabled infants with life-threatening conditions. I am deeply grateful to the Rossow family in Connecticut for their heartfelt efforts to see that the very best information and assistance is provided to the parents of such infants. I look forward to working with my colleagues and interested groups in strengthening such assistance in the future.

This compromise makes $5 million available for training and technical assistance to States over the next 4 fiscal years with respect to establishing procedures to investigate cases of medical neglect involving such infants. Such assistance will come none too soon for solely understaffed, overtaxed child protective service systems.

In summary, Madam President, the compromise amendments have made it possible for the underlying child-abuse legislation to be brought to the floor. This package restores critical funding for the prevention and treatment of child abuse. I urge my colleagues to support it as a means of helping us meet the national crisis posed by the physical and sexual victimization of our Nation's young people.

Madam President, in closing I want to express my sincere appreciation for the tremendously fine efforts of all Senate staff involved in deliberations on the child abuse legislation. Their work exemplifies the very best spirit of bipartisanship.

The staff worked incredibly long hours over many months and never gave up hope of reaching a compromise. The persistence of staff in refusing to let the child abuse bill die is a lesson for us all. The staffs' dedication, along with that of the representatives of the many outside organizations involved, serves the one-third of the American public who are children, well indeed.

Having previously commended the organizations for their contribution, I would like to take this opportunity to single out the Senate staff. I would like to thank Susanne Martinez and Jon Steinberg of Senator CRANSTON's staff; Debbie Turner, Nancy Taylor, and Steven Grossman of Senator HATCH's staff; David Yensen of Senator DENTON's staff; Laura Clay of Senator NICKLE's staff; Susan Hattan of Senator KASSEBAUM's staff; Wes Clark, Andrea Young, and Debbie Curtis of Senator KENNEDY's staff; Susan Arnold of Senator STEVEN's staff; and Marsha Renwanz of my own staff.

Madam President, by acting to reauthorize this child abuse legislation, the Senate takes an important step toward breaking the tragic cycle of abuse in this country. I call for immediate enactment of this legislative package.

AMENDMENT NO. 3420

(Purpose: To provide for the coordination of Federal programs involving incidents of family violence, to provide demonstration grants for the prevention of incidents of family violence, and for other purposes)

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

The PRESIDING OFFICER [Mr. GARN]. The clerk will report. The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. STEVENS, Mr. ANDREWS, Mr. KENNEDY, Mr. CRANSTON, Mr. DODD, Mrs. HAWKINS, Mr. BOSCHWITZ, Mr. MURKOWSKI, Mr. DURENBERGER, Mr. LAUTENBERG, Mr. MOYNIHAN, Mr. RIEGLE, Mr. COHEN, Mr. RANDOLPH, Mr. MATSUNAGA, and Mr. COCHRAN, proposes an amendment numbered 3420.

Mr. HATCH. 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 22, after line 20, add the following new title:

TITLE III—FAMILY VIOLENCE PREVENTION PROGRAM

SHORT TITLE

SEC. 301. This title may be cited as the "Family Violence Prevention Act."

COORDINATION OF PROGRAMS

SEC. 302. The Secretary shall coordinate all programs within the Department of Health and Human Services, and seek to coordinate all other Federal programs, which involve the prevention of incidents of family violence and the provision of assistance for victims and potential victims of family violence and their dependents.

DEMONSTRATION GRANTS AUTHORIZED

SEC. 303. (a) The Secretary is authorized to make demonstration grants to public agencies and private nonprofit organizations (including religious and charitable organizations and voluntary associations) in any State that have the capacity to administer, or are administering, family violence prevention programs. Such grants shall be made on the basis of applications submitted under subsection (b) and approved by the Secretary for the cost of programs designed to carry out one or more of the following purposes:

(1) To prevent incidents of family violence, including the provision of immediate shelter and related assistance to victims of family violence and their dependents.

(2) To conduct research into the causes of family violence, and into prevention, identification, and treatment thereof, including research into the effectiveness of (A) involving law enforcement personel in responding to incidents of family violence, (B) State procedures for the removal from the household of the abusing spouse, (C) arrest of the abusing spouse, and (D) referral to drug and alcohol treatment programs or other therapy programs for the abusing spouse.

(3) To train personnel in the conduct of programs for the prevention and treatment of family violence.

(4) To prepare local and State law enforcement personnel for the handling of incidents of family violence.

(b) No demonstration grant may be made under this section unless the public agency or private nonprofit organization submits an application to the Secretary at such time, in such manner, and containing or accompanied by such matter as the Secretary determines reasonably necessary.

(c) In approving applications submitted under subsection (b) of this section, the Secretary shall—

(1) assure that there is an equitable distribution or assistance both with respect to States and between rural and urban areas;

(2) give priority to applications from applicants in communities currently without family violence prevention programs or which can demonstrate that current services or programs are inadequate to meet the needs of the community;

(3) assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this title, and assure that the address or location of any shelter-facility assisted under this title is not made public except by written authorization of the person or persons responsible for the operation of such shelter; and

(4) not make a grant under this section in any fiscal year to any single entity for an amount in excess of $50,000 unless the Secretary, in exceptional circumstances, determines that a grant in a greater amount is necessary.

(d) Nothing in this title shall be construed to supersede the application of State or local requirements for the reporting of incidents of suspected child abuse to the appropriate State authorities.

NATIONAL CLEARINGHOUSE ON FAMILY VIOLENCE PREVENTION

SEC. 304. (a) The Secretary shall operate a national information and research clearinghouse on the prevention of family violence (including the abuse of elderly persons) in order to—

(1) collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance to victims of family violence and their dependents; and

(2) provide information about alternative sources of assistance available with respect to the prevention of incidents of family violence and the provision of immediate shelter and related assistance to victims of family violence and their dependents.

(b) The Secretary shall assure that the activities of the national information and research clearinghouse operated under subsection (a) are coordinated with the information clearinghouse maintained by the National Center on Child Abuse and Neglect under section 2 of the Child Abuse Prevention and Treatment Act.

PAYMENTS

SEC. 325. (a)(1) From the amounts appropriated and available for demonstration grants under section 308, the Secretary shall pay, in accordance with the provisions of this title, the Federal share of the costs of programs described in the applications approved under section 303.

(2) The Federal share shall be—

(A) 65 percent in fiscal year 1985,

(B) 45 percent in fiscal year 1986, and

(C) 35 percent in fiscal year 1987.

(3) the non-Federal share of demonstration grants under this title may be in cash or in kind, fairly evaluated, including but not limited to planning expenses, plant, equipment, and services.

(b) Demonstration grants made under section 303 may be paid in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

ADMINISTRATIVE PROVISIONS

SEC. 306. (a) The Secretary shall appoint an employee of the Department of Health and Human Services to carry out the provisions of this act. The individual appointed under this subsection shall, prior to such appointment, have had expertise in the field of family violence prevention and services.

(b) In order to carry out the provisions of this title, the Secretary is authorized to—

(1) appoint and fix the compensation of such personnel as are necessary;

(2) procure, to the extent authorized by section 3109 of title 5, United States Code, such temporary and intermittent services of experts and consultants as are necessary;

(3) prescribe such regulations as are necessary; and

(4) enter into contracts, grants, or other arrangements, or modifications thereof that are necessary to carry out the provisions of this title.

DEFINITIONS

SEC. 307. As used in this title—

(1) the term "Secretary" means the Secretary of Health and Human Services;

(2) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the

Trust Territory of the Pacific Islands, and the Northern Mariana Islands;

(3) the term "related assistance"—

(A) includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate health-care services (including alcohol and drug abuse treatment), and

(B) may include food, clothing, child care, transportation, and emergency services (but not reimbursement for any health-care services) for victims of family violence and their dependents; and

(4) the term "shelter" means the provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

AUTHORIZATION OF APPROPRIATIONS

SEC. 308. There are authorized to be appropriated to carry out this title $5,000,000 for fiscal year 1985, $15,000,000 for fiscal year 1986, and $15,000,000 for fiscal year 1987. Of the amounts appropriated pursuant to this section for each such year, not less than 50 percent shall be available for demonstration grants made under section 303(a)(1) in such year.

Mr. HATCH. Mr. President, this amendment is offered on behalf of Senator STEVENS and others.

Basically, Mr. President, it involves a family violence amendment that I think everybody on the floor is aware of.

Mr. STEVENS. Mr. President, today I propose an amendment supported by my colleagues on both sides of the aisle which addresses a situation that touches more individuals than we have cared, in the past, to think about: the problem of violence between Family members. I am pleased that the Senator from Utah [Mr. HATCH] has accommodated our interest in including these provisions in the child abuse bill, as statistics show that child abuse, and the manifestation of violent and abusive behavior in adulthood, are intimately linked. Research has identified a vicious cycle of the abused becoming the abuser, and so on, and I believe the family violence prevention and services program authorized by our amendment will contribute to the breaking down of this cycle of abuse. For too many years, because of ignorance, shame, or simply indifference, we have neglected to address the variety of difficulties and tensions posed by acts of violence such as wife battering and abuse of the elderly. Now, in communities across the country, programs and projects have sprung up to assist victims of family violence and to try to prevent future violence. Private, nonprofit organizations and voluntary associations such as the Junior Leagues, Family Service America, Catholic Charities, the YMCA, and local networks of emergency shelters and safe homes, have taken on the task of providing emergency assistance and developing prevention services for those plagued by the problem of violence within the family. These community-based efforts have succeeded in elevating this issue in our collective national conscience: The Attorney General's Task Force on Family Violence, the Bureau of Justice Statistics, and national magazines such as Time have all focused special attention in the past year on the problem of family violence and the fact that it appears to be on the rise in this country. The program proposed in the amendment before us today, while not as comprehensive a program as proposed in my original family violence prevention and services bill, S. 2430, will offer a helping hand to organizations and projects already involved in the effort of family violence prevention and services or seeking to expand into it. I believe this is a timely proposal; the need for increased attention to the problem in order to understand and prevent it is highlighted as follows in the Bureau of Justice Statistics Special Report on Family Violence:

We hope this report will encourage an open discussion of a problem that has been handled with secrecy in the past. Only when more victims are willing to talk about their experiences will we be able to develop accurate measures of this problem and begin as a society to develop effective solutions.

The recognition and support implied by increased Federal attention to the phenomenon of family violence is an essential step in the process outlined by the BJS report, and the proposal before us today is an important first step in this direction. I'd like to share with my colleagues a sample of the kind of testimony received by the Attorney General's Task Force on Family Violence which further emphasizes the point made in the BJS special report. What follows was submitted to the task force by a victim of spouse abuse in Homer, AK:

"Here is how things were.

I was always afraid. Even when things were going well I had an inner terror, knowing things could snap at any time.

What is it like to be under someone's control?

It's being afraid to stay too long in the outhouse; I know he would be angry, ask me what took so long. It's being afraid to glance at someone on the street. I knew he would accuse me of wanting to go to bed with them.

And friends? Forget them too. He didn't like them.

I tried so hard to be perfect. Funny thing though. The requirements of perfection were constantly changing. People told me I was a wonderful mother, a great cook and did more hard work than anyone they knew. Somehow, though, to him I was a lazy bitch. I gradually started to believe what he told me, that I was a stupid, lazy, worthless woman just like all other women. Deep down I knew this wasn't true, but I was too tired to argue. I knew he would always win. So I did what I was told. I became a nonperson, a robot, desperately trying to keep one step ahead of the program. But it didn't matter, the black eyes, the broken teeth, bruises, scratches, and sexual abuse kept coming.

Do you really want to know what it was like? The hot white flash that comes with the first blow? The feeling of being trapped. The desperate hope held out against all hope. 'Maybe things will be different, maybe he will change, maybe I'll finally do enough to please him so he won't get so angry.'

The look of horror in your children's eyes when they see you covered with blood? The look of horror in your eyes when you see the blood from your torn vagina pouring down your legs? When I found courage to leave it's amazing I could still think at all. I had been brainwashed for so long. Finding women's service was like finding a match in the dark. I was amazed to find, through counseling and literature, that I was not alone in my experience. I had never talked about it to anyone.

Making the smallest decision seemed impossible. But I received support and gained confidence to come to my own decisions about my life.

Seven months later I feel like a real person again. I know that I have special qualities and strengths, and that I can contribute something to others. I am a better person. Maybe I could have done it on my own, but it's a lot easier to find your way with a light."

It was this victim's contact with the South Peninsula Women's Services in Homer that proved the turning point in her life, and I would like to know that all victims of abuse have such an opportunity. That is why I have proposed to add to the child abuse bill a title that would direct funds to programs and projects similar to those provided by the South Peninsula Women's Services.

Not only did South Peninsula Women's Services provide a refuge and shelter from life-threatening attacks of abuse, but they provided an environment of support, offered counseling and legal assistance, and enabled this victim to become a functioning individual making informed choices and decisions, rather than an isolated and incapacitated recipient of violence and abuse. The State of Alaska makes grants which help support a network of emergency shelters such as South Peninsula Women's Services all around the State, from downtown Anchorage to Bethel, Nome, Barrow, and Dillingham. The services offered clients, in addition to emergency shelter, include alcohol and drug information and counseling, employment assistance, education and health information, and legal assistance. Several programs of therapy and counseling for batterers are also underway in my State and have some record of success, although this is an area in which techniques for the prevention of future incidents are still emerging. Clearly, these shelters are providing essential services to Alaskan communities; services that not only play a role in crisis intervention, but assist in preventing future crises, and incidents of violence and abuse. As a resource in the com-

munity, the services they provide are an integral aspect of an ongoing effort in my State to address this problem, an effort which also includes modifications and additions to the State civil and criminal codes to enhance the rights of victims in cases of family violence and the training of law enforcement officials who are called on to handle incidents of violence within families. It is this kind of comprehensive approach to the problem of family violence that I am hopeful the amendment we are offering today will help to move along in communities across the country.

I would like to thank my colleagues who have joined me in developing this proposal—Senators CRANSTON, KENNEDY, and DODD, each of whom has a history of commitment and involvement in promoting activity on this area. The support of the other cosponsors of this amendment—Senators HAWKINS, BOSCHWITZ, ANDREWS, MURKOWSKI, DURENBERGER, LAUTENBERG, MOYNIHAN, RIEGLE, HART, COHEN, RANDOLPH, MATSUNAGA—is also appreciated. I commend Senator HATCH's efforts which have succeeded in bringing this bill to the floor; his willingness to take on the issue of family violence prevention and services is much appreciated. Senator DENTON's consideration and effort was also instrumental, and I would like to thank him for his interest and concern. Violence between family members affects all of us in the damage it inflicts on this fundamental unit of our society. I believe it is incumbent upon us to speak out, and to act, in order to understand, prevent, and control this terrible problem.

Mr. MATSUNAGA Mr. President, I rise in support of the amendment offered by the senior Senator from Alaska, Senator TED STEVENS, to S. 1003, the Child Abuse Prevention and Treatment and Adoption Reform Act Amendments of 1983.

As an original cosponsor of Senator STEVENS' bill (S. 2430) which authorizes a 3-year $65 million block grant to enable States to support community-based projects which serve family violence victims and their dependents, I fully recognize the need for such prevention and services programs.

When H.R. 1904, the companion bill of S. 1003, was considered by the House of Representatives on February 2, 1984, it was amended by a vote of 367 ayes to 31 noes to include the $65 million State domestic violence funding as similarly provided by S. 2430. It is my hope that the Senate, by passing this family violence prevention and services amendment, will recognize and address one of the most serious problems facing our Nation today.

Senator STEVENS' amendment provides modest funding, $35 million over 3 years, for demonstration grants awarded by the Secretary of Health and Human Services to local service and research projects. At least 50 percent of these funds must be used to assist programs which provide immediate shelter and related services to victims of family violence. The remainder of funds would support personnel training, research into prevention and treatment of domestic violence, and improvements in law enforcement efforts in this area.

The family violence amendment is a consistent extension of the child abuse program to assist other family members who suffer from similar acts of violence. In recent years, abuse at home has escalated. Battery is currently the prime cause of injury to women, more significant than auto accidents, rapes, or muggings. Approximately 40 percent of all women killed are beaten to death annually, and about 10 percent of all men killed are murdered by their mates. Furthermore, shelter programs for abused wives report that an increasing number of residents are children in need of services. Children exposed to violence of parent against parent frequently exhibit a wide range of behavioral and emotional problems and often grow up to inflict violence on their own children and spouses—or become victims themselves. Many dependent elderly individuals live in fear of abuse at the hand of their adult children.

While the Federal Government has been slow to respond to this tragic social problem, State and local communities have taken action—There are over 500 community shelters across the country. In my State of Hawaii there is a shelter on each of the major islands—Oahu, Maui, Kaui, and Hawaii. In addition, a minister shelters victims in her home on Molokoi. The shelter on Oahu was established nearly 10 years ago in 1975. Together with a network of other nonprofit and public agencies, they have formed coalitions to assist family violence victims. Many States have also strengthened their laws to ensure better protection of domestic violence victims. Community and public education programs have been created, crisis hotlines established, and training implemented to improve intervention within criminal justice, medical, and social service agencies. Importantly, counseling and education programs for abusers, as well as family counseling, have been developed with the aim, where appropriate, to unify and rehabilitate a family torn by violence.

We must provide these community initiatives the necessary resources and encouragement on the Federal level. It is imperative that we combine our efforts to break the cycle of violence that is passed on from generation to generation within much too many families.

Mr. President, to preserve the all-important family unit of our great society, I urge my colleagues to join in support of this most essential family violence prevention and services amendment.

Mrs. HAWKINS. Mr. President, I rise today to express my strong support for family violence legislation.

The American family is one of this Nation's greatest assets. Yet, it is under attack, buffeted by domestic pressures and internal violence. The force and power of this assault is little known; the magnitude of family violence is poorly perceived by the general public and even by those in positions of responsibility.

Statistics highlight the scope of the problem. Each year, between 2 an 5 million women are battered in family disputes; 40 percent of these incidents remain unreported to the police. And those that are reported are often dealt with poorly, leading to an escalation of violence that sometimes spills over into dangerous rampages. In this vein, it becomes clear why 40 percent of all murdered women die at the hands of family members or boyfriends and why 40 percent of all police injuries occur during investigations of domestic disputes. Family violence is not limited to a few slaps or bruises; it is a dangerous malignancy that strikes at the root of societal stability.

This is true because, tragically, family violence only breeds more violence. A victim of abuse often becomes an abuser later in life. Unfortunately, incompetent and brutal parents still serve as role models for impressionable children. The victim becomes the abuser and the cycle of pain rolls on through the successive generations. And tragically again, there are now millions of children who are being transformed into the abusers of the future. Authoritative sources suggest that 6.5 million children are abused each year and 1.7 million are severely battered. While these figures are probably underestimated, they indicate that there are millions of children being battered today who are the heir to the legacy of abuse tomorrow. It is our duty to do all we can to break this tragic cycle of pain.

However, there are many obstacles to solving the problems of family violence. The clanish nature of the family, the difficulties of prevention and counseling programs, and the reluctance to report these familial assaults are all barriers to erecting an effective violence prevention system. Indeed, there is another problem that excacerbates violence and stymies community help. Alcohol is this new element; it is the grease that helps spin this cycle of pain. It is the omnipresent variable that turns a minor incident into murderous intent. Alcohol is often the solace victims turn to after an attack, but it is not a solution to the problem. Indeed, it is a root cause. Any program that attempts to mini-

mize family violence must also strike at this national problem of alcohol addiction.

Mr. President, we have reached a point where family violence is no longer a thinly spread social phenomena; it is a disease that afflicts millions of homes and all generations. I believe that this legislation is an important first step in the fight to end this national nightmare. Another key element in this battle will be the report of the Attorney General's Task Force on Family Violence. I eagerly await the report as another part of our efforts to break this cycle of violence. I urge all my colleagues to join me in this important and vital task.

Mr. KENNEDY. Mr. President, I strongly urge my colleagues to support the Stevens-Kennedy domestic violence amendment. This amendment is a bipartisan effort to respond to the need in our society for services to prevent domestic violence and provide assistance for the victims of domestic violence.

While a compromise from my original bill, this bill will provide badly needed funds for the grassroots movement to assist the victims of spousal abuse. Support for shelters, which provide emergency services to victims of domestic violence, counseling and community education, remains a priority.

This legislation is a modest response to a tremendous need. When I introduced my domestic violence bill well over 1 year ago women's groups had been lobbying for such legislation for many years. Under Senator CRANSTON's leadership the Labor and Human Resources Committee reported a domestic violence bill in the last Congress.

For over a decade, women and men in the shelter movement have provided emergency relief for victims of spousal abuse, conducted community education campaigns to increase our awareness of this problem and provided counseling for all the victims of family violence. Through their persistence, dedication and commitment of the persons in the shelter movement we can no longer ignore the painful reality of family violence. Recognition is the first step to stopping the cycle of family violence.

All across the country, State and local governments, community organizations and women's groups have recognized the need for assisting the battered spouse; 700 shelters and safe homes exist today as a result of these efforts; 44 States have enacted new legislation to provide some kind of help to the battered spouse through direct grants or technical assistance. Although thousands of families are served each year by these programs, shelters are forced to turn away three times the number of people they serve. In my own State of Massachusetts 26 shelters receive State assistance in combination with local and private contributions. Last year 15 of these shelters were forced to deny services to over 2,500 family units due to lack of space.

Access to domestic violence shelters is often the only resource for these families. It is imperative that we provide the necessary resources and encouragement on the Federal level to existing shelters and incentive for new shelters to be established so that families will no longer find these doors closed to them. This is even more urgent now, as States find themselves forced to cut back on funds for social services due to decreasing Federal grants and the rising costs of the recession. The stress on families due to the disastrous rise in unemployment has dramatically increased the incidence of wife and child abuse.

The House of Representatives passed domestic violence legislation at the beginning of the session. Volunteers, privately supported organizations, local governments, and victims of domestic violence across this country are awaiting action by this body. The American family is our greatest resource. We must be willing to make them our highest priority.

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

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3420) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3421

(Purpose: To provide for the inclusion in State child protective services system of provision for responding to reports of the withholding of medically indicated treatment from disabled infants with life-threatening conditions)

Mr. HATCH. Mr. President, on behalf of myself and Senators DENTON, DODD, CRANSTON, NICKLES, and KASSEBAUM, 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 Utah [Mr. HATCH], for himself, Mr. DODD, Mr. DENTON, Mr. CRANSTON, Mr. NICKLES, and Mrs. KASSEBAUM proposes an amendment numbered 3421.

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

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

Mr. LONG. Mr. President, reserving the right to object, will the Senator please explain what the amendment is?

Mr. HATCH. Mr. President, this amendment involves a very extensive compromise worked out over an extensive period of time with the distinguished Senator from Connecticut, the distinguished Senator from Alabama, the distinguished Senator from California, and others, all of whom deserve a great deal of credit for working together and trying to resolve this very difficult issue.

The PRESIDING OFFICER. Is there objection to dispensing with the reading?

Mr. LONG. I object until I have heard an explanation of it, Mr. President.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 11, beginning with line 11, strike out all through line 2 on page 12. On page 12, line 3, strike out——

Mr. LONG. 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 11, beginning with line 11, strike out all through line 2 on page 12.

On page 12, line 3, strike out "(c)" the first time it appears and insert in lieu thereof "(b)".

On page 12, line 8, strike out "SEXUAL ABUSE".

On page 12, lines 10 and 11, strike out "title" and insert in lieu thereof "Act" in both places.

On page 12, lines 14 and 15, strike out "comma and the word 'and' " and insert in lieu thereof "semicolon".

On page 12, line 24, strike out the end quotation marks and the period the second time it appears and insert in lieu thereof a semicolon and "and".

On page 12, after line 24, insert the following:

"(3) the term 'withholding of medically indicated treatment' means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, (A) the infant is chronically and irreversibly comatose; (B) the provision of such treatment would (i) merely prolong dying, (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or (iii) otherwise be futile in terms of the survival of the infant; or (C) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.".

On page 13, strike out line 10 through line 17 and insert in lieu thereof the following:

"$32,500,000 for fiscal year 1984, $39,000,000 for fiscal year 1985, $40,500,000 for fiscal year 1986, and $42,000,000 for fiscal year 1987 to carry out the provisions of this Act. Of the sums appropriated for each fiscal year, $9,500,000 shall be available in each fiscal year to carry out the provisions of section 4(b)(1) of this Act, relating to State grants, $4,000,000 shall be available in each such year for identification, treatment, and prevention of sexual abuse, and $5,000,000 shall be available in each such year for the purpose of making additional grants to the States to carry out the provisions of section 4(c) of this Act (as amended by section 201 (c)(2) of the Child Abuse Prevention and Treatment and Adoption Reform Act).".

On page 14, line 25, and page 15, line 1, strike out "infants at risk with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 15, lines 11 and 12, strike out "infants at risk with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 16, lines 20 and 21, strike out "infants at risk with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 17, lines 9 and 10, strike out "children with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 19, beginning with line 9, strike out all through line 20 on page 22 and insert in lieu thereof the following new title:

TITLE II—SERVICES AND TREATMENT FOR DISABLED INFANTS

SEC. 201. (a) Section 4(b)(2) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5103(b)(2), hereinafter in this title referred to as "the Act") is amended by—

(1) striking out "and" at the end of clause (I);

(2) striking out the period at the end of clause (J) and inserting in lieu thereof a semicolon and the word "and"; and

(3) inserting after clause (J) the following new clause:

"(K) have in place for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the state child protective services system), to provide for (i) coordination and consultation with individuals designated by and within appropriate health-care facilities, (ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), and (iii) authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.".

(b) Section 4(b)(3) of the Act is amended by striking out "and (F)" and inserting in lieu thereof "(F), and (K)".

(c) Section 4 of the Act is further amended by—

(1) redesignating subsection (c) as subsection (d), subsection (d) as subsection (e), and subsection (e) as subsection (f); and

(2) inserting after subsection (b) the following new subsection (c):

"(c) The Secretary is authorized to make additional grants to the States for the purpose of developing, establishing, and operating or implementing—

"(1) the procedures or programs required under clause (K) of subsection (b)(2);

"(2) information and education programs or training programs for the purpose of improving the provision of services to disabled infants with life-threatening conditions for (i) professional and paraprofessional personnel concerned with the welfare of disabled infants with life-threatening conditions, including personnel employed in child protective services programs and health-care facilities, and (ii) the parents of such infants; and

"(3) programs to help in obtaining or coordinating necessary services, including existing social and health services and financial assistance for families with disabled infants with life-threatening conditions, and those services necessary to facilitate adoptive placement of such infants who have been relinquished for adoption.".

REGULATIONS AND GUIDELINES

SEC. 202. (a)(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services (hereinafter in this title referred to as the "Secretary") shall publish proposed regulations to implement the requirements of section 4(b)(2)(K) of the Act (as amended by section 201(a)(3) of this Act).

(2) Not later than 100 days after the date of the enactment of this Act and after notice and opportunity for public comment, the Secretary shall publish final regulations under this subsection.

(b)(1) Not later than 60 days after the date of the enactment of this Act, the Secretary shall publish interim model guidelines to encourage the establishment within health-care facilities of committees which would serve the purposes of educating hospital personnel and families of disabled infants with life-threatening conditions, recommending institutional policies and guidelines concerning the withholding of medically indicated treatment from such infants, and offering counsel and review in cases involving disabled infants with life-threatening conditions.

(2) Not later than 150 days after the date of the enactment of this Act and after notice and opportunity for public comment, the Secretary shall publish the model guidelines.

REPORT ON FINANCIAL RESOURCES

SEC. 203. The Secretary shall conduct a study to determine the most effective means of providing Federal financial support, other than the use of funds provided through the Social Security Act, for the provision of medical treatment, general care, and appropriate social services for disabled infants with life-threatening conditions. The Secretary shall report the results of the study to the appropriate Committees of the Congress not later than 270 days after the date of the enactment of this Act and shall include in the report such recommendations for legislation to provide such financial support as the Secretary considers appropriate.

TRAINING, TECHNICAL ASSISTANCE, AND CLEARINGHOUSE ACTIVITIES

SEC. 204. The Secretary shall provide, directly or through grants or contracts with public or private nonprofit organizations, for (1) training and technical assistance programs to assist States in developing, establishing, and operating or implementing programs and procedures meeting the requirements of section 4(b)(2)(K) of the Act (as amended by section 201(a)(3) of this Act); and (2) for the establishment and operation of national and regional information and resource clearinghouses for the purpose of providing the most current and complete information regarding medical treatment procedures and resources and community resources for the provision of services and treatment for disabled infants with life-threatening conditions.

STATUTORY CONSTRUCTION

SEC. 205. (a) No provision of this Act or any amendment made by this Act is intended to affect any right or protection under section 504 of the Rehabilitation Act of 1973.

(b) No provision of this Act or any amendment made by this Act may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other law.

(c) If the provisions of any part of this Act or any amendment made by this Act or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

EFFECTIVE DATES

SEC. 207. (a) Except as provided in subsection (b), the provisions of this Act or any amendment made by this Act shall be effective on the date of the enactment of this Act.

(b)(1) Except as provided in paragraph (2), the amendment made by section 201(a)(3) of this Act shall become effective one year after the date of such enactment.

(2) In the event that, prior to such effective date, funds have not been appropriated pursuant to section 5 of the Act (as amended by section 104 of this Act) for the purpose of grants under section 4(c) of the Act (as amended by section 201(c) of this Act), the Secretary may grant to any State which has not met the requirements of section 4(b)(2)(K) of the Act (as amended by section 201(a)(3) of this Act) a waiver of such requirements for a period of not more than one year, if the Secretary finds that such State is making a good faith effort to comply with such requirements.

Mr. HATCH. Mr. President, I have agreed to explain this amendment for the benefit of our colleagues on the floor and in particular the distinguished Senator from Louisiana.

The amendment would require States to have procedures to respond to reports of instances of withholding medically indicated treatment from disabled infants.

Such procedures would provide for coordination and consultation with designated individuals and hospitals, notification of such cases, and authority for child protective services to

invoke legal proceedings to prevent withholding of treatment to disabled infants.

The questions most often asked are answered best by the joint explanatory statement by the principal sponsors of the compromise amendment. The statement was placed into the RECORD on Friday, June 29, 1984. I ask unanimous consent that that joint explanatory statement be printed in the RECORD.

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

JOINT EXPLANATORY STATEMENT BY PRINCIPAL SPONSORS OF COMPROMISE AMENDMENT REGARDING SERVICES AND TREATMENT FOR DISABLED INFANTS

This explanatory statement is a product of the six principal sponsors of this compromise measure: Senators HATCH, DODD, DENTON, CRANSTON, NICKLES, and KASSEBAUM. It is their intention that this statement serve in lieu of a Committee report on the compromise agreement and thus be the definitive legislative history in the Senate on it. Any remarks of individual Senators, including the principal sponsors, on this legislation express only their personal views and do not, therefore, constitute authoritative interpretation or explanation of the measure.

The provisions of the amendment are discussed below:

AMENDMENTS TO THE CHILD ABUSE PREVENTION AND TREATMENT ACT

The amendment would add a new clause (K) to section 4(b)(2) of the Child Abuse Prevention and Treatment Act (hereinafter referred to as "the Act"). Section 4(b)(2) authorizes grants to carry out child abuse prevention and treatment programs to be made to States which meet the requirements of the Act.

New clause (K) would require States which participate in the State grant program to have in place procedures and/or programs (within the State child protective service system) for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions. The new clause specifies that these procedures and/or programs will provide for (i) coordination and consultation with individuals within appropriate health care facilities who have been designated by such health-care facilities, (ii) prompt notification by such individuals to the child protective services system of cases of suspected medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions, and (iii) the authority, under State law, for the State child protective services system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

The term "withholding of medically-indicated treatment" is defined (in a new definition to be added to section 3 of the Act) as the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, (A) the infant is chronically and irreversibly comatose; (B) the provision of such treatment would (i) merely prolong dying, (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or (iii) otherwise be futile in terms of the survival of the infant; or (C) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. The use of the term "inhumane" in exception (C), above, is not intended to suggest that consideration of the humaneness of a particular treatment is not legitimate in any other context; rather, it is recognized that it is appropriate for a physician, in the exercise of reasonable medical judgment, to consider that factor in selecting among effective treatments.

Under the definition, if a disabled infant suffers from more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of those conditions, then that infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hydration, and medication) concerning the withholding of medically indicated treatment.

The term "infant" as used in this definition is intended to mean infants less than one year of age although it may include older infants who have been continuously hospitalized since birth, who were born extremely prematurely or who have long-term disabilities. The reference to less than one year of age is not intended to imply that treatment should be changed or discontinued when an infant reaches one year of age. Nor is it intended to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age.

The reference to "reasonable medical judgment" of the treating physician or physicians means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

With respect to the procedures and/or programs to be utilized to comply with the requirements in new clause (K), the Act now requires States which receive funds under section 4(b)(2) to provide certain mechanisms for the reporting of abuse or neglect cases. The same reporting mechanisms and standards set forth in the Act and existing regulations would be applicable to the reporting of cases of medical neglect covered under new clause (K).

Similarly, the Act now requires the appointment of a guardian *ad litem* for children involved in judicial proceedings relating to abuse or neglect. This provision would be applicable in judicial proceedings with respect to cases under new clause (K).

The Act and regulations also now already require States receiving funds under section 4(b)(1) to take appropriate steps to protect the health and welfare of abused or neglected children, including instituting legal proceedings. The new clause (K) includes specific statutory reference to the authority to institute legal proceedings only because questions have occasionally been raised about the authority of particular child protective services agencies to take such actions in cases involving withholding of medically-indicated treatment from disabled infants with life-threatening conditions. Under new clause (K), States have the flexibility to determine the specific agency or agencies within their child protective services systems, to exercise that authority. State authority to utilize other agencies, in addition to the child protective services system, for these purposes would be unaffected by the legislation.

ADDITIONAL GRANTS TO STATES

The amendment (in section 201(c)(2)) would add a new subsection 4(c) to the Act to authorize the Secretary to make additional grants to the States for the purposes of developing, establishing, and operating or implementing (1) the procedures or programs required under the new clause (K), (2) information and education programs or training programs (for the purposes of improving the provision of services to disabled infants with life-threatening conditions) for professional and paraprofessional personnel concerned with the welfare of such infants, including personnel employed in child protective services programs and health-care facilities, and for parents of such infants, and (3) programs to help obtain or coordinate necessary services, including existing social and health services and financial assistance for families with disabled infants with life-threatening conditions as well as those services necessary to facilitate adoptive placement of such infants who have been relinquished for adoption.

REGULATIONS AND GUIDELINES

The amendment (in section 202) would direct the Secretary, within 90 days of the date of enactment, to publish for public comment proposed regulations to implement the requirements of the new clause (K), and to publish final such regulations within 180 days after enactment.

It also would direct the Secretary to publish, within 60 days after enactment, interim model guidelines to encourage the establishment within health-care facilities of committees which would serve the purposes of educating hospital personnel and families of disabled infants with life-threatening conditions, recommending institutional policies and guidelines concerning the withholding of medically indicated treatment from such infants, and offering counsel and review in cases involving disabled infants with life-threatening conditions. Not later than 150 days after the date of enactment and after notice and opportunity for public comment, the Secretary would be required to publish the model guidelines.

REPORT ON FINANCIAL RESOURCES

The amendment (in section 203) would require the Secretary to conduct a study to determine the most effective means of providing Federal financial support other than the use of funds provided through the Social Security Act, for the provision of medical treatment, general care, and appropriate social services for disabled infants with life-threatening conditions and report the results of such study to the appropriate committees of the Congress not later than 270 days after the date of enactment. The report to the appropriate Committees would also be required to contain such recommendations for legislation to provide such financial support as the Secretary considers appropriate.

TRAINING, TECHNICAL ASSISTANCE, AND CLEARINGHOUSE ACTIVITIES

The amendment (in section 204) would direct the Secretary to provide, directly or through grants or contracts with public or private nonprofit organizations, for training and technical assistance programs to assist states in meeting the requirements of new clause (K) and for establishing and operating national and regional information and resource clearinghouses to provide the most current and complete information regarding medical treatment procedures and resources and community resources for services and treatment for disabled infants with life-threatening conditions. The funds to carry out these activities would be provided from the funds, other than those funds made available for basic States grants under section 4(b)(1), otherwise available to the Secretary to carry out activities under the Act (meaning the Child Abuse Prevention and Treatment Act).

STATUTORY CONSTRUCTION

The amendment (in section 205) would provide that no provision of or any amendment made by the Act is intended to affect any right or protection under section 504 of the Rehabilitation Act of 1973.

It would also provide that no provision of or any amendment made by the Act may be construed to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws.

It would also contain a standard severability provision in the event that a particular provision of or any amendment made by the Act is declared unconstitutional by a court.

AUTHORIZATION OF APPROPRIATIONS

The amendment (in section 206) would increase the authorizations of appropriations—from the levels in the bill as reported ($27 million for FY 1984, $34 million for FY 1985, $35.5 million for FY 1986, and $37.08 million for FY 1987)—under the Act by $5,000,000 for each fiscal year for the purpose of making the additional grants to the states to implement the provisions of new clause (K) and to establish the information and education and training programs and the programs to help obtain or coordinate necessary services for disabled infants with life-threatening conditions authorized under the new section 4(c).

The amendment would retain the earmark contained in S. 1003 as reported of $9,500,000 in each fiscal year for the carrying out of the provisions of section 4(b)(1), relating to basic state grants and $4,000,000 in each fiscal year for identification, treatment, and prevention of sexual abuse.

It is the firm intention of the sponsors that appropriations for the new section 4(c) program should be in addition to appropriations at the authorization levels contained in the amendment for the section 4(b)(1) basic state grant program and for the sexual abuse, identification, treatment, and prevention program and that neither of these existing programs should be reduced in funding in order to provide funds for the new section 4(c) program.

EFFECTIVE DATES

The provisions of the Act and amendments made by the Act would be effective upon the date of enactment, except that the amendment establishing new clause (K) as a requirement for participation in the state grant program does not become effective until one year after the date of enactment.

The amendment further provides that in the event that, prior to the clause (K) effective date, funds have not been appropriated pursuant to section 5 of the Act (as amended by section 104 of this Act) for the purpose of grants under new section 4(c), the Secretary may grant to any State which has not met the requirements of new clause (K) a waiver of such requirements for a period of not more than one year, if the Secretary finds that such State is making a good faith effort to comply with such provisions.

Mr. HATCH. Mr. President, I am happy to deliver a copy of that statement to the distinguished Senator from Louisiana.

Does the distinguished Senator have any other questions about it? I will be happy to go into detail, but I think that provides him with a basic explanation.

Mr. LONG. Will the Senator give me further explanation?

Mr. HATCH. Mr. President, let me give the Senator some more detail.

Mr. LONG. I am pretty much in the dark even now.

Mr. HATCH. If I may, I am happy to yield for further explanation to the distinguished Senator from Connecticut, who would like to respond to the distinguished Senator from Louisiana.

Mr. DODD. I thank my colleague for yielding.

I reiterate to my good friend from Louisiana that this has again been a very difficult and delicate process to go through because of the very strong feelings so many people have on the Baby Doe issue.

What the Senator from Utah, myself, and others have done is come up with a compromise that has six major features to it. Very simply, those features try to set up a process that will allow for a good decision. Mr. President, no one can sit back and tell you what that decision ought to be, but we want to make sure that when decisions are made we have gone through a process that will allow for a decision that will make sense.

Maybe those are not the proper words to use, but that is the purpose—so that we do not end up with this becoming a political football, as it has been in so many cases.

The six key elements of the Baby Doe compromise are:

First, it relies on existing State child protective services systems to respond to reports of medical neglect involving disabled infants with life-threatening conditions.

Second, it includes carefully crafted provisions to spell out the areas of concern regarding medical treatment for these infants.

Third, it relies very heavily on reasonable medical judgment as determinative factor in the decisionmaking process.

Fourth, it provides for coordination and consultation with designated individuals within health-care facilities to enhance that decisionmaking process.

Fifth, it authorizes the setting up of training and technical assistance programs to improve the provision of services to these infants—$5 million, which is not much.

Sixth, it authorizes the setting up of programs to assist the families of such infants in finding the necessary support services, including financial assistance. That is significant because caring for such infants can pose a serious financial burden to the parents.

Those are the six major features. It tries to bring together all of these elements in an intelligent way so that good decisions can be made in trying to resolve these problems.

Mr. HATCH. Will the Senator yield?

Mr. DODD. Again, I commend my colleague from Utah.

Mr. LONG. Mr. President, will the Senator please explain one matter to me? He made the statement that various organized groups concerned favored, I believe, this amendment other than the American Medical Association. Is the American Medical Association opposed to this matter?

Mr. HATCH. Let me mention, first, the groups that do support it. It is a broad group that are directly concerned with the welfare of the child and the family and the hospital and the doctor. These are the groups that support this amendment: American Hospital Association, Catholic Health Association, National Association of Children's Hospitals and Related Institutions, American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American Nurses Association, American College of Physicians, California Association of Children's Hospitals, Nurse Association of the American College of Obstetricians and Gynecologists, American Association of Mental Deficiency, Association for Retarded Citizens, U.S. Spina-Bifida Association of America, Downs-Syndrome Conference, People First of Nebraska, Association for Persons With Severe Handicaps, Disability Rights Center, Operation Real Rights, Christian Action Council, National Right to Life Committee, and the American Life Lobby.

The American Medical Association has not endorsed it.

Mr. LONG. Does the American Medical Association oppose it or are they just silent? What is their position about the matter?

Mr. HATCH. It is my understanding that they do oppose it, but all of the others support it.

Mr. LONG. Sometimes even one holding out might be right. Will the Senator explain to me, why is the American Medical Association opposed to the matter?

Mr. HATCH. I think the association does not want any type of definitive rules and regulations or definitive statutory language which puts any pres-

sure either way on this particular issue. I cannot speak for them. All I can say is that I think they think they are acting in the interests of their doctors. Yes, I believe most of the doctors who are concerned are totally for this. What I am saying is that they are acting in a very special interest way that they feel necessary but we feel is not proper under the circumstances.

As I understand it, the AMA does not like the definitiveness of this particular bill. They wanted a few words in the bill that at the negotiating table all the other organizations opposed. So it comes down to a classic confrontation by all the other organizations which deal with this problem and by the American Medical Association, which may deal generally but perhaps not as directly as these other organizations.

We feel they are wrong. We feel that this is a classic compromise and that this is the way to resolve it and that it will be resolved across the spectrum in this way. It is a reasonable compromise. We have worked very hard to put it together. It involved Senators and Representatives across the spectrum who have tried to bring this about. We feel that the American Medical Association is being unreasonable under the circumstances.

Mr. DODD. Mr. President, if the Senator will yield, in answer to the Senator from Louisiana, the pediatricians and the gynecologists, the physicians most directly involved in this issue, support the compromise. The American Medical Association, as an umbrella organization, has some problems with it, and I suspect it is like any professional organization.

There is probably some resentment because we have talked about other people being involved. The American Medical Association feels that only the doctors and the parents should be involved and everybody else should be excluded. It is part of their argument. I do not say that it is without merit, but to have something that does involve other people is not necessarily bad. The fact that the American Medical Association objects to some of the other people being involved is not enough for me to say that we should not adopt this compromise and get this issue behind us.

Mrs. KASSEBAUM. Mr. President, in response to the Senator from Louisiana, I want to say that I share some of the concerns he might have. I have given a great deal of thought and my staff has given a great deal of effort to this compromise. One does worry about excessive governmental intrusion in such a sensitive area. When parents are going through great agony and emotional trauma and medical personnel are doing everything possible to assist their decisions, the injection of another element—such as Government fiat—does become a real concern.

This proposal is the product of an effort to strike a balance and to develop a thoughtful and realistic approach to this difficult issue. The attempt was to meet, on balance, the various and diverse needs of family and doctors, as well as governmental interest in assuring there will be fair and equitable treatment for newborn infants.

Mr. LONG. Does the Senator from Kansas favor the amendment?

Mrs. KASSEBAUM. Yes. I am a cosponsor.

Mr. President, as I have said, I am a cosponsor of the compromise "Baby Doe" proposal now under consideration as an amendment to S. 1003, the Child Abuse Prevention and Treatment and Adoption Reform Act Amendments of 1983. I join Senators HATCH, DODD, DENTON, CRANSTON, and NICKLES in offering what I believe to be a well-balanced approach for dealing with the treatment decisions involving disabled infants with life-threatening conditions.

This proposal has the support of a broad coalition of medical, disability, and right-to-life groups. It is the product of months of discussion among representatives of these groups, Senate staff, and the cosponsors of the amendment. Arriving at this point has not been an easy undertaking. The issues involved are troubling and complex, and it is a tribute to the good faith and dedication of all involved that we are able to bring this proposal to the Senate floor.

My interest and involvement in this issue stem in large part from my heartfelt concern for the parents who find themselves in these unfortunate situations. I have been deeply troubled by news accounts of the way these situations have been handled, particularly during the period in which the intial HHS regulations in this area were in effect. Prominent signs posted in maternity wards advertising hot lines and the deployment of "Baby Doe squads" to local hospitals created an atmosphere which was inherently disruptive and confrontational. I was appalled at the concept of bringing the full force of State power to point an accusatory finger at parents who were attempting to do what they believed to be best under extremely trying and uncertain circumstances.

Experiencing the emotional shock of not having the healthy baby they expected, these parents are struggling to balance a faith in medical technology against the realities of painful and often uncertain prognoses. It is a disservice to these parents and the hospital personnel who attempt to assist their decisionmaking to imply that their love and concern for the child is in any way lessened by its disabling conditions. I was greatly relieved when the original regulations were discarded and replaced with a more reasonable approach placing greater emphasis on internal hospital review mechanisms. These regulations have since been struck down in court.

Reviewing the legislation approved by the House in this area, I became concerned that its ambiguity would open the door to a repetition of our experience with the original Federal regulations in 50 different State settings. In considering the situation, my reaction has been that an area involving so many complex and unique cases is really not amenable to a uniform Federal solution. In my mind, the more individualized responses available through hospital infant care review committees seem a more appropriate and workable solution. At the same time, I recognize that many issues surrounding the operation and function of such committees have yet to be resolved. As we gain more experience with them, I think we will find they are an extremely valuable and helpful mechanism.

Moreover, I found in the course of working with this issue that many were looking toward Government for guidance in the way of some kind of standard for dealing with the relatively new issues posed by technological advances. They expressed deep concern that sufficient information is not always available to guide parental decisionmaking and that mistakes were being made. One capacity of our democratic form of government is that of bringing together diverse viewpoints to mold public policies under which all can live.

Consequently, it seemed worthwhile to explore means by which government could play a role in clarifying and assisting the decisionmaking process. The negotiations associated with this effort offered its diverse participants an even deeper appreciation of the seriousness and complexity of the decisions involved.

The result we achieved is one which works through existing child protective services systems in calling for procedural mechanisms to deal with reported instances involving the withholding of medically indicated treatment from disabled infants with life-threatening conditions. It clarifies those instances which are and are not areas of potential medical neglect in such situations. It relies heavily on the reasonable medical judgment of physicians in determining appropriate treatment.

In addition, it acknowledges that the best possible information and support should be available to all involved through the authorization of training programs and of programs to assist families in obtaining supportive services. It also recognizes the important role which can be played by hospital committees by requiring the Secretary

of Health and Human Services to publish model guidelines encouraging their establishment.

On balance, I believe this is a thoughtful, realistic proposal which avoids excessive governmental intervention while assuring that the best interests of disabled infants will be served. It establishes an appropriate balance among all concerns.

I commend the efforts of all who spent countless hours over the past months in bringing us to this point. I urge my colleagues to join in supporting this amendment.

Mr. HELMS. Mr. President, I hope we can clear up a question that has arisen in my review of the proposed amendment relating to the withholding of medically indicated treatment for disable infants. Let me make an inquiry of my friend from Utah [Mr. HATCH], the original sponsor of this amendment.

Mr. HATCH. Mr. President, I would be happy to entertain a question from my friend from North Carolina.

Mr. HELMS. Am I correct in understanding the words "appropriate nutrition (and) hydration," as used throughout the amendment, are not meant to sanction outright denial of all nutrition and hydration but are intended only to affirmatively require appropriate nutrition and hydration in all cases? In other words, nothing in this amendment allows an infant to be denied nutrition and hydration?

Mr. HATCH. Yes; that is correct.

Mr. HELMS. Mr. President, I thank my able colleague from Utah.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 3421) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, I agree with the intent in the minds of the drafters of this amendment—that is, that handicapped babies should not be put to death by withholding what amounts to ordinary medical care such as food, water, routine surgery, and so forth.

The problem is that this intent is not fully carried out, in my opinion, because of vague and ambiguous language, which may well be misconstrued in application—to the detriment of the very infants we seek to protect.

Therefore, Mr. President, I want the RECORD to show that I voted "nay" on this amendment.

Mr. ZORINSKY. Mr. President, I would like to concur with the views expressed by the Senator from North Carolina [Mr. HELMS], and I would like the RECORD to show that I voted against this amendment.

AMENDMENT NO. 3422

(Purpose: To strike the savings provision and add an implementation report)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] for himself and Mr. KENNEDY proposes an amendment numbered 3422.

Mr. HATCH. 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 14, strike out lines 9 through 16.

At the end of the bill add the following new title:

TITLE IV—REPORT

SEC. 401. Not later than October 1, 1987, the Secretary of Health and Human Services shall submit to the Congress a detailed report on the implementation and the effects of the provisions of the Child Abuse Prevention and Treatment and Adoption Reform Act Amendments of 1983 and the amendments made by it.

Mr. LONG. Is the Senator going to explain the amendment?

Mr. HATCH. Yes.

Mr. President, we have language in the bill that provided for a so-called "savings provision" which dealt with the interaction of the bill's provision with religious liberty. I have agreed to drop this provision out, at the request of its proponents because of the controversy surrounding it. In addition, as a completely separate part of the amendment and at the request of Mr. KENNEDY, there is added to the bill a requirement for an implementation study on the entire act.

Mr. LONG. Will the Senator explain what is being dropped from the bill?

Mr. HATCH. It allowed States to determine to what extent a religious exemption applies. The text that would be deleted from the bill (page 14, lines 9 through 16) reads as follows:

SAVINGS PROVISION

SEC. 107. The Act is further amended by adding at the end thereof the following new section:

"SAVINGS PROVISION

"SEC. 8. Nothing in this Act shall be construed to limit the right of a State to determine the health care and treatment a parent may provide his child in the exercise of the parent's freedom of religion.".

Thus, the first part of the amendment removes the savings provision that I had in this particular bill. It is a delicate issue, important particularly for its recognition of the rights of the Christian Scientists in our society, but one that cannot be resolved properly today and which is therefore being withdrawn from the bill to avoid unnecessary controversy. As I indicated in my opening statement, it is an issue on which the concerned parties will be continuing to talk in order to reach a satisfactory resolution.

Mr. DODD. I believe, as well, that there is a second provision in the amendment which would require that after 3 years, there would be an analysis of the bill we are now adopting. Even though I think good ideas have been incorporated, we will not know until they are tried. So there is language in there that suggests that we take a good, hard look at it to see if all initiatives are working, for example, the Baby Doe initiative. That is added to what the Senator from Utah has just explained. So there are two parts to the amendment.

Mr. HATCH. That is correct.

Mr. PERCY. Mr. President, I support Senator HATCH's call for active study of the problems faced by families who believe in healing through religious means. No one would suggest that society cannot under proper circumstances intervene to protect the lives of children who are gravely ill. However, their right to enjoy the free exercise of religion must be guaranteed to the fullest practical extent. Fortunately, most of those, such as Christian Scientists who under most circumstances decline orthodox medical treatment, are not hostile to medical practice and are law-abiding citizens.

I understand that State juvenile courts are dealing satisfactorily with this delicate issue. They will intervene and assure that medical services are provided where there is clear danger to a child's life or future health. I call on the professional and religious groups as well as the Department of Health and Human Services to continue their efforts to come to an understanding of the proper roles of parents and the State in this difficult area, building on the base of experience already laid in State courts.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 3422) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mrs. HAWKINS. Mr. President, I am delighted that the Senate is finally considering legislation to reauthorize the Child Abuse Prevention and Treatment and Adoption Act of 1984. Reauthorization of this act is essential in order to restore funding to this small but effective program. I believe that the limited Federal funds that the

Government allocates to combat this growing epidemic is woefully inadequate. But that is not to belittle the excellent programs funded under this act. Grants from the National Center for Child Abuse and Neglect make a critical difference in our efforts to prevent child abuse from ever occurring and to counsel and treat the victims of abuse to avoid a repeat of this terrible cycle of abused children growing up to be abusive adults.

In Florida, the Orlando Regional Medical Center has operated an excellent therapeutic program for sexually abused preschoolers called The Orange Playhouse, with a 3-year grant from NCAN. Another grant was given to Sacred Heart Hospital of Pensacola for a program to teach new parents parenting skills in order to avoid potential abuse and neglect. A mental health center in Hillsborough County received a grant to offer specialized treatment and counseling services for sexually and physically abused children in an attempt to help them deal with their severe emotional problems caused by the abuse. Funding for these prevention and counseling programs is essential. Studies have shown that abused children who do not receive treatment to deal with this trauma suffer irreparable harm that often results in them being abusive parents.

Various studies have indicated that a high percentage of individuals involved in prostitution, juvenile delinquency, and child abuse were themselves child abuse victims. A study by Dr. Mimi Silbert, a criminologist who runs the Delancy Foundation, a shelter for young prostitutes in San Francisco, indicated that 70 percent of the child prostitutes interviewed reported early sexual child abuse which affected their decision to engage in prostitution. A Boston University School of Law study determined that child abuse is a common ingredient in the backgrounds of many delinquents in the United States; 10 percent of children left in an environment with recurrent physical abuse will not survive that situation; 30 to 60 percent of children have severe mental, emotional or behavioral disturbances that don't seem to disappear in adulthood.

In my own State of Florida, the Florida Child Abuse Registry reports that 2.4 million children were reportedly abused or neglected in Florida last year—128 children incurred serious neurological damage due to the abuse, 564 were seriously scalded or burned, and 1,880 children were placed in foster care due to the physical abuse in their homes; 65 percent of Florida's children who were admitted to State mental hospitals had histories of abuse and neglect. In 1971, only 4,225 children were reported to this registry. This number has steadily grown to the 85,466 reported in calendar year 1982. I would like to think that this increase indicates only an improved reporting system, but all indications point to the sad fact that this situation of child abuse is indeed worsening.

Mr. President, I would like to take just a few minutes to praise the efforts of those Senators who are responsible for crafting the compromise on the sensitive issue of care of newborn handicapped infants that enables us to be considering this legislation today. Senators HATCH, DENTON, NICKLES, KENNEDY, DODD, and CRANSTON have dedicated long hours of negotiation which fortunately for us proved extremely fruitful. These Senators and their dedicated staffs deserve our praise and gratitude for developing a legislative compromise which achieves the delicate balance of providing protection for the rights of handicapped newborns without adversely affecting the relationship between patient and physician or disrupting the operation of a hospital.

I urge my Senate colleagues to enact this legislation without further delay. The abused and neglected children need our help and assistance now.

Mr. GRASSLEY. Mr. President, I rise in support of S. 1003 and commend the untiring efforts of all those who participated through the entire journey of this bill and to those who worked many late hours in the night to bring a fruitful resolution of the many concerns.

S. 1003 reauthorizes and amends the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978. Child abuse is a national tragedy and when we pause and look at the statistics documenting the rapid increase in child abuse, we should be deeply concerned and appalled. This bill provides for the study of the National incidence of child abuse and neglect and makes more explicit the definition of what constitutes sexual abuse and provides funding for sexual abuse prevention and treatment.

I am also encouraged to see this bill emphasizing the promotion of special needs adoptions and the improvement of the Federal role in promoting adoption of children whose welfare is otherwise at risk.

Another important provision in this measure addresses the tragedy of the Baby Doe issue. An amendment to this bill ensures that State child abuse agencies which receive Federal funds, will incorporate procedures to enable them to handle incidences of medical neglect, such as we see occurring in major medical centers in this country. In the Bloomington, IN, case the child abuse agency was offered the right to defend Baby Doe, and they declined.

Pediatrics, October 1983 official Journal of the American Academy of Pediatrics, reported a program in which systematic neglect of spinabifida children was taking place. A cable news network series aired in February of this year and the subsequent Washington Times series from July 9-13, 1984, also exposed that program. I find the selective destruction of a handicapped child morally and ethically repugnant to our very way of life. Our Nation's commitment to equal protection under the law will have little meaning if we deny such protection to those who have not been blessed with the same physical or mental gifts that we too often take for granted. What would happen if necessary medical treatment were withheld from infants based on race, sex or creed? We must never allow a mind-set that arbitrarily determines the "quality of life" another may or may not have.

I am proud to be a cosponsor of this bill and of the "Baby Doe" amendment. I ask my colleagues to support this important and necessary legislation.

Mr. NICKLES. Mr. President, I am pleased to support S. 1003 and the amendments which are being offered to the bill today. This compromise package includes a significant increase in authorizations for the child abuse program, the creation of a demonstration program for those who are the victims of domestic violence, and a small sum of money that is set aside to help find homes for hard to place children. In addition, it includes the final product of long negotiations with medical, hospital, disability, and right to life organizations on language addressing the "Infant Doe" situation.

The statistics show an increase in reported cases of child abuse, including the abhorrent crime of sexual abuse of children. Whether this increase represents a change in society's attitude and openness toward reporting abuse cases or whether it represents an increase in the actual amount of child abuse occurring in our country, it has become apparent that the States are straining to keep up with the increased caseload.

This bill increases the authorization for Federal funding of State child abuse programs from $17 million in 1983 to $32.5 million in 1984, $39 million in 1985, $40.5 million in 1986, and $42 million in 1987. Of this money, $9.7 million is for State grants, $5 million is targeted for identification and treatment of sexual abuse, and $4 million is for States to carry out the new provisions relating to treatment of handicapped infants. It is my hope that this increase in funds will assist States in meeting the needs of those children and families who are victims of the tragedy of child abuse and neglect.

It is a known fact that there are many families in America who would like to adopt children. They often wait 1, 2, 3 or more years for infants and

sometimes just give up waiting. Unfortunately, however, there is another waiting list which is equally as dismal, and that is the list of children who are waiting to find permanent homes through adoption. Often these children fall into a category known as the hard to place kids. They may come from mixed racial backgrounds, have mild to severe disabilities, or serious behavioral problems. Sometimes it seems that they just fall through the cracks of the State child placement system or are regarded as a lower priority than placing those children who are more easily placed. Yet, programs such as "Wednesday's Child" which feature hard to place children on news programs have shown that there are homes for these children. I believe that more can be done to match these special children with special families. The legislation which is before us today has a small amount of money in it for that purpose. I will be most anxious to see what the results of this seed money are over the next several years.

Recently, I received a letter from a woman in Oklahoma who had been a victim of physical violence from her husband. As she told her story, I was both shocked and impressed—shocked that this is a reoccurring phenomenon in families throughout our country, and impressed at the fortitude of this woman and the way she has used her tragic experiences to help others. She has given her time and energies for a shelter—one that helped her and now helps many others like her.

Because of her letter and those that I received from other women in Oklahoma, I want to state my support for the seed money that is provided in Senator STEVENS, amendment for a new demonstration program for domestic shelters and services. It is my understanding that the social services block grant does allow for funding of domestic violence programs. However, not all States use their funds for this activity. The demonstration program which we are authorizing today is intended to be a temporary stimulant for States to act, as is evidenced by the matching component. For 1985, the Federal share is 65 percent of any program funded under this Federal initiative. In 1986, this decreases to 45 percent, and in 1987, it decreases again to 35 percent. This is consistent with my belief that this activity is primarily one for which States should assume responsibility. However, seed money is needed to initiate such responsibility.

Finally the last new provision of this package is an amendment which Senators HATCH, DENTON, KASSEBAUM, CRANSTON, DODD, and I have offered to S. 1003 to deal with the so-called "Baby Doe" issue. The amendment expands the responsibilities of State child protective service agencies receiving Federal funds under this program to include procedures and/or programs for responding to reports of medical neglect, including the alleged denial of necessary medical treatment for handicapped newborns. In reality, this is not a new responsibility in most States since the child abuse statutes could be interpreted to include this form of medical neglect.

It is an understatement to say that defining what constitutes medical neglect is fraught with difficulties, sensitivities, and very fine lines. No one wants Washington establishing medical standards and practices for every case or diagnosis. Yet, on the other side of the equation, no one wants to condone the discriminate denial of medical treatment for infants simply because they may suffer some degree of retardation, paralysis, or other disability. Our Nation has come too far in the mainstreaming of persons with disabilities into all aspects of society to sanction a quality of life ethic in which only those who are fit or productive or functioning members of society are allowed to live. I believe that this legislation represents the best middle-ground approach to the issue.

First, it designates States, rather than the Federal Government as the first tier of review for any allegation of the withholding of medically indicated treatment from an infant. The State child protection authorities are encouraged to establish a working relationship with hospitals, particularily those which serve as referral centers for children born with complications, not only for purposes of any neglect reporting, but also for the exchange of information about what services are available to an infant born with disabilities and his or her family. One of the most helpful things for a family dealing with the trauma of the birth of a handicapped child is to talk with other parents who have gone through the same experience. The Rossaw family of Connecticut have adopted 11 children with various disabilities. In their experience, this single recommendation is the one which has made the most difference to families coping with an unanticipated complication at birth. I envision that the child protective services can serve as a conduit for this kind of exchange and for notification of the other services which may be available in the community.

Second, the amendment to S. 1003 provides a carefully crafted definition of the phrase "withholding of medically indicated treatment" to guide States in carrying out the provisions of this act. This language was the product of a broad spectrum of interests from the medical, hospital, disability, and prolife organizations.

Those who now support it include: The American Hospital Association, the Catholic Health Association, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the American Nurses Association, the American College of Physicians, the National Association of Children's Hospitals and Related Institutions, the California Association of Children's Hospitals, the Nurses Association of the American College of Obstetricians and Gynecologists, the American Association on Mental Deficiency, the Association for Retarded Citizens, U.S.; the Spina Bifida Association of America, the Down's Syndrome Congress, the Association for Persons with Severe Handicaps, the Disability Rights Center, People First of Nebraska, Operation Real Rights, the National Right to Life, and the Christian Action Council.

Withholding of medically indicated treatment is defined as:

> * * * the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physicians' or physician's reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physicians' reasonable medical judgment, (A) the infant is chronically and irreversibly comatose, (B) the provision of such treatment would not be effective in ameliorating or correcting all of the infant's life-threatening conditions, (C) the provision of such treatment would merely prolong dying, or, (D) the provision of such treatment would be almost entirely futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

I think that this language is very clear in what it does not require. First, it does not require unending treatment of an infant which is doomed to die regardless of what is done. If the child is born dying, then only that which is necessary to feed the child and relieve pain is required. Second, if a child is born with more than one anomaly, and one or several are correctable with treatment, but the child has some condition which is fatal and untreatable, then the physician is not being mandated to take the infant through repeated surgeries for the correctable condition(s). Third, the language does not apply to children in comas.

Finally, the last exception allows for the so-called gray areas. These are the cases when the child has a very slim chance for survival and the physician must make a judgment call as to whether the odds of correcting the child's condition are strong enough to merit an attempt to save the baby, even with treatment that may be very painful. This provision in our language gives a physician the leeway needed to make such a judgment call without fear of violating the letter or spirit of this legislation.

What does this language require, then? It requires a physician to treat

treatable medical conditions to the best of his/her ability without regard for any handicap that a child may have. For example, a child born with Down's syndrome who also has an esophagus which needs surgery cannot be denied that surgery and allowed to die simply because he or she will suffer some unknown degree of retardation. Or, a child born with spina bifida cannot be denied aggressive life-saving treatment simply because he or she may need leg braces to walk.

Cathryn Donnelly of Tulsa, OK, was born with spina bifida. No one could have predicted how Cathryn's family would handle her disability, how she would cope, what the degree of her paralysis would be, or if she would suffer any mental impairment. Yet, there are decisions being made in hospitals today which judge all of these things in the first few days of birth and rule against treatment because some alleged quality of life is not expected. I am not comfortable setting standards for who shall live and who shall die, nor am I comfortable allowing someone else to make such a decision for me. The standard that has been part of our common law is to treat those for which there is a reasonable chance to save, regardless of whether or not they are going to be retarded, paralyzed, or otherwise disabled. Obviously, such a standard requires that we, as a society, are willing to commit the resources necessary to help this population reach their potential. We have gone a long way at the Federal level to try and ensure that medical, rehabilitative, educational, and other services are available to meet that commitment.

In closing, I would like to say that this compromise in the "Infant Doe" area is one that is a reasonable balance between the twin objectives of minimal Government interference, while ensuring adequate protection of the civil rights of all Americans, regardless of age, handicap, sex, or race. The other portions of the amendment as I have outlined them are also laudable initiatives which I am happy to support and recommend to my colleagues.

Mr. DODD. Mr. President, I ask unanimous consent that Senator CRANSTON and I be added as cosponsors of the underlying bill, S. 1003.

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

Mr. KENNEDY. Mr. President, I urge my colleagues to support the reauthorization of the Child Abuse Prevention and Treatment Act. The extension and increase in authorization for child abuse prevention and support for child protective service is desperately needed.

In my State, the Massachusetts Committee for Children and Youth reports that we are unable to provide adequate services at the present level of Federal funding. Staff, services, foster care and emergency shelter are inadequate to meet the need. According to Parents Anonymous, 30,000 incidents of child abuse and neglect were reported in Massachusetts in 1982-83.

A nation that truly cherishes its children must protect and support those children. Our children are our future, our most precious national resource.

Families suffering the stress of modern society, the erosion of traditional support systems, the humiliation of unemployment, the isolation of single parenthood, the pain of poverty, or the affliction of mental illness must have somewhere to turn. We must strengthen the support systems for our families. We must not abandon the weakest and most vulnerable members of our society—our children.

With the passage of this legislation we reaffirm our commitment to care for and protect our Nation's children.

Mr. CRANSTON. Mr. President, I am pleased to join in cosponsoring and supporting the legislation which the Senate is considering which would extend the authorizations of appropriations for the Federal Child Abuse and Neglect Program and Adoption Reform Program, respond to the difficult and troubling problems surrounding the provision of medical care to disabled infants with life-threatening conditions, and establish a program to help meet the needs of victims of family violence.

Mr. President, the legislation before the Senate today represents a complex package dealing with a number of critical issues. First, it would continue the important Federal Child Abuse Prevention and Treatment Act. As the Senate author of the 1978 extension and revision of that program, I am pleased to see this program continued. I doubt anyone can seriously question the need for continuation of this program, particularly given the increases in cases of reported child abuse that have taken place during the past several years. Second, it would continue the adoption reform program which I also authored in the 95th Congress. This program is designed to help facilitate the adoptive placement of children with special needs. It is a companion to the landmark legislation we enacted in 1980, Public Law 96-272, the Adoption Assistance and Child Welfare Act. Both laws are focused upon eliminating those barriers which have held thousands of children in the foster care system limbo and prevented their placement in loving, adoptive homes. The bill which was reported by the Labor and Human Resources Committee does add some additional activities to be carried out under this program, but I am satisfied that these additional activities are not intended to alter the focus of this program upon the problems related to the adoptive placement of children with special needs.

Third, the legislation would establish a new program to provide demonstration grants to programs providing assistance to victims of family violence and research and personnel training in this area.

Mr. President, I would like to discuss the two amendments, one relating to the withholding of medical treatment from disabled infants with life-threatening conditions and the other relating to the Family Violence Program.

DISABLED INFANT AMENDMENT

As I indicated at the time this amendment, No. 3385, was introduced on June 29, 1984, it was developed as the product of many, many long hours of negotiations with representatives from the disability community, the health-care community and the pro-life community. This process contended over 4 months and virtually nonstop for 4 days and nights at the end of June.

Mr. President, as I said at that time, those negotiations were absolutely remarkable in every respect. These divergent groups have met repeatedly with the Senate staff to attempt to hammer out an agreement. Some of the parties to the negotiations would have preferred no Federal legislation in this area; others would have preferred a stronger Federal role. Nevertheless, in an effort to develop a workable and appropriate amendment, they all worked constructively together.

The compromise has the support of virtually all of the groups involved, including the American Association on Mental Deficiency, Association for Retarded Citizens, U.S., Spina-Bifida Association of America, Downs-Syndrome Congress, People First of Nebraska, American Coalition of Citizens With Disabilities, the Association for Persons with Severe Handicaps [TASH], Disability Rights Center, Operation Real Rights, Christian Action Council, National Right to Life Committee, American Hospital Association, Catholic Health Association, National Association of Children's Hospital and Related Institutions, American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American Nurses Association, American College of Physicians, California Assocation of Children's Hospitals, and Nurses Association of the American College of Obstetricians and Gynecologists.

This amendment, I believe, represents an appropriate response to a very difficult problem. It relies upon the existing State child protective services system to respond to reports of medical neglect involving the withholding of medically indicated treatment from disabled infants with life-threatening conditions. It includes carefully worded provisions to delin-

eate the areas of concern regarding medical treatment for these infants. It relies heavily upon reasonable medical judgment as a determinative factor in decisionmaking. It provides for coordination and consultation with designated individuals within health-care facilities to enhance the decisionmaking process involving these cases. It would authorize the establishment of training and technical assistance programs to improve the provision of services to these infants and programs to assist their families in finding the necessary support services, including financial assistance.

I think it is a reasonable, rational, and carefully crafted response to a difficult area; it represents an approach which is likely to improve the decisionmaking process without unnecessary Government intervention. It also includes a provision for additional funding so that the already sorely overtaxed child protective services agencies will receive some additional resources to carry out their responsibilities in an effective manner.

Finally, an amendment proposed by the distinguished Senator from Massachusetts [Mr. KENNEDY] would direct the Secretary of Health and Human Services to provide Congress, by October 1, 1987, with a detailed report on the implementation and the effects of the amendments made by each of the titles of this legislation. This is most particularly aimed at the provisions of title II.

DOMESTIC VIOLENCE PROVISIONS

Mr. President, I am also a principal cosponsor of the amendment offered by the distinguished Senator from Alaska [Mr. STEVENS] which would add, as a new title III to the bill, a program relating to family violence. Again, this amendment was worked out with the floor managers and represents a compromise proposal.

As an original cosponsor of S. 2430, introduced by the Senator from Alaska on March 15 of this year, an original cosponsor as well of similar legislation introduced by the Senator from Massachusetts [Mr. KENNEDY], S. 699, in March of last year, and as the author of the legislation dealing with family violence twice passed by the Senate—S. 1843 in 1980 during the 96th Congress and S. 2759 in 1978 during the 95th Congress, I have been deeply committed to the enactment of legislation which would provide for Federal assistance to State and local programs dealing with the devastating problems associated with family violence.

Mr. President, as would the other cosponsors of this amendment, I would prefer to see a stronger domestic violence bill enacted. However, like the other cosponsors, we entered into negotiations with the distinguished chairman of the Labor and Human Resources Committee and the chairman of the Subcommittee on Family and Human Resources in order to develop an amendment which would accommodate, as much as possible, the concerns of all the parties. Given the long history of congressional inability to reach a final agreement about the appropriate Federal role in this area, I am pleased that we have been able to reach a bipartisan agreement with regard to this amendment. I congratulate my colleagues on all sides of this issue for their efforts in this endeavor, and I think that the amendment which we have developed does meet many of the critical goals which have motivated legislative initiatives in this area.

BRIEF DESCRIPTION

Mr. President, I would like to take a few moments to describe the major features of the amendment.

First, it would establish authority for the Secretary of Health and Human Resources to make demonstration grants to public agencies and private nonprofit organizations, including religious and charitable organizations and voluntary associations for one or more of the following purposes: First, to prevent incidents of family violence including providing immediate shelter and related assistance to victims of domestic violence and their dependents; second, to conduct research into the causes of family violence and into the prevention, identification, and treatment thereof; third, to train personnel working in family violence programs, and, fourth, to train local and State law enforcement personnel on techniques in handling incidents of family violence.

The legislation would provide that not less than 50 percent of the funds appropriated shall go to programs aimed at preventing incidents of family violence, including shelter programs.

Mr. President, this earmark is important because it makes clear the intent of the sponsors that the majority of the funds allocated under this legislation must go to programs actually providing services to victims of domestic violence and particularly those programs providing emergency shelter, rather than to the research or personnel training programs. In my view, it would be preferable that more than 50 percent of the funds be allocated to those types of service programs. The 50 percent is intended simply to be a minimum guarantee, not a maximum, and I certainly intend to monitor closely the allocation of program grants to assure that this intent be carried out. The overwhelming necessity of providing support to programs providing emergency shelter care to victims of family violence has always been a major, driving force behind this legislation, and it is our intent that providing assistance to those programs continue to be a major priority under this amendment.

In this connection, Mr. President, I want to stress that the availability of emergency shelter has always been regarded as an integral part of prevention efforts in this area. Law enforcement officials who testified before a hearing on family violence I chaired during the 95th and 96th Congresses repeatedly stressed their support for emergency shelter facilities and the importance of such facilities in preventing incidents of family violence.

There are, of course, other services that can and should be provided to individuals involved in family violence programs. But the provision of a refuge to those women and children whose lives are endangered during violent episodes has always been of the utmost importance in our effort to deal with this overall problem.

The legislation also would require the Secretary to ensure that there is an equitable distribution of assistance both with respect to the States and between rural and urban areas and would direct that a priority be given to applications from communities without such programs or which are underserved.

The size of the grants would also be limited to not more than $50,000 in any entity unless the Secretary, in exceptional circumstances, determines that a grant in a greater amount is necessary. Similar provisions have been included in previous proposals in order to encourage programs to secure other funds and not rely solely upon grants from this program. An increaseing matching share is also contained in the bill in order, again, to encourage programs to seek other support. The non-Federal share requirements could be met either by cash or in-kind services. Similar provisions have been included in the provisions proposals.

Second, in addition to the demonstation grant authority provisions, the amendment directs the Secretary to coordinate programs within HHS and to seek to coordinate all other Federal programs which involve the prevention of incidents of family violence. The Secretary would also be directed to appoint to implement the act an employee of the Department with expertise in the field of family violence prevention and services. Those provisions also include the responsibility for operating a national information and research clearinghouse on the prevention of family violence which would include collecting, preparing, analyzing, and disseminating information and statistics and analyses of such information and statistics relating to the incidence and prevention of family violence and providing information about alternative sources of assistance for the prevention of incidents of family violence and for the provision

of immediate shelter and related assistance to victims of family violence and their dependents.

These clearinghouse activities would be required to be coordinated with the information clearinghouse maintained by the National Center on Child Abuse and Neglect.

Mr. President, the sponsors of the amendment are aware that some of these activities required for the clearinghouse functions under section 304 of the amendment are already being performed by certain existing entities. However, the level of activity in this area being supported by the Department is not sufficient, and a substantial increase in these activities would be required to take place if section 304 is enacted.

Finally, the amendment would authorized the $5,000,000 fiscal year 1985, $15,000,000 for fiscal year 1986, and $15,000,000 for fiscal year 1987 to carry out this title. These funding levels are extremely modest and clearly would provide a very minimal level of assistance in areas of great unmet needs. Nevertheless, they represent a beginning for a long-awaited program.

Mr. President, as I indicated at the outset, I certainly would have preferred a stronger bill. Nevertheless, I am acutely aware of the problems which have hindered enactment of legislation in this area and the necessity of reaching a compromise. The amendment represents an important step in the direction which should have been taken long ago.

I want especially to congratulate the Senator from Alaska [Mr. STEVENS] for having offered this amendment and having made the effort to enact family violence legislation a truly bipartisan effort. I also want to make note of the dedication and commitment—derived from firsthand experience in helping domestic violence victims—which Susan Arnold of Senator STEVENS' staff has given to this issue.

DELETION OF SAVINGS PROVISION

Mr. President, one issue of controversy arose fairly recently regarding the so-called savings provision, contained in section 107 of the Senate-reported bill which relates to States granting exemptions from child abuse or neglect findings under State law in cases involving failure to provide medical treatment on the basis of religious beliefs.

Because of the shortness of time and the urgency of moving ahead with this legislation, it was not possible to resolve the differing viewpoints on this provision. The Senator from Utah therefore decided to delete this provision from the bill rather than hold up its consideration because of this issue. This was a very conciliatory and gracious move on his part, and I congratulate him for his willingness to set this issue aside for the time being so that we could move forward today with the rest of the bill.

I share the Senator from Utah's view that this issue does need to be revisited, particularly in light of the confusion which has for many years surrounded its relationship to the child abuse State grant program. Much of this confusion resulted from the failure of the Congress to deal directly with the religious exemption issue when the legislation was first enacted in 1973. The Department of Health, Education, and Welfare—now the Department of Health and Human Services—attempted to fill this void by promulgating in 1974 regulations requiring States to enact religious exemption clauses in order to receive State grant funds. The Department based those regulations upon language that had appeared in the 1973 House report, not upon any express requirement in the statute itself. The most recent set of regulations, published in 1983, reversed that interpretation and indicated that States are free to enact or not enact such exemptions, but required that any such exemptions that are enacted must provide administrative or judicial authority to order medical treatment for a child "when his health requires it." There is no clear consensus as to what impact these provisions or exemptions have upon reporting obligations.

Congress needs to focus upon this entire question very carefully and seek to find a reasonable balance which allows States to deal with the religious exemption issue in their own fashion while reaffirming the well-recognized authority of the State, through its judicial system, to protect the health and lives of the children involved and to ensure that reporting mechanisms are appropriately fashioned to achieve those ends. Congress ought to determine these issues and not merely relegate them to a regulatory process which has in the past produced quite contradictory results.

Again, I congratulate Senator HATCH for his willingness to set this important issue aside temporarily so that we can move forward with the other most important components of this bill.

CONCLUSION

Mr. President, in concluding I want to make special note of the extraordinary contributions made by the staffs on both sides of the aisle in working out the numerous issues involved in this legislation. In particular, Nancy Taylor, Debbie Turner, and Steve Grossman of Senator HATCH's staff, David Yensen of Senator DENTON's staff, Laura Clay of Senator NICKLES staff and Susan Hutton of Senator KASSENBAUM's have played a truly productive and creative role on behalf of the majority. On the minority side, Andrea Young and Debbie Curtis ably represented Senator KENNEDY on the domestic violence legislation as did Westly Clark on the disabled infant amendment. Marsha Renwanz of Senator DODD's staff, played a critical role in working out all of the provisions of the bill. On my own staff, Susanne Martinez and Jon Steinberg were deeply involved in the negotiations that lead to agreements on each of the amendments and played crucial roles in drafting the legislative language.

I also want to express my deep admiration for all of the groups who worked on this legislation and the amendments. The compromises and willingness to continue striving to reach agreement was extrordinary. Senator HATCH has already mentioned the names of the representatives of these groups, and I would like to add my personal tribute for the vital contribution that each one of them made to the final legislative action being taken by the Senate tonight.

Mr. JEPSEN. Mr. President, I am pleased to see that the Senate has turned to the consideration of S. 1003, the Child Abuse Prevention and Treatment and Adoption Reform Act. This important bill has been delayed for over a year because of language dealing with the treatment of handicapped infants.

Through the diligent efforts of Senators HATCH, DENTON, NICKLES, KASSEBAUM, DODD, and CRANSTON, their staffs, and several health/medical, disability, and prolife groups, a compromise has been reached on the treatment of handicapped infants. This compromise, which is being offered as an amendment to S. 1003, provides protections to handicapped infants.

As many of my colleagues will remember, the issue of treating handicapped infants started over 2 years ago when an infant with Down's syndrome and an incomplete esophagus was allowed to die. The public was outraged about this case, including many of us on Capitol Hill.

In response to this case, known as the "Baby Doe" case, the Department of Health and Human Services issued regulations twice under section 504 to ensure that treatment was not deliberately withheld from handicapped infants. However, in both cases, a U.S. court struck down the regulations.

Pressure to adopt some protections for handicapped infants have intensified as more cases of medical neglect have been discovered. I could point out many shocking cases where infants were allowed to die, some of which were based on a mathematical equation. These tragedies must not continue.

We cannot destroy life just because the life does not meet our specifications nor can we judge the quality of life. These infants should not be deprived the opportunity of living just because they have a crippling handicap. I know of many handicapped indi-

viduals who have had very successful, happy, and productive lives. I know of many families who feel blessed to have experienced the joys of raising a handicapped youngster.

I am increasingly concerned about the growing lack of respect for life we have in this Nation today. This lack of respect starts out with the willingness of our society to kill the unborn and continues onward to handicapped newborns. One way we can turn this trend around is to adopt protections for these handicapped infants.

It is for this reason that I cosponsored the compromise "Baby Doe" amendment, and I urge my colleagues to support it today. This amendment is a reasonable step toward protecting these infants.

Mr. BURDICK. Mr. President, child abuse and neglect reporting laws have revealed to us in recent years the dimension of this painful social problem. The system of mandatory reporting is the backbone of our effort to understand and combat abuse and neglect.

However, in situations where parents rely on spiritual healing methods, some consideration should be given to the protection of religious freedoms. I am not prepared to say today what adaptations of these reporting laws will best protect our children while respecting the spirit of the first amendment, but I believe the matter is worthy of continued study.

These reporting requirements pose a particular dilemma for persons engaged in a religious healing industry, such as Christian Science practitioners. Depending on administrative interpretations, they are left in an ambiguous situation by many State reporting laws. An examination of abuse and neglect reporting laws should include consideration of the traditional privileges given to confidential communications with ministers, priests, rabbis, and others serving in a similar capacity.

I support Senator HATCH in asking all those interested to join in an effort to produce some legislation which will be fair and acceptable to the families affected, the health professions and the social agencies which must administer the reporting statutes.

● Mr. RIEGLE. Mr. President, I am encouraged that the Senate has finally reached a compromise on issues which have delayed this Chamber's consideration of S. 1003 since the measure was reported favorably by the Senate Committee on Labor and Human Resources in May 1983. This legislation is needed to reauthorize the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, which provides Federal support to States for child abuse prevention and adoption services.

As a member of the Labor and Human Resources Committee, I believe it is essential that we have a strong Federal policy designed to combat the widespread occurrence of child abuse in this Nation. The alarming increase in the number of child abuse and neglect cases affirms the need for us to continue with vigor our efforts to reduce what is truly a serious and unacceptable tragedy.

In addition, Mr. President, I am pleased to cosponsor the amendment to S. 1003 offered by the Senator from Alaska [Mr. STEVENS], to provide funding for demonstration grants to community-based groups to promote prevention and provide services to victims of family violence. Although I supported the allocation of greater resources for this important effort, the amendment we are offering today is nevertheless critically needed.

Violence in the family is unfortunate and increasing, and it has shown to be a practice handed down from generation to generation. Family violence threatens the integrity of our society and, again, I am pleased to be a cosponsor of this action and urge all of my colleagues to join us in this effort.●

● Mr. D'AMATO. Mr. President, I am in strong support of this bill. The reauthorization of the Child Abuse Prevention, Treatment, and Adoption Reform Act is an urgent necessity if we are to stem the tide of violence against children and protect handicapped infants and children. The epidemic of child abuse and neglect demands our immediate attention. The tragedies of Baby Doe and Baby Jane Doe, and an increase in the sexual abuse of children are the most recent signals that we can no longer delay implementing a coordinated national campaign to save our most vulnerable citizens, our children.

This legislation enables us to address these critical issues and to act together to assist parents, with the advice of their physicians, to ensure that proper decisions about the treatment of seriously ill newborn children are made. I applaud Senators HATCH, DODD, KASSEBAUM, NICKLES, and CRANSTON, and the Committee on Labor and Human Resources for developing an approach that balances very important and sensitive concerns: The privacy rights of the family, the vulnerability of children, and the need to ensure medical treatment for handicapped children when it is necessary, but not when it is merely futile.

The key to the compromise represented by this act is that it relies upon the existing State child protective services system to respond to reports of medical neglect involving the withholding of medically indicated treatment from disabled infants with life-threatening conditions. It clearly states that reasonable medical judgment is part of the decisionmaking process and provides for coordination and consultation with designated health care professionals in these difficult cases. I am particularly impressed by the provisions for training and technical assistance to improve the level of care and support provided both to the infants and to their families.

The act also continues Federal programs supporting the adoption of special-needs children, increasing their authorization levels to $5 million, a modest but significant increase over the previous level of $2 million. This bill contains important provisions for adoptive family and minority group consultation, encouragement of private sector support for adoption services, and a national study of unlicensed adoption and child placement operations.

I urge my colleagues to give this bill unanimous support.●

Mr. LONG. Mr. President, will the Senator object to having the yeas and nays ordered on final passage of the bill?

Mr. HATCH. We have a number of Senators who would not like to have the yeas and nays. I would like to have the yeas and nays, but I would like to accommodate other Senators.

Mr. LONG. It is all right with me to go to third reading and have the yeas and nays tomorrow. I would like to have a rollcall vote on the bill.

It is my understanding that a message has been sent out on the Democratic hotline that there may be further votes tonight.

Mr. HATCH. I told everybody that I did not think there would be, but I could not guarantee it.

Mr. LONG. It seems to me that we should have a vote on the bill. I would like to be on record.

Mr. HATCH. Mr. President, if I may finish——

Mr. LONG. May we have the yeas and nays on the bill?

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, as agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 1904, Calendar No. 647.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 1904) to extend and improve the provisions of the Child Abuse Prevention and Treatment Act and the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. HATCH. Mr. President, I move to strike all after the enacting clause of H.R. 1904 and to insert in lieu thereof the text of S. 1003, as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Utah.

The motion was agreed to.

Mr. LONG. Mr. President, it is my understanding that the yeas and nays were ordered on the Senate bill and not on the bill now before us.

I ask to have the yeas and nays on the bill that is now pending.

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

The yeas and nays were ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that we vitiate the yeas and nays on the Senate bill.

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

The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Colorado [Mr. ARMSTRONG], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Oregon [Mr. PACKWOOD], the Senator from Illinois [Mr. PERCY], the Senator from Vermont [Mr. STAFFORD], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania [Mr. HEINZ], would vote "yea."

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES], the Senator from Colorado [Mr. HART], the Senator from Hawaii [Mr. INOUYE], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Massachusetts [Mr. TSONGAS] are necessarily absent.

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

The result was announced—yeas 89, nays 0, as follows:

[Rollcall Vote No. 199 Leg.]

YEAS—89

Abdnor	Ford	Metzenbaum
Andrews	Garn	Mitchell
Baker	Glenn	Moynihan
Baucus	Goldwater	Murkowski
Bentsen	Gorton	Nickles
Biden	Grassley	Nunn
Bingaman	Hatch	Pell
Boren	Hatfield	Pressler
Boschwitz	Hawkins	Proxmire
Bradley	Hecht	Pryor
Bumpers	Heflin	Quayle
Burdick	Helms	Randolph
Byrd	Hollings	Riegle
Chafee	Huddleston	Roth
Cochran	Humphrey	Rudman
Cohen	Jepsen	Sarbanes
Cranston	Kassebaum	Sasser
D'Amato	Kasten	Simpson
Danforth	Kennedy	Specter
DeConcini	Lautenberg	Stennis
Denton	Laxalt	Stevens
Dixon	Leahy	Thurmond
Dodd	Levin	Tower
Dole	Long	Trible
Domenici	Lugar	Wallop
Durenberger	Mathias	Warner
Eagleton	Matsunaga	Weicker
East	Mattingly	Wilson
Evans	McClure	Zorinsky
Exon	Melcher	

NOT VOTING—11

Armstrong	Inouye	Stafford
Chiles	Johnston	Symms
Hart	Packwood	Tsongas
Heinz	Percy	

So the bill (H.R. 1904), as amended, was passed.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I move that the Senate insist on its amendments, and request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the following conferees.

The motion was agreed to, and the Chair appointed the following conferees; Senator HATCH, Senator DENTON, Senator NICKLES, Senator KENNEDY, and Senator DODD.

Mr. HATCH. Mr. President, I move to indefinitely postpone Calendar No. 171, S. 1003.

The motion was agreed to.

Mr. HATCH. Mr. President, I congratulate all of the respective Senators and staffs for the wonderful work they have done on this very historic bill.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, if I could have the attention of the Senate, I believe there will be one more record vote tonight. I think it can begin within the next 5 minutes or so. I urge Senators to pay attention of what we are about to do.

Senator MOYNIHAN has proposed a Social Security amendment to the previous bill.

The distinguished chairman of the Finance Committee indicated that he would cooperate in trying to find another vehicle for that. I am happy to report that the chairman of the Finance Committee has found such a vehicle.

I report as well that I support this, and the administration supports this action. The amendment about to be proposed by Senator MOYNIHAN and Senator DOLE, I believe, we can move on now with a minimum of difficulty.

Mr. President, I ask unanimous consent that the Senate temporarily lay aside the Hoover Dam bill.

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

SOCIAL SECURITY COST-OF-LIVING ADJUSTMENTS IN 1985

Mr. BAKER. Mr. President, I further ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 1428, and that the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 1428) for the relief of the estate of Nell J. Redfield.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, H.R. 1428 is a House-passed private relief bill to provide an estate tax credit to the Redfield estate to facilitate Federal acquisition of forest land.

The relief was recently enacted as part of the Deficit Reduction Act, H.R. 4170. Thus, there is no need to deal further with the substance of H.R. 1428.

AMENDMENT NO. 3423

(Purpose: To provide that there will be a cost-of-living increase in social security and SSI benefits for 1985 without regard to whether the 3 percent threshold is met)

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

Mr. MOYNIHAN. Mr. President, I move that all after the enacting clause be stricken, and I send an amendment to the desk on behalf of myself and Mr. DOLE, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New York [Mr. MOYNIHAN], for himself, Mr. DOLE, and Mr. BRADLEY, proposes an amendment numbered 3423.

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

31-059 O-87-37 (Pt. 15)

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

The amendment is as follows:

Strike all after the enacting clause and insert:

That (a) in determining whether the base quarter ending on September 30, 1984, is a cost-of-living computation quarter for the purposes of the cost-of-living increases under sections 215(i) and 1617 of the Social Security Act, the phrase "is 3 percent or more" appearing in section 215(i)(1)(B) of such Act shall be deemed to read "is greater than zero".

(b) For purposes of section 215(i) of such Act, the provisions of subsection (a) shall not constitute a "general benefit increase".

Mr. MOYNIHAN. Mr. President, I rise today to offer legislation that would ensure a cost of living increase in January 1985 for the Nation's Social Security and supplemental security income beneficiaries.

The Social Security Act provides for an automatic benefit increase in any year when the cost of living rises by 3 percent or more. Inflation, of late, has slowed markedly, and in most respects this is a welcome and happy event. But for aged and disabled Americans, lower inflation is a mixed blessing. Current projections for the increase in the Consumer Price Index from the third quarter of 1983 to the third quarter of 1984 are hovering just below 3 percent. While this may mean only slightly higher prices for the goods our elderly and disabled citizens must purchase, it also appears that, barring the change I am proposing, Social Security and SSI recipients will receive no cost of living increase.

The fact is, we are in a position to provide for this increase, because the trust funds are in satisfactory condition.

On January 15, 1983, the National Commission on Social Security Reform, on which I served, agreed to a set of recommendations to put Social Security on a firm financial footing. Our proposals became law 3 months later, and optimism about their efficacy has been vindicated. On April 5 of this year, the trustees of the Social Security trust funds—Treasury Secretary Donald T. Regan, Labor Secretary Raymond J. Donovan, and Health and Human Services Secretary Margaret M. Heckler—reported that benefits to be provided "under these programs can be paid well into the next century."

This 1984 trustees report assumed that in January 1985, benefits would increase 4.7 percent—that being the projected rise in the CPI. In 1985, that increase would cost the Social Security system $8.3 billion in benefit payments. If benefits were adjusted in January of next year based on a 2.9-percent CPI increase, the costs to the OASDI funds would be about $5 billion—roughly $3.3 billion less than is now incorporated in the trust fund projections.

Let me also note that over 2 years, this legislation will not cost the trust fund any substantial additional moneys. Under provisions of the Social Security Act, if recipients forfeit their COLA because the CPI rises less than 3 percent, the COLA for the following year would be based on the increase in the CPI over the previous 2 years. With this legislation, then, we simply would ensure that our elderly and disabled citizens receive their COLA's when they need it—when the CPI rises, without waiting an additional year. And let me mention another happy fact. The OASDI trust funds are in even sounder condition today than the 1984 trustee's report had estimated. That report predicted a trust fund balance in January 1985 of $27.7 billion. According to Social Security actuaries, the military adjustment payment to the trust funds will exceed the trustee's expectations by some $2.6 billion. Moreover, the current recovery is increasing revenues into the fund at a faster rate than expected. A timely COLA of just under 3 percent would leave the trust funds in a fine and healthy condition.

President Reagan now supports this increase in Social Security benefits.

This week, the President joined in the view of the trustees of the Social Security funds. The President's remarks are a happy, though somewhat belated, expression of confidence in the solvency of the Social Security funds. In effect, he acknowledged that the trust funds are healthy enough to provide benefit increases beyond those required by present law. Perhaps now, at last, the cosntant harping we have heard about the failings and possible demise of the Social Security system is at an end.

Single Americans on Social Security receive an average benefit of $425 a month, an annual income of just $5,100. This increase of roughly 3 percent will mean about $12 more each month, or $144 a year. The average benefit for aged couples on Social Security, about $700 a month, would be increased by roughly $21 per month. That means $252 more a year for a couple living now on just $8,400. Among the most poor aged—those receiving SSI—this increase will mean $108 more per year for an individual now living on less than $3,800, and $168 more per year for a couple now receiving less than $5,700 in annual support.

These certainly are small sums for individuals, but they maintain the buying power of their current incomes. These increases just keep pace with actual inflation, inflation which elderly and disabled Americans cannot offset, like some of the rest of us, by working harder.

This increase of about 3 percent will keep almost a half million elderly and disabled Americans above the poverty line, according to estimates by the American Association of Retired Persons. Can we do otherwise? Can we sit by and watch a half million of our elderly and disabled citizens slip below the poverty line? They deserve—indeed, have earned—this cost of living adjustment.

I invite my colleagues to join me in this effort to grant a cost of living adjustment to the millions of elderly, blind, and disabled Americans who receive Social Security and supplemental security income.

Mr. President, I am introducing this amendment with my good friends and colleagues, Senators DOLE, BRADLEY, and HART.

Mr. DOLE. Mr. President, this amendment would permit Social Security beneficiaries to receive their cost of living adjustment [COLA] in January 1985. Under the law, if inflation is very low—3 percent or less—the COLA is delayed until the following year. This has been a part of the law since Social Security was first indexed in 1972. It is in there only for administrative convenience, not as a solvency matter. Beneficiaries would ultimately receive the COLA; this amendment just ensures they receive it on time.

President Reagan, recently proposed this modification of the law.

I'd like to assure my colleagues that this in no way would affect the consensus reform package adopted last year. This amendment just modifies a technical provision in the law and does so for just 1 year, 1985. I would also like to point out that the Congress adopted this provision for the 1984 COLA in last year's Social Security amendments.

Under this amendment if inflation, measured from the third quarter of 1983 to the third quarter of 1984, should fall to less than 3 percent—to say 2.8 percent—a 2.8-percent COLA will be paid in January, rather than being deferred to 1986. The other indexed features of the Social Security program would also be increased on time—the exempt amount of earnings under the retirement-earnings test, the amount of taxable earnings, and the SSI COLA. If inflation does run below 3 percent, 2.8 percent, for example, the net costs will be about $3.0-$3.5 billion. If the inflation rate remains above 3 percent, as it certainly may, the amendment will have no effect at all.

I urge my colleagues to support this amendment. It ensures the Nation's elderly that they will receive their COLA on time, in January, and not find it delayed due to a technicality in the law that few are even aware of.

Mr. BRADLEY. Mr. President, I rise as a cosponsor of this amendment to ensure that Social Security recipients be provided with the cost-of-living ad-

justment that is due them this January.

Under current law, if the inflation rate over the past year is less than 3 percent, a COLA is not granted. Last year, the Congress delayed Social Security COLA's for 6 months—from June 1984 to January 1985.

Mr. President, inflation has been averaging approximately 3 percent over the past year. If the inflation rate comes out to just under 3 percent, Social Security recipients will be denied a COLA until January 1986. The last COLA was provided in June 1983. Unless we pass this legislation, Social Security recipients will have to wait 2½ years between COLA's. We can do better.

Mr. President, for the sake of fairness, I urge my colleagues to support this amendment.

Mr. MOYNIHAN. Mr. President, I assure the Senate that a very careful day was spent with the actuaries of the Social Security Administration, which convinces this Senator that this is wholly feasible, that the Social Security trust funds at the end of the 1985 will be by a considerable number larger than projected by the actuaries earlier this year.

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.

Mr. BAKER. Mr. President, assuming this amendment is adopted at this time, there will be no more record votes tonight.

Mr. DOLE. Mr. President, I indicate to the majority leader that this has been discussed with the White House, and they are very pleased that we are taking action on this this evening.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York. On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. HOLLINGS. Shameful.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Colorado [Mr. ARMSTRONG], the Senator from Oregon [Mr. PACKWOOD], the Senator from Wyoming [Mr. SIMPSON], the Senator from Vermont [Mr. STAFFORD], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES], the Senator from Colorado [Mr. HART], the Senator from Hawaii [Mr. INOUYE], the Senator from West Virginia [Mr. RANDOLPH], and the Senator from Massachusetts [Mr. TSONGAS] are necessarily absent.

The PRESIDING OFFICER (Mr. WILSON). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 87, nays 3, as follows:

[Rollcall Vote No. 200 Leg.]

YEAS—87

Abdnor	Exon	McClure
Andrews	Ford	Melcher
Baker	Garn	Metzenbaum
Baucus	Glenn	Mitchell
Bentsen	Goldwater	Moynihan
Biden	Gorton	Murkowski
Bingaman	Grassley	Nickles
Boren	Hatch	Nunn
Boschwitz	Hatfield	Pell
Bradley	Hawkins	Percy
Bumpers	Hecht	Pressler
Burdick	Heflin	Proxmire
Byrd	Heinz	Pryor
Chafee	Helms	Quayle
Cochran	Huddleston	Riegle
Cohen	Humphrey	Roth
Cranston	Jepsen	Rudman
D'Amato	Kassebaum	Sarbanes
Danforth	Kasten	Sasser
DeConcini	Kennedy	Specter
Denton	Lautenberg	Stevens
Dixon	Laxalt	Thurmond
Dodd	Leahy	Tower
Dole	Levin	Trible
Domenici	Long	Wallop
Durenberger	Lugar	Warner
Eagleton	Mathias	Weicker
East	Matsunaga	Wilson
Evans	Mattingly	Zorinsky

NAYS—3

Hollings	Johnston	Stennis

NOT VOTING—10

Armstrong	Packwood	Symms
Chiles	Randolph	Tsongas
Hart	Simpson	
Inouye	Stafford	

So the amendment (No. 3423) was agreed to.

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 of the amendments and the third reading of the bill.

The amendments were 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. 1428), as amended, was passed.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

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

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

Amend the title so as to read:

An act to insure the payment of Social Security cost of living adjustments in 1985.

The PRESIDING OFFICER. The question is on agreeing to the amendment to amend the title.

The amendment was agreed to.

Mr. STEVENS. Mr. President, I enter a motion to reconsider the vote on amendment No. 3423, I enter a motion to reconsider the third reading of this bill, and I enter a motion to reconsider the final passage of the bill, H.R. 1428.

NOMINATION OF JAMES HARVIE WILKINSON III TO BE U.S. CIRCUIT JUDGE

Mr. TRIBLE. Mr. President, earlier today the Senator from Massachusetts repeated the same insubstantial and irrelevant allegations regarding the nomination of J. Harvie Wilkinson III as he has advanced in the past. The same arguments were rejected by this body 54 to 36 on a vote to recommit the nomination to the Judiciary Committee. I regret that this nomination has fallen prey to petty partisanship by Senator KENNEDY.

But I regret most the Senator's unfortunate characterization of the distinguished chairman of the Judiciary Committee and his handling of J. Harvie Wilkinson's nomination to the Fourth U.S. Circuit Court of Appeals.

To even insinuate that Senator THURMOND has, in some way, stonewalled this nomination is both incorrect and manifestly unfair. The record clearly shows that Senator THURMOND, in his capacity as Judiciary Committee chairman, has acted fairly and evenhandedly in all of these proceedings.

Senator KENNEDY knows very well that there have been two separate hearings before the committee on this nomination—neither of which he nor any other Democratic member attended.

Also, since the nomination was first made in November 1983, Senator THURMOND has three times—three times—held over action on it in an effort to accommodate minority members of the committee.

Those are not the actions of a man trying to stonewall a nomination. Senator THURMOND is too gracious a gentleman to come to his own defense in this matter, but I feel that the record must correctly reflect the fair and open manner in which this nomination has been handled by the Judiciary Committee chairman.

It is, quite simply, time to vote on this nomination. Senator THURMOND has urged us to do that, and has instructed members of the committee who have continuing objections about Mr. Wilkinson's qualifications or the ABA rating system to express themselves in a vote on this nomination. However, to hold up one nomination for this long is neither accommodating nor constructive.

There are hearings pending by the Judiciary Subcommittee on the Courts regarding the ABA rating system. I urge those Senators with concerns about that system to attend those hearings and to participate if they so wish. In the meantime, it is time to

move on with this nomination and get on with the Nation's business.

MESSAGES FROM THE HOUSE

At 11:11 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 5712) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1985, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of two Houses thereon, and appoints Mr. SMITH of Iowa, Mr. ALEXANDER, Mr. EARLY, Mr. DWYER of New Jersey, Mr. MRAZEK, Mr. CARR, Mr. WHITTEN, Mr. O'BRIEN, Mr. MILLER of Ohio, Mr. PORTER, and Mr. CONTE as managers of the conference on the part of the House.

The message also announced that the House has passed the bill (S. 1146) to amend the Federal Aviation Act of 1958 to provide for the revocation of the airman certificates and for additional penalties for the transportation by aircraft of controlled substances, and for other purposes, with an amendment; it insists upon its amendment to the bill, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. MINETA, Mr. ANDERSON, Mr. ROE, Mr. SNYDER, and Mr. HAMMERSCHMIDT as managers of the conference on the part of the House.

The message further announced that the House agrees to the amendment of the Senate to the following bills:

H.R. 559. An act to amend the Securities Exchange Act of 1934 to increase the sanctions against trading in securities while in possession of material nonpublic information; and

H.R. 1310. An act to provide assistance to improve elementary, secondary, and postsecondary education in mathematics and science; to provide a national policy for engineering, technical, and scientific personnel; to provide cost sharing by the private sector in training such personnel; to encourage creation of new engineering, technical, and scientific jobs, and for other purposes.

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

H.R. 5223. An act to exempt restaurant central kitchens from Federal inspection requirements;

H.R. 5358. An act to enable honey producers and handlers to finance a nationally coordinated research, promotion, and consumer information program designed to expand their markets for honey;

H.R. 5541. An act to amend the Communications Act of 1934 to extend certain authorizations of appropriations contained in such Act, and for other purposes;

H.R. 5833. An act to improve certain maritime programs of the Department of Transportation and the Department of Commerce; and

H.R. 5890. An act to establish a commission to assist in the first observance of the Federal legal holiday honoring Martin Luther King, Jr.

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

H. Con. Res. 340. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 559.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 5223. An act to exempt restaurant central kitchens from Federal inspection requirements; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5358. An act to enable honey producers and handlers to finance a nationally coordinated research, promotion, and consumer information program designed to expand their markets for honey; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5541. An act to amend the Communications Act of 1934 to extend certain authorizations of appropriations contained in such act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 5833. An act to improve certain maritime programs of the Department of Transportation and the Department of Commerce; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The Committee on the Judiciary was discharged from the further consideration of the following joint resolutions which were placed on the calendar:

S.J. Res. 272. Joint resolution recognizing the anniversaries of the Warsaw uprising and the Polish resistance to invasion of Poland during World War II; and

S.J. Res 323. Joint resolution designating August 1984 as "Polish American Heritage Month."

The Committee on Foreign Relations was discharged from the further consideration of the following concurrent resolution; which was placed on the calendar:

H. Con. Res. 331. Concurrent resolution to condemn the closing of ABC Color, the only independent newspaper in Paraguay, and to urge the Government of Paraguay to permit the reopening of that newspaper, and to guarantee freedom of the press.

MEASURES HELD AT THE DESK

The following bill was ordered held at the desk until the close of business on July 27, 1984, by unanimous consent:

H.R. 5890. An act to establish a commission to assist in the first observance of the Federal legal holiday honoring Martin Luther King, Jr.

The following concurrent resolution was ordered held at the desk pending further disposition, by unanimous consent:

H. Con. Res. 340. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 559.

ENROLLED BILL PRESENTED

The Secretary reported that on today, July 26, 1984, he had presented to the President of the United States the following enrolled bill:

S. 373. An act to provide for a comprehensive national policy dealing with national research needs and objectives in the Arctic, for a National Critical Materials Council, for development of a continuing and comprehensive national materials policy, for programs necessary to carry out that policy, including Federal programs of advanced materials research and technology, and for innovation in basic materials industries, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3587. A communication from the Secretary of Agriculture and the Secretary of the Army, transmitting, pursuant to law, notice of the intention of the Departments of the Army and Agriculture to interchange jurisdiction of certain Army Corps of Engineers lands and Forest Service lands in Kentucky; to the Committee on Energy and Natural Resources.

EC-3588. A communication from the Administrator of the Environmental Protection Agency transmitting, pursuant to law, the national statistical assessment of rural drinking water conditions; to the Committee on Environment and Public Works.

EC-3589. A communication from the Acting Commissioner of Social Security transmitting, pursuant to law, a notice of a computer matching program between the Social Security Administration and State records of individual interest income reported by financial institutions; to the Committee on Governmental Affairs.

EC-3590. A communication from the law firm of LeBoeuf, Lamb, Leiby & MacRae transmitting, pursuant to law, the 1983 annual report of independent auditors who have audited the records of the National Council on Radiation Protection and Measurements; to the Committee on the Judiciary.

EC-3591. A communication from the law firm of Sutherland, Asbill & Brennan transmittion, pursuant to law, the 1983 Pacific Tropical Botanical Garden Annual Audit Report; to the Committee on the Judiciary.

EC-3592. A communication from the Secretary of Education transmitting, pursuant to law, final regulations for the Regional Education Laboratories and Research and Development Centers Program; to the Committee on Labor and Human Resources.

EC-3593. A communication from the Administrator of the Veterans Administration transmitting, pursuant to law, the 1983 annual report of the Administrator of Vet-

erans Affairs; to the Committee on Veterans Affairs.

EC-3594. A communication from the Acting Assistant Secretary of the Army for Installations and Logistics transmitting, pursuant to law, notice of a decision to convert the custodial services at the U.S. Army Medical Department Activity, Fort Carson, Colorado to performance under contract; to the Committee on Armed Services.

EC-3595. A communication from the Deputy Assistant Secretary of Defense transmitting, pursuant to law, to exclude certain records from examination by the Comptroller General relating to recurring activities in Oman; to the Committee on Armed Services.

EC-3596. A communication from the Director of the Defense Security Assistance Agency transmitting, pursuant to law, a report on a foreign military sale to Thailand; to the Committee on Armed Services.

EC-3597. A communication from the Director of the Defense Security Assistance Agency transmitting, pursuant to law, a report on a foreign military assistance sale to Korea; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. COCHRAN, from the Committee on Appropriations, with amendments:

H.R. 5743: A bill making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1985, and for other purposes (Rept. No. 98-566).

By Mr. MATTINGLY, from the Committee on Appropriations, with amendments:

H.R. 5898: A bill making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1985, and for other purposes (Rept. No. 98-567).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

Walter T. Cox, III. of South Carolina, to be a Judge of the United States Court of Military Appeals for fifteen years.

Mr. THURMOND. Mr. President, from the Committee on Armed Services, I report favorably the following nominations: Lt. Gen. George M. Browning, Jr., U.S. Air Force (age 55), to be placed on the retired list, Maj. Gen. Casper T. Spangrud, U.S. Air Force, to be lieutenant general, Rear Adm. Thomas E. Flynn, U.S. Navy, to be Judge Advocate General of the Navy, Gen. Wilbur L. Creech, U.S. Air Force (age 57), to be placed on the retired list, and Gen. Jerome F. O'Malley, U.S. Air Force, to be reassigned. I ask that these names be placed on the Executive Calendar.

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

Mr. THURMOND. Mr. President, in addition, in the Air Force there are 35 appointments to the grade of colonel and below (list begins with David E. Ternes), in the Air Force there are 14 appointments to the grade of lieutenant colonel (list begins with Charles E. Cook), in the Army Reserve there are 272 promotions to the grade of colonel and below (list begins with John W. Gaines), and in the Navy and Navy Reserve there are 18 appointments to the grade of captain and below (list begins with Robert K. Yoho). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of June 28 and June 29, 1984 at the end of the Senate proceedings.)

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. LEAHY:

S. 2869. A bill to amend the Internal Revenue Code of 1954 to provide an income tax credit for expenses incurred by an individual taxpayer for the purchase of television subtitle equipment to be used by a hearing-impaired individual; to the Committee on Finance.

By Mr. HATCH:

S. 2870. A bill to amend the Higher Education Act of 1965, to establish a financial assistance program emphasizing student self-help, to enhance the equity and effectiveness of Federal programs in support of higher education, to increase flexibility and simplify higher education programs, and for other purposes; to the Committee on Labor and Human Resources.

S. 2871. A bill to improve the operation of the chapter 1 program authorized under the Education Consolidation and Improvement Act of 1981, to improve the effectiveness of migrant education programs, to provide for use of the most recent available decennial census information, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. GRASSLEY:

S. 2872. A bill to reform the Residential Conservation Service and to repeal the Commercial and Apartment Conservation Service, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MOYNIHAN (for himself, Mr. HART, and Mr. BRADLEY):

S. 2873. A bill to provide that there will be a cost-of-living increase in social security and SSI benefits for 1985 without regard to whether the 3-percent threshold is met; to the Committee on Finance.

By Mr. PACKWOOD:

S. 2874. A bill to amend title 49, United States Code, to reduce regulation of surface freight forwarders, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HOLLINGS (for himself, Mr. KENNEDY, Mr. LAUTENBERG, Mr. RIEGLE, Mr. WEICKER, Mr. LEVIN, Mr. METZENBAUM, Mr. BRADLEY, Mr. BINGAMAN, Mr. SASSER, Mr. MITCHELL, Mr. FORD, Mr. SARBANES, and Mr. TSONGAS):

S. 2875. A bill to establish qualifications for individuals appointed to the National Advisory Committee on Oceans and Atmosphere to authorize appropriations for fiscal year 1985, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. PERCY:

S. 2876. A bill to amend title 18, United States Code, to improve collection and administration of criminal fines, and for other purposes; to the Committee on the Judiciary.

By Mr. BRADLEY:

S. 2877. A bill relating to the tariff treatment of certain canned mushrooms; to the Committee on Finance.

By Mr. HATCH (for himself and Mr. QUAYLE):

S. 2878. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish conditions for the export of drugs; to the Committee on Labor and Human Resources, by unanimous consent, pursuant to the order of July 26, 1984.

By Mr. DENTON (for himself, Mr. LEAHY, Mr. THURMOND, Mr. BIDEN, Mr. BAUCUS, Mr. D'AMATO, Mr. DECONCINI, Mr. DOLE, Mr. EAST, Mr. GLENN, Mr. GOLDWATER, Mr. GRASSLEY, Mr. HART, Mr. HATCH, MRS. HAWKINS, Mr. HEFLIN, Mr. HELMS, Mr. INOUYE, Mr. JEPSEN, Mr. LAXALT, Mr. LUGAR, Mr. METZENBAUM, Mr. RANDOLPH, Mr. SPECTER, Mr. SYMMS, and Mr. TRIBLE):

S.J. Res. 336. A joint resolution to proclaim October 23, 1984, as "A Time of Remembrance" for all victims of terrorism throughout the world; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY:

S. 2869. A bill to amend the Internal Revenue Code of 1954 to provide an income tax credit for expenses incurred by an individual taxpayer for the purchase of television subtitle equipment to be used by a hearing-impaired individual; to the Committee on Finance.

(The remarks of Mr. LEAHY and the text of this legislation appear earlier in today's RECORD.)

By Mr. HATCH:

S. 2870. A bill to amend the Higher Education Act of 1965, to establish a financial assistance program emphasizing student self-help, to enhance the equity and effectiveness of Federal programs in support of higher education, to increase flexibility and simplify higher education programs, and for other purposes; to the Committee on Labor and Human Resources.

HIGHER EDUCATION AMENDMENTS

Mr. HATCH. Mr. President, today I am introducing a bill to authorize needed initiatives included in the President's fiscal year 1985 budget which will encourage student self-help

efforts, improve the effectiveness and efficiency of our student aid and other higher education programs, reduce waste and program abuse, and more equitably distribute Federal assistance to disadvantaged students.

In general, the authority for Higher Education Act programs will expire at the end of fiscal year 1985. The Department of Education is not proposing extension of the act at this time. The Secretary is continuing to study the need for long-term legislative changes in these programs, and will forward his proposals for reauthorization of the Higher Education Act at a later date.

Over the past decade, annual Federal appropriations for student assistance programs have increased by $4.6 billion, a 373-percent increase. This increase has, unfortunately, been accompanied by a shift in the traditional responsibility for financing college costs from students and families toward the Federal Government.

At many schools, average student contributions for relatively better off individuals represent only a small share of education costs, and do not begin to reflect actual student earning or borrowing capacities. Excessive reliance on federally supported student financial assistance abuses the spirit of student aid, which should supplement, not replace, other sources of college financing.

STUDENT SELF-HELP INITIATIVE

A major purpose of this legislation is to promote the principle that postsecondary students should be expected to contribute to their own education costs before Federal grant assistance is provided. This policy would be implemented by first, increasing college work-study support by $295 million in fiscal year 1985—representing a potential increase of some 335,000 student jobs; second, making work-study funds more flexible for use in job search and grants where appropriate; third, extending the need test for guaranteed student loans [GSL] to students of all family income levels; and, fourth, restructuring the Pell grant into a Pell self-help grant explicitly designed to supplement family and student contributions. This reformed grant program, in tandem with the federally subsidized work and loan programs, would continue to ensure financial access to moderately priced institutions and would broaden the institutional choice of financially needy students.

STUDENT GRANTS

This bill includes provisions designed to encourage student self-help and to better target Federal grant aid toward students with the greatest need. Under the amended Pell grant program, student awards would become subject to reasonable self-help expectations. The grant amount and self-help expectations would vary with education costs so that needy students interested in attending higher cost schools and willing to undertake greater self-help efforts could receive additional Federal grant assistance.

In place of the current half-cost limit, the Pell self-help grant would be limited to 60 percent of educational costs minus the expected family contribution, with a minimum student self-help expectation of $500. The maximum Pell award would be increased to $3,000. The expected family contribution [EFC] would be taken into account in determining the Pell awards of all students—eliminating an inequity in the current program whereby the EFC's of some students—those affected by the half-cost rule—are ignored.

The combination of Pell self-help and supplemental grant [SEOG] awards would be limited to 60 percent of educational costs or $500, whichever is less, minus the expected family contribution. Also, the receipt of SEOG and Pell awards by a particular student would be generally limited to 4 academic years—restoring a reasonable limit which was repealed in 1980.

WORK-STUDY/COOPERATIVE EDUCATION

The bill would increase to $850 million the 1985 work-study authorization level, and also increase institutional discretion in the use of these funds. While it is expected that the work-study program will be used primarily to finance employment—self-help—opportunities, it is recognized that in special circumstances an institutionally based grant might be required to complete the financial aid package for a needy student. Therefore, participating institutions would be allowed to use up to 50 percent of their work-study funding for making supplemental grants. The institutional allocation provisions would be simplified and made more equitable, with State allotments based solely on relative full-time equivalent enrollment subject to a fiscal year 1984 hold-harmless level. All other hold-harmless provisions would be repealed.

The amount of an institution's work-study funds which may be used to administer a job location and development program would be expanded from $25,000—or 10 percent of the allocation—to $100,000—no percentage limit. Schools would also be authorized to use all or any part of this amount for purposes of administering cooperative education, and/or adult literacy programs. This new approach to Federal support for cooperative education is designed to consolidate funding for federally sponsored student employment programs under a broader and more flexible program—through which institutional and student participation in cooperative education programs may be substantially expanded in light of the funding level we are seeking for work-study.

STUDENT LOANS

The bill includes several important amendments to the Guaranteed Student Loan [GSL] Program. All applicants for regular GSL's would become subject to the need analysis limitation which now applies only to those with adjusted family income above $30,000, thus eliminating loans to those who do not need them and the related Federal subsidy costs while improving equity in student treatment. The less subsidized auxiliary loan component of the GSL Program would remain nonneed based, and could be used to meet expected family contributions derived from need analysis.

The administration is proposing several amendments which are designed to reestablish State cost sharing in meeting the administrative and default costs associated with the GSL Program. All current interest-free Federal loan advances to guarantee agency reserve funds would be returned by October 1, 1985. The two guarantee agency administrative allowances based on new loan volume would be repealed. The agencies would still be allowed to retain up to 30 percent of default collections to help meet administrative costs. Federal reinsurance would be reduced from 100 percent—generally—to 80 percent of default costs. These measures would create new incentives for State level efforts to control GSL default and administrative costs.

This proposal would repeal existing provisions which place various limits on GSL's made and originated by eligible educational institutions. These limitations restrict loan access, impose unreasonable administrative burdens on program participants and have proven to be administratively unworkable. Moreover, they fail to address the main problems caused by origination relationships—the increased likelihood that unsophisticated borrowers will not be made to understand that they are receiving loans, not grants, and that borrowers will refuse to repay their loans if they are dissatisfied with the education they receive. These problems are adequately addressed by current regulations of the Secretary and the Federal Trade Commission and by common law agency principles.

In the National Direct Student Loan [NDSL] Program, Federal cancellation payments to educational institutions related to outstanding loans to individuals in certain occupations would be based only on the original institutional investment. Institutions would not have to reinvest these repayments in the NDSL program as is now required. The NDSL interest rate would be increased from 5 to 8 percent—the current GSL rate—effective for loans made after June 30, 1985. This would establish some degree of equity be-

tween NDSL and GSL and increase the flow of funds available for new loans in a reasonable way without new Federal capital appropriations.

This bill also includes several student loan technical and administrative improvement amendments, and it includes amendments designed to make the plus/auxiliary loan program more workable and more attractive to lenders and students.

INSTITUTIONAL AID—DEVELOPING INSTITUTIONS

Title III of the Higher Education Act would be substantially simplified—by merging parts A and B, and reducing eligibility requirements. Greater emphasis would be placed on endowment building and institutional graduation to self-sufficienty. The bill provides for 1- to 5-year nonrenewable strengthening institutions grants which would require institutional matching of 10, 20, and 30 percent for the third years of the award eligibility period. Graduates of this new part A program would be eligible for further title III aid only under the endowments grant—new part B—program. Set-aside provisions for 2-year and historically black institutions—25 percent of the appropriation, and $45.7 million respectively—would be simplified and applied to the entire title.

SPECIAL PROGRAMS FOR THE DISADVANTAGED [TRIO]

The bill includes amendments which simplify these programs, reduce administrative burden, and provide for a more equitable and effective distribution of Federal funds. The very similar talent search and educational opportunity centers programs would be consolidated, and the staff training program would be eliminated. Special services and upward bound grantees could use their awards for the new consolidated program. Special services grantees would be required to share increasingly in the costs of their projects and to graduate from Federal funding for these activities after 5 years. The upward bound institutional participants would be required to provide 10 percent of project costs and the consolidated talent search and assistance program would require institutions to meet 25 percent of costs.

FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION [FIPSE]

By providing that institutions must meet 50 percent of projects costs, the bill would require a demonstration of institutional commitment and recognize that institutions derive direct benefits from these awards. Currently, institutions meet about 40 percent of project costs. The amendment would allow an estimated 20 additional comprehensive program grants under level funding.

Mr. President, I believe that, if enacted, this higher education legislation would substantially improve the effectiveness of Federal student financial assistance and other higher education programs and would result in a more equitable distribution of limited Federal resources. I ask that the full text of the bill along with a section-by-section analysis of it be included in the RECORD immediately following my remarks.

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

S. 2870

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Higher Education Amendments of 1984".

TITLE I—INSTITUTIONAL AID NEW CONSOLIDATED PROGRAM

SEC. 101. Part B of title III of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; hereinafter in this Act referred to as "the Act") is repealed.

SEC. 102. Section 311(a) of the Act is amended by inserting a comma and "help meet their special needs" immediately after "self-sufficiency".

DEFINITIONS

SEC. 103. (a) Section 312 of the Act is amended by inserting "(a)" immediately before "For purposes of this part".

(b) Section 312(a)(2) of the Act (as redesignated by subsection (a)) is amended—

(1) in subparagraph (A)(i) by striking out ", the average amount of which is high in comparison with the average amount of all grants awarded under such subpart to students at such institutions" each place it appears;

(2) in subparagraph (A)(ii) by striking out "undergraduate" each place it appears;

(3) in subparagraph (A)(v)(II) by striking out "and" at the end thereof;

(4) by redesignating clause (vi) of subparagraph (A) as clause (vii);

(5) in subparagraph (A) by inserting immediately after clause (v) the following new clause:

"(vi) has an enrollment of not less than 100 full-time equivalent students in the academic year for which the determination is made; and";

(6) in subparagraph (B) by striking out "and (ii) of such subparagraph." and inserting in lieu thereof a comma and the following: "(ii), and (vi) of such subparagraph, and which is located in a community different from that in which its parent institution is located."; and

(7) by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "and the Secretary may also consider the factors specified in subsection (b).".

(c) Section 312(a)(3) of the Act (as redesignated by subsection (a)) is further amended by striking out "(determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by twelve)".

(d) Section 312 of the Act is further amended by adding at the end thereof the following new subsection:

"(b) In determining whether an institution is an eligible institution under subsection (a)(2), the Secretary may also consider the following factors:

"(1) extreme financial limitation requiring low faculty salaries, low costs of instruction for students, and low library expenditures;

"(2) little or no endowment, whether or not unrestricted;

"(3) a high student to faculty ratio;

"(4) a substantial percentage of students receiving need-based Federal student assistance;

"(5) limited library resources;

"(6) a low percentage of faculty with doctorate degrees;

"(7) poor physical facilities and limited resources to maintain physical facilities;

"(8) little or no support from foundations, alumni, or corporations;

"(9) limited or no sponsored research or faculty publications;

"(10) inadequate development offices and a limited capacity for long-range planning; and

"(11) poor or inadequate fiscal management and accounting procedures.".

DURATION OF A GRANT

SEC. 104. (a) Section 313(a) of the Act is amended to read as follows:

"(a) The Secretary may award a grant to an eligible institution under this part for a period of not more than five years, subject for each fiscal year to the availability of appropriations.".

(b) Section 313(b) of the Act is amended by striking out "subsection (a)(2)" and inserting in lieu thereof "subsection (a)".

(c) Section 313(c) of the Act is amended by inserting before the period at the end thereof a comma and the following: "provided that such institution has not received a grant under this subsection for any prior fiscal year".

FEDERAL SHARE AND TRANSITION PROVISIONS

SEC. 105. Part A of title III of the Act is amended by adding at the end thereof the following new sections:

"FEDERAL SHARE

"SEC. 314. The Federal share of the cost of a grant made to an eligible institution under this part shall be 100 per centum for the first two years in which an institution receives a grant, 90 per centum for the third year an institution receives a grant, 80 per centum for the fourth year an institution receives a grant, and 70 per centum for the fifth year an institution receives a grant.

"TRANSITION

"SEC. 315. (a) During the period beginning October 1, 1984, and ending September 30, 1988, the Secretary is authorized to make continuation awards under this part to any eligible institution which received a multiple year grant awarded prior to October 1, 1984, under section 311 or 321 of the Act as in effect on September 30, 1984.

"(b) No institution shall receive a grant under this section or under—

"(1) section 311 as in effect on September 30, 1984, for a period of more than seven years in the aggregate; and

"(2) section 321 as in effect on September 30, 1984, for a period of more than five years in the aggregate.

"(c) An institution which has received a continuation award for the maximum period described in subsection (b) shall not be eligible to receive a grant under this part.".

CHALLENGE GRANTS TRANSITION

SEC. 106. Part C of title III of the Act is redesignated as part B and the heading for such part is amended to read as follows: "PART B—CHALLENGE GRANT TRANSITION AWARDS".

SEC. 107. Sections 331 and 332 of the Act are repealed.

SEC. 108. Part B of title III of the Act (as redesignated by section 106) is further

amended by adding the following new section immediately after the heading:

"CONTINUATION AWARDS

"SEC. 321. (a) During the period beginning October 1, 1984, and ending September 30, 1988, the Secretary is authorized to make continuation awards under this part to any eligible institution which received a multiple year grant awarded prior to October 1, 1984, under section 331 of the Act as in effect on September 30, 1984.

"(b) No institution shall receive a grant under this section or section 331 as in effect on September 30, 1984, for a period of more than five years in the aggregate.".

ENDOWMENT GRANTS

SEC. 109. Title III of the Act is further amended by inserting the following heading immediately before section 333: "PART C—ENDOWMENT GRANTS".

SEC. 110. Section 333 of the Act is amended—

(1) in subsection (b)(4) by amending subparagraph (A) to read as follows:

"(4)(A) An institution of higher education is eligible to receive a grant under this section if—

"(i) it is an eligible institution under part A or would be considered to be such an institution if section 312(a)(2)(A)(iii) referred to a postgraduate degree rather than a bachelor's degree; or

"(ii) it is an institution of higher education which includes a substantial number of minority and educationally disadvantaged students, provides a medical education program which leads to a doctor of medicine degree or is not less than a two-year program fully acceptable toward such a degree, and in fiscal year 1980 received a grant as a two year medical school under section 788(a) of the Health Professions Educational Assistance Act of 1976."; and

(2) in subsection (f) by striking out "part A or B" and inserting in lieu thereof "part A".

GENERAL PROVISIONS

SEC. 111. (a) Section 341(b) of the Act is amended—

(1) in paragraph (2) by striking out "or 321(b)";

(2) in paragraph (8) by striking out subparagraph (C) and by redesignating subparagraphs (D), (E), (F), and (G) (as subparagraphs (C), (D), and (F), respectively; and

(3) in paragraph (8)(F) (as redesignated by paragraph (2)) by striking out "in subparagraph (F)" and inserting in lieu thereof "in subparagraph (E)".

(b) Section 342 of the Act is amended—

(1) in subsection (a)(1) by striking out—

(A) "or section 322(a)(2)(A)(ii)" and "or as an institution with special needs under part B (as the case may be)"; and

(B) "parts" and inserting in lieu thereof "part";

(2) in subsection (a)(2) by striking out "or section 322(a)(2)(A)(ii)", "or institution with special needs under part B, as the case may be", "or section 322(a)(2)(A)(ii), as the case may be", and "or as an institution with special needs under part B";

(3) in subsection (b) by striking out "and 322(a)(i)(v)"; and

(4) by striking out "section 312(2)(A)(ii)" each place it appears and inserting in lieu thereof "section 312(a)(2)(A)(ii)".

(c) Section 343 of the Act is amended—

(1) in subsection (a)(2)(A) by striking out "and of the types of activities referred to in section 321(b) that should receive special consideration for grants awarded under part B" before the semicolon at the end thereof; and

(2) in subsection (c) by striking out "Not later than June 30 of each year, the" and inserting in lieu thereof "The".

(d) Section 344 of the Act is amended—

(1) in subsection (a)—

(A) by striking out the dash and "(1)" before "with funds available to carry out part A,";

(B) by striking out paragraph (2); and

(C) by striking out "or section 321(b), as the case may be"; and

(2) in subsection (c) by striking out "or 323, as the case may be" before the period at the end thereof.

(e) Section 345 of the Act is amended—

(1) in subsection (a) by striking out "or an institution with special needs under part B"; and

(2) in subsection (b)(2) by striking out "title II, IV, VII, or VIII" and inserting in lieu thereof "title II, IV, or VII".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 112. (a) Section 347 of the Act is amended to read as follows:

"AUTHORIZATIONS

"SEC. 347. (a) There are authorized to be appropriated to carry out this title $134,416,000 for the fiscal year 1985.

"(b) Any funds made available under this section for grants under part C which are not expended during the fiscal year for which such funds were appropriated shall remain available for expenditure for the purpose of making grants until expended.

"(c) Of the sums appropriated under subsection (a) for the fiscal year 1985, the Secretary shall make available to use for the purpose of this title not less than 25 per centum to institutions that are junior or community colleges.

"(d) The Secretary shall reserve from the funds appropriated for the fiscal year 1985 under this title $45,741,000 for eligible institutions that have historically served substantial numbers of black students.".

TITLE II—STUDENT ASSISTANCE PART A—STUDENT GRANT AMENDMENTS

Subpart 1—Pell Self-Help Grants

NOMENCLATURE AMENDMENTS

SEC. 201. (a) Section 401(a)(1) of the Act is amended by striking out "basic educational opportunity grants (hereinafter referred to as 'basic grants')" and inserting in lieu thereof "Pell Self-Help Grants".

(b) The heading of subpart 1 of part A of title IV of the Act is amended by striking out "BASIC EDUCATIONAL OPPORTUNITY GRANTS" and inserting in lieu thereof "PELL SELF-HELP GRANTS".

(c) The heading immediately before section 411 of the act is amended by striking out "BASIC EDUCATIONAL OPPORTUNITY GRANTS" and inserting in lieu thereof "PELL SELF-HELP GRANTS".

(d) Section 411 of the Act is amended by striking out "basic grant" or "basic grants" each place they appear and inserting in lieu thereof "Pell Self-Help Grant" or "Pell Self-Help Grants", respectively.

(e) Section 411(a)(1)(C) of the Act is amended to read as follows: "(C) Grants made under this subpart shall be known as 'Pell Self-Help Grants'.".

PELL GRANT AWARD RULES

SEC. 202. (a) Section 411 (a)(1) of the Act is amended—

(1) by adding in subparagraph (A) at the end thereof the following: "A student may receive only one Pell Self-Help Grant for an academic year during an award year as defined by the Secretary.";

(2) by striking out subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

(b) Section 411(a)(2) of the Act is amended to read as follows:

"(2)(A) For academic year 1985-1986, the maximum Pell Self-Help Grant for an eligible student shall be $3,000. For each succeeding academic year, the Secretary shall establish the maximum Pell Self-Help Grant amount.

"(B) The amount of a Pell Self-Help Grant which an eligible student may be paid shall not exceed the lesser of—

"(i) the amount determined as the student's cost of attendance under section 413; minus the sum of (I) the amount determined as the student's expected family contribution under section 412 and (II) $500 for academic year 1985-1986, or such amounts as the Secretary shall establish for each succeeding academic year;

"(ii) the amount determined as the student's cost of attendance under section 413, minus the sum of (I) the amount determined as the student's expected family contribution under section 412 and (II) 40 per centum of the amount determined as the student's cost of attendance under section 413;

"(iii)(I) for academic year 1984-1986, the sum of 25 per centum of the amount determined as the student's cost of attendance under section 413 and $1000, minus the amount determined as the student's expected family contribution under section 412; or (II) for each academic year after 1985-1986, the sum of such per centum, as the Secretary shall establish, of the amount determined as the student's cost of attendance under section 413 and such additional amounts as the Secretary may establish, minus the amount determined as the student's expected family contribution under section 412; or

"(iv) the maximum Pell Self-Help Grant, minus the amount determined as the student's expected family contribution under section 412.

"(C) If a student attends an institution of higher education on less than a full-time basis during any academic year, the amount of the Pell Self-Help Grant which that student would otherwise be paid shall be reduced in proportion to the degree to which that student is not attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary. In no event shall the award exceed the amount specified in paragraph (2)(B)(i) and no award shall be made to a student attending an institution on less than a half-time basis.

"(D) No Pell Self-Help Grant shall be awarded to a student if the amount of the grant would be less than $100.".

(c) Section 411(a)(3) of the Act is amended to read as follows:

"(3) The period during which a student may receive Pell Self-Help Grants shall be the period required for the completion of the undergraduate course of study being pursued by that student at the institution at which the student is in attendance. A student who already has a baccalaureate degree shall not receive a Pell Self-Help Grant. The maximum eligibility period may not exceed four academic years unless—

"(A) the student is pursuing a course of study leading to a first degree which is designed by the institution offering it to cover a period of more than four but not more than five academic years;

"(B) the student is, or will be, unable to complete a course of study within four academic years because of a requirement of the institution that the student enroll in a course of study for which no credit is given toward an academic degree, and which is designed to increase the ability of the student to engage in an undergraduate course of study leading to such a degree; or

"(C) the student is, or will be, unable to complete a course of study within four academic years because of exceptional circumstances as determined by the Secretary. In any case in which subparagraph (A), (B), or (C) is applicable, the maximum eligibility period may not exceed five academic years.

(d) Section 411(a) of the Act is amended by adding at the end thereof the following new paragraph:

"(4) For purposes of determining the maximum eligibility period under paragraph (3), part-time enrollment shall be counted as a ratable portion of an academic year.".

FUNDING AMENDMENTS

SEC. 203. Section 411(b) of the Act is amended—

(1) by amending paragraph (3)(B) to read as follows:

"(B)(i) If the funds appropriated for payments under this subpart are insufficient to satisfy fully all entitlements as calculated under subsection (a)(2)(B), the amount paid to each eligible student shall be—

"(I) the full amount for any student whose expected family contribution is $100 or less; or

"(II) a percentage of that payment, as determined in accordance with a schedule of reductions established by the Secretary, for any student whose expected family contribution is more than $100.

"(ii) Any schedule established by the Secretary for the purpose of division (i) shall contain a single linear reduction formula in which the percentage reduction increases uniformly as the payment decreases, and shall provide that if a payment is reduced to less than $100, no payment shall be made.

"(iii) If the funds appropriated under this subpart for any fiscal year are insufficient to satisfy fully payments to students whose expected family contribution is $100 or less, the Secretary is further authorized to reduce payments to such students on an equitable basis, notwithstanding subsection (a)(2)(D).'"; and

"(2) Section 411 of the Act is amended by adding at the end thereof the following new subsection:

"(d) There are authorized to be appropriated to carry out this subpart $2,800,000,000 for fiscal year 1985.".

PELL SELF-HELP GRANT NEED ANALYSIS

SEC. 204. Subpart 1 of part A of title IV of the Act is amended by adding at the end thereof the following new sections:

"EXPECTED FAMILY CONTRIBUTIONS

"SEC. 412. (a) For the purpose of calculating a Pell Self-Help Grant under this subpart, the Secretary shall publish, in accordance with the notice and comment procedures of section 553 of title 5, United States Code, a schedule of expected family contributions for each academic year. Each schedule of expected family contributions shall contain the amounts, as determined by the Secretary, that a dependent student, his spouse, and his family, or an independent student and his spouse, may reasonably be expected to contribute to the student's postsecondary education for the academic year.

"(b) The Secretary shall base a schedule of expected family contributions on relevant factors which shall include, but not be limited to, the following:

"(1) the adjusted gross income, as defined under the Internal Revenue Code of 1954, for the base year as defined by the Secretary, of the student, his spouse, or his parents;

"(2) the Federal income tax paid by the student, his spouse, or his parents in the base year;

"(3) the income of the student, his spouse or his parents in the base year, (A) which is exempt in whole or in part from Federal income tax under the Internal Revenue Code of 1954, and (B) which the Secretary determines decreases the student's financial need;

"(4) the number of dependents who would qualify as exemptions of the student, his spouse, or his parents under the Internal Revenue Code of 1954 in the base year; and

"(5) the assets, as defined by the Secretary, of the student, his spouse, or his parents in the base year.

"(c) In determining the expected family contribution under this section for any academic year, the Secretary shall establish assessment rates to be applied to a family's discretionary income and assets.

"COST OF ATTENDANCE

"SEC. 413. (a) For the purpose of calculating the amount of a Pell Self-Help Grant under this subpart, the term 'cost of attendance' means the tuition and fees normally assessed a fulltime student at the institution at which the student is in attendance, plus additional amounts for living expenses as may be established by the Secretary.

"(b)(1) For academic year 1985-1986, the living expense allowance for a student not residing with his parents shall not exceed $3,000 and for a student residing with his parents such allowance shall not exceed $1,500.

"(2) For subsequent academic years, the Secretary shall set appropriate limits on living expense allowances.".

Subpart 2—Supplemental Educational Opportunity Grants

SUPPLEMENTAL GRANT AWARD RULES

SEC. 205. Section 413B of the Act is amended to read as follows:

"AMOUNT AND DURATION OF GRANTS

"SEC. 413B. (a) Each institution of higher education which receives funds under this subpart shall award supplemental grants to eligible students for each academic year in accordance with the requirements of this section.

"(b)(1) Except with respect to a student who has also received a Pell Self-Help Grant under section 411, the amount awarded as a supplemental grant to any student for an academic year shall be the amount determined by the institution, in accordance with a need analysis system approved by the Secretary, to be needed by such student for pursuing a course of study at the institution, except that such amount shall not exceed $2,000.

"(2) With respect to any student who has also received a Pell Self-Help Grant under section 411, the amount awarded as a supplemental grant to such student for an academic year shall be the amount determined by the institution, in accordance with a need analysis system approved by the Secretary, to be needed by such student for pursuing a course of study at the institution, except that such amount shall not exceed the lesser of—

"(A) $4,500, minus the amount of the student's Pell Self-Help Grant, minus the student's expected family contribution; or

"(B) 60 per centum of the cost of attendance, minus the amount of the student's Pell Self-Help Grant, minus the student's expected family contribution.

"(3) If the amount determined by an institution to be awarded to a student for an academic year is less than $100, no supplemental grant shall be awarded to such student for the academic year.

"(4) For purposes of this subsection, the terms 'expected family contribution' and 'cost of attendance' shall have the same meanings given to such terms under sections 412 and 413.

"(5) For any academic year after 1985-1986, the Secretary is authorized to change the base line figure of $4,500 in paragraph (1)(A) by regulation.

"(c)(1) The period during which a student may receive supplemental grants shall be the period required for the completion of the undergraduate course of study being pursued by that student at the institution at which the student is in attendance. A student who already has a baccalaureate degree shall not receive a supplemental grant. The maximum eligibility period may not exceed four academic years unless—

"(A) the student is pursuing a course of study leading to a first degree which is designed by the institution offering it to extend for a period of more than four but not more than five academic years;

"(B) the student is, or will be, unable to complete a course of study within four academic years because of a requirement of the institution that the student enroll in a course of study for which no credit is given toward an academic degree, and which is designed to increase the ability of the student to engage in an undergraduate course of study leading to such a degree; or

"(C) the student is, or will be, unable to complete a course of study within four academic years because of exceptional circumstances as determined by the Secretary. In any case in which subparagraph (A), (B), or (C) is applicable, the maximum eligibility period may not exceed five academic years.

"(2) For the purposes of determining the maximum eligibility period under paragraph (1), part-time enrollment shall be counted as a ratable portion of an academic year.".

COST SHARING

SEC. 206. Section 413D of the Act is amended by adding at the end thereof the following new subsection:

"(c) Each institution receiving funds under this section or under section 488 of the Act shall provide matching funds equal to 20 per centum of the amount received under such sections, in accordance with regulations prescribed by the Secretary.".

CONFORMING AMENDMENT

SEC. 207. Sections 3, 4, 5, and 6 of the Student Financial Assistance Technical Amendments of 1982 (P.L. 97-301, 96 Stat. 1400) as amended by section 4 of the Student Loan Consolidation and Technical Amendments Act of 1983 (P.L. 98-79, 97 Stat. 479) are repealed.

Subpart 3—State Student Incentive Grant

ELIMINATION OF MAINTENANCE OF EFFORT

SEC. 208. Section 415C(b) of the Act is amended—

(1) by adding "and" at the end of paragraph (6);

(2) by striking out paragraph (7); and

(3) by redesignating paragraph (8) as paragraph (7).

PART B—GUARANTEED STUDENT LOAN PROGRAM

SEC. 211. The heading of part B of title IV of the Act is amended to read as follows: "PART B—GUARANTEED STUDENT LOAN PROGRAM".

ELIGIBILITY FOR SUBSIDIZED LOANS

SEC. 212. Section 428(a)(2) of the Act is amended—

(1) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(2)(A) To qualify for a portion of an interest payment under paragraph (1), a student shall provide to the lender a statement from the eligible institution at which the student has been accepted for enrollment, or at which the student is in attendance, which—

"(i) sets forth the amount of such student's estimated cost of attendance;

"(ii) sets forth the amount of such student's estimated financial assistance (as defined in regulations of the Secretary) and expected family contribution; and

"(iii) evidences a determination of remaining need for a loan and the amount of such need, subject to the provisions of subparagraph (D).";

(2) by striking out subparagraphs (B) and (E) and redesignating subparagraphs (C), (D), and (F) as subparagraphs (B), (C), and (D), respectively;

(3) by striking out "subparagraph (B)(ii)" in subparagraph (B)(iii) (as redesignated by paragraph (2)) and inserting in lieu thereof "subparagraph (A)";

(4) by striking our subparagraph (C) (as redesignated by paragraph (2)) and inserting in lieu thereof the following:

"(C) The Secretary shall publish, in accordance with the notice and comment procedures of section 553 of title 5, United States Code, a schedule of expected family contributions for each academic year."; and

(5) by striking out "clause (ii) of subparagraph (B)" in subparagraph (D) (as redesignated by paragraph (2)) and inserting in lieu thereof "subparagraph (A)".

DEFERMENTS

SEC. 213. (a) Section 427(a)(2)(C) of the Act is amended—

(1) by redesignating clauses (i) through (viii) as divisions (I) through (VIII), respectively;

(2) by striking out "clause (iii) and (iv)" in division (V) (as redesignated by paragraph (1)) and inserting in lieu thereof "divisions (III) and (IV)";

(3) by inserting "(i) for a loan made prior to the effective date of section 213 of the Higher Education Act Amendments of 1984," after "but interest shall accrue and be paid";

(4) by inserting the following before "and that any such period shall not be included in the ten-year period";

"and (ii) for a loan made on or after the effective date of section 213 of the Higher Education Act Amendments of 1984 during any period—

"(I) not in excess of five years in the aggregate during which the borrower has resumed study, and is carrying at least one-half the normal full-time academic workload, at an eligible institution;

"(II) not less than six months, nor more than three years in the aggregate, during which the borrower is serving as a member of the Armed Forces of the United States;

"(III) not in excess of three years in the aggregate during which the borrower is in service as a volunteer under the Peace Corps Act; or

"(IV) not in excess of three years in the aggregate, during which the borrower demonstrates a financial inability to repay any loan principal or interest because of exceptional circumstances which meet criteria established by the Secretary;" and

(5) by inserting "described in clauses (i) and (ii)" before "shall not be included in determining the ten-year period".".

(b) Section 428(b)(1)(M) of the Act is amended—

(1) by redesignating clauses (i) through (viii) as divisions (I) through (VIII), respectively;

(2) by striking out "clauses (iii) and (iv)'" in division (V) (as redesignated by paragraph (1)) and inserting in lieu thereof "divisions (III) and (IV)";

(3) by inserting "(i) on a loan made prior to the effective date of section 213 of the Higher Education Act Amendments of 1984," after "but interest shall accrue and be paid"; and

(4) by adding at the end thereof before the semicolon the following:

"(ii) for a loan made on or after the effective date of section 213 of the Higher Education Act Amendments of 1984, during any period—

"(I) not in excess of five years in the aggregate during which the borrower has resumed a course of study, and is carrying at least one-half the normal full-time academic workload, at an eligible institution;

"(II) not less than six months, nor more than three years in the aggregate, during which the borrower is serving as a member of the Armed Forces of the United States;

"(III) not in excess of three years in the aggregate during which the borrower is in service as a volunteer under the Peace Corps Act; or

"(IV) not in excess of three years in the aggregate during which the borrower demonstrates a financial inability to repay any loan principal or interest because of exceptional circumstances which meet criteria established by the Secretary;".

NEED ANALYSIS FOR STUDENTS ATTENDING FOREIGN SCHOOLS

SEC. 214. Section 428(a)(2) of the Act is further amended by adding at the end thereof the following new subparagraph:

"(E) In the case of a student attending an eligible institution not in a State, the determination to be made under subparagraph (A)(iii) shall be made by (i) the Secretary in the case of a loan described by section 427, or (ii) a State or nonprofit private institution or organization, as the case may be, in the case of a loan made under a program covered by subsection (b).".

UNDERGRADUATE STUDENT

SEC. 215. (a) Section 425(a) of the Act is amended—

(1) by striking out "a student who has not successfully completed a program of undergraduate education," in paragraph (1) and inserting in lieu thereof "an undergraduate student (as defined in regulations of the Secretary),"; and

(2) by striking out "any student who has not successfully completed a program of undergraduate education," in paragraph (2) and inserting in lieu thereof "any undergraduate student (as defined in regulations of the Secretary),".

(b) Section 428(b)(1) of the act is amended—

(1) by striking out "a student who has not successfully completed a program of undergraduate education," in subparagraph (A) and inserting in lieu thereof "an undergraduate student (as defined in regulations of the Secretary),"; and

(2) by striking out "any student who has not successfully completed a program of undergraduate education," in subparagraph (B) and inserting in lieu thereof "any undergraduate student (as defined in regulations of the Secretary),".

RECALL OF ADVANCES

SEC. 216. (a) Section 421(b) of the Act is amended—

(1) by striking out paragraphs (3) and (4);

(2) by adding "and" at the end of paragraph (2);

(3) by redesignating paragraph (5) as paragraph (3); and

(4) by striking out the last sentence therein.

(b) Section 422 of the Act is amended—

(1) in subsection (a)(3)—

(A) by inserting a comma and "but in any case prior to October 1, 1985" immediately before the period at the end thereof; and

(B) by adding at the end thereof the following:

"Any such repayment of an advance shall be deposited in the fund established by section 431."; and

(2) by amending subsection (c)(4) to read as follows:

"(4) An advance by the Secretary under this subsection, whenever made, shall be repaid within such period as determined by the Secretary, but in any case, prior to October 1, 1985. Any such repayment of an advance shall be deposited in the fund established by section 431.".

REINSURANCE CHANGES

SEC. 217. (a) Section 425(b)(1) of the Act is amended—

(1) by striking out "Except as provided in subparagraph (B), the" in subparagraph (A) and inserting in lieu thereof "The";

(2) by striking out everything that follows "the principal amount of the loan plus interest" in subparagraph (A) through the end thereof and inserting in lieu thereof a period;

(3) by striking out subparagraphs (B) and (C); and

(4) by redesignating subparagraph (A) as paragraph (1).

(b) Section 425(b) of the Act is amended by striking out paragraphs (2) and (3) and by redesignating paragraph (4) as paragraph (2).

(c) Section 428(c)(1) of the Act is amended—

(1) by amending the last sentence in subparagraph (A) to read as follows: "The amount to be paid a State or nonprofit private institution or organization as reimbursement on loans made for academic years beginning on or after July 1, 1984, under this subsection shall be 80 per centum of the amount expended for the unpaid balance of the principal amount of the loan plus interest by it in discharge of its insurance obligation (resulting from the default of the borrower) incurred under its loan insurance program.";

(2) by striking out subparagraphs (B) and (C); and

(3) by redesignating subparagraph (A) as paragraph (1).

(d) Section 428A of the Act is repealed.

UNIFORM LOAN AVAILABILITY

SEC. 218. (a) Section 428(b)(1) of the Act is amended—

(1) in subparagraph (A)—

(A) by inserting after "authorizes the insurance in any academic year or its equivalent (as determined under regulations of the Secretary)" the following: "of loans to any individual student who is carrying at an eligible institution at least one-half the normal full-time academic workload (as determined under regulations of the Secretary)"; and

(B) by striking out "of not less than $1,000 nor more than" and inserting in lieu thereof "of";

(2) in subparagraph (B) by striking out "not at any time exceed" and inserting in lieu thereof "be any amount up to a maximum of";

(3) in subparagraph (E)—

(A) by striking out "pursue a full-time course of study at an eligible institution, except —" and inserting in lieu thereof "carry at an eligible institution at least one-half the normal full-time academic workload (as determined under regulations of the Secretary), except";

(B) by striking out division (i); and

(C) by striking out "(ii)";

(4) in subparagraph (G)—

(A) by striking out "80 per centum" and inserting in lieu thereof "100 per centum"; and

(B) by inserting before the semicolon at the end thereof a comma and the following: "whether or not such loans are eligible for the payments provided for in subsection (a)";

(5) in subparagraph (O) by striking out "and" at the end thereof;

(6) in subparagraph (P) by striking out the period at the end thereof; and

(7) by adding at the end thereof the following new subparagraphs:

"(Q) provides for the guarantee of loans made to students, spouses of students, and parents under section 428B;

"(R) with respect to lenders which are eligible institutions, provides for the insurance of loans by only such institutions as are located within the geographic area served by such State or nonprofit private institution or organization;

"(S) provides no restrictions with respect to the insurance of loans for students who are otherwise eligible for loans under such program if such a student is accepted for enrollment in or is attending an eligible institution within the State, or if such a student is a legal resident of the State and is accepted for enrollment in or is attending an eligible institution outside that State;

"(T) provides no restrictions with respect to eligible institutions which are more onerous than eligibility requirements for institutions under the Federal student loan insurance program, unless (i) that institution is ineligible under regulations for the limitation, suspension, or termination of eligible institutions under the Federal student loan insurance program or is ineligible pursuant to criteria issued under the student loan insurance program which are substantially the same as regulations with respect to such eligibility issued under the Federal student loan insurance program, or (ii) there is a State constitutional prohibition affecting the eligibility of such an institution; and

"(U) provides (i) for the eligibility of all lenders described in section 435(g)(1) under reasonable criteria, unless (I) that lender is eliminated as a lender under regulations for the limitation, suspension, or termination of lenders under the Federal student loan insurance program or is eliminated as a lender pursuant to criteria issued under the student loan insurance program which are substantially the same as regulations with respect to such eligibility as a lender issued under the Federal student loan insurance program, or (II) there is a State constitutional prohibition affecting the eligibility of a lender, and (ii) assurances that the State or nonprofit private institution or organization will report to the Secretary annually concerning such criteria, including any procedures in effect under such program to limit, suspend, or terminate lenders.".

(b) Section 428(c)(6)(A) of the Act is amended by striking out "and for the purpose of section 428A(b)(5)".

(c) Section 428 of the Act is further amended by striking out subsection (f).

MULTIPLE DISBURSEMENTS AND ESCROW REPEAL

SEC. 219. (a) Section 428(a) of the Act is amended by striking out paragraph (8).

(b) Section 428 of the Act is further amended by striking our subsection (i).

REPEAL OF SCHOOL LENDER AND OTHER "ORIGINATION" REQUIREMENTS

SEC. 220. (a) Section 425(a)(1) of the Act is amended—

(1) by striking out subparagraphs (A) and (B);

(2) by striking out the dash after "except" and by striking out "(C)"; and

(3) by striking out the last sentence therein.

(b) Section 428(b)(1)(A) of the Act is amended—

(1) by striking out clauses (i) and (ii); and

(2) by striking out the dash after "except", "(iii)", and ", and all loans issued within any period of 90 days shall be considered as a single loan for purposes of division (ii)".

(c) Section 433 of the Act is repealed.

ELIGIBLE LENDERS

SEC. 221. Section 435(g)(1) of the Act is amended—

(1) in subparagraph (G) by striking out "and" at the end thereof;

(2) in subparagraph (H) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new subparagraphs:

"(I) a State or a Federal agency which is the assignee of an eligible lender, as defined in subparagraphs (A) through (H); and

"(J) a Rural Rehabilitation Corporation, or its successor agency, which has received Federal funds under Public Law 499 (ch. 152, 64 Stat. 98 (1950)).".

DELEGATION OF FUNCTIONS

SEC. 222. (a) Section 432(d) of the Act is amended to read as follows:

"(d) The Secretary is authorized to delegate his functions under this part to employees in the regional offices of the Department of Education established pursuant to section 403(c)(2) of the General Education Provisions Act.".

COMMISSIONED SALESMEN

SEC. 223. Section 435(a) of the Act is amended by inserting "or 428B" after "section 428(a)(1)".

AUXILIARY LOAN PROGRAM

SEC. 224. (a) Section 428B(a) of the Act is amended—

(1) in paragraph (1)—

(A) by inserting "and parents or a spouse of a graduate or professional student (as defined by regulations of the Secretary)" immediately before "shall be eligible to borrow funds under this part"; and

(B) by inserting "or a spouse borrower" immediately after "a parent borrower"; and

(2) in paragraph (2)—

(A) by striking out "section 482(c)(2)" and inserting in lieu thereof "section 482"; and

(B) by striking out "(treating graduate and professional students as parents for the purposes of such subsection)" and inserting in lieu thereof "or subsection (c)(4), respectively,".

(b) Section 428B(b) of the Act is amended—

(1) in paragraph (1) by striking out "may borrow" and inserting in lieu thereof a comma and "a spouse, and a graduate or professional student may borrow in the aggregate";

(2) in paragraph (2) by striking out "parents on account of an undergraduate dependent student" and inserting in lieu thereof "parents, a spouse, and a graduate or professional student on account of one student"; and

(3) in paragraph (3) by inserting a comma and "spouse," immediately after "parent".

(c) Section 428B(c)(1) of the Act is amended—

(1) in paragraph (1)—

(A) by inserting "(A) in the case of a loan made to a parent or spouse," after "shall commence"; and

(B) by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "or (B) in the case of a loan made to any student, six months after the month in which the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload as determined by the institution."; and

(2) by adding at the end thereof the following new paragraphs:

"(5) For any loan made under this section to a borrower who is not a student, the lender is authorized to charge the borrower a fee (which may be deducted from the amount of the loan), not to exceed $25, to defray the cost of verifying the credit-worthiness of the borrower.

"(6) The maximum repayment period for a loan made under this section to a parent or spouse, shall not exceed 10 years from the date of the initial disbursement of the loan, provided that if a lender provides for repayment of several such loans under a single repayment agreement, the lender may calculate the repayment period for each included loan from the date of the initial disbursement of the most recent included loan.".

AUXILIARY LOAN PROGRAM ACCESS

SEC. 225. Section 421(a)(1) of the Act is amended by inserting "and for borrowers participating in the program authorized under section 428B" immediately after "(as defined in section 435)".

SEC. 226. Section 428B(d) of the Act is amended—

(1) by striking out "Loans made under this section" and inserting in lieu thereof "(1) Except as provided in paragraph (2), loans made under this section";

(2) by redesignating subparagraphs (A) and (B) in paragraph (2) as clauses (i) and (ii), respectively;

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(4) by adding at the end thereof the following new paragraph:

"(2) Loans made by a lender under this section may be insured directly by the Secretary if the lender satisfies the Secretary that, by reason of the residences of the intended borrowers of such lender, such

lender will not have access to any single State or nonprofit private loan insurance program which will insure substantially all of the loans such lender intends to make to such borrowers.".

PART C—WORK-STUDY PROGRAM

AUTHORIZATION OF APPROPRIATIONS

SEC. 231. Section 441(b) of the Act is amended to read as follows:

"(b) There are authorized to be appropriated for carrying out the purposes of this part $850,000,000 for fiscal year 1985.".

ALLOTMENTS AND ELIMINATION OF MAINTENANCE OF EFFORT

SEC. 232. (a) Section 442 of the Act is amended—

(1) by amending subsections (a) and (b) to read as follows:

"(a) From the sums appropriated for a fiscal year to carry out this part, the Secretary shall (1) allot $2,000,000 among Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands according to their respective needs for assistance under this part, and (2) allot the remainder of such sums among the States as provided in subsection (b).

"(b) Each State shall be allotted an amount which bears the same ratio to the total sums made available under this subsection as the number of full-time-equivalent students enrolled in institutions of higher education in such State bears to the total number of such students enrolled in institutions of higher education in all the States, except that the amount allotted to each State shall not be less than the amount allotted to such State in fiscal year 1984.";

(2) by striking out subsection (c);

(3) in subsection (d)—

(A) by striking out in the first sentence of paragraph (1) the first comma and everything that follows until the end thereof and inserting in lieu thereof a period;

(B) by striking out "(1)" after "(d)"; and

(C) by striking out paragraph (2);

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively; and

(5) by striking out subsection (f).

(b) Section 443(b) of the Act is amended—

(1) by adding "and" at the end of paragraph (1)(B);

(2) by striking out "and" at the end of paragraph (1)(C);

(3) by striking out paragraph (1)(D);

(4) by striking out paragraph (5); and

(5) by redesignating paragraphs (6), (7), (8), and (9) as paragraphs (5), (6), (7), and (8), respectively.

(c) Section 446(a) of the Act is amended by striking out the second sentence therein.

NEED ANALYSIS

SEC. 233. Section 443(b)(3) of the Act is amended by striking out "in accordance with the provisions of section 482," and inserting in lieu thereof "in accordance with a need analysis system approved by the Secretary,".

RESTORATION OF AREA VOCATIONAL SCHOOL ELIGIBILITY

SEC. 234. Section 443 of the Act is amended—

(1) in subsection (b)(1) by inserting in the parenthetical "or an area vocational school" immediately after "a proprietary institution of higher education"; and

(2) by adding at the end thereof the following new subsection:

"(c) For purposes of this part, the term 'institution of higher education' shall include an area vocational school as defined under section 195 of the Vocational Education Act of 1963.".

JOB LOCATION AND DEVELOPMENT AND COOPERATIVE EDUCATION ACTIVITIES

SEC. 235. Section 447 of the Act is amended—

(1) by amending the heading for such section to read as follows: "JOB LOCATION AND DEVELOPMENT AND COOPERATIVE EDUCATION ACTIVITIES";

(2) by amending subsection (a) to read as follows:

"(a) The Secretary is authorized to enter into agreements with an eligible institution under which such institution may use, subject to subsection (c), up to $100,000 of its allotment under section 446 to—

"(1) establish or expand a program under which such institution, separately, or in combination with other eligible institutions, or through contract with a nonprofit organization or public agency, locates and develops jobs for currently enrolled students which are suitable to the scheduling and other needs of such students;

"(2) plan, establish, administer, or expand a program of cooperative education by such institution, separately, or in combination with other eligible institutions, and which cooperative education program provides alternating or parallel periods of academic study and of public or private employment, the latter affording students not only the opportunity to earn funds necessary for continuing and completing their education but, so far as practicable, giving them work experience related to their academic or occupational objectives; or

"(3) plan, establish, operate, or expand a program of adult literacy on or off campus at such institution, separately, or in combination with other eligible institutions.";

(3) in subsection (b)—

(A) by inserting in paragraph (2) after "an eligible institution" a comma and the following: "except that such funds may be used to locate or develop jobs in programs promoting adult literacy which are operated by public agencies and nonprofit organizations, or by eligible institutions either on or off campus";

(B) by striking out paragraph (3);

(C) by striking out "and" at the end of paragraph (6);

(D) by striking out the period at the end of paragraph (7) and inserting in lieu thereof a comma and the following: "including a summary of student compensation received and of any activities performed by organizations participating in programs under this section; and";

(E) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (3), (4), (5), and (6), respectively; and

(F) by adding at the end thereof the following new paragraph:

"(7) provide such fiscal controls and fund accounting procedures as may be necessary to ensure proper and effective expenditure of funds awarded under this section, in accordance with regulations prescribed by the Secretary."; and

(4) by adding at the end thereof the following new subsection:

"(c)(1) For academic year 1986-1987 and thereafter, the maximum amount of an institution's allotment under section 446 that may be used for any or all programs authorized by this section shall not exceed one-fifth of the total amount of earnings received by students, through their participation in such programs, during the previous academic year.

"(2) For purposes of calculating the allotment limitations in paragraph (1), the Federal contribution to any earnings received by a student employed under a work-study program and placed in employment through a job location and development program shall be excluded unless the student is employed in an adult literacy program.

"(3) For purposes of this subsection, the term 'earnings' shall mean total gross income received by a student in compensation of services performed in programs authorized by this section.".

CONFORMING AMENDMENTS

SEC. 236. (a) Section 448 of the Act is repealed.

(b) Section 801 of the Act is amended by striking out "1983, 1984, and 1985," each place it appears and inserting in lieu thereof "1983, and 1984,".

PART D—SPECIAL PROGRAMS FOR THE DISADVANTAGED

TECHNICAL CHANGES

SEC. 241. Section 417A of the Act is amended—

(1) in subsection (a)—

(A) by striking out "and contracts";

(B) by inserting "and" immediately after "to prepare them for a program of postsecondary education,"; and

(C) by striking out at the end thereof the last comma and "and to train persons serving or preparing for service in programs and projects so designed." and inserting in lieu thereof a period;

(2) by striking out subsection (b);

(3) by amending subsection (d) to read as follows:

"(d) For the purpose of this subpart the term 'low-income individual' means an individual from a family whose taxable income for the preceding year did not exceed 150 per centum of an amount equal to the poverty level determined under criteria of poverty established by the Bureau of the Census."; and

(4) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

TALENT SEARCH PROGRAM AMENDMENTS

SEC. 242. (a) The heading for section 417B of the Act is amended by inserting "AND ASSISTANCE" after "TALENT SEARCH".

(b) Section 417B of the Act is amended—

(1) by inserting "and assistance" after "talent search" each place it appears;

(2) in subsection (a)—

(A) by striking out in paragraph (1) "youths" and "youth" and inserting in lieu thereof "persons";

(B) by amending paragraph (2) to read as follows:

"(2) to provide information with respect to financial and academic assistance available to persons who pursue a program of postsecondary education;";

(C) by redesignating paragraph (3) as paragraph (4); and

(D) by inserting after paragraph (2) the following new paragraph:

"(3) to provide assistance to persons applying for admission to institutions of higher education, including such assistance as preparing applications and forms used by admissions and financial aid officers; and";

(3) by amending subsection (b) to read as follows:

"(b) A talent search and assistance project funded under this section may provide in addition to the services provided in paragraphs (1), (2), (3), and (4) of subsection (a), tutorial and counseling services for persons

participating in the project if such services are not otherwise available through a project assisted under this subpart.";

(4) in subsection (c)—

(A) by striking out "under this subpart" and inserting in lieu thereof "under this section";

(B) by striking out in paragraph (1) "youths participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;" and inserting in lieu thereof "persons who would participate in the project proposed for funding be low-income individuals or physically handicapped;";

(C) by striking out in paragraph (2) "but not more than twenty-seven years of age, unless the imposition of any such limitation with respect to any person would defeat the purposes of this section or the purposes of section 417E; and" and inserting in lieu thereof a comma and "unless waived by the Secretary because of exceptional circumstances demonstrated by the applicant; and"; and

(D) by striking out in paragraph (3) "do not have access to services from another project funded under this section or under section 417E." and inserting in lieu thereof "are not receiving services from another project funded under this section.";

(5) by striking out in subsection (d) "under this subpart" and inserting in lieu thereof "under this section" and by striking out in such subsection "a setting accessible to the persons proposed to be served by the project." and inserting in lieu thereof "an area accessible to the persons proposed to be served by the project and assurances that a substantial concentration of low-income individuals or physically handicapped persons reside in such area, in accordance with regulations promulgated by the Secretary."; and

(6) by adding at the end thereof the following new subsection:

"(e)(1) The Secretary is authorized to award grants under this section based on applications submitted by institutions of higher education, including consortia of such institutions, public and private agencies, and, in exceptional circumstances, secondary schools.

"(2) The amount of any grant awarded under this section for a talent search and assistance project shall not exceed 75 per centum of the cost of the project, as determined by the Secretary.".

UPWARD BOUND PROGRAM AMENDMENTS

SEC. 243. Section 417C of the Act is amended—

(1) by striking out "youths" and "Youths" each place they appear and inserting in lieu thereof "persons" or "Persons", respectively;

(2) in subsection (b) by striking out "under the subpart" and inserting in lieu thereof "under this section";

(3) in subsection (c)—

(A) by striking out "under this subpart" and inserting in lieu thereof "under this section";

(B) by amending paragraph (1) to read as follows:

"(1) require an assurance that the persons who would participate in the project proposed for funding be low-income individuals or physically handicapped;";

(C) by striking out paragraph (2);

(D) by striking out in paragraph (4) "unless the imposition of any such limitation would defeat the purposes of this section." and inserting in lieu thereof "unless waived by the Secretary because of exceptional circumstances demonstrated by the applicant."; and

(E) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(4) by striking out the period at the end of subsection (d) and inserting in lieu thereof "to meet travel and other program-related costs, as determined by the Secretary."; and

(5) by adding at the end thereof the following new subsection:

"(e)(1) The Secretary is authorized to award grants under this section based on applications submitted by those institutions of higher education, including consortia of such institutions, which have entered into a program participation agreement with the Secretary under section 487 and which participate in programs authorized by this title, other than this subpart. Applications shall be submitted in the form, manner, and at such time that the Secretary deems appropriate to carry out the purposes of this section.

"(2) The amount of any grant awarded under this section for an upward bound project shall not exceed 90 per centum of the cost of the project, as determined by the Secretary.".

SPECIAL SERVICES PROGRAM AMENDMENTS

SEC. 244. Section 417D of the Act is amended—

(1) in subsection (b) by striking out "under this subpart" and inserting in lieu thereof "under this section";

(2) in subsection (c)—

(A) by striking out "under this subpart" and inserting in lieu thereof "under this section";

(B) by amending paragraph (1) to read as follows:

"(1) require an assurance that the persons who would participate in the project proposed for funding be low-income individuals or physically handicapped;";

(C) by striking out paragraph (2);

(D) by striking out paragraph (4) "or contract." and inserting in lieu thereof a period; and

(E) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(3) by striking out in subsection (d) "or contract"; and

(4) by adding at the end thereof the following new subsection:

"(e)(1) The Secretary is authorized to award grants based on applications submitted by those institutions of higher education which have entered into a program participation agreement with the Secretary under section 487 and which participate in programs authorized by this title, other than this subpart. Applications shall be submitted in the form, manner, and at such time that the Secretary deems appropriate to carry out the purposes of this section.

"(2) Any institution of higher education which, on or before October 1, 1984, had received assistance under this section for three or more years shall not receive additional assistance for a period greater than three years. The amount of any grant awarded to an institution which is subject to this paragraph shall not exceed—

"(A) 75 per centum of the cost of the project during its first year of funding;

"(B) 50 per centum of the cost of the project during its second year of funding; or

"(C) 25 per centum of the cost of the project during its third year of funding.

"(3) Beginning on October 1, 1984, any institution which is not subject to the requirements of paragraph (2) shall not receive assistance awarded under this section for a period greater than five years. The amount of any grant awarded to an institution which is subject to this paragraph shall not exceed—

"(A) 100 per centum of the cost of the project during its first year of funding;

"(B) 90 per centum of the cost of the project during its second year of funding;

"(C) 75 per centum of the cost of the project during its third year of funding;

"(D) 50 per centum of the cost of the project during its fourth year of funding; or

"(E) 25 per centum of the cost of the project during its fifth year of funding.

"(4) For purposes of this subsection, the Secretary shall determine the cost of any project funded under this section.".

REPEALS

SEC. 245. Sections 417E and 417F of the Act are repealed.

PART E—NATIONAL DIRECT STUDENT LOANS

TECHNICAL AND NEED ANALYSIS CHANGES

SEC. 251. (a) Section 462(b)(2) of the Act is amended by striking out in the first sentence "the amount requested in such application." and inserting in lieu thereof "an appropriate amount of funds, taking into account the amount reasonably needed by such applicant as reflected in its application.".

(b) Section 464(b) of the Act is amended by striking out "in accordance with section 482" and inserting in lieu thereof "in accordance with a need analysis system approved by the Secretary".

DEFERMENTS AND INTEREST RATE

SEC. 252. Section 464 of the Act is amended—

(1) in subsection (c)—

(A) by striking out in paragraph (1)(A) "over a period beginning" and everything that follows until the end thereof and inserting in lieu thereof "over a ten-year and six-month repayment period which shall begin six months after the month in which the borrower ceases to carry, at an institution of higher education or a comparable institution outside the United States approved by the Secretary for this purpose, at least one-half the normal full-time academic workload, except that such repayment period may begin at an earlier time if requested by the borrower;";

(B) by amending paragraph (1)(D) to read as follows:

"(1)(D) shall provide that a loan made on or after July 1, 1985, shall bear interest, on the unpaid balance of the loan, at the rate of 8 per centum per annum, except that no interest shall accrue (i) prior to the beginning date of repayment determined under clause (A)(i), or (ii) during any period in which repayment is suspended by reason of subsection (e);";

(C) by striking out in paragraph (2)(A) "No repayment of principal" and inserting in lieu thereof "For a loan made on or before July 1, 1985, no repayment of principal"; and

(D) by striking out paragraph (2)(C); and

(2) by adding at the end thereof the following new subsection:

"(e) No repayment of principal of, or interest on, any loan made on or after July 1, 1985, from a student loan fund assisted under this part shall be required during any periods——

"(1) not in excess of five years in the aggregate, during which the borrower has resumed study, and is carrying at least one-half the normal full-time academic workload, at an institution of higher education

or at a comparable institution outside the United States approved by the Secretary for this purpose;

"(2) not less than six months, nor more than three years in the aggregate, during which the borrower is serving as a member of the Armed Forces of the United States;

"(3) not in excess of three years in the aggregate during which the borrower is in service as a volunteer under the Peace Corps Act; or

"(4) not in excess of three years in the aggregate, during which the borrower demonstrates a financial inability to repay any loan principal or interest because of exceptional circumstances which meet criteria established by the Secretary.".

CANCELLATION

SEC. 253. Section 465(b) of the Act is amended to read as follows:

"(b) The Secretary shall pay to each institution for each fiscal year an amount equal to 10 per centum of the aggregate of the amounts of loans from its student loan funds which are cancelled pursuant to this section for such year. Such payments may be used as each institution determines appropriate.".

PART F—GENERAL PROVISIONS AMENDMENTS

DEFINITION OF INDEPENDENT STUDENT

SEC. 261. Section 482 of the Act is amended to read as follows:

"INDEPENDENT STUDENTS

"SEC. 482. (a) For purposes of this title, the term 'independent student' means a student who is determined, pursuant to regulations of the Secretary, to be financially independent of the parents or legal guardians of the student.

"(b)(1) In the case of any student who claims to be independent of his parents or legal guardians in any application for student financial assistance under this title and who has not attained the age of 25 on July 1 of the award year in which such application is made, each parent or guardian of such student shall certify to the Secretary or the eligible institution which such student attends that such student meets the definition of independent student under subsection (a).

"(2) Whenever the Secretary or the eligible institution has reasonable cause to believe that a student is not entitled to be classified as an independent student under this section, each parent or guardian of such student shall submit, upon request, to the Secretary or the eligible institution Federal income tax returns or any other relevant documents that the Secretary or the eligible institution deem necessary to substantiate that such student meets the definition of independent student under subsection (a).

"(3) Whenever, because of exceptional circumstances as determined by the Secretary, the information required by paragraphs (1) and (2) cannot be obtained from each parent or guardian of a student who claims to be independent, such student shall submit to the Secretary or eligible institution an itemized accounting of his financial condition, including a description of how such student previously supported himself at a minimum subsistence level determined by the Secretary.

"(c)(1) Whenever the information required from a parent, a guardian, or a student under subsection (b) has not been submitted or, if submitted, fails to substantiate that such student is an independent student to the Secretary or the eligible institution, such student shall be treated as a dependent student for purposes of any student financial assistance program under this title during the award year for which assistance was sought.

"(2) Whenever the Secretary or the eligible institution determines that the information submitted by a parent, guardian, or student under subsection (b) contains any material false statement or claim regarding such student's claim of independency, such student shall be denied any student financial assistance under this title during the award year for which assistance was sought.".

COMMON FORMS

SEC. 262. Section 483 of the Act is amended—

(1) by striking out subsection (a) and (c); and

(2) by striking out "(b)" in subsection (b).

ELIMINATION AND WAIVER OF INSTITUTIONAL PARTICIPATION REQUIREMENTS

SEC. 263. Section 487 of the Act is amended—

(1) in subsection (a)—

(A) by striking out paragraph (2) and by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

(2) by adding at the end thereof the following new subsection:

"(d) The Secretary is authorized to waive any requirement of this section with respect to an institution of higher education located outside the United States and organized under the law of a foreign nation.".

TRANSFER OF ALLOTMENT FOR WORK-STUDY AND SUPPLEMENTAL GRANT PROGRAMS

SEC. 264. Section 488 of the Act is amended by striking out the first sentence "10 per centum" and inserting in lieu thereof "50 per centum".

ADMINISTRATIVE EXPENSES

SEC. 265. Section 489(a) of the Act is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following: "From the funds appropriated under subpart 1 of part A, the Secretary is authorized to pay each institution which has entered into an agreement under section 487 an amount up to $5 for each student who receives a Pell Self-Help Grant for attendance at that institution. The Secretary may require that an institution use the funds it receives under the preceding sentence to carry out specific activities.";

(2) by striking out the last sentence therein.

TITLE III—CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 301. Section 702 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 702. (a) There are authorized to be appropriated for the fiscal year 1985 $18,775,000 to carry out part C, and $14,194,000 to carry out part D.

"(b) None of the sums appropriated pursuant to subsection (a) or otherwise available may be used for commitments for new loans under this title.".

TITLE IV—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

COST SHARING

SEC. 401. Section 1001 of the Act is amended—

(1) by inserting "(a)" immediately before "Subject to the provisions of section 1002,"; and

(2) by adding at the end thereof the following new subsection:

"(b) The Secretary shall require a recipient of assistance under this part to pay 50 per centum of the allowable costs incurred by the recipient in carrying out a project assisted under this part.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 402. Section 1005 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1005. There are authorized to be appropriated to carry out this title $11,710,000 for the fiscal year 1985.".

TECHNICAL AMENDMENT

SEC. 403. Section 1001, 1002, and 1004(b) of the Act are amended by striking out "contracts" and "contract" each place they appear and inserting in lieu thereof "cooperative agreements" and "cooperative agreement", respectively.

TITLE V—EFFECTIVE DATES

EFFECTIVE DATE PROVISIONS

SEC. 501. (a) The amendments made by titles I, III, and IV, and by part D of title II of this Act shall take effect on October 1, 1984.

(b) The amendments made by parts A, C, E, and F of title II of this Act shall take effect on July 1, 1985.

(c)(1) Except as provided in paragraphs (2) and (3), the amendments made by part B of title II of this Act (regarding the Guaranteed Student Loan Program) shall take effect on July 1, 1984 or 90 days after the date of enactment of this Act, whichever is later, and shall apply to loans made to cover the cost of attendance for any period of enrollment beginning on or after such effective date. Any provisions repealed by such amendments shall continue to apply to loans made to cover the cost of attendance for any period of enrollment beginning prior to such effective date.

(2) The amendments made by section 216 of this Act shall take effect on the date of enactment of this Act and shall apply to all advances, whenever made.

(3) The amendments made by sections 221(3) and 222 of this Act shall take effect on the date of enactment of this Act and shall apply to all loans, whenever made.

HIGHER EDUCATION ACT AMENDMENTS OF 1984

SECTION-BY-SECTION ANALYSIS

TITLE I—INSTITUTIONAL AID

PART A—STRENGTHENING INSTITUTIONS

Section 101. Section 101 of the bill would repeal the program which authorizes Aid to Institutions with Special Needs under part B of title III (Institutional Aid) of the Higher Education Act of 1965 ("the Act"; 20 U.S.C. 1001 *et seq.*). Part B of title III which would no longer be maintained as a separate program of institutional aid under the consolidation proposal in this bill. For purposes of simplification, activities currently funded under the part A Strengthening Institutions program and part B would be supported under an expanded part A program, which would retain the title of Strengthening Institutions. A single program would be less confusing to applicants, less costly to administer, and would reduce regulatory burden and related costs.

Section 102. Section 102 of the bill would add to the statement of purpose for the proposed consolidated part A program the goal of helping institutions meet their special needs, the purpose of part B which would be repealed.

Section 103. Section 103 of the bill would make certain changes to the definitions in section 312 of the Act for new part A. Principally, the definition of "eligible institution" would be amended by (1) deleting the requirement that the average amount of Pell Grants (awarded under subpart 1 of part A of title IV of the Act) received by students at eligible institutions is higher in comparison with the average amount of Pell Grants awarded at comparable institutions, (2) eliminating the requirement that average expenditure calculations be limited to the number of undergraduate students, and (3) adding, as eligibility factors, items from part B of the Act. These amendments would be made to focus assistance on institutions serving the most disadvantaged students.

Section 104. Section 104 of the bill would provide that the duration of a grant to an eligible institution under amended part A not exceed five years. Under current law, certain grants for part A are for not more than three years, while others are for between four and seven years. For current part B, five years is the maximum limit. One grant limit would simplify the award process and reduce the need for annual regulations. The bill would continue to provide for one-year planning grants, with the new requirement that only one such grant be awarded to an institution.

Section 105. Section 105 of the bill would incorporate the Federal cost sharing provisions from part B of the current law into amended part A. The Federal share for the cost of grants to eligible institutions would be 100 percent for the first two years of a grant, decreasing to 70 percent in the fifth year. This section would also provide for phasing out grants under parts A and B of current law. The Secretary would be authorized to make continuation awards under current part A for not more than a total of seven years and under part B for not more than a total of five years to recipients awarded multi-year grants prior to October 1, 1984. These limits are the maximum grant periods for each part under the current statute. Furthermore, an institution which received a grant for the maximum period of seven or five years, as appropriate, would not be eligible for a new grant under amended part A of title III.

PART B—CHALLENGE GRANTS TRANSITION

Section 106. Section 106 of the bill would redesignate part B of title III (which was repealed in section 101 of this bill) as "Challenge Grant Transition Awards." The Challenge Grant program, currently authorized under part C of title III, would be phased out over several years.

Section 107. Section 107 of the bill would repeal sections 331 and 332 of the current Challenge Grant program which would be unnecessary due to the proposed elimination of the program.

Section 108. Section 108 of the bill would provide for continuation awards for multi-year Challenge Grants until the end of fiscal year 1988. The Secretary would be authorized to make continuation awards to eligible institutions under the Challenge Grant program as in effect on September 30, 1984, provided that the institution received a multi-year grant prior to October 1, 1984. The maximum total grant period would be five years.

PART C—ENDOWMENT GRANTS

Section 109. Section 109 of the bill would redesignate part C as "Endowment Grants." The authority to carry out the Endowment Grant program is currently in section 333 of the Act.

Section 110. Section 110 of the bill would make certain conforming amendments to section 333 of the Act which are necessary as a result of the repeal of part B of the Act and the changes to the Challenge Grant program.

GENERAL PROVISIONS

Section 111. Section 111 of the bill would make conforming amendments to part D of title III—General Provisions, required as a result of other amendments in this bill. In addition, this section would make several minor amendments to improve the operation of programs under title III of the Act. For example, the June 30th notification date by which the Secretary must inform each applicant institution of its scores and recommendation of the evaluation panel and the reasons for decisions by the Secretary in awarding grants under title III has been made more flexible. The Secretarty would continue to provide timely notice to applicants of this important information without being held to an inflexible statutory deadline.

Section 112. Section 112 of the bill would amend the authorization of appropriation language in section 347 for title III. The authorization provisions would be significantly simplified and would be applicable to fiscal year 1985 only. Only the following restrictions would be placed on the fiscal year 1985 appropriation: (1) Endowment Grant funds not expended in fiscal year 1985 would remain available until expended; (2) a 25 percent set-aside would be required for junior and community colleges; and (3) $45,741,000 would be reserved for eligible institutions which have historically served substantial numbers of black students. While current law does not provide carryover authority for the Endowment Grant program, it does provide special set-asides for junior and community colleges and historically black colleges and universities. In the latter case, a "hold harmless" provision based on fiscal year 1979 funding is provided under current law rather than a specific dollar amount, as proposed.

TITLE II—STUDENT ASSISTANCE

PART A—STUDENT GRANT AMENDMENTS

Subpart 1—Pell self-help grants

Section 201. Section 201 of the bill would make a number of nomenclature changes to the current Pell Grant program. Essentially, these changes would direct that student grants under the program be classified as "Pell Self-Help Grants." This change would emphasize that students receiving the benefits of the program are expected to share in the responsibility of financing the cost of a postsecondary education.

Section 202. Section 202 of the bill would provide for a number of operational changes in delivering, awarding, and computing payments to students who receive Pell Self-Help Grants. As described more fully below, these changes are designed to improve the operations of the program and provide a more equitable basis in distributing awards to students under the program. More importantly, section 202 places a minimum self-help requirement on all students wishing to receive the benefits of the program.

Subsection (a) would mandate that students could only receive one Pell Self-Help Grant during an academic/award year. The Department of Education possesses evidence that students may be receiving more than one grant per academic/award year, a practice not prohibited by the current law.

Subsection (b) would extensively modify the current method of calculating the amounts of financial assistance that students receive under the program. Among other things, these modifications would increase the maximum grant award level from $1,900 to $3,000 in academic year 1985-86; would mandate, in calculating the amount awarded to students, a minimum student self-help contribution to their educational expenses of 40 percent of such expenses or $500, whichever is greater; would control the number of years during which a student may receive grants under the program to 4 years, in general; and would prohibit students from receiving additional grants after they have completed a baccalaureate degree—a prohibition not included under current law.

Section 203. Section 203 of the bill would provide for several funding and award calculation changes. This section modifies the language of the linear reduction formula which was enacted as part of the Student Financial Assistance Technical Amendments of 1982, Pub. L. No. 97-301, 96 Stat. 1400. The current formula provides that in the event funds appropriated are insufficient in any given year to pay for all grants to students, then the most financially hard-pressed students (the so-called "hold-harmless" class of students) would not have their awards reduced; however, other students would, under the formula, have their awards progressively reduced depending on their financial status. The modification proposed would effect a technical change in the formula so that the hold-harmless class of students would also have their awards reduced in the event of very low appropriations.

This section also establishes a $2.8 billion limitation on Pell Self-Help Grant appropriations for fiscal year 1985 for consistency with the President's 1985 budget request for this program.

Section 204. Section 204 of the bill would add two new sections to the Higher Education Act for purposes of simplifying awarding of Pell Self-Help Grants.

New section 412 would simplify and improve the criteria of student need (commonly stated as the "need analysis system") for determining the student's award under the restructured Pell Self-Help Grant program by moving the need analysis criteria from the General Provisions part of title IV of the current law to the subpart authorizing the program.

New section 413 would simplify and improve the current need analysis system for the Pell Self-Help Grant program by (1) moving the "cost of attendance" provisions from the General Provisions part of title IV of the current law to the subpart authorizing the program, and (2) authorizing the Secretary to set an appropriate, uniform limit on a student's indirect costs of attendance allowable for computing Pell Self-Help Grant entitlement levels. This allowance would be in addition to actual tuition and fees. Under currently applicable legislation, an indirect cost allowance of $1,500 (including $400 for travel, books, and supplies) is used for all students residing off-campus. Under the proposed new authority, a $3,000 indirect cost allowance (for 1985-86) for all students other than those residing with their parents would be established. For students residing with their parents, the indi-

rect cost allowance could remain at $1,500. (Again, this allowance would cover travel, books, and supplies in addition to basic living costs.) This more standardized approach would result in a more equitable distribution of awards.

While this bill would eliminate the current statutory deadlines for publication of Pell Grant family contribution schedule regulations, the Secretary intends to publish these schedules at approximately the same times during the year as now required.

Subpart 2—Supplemental educational opportunity grants

Section 205. Section 205 of the bill would extensively modify the terms, conditions, and award levels of grants under the SEOG program. With respect to award levels, section 205 mandates in calculating the amount of a SEOG award to a student, that Pell Self-Help Grants awarded to students be taken into account. "Supplemental Grants", as the name itself suggests, would operate as a supplement to Pell Self-Help Grants when a student has received the latter type of assistance. Thus, under section 205 the amount a student could receive as a supplemental award would be limited in such a way that the combination of Pell Self-Help and Supplemental Grant awards, together with a student's expected family contribution, could not exceed the lesser of $4,500 or 60 percent of the cost of that student's attendance at a postsecondary institution. For the student who has not received a Pell Self-Help Grant, the current award rule of limiting the amount of a supplemental grant to $2,000 or less would be preserved. With respect to terms and conditions of supplemental grants, the same reform measures proposed for the Pell Self-Help Grant program are also proposed for the SEOG program, e.g. durational limitations for receiving grants.

Section 206. Section 206 of the bill would require institutional matching of any funds allocated for this campus-based program on the same (80/20) matching basis for the Work-Study program. In addition, if funds are transferred from an institutions Work-Study allotment to its SEOG program, such funds would be subject to the 20 percent matching requirement.

As will be discussed under Section 264 of the bill, greater discretion over using funds allocated under these two campus-based programs would be provided to institutions.

Section 207. Section 207 of the bill would repeal a number of statutory provisions under the Student Financial Assistance Technical Amendments of 1982, P.L. 97-301, 96 Stat. 1400-1401, as amended by the Student Loan Consolidation and Technical Amendments Act of 1983, P.L. 98-79, 97 Stat. 479. These provisions are not consistent with the amendments proposed by this bill.

Subpart 3—State student incentive grants

Section 208. Section 208 of the bill would eliminate a maintenance of effort condition. This condition is burdensome on participating States and schools, and it is not necessary as a means of assuring substantial State-level financial contributions—this concern is adequately met by the 50/50 State matching requirement.

PART B—GUARANTEED STUDENT LOAN PROGRAM

Section 211. Section 211 of the bill would change the heading for part B of title IV of the Act from "Federal, State, and Private Programs of Low-Interest Insured Loans to Students in Institutions of Higher Education" to "Guaranteed Student Loan Program." This new title for the program is commonly used in the higher education community and is less cumbersome than the current statutory heading.

Section 212. Section 212 of the bill would require borrowers at all family income levels to demonstrate need for a loan under a need analysis system prescribed in regulations. The Secretary would publish, in accordance with notice and comment procedures prescribed in the Administrative Procedures Act (5 U.S.C. § 553), a schedule of expected family contributions for each academic year. Under current law, only borrowers with adjusted gross family income in excess of $30,000 must complete need analysis. This change would apply only to regular loans under the Guaranteed Student Loan (GSL) program, and not to loans made under the Auxiliary Loan component of the program authorized under section 428B of the Act. These amendments are intended to curtail unnecessary borrowing and to improve equity in student treatment, and to lower, somewhat, related Federal subsidy costs.

Section 213. Section 213 of the bill would modify the conditions under which statutory deferments of repayment would be provided for loans made on or after the effective date of this section. Current law provides twelve categorical deferments during which time principal need not be repaid by the borrower, and interest is paid by the Government. For new loans under the Federal Insured Student Loan (FISL, under section 427), the regular GSL program (under section 428), and the Auxiliary Loan program (PLUS, under section 428B) only four categorical deferments would be provided as follows:

(1) not in excess of five years, during which the borrower has resumed at least half-time study at an eligible institution;

(2) not less than six months, nor more than three years, during which the borrower is serving as a member of the Armed Forces of the United States;

(3) not in excess of three years during which the borrower is in service as a volunteer under the Peace Corps Act; or

(4) not in excess of three years during which the borrower demonstrates financial inability to repay the loan because of certain exceptional circumstances approved by the Secretary.

Existing deferment provisions are costly, complicated, difficult to administer, and are not necessarily related to financial hardship of the borrower. Under the amendments, many individuals who would qualify for a statutory deferment under current law would still be permitted to delay repayment on account of financial hardship. The provisions of the existing law tend to deter participation of lending institutions, particularly in the Auxiliary Loan program. Currently, borrowers may abuse the wide range of deferments causing expensive increases in Federal subsidy costs. These amendments would result in greater cost-effectiveness with additional administrative flexibility. Similar amendments are proposed in section 252 of the bill for deferments under the National Direct Student Loan program authorized under part E of title IV of the Act.

Section 214. Section 214 of the bill would provide that need analysis for students attending foreign schools would be made by the Secretary for FISL loans and by the guarantee agency for regular GSDL loans. Need analysis for students at foreign schools must be completed by those schools under current law. The amendment would eliminate the administrative burden on foreign schools which has impeded the availability of loans to eligible students attending schools abroad.

Section 215. Section 215 of the bill would clarify eligibility for maximum loan limits based on undergraduate student status. Current law provides $2,500 maximum loan limits per academic year and $12,500 in the aggregate for a student "who has not successfully program of undergraduate education." The amendments in this section would provide for undergraduate student status to be defined in regulations of the Secretary.

Section 216. Section 216 of the bill would require repayment of all Federal advances to guarantee reserve funds by October 1, 1985. Currently, about $100 million in "advances" (zero interest indefinite maturity Federal loans) are held by State and private nonprofit guarantee agencies. These funds and their investment earnings are one of the many sources of Federal support which allow these agencies to operate at no cost to the State. Retention of these advances is inconsistent with the proposed restoration of GSL cost-sharing between the States and the Federal Government. This section provides that repayments on the advances would be deposited in the student loan insurance fund established under section 431 of the Higher Education Act, thus reducing the need for new GSL appropriations. Currently, recoveries on certain older advances are deposited in the Treasury and do not reduce GSL costs.

Section 217. Section 217 of the bill would restore the flat 80 percent Federal reinsurance system which existed prior to 1976. Currently, guarantee agencies pay default claims filed by lenders and are then reimbursed for 100 percent of principal and interest by the Education Department. (One agency has chosen to remain at 80 percent reinsurance.) This section would restore the requirement that guarantee agencies meet 20 percent of all default costs (via State appropriations or otherwise). In addition to directly reducing Federal costs, this would encourage the State level guarantee agencies to require greater collection diligence on the part of lenders and to take other actions to reduce the incidence of default. This section would also repeal certain guarantee agency "reinsurance trigger" and FISL "insurance trigger" provisions of current law which are administratively cumbersome as well as ineffectual and inequitable.

Section 218. Section 218 of the bill would establish nationwide uniformity in certain important guarantee agency policies. All of the current policy requirements for 100 percent reinsurance would become conditions of the proposed flat 80 percent guarantee agency reinsurance agreement. For example, all guarantee agencies would be required to provide GSL insurance for both in-state residents attending school out-of-state and for out-of-state residents attending school within the State served by the agency; and all guarantee agencies would be required to provide loan limits identical to those available under the direct Federal insurance (FISL) component of GSL program ($2,500 per year for undergraduates, $5,000 for graduate students). In addition, all guarantee agencies would be required to provide insurance for all categories of eligible lenders established under section 435(g)(1) of the Higher Education Act.

Section 219. Section 219 of the bill would repeal the current authority for lenders making loans in multiple installments to re-

ceive interest benefit and special allowance payments based on the anticipated full loan amount for an academic year even though only a portion has been disbursed. Section 219(b) would repeal the current provision authorizing guarantee agencies to act as multiple disbursement "escrow agents," whereby the lender receives interest benefit and special allowance payments based on the annual loan amount and the guarantee agency is allowed to invest and retain "float" earnings on undisbursed loan amounts. In both cases, the Federal taxpayer should not be paying interest on funds which have not been disbursed to borrowers. Lenders, and guarantee agencies acting as their agents, would still be allowed to disburse GSLs in multiple installments. They would simply not be given an extra interest incentive for doing so.

Section 220. Section 220 of the bill would repeal several current provisions which impose administrative requirements and loan limitations on GSL loans which are made or "originated" by educational institutions. Currently, such loans may not be made to more than 50 percent of a school's undergraduates at one time; borrowers of such loan must obtain commerical lender refusal statements; such loans to freshmen may not exceed 50 percent of educational costs and may not exceed $1,500 unless disbursed under certain multiple disbursement rules. Repeal of these current legislative provisions would result in program simplification, elimination of unnecessary administrative burden, and improvement in loan access. Moreover, these provisions fail to address the main problems caused by "origination" relationships—the increased likelihood that unsophisticated borrowers will refuse to repay their loans if they are dissatisfied with the education they receive. This problem is adequately addressed by current regulations of the Secretary and the Federal Trade Commission and by common law agency principles.

Section 221. Section 221 of the bill would clarify the GSL lender eligibility of Rural Rehabilitation Corporations, and successor agencies, a category of participating lender. Their status has been made uncertain by changes over the last few years in section 434(g)(1) of the Higher Education Act. This section of the bill would also clarify the eligibility of State and Federal agencies to hold GSL notes as "assignees" of initial lenders. This change is necessary to clarify the ability of such agencies to assume ownership of GSL notes in cases of lender bankruptcy or reorganization by a State or Federal banking insurance agency.

Section 222. Section 222 of the bill would clarify the Secretary's authority to delegate any of his functions to officials and staff of the Department's regional offices. Numerous functions such as review of lenders, educational institutions, and guarantee agencies are more appropriately and cost-effectively handled by the regional offices.

Section 223. Section 223 of the bill would make a conforming amendment to eliminate disparate treatment under the Auxiliary Loan program of schools which use commissioned saleman to promote the availability of loans. Schools using commissioned salemen would be probibited from participating in either the regular GSL or Auxiliary Loan program.

Section 224. Section 224(a) of the bill would broaden eligibility for the Auxiliary Loan (PLUS) program authorized under section 428B of the Act to include parents and spouses of graduate students.

Auxiliary Loan eligibility is limited under current law to graduate and professional students, independent undergraduates, and parents of dependent undergraduate students. The current eligibility rules for undergraduates and their parents would not be changed. The proposed amendments would enhance the attractiveness and growth of this lower cost component of the GSL program by broadening the opportunity for borrowing under the Auxiliary Loan program.

Under the proposed changes, section 224(b) would provide that all borrowers would be limited to borrowing $3,000 per academic year, $15,000 in the aggregate, for a student. For example, if parents and the spouse of a graduate student were to borrow under the program, their combined loans would be limited to $3,000 per year for the student.

In addition, section 224(c) would provide for an initial in-school deferment of repayment of the principal of the loan for student borrowers until six months after the student ceases at least half-time enrollment at an eligible institution. Current law provides for deferment of repayment of principal for independent and graduate students as long as the student is enrolled full-time at an eligible institution. Loan principal, as well as interest, must be repaid if the student is enrolled less than full-time. Under the amendment, interest would continue to accrue and be payable regardless of enrollment status of the student. This amendment is designed to provide equity in student treatment, reduce the number of defaults on in-school principal repayments, and improve lender and borrower response to the Auxiliary Loan program.

Section 224(c)(3) would add new authority for lenders to charge up to $25 per loan (which may be deducted from the amount of the loan) to parent or spouse borrowers to defray the cost of verifying the creditworthiness of the borrower. While lenders may use, and guarantee agencies may require credit checks at present, no provision is made in current law for a fee to be charged.

Finally, this section would increase the maximum repayment period and change the method for its calculation for parents and spouses under the program. A ten-year repayment period is the limit placed on each loan made under the current program. The amendment would authorize lenders to provide a new ten-year repayment period each time a new loan is taken out and provide for repayment of loans under a single repayment schedule, provided that the total period not exceed 20 years from the date of the first included loan.

Section 225. Section 225 of the bill would clarify that a purpose of part B of title IV of the Act is to encourage participation in the Auxiliary Loan program.

Section 226. Section 226 of the bill would provide new authority for direct Federal insurance of Auxiliary Loans for lenders which do not have access to a single guarantee agency program for substantially all of the loans the lender intends to make under the program. This amendment would enable certain regional and nationwide lenders to offer Auxiliary Loans if no guarantee agency were available.

PART C—WORK-STUDY PROGRAM

Section 231. Section 231 of the bill would increase the authorization of appropriations for the Work-Study program from $830 million to $850 million in fiscal year 1985. The Department has requested an appropriation for this increased amount, which if approved and enacted would represent a 53 percent increase in funding over fiscal year 1984's funding of $555 million. This increased amount is necessary to support the wider range of discretionary activities that would be authorized by this bill for the Work-Study program and would ensure that students have employment-based assistance to meet self-help contributions to finance their postsecondary education.

Section 232. Section 232 of the bill would streamline the mechanics and distribution of Work-Study funds to institutions. This section, among other things, would eliminate maintenance of effort conditions, which are burdensome to institutions and no longer serve any meaningful utility, revise hold-harmless conditions with respect to apportionment of funds to States, and mandate a $2 million set-aside to certain territories.

Section 233. Section 233 of the bill would add a technical amendment which directs that determinations by institutions of the level of Work-Study assistance to students be done under a need analysis system approved by the Secretary, as is the case under currently applicable law. This condition is also proposed for the other campus-based (National Direct Student Loan and SEOG) programs.

Section 234. Section 234 of the bill would restore the eligibility of "area vocational schools" to participate in the Work-Study program. These schools were eligible to participate during the inception of the Work-Study program until the Education Amendments of 1980, which comprehensively revised the Higher Education Act of 1965. The omission of these schools in the 1980 Amendments was evidently inadvertent.

Section 235. Section 235 of the bill would greatly expand institutional flexibility in providing student employment opportunities funded under Work-Study programs. This section would increase the amount of Work-Study funds that an institution may expend on a Job Location and Development program for its students from the current maximum allotment of $25,000 to $100,000. This maximum amount could be used, as proposed under this section, for certain Cooperative Education or adult literacy activities, in addition to Job Location and Development activities. The authorization for Cooperative Education activities under the current Job Location Development program is intended to maximize the Impact of Federal funds for students who wish to receive employment-based, subsidized Federal financial assistance. The programs of Cooperative Education and Job Location and Development in essence would be telescoped under one funding scheme and would benefit by centralization of management over both programs. As discussed more fully below, the bill also proposes eliminating separate Cooperative Education programs funded under title VIII of the Higher Education Act of 1965.

Further, a new major activity would also be authorized with the maximum $100,000 allotment to institutions under the Work-Study program: institutions could establish adult literacy programs with such funds. Once these programs are in place at an institution students could receive Work-Study assistance to tutor adult illiterates. With such programs, a major step in eliminating adult illiteracy in this Nation might be achieved. College students, particularly those who wish to become elementary or secondary education teachers, would be

ideal tutors for large segments of the adult illiteracy population.

Finally, the activities conducted by an institution with the maximum $100,000 allotment and the success the institution has had in affording students with employment-based, non-subsidized income would affect the amount of future allotments to an institution. Basically, this section of the bill would base the amount of a future allotment to an institution on its past performance. Institutions which have a successful program, based on past earnings of their students, would be entitled to the maximum $100,000 allotment in most cases.

Section 236. Section 236 of the bill would make two conforming amendments. Subsection (a) would repeal section 448 of the Higher Education Act of 1965, which (in connection with a separate administrative allowance) specifically authorizes the use of Work-Study for Community service-learning. Because institutions would be free to use Work-Study funds to promote "community service-learning" activities in various ways under these amendments (and are specifically encouraged to do so in regard to adult literacy training), both this provision and the current separate administrative allowance for Community service-learning Work-Study are unnecessary.

Subsection (b) would eliminate the authorization of appropriations for Cooperative Education programs under title VIII of the Act for fiscal year 1985. Because Cooperative Education activities would be funded through Work-Study funds to institutions, a separate authorization for such activities is not necessary.

PART D—SPECIAL PROGRAMS FOR THE DISADVANTAGED

Section 241. Section 241 of the bill would make a number of technical and conforming changes to section 417A of the Higher Education Act of 1965, the general statutory authority for the special programs. Most of these changes are necessary because of other amendments proposed for the five special programs for students from disadvantaged backgrounds authorized under title IV of the Act. Major amendments are proposed to improve and simplify the operations of the Talent Search, Upward Bound, and Special Services programs (collectively known as the TRIO programs). Services or activities provided under two other programs—Educational Opportunity Centers and Staff Developments Activities—would, under the bill, be phased-out or authorized under one or more of the TRIO programs.

Section 242. Section 242 of the bill proposes to consolidate the current Talent Search and Educational Opportunity Centers programs. This consolidation of activities or projects under these programs is symbolized by the new title proposed for this consolidated program: TALENT SEARCH AND ASSISTANCE. Consolidation is appropriate and desirable because it would eliminate duplication of services under the current programs which are similar in scope, would simplify application process and reporting burdens, and would ultimately effect a reduction in administrative costs borne by potential and actual grantees. In consolidating these programs, none of the current activities under each of these programs would be eliminated.

A second major thrust is to specify that the benefits of this consolidated program are available to students who are physically handicapped. The special population of physically handicapped students who wish to pursue a postsecondary education has seldom been given adequate attention in Federal postsecondary education assistance programs. Along with similar amendments to the remaining TRIO programs, physically handicapped students would be added as explicit beneficiaries of all the TRIO programs.

Finally, several new conditions are proposed for improving the manner in which institutions operate Talent Search and Assistance projects. First, grantees would be required to design a project in a geographical area where there is a substantial concentration of low-income or physically handicapped persons—the target populations of the program. Second, projects could not be duplicative of other services under the other TRIO programs and an applicant for a Talent Search and Assistance grant would have to demonstrate that it would not be duplicating such services. Third, consortia of eligible institutions would be able receive a grant under the program. Fourth, and finally, each recipient of a grant under the program would share in the overall cost of the project it carries out. To insure a satisfactory institutional commitment to projects, grantees would be required to finance 25 percent of the cost of any project.

Section 243. Section 243 of the bill would make several operational changes to the Upward Bound program. For example, physically handicapped students would also be beneficiaries of the program. Consortia of eligible institutions are proposed to be eligible grantees and each grantee would be required to finance 10 percent of the cost of any Upward Bound Project.

Section 244. Section 244 of the bill would make amendments to the Special Service program similar to those proposed for the Talent Search and Upward Bound programs. As physically handicapped students are under current law specified as beneficiaries of the Special Service program no change is proposed in their area. However, section 244 proposes that a number of funding conditions be imposed on grantee. These conditions would operate to phase-out gradually, Federal funding of Special Services projects for institutions which have previously received grants. Briefly stated, institutions which previously received Special Services grants for three or more years before October 1, 1984 would only receive additional Federal assistance up to three years with requirements that they match a percentage of the Federal assistance. For all other institutions, a five year maximum period of entitlement would be established with additional requirements that for four of those years they match a certain percentage of the Federal assistance. These conditions would ensure greater institutional commitment to Special Service projects—eventually resulting in institutional "graduation" away from Federal support for these activities. This would allow additional institutions to benefit from the limited Federal funds available for stimulation of institutional support for such student support services.

Section 245. Section 245 of the bill would repeal the authority for the Educational Opportunity Centers and Staff Development Activities programs. The Educational Opportunity Centers program would, under other amendments made by this bill, be consolidated as part of the new Talent Search and Assistance program. The authority for Staff Development Activities program would also be repealed. However, staff development activities could still be funded as part of Special Services projects.

PART E—NATIONAL DIRECT STUDENT LOANS

Section 251. Section 251 of the bill would make a few technical changes to statutory provisions governing applications from institutions and the need analysis calculation of loan amounts to students.

Section 252. Section 252 of the bill would modify the extent to which students may have loans under the National Direct Student Loan program deferred. These modifications are substantially similar to the deferment changes proposed for the Guaranteed Student Loan program under section 213 of the bill. Additionally, section 252 would provide that loans made on or after July 1, 1985 bear an interest rate of 8 percent (the GSL program interest rate). This would improve equity between the two need-based student loan programs, and it would improve the flow of funds available for new loans.

Section 253. Section 253 of the bill would decrease the Federal payments due to an institution on account of a loan cancellation from 100 to 10 percent of the amount cancelled. This 10 percent is equivalent to the amount the institution originally contributed to the loan. Each institution would be free to determine the appropriate use of these funds, instead of being required to use all returned funds for purposes of the NDSL program as is the case under current law.

PART F—GENERAL PROVISIONS AMENDMENTS

Section 261. Section 261 of the bill would substantially revise section 482 of the Higher Education Act of 1965. Current criteria for expected family contribution and cost of attendance in section 482 of the Act, both of which seldom operated because of superseding statutory enactments, would be eliminated. As is the case under currently applicable law, section 261 and other sections of the bill would separate the need analysis system of the Pell Self-Help Grant program (as proposed) from the systems used for the campus-based programs.

Section 482 of the Act, as proposed for revision by section 261 of the bill would solely contain authority for the Secretary to define what constitutes an "independent student" and would provide for verification and reporting requirements for determining the veracity of claims by students that they are independent students and, thus, entitled in most cases, to more generous Federal student financial assistance than other students who receive parental financial support. The Department has found that there is substantial program abuse by students falsely claiming independent student status. The verification and reporting requirements proposed would provide the Department and institutions of higher education, which perform a surrogate's role in administering the Federal campus-based programs, substantial authority to detect unfounded claims by students of their independent student status. Section 261 also proposes to provide a sanction against students who lie about their independency; such a student would be denied all forms of Higher Education Act student financial assistance during the academic year for which he lied about his independency. Students who receive financial aid and are subsequently found to have done so on such a fraudulent basis would be required to repay the assistance provided plus interest. This sanction would be in addition to the otherwise applicable civil and crimminal penalties for such misrepresentation.

Section 262. Section 262 of the bill would eliminate requirements that the Secretary

develop a common Federal financial aid application form for the Pell Self-Help Grant (as proposed) and campus-based programs. These provisions under current law are inconsistent with the proposed continuation of the separtion of the need analysis systems for these programs.

Section 263. Section 263 of the bill would eliminate certain maintenance of effort requirements and authorize the Secretary to waive certain title IV participation requirements with respect to foreign schools, many of which are not authorized under their foreign laws to execute such agreements with another soveriegn power.

Section 264. Section 264 of the bill would authorize institutions participating in both the Work-Study and SEOG programs to transfer up to 50 percent of their Work-Study funds to their SEOG program. An institution would, thus, have discretion to use Work-Study funds for making SEOG awards.

Section 265. Section 265 of the bill would modify the current administrative expense allowances for institutions participating in the Pell Self-Help Grant program (as proposed). In addition, for reasons discussed earlier, funding provisions for the Community service-learning projects, which are currently authorized as part of the Work-Study program, would be eliminated. Community service-learning projects would be eliminated under section 236 of the bill.

TITLE III—CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF COLLEGE AND UNIVERSITY FACILITIES

Section 301. Section 301 of the bill would authorize to be appropriated for the fiscal year 1985 $18,775,000 to carry out the academic facilities annual interest grant program, and $14,194,000 to make payments to the Treasury out of the academic and facilities revolving fund. Section 301 would also prohibit the use of appropriations or other available funds for new loan commitments. These provisions would support the President's 1985 budget.

TITLE IV—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

Section 401. Section 401 of the bill would amend the administrative provisions for the Fund for the Improvement of Postsecondary Education (FIPSE) by mandating that the Secretary require grantees to provide a matching share of 50 percent of project costs.

Section 402. Section 402 of the bill would authorize $11,710,000 to be appropriated for FIPSE for the fiscal year 1985.

Section 403. Section 403 of the bill would make a technical amendment to the Act by allowing the Secretary to enter into cooperative agreements (rather than contracts) with educational institutions. This change in terminology brings the FIPSE provisions into accord with the Federal Grant and Cooperative Agreement Act, which defines "contract" as an award instrument used for improvement, rather than assistance, purposes.

TITLE V—EFFECTIVE DATES

Section 501. Section 501 of the bill would provide for effective dates for the amendments made by this bill as folows:

(a) amendments made for Institutional Aid (title I), Academic Facilities (title III), FIPSE (title IV), and TRIO (part D of title II) would be effective October 1, 1984;

(b) amendments made for the Pell Self-Help (part A), Work-Study (part C), TRIO (part D), NDSL (part E) and general provisions for student aid programs (part F of title II) would be effective July 1, 1985; and

(c) most amendments for the GSL program (part B of title II) would be effective July 1, 1984 or 90 days after enactment of this Act, whichever is later, and shall apply to loans made to cover the cost of attendance for any period of enrollment beginning on or after such effective date.

By Mr. HATCH:

S. 2871. A bill to improve the operation of the chapter 1 program authorized under the Education Consolidation and Improvement Act of 1981, to improve the effectiveness of migrant education and programs, to provide for the use of the most recent decennial census information, and for other purposes; to the Committee on Labor and Human Resources.

CHAPTER I IMPROVEMENT AMENDMENTS

Mr. HATCH. Mr. President, today I am introducing a bill developed by the administration to make certain substantive and technical amendments to title I of the Elementary and Secondary Education Act [ESEA] incorporated into chapter I of the Education Consolidation and Improvement Act of 1981.

The purposes of the bill are to: First, enable the Department to use consistently the most recent available census data in making chapter I formula allocations; and second, better target resources in the chapter I migrant program. I share the belief of the administration that these amendments are necessary to improve program effectiveness and to ensure the efficient operation of chapter I program.

Two of these amendments concern the data sources used in making allocations under the chapter I formula. First, the bill would amend ESEA by deleting any reference to use of survey of income and education [SIE] data, gathered by the Bureau of the Census in 1975, in allocating title I funds. The existing statute requires the Department to allocate, on the basis of SIE data, one-half of any funds appropriated for title I grants to local school districts that exceed the amount made available for that activity in fiscal year 1979. Deletion of this requirement would eliminate the anomaly of adjusting more recent 1980 census data to account for obsolete 1975 SIE data.

This bill would amend ESEA to allow the Department to utilize the criteria of poverty used by the Bureau of the Census in compiling the most recent—in this case 1980—decennial census, instead of the criteria used in the 1970 census, to make the chapter I formula allocation. Under the existing statute the Department can use data on the number of children from low-income families from the 1980 census but has had to adjust those data to reflect the poverty criteria established under the 1970 census. The amendment would enable the Department to use the criteria for poverty associated with the most recent census and thus provide a more accurate base on which to make the formula allocation.

Additional amendments concern the chapter I migrant education program. The bill would reduce from 5 years to 2 years the time a formerly migrant child can be deemed migratory for purposes of allocating funds and receiving services under the migrant education program. This proposal would be phased in over 2 years. Under the existing law, migrant children are counted for allocation purposes and are eligible to receive services for 5 years after they have migrated even if they have not moved during that period. Data collected by the migrant student record transfer system show that over half of all chapter I migrant students served and counted for allocation purposes are formerly migrant students who have not moved in the past year. Of this group slightly over half are in their third, fourth, or fifth year of eligibility as formerly migratory students and have remained in the same school district for at least 2 years. A report released by the General Accounting Office in May 1983 found that 60 percent of the migrant education participants in the sample studied were enrolled in only one school district during the period reviewed, which averaged 4.3 years. The amendment would enable the Department to focus limited migrant education funds on students who are actually migratory. Those formerly migratory students who are educationally deprived, and who were initially served by the program but were dropped from the migrant program as a result of the amendment would remain eligible for compensatory education services under the chapter I program for local educational agencies.

In addition, the bill would remove the $6 million, minimum set-aside requirement for coordination of migrant education activities. The 5-percent ceiling of the total appropriated for migrant education would remain as the maximum set-aside for coordination activities. This legislative change would give the Department needed flexibility in choosing whether to place more emphasis on assisting States to provide direct services or on coordination activities.

I would hope that this bill will receive prompt and favorable action. Passage would enable the Department of Education to carry out its obligations under the law with regard to allocating chapter I funds more efficiently and equitably and would increase its ability to focus limited program resources on those migrant children who are most in need.

Mr. President, I ask that the text of the bill along with a section-by-section analysis be printed in the RECORD.

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

S. 2871

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Chapter 1 Improvement Amendments of 1984".

ALLOCATION OF FUNDS

SEC. 2. Section 111(a)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.) (hereinafter in this Act referred to as "the Act") is amended by striking out subparagraphs (D) and (E).

CENSUS DATA

SEC. 3. (a) Section 111(c)(2) of the Act is amended by striking out "1970 decennial census" each place it appears and inserting in lieu thereof "most recent available decennial census".

(b) Section 111(c)(2)(B) of the Act is amended by striking out "nonfarm".

MIGRANT EDUCATION PROGRAMS

SEC. 4. (a) Section 142(b) of the Act is amended by striking out "not in excess of five years," and inserting in lieu thereof "not in excess of three years for fiscal year 1985, and not in excess of two years thereafter,".

(b) Section 143(b) of the Act is amended by striking out "shall not be less than $6,000,000 nor more than 5 per centum" and inserting in lieu thereof "shall not be more than 5 per centum".

EFFECTIVE DATE

SEC. 5. The amendments made by this Act shall affect funds appropriated for fiscal year 1985 and for subsequent fiscal years.

CHAPTER I IMPROVEMENT AMENDMENTS OF 1984

Section 2. Section 2 of the bill would amend the Elementary and Secondary Education Act of 1965 (ESEA) by eliminating the requirement that the Secretary of Education allocate funds on the basis of Survey of Income and Education (SIE) data gathered by the Bureau of the Census in 1975. The Secretary would no longer allocate, on the basis of SIE data, one-half of any funds for chapter 1 grants made under the Education Consolidation and Improvement Act of 1981 (ECIA) to local educational agencies that exceed the funds made available for this activity in fiscal year 1979. Deletion of this requirement would eliminate the need to adjust more recent census data to account for outdated SIE data.

Section 3. Section 3(a) of the bill would authorize the Secretary to use the criteria of poverty from the most recent available decennial census, rather than from the 1970 census, for determining the amounts of payments under Chapter 1 of the ECIA.

Section 3(b) of the bill would make a related technical amendment, deleting the terms "nonfarm" in the current statutory reference to census data. This change is needed because the most recent census makes no distinction between the farm and nonfarm status of families.

Section 4. Section 4(a) of the bill would reduce from five years to two years the time a child of a migratory agriculture worker or migratory fisherman who no longer migrates is deemed migratory for purposes of allocating funds and receiving services under education programs operated for these children by State educational agencies. This change would be phased in over two years. The purpose of this amendment is to enable the Secretary to focus migrant education funds more effectively on students who are migratory.

Section 4(b) of the bill would remove the minimum $6 million set-aside requirement for coordination of activities under the migrant education programs. However, a maximum set-aside for coordination activities would remain at five percent of the total appropriation for these programs. This amendment would provide the Secretary needed flexibility in establishing priorities the migrant education appropriation level is reduced.

Section 5. Section 5 of the bill would provide that the amendments affect funds appropriated for fiscal year 1985 and subsequent fiscal years.

By Mr. GRASSLEY:

S. 2872. A bill to reform the Residential Conservation Service and to repeal the Commercial and Apartment Conservation Service, and for other purposes; to the Committee on Energy and Natural Resources.

CONSERVATION SERVICE REFORM ACT

● Mr. GRASSLEY. Mr. President, today I am introducing legislation to reform the Residential Conservation Service Program, and to repeal the Commercial and Apartment Conservation Service Program. This bill, which is the companion to H.R. 5946, addresses many of the most serious faults with the RCS Program. It is the result of painstaking deliberations in the House of Representatives, and I commend Congressman RALPH HALL and Congressman OTTINGER for their efforts.

I had previously introduced S. 2315 with Senator TRIBLE to repeal both the RCS and the CACS Programs. It is apparent that the RCS Program is not an effective conservation program. The program's intent was to provide energy users with an audit of their usage and follow up with suggestions on how to improve energy conservation. This service was to be provided by public utilities at a minimal cost and homeowners would be encouraged to take steps to achieve energy conservation. Special emphasis was to be placed on achieving savings for low-income homes.

The goals of the RCS Program are laudable. However, the actual implementation has fallen far short of meeting those goals. Instead of encouraging energy conservation among the lower income homeowners, the RCS Program has developed into a "seal of approval" for upper income homeowners who have already taken steps to improve energy efficiency.

The real costs of the audits are almost nine times as high as the allowed utility charge, yet the cost of the service is included in the rate base for all utility customers. As a result, nonparticipating low-income households are actually subsidizing the energy audits for their affluent neighbors.

One further point needs to be mentioned. The cost effectiveness of the RCS Program and the participation rate have been tremendously disappointing. The program has elicited response from only 3 percent of eligible participants despite extensive utility advertising, and has resulted in minimal energy savings. The cost of gas saved per MCF has been estimated to be as high as $82, which is equivalent to a per-barrel oil price of $492.

Clearly it is time to revise this program. The Conservation Service Reform Act will accomplish meaningful reform of the RCS program, and provides for repeal of the soon-to-be implemented CACS Program. Briefly, this legislation will allow States greater flexibility in implementing a program which is better designed to meet States' needs through an alternative plan exemption.

This bill is the result of laborious negotiations and much compromise. Like all compromises, this bill is not perfect. While I am introducing H.R. 5946 as reported by the House Energy and Commerce Committee, I feel it is necessary to pursue modifications in the bill. Specifically, the alternative plan section, and its requirements for annual participation and energy consumption reductions, need revision. I would also like to see more State and utility flexibility in designing conservation programs which can be targeted to local and State needs. It appears we may be overstepping our authority in mandating specific actions by the Governor. All too often, we at the Federal level feel we have the only solution to a problem and foist our position on the States. As long as the goals of increased participation and conservation are achieved, my preference is to leave the means to obtain those goals to the individual States in coordination with utilities. One final concern of mine is that we not place undue burdens on the States or public utility commissions through the reporting requirements and the section on administrative and judicial enforcement proceedings.

I would like to stress that I feel this bill is an excellent starting point for full Senate consideration and I look forward to working closely with Senators HATFIELD, WEICKER, and MCCLURE to secure reforms in the RCS Program. Given the limited amount of time remaining in this legislative schedule, prompt consideration and careful coordination among concerned Senators, Congressmen, and interest groups is necessary. We have the opportunity to take action yet this year, And I remain hopeful that with the introduction of this bill, the Senate can join the House of Representatives in actively pursuing changes in the current RCS Program.

I ask unanimous consent that the bill and a section-by-section summary be included in the RECORD.

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Conservation Service Reform Act of 1984".

TITLE I—RESIDENTIAL CONSERVATION SERVICE

SEC. 101. CHANGES IN CERTAIN PLAN REQUIREMENTS.

(a) INFORMATION REQUIREMENTS MADE APPLICABLE UNTIL JANUARY 1, 1990.—Sections 215 (a) and (d) and 217(a)(1) of the National Energy Conservation Policy Act (relating to utility programs and home heating supplier programs) are amended by striking out "January 1, 1985" each place it appears and inserting in lieu thereof "January 1, 1990".

(b) ELIMINATION OF REQUIREMENTS THAT PUBLIC UTILITIES ARRANGE FOR INSTALLATION OF SUGGESTED MEASURES AND FOR RELATED LOANS; ELIMINATION OF LISTING REQUIREMENTS.—

(1) UTILITY PROGRAMS.—Section 215(b) of such Act (relating to project manager requirements) is amended—

(A) by striking out "Each utility program shall include" through "procedures" and inserting in lieu thereof "Each utility program shall include procedures";

(B) by striking out "to" through "inspect" and inserting in lieu thereof "to inspect"; and

(C) by striking out "inspection;" and all that follows and inserting in lieu thereof "inspection.".

(2) HOME HEATING SUPPLIER PROGRAMS.—Section 217(a)(2) of such Act (relating to home heating supplier programs) is amended—

(A) by striking out "will—" through "inspect" and inserting in lieu thereof "will inspect"; and

(B) by striking out "installing, suggested measures;" and all that follows and inserting in lieu thereof "installing, suggested measures.".

(3) STATE PLANS.—Section 213(a) of such Act (relating to general plan requirements) is amended—

(A) by striking out paragraphs (2) and (3); and

(B) by redesignating paragraphs (4) through (9) as paragraphs (2) through (7), respectively.

(c) RULES.—Section 212(b)(2) of such Act (relating to rules of the Secretary) is amended by striking out subparagraphs (E) and (F) and inserting "and" at the end of subparagraph (C).

(d) EFFECT OF 1984 AMENDMENTS ON APPROVED PLANS.—Section 219 of such Act (relating to Federal standby authority) is amended by adding at the end thereof the following new subsection:

"(e) PLANS APPROVED BEFORE 1984 AMENDMENTS.—For purposes of this section, any residential energy conservation plan which was approved by the Secretary before the effective date of the Conservation Service Reform Act of 1984 shall be treated as an approved plan which is adequately implemented if such plan is adequately implemented in accordance with the requirements of this Act as amended by the Conservation Service Reform Act of 1984.".

(e) CONFORMING AMENDMENTS.—

(1) Paragraph (16) of section 210 of such Act is amended by striking out "215(b)(1)(A)" and inserting in lieu thereof "215(b)".

(2) Subparagraph (C) of section 212(b)(2) of such Act is amended by striking out "213(a)(4)" and inserting in lieu thereof "213(a)(2)".

(3) Subparagraph (A) of section 213(b)(2) of such Act is amended by striking out "215(b)(1)" and inserting in lieu thereof "215(b)".

(4) Subsection (b) of section 214 of such Act is amended by striking out "8" and inserting in lieu thereof "6".

(5) Section 215(a)(3) of such Act is amended by striking out "and the lists referred to in section 213(a) (2) and (3)".

(6) Subsection (d) of section 215 of such Act is amended by striking out ", the offer required under subsection (b)(1)(A)" and all that follows and by inserting in lieu thereof "and the offer required under subsection (b).".

(7) Section 215 of such Act is amended by striking out subsection (f) and by redesignating subsection (g) as subsection (f).

(8) Paragraph (1) of section 216(c) of such Act is amended by striking out subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(9) Subparagraph (C) of section 216(c)(2) of such Act is amended by striking out "on the list referred to in section 213(a)(2)".

(f) STATUTORY CONSTRUCTION.—Nothing in the amendments made by subsections (b) through (e) shall prevent implementation of a plan or program pursuant to the National Energy Conservation Policy Act as in effect before the date of the enactment of this Act.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect 90 days after the date of the enactment of this Act.

(2) RULES.—The Secretary of Energy shall, within the 90-day period referred to in paragraph (1), amend the rules promulgated under section 212 of the National Energy Conservation Policy Act to carry out the amendments made by this Act.

(3) SPECIAL REQUIREMENT FOR PLANS APPROVED BEFORE 1984 AMENDMENTS.—The Secretary of Energy shall, with respect to any residential energy conservation plan approved by the Secretary of Energy before the effective date (as described in paragraph (1)) of the amendments made by this section, require the appropriate official in charge of such plan to notify the Secretary of Energy, within 120 days of the date of enactment of this Act, that the amendments made by subsection (a) of this section shall be implemented for the duration of such plan.

SEC. 102. TIME LIMIT FOR ACTION ON APPLICATIONS FOR TEMPORARY PROGRAMS.

Any application for an exemption under section 218(a) of the National Energy Conservation Policy Act which is pending before the Secretary of Energy on the date of the enactment of this Act shall be deemed approved unless it is disapproved by the Secretary of Energy within 30 days after such date of enactment.

SEC. 103. ALTERNATIVE PLANS FOR RESIDENTIAL BUILDINGS.

(a) IN GENERAL.—The National Energy Conservation Policy Act is amended by inserting the following new sections after section 225:

"SEC. 226. ALTERNATIVE STATE PLANS.

"(a) IN GENERAL.—A Governor of any State or any State agency authorized to do so under State law may elect to formulate and certify an alternative State plan under this section.

"(b) CONSEQUENCES OF CERTIFICATION.—(1) Beginning with the date on which the certification of a plan is made with respect to a State under subsection (e) and ending with the date on which a plan is no longer in effect under this section with respect to such State—

"(A) sections 212(a) through (c)(3), 213 through 215, and sections 217 and 218 shall not apply with respect to—

"(i) regulated utilities in such State, and

"(ii) nonregulated utilities which are included in the plan;

"(B) section 219 shall apply to utilities described in subparagraph (A) only to the extent provided for in subsection (g); and

"(C) sections 212 through 219 shall apply to nonregulated utilities which are not included in the plan and which have not certified an alternative utility plan under section 227.

"(2) Except as provided in subsection (g), any State which certifies a plan under subsection (e) shall continue to have such plan in effect until the expiration of the 5-year period beginning on the date of such certification or until January 1, 1990, whichever occurs first.

"(c) FORMULATION OF PLAN.—In formulating any plan under this section, the Governor or State agency shall—

"(1) provide for advance notice to the public of proposed rulemaking for the purpose of formulating such plan;

"(2) publish a proposed rule on the content and implementation of the plan;

"(3) afford interested persons an opportunity to present oral and written comments on matters relating to such proposed rule; and

"(4) after taking such public comment into consideration, prescribe and make public a final rule setting forth the content and implementation of such plan.

"(d) CONTENT OF PLAN.—A plan certified pursuant to this section shall—

"(1) be designed to result in the dissemination of general energy conservation suggestions to all residential customers of utilities in the State;

"(2) be designed to result in—

"(A) specific energy conservation suggestions to each residential customer requesting such suggestions regarding the customer's residential building,

"(B) energy conservation improvements (which are included in such plan) to the customer's residential building, or

"(C) load management improvements (which are included in such plan) in the customer's residential building;

"(3) except as provided in subsection (k), for each year in which such plan is in effect, be designed to result in—

"(A)(i) in the case of a plan carried out solely by a State, benefits under paragraph (2) for a number of buildings equal to 5 percent or more of the residential buildings using natural gas or electric energy from utilities covered under section 211(a) in such State which did not, before such year, receive benefits under this Act (other than under paragraph (1) or section 227(d)(1)) or similar State law, and

"(ii) in the case of any other plan, benefits under paragraph (2) for a number of buildings equal to 5 percent or more of the residential buildings served by the utilities in-

cluded in the plan which did not, before such year, receive benefits under this Act (other than paragraph (1) or section 227(d)(1)) or similar State law;

"(B) energy consumption reductions (as determined by the Governor by rule) of an average of 10 percent or more (as compared to the preceding year) in the residential buildings in such State which receive specific energy conservation suggestions or energy conservation improvements under paragraph (2) during the year for which the determination is made; and

"(C) maximum kilowatt demand reductions (as determined by the Governor by rule) of an average of 10 percent or more (as compared to the preceding year) in the residential buildings in such State which receive load management improvements under paragraph (2) during the year for which the determination is made;

"(4) be designed to benefit individuals, including but not limited to individuals with low or moderate incomes;

"(5) contain adequate procedures to assure that, if a public utility sypplies or installs residential energy conservation measures, such actions shall be consistent with section 216 and prices and rates of interest charged shall be fair and reasonable;

"(6) contain adequate procedures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of such plan;

"(7) be carried out by the State, by utilities within the State, or a combination of both;

"(8) be consistent with the rules under section 212(b)(2)(D);

"(9) contain rules consistent with the rules under section 215(c);

"(10) contain provisions to assure that any person who alleges any injury resulting from a violation of any plan provision shall be entitled to redress pursuant to State law or under such procedures as may be established by the Governor or State agency prior to the date on which the plan is certified under subsection (e); and

"(11) contain provisions described in section 213(b)(2)(B).

"(e) CERTIFICATION.—(1) A Governor or State agency which elects to certify a plan under this section shall certify, pursuant to a form to be prescribed by the Secretary (except as provided by paragraph (2)) to the Secretary that the plan—

"(A) has been formulated in accordance with subsection (c); and

"(B) will be adequately implemented.

"(2) If a form is not made available by the Secretary within 90 days after the date of the enactment of this section, the Governor or State agency may make such certification on a form prescribed by such Governor or State agency.

"(3) Any certification under this subsection shall include a detailed explanation of the manner in which the contents of the plan will be implemented.

"(f) ANNUAL REPORT.—(1) The State shall submit an annual report to the Secretary, within 60 days after the end of the 1-year period to which the report relates, describing the implementation of the plan and the results thereof.

"(2) Such report shall include—

"(A) a statement of the number of buildings receiving benefits under subsection (d)(2),

"(B) a statement of the energy savings resulting from the plan, including a statement of average energy consumption reductions in the case of residential buildings which receive energy conservation suggestions or energy conservation improvements under subsection (d)(2), and a statement of average maximum kilowatt demand reductions in the case of residential buildings which receive load management improvements under subsection (d)(2),

"(C) a statement of the proportion of individuals with low and moderate incomes who receive benefits under subsection (d)(2),

"(D) a detailed description of the benefits provided under the plan, and

"(E) the names of the entities carrying out the plan.

"(g) ADMINISTRATIVE AND JUDICIAL ENFORCEMENT PROCEEDINGS.—(1) At any time more than 1 year after an alternative State plan has been certified under subsection (e) with respect to a State, any resident of such State may petition the Secretary to conduct a public hearing to determine if the alternative State plan has been adequately implemented. A copy of such petition shall be transmitted to the Governor or the appropriate State agency on the same date it is transmitted to the Secretary. The Secretary shall have 90 days after the date on which such petition is received to make a determination on the matter.

"(2) Except as provided in paragraph (3), if the Secretary determines that the alternative State plan has not been adequately implemented, the Secretary shall, within the 90-day period described in paragraph (1), initiate standby authority under section 219 with respect to such State. If the Secretary does not initiate the standby authority within the 90-day period, the resident may bring a de novo action in the appropriate United States district court—

"(A) against the Secretary (with the State having the right to intervene) to require the Secretary to implement standby authority under section 219, or

"(B) against the State to require the State to adequately implement the alternative State plan certified under subsection (e).

If the court finds that the State has failed to adequately implement such plan, it shall order the remedy requested by the plaintiff under subparagraph (A) or (B). If an individual prevails in an action under subparagraph (A), the court shall award such individual reasonable fees and expenses of attorneys and costs.

"(3) If a State which had an approved plan in effect under section 212 on the day before the date on which certification was made under this section informs the Secretary in writing, within 30 days after receiving a copy of the petition described in paragraph (1), that it will no longer implement a plan certified under this section and that it will implement the approved plan which was in effect in the State on the day before certification of the alternative plan under this section—

"(A) the determinations and actions described in paragraph (2) may not be carried out; and

"(B) sections 212 through 219 shall apply in such State except to the extent an alternative utility plan under section 227 is implemented in such State.

"(4)(A) A resident may not petition the Secretary under paragraph (1) and may not bring an action under paragraph (2) if such petition or action is based solely on a failure to reach the results described in paragraph (3) of subsection (d) or subsection (k).

"(B) A court may not make a finding that a State has failed to adequately implement a plan under paragraph (2) if such finding is based solely on a failure to reach the results described in paragraph (3) of subsection (d) or subsection (k).

"(h) COVERAGE.—A plan certified under this section shall not apply to utilities other then utilities covered under section 211(a).

"(i) INCLUSION OF NONREGULATED UTILITIES.—No nonregulated utility may be included in a plan by a Governor or State agency under this section unless such inclusion is authorized under State law or the nonregulated utility agrees to such inclusion.

"(j) UTILITIES WITH RETAIL SERVICE TERRITORIES IN MORE THAN 1 STATE.—For purposes of this section, any utility with a retail service territory (as defined in section 227(d)) in more than one State shall be considered to be a separate utility with respect to each State in which its retail service territory is located.

"(k) ALTERNATIVE STANDARDS.—(1) If—

"(A) the Governor or State agency which certifies a plan under this section finds—

"(i) with respect to the first year in which the alternative State plan is to be in effect, that residential customers will not be adequately informed of the availability of benefits under such plan, or

"(ii) with respect to any year in which the alternative State plan is to be in effect, that—

"(I) the number of residential buildings which have received benefits described in subsection (d)(2) (regardless of whether included in a plan) prior to such year is so large that the results described in subsection (d)(3) are unlikely to be reached in the absence of a finding under this subsection, or

"(II) such alternative State plan (or substantial portions thereof) will primarily benefit individuals with low or moderate incomes, and

"(B) such finding is made after interested persons are afforded an opportunity to present oral and written comments thereon (which, with respect to the first year in which an alternative State plan is to be in effect, may be in combination with the opportunity afforded under subsection (c)(3)), the results described in subsection (d)(3)(A) shall be applied to such year by substituting for '5 percent' a percentage (determined by such Governor or State agency) which is less than 5 percent and greater than or equal to 3 percent.

"(2) A finding under this subsection may not be made more frequently than once a year and each such finding shall be applicable to the implementation of an alternative State plan for a period, beginning on the date specified in such finding, not to exceed 12 months. Such period shall not begin before the date of such finding.

"(l) CLASSIFICATION AS LOAD MANAGEMENT IMPROVEMENT OR ENERGY CONSERVATION IMPROVEMENT.—For purposes of this section, in the case of a technique or installation which may be classified as either a load management improvement or an energy conservation improvement, the Governor, by rule, shall determine whether to treat such technique or installation as a load management improvement, an energy conservation improvement, or both.

"SEC. 227. ALTERNATIVE UTILITY PLANS.

"(a) IN GENERAL.—A regulated utility which is in a State in which an alternative State plan is not in effect under section 226 and a nonregulated utility which is not included in a plan submitted by a Governor or State agency as described in section 212(c) (if such inclusion is authorized under State

law) or in a plan certified under section 226 may elect to certify an alternative utility plan under this section.

"(b) CONSEQUENCES OF CERTIFICATION.—(1) Beginning with the date on which the certification of a plan is made with respect to a utility under subsection (e) and ending with the date on which a plan is no longer in effect under this section with respect to such utility—

"(A) sections 212(a) through (c)(3), 213 through 215, and sections 217, 218, and 226 shall not apply with respect to such utility; and

"(B) section 219 shall apply to such utility only to the extent provided for in subsection (g).

"(2) Except as provided for in subsection (g), any utility which certifies a plan under subsection (e) shall continue to have such plan in effect until the expiration of the 5-year period beginning on the day of such certification or until January 1, 1990, whichever occurs first.

"(c) FORMULATION OF PLAN.—The Governor or State agency authorized to do so under State law shall formulate a plan under this section on behalf of any regulated utility which has elected to certify a plan under this section. In formulating any plan under this section, the nonregulated utility or the Governor or State agency in the case of a regulated utility shall—

"(1) provide for advance notice to the public of such plan;

"(2) publish a description of the proposed content and implementation of the plan;

"(3) afford interested persons an opportunity to present oral and written comments on matters relating to such proposed plan; and

"(4) after taking such public comment into consideration, prescribe and make public the content and implementation of such plan.

"(d) CONTENT OF PLAN.—Any plan certified pursuant to this section shall—

"(1) be designed to result in the dissemination of general energy conservation suggestions to all residential customers of such utility;

"(2) be designed to result in—

"(A) specific energy conservation suggestions to each residential customer requesting such suggestions regarding the customer's residential building,

"(B) energy conservation improvements (which are included in such plan) to the customer's residential building, or

"(C) load management improvements (which are included in such plan) in the customer's residential building;

"(3) except as provided in subsection (j), for each year in which such plan is in effect and with respect to the retail service territory of the utility, be designed to result in—

"(A) benefits under paragraph (2) for a number of buildings equal to 5 percent or more of the residential buildings using natural gas or electric energy from such utility which did not, before such year, receive benefits under this Act (other than under paragraph (1) or section 226(d)(1)) or similar State law;

"(B) energy consumption reductions (as determined by the Governor by rule) of an average of 10 percent or more (as compared to the preceding year) in the residential buildings in such territory which receive specific energy conservation suggestions or energy conservation improvements under paragraph (2) during the year for which the determination is made; and

"(C) maximum kilowatt demand reductions (as determined by the Governor by rule) of an average of 10 percent or more (as compared to the preceding year) in the residential buildings in such territory which receive load management improvements under paragraph (2) during the year for which the determination is made;

"(4) be designed to benefit individuals including but not limited to individuals with low or moderate incomes;

"(5) contain adequate procedures to assure that, if a public utility supplies or installs residential energy conservation measures, such actions shall be consistent with section 216 and prices and rates of interest charged shall be fair and reasonable;

"(6) contain adequate procedures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of such plan;

"(7) be consistent with the rules under section 212(b)(2)(D);

"(8) contain rules consistent with the rules under section 215(c);

"(9) contain provisions to assure that any person who alleges any injury resulting from a violation of any plan provision shall be entitled to redress—

"(A) in the case of an alleged violation by a regulated utility, pursuant to State law or under such procedures as may be established by the Governor or State agency prior to the date on which the plan is certified under subsection (e), or

"(B) in the case of an alleged violation by a nonregulated utility, under such procedures as are established by the nonregulated utility prior to the date on which the plan is certified under subsection (e); and

"(10) contain provisions described in section 213(b)(2)(B).

For purposes of this subsection, the term 'retail service territory' means the territory in a state in which a utility makes retail sales to residential customers.

"(e) CERTIFICATION.—(1) A utility which elects to certify a plan under this section shall certify, pursuant to a form to be prescribed by the Secretary (except as provided by paragraph (2)), to the Secretary that the plan—

"(A) has been formulated in accordance with subsection (c); and

"(B) will be adequately implemented.

"(2) If a form is not made available to a utility by the Secretary within 90 days after the date of the enactment of this section, the utility may make such certification on a form prescribed by such utility.

"(3) Any certification under this subsection shall include a detailed explanation of the manner in which the contents of the plan will be implemented, and, in the case of a regulated utility, shall include a statement of support from the Governor or the State agency of the State concerned.

"(f) ANNUAL REPORT.—(1) The utility shall submit an annual report to the Secretary, within 60 days after the end of the 1-year period to which the report relates, describing the implementation of the plan and the results thereof.

"(2) Such report shall include—

"(A) a statement of the number of buildings receiving benefits under subsection (d)(2),

"(B) a statement of the energy savings resulting from the plan, including a statement of average energy consumption reductions in the case of residential buildings which receive energy conservation suggestions or energy conservation improvements under subsection (d)(2), and a statement of average maximum kilowatt demand reductions in the case of residential buildings which receive load management improvements under subsection (d)(2),

"(C) a statement of the proportion of individuals with low and moderate incomes who receive benefits under subsection (d)(2),

"(D) a detailed description of the benefits provided under the plan, and

"(E) the names of the entities carrying out the plan.

"(g) ADMINISTRATIVE AND JUDICIAL ENFORCEMENT PROCEEDINGS.—(1) At any time more than 1 year after an alternative utility plan has been certified under subsection (e) with respect to a utility, any residential customer of such utility may petition the Secretary to conduct a public hearing to determine if the alternative utility plan has been adequately implemented. A copy of such petition shall be transmitted to the utility on the same date it is transmitted to the Secretary. The Secretary shall have 90 days after the date on which such petition is received to make a determination on the matter.

"(2) Except as provided in paragraph (3), if the Secretary determines that the alternative utility plan has not been adequately implemented, the Secretary shall, within the 90-day period described in paragraph (1), initiate standby authority under section 219 with respect to the utility concerned. If the Secretary does not initiate such standby authority within such 90-day period, such customer may bring a de novo action in the appropriate United States district court—

"(A) against the Secretary (with the utility having the right to intervene) to require the Secretary to implement standby authority under section 219 with respect to such utility, or

"(B) against the utility to require the utility to adequately implement the alternative utility plan certified under subsection (e).

If the court finds that the utility has failed to adequately implement such plan, it shall order the remedy requested by the plaintiff under subparagraph (A) or (B). If an individual prevails in an action under subparagraph (A), the court shall award such individual reasonable fees and expenses of attorneys and costs.

"(3) If a utility which was within an approved State plan under section 212 on the day before the date on which certification was made under this section informs the Secretary in writing, within 30 days after receiving a copy of a petition described in paragraph (1), that it will no longer implement a plan certified under this section and that it will carry out a program in accordance with the State plan in effect under this part in the State—

"(A) the determinations and actions described in paragraph (2) may not be carried out; and

"(B) sections 212 through 219 shall apply to such utility unless it voluntarily or pursuant to State law becomes part of a State alternative plan implemented in the State under section 226.

"(4) For purposes of implementing section 219(a)(2) to a regulated utility as a result of this subsection, the term 'each regulated utility in the State' in such section shall be deemed to mean only the utility with respect to which action is taken under this subsection.

"(5)(A) A residential customer may not petition the Secretary under paragraph (1) and may not bring an action under paragraph (2) if such petition or action is based solely on a failure to reach the results described in paragraph (3) of subsection (d) or subsection (j).

"(B) A court may not make a finding that a utility has failed to adequately implement a plan under paragraph (2) if such finding is based solely on a failure to reach the results described in paragraph (3) of subsection (d) or subsection (j).

"(h) COVERAGE.—A plan certified under this section shall not apply to utilities other than utilities covered under section 211(a).

"(i) UTILITIES WITH RETAIL SERVICE TERRITORIES IN MORE THAN 1 STATE.—For purposes of this section, any utility with a retail service territory (as defined in subsection (d)) in more than one State shall be considered to be a separate utility with respect to each State in which its retail service territory is located.

"(j) ALTERNATIVE STANDARDS.)—(1) If—

"(A) the Governor of a State which includes a retail service territory (as defined in subsection (d)) of a utility which certifies a plan under this section finds, for such retail service territory—

"(i) with respect to the first year in which the alternative utility plan is to be in effect, that residential customers will not be adequately informed of the availability of benefits under such plan, or

"(ii) with respect to any year in which the alternative utility plan is to be in effect, that—

"(I) the number of residential buildings which have received benefits described in subsection (d)(2) (regardless of whether included in a plan) prior to such year is so large that the requirements of subsection (d)(3) are unlikely to be met in the absence of a finding under this subsection, or

"(II) such alternative utility plan (or substantial portions thereof) will primarily benefit individuals with low or moderate incomes, and

"(B) such finding is made after interested persons are afforded an opportunity to present oral and written comments thereon (which, with respect to the first year in which an alternative utility plan is to be in effect, may be in combination with the opportunity afforded under subsection (c)(3)).

the requirements of subsection (d)(3)(A) shall be applied to such retail service territory for such year by substituting for '5 percent' a percentage (determined by such Governor) which is less than 5 percent and greater than or equal to 3 percent.

"(2) A finding under this subsection may not be made more frequently than once a year and each such finding shall be applicable to the implementation of an alternative utility plan for a period, beginning on the date specified in such finding, not to exceed 12 months. Such period shall not begin before the date of such finding.

"(k) CLASSIFICATION AS LOAD MANAGEMENT IMPROVEMENT OR ENERGY CONSERVATION IMPROVEMENT.—For purposes of this section, in the case of a technique or installation which may be classified as either a load management improvement or an energy conservation improvement, the Governor, by rule, shall determine whether to treat such technique or installation as a load management improvement, an energy conservation improvement, or both.".

(b) TVA AUTHORITY.—Paragraph (4) of section 212(c) is amended by inserting ", section 210(21), section 226, or section 227" after "this section,".

(c) CONFORMING AMENDMENT.—

(1) Subsection (e) of section 218 of such Act is amended by striking out the period at the end of the second sentence and inserting in lieu thereof "or a plan in effect under section 226 or section 227 which is applicable to such utility.".

(2) Subsection (a) of section 219 of such Act is amended by striking out "If" and inserting in lieu thereof "Except as provided in sections 226 and 227, if".

(3) Subsection (b) of section 219 of such Act is amended by striking out "If" and inserting in lieu thereof "Except as provided in sections 226 and 227, if".

(d) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 225 the following new items:

"Sec. 226. Alternative State plans.
"Sec. 227. Alternative utility plans.".

SEC. 104. REPORTS AND DISSEMINATION OF INFORMATION.

(a) IN GENERAL.—Section 225 of the National Energy Conservation Policy Act (relating to FTC study and report submitted before January 1, 1982) is amended to read as follows:

"SEC. 225. REPORTS AND DISSEMINATION OF INFORMATION.

"(a) GENERAL REPORT.—(1)(A) No later than January 1, 1986, the Secretary shall submit a report to the chairman of the Committee on Energy and Commerce of the House of Representatives and the chairman of the Committee on Energy and Natural Resources of the Senate relating to the operation of this part.

"(B) Not later than January 1 of every other year after 1986, the Secretary shall submit a report to the Chairman of the Committee on Energy and Commerce of the House of Representatives and the Chairman of the Committee on Energy and Natural Resources of the Senate relating to the operation of this part during the preceding 2-year period.

"(2) Each such report shall include—

"(A) a comparison of actual and predicted energy savings resulting from plans under this part,

"(B) identification of the most effective plans (or portions thereof),

"(C) an analysis, based on completed audits and other relevant data, of the energy saving potential of the installation of additional residential conservation measures, and

"(D) an analysis of economic, technical, behavioral, and other factors considered relevant to energy consumption by the Secretary.

Nothing in this paragraph shall require a survey of each residential building in which a residential energy conservation measure has been installed under this part.

"(b) SUMMARY OF ALTERNATIVE PLAN REPORTS.—No later than January 1, 1986, and no later than January 1 of each year thereafter, the Secretary shall submit a report to the Chairman of the Committee on Energy and Commerce of the House of Representatives and the Chairman of the Committee on Energy and Natural Resources of the Senate summarizing the annual reports the Secretary received under section 226(f) and section 227(f) during the 12-month period ending on the preceding July 1.

"(c) DISSEMINATION OF INFORMATION.—(1)(A) The Secretary shall at least annually, in fiscal years beginning after September 30, 1984, disseminate to the States and public utilities information providing technical assistance (including assistance in making calculations under sections 226(d)(3)(B) and 227(d)(3)(B)) and relating to the most cost-effective energy conservation procedures and devices (including residential energy conservation measures) and the most successful plans (or portions thereof) under this part.

"(B) The Secretary shall make the information described in subparagraph (A) available to the public.

"(2) The Secretary shall conduct seminars in various regions of the United States to disseminate information described in paragraph (1).".

(b) CLERICAL AMENDMENT.—The table of contents of such Act is amended by striking out the item relating to section 225 and inserting in lieu thereof the following:

"Sec. 225. Reports and dissemination of information.".

SEC. 105. LOAD MANAGEMENT IMPROVEMENT DEFINED.

Section 210 of the National Energy Conservation Policy Act (relating to definitions) is amended by inserting after paragraph (20) the following new paragraph:

"(21) The term 'load management improvements' means—

"(A) as determined by the Secretary—

"(i) load management techniques (other than time-of-day or seasonal rates), and

"(ii) the installation of energy-efficient electric appliances or any other devices which reduce kilowatt demand, and

"(B) as determined by the Governor of a State, any other improvements in such State which are described in clause (i) or (ii) of subparagraph (A).".

SEC. 106. LIMITATION ON SUPPLY AND INSTALLATION BY PUBLIC UTILITIES.

(a) ADDITIONAL REQUIREMENTS FOR WAIVER.—Section 216(e) of the National Energy Conservation Policy Act (relating to waiver of prohibition against supply and installation of residential energy conservation measures by public utilities) is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) The",

(2) by striking out "charged and" and inserting in lieu thereof "charged, there will be no unfair competitive advantages to the utility (with respect to competitors such as small businesses) in carrying out such activities, and", and

(3) by adding at the end thereof the following new paragraph:

"(2) The Governor may not support the petition of a regulated utility under paragraph (1) before—

"(A) the Governor—

"(i) provides advance notice to the public of such waiver petition,

"(ii) affords interested persons an opportunity to present oral and written comments on the waiver petition, and

"(iii) makes the determinations and findings which the Secretary is required to make in order to grant a waiver under paragraph (1), and sets forth, in writing, such findings and the reasons for such determinations and findings; and

"(B) the utility makes all relevant documents and records requested by the Governor available to the Governor.".

(b) CONTRACTING EXEMPTION.—Subsection (c) of such section is amended by adding at the end thereof the following new paragraph:

"(3) This subsection shall not apply to the supply or installation of residential energy conservation measures other than specific measures which the Secretary determines—

"(A) were being installed or supplied by a public utility on the date of the enactment of the Conservation Service Reform Act of 1984, or

"(B) were broadly advertised on or before such date of enactment.".

(c) GENERAL EXEMPTION.—Subsection (d) of such section is amended—

(1) by striking out "The" and inserting in lieu thereof: "(1) Except as provided in paragraph (2), the",

(2) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively, and

(3) by adding at the end thereof the following new paragraph:

"(2) Effective July 1, 1986, subparagraphs (A) and (B) of paragraph (1) shall not apply to the supply or installation of residential energy conservation measures other than measures which the Secretary determines were being installed or supplied by a public utility during the 12-month period ending June 1, 1984.

"(3)(A) If any person requests review of an exemption under paragraph (1) (A) or (B) by the Governor of the State in which the exemption applies, and such request includes adequate documentation, the Governor shall review such exemption under subparagraph (B).

"(B) If, after notice and opportunity for a public hearing, the Governor determines that with respect to an activity which is the subject of a request under subparagraph (A)—

"(i) the utility is not charging fair and reasonable prices and rates of interest,

"(ii) there are unfair competitive advantages to the utility (with respect to competitors such as small businesses),

"(iii) such activity is inconsistent with the prevention of unfair methods of competition or the prevention of unfair or deceptive acts or practices, or

"(iv) the utility has not provided the Governor with all documents and records he determines necessary to make the determination under clauses (i) through (iii),

and sets forth, in writing, such determination and the reasons for such determination, such exemption shall not apply to the activity which is the subject of such request.

"(C) Notwithstanding any findings of the Governor under subparagraph (B), the Governor may allow an exemption under paragraph (1) (A) or (B) if the utility establishes to the satisfaction of the Governor that it will provide appropriate competitive safeguards.".

TITLE II—REPEAL OF PROVISIONS REGARDING COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

SEC. 201. (a) IN GENERAL.—Title VII of the National Energy Conservation Policy Act (relating to energy conservation for commercial buildings and multifamily dwellings) is hereby repealed.

(b) CLERICAL AMENDMENT.—The table of contents for such Act is amended by striking out the items relating to title VII.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE: CONSERVATION SERVICE REFORM ACT OF 1984

Title I—Residential Conservation Service

Section 101—Changes in Certain Plan Requirements—This section makes changes in certain plan requirements under the existing RCS program.

Extension of Announcement Date—The bill would extend from January 1, 1985, to January 1, 1990, the last date on which utilities and participating home heating suppliers are required to issue announcements of the RCS program to their customers.

Elimination of Arranging and Listing Requirements—The bill would eliminate the requirements that covered utilities and home heating suppliers arrange for the installation and financing of conservation measures and provide a list of suppliers, contractors and financial institutions to residential customers. (However, the bill would not prohibit such activities by a utility.)

If a Governor or public utility wishes to revise a previously approved residential energy conservation plan to reflect this legislation's elimination of requirements relating to arranging and listing, this section explicitly permits such a change without requiring that a plan amendment be submitted to the Secretary of Energy.

In the case of states or public utilities that elect to continue a residential energy conservation plan approved by DOE prior to enactment of this legislation, the appropriate official in charge of such plan must notify the Secretary in writing that the announcement date requirement shall be extended to January 1, 1990, as required by this section. The Committee intends that a letter from the appropriate official in charge of the plan to the Secretary should satisfy this requirement.

Section 102—Temporary Programs—The Secretary of Energy must approve or disapprove any pending applications for temporary programs under section 218(a) of the National Energy Conservation Policy Act (NECPA) no later than 30 days after enactment. If the Secretary takes no action within 30 days, the temporary program shall be deemed approved.

Section 103—Alternative Plans for Residential Buildings—The bill allows an exemption from the requirements of the RCS program for states adopting an "alternative plan." This section would add new sections 226 and 227 to NECPA. Section 226 allows states to adopt an alternative plan, while section 227 allows utilities to develop alternative plans in states that choose to continue their existing RCS programs.

Alternative State Plans (new section 226)—A Governor of any state or any state agency authorized under state law may certify to the Department of Energy that the state will carry out an alternative plan. Under section 226(b), the Governor may make his certification as soon as DOE has prescribed a form for such certification or, if no such form is available, as early as 90 days after enactment. This provision is intended to insure a minimum of delay in enactment of the alternative program once the state has met the procedural requirement under the formulation of the plan.

Approval of the Secretary is not required at the time of certification. Any state which certifies an alternative plan shall continue to have such plan in effect for the five-year period after certification or until January 1, 1990, whichever occurs first. This new section 266 does not contain a requirement that, under an alternative plan, program announcements be sent to eligible customers.

Formulation of the Plan—In formulating an alternative plan, the Governor must hold a public hearing with opportunity for oral comments prior to certification.

Content of the Plan—In formulating an alternative plan, the Governor should be guided by the items set out under "Content of Plan," in section 226(d). The content of the plan is described below.

(1) The plan shall be designed to result in the dissemination of general energy conservation suggestions to all residential customers of utilities in the state. This is a minimal requirement of the plan to insure that general conservation information is available to all residential utility customers. Such a program could include, for example, utility bill inserts listing the most cost-effective conservation items for the region or a state- or utility-operated telephone "hot-line" to answer questions from residents about energy conservation.

(2) In addition, the plan shall be designed to include result-oriented energy conservation programs. It is intended that the state should have maximum flexibility in designing this class of program, keeping in mind that it should be designed to reach the targets set out in section 226(d)(3). Three broad types of approaches are named under this class of program. An alternative plan may include items from any of the three categories or a combination of these categories. The categories follow:

(a) Specific energy conservation suggestions regarding a customer's residential building. A home energy audit providing specific suggestions about conservation improvements appropriate to the residence would qualify under this description.

(b) Programs designed to result in energy conservation improvements to the customer's residence. This is a broad class of programs that could include, for example, low-interest financing of conservation measures, rebates for the purchase of energy-efficient equipment, or the purchase of predicted or actual kilowatt hours saved through conservation improvements, such as under the RECAP program conducted by General Public Utilities. The Committee intends to encourage innovative programs to induce residential customers to make cost-effective conservation investments. This list of possible programs should not be considered all-inclusive. This provision is not intended to require that the program pay the entire cost of weatherizing residential buildings participating in the plan, although a state may decide to do so and include such a program in its plan.

(c) Programs designed to result in load management improvements in the customer's residential building. Such programs would be aimed at reducing electricity use by an individual customer at times of peak electricity use during the day or during the year. Effective programs in this area have included rebates for the purchase of efficient replacement equipment and devices to turn off such equipment as water heaters during peak energy use. This bill is not intended to encourage, as load management improvements, the replacement of home appliances with appliances powered by a fuel different from that used in the original appliance. Merely switching the fuel for an appliance should not, under the definition in this legislation, be considered in and of itself as a load management improvement.

Programs to reduce peak energy use generally benefit all ratepayers by reducing the need for additional power at the most expensive periods of time. Under this section, it is intended that any load management programs included in the alternative plan should also result in a benefit to the individual residence in reduced peak energy use.

(3) The plan shall be designed to result in annual participation in the alternative program by at least 5 percent of the residential buildings served by natural gas or electric utilities included in the state plan. In the case of an alternative plan carried out by the state only, without utility involvement, the plan should be designed to reach at least 5 percent of the residential customers

served by utilities covered under NECPA. The Committee intends the 5 percent number to be a target. This target may be exceeded or may not be met, but should be used by the State in formulating an alternative program. For those states that have conducted RCS programs or similar conservation programs under state law, the 5 percent applies to the remaining number of residents that have not yet been served. Since the 5 percent target applies to the alternative plan as a whole, the state may decide to allocate responsibility for reaching that target in varying degrees among programs or utility participants. For example, the state program could be designed to reach more than five percent of the customers in a utility service area where dense population or other factors made a high level of participation likely, but less than 5 percent where a lower level of participation was expected.

Section 226 also requires that the plan be designed to result in annual energy consumption reductions of at least 10 percent per household for buildings that participate in the energy conservation programs designed under section 226(d)(2). The Governor of the state shall define by rule the term "energy consumption reductions." The Committee intends that the 10 percent reduction target apply to energy savings that are attributable to the home served by the program, sometimes described as "gross" savings. It is not intended that the savings target be attributable solely to the program as compared to savings that might have occurred in the absence of the program. In calculating the energy reductions, the Governor should adjust for variations in weather from year to year, for population changes, for structural changes in the home or other factors that could distort an assessment of the energy savings achieved.

In the case of load management improvements included in the alternative program, the plan shall be designed to result in annual peak electricity demand reductions of an average of at least 10 percent in residential buildings served by such programs.

(4) The alternative plan shall be designed to benefit individuals with low or moderate incomes, as well as other individuals. This provision is not intended to limit the program to any one income class, but rather to insure that low- or moderate-income individuals would benefit under the design of the program, in addition to those with higher incomes.

(5) The plan shall contain adequate procedures to assure that, if a public utility supplies or installs residential energy conservation measures, such actions shall be carried out in accordance with Section 216 of NECPA and at fair and reasonable prices and rates of interest.

(6) The plan shall contain adequate procedures for preventing unfair, deceptive or anti-competitive acts or practices.

(7) The plan shall be carried out by the state, by utilities within the state or a combination of both. In formulating the alternative state plan, the Governor has several options for determining what entities shall carry out the programs under the plan:

The state may elect to carry out all the programs itself without any utility involvement. Under this option the state could operate the program directly under the designated state agency in charge of the residential conservation service program. Alternatively, the lead state agency could enter into a cooperative agreement with other state agencies or non-governmental entities, such as non-profit community organizations, to carry out or assist in carrying out the program.

The state may elect to have the plan carried out by utilities within the state. Under this section, the state has the option of including all or some of the utilities covered under the RCS program by NECPA.

The state may elect to carry out the plan in combination with the utilities. This option could include, for example, a combination of the cooperative agreement mentioned in the first option and a role for the utilities as well.

(8) The plan shall be consistent with DOE rules developed under NECPA in consultation with the Federal Trade Commission concerning unfair, deceptive or anticompetitive practices.

(9) The plan shall contain rules consistent with the rules under section 215(c) of NECPA concerning the accounting and payment of costs for the program.

(10) The plan shall contain provisions to assure that any person who alleges injury resulting from inadequate implementation shall be entitled to redress under state law or procedures established by the Governor, or appropriate state agency. This provision is consistent with existing law governing the RCS program.

(11) The plan shall contain provisions described in section 213(b)(2)b of NECPA to insure that a utility will not inspect a furnace which uses a source of energy other than that provided by the utility unless the residential customer requests such inspection in writing. This provision is consistent with existing law governing the RCS program.

Annual Report—The state shall submit an annual report to DOE describing implementation of its alternative plan and reporting on the number of buildings reached and energy savings achieved within 60 days after the end of the one-year period to which the report applies.

In requiring a statement of the proportion of low- and moderate-income individuals participating in the alternative plan, it is recognized that utilities might not have access to information about the income of persons involved. An estimate of the number of such individuals would satisfy the requirement.

Administrative and Judicial Enforcement Proceedings—A resident of any state in which an alternative plan has been certified may, no sooner than one year after the program's certification, petition DOE to conduct a public hearing to determine if the alternative state plan has been adequately implemented. At the time that such a petition is filed, the state may opt to implement its previously approved RCS plan and thus halt the DOE hearing process.

If the Secretary finds that the program has not been adequately implemented, he shall initiate Federal standby authority (implementing the regular RCS program) within 90 days after the petition is filed.

If the Secretary does not initiate Federal standby authority within 90 days, the petitioner may bring an action in U.S. District Court to require the Secretary to implement standby authority or require the state to adequately implement the alternative state plan.

Under this section, a petitioner could challenge the implementation of the plan in court unless the Secretary initiates standby authority within the time period specified. Thus, the petitioner would have standing in U.S. District Court even if the Secretary upheld the plan as adequately implemented.

An individual who prevails in court in an action against the Secretary shall be awarded reasonable attorneys' fees and costs.

A state resident may not petition DOE or bring a court action solely on the grounds that the state has failed to reach the participation and energy-saving results described in the content of the plan. Similarly, a court may not make a finding that a state has failed to implement a plan adequately solely on the basis of a failure to reach the above-described results.

If a petition to DOE or a court action is brought on other grounds, however, the petitioner's complaint could still include as an issue the state's failure to meet one or more of the numerical results. Similarly, this provision would not preclude the Department of Energy or a judge from considering a failure to meet these results as part of the overall consideration of whether an alternative plan had been adequately implemented.

In general, the Committee intends that in deciding whether a plan has been adequately implemented, the Department or a judge should look at the entirety of the plan, including the formulation of the plan, its content, and its implementation.

Alternative Standards—Under this provision, the Governor or appropriate state agency may establish an alternative standard to the annual participation rate of 5 percent under the alternative plan. Following a public hearing, the target may be reduced to no lower than 3 percent, if the state finds that any of three conditions exist: (1) customers will not be adequately informed of the program in the first year, (2) such a large number of eligible buildings is already equipped with conservation or load management improvements as to make it unlikely that the alternative program could achieve the bill's targets of 5 percent annual participation and 10 percent average annual energy savings, or (3) if the alternative program will primarily benefit low- or moderate-income individuals.

The first finding may be made only with respect to the first year of the alternative plan, if the Governor finds that the programs under the alternative plan are sufficiently new and unfamiliar as to require extra efforts at making their availability known to customers in their stand-up phase.

The second finding is intended to apply to a state in which such a large amount of energy conservation or load management improvements has already been achieved in eligible customers' homes as to make the energy savings and participation rate goals of the plan infeasible. This could apply to areas in which Federal, state or utility programs have already achieved major improvements in customers' homes. It may also apply to areas in which, for example, the climate or the price of energy has already induced major conservation/load management improvements in the majority of potential participants' homes.

Alternative Utility Plans: Regulated Utilities (New Section 227)—In a state which does not have an alternative plan, an individual regulated utility may certify that it will carry out an alternative program if supported by the Governor.

Th^ provisions applying to an alternative utility plan are similar to those governing an alternative state plan in formulation of the plan, content of the plan, annual report, and administrative and judicial enforcement proceedings.

Non-Regulated Utilities—A non-regulated utility may be included in a state alternative plan only if the Governor has legal author-

ity to include it or the non-regulated utility elects to be included in the state plan. A non-regulated utility may certify to DOE that it will carry out an alternative plan if the Governor does not include the utility in the state plan.

Section 104—Reports and Dissemination of Information—No later than January 1, 1986, and every two years thereafter, DOE shall submit a report to the House Committee on Energy and Commerce and the Senate Committee on Energy and Natural Resources, comparing predicted energy savings with actual savings achieved under both the RCS and alternative plans and identifying the most successful programs. The Committee intends this report to be an evaluation of the RCS and alternative plan based on selective studies or samples of buildings, rather than an exhaustive building-by-building report. DOE shall compile a summary of annual reports on alternative plans to be delivered annually to Congress.

Dissemination of Information by DOE—At least annually, the Secretary shall provide information to states and utilities, including technical assistance for calculating energy consumption reductions and information about the most effective programs. This technical assistance would include examples of several professionally accepted methods for calculating energy consumption reductions in the residential sector.

Section 105—Load Management Improvement Defined—Load management improvements are defined as those load management techniques included under the existing RCS program, plus the installation of any devices which reduce electricity demand during peak periods. The Governor of a state may add load management devices to those approved by DOE. In determining allowable load management improvements, neither the Secretary nor a Governor should regard the mere replacement of equipment powered by one source of energy with equipment powered by another as a load management improvement.

Section 106—Limitation on Supply and Installation by Public Utilities—NECPA prohibits utilities from directly installing or supplying conservation measures, as defined by NECPA for purposes of the RCS program. The existing law provides three types of exemptions from these prohibitions.

(1) A utility may, with the support of the Governor, petition DOE for a waiver from the prohibition. DOE may grant the waiver after making certain findings aimed at preventing anti-competitive activity.

(2) A utility may contract with an independent contractor to supply or install conservation measures. Under current law, no waiver is required for this exemption.

(3) A utility that supplied or installed conservation measures, or made substantial preparations to do so, may receive a "grandfather exemption" from DOE to continue such activity.

This section would amend existing law to provide an opportunity for a public review of potential competitive abuses in each of the three types of exemptions named above. Because of the regulated monopoly position of utilities and because of the potential for such utilities to subsidize unregulated installation or supply activities with revenues derived from their regulated activities, the Committee believes that the entry of utilities into unregulated conservation markets deserves very careful public scrutiny.

Additional Requirements for Waiver—In granting a waiver to a utility from the prohibition on supply and installation of energy conservation measures, the Secretary of Energy must make an additional finding that there will be no unfair competitive advantages to the utility in carrying out such activities.

The Governor may not support the petition of a regulated utility for a waiver to DOE unless the Governor provides advance notice of the waiver petition and opportunity for a public hearing. In order to support the petition, the Governor must make the same findings required of the Secretary in granting the waiver petition. The utility must make available to the Governor all relevant documents and records requested by the Governor.

Contracting Exemption—Utilities which installed, supplied or advertised residential conservation measures through contractors on the date of enactment of this Act may continue to supply and install those same measures without applying for a waiver.

New utility contracting programs, started after the date of enactment of this legislation, are subject to the amended waiver process.

General Exemption (Grandfather Provision)—No change is made in the grandfather provision under Subsection d(3) of Section 216 of NECPA, which exempts utilities from installation and supply prohibitions in states where a state law or regulation requires or permits such supply or installation.

However, the grandfather provision is narrowed for those utilities that received a grandfather exemption pursuant to subsection d(1) or d(2) of section 216. These provisions provide a grandfather exemption to utilities that supplied, installed, advertised, or prepared for such programs prior to the enactment of the 1978 National Energy Conservation Policy Act. Starting July 1, 1986, the grandfather exemption would remain in effect only for those utilities which, during the 12-month period prior to June 1, 1984, were installing and supplying those specific measures for which they had received the grandfather exemption.

State Hearing for Grandfathered Utility—If any person requests review of a grandfathered utility and includes adequate documentation of anti-competitive activity by the utility, the Governor shall review the grandfather exemption in a public hearing.

The exemption shall continue for a grandfathered utility if the Governor, following a public hearing, makes any of the following findings:

(1) The utility is not charging fair and reasonable prices and rates of interest.

(2) There are unfair competitive advantages to the utility.

(3) Such activity is inconsistent with the prevention of unfair methods of competition or the prevention of unfair or deceptive acts or practices.

(4) The utility has not provided the Governor with all the documents he determines necessary to make the above findings.

Regardless of whether the Governor makes any of the above findings, the Governor may condition the continuation of the grandfathered activity on the provision of appropriate competitive safeguards by the utility in carrying out the activity.

To ensure that DOE will remain the central repository of information about utilities with grandfather exemptions, the Committee expects that a state in which a grandfather exemption has been removed as a result of the public hearing provided under this section would notify the Department of any change in the exemption status.

Title II—Repeal of Provisions Regarding Commercial Buildings and Multifamily Dwellings

The Commercial and Apartment Conservation Service is repealed.●

By Mr. MOYNIHAN (for himself, Mr. HART, and Mr. BRADLEY):

S. 2873. A bill to provide that there will be a cost-of-living increase in Social Security and SSI benefits for 1985 without regard to whether the 3-percent threshold is met; to the Committee on Finance.

COST-OF-LIVING INCREASE FOR SOCIAL SECURITY AND SUPPLEMENTAL SECURITY INCOME RECIPIENTS

● Mr. MOYNIHAN. Mr. President, I rise today to offer legislation that would ensure a cost-of-living increase in January 1985 for the Nation's Social Security and supplemental security income beneficiaries.

The Social Security Act provides for an automatic benefit increase in any year when the cost of living rises by 3 percent or more. Inflation, of late, has slowed markedly, and in most respects this is a welcome and happy event. But for aged and disabled Americans, lower inflation is a mixed blessing. Current projections for the increase in the Consumer Price Index from the third quarter of 1983 to the third quarter of 1984 are hovering just below 3 percent. While this may mean only slightly higher prices for the goods our elderly and disabled citizens must purchase, it also appears that, barring the change I am proposing, Social Security and SSI recipients will receive no cost-of-living increase.

The fact is, we are in a position to provide for this increase, because the trust funds are in satisfactory condition.

On January 15, 1983, the National Commission on Social Security Reform, on which I served, agreed to a set of recommendations to put Social Security on a firm financial footing. Our proposals became law 3 months later, and optimism about their efficacy has been vindicated. On April 5 of this year, the trustees of the Social Security trust funds—Treasury Secretary Donald T. Regan, Labor Secretary Raymond J. Donovan, and Health and Human Services Secretary Margaret M. Heckler—reported that benefits to be provided under these programs can be paid well into the next century.

This 1984 trustees report assumed that in January 1985, benefits would increase 4.7 percent—that being the projected rise in the CPI. In 1985, that increase would cost the Social Security system $8.3 billion in benefit payments. If benefits were adjusted in January of next year based on a 2.9-percent CPI increase, the cost to the OASDI funds would be about $5 billion—roughly $3.3 billion less than is

now incorporated in the trust fund projections.

Let me also note that over 2 years, this legislation will not cost the trust fund any substantial additional moneys. Under the provisions of the Social Security Amendments of 1983, if recipients forfeit their COLA because the CPI rises less than 3 percent, the COLA for the following year would be based on the increase in the CPI over the previous 2 years. With this legislation, then, we simply would ensure that our elderly and disabled citizens receive their COLA's when they need it—when the CPI rises, without waiting an additional year. And let me mention another happy fact. The OASDI trust funds are in even sounder condition today than the 1984 trustees' report had estimated. That report predicted a trust fund balance in January 1985 of $27.7 billion. According to Social Security actuaries, the military adjustment payment to the trust funds will exceed the trustees' expectations by some $2.6 billion. Moreover, the current recovery is increasing revenues into the fund at a faster rate than expected. A timely COLA of just under 3 percent would leave the trust funds in a fine and healthy condition.

President Reagan now supports this increase in Social Security benefits.

This week, the President joined in the view of the trustees of the Social Security funds. The President's remarks are a happy, though somewhat belated, expression of confidence in the solvency of the Social Security funds. In effect, he acknowledged that the trust funds are healthy enough to provide benefit increases beyond those required by present law. Perhaps now, at last, the constant harping we have heard about the failings and possible demise of the Social Security system is at an end.

Single Americans on Social Security receive an average benefit of $425 a month, an annual income of just $5,100. This increase of roughly 3 percent will mean about $12 more each month, or $144 a year. The average benefit for aged couples on Social Security, about $700 a month, would be increased by roughly $21 per month. That means $252 more a year for a couple living now on just $8,400. Among the most poor aged—those receiving SSI—this increase will mean $108 more per year for an individual now living on less than $3,800, and $168 more per year for a couple now receiving less than $5,700 in annual support.

These certainly are small sums for individuals, but they maintain the buying power of their current incomes. These increases just keep pace with actual inflation, inflation which elderly and disabled Americans cannot offset, like some of the rest of us, by working harder.

This increase of about 3 percent will keep almost a half million elderly and disabled Americans above the poverty line, according to estimates by the American Association of Retired Persons. Can we do otherwise? Can we sit by and watch a half million of our elderly and disabled citizens slip below the poverty line? They deserve—indeed, have earned—this cost-of-living adjustment.

I invite my colleagues to join me in this effort to grant a cost-of-living adjustment to the millions of elderly, blind, and disabled Americans who receive Social Security and supplemental security income.

Mr. President, I am introducing this legislation with my good friends and colleagues Senators BRADLEY, HART, and SASSER. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2873

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in determining whether the base quarter ending on September 30, 1984 is a cost-of-living computation quarter for purposes of the cost-of-living increases under sections 215(i) and 1617 of the Social Security Act, the phrase "is 3 percent or more" appearing in section 215(i)(1)(B) of such Act shall be deemed to read "is greater than zero".

(b) For purposes of section 215(i) of such Act, the provisions of subsection (a) shall not constitute a "general benefit increase".●

By Mr. PACKWOOD:

S. 2874. A bill to amend title 49, United States Code, to reduce regulation of surface freight forwarders, and for other purposes; to the Committee on Commerce, Science, and Transportation.

SURFACE FREIGHT FORWARDER DEREGULATION ACT

● Mr. PACKWOOD. Mr. President, today I am introducing legislation which would eliminate economic regulation of the surface freight forwarding industry in the United States. This bill, the Surface Freight Forwarder Deregulation Act of 1984, would remove Interstate Commerce Commission [ICC] regulations governing the operation of surface freight forwarders.

The freight forwarding industry plays a crucial role in our freight transportation system. Freight forwarders assemble small shipments for consolidation, then dispatch these shipments in full truckloads or rail carloads. By arranging for the transportation of these small shipments as part of larger loads, freight forwarders historically have been able to offer lower rates for small shipments than the rates the individual shippers could have obtained from trucking companies or railroads.

There is healthy competition in the freight forwarding industry as well as vigorous competition between freight forwarders and trucking companies, unregulated shipper associations, and railroads. Because of this degree of competition, continued regulation of freight forwarders is not necessary. In fact, many freight forwarders are eager to be deregulated because they believe they are currently at a competitive disadvantage with the trucking and rail industries. In 1980, legislation providing significant regulatory reform of the trucking industry and railroads was enacted. These two pieces of legislation provided greater pricing flexibility for carriers and also brought increased competition to the trucking and rail industries. As a result, these industries can now much more effectively compete with freight forwarders for small shipments traffic than they could in the past.

Mr. President, the time has come to remove the needless regulations which hamper the operations of surface freight forwarders. The bill I am introducing today eliminates ICC entry and rate regulation over freight forwarders and eliminates antitrust immunity for collective ratemaking activities in the freight forwarding industry. The reforms in this bill will strengthen the freight forwarder industry and will lead to more effective competition between freight forwarders and the trucking and rail industries.

Mr. President, I ask unanimous consent that the text of the Surface Freight Forwarder Deregulation Act of 1984 and a section-by-section analysis of this legislation be included in the RECORD in their entirety.

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

S. 2874

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 "Surface Freight Forwarder Deregulation Act of 1984".

PURPOSE

SEC. 2. This Act is part of the continuing effort by Congress to reduce burdensome and unnecessary government regulations and to ensure the competitiveness and efficacy of transportation services of surface freight forwarders in the United States.

FINDINGS

SEC. 3. The Congress finds that—

(1) a safe, sound and competitive surface freight forwarder industry is important to the national transportation system;

(2) the statutes governing Federal regulation of the freight forwarder industry are outdated and must be revised to reflect present and future transportation needs and realities;

(3) protective regulation has resulted in anticompetitive pricing and has restricted the range of price and service options available to shippers;

(4) in order to reduce the uncertainty experienced by the Nation's transportation in-

dustries, the Interstate Commerce Commission's remaining responsibilities for the regulation of surface freight forwarders should be eliminated by Act of Congress; and

(5) legislative and resulting changes should be implemented with the least amount of disruption consistent with achieving the reforms enacted.

DEFINITIONS

SEC. 4. Section 10102(9) of title 49, United States Code, is amended—

(1) by striking "holding itself out to the general public";

(2) by striking "to provide" and inserting in lieu thereof "that provides";

(3) by inserting "and" at the end of subparagraph (A);

(4) in subparagraph (B), by striking "; and" and inserting in lieu thereof a period; and

(5) by striking subparagraph (C).

INTERSTATE COMMERCE COMMISSION ADMINISTRATION

SEC. 5. (a) Section 10328(b)(2) of title 49, United States Code, is amended by striking "or freight forwarder".

(b) Section 10329 of title 49, United States Code, is amended—

(1) in subsection (a)(2)—

(A) by striking ", or a freight forwarder";

(B) by inserting "or" immediately after "broker"; and

(C) by striking "II, III or IV" and inserting in lieu thereof "II or III";

(2) in subsection (c)(3), by striking "or freight forwarder" wherever it appears; and

(3) in subsection (d), by striking "(1)", and by striking "or (2) a freight forwarder,".

JURISDICTION

SEC. 6. (a) Section 10521(a) of title 49, United States Code, is amended by inserting ", except by a broker," after "transportation" the second time it appears.

(b) Section 10523 of title 49, United States Code, is amended—

(1) in subsection (a)(1)(B)(i), by inserting "or" immediately after the semicolon;

(2) in subsection (a)(1)(B)(ii), by striking "or" and inserting in lieu thereof "and";

(3) by striking subsection (a)(1)(B)(iii);

(4) in subsection (a)(1)(C), by striking "or service provided by the freight forwarder";

(5) in subsection (a)(2), by striking ", and under subchapter IV of this chapter when provided by such a freight forwarder";

(6) in subsection (b)(1)(B)(ii), by inserting "or" immediately after the semicolon;

(7) in subsection (b)(1)(B)(iii), by striking "; or" and inserting in lieu thereof a period;

(8) by striking subsection (b)(1)(B)(iv); and

(9) in subsection (b)(2)—

(A) by striking "or service provided by the freight forwarder for whom the transportation was provided";

(B) by inserting "and" immediately after "for such a motor carrier,"; and

(C) by striking ", and under subchapter IV of this chapter when provided for such a freight forwarder".

(c)(1) Section 10561 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 105 of title 49, United States Code, is amended by striking

"10561. General jurisdiction."

and inserting in lieu thereof

"10561. Repealed.".

(d)(1) Section 10562 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 105 of title 49, United States Code, is amended by striking "10562. Exempt freight forwarder service." and inserting in lieu thereof "10562. Repealed.".

RATES, TARIFFS, AND VALUATIONS

SEC. 7. (a) Section 10701(d) of title 49, United States Code, is amended by striking "II, III, or IV" and inserting in lieu thereof "II or III".

(b) Section 10704 of title 49, United States Code, is amended—

(1) in subsection (b)(1)(A), by striking ", express" and by inserting "or" immediately after the semicolon;

(2) in subsection (b)(1)(B), by striking "or";

(3) by striking subsection (b)(1)(C);

(4) in subsection (b)(3), by striking "or a freight forwarder"; and

(5) in subsection (b)(4), by striking "or a freight forwarder" and "or the inherent nature of freight forwarding, respectively".

(c) Section 10706 of title 49, United States Code, is amended—

(1) in subsection (a)(2)(A), by striking "(c)(1)(B)-(E)" and inserting in lieu thereof "(d)(1)(B)-(D)"; and

(2) by striking subsection (d)(1)(E).

(d) Section 10708 of title 49, United States Code, is amended—

(1) in subsection (d)(1), by striking "or freight forwarder"; and

(2) in subsection (d)(2), by striking "or freight forwarders" wherever it appears.

(e) Section 10722(d)(2) of title 49, United States Code, is amended by striking the second sentence.

(f)(1) Section 10725 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 107 of title 49, United States Code, is amended by striking

"10725. Special freight forwarder rates."

and inserting in lieu thereof

"10725. Repealed.".

(g) Section 10730(a) of title 49, United States Code, is amended—

(1) by striking "I, II, or IV" and inserting in lieu thereof "I or II"; and

(2) by striking the last sentence.

(h) Section 10741 of title 49, United States Code, is amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) through (f) as subsections (c) through (e), respectively.

(i) Section 10743(b)(2) of title 49, United States Code, is amended by striking "(including a motor common carrier being used by a freight forwarder)".

(j)(1)(A) The heading of section 10749 of title 49, United States Code, is amended by striking "and limitation on use of common carriers by freight forwarders".

(B) The item relating to section 10749 in the section analysis of chapter 107 of title 49, United States Code, is amended by striking "and limitation on use of common carriers by freight forwarders".

(2) Section 10749 of title 49, United States Code, is amended—

(A) by striking "(a)"; and

(B) by striking subsection (b).

(k) Section 10762 of title 49, United States Code, is amended—

(1) in subsection (a)(2)—

(A) by striking "II, III, or IV" wherever it appears and inserting in lieu thereof "II or III" in each such place; and

(B) by striking "or by a freight forwarder";

(2) in subsection (b)(1), by striking "I, III, or IV" and inserting in lieu thereof "I or III"; and

(3) in subsection (b)(1)(C), by striking "or IV".

(l) Section 10766 of title 49, United States Code, is amended—

(1) by striking subsection (a);

(2) in subsection (b)—

(A) by striking "(b)";

(B) by striking "providing service subject to the jurisdiction of the Commission under that subchapter";

(C) by striking the second sentence; and

(D) by striking the last two sentences; and

(3) by striking subsection (c).

LICENSING

SEC. 8. (a)(1)(A) The heading of section 10923 of title 49, United States Code, is amended by striking "and freight forwarders".

(B) The item relating to section 10923 in the section analysis of chapter 109 of title 49, United States Code, is amended by striking "and freight forwarders".

(b) Section 10923 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "or to provide service subject to that jurisdiction under subchapter IV of chapter 105 as a freight forwarder,"; and

(B) in paragraph (2), by striking "or service";

(2) in subsection (b)(1), by striking "or to provide service as a freight forwarder";

(3) by striking subsection (b)(7);

(4) in subsection (c)—

(A) in paragraph (1), by inserting "and" immediately after the semicolon;

(B) in paragraph (2), by striking "; and" and inserting in lieu thereof a period; and

(C) by striking paragraph (3);

(6) in subsection (d)(1), by striking "or freight forwarder"; and

(7) in subsection (d)(3)(B), by striking "or freight forwarder".

(b) Section 10925 of title 49, United States Code, is amended—

(1) in subsection (b)(1), by striking "broker, or freight forwarder,";

(2) in subsection (c)(1), by striking "or freight forwarder";

(3) in subsection (d)(1), by striking ", a permit of a freight forwarder,";

(4) in subsection (d)(1)(A)—

(A) by striking "; and" and inserting in lieu thereof a period; and

(B) by striking "(A)"; and

(5) by striking subsection (d)(1)(B).

(c) Section 10926 of title 49, United States Code, is amended—

(1) in paragraph (1), by inserting "and" immediately after the semicolon;

(2) in paragraph (2), by striking "; and" and inserting in lieu thereof a period; and

(3) by striking paragraph (3).

(d)(1)(A) The heading of section 10927 of title 49, United States Code, is amended by striking "carriers, brokers, and freight forwarders" and inserting in lieu thereof "carriers and brokers".

(B) The section analysis for chapter 109 of title 49, United States Code, is amended by striking

"10927. Security of motor carriers, brokers, and freight forwarders."

and inserting in lieu thereof

"10927. Security of motor carriers and brokers.".

(2) Section 10927 of title 49, United States Code, is amended—

(A) by striking subsection (c); and

(B) by redesignating subsection (d) as subsection (c).

(e) Section 10930 of title 49, United States Code, is amended—

(1) by striking "(a)"; and

(2) by striking subsection (b).

(f)(1) Section 10933 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 109 of title 49, United States Code, is amended by striking

"10933. Authorizing abandonment of freight forwarder service."

and inserting in lieu thereof

"10933. Repealed.".

OPERATIONS OF CARRIERS

SEC. 9. (a) Section 11101(b) of title 49, United States Code, is amended—

(1) by striking "and freight forwarders";

(2) by striking "subchapters II and IV" and inserting in lieu thereof "subchapter II"; and

(3) by striking "and for" and inserting in lieu thereof "including".

(b)(1) Section 11127 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 111 of title 49, United States Code, is amended by striking

"11127. Service of freight forwarders."

and inserting in lieu thereof

"11127. Repealed.".

(c) Section 11141(1) of title 49, United States Code, is amended by striking "(except a freight forwarder)".

(d) Section 11142 of title 49, United States Code, is amended by striking "II, III, and IV" and inserting in lieu thereof "subchapters II and III".

FINANCE

SEC. 10. (a) Section 11323 of title 49, United States Code, is repealed.

(b) The section analysis of chapter 113 of title 49, United States Code, is amended by striking

"11323. Limitation on ownership of other carriers by freight forwarders."

and inserting in lieu thereof

"11323. Repealed.".

FEDERAL-STATE RELATIONS

SEC. 11. (a) Section 11501 of title 49, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsections (b) through (f) as subsections (a) through (e), respectively; and

(3) by adding at the end thereof the following new subsection:

"(f) No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to interstate rates, interstate routes, or interstate services of any freight forwarder.".

(b) Section 11502 of title 49, United States Code, is amended—

(1) in subsection (a)(1), by striking "I, III, or IV" and inserting in lieu thereof "I or III"; and

(2) in subsection (b), by striking "or IV".

(c) Section 11505 of title 49, United States Code, is amended—

(1) in subsection (a), by striking "(a)"; and

(2) by striking subsection (b).

ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

SEC. 12. (a) Section 11702(a) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking "or 10933";

(2) in paragraph (5), by striking "; and" and inserting in lieu thereof a period; and

(3) by striking paragraph (6).

(b)(1) Section 11704 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 117 of title 49, United States Code, is amended by striking

"11704. Action by a private person to enjoin abandonment of service."

and inserting in lieu thereof

"11704. Repealed.".

(c) Section 11705(b)(3) of title 49, United States Code, is amended by striking "or IV".

(d) Section 11707(a) of title 49, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking "(1)"; and

(B) by striking "I, II, or IV" wherever it appears and inserting in lieu there of "I or II" in each such place; and

(2) by striking paragraph (2).

(e)(1)(A) The heading of section 11708 of title 49, United States Code, is amended by striking "and freight forwarder".

(B) The item relating to section 11708 in the section analysis of chapter 117 of title 49, United States Code, is amended by striking "and freight forwarder".

(2) Section 11708(a) of title 49, United States Code, is amended by striking "or service of a freight forwarder".

CIVIL AND CRIMINAL PENALTIES

SEC. 13. (a) Section 11904 of title 49, United States Code, is amended by striking subsection (d).

(b)(1) Section 11908 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 119 of title 49, United States Code, is amended by striking

"11908. Abandonment of service by freight forwarder."

and inserting in lieu thereof

"11908. Repealed.".

(c) Section 11909 of title 49, United States Code, is amended by striking subsection (d).

(d) Section 11910(a) of title 49, United States Code, is amended by striking paragraph (4).

(e) Section 11914 of title 49, United States Code, is amended by striking subsection (d).

EFFECTIVE DATE

SEC. 14. This Act shall become effective on July 1, 1985.

SECTION-BY-SECTION ANALYSIS—THE "SURFACE FREIGHT FORWARDER DEREGULATION ACT OF 1984"

SECTION 2—PURPOSE OF THE ACT

This section states that the purpose of this Act is to reduce unnecessary and burdensome government regulations and to insure the competitiveness and efficacy of the freight forwarder industry in the United States.

SECTION 3—CONGRESSIONAL FINDINGS

This section states the following Congressional findings:

1. That a safe, sound, and competitive surface freight forwarder industry is important to the national transportation system;

2. That the statutes governing Federal regulation of freight forwarders are outdated;

3. That protective regulations has resulted in anticompetitive pricing and has restricted price and service options available to shippers;

4. That the Interstate Commerce Commission's (ICC) remaining responsibilities for the regulation of surface freight forwarders should be legislatively eliminated; and

5. That legislative and resulting changes should be implemented with the least amount of disruption, consistent with achieving the reforms enacted.

SECTION 4—DEFINITIONS

This section amends the definition of "freight forwarder" in section 10102 of title 49, U.S. Code, to remove the requirement that freight forwarders hold themselves out to serve the general public.

SECTION 5—INTERSTATE COMMERCE COMMISSION ADMINISTRATION

Subsection (a) of this section amends section 10328 of title 49, U.S.C., which allows the ICC to provide special notice procedures in lieu of Federal Register publication for operating authority applications, by eliminating reference to freight forwarders since freight forwarders would be removed from ICC jurisdiction under this Act.

Subsection (b) of this section amends section 10329 of title 49, U.S.C., by deleting the requirement for designation of agents by freight forwarders, which will no longer be subject to ICC jurisdiction, as well as requirements for service of notice to those parties regarding Commission proceedings.

SECTION 6—JURISDICTION

Subsection (a) of this section amends section 10521 of title 49, U.S.C., by removing Interstate Commerce Commission jurisdiction over the procurement of motor carrier transportation by freight forwarders.

Subsection (b) of this section amends section 10523 of title 49, U.S.C., provides a conforming change, by removing freight forwarders from the exemption from Interstate Commerce Commission jurisdiction over motor vehicle transportation in terminal areas.

Subsection (c), (d), and (e) repeal section 10561, "General Jurisdiction", and section 10562, "Exempt freight forwarder service", of title 49, U.S.C. This removes all transportation by freight forwarders from ICC jurisdiction.

SECTION 7—RATES, TARIFFS AND VALUATIONS

Subsection (a) of this section amends section 10701 of title 49, U.S.C., by eliminating standards for rates, classifications, through routes, rules and practices of freight forwarders.

Subsection (b) of this section amends section 10704 of title 49, U.S.C., by removing Interstate Commerce Commission authority to describe rates, classification, rules, or practices to be followed by freight forwarders.

Subsection (c) amends section 10706 of title 49, U.S.C., by removing freight forwarders from the class of carriers who are entitled to receive antitrust immunity from the Interstate Commerce Commission.

Subsection (d) amends section 10708 of title 49, U.S.C. by removing Interstate Commerce Commission jurisdiction to investigate, suspend, revise or revoke any rate of a freight forwarder on the grounds that such rate is unreasonably high or low. The zone of rate freedom established by the Motor Carrier Act of 1980 will remain applicable only to motor carriers of property.

Subsection (e) amends section 10722 of title 49, U.S.C., "Special Passenger Rates", by removing freight forwarders from the special property rate provisions of this section.

Subsection (f) repeals section 10725 of title 49, U.S.C., "Special freight forwarder rates".

Subsection (g) amends section 10730 of title 49, U.S.C., by removing the Interstate Commerce Commission's jurisdiction to require or authorize freight forwarders to establish rates for transportation of property under which the liability of the freight forwarder for that property is limited to a value established by written declaration of the shipper or by written agreement. Freight forwarders will be subject to the common law, and the Uniform Commercial Code (Section 7-309(2) and State variants), which allows a freight forwarder to declare a limit to its liability as long as the consignor is afforded an opportunity to declare a higher value.

Subsection (h) amends section 10741 of title 49, U.S.C., by removing the general prohibition of rail, motor carrier, and motor discrimination against freight forwarder services. The effect of this amendment is to allow the general anti-discrimination provisions of the anti-trust laws to apply to freight forwarders.

Subsection (i) amends section 10743 of title 49, U.S.C., "Payment of rates," by deleting the reference to freight forwarders.

Subsection (j) amends section 10749 of title 49, U.S.C., by deleting limitations on the exchange of services and use of common carriers by freight forwarders.

Subsection (k) amends section 10762 of title 49, U.S.C., by removing the requirement that freight forwarders publish, file, and keep tariffs open for public inspection.

Subsection (l) amends section 10766 of title 49, U.S.C., "Freight forwarder traffic agreements". This subsection removes the requirement to file contracts between freight forwarders and motor carriers with the Commission, removes requirements that such contracts establish reasonable conditions and compensation, and also removes Commission authority to prescribe such conditions and compensation when it finds them unreasonable.

SECTION 8—LICENSING

Subsection (a) of this section amends section 10923 of title 49, U.S.C., by striking the language concerning entry requirements for freight forwarders.

Subsection (b) amends section 10925 of title 49, U.S.C., by removing language dealing with the effective periods and the conditions governing the operating authorities freight forwarders.

Subsection (c) amends section 10926 of title 49, U.S.C., by deleting requirements concerning transfers of certificates for freight forwarders.

Subsection (d) amends section 10927 of title 49, U.S.C., by removing the language dealing with security and insurance requirements for freight forwarders.

Subsection (e) amends section 10930 of title 49, U.S.C., by deleting the specified limits on who may simultaneously hold certificates and permits to provide freight forwarder transportation and rail, motor carrier, or water transportation.

Subsection (f) repeals section 10933 of title 49, U.S.C., "Authorizing abandonment of freight forwarder service".

SECTION 9—OPERATIONS OF CARRIERS

Subsection (a) of this section amends section 11101 of title 49, U.S.C., by removing the authority of the Interstate Commerce Commission to prescribe requirements for continuous and adequate transportation service by freight forwarders, i.e., "common carrier obligation".

Subsection (b) repeals section 11127 of title 49, U.S.C., "Service of freight forwarders". This deals with authority of the Interstate Commerce Commission to suspend service requirements for freight forwarders during emergencies, and to establish terms of compensation for freight forwarder service during such periods.

Subsection (c) amends section 11141 of title 49, U.S.C., by making conforming changes by definitions.

Subsection (d) amends section 11142 of title 49, U.S.C., by removing Interstate Commerce Commission power to prescribe uniform accounting systems for freight forwarders.

SECTION 10—FINANCE

This section repeals section 11323 of title 49, U.S.C., "Limitation on ownership of other carriers by freight forwarders", thereby removing the prohibition against freight forwarders owning or controlling motor carriers or rail carriers.

SECTION 11—FEDERAL-STATE RELATIONS

Subsection (a) of this section amends section 11501 of title 49, U.S.C., by removing the power of the Interstate Commerce Commission to prescribe rates, rules, classifications and practices of freight forwarders involved in both intrastate and interstate commerce, when it finds that State regulation is causing either unreasonable discrimination or is imposing an unreasonable burden on interstate commerce. This subsection also adds a new subsection (f) which prevents State and other political agencies from enacting or enforcing any regulations concerning interstate rates, routes or services that were subject to ICC jurisdiction prior to enactment of this Act. This subsection is intended to prevent states and other local governments from exercising regulatory authority over areas of interstate commerce that are being vacated by the Interstate Commerce Commission under this legislation.

Subsection (b) of this section amends section 11502 of title 49, U.S.C., by removing Interstate Commerce Commission power to confer and hold joint hearings with State authorities concerning freight forwarder matters.

Subsection (c) amends section 11505 of title 49, U.S.C., by removing the power of a State regulatory authority to bring civil action to enjoin the abandonment of service by a freight forwarder.

SECTION 12—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

Subsection (a) amends section 11702 of title 49, U.S.C., by eliminating Interstate Commerce Commission's power to enforce regulations against freight forwarders.

Subsection (b) repeals section 11704 of title 49, U.S.C., "Action by a private person to enjoin abandonment of service". This pertains to freight forwarders, controlled by or under common control with common carriers by rail, motor or water.

Subsection (c) amends section 11705 of title 49, U.S.C., by rescinding the rights of private parties to relief and damages sustained by them as a result of an act or omission of freight forwarders in violation of the Interstate Commerce Act. This will not reduce rights of private parties to sue carriers under State contract or tort law.

Subsection (d) amends section 11707 of title 49, U.S.C., which provides the legal standards of liability of common carriers under receipts and bills of lading. Common carriers no longer subject to ICC jurisdiction will be subject to standards of liability under State law, including applicable sections of the Uniform Commercial Code.

Subsection (e) amends section 11708 of title 49, U.S.C., by deleting the reference to freight forwarders in private enforcement actions.

SECTION 13—CIVIL AND CRIMINAL PENALTIES

Subsection (a) of this section amends section 11904 of title 49, U.S.C., by removing provisions for penalties against freight forwarders for rate and discrimination violations of the Interstate Commerce Act.

Subsection (b) repeals section 11908 of title 49, U.S.C., "Abandonment of Service by Freight Forwarder". This section provides penalties against freight forwarders controlled by or under common control with common carriers by rail, motor and water who abandon service in violation of Interstate Commerce Commission public interest findings.

Subsection (c) amends section 11909 of title 49, U.S.C., by removing freight forwarders from the provisions of this section which provide penalties for failure to make reports required by the Interstate Commerce Commission.

Subsection (d) amends section 11910 of title 49, U.S.C., by removing freight forwarders from the provisions of this section which provide penalties for unlawful disclosure of information.

Subsection (e) amends section 11914 of title 49, U.S.C., by removing freight forwarders from the general penalties section of the Interstate Commerce Act.

SECTION 14—EFFECTIVE DATE

This section provides that this Act shall take effect on July 1, 1985.●

By Mr. HOLLINGS (for himself, Mr. KENNEDY, Mr. LAUTENBERG, Mr. RIEGLE, Mr. WEICKER, Mr. LEVIN, Mr. METZENBAUM, Mr. BRADLEY, Mr. BINGAMAN, Mr. SASSER, Mr. MITCHELL, Mr. FORD, Mr. SARBANES, and Mr. TSONGAS):

S. 2875. A bill to establish qualifications for individuals appointed to the National Advisory Committee on Oceans and Atmosphere to authorize appropriations for fiscal year 1985, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE ACT

Mr. HOLLINGS. Mr. President, today I introduce legislation to create a new National Advisory Committee on Oceans and Atmosphere (NACOA) by requiring that members be subject to the advice and consent of the Senate and by providing for 13 members, a reduction from the 18 members on the current NACOA.

During the past two decades, Americans have shown increasingly how much they care about their natural resources. Poll after poll confirm the notion that Americans place great priority on environmental issues. They care greatly about the quality of their air and water. They worry about the destruction of wildlife and natural areas. And they demand that proper consideration be given to our environment in the quest for technological

and economic progress in the years to come.

These concerns were reflected in the National Advisory Committee on Oceans and Atmosphere Act of 1971, the law which established NACOA and one which I authored. The act was one of three direct results of the Stratton Commission, which was established by Congress to examine all aspects of marine science and to develop an overall strategy which would provide the Nation with a well-integrated and centrally coordinated program in this area. The other results of the Stratton Commission's 1969 report were the creation of the National Oceanic and Atmospheric Administration by Executive order, and legislation establishing the Coastal Zone Management Program, which I am proud to say I also authored.

The original NACOA, consisting of 25 members, was established with three purposes in mind. First, it would facilitate communication between the Federal Government and the oceanic and atmospheric communities. Second, it would provide Congress and the President with an honest source of information and advice concerning oceanic and atmospheric policies and programs. Finally, it was intended to bring about innovative policy leadership and new ideas regarding oceanic and atmospheric affairs.

In drafting this legislation, I took special care to emphasize the importance of experience and diversity among NACOA's membership. Let me read to you from the Senate report on the original legislation:

> • • • members of the Advisory Committee shall be appointed by the President for staggered terms and shall be drawn from State and local government, industry, science, and other appropriate areas. It is intended that the membership should be broadly based both in terms of interest and geography in order to accomplish its primary advisory function. Recognizing the national concern for environmental quality, it is anticipated that the President will appoint a number of individuals to the Advisory Committee who are trained or experienced in conservation, ecology, and related fields concerned with the quality of the oceanic and atmospheric environment.

By 1977, it became clear that this language was not sufficient to prevent NACOA from falling prey to predominantly political appointments. So, in that year, Congress passed a bill I authored which abolished the existing committee and created a new 18-member NACOA. This time, I attempted to further clarify what Congress expected of the Presidential appointments to the committee. I quote the Senate report on that legislation:

> These qualifications are included to make explicit the Committee's original intent that NACOA's members be experts or others very experienced in marine and atmospheric affairs or related fields. . . . the Committee does intend that most members be individuals with great expertise and knowledge in marine and atmospheric affairs. Such individuals are vital if NACOA is to provide the expert, useful, and timely assistance that the Advisory Committee was created to provide.

When this law was passed, I assumed that the language was clear. I took it for granted that Presidents would honor and respect the intent of Congress that the committee reflect varied interests and a high degree of expertise and integrity.

For a number of years, that faith was well rewarded. NACOA has seen numerous dedicated individuals who have served the committee and this Nation with great distinction. In recent years, the committee has produced some exceptionally fine commentary on oceanic and atmospheric matters.

For example, NACOA's study of the National Weather Service acted as a timely counterweight to a NOAA study which called for the Weather Service to be reduced to its most basic missions. The committee's assessment of the need for exclusive economic zone legislation has made a significant contribution to ocean policymaking with respect to the Nation's 200-mile offshore zone.

In addition, I admire the Committee's willingness to tackle the issue of ocean dumping of nuclear wastes, even though I strongly disagree with the April 1984, conclusion calling for a revision in the current U.S. policy of a moratorium on such dumping. In light of all the budget cuts in the research arms of EPA and NOAA, now is a very poor time to start revising that policy. Until we can prove without a doubt that dumping is not harmful, I see no reason why it should be allowed.

Under EPA in 1982, the Reagan administration was considering a radical loosening of restrictions on low-level nuclear dumping, and it took Congress to pass a 2-year moratorium on dumping. When you read the April NACOA report, it is not difficult to see how the Committee's objectivity is being distorted by the new appointments. The text of the report supports an evaluation of the scientific evidence to determine if low-level nuclear dumping can be done safely. However, the Committee's principal recommendation—which was added after the preparation of the text—is to revise the current ban. As I understand it, the writing of the text and the in-depth investigation of the issue were carried out by John Knauss and other highly regarded NACOA members who were held over while President Reagan was deciding whether to fill vacancies. The recommendation to revise the ban on dumping was made subsequently by the full NACOA panel which was dominated by the Reagan administration appointees.

In order for NACOA to continue its record of informed and independent review of our oceanic and atmospheric policies, it is important that qualifications for Committee membership—clearly described by Congress in 1971 and 1977—be respected by the President.

With his latest round of appointments, President Reagan has demonstrated that he has no intention of honoring the spirit of the law. The new Reagan NACOA is heavily weighted with members who are involved in offshore mineral exploration and development. There are no environmentalists, atmospheric experts, or commercial fishermen. And worst of all, the Committee Chairman is Anne Gorsuch Burford.

I was amazed by President Reagan's decision to appoint his former Environmental Protection Agency Administrator as NACOA Chairman. As the author of the NACOA legislation and one who takes a great deal of interest in ensuring the Committee's continued quality and integrity, I find this action reprehensible. I never thought it would be necessary to require that the Committee's members be subject to Senate confirmation. I always presumed the President would treat these kinds of appointments seriously and not use the appointment process as a device for the rehabilitation of someone like Anne Burford.

Maybe I should have expected it. When Mrs. Burford resigned as head of the EPA in the spring of 1983, Time magazine reported that the President told her he would eventually give her a part-time job on a Federal board or commission. Perhaps I was hoping for the best—maybe an appointment to the Citizens' Stamp Advisory Committee or something of the kind. A few weeks ago, right here on the floor during debate on the appropriations bill for State, Justice, and Commerce, we talked about the International Office on Epizootics. I'm still not quite certain what that is—I believe it has something to do with animal disease—but maybe we can get Mrs. Burford an appointment to that. Is that possible? Or what about the President's Council on Integrity and Efficiency? Maybe she could learn something there.

During her 22 month tenure as EPA Administrator, Anne Burford did a great deal to ruin the integrity of that Agency. Enforcement of antipollution laws became a joke. The conduct of science fell to its lowest level ever. And during this time there were numerous allegations that the Agency's leadership was acting in concert with some of the Nation's major polluters in a policy of nonintervention and nonenforcement.

One example of this occurred in my own State of South Carolina early last year. In an official letter, Mrs. Burford said that the EPA agreed with the Energy Department that restarting a

major nuclear reactor in the State would not significantly affect the environment and thus no environmental impact statement was required. This position was directly contrary to that taken by the Agency's field staff, including its lawyers, who spoke of ground water contamination and other serious problems. Yet, in order to toe the Reagan administration's party line, Mrs. Burford suppressed the scientific and legal findings of the EPA's own experts.

I am nonplussed by the President's failure to consult with his own top environmental officials before choosing Mrs. Burford for this post. Even Bill Ruckelshaus was shocked when he heard about it. Now Bill is a gentleman of the highest integrity, and he commands a great deal of respect from both sides of the aisle in this body—that's why the President appointed him to straighten out the EPA after the Burford disaster. He has admitted that Mrs. Burford is not a good choice. The fact that he wasn't consulted about it demonstrates to me that his appointment to EPA was more cosmetic than anything else.

It is downright frightening to think of Anne Burford as Chairman of NACOA. She has the worst record on the environment of any administrator that we have ever had here in Washington. Like Ronald Reagan, she is a dismantler. The President couldn't eliminate the EPA outright, so he sent Mrs. Burford there to accomplish the job from within. I suspect that since the Reagan administration has proposed the elimination of funding for NACOA, her mission there may be a similar one.

So this appointment may not be just an easy political payoff to Mrs. Burford after all. We can view it as a blatant attempt by the President to accomplish a political objective in an area that Congress has tried in the past to remove from the political realm. It is a further manifestation of the Reagan creed that the fox should guard the chicken coop on environmental matters.

My legislation would stop this from happening at NACOA by requiring that all committee members pass Senate muster. If I had foreseen the events of today, I would have included advice and consent in the original authorizing legislation. But I exercised faith that subsequent Presidents would honor the intent of the law that the NACOA membership reflect a high caliber of expertise and integrity. Obviously, faith is not enough for this President. He has violated the clearly stated intent of the selection qualifications for this committee. For this reason, I urge my colleagues to give swift approval to this legislation.

Mr. LAUTENBERG. Mr. President, I am pleased to join the ranking Democratic member of the Committee on Commerce, Science, and Transportation, Mr. HOLLINGS, in introducing legislation to reconstitute and authorize funding for the National Advisory Committee on Oceans and Atmosphere.

The legislation would convert NACOA from an 18-member body, appointed by the President without advice and consent of the Senate, into a 13-member body whose appointments would be subject to Senate approval. The duties of the Committee, and the legislated qualifications of its members would remain essentially the same as they have been. NACOA would be charged with providing objective advice to the Congress, the President, and the Department of Commerce on national policy on the ocean and the atmosphere.

In the past, NACOA has fulfilled this function admirably. On many occasions, it has come before the Commerce Committee to testify about oceans and atmospheric programs of the National Oceanic and Atmospheric Administration. NACOA has rightfully condemned the administration's efforts to gut critical ocean and atmospheric programs of NOAA. Of particular concern to me, I might add, has been NACOA's continuing interest in furthering research into ocean dumping, which so threatens the shore of New Jersey.

Mr. President, NACOA's role as an effective, independent, and expert voice on matters pertaining to the atmosphere and the oceans has been seriously undermined by the President's appointment of Anne Burford as NACOA chairperson. During Mrs. Burford's tenure as head of the Environmental Protection Agency, the protection of our environment was sacrificed while the Agency entered into sweetheart deals with industry and put politics above pollution control.

The membership of NACOA, by law, is reserved for those with particular expertise in the marine and atmospheric sciences and in local governmental functions in the field. Mrs. Burford's predecessor, Dr. John Knauss, is a distinguished scientist. His qualifications are typical of the people who have served on NACOA. It is just such qualifications that Mrs. Burford lacks.

Mr. President, this legislation is made necessary by the President's utter disregard for the appropriate role of NACOA. This week, by an overwhelming vote, the Senate expressed its view that the appointment of Mrs. Burford should be withdrawn. The President has refused. I am sorry, but I am not surprised. In the past, the administration has sought to deny NACOA funding. Now, with the appointment of Anne Burford, the President would disable the committee in a different way.

By allowing the Senate to review and reject appointees like Anne Burford, this legislation would ensure the continued independence of NACOA, and its contribution to ocean and atmospheric policymaking of our Nation. I urge my colleagues to support this bill.

Mr. MITCHELL. Mr. President, I am pleased to be an original cosponsor of the bill being introduced today by Senator HOLLINGS which would reestablish and provide authorizations for the National Advisory Committee on Oceans and Atmosphere [NACOA].

This bill would ensure that this important advisory body is not misused in the future and, in my judgment, its introduction is long overdue.

It reduces the size of NACOA from 18 members to 13 members on the assumption that a smaller group will be able to be more active in advising the President on environmental matters concerning the oceans and atmosphere.

It explicitly requires that those persons chosen by the President for NACOA have background relating to oceanic and atmospheric policy and are "eminently qualified" in one or more of the following disciplines and fields: Marine science and technology; marine industry; marine-related State and local governmental functions; coastal zone management; atmospheric science; or atmospheric-related State and local governmental functions.

Most importantly—given events of the last several weeks—the bill requires that members appointed to a newly reconstituted NACOA will be subject to the advice and consent of the U.S. Senate. It also requires that NACOA submit an annual report to the President and to the Congress setting forth an assessment of the status of the Nation's marine and atmospheric activities. A total of $630,000 is authorized for appropriation for NACOA for fiscal year 1985.

The need for this legislation became clear earlier this month when President Reagan appointed Anne Burford as Chairperson of the Committee.

The President's appointment of Mrs. Burford to this position of responsibility was a step backward not only for the cause of environmental protection but for Mr. Reagan's own credibility on the issue.

Mrs. Burford resigned just over a year ago as head of the Environmental Protection Agency under heavy criticism for her management of that important institution. In returning her to a position of influence in the same field, the President greatly strengthened doubts about his commitment to safeguarding the environment and applying the laws designed for that purpose.

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In the eyes of the American public, which for well over a decade has overwhelmingly supported protection of the environment and legislation to achieve that goal, Mrs. Burford had no credentials and no place in such an effort. Her appointment was a repudiation of the clear intent of the Congress and the people of this country on a matter of primary importance.

As Administrator of the Environmental Protection Agency, Mrs. Burford showed little respect for the responsibilities entrusted to her under law. Under her leadership, enforcement of environmental statutes decreased drastically, as did funding for the implementation of EPA's legally mandated duties. According to sworn testimony of two career officials, the EPA pursued a deliberate policy not to implement the Superfund law aggressively during the Burford tenure.

For over a decade the National Advisory Committee on Oceans and Atmosphere has played an important role in shaping future environmental policy. Past board members have had considerable expertise in the marine and atmospheric sciences and have maintained a nonpartisan approach to environmental issues. The appointment of Mrs. Burford to the Committee is inappropriate based on her past performance in the field of environmental policy and the qualifications of past members of the Board; her designation as Chairperson adds insult to injury.

National advisory committees can result in the formulation of sound national policies if they are responsibly constituted, and if policymakers consult with them and heed their advice.

National advisory committees which become the dumping ground for former Government officials lacking competence and sound policies gives all government a bad name.

The bill being introduced today will ensure that NACOA serves the public good, not the ends of those wishing to resurrect their squandered reputations.

I urge my colleagues to give it their full support.

By Mr. PERCY:

S. 2876. A bill to amend title 18, United States Code, to improve collection and administration of criminal fines, and for other purposes; to the Committee on the Judiciary.

CRIMINAL FINE ENFORCEMENT ACT

Mr. PERCY. Mr. President, today I introduce a bill substantially similar to the Criminal Fine Collection Act, S. 1976, which I introduced last year and whose terms were incorporated in S. 1762 when it passed the Senate. At that time, S. 1976 had 32 cosponsors.

This new bill is identical to one approved by the House Judiciary Committee, and which soon should be approved by the entire House. I would like to congratulate the outstanding Congresswoman from Illinois, LYNN MARTIN, and Congressmen CONYERS and BOUCHER, for their success to date in moving this legislation.

As soon as this bill is enacted by the House, I will ask that it be given immediate attention here. With crime—especially narcotics crime—as serious a problem as it is, and with so many criminal fines going uncollected, we must get this bill to the President's desk without delay.

By Mr. BRADLEY:

S. 2877. A bill relating to the tariff treatment of certain canned mushrooms; to the Committee on Finance.

TARIFF TREATMENT OF CERTAIN CANNED MUSHROOMS

● Mr. BRADLEY. Mr. President, I rise today to introduce a bill which will insure that importers which have products in transit when tariffs are changed under an administrative action are able to receive the tariff in effect when the contract to ship was signed. The impetus for this bill comes from the increase in the tariff on certain canned mushrooms in 1980.

This bill in intended to allow all similarly situated U.S. importers to receive the tariff treatment contemplated when fixed priced contracts were made. This bill will allow such importers to be fairly treated by not charging them with customs duties they could not have contemplated, and will not harm domestic producing interests. The conditions imposed were suggested by the administration in a letter from the U.S. Trade Representative to Senator RUSSELL LONG on March 22, 1982. This bill will cover entries numbered 81-118906-8, 81-1-00118528, 81-113856-9, 81-116071-5, 81-1-00277381, 81-00118817, 81-00276882, 81-113659, 81-118604-5, 81-1-00534169, 81-1728076, 81-1-00118627, and 81-1-0018814—covering canned mushrooms.●

By Mr. HATCH (for himself and Mr. QUAYLE):

S. 2878. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish conditions for the export of drugs; by unanimous consent, referred to the Committee on Labor and Human Resources.

PHARMACEUTICAL EXPORT AMENDMENTS

Mr. HATCH. Mr. President, I am pleased to introduce today the Pharmaceutical Export Reform Act of 1984.

Under current U.S. law, new drugs and other important pharmaceuticals may not be exported for sale abroad unless they have already received approval for marketing in the United States by the Food and Drug Administration. This restriction applies even though the particular drug is already approved in the country to which it would be exported. The current policy also prohibits the export of drugs which may be vital in treating foreign diseases which do not exist here, and for which no manufacturer would have reason to request FDA approval for use in the United States.

The only manner in which a U.S. firm may sell its new product in those foreign countries where it is approved is by establishing manufacturing facilities abroad. In many cases, U.S. approval of a drug does not come until a few months, a year or longer after the company has already set up an overseas factory to produce the drug.

As a result, this limitation on exports has had a significant adverse impact upon the U.S. economy and on the international competitive position of American firms. It results in the loss of American jobs and domestic capital investment. It also results in an undesirable flow of American research and manufacturing technology overseas and has a negative impact upon U.S. balance of trade. Our current policy does not prohibit foreign consumers from gaining access to these drugs—it simply locks the United States out of competition for jobs and revenues. This is pointless public policy.

This damage to the U.S. economy is not a speculative one. Our loss is very real. At the end of my remarks, I ask unanimous consent to have printed a statement that describes several specific examples of the adverse impact of current drug export restrictions.

The Pharmaceutical Export Reform Act would rectify this anomalous situation. It would permit the export of new drugs not yet approved in the United States, subject in most cases to ongoing FDA review and under restrictions that protect against any danger to the health and safety of either Americans or foreign citizens. Indeed, in allowing production facilities to be located in this country, where they will be subject to FDA's good manufacturing practices, the bill in many cases assures foreign consumers of a better quality product than if the facility had been located in their own country.

This bill is particularly necessary in the new area of biotechnology. It will allow the technology and jobs to remain in the United States by permitting manufacturers to export products, under carefully limited circumstances, prior to the Food and Drug Administration's approval for domestic use.

The bill is the negotiated product of lengthy deliberations among Members of Congress and industry with diverse points of view and I believe it fairly meets the traditional objections to the export of unapproved drugs. It imposes sufficient conditions and provides adequate safeguards to protect the health and safety of both Ameri-

can and foreign citizens by limiting exports of drugs to those that have been approved by the regulatory authorities of a developed country requiring adequate proof of safety and effectiveness.

The bill in draft form was the subject of a hearing in the Labor and Human Resources Committee on June 28, 1984. As a result of that hearing, and particularly in response to the testimony of Dr. Phillee, the bill as introduced contains several changes.

First, it now provides that the prohibition on exports where a drug has been affirmatively banned includes adverse actions by other coutries with responsible FDA-like regulatory agencies, as well as by our own FDA.

Second, the exception for export of banned drugs under particular foreign circumstances now requires a finding by the Secretary of HHS or of Agriculture that export is justified to promote the public health of the importing country. Language is added making explicit the agency's authority to rescind such a finding if new information subsequently changes the agency's assessment. Third, it provides that drugs exported to unlisted nations must not only be the subject of an investigation new drug exemption they must have completed the pharmacological testing phase of the process. Fourth, notice of intent to export to unlisted countries must not only be filed with the Department of HHS or Agriculture, but the appropriate agency is required to publish the notice in the Federal Register.

Fifth, the bill in a new section 3 specifies eight countries which are deemed to meet the criteria for listing under the bill, unless FDA within 90 days makes a finding that one or more should not qualify. The Agency will then proceed to consider the addition of other nations to the list as the bill provides. The nations named in section 3 are those whose regulatory agencies are highly regarded by experts in the field. However, the exclusion of a country's name from section 3 is not meant to indicate that it should not be added thereafter following review by FDA of the particular regulatory structure and operation. It is simply felt that scrutiny is advisable for nations not named in section 3 before adding them to the list.

The bill will undoubtedly undergo additional refinement as it moves through Congress. I feel it is good bill, and I encourage my fellow Senators to join in the debate on the important issues it raises.

I ask unanimous consent that the text of the bill, and an explanatory statement and analysis be inserted in the RECORD at the conclusion of my remarks, as well as the statement I mentioned earlier on the adverse impact of existing law.

There being not objection, the material was ordered to be printed in the RECORD, as follows:

S. 2878

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 "Pharmaceutical Export Amendments of 1984."

SEC. 2. Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by adding at the end thereof the following new subsection:

"(e)(1) A drug (including a biological product) intended for human or animal use which—

"(A) requires approval by the Secretary under section 505 or section 512, or

"(B) requires licensing by the Secretary under section 351 of the Public Health Service Act or the Secretary of Agriculture under the Act of March 4, 1913 (known as the Virus Serum Toxin Act),

before it may be shipped in interstate commerce for export to a foreign country and which does not have such approval or license may, notwithstanding such section or Act, be shipped for export to a foreign country described in paragraph (2) if the drug meets the requirements of paragraph (3).

"(2)(A) A foreign country to which a drug may be exported under paragraph (1) is a foreign country—

"(i) included in the list established by the Secretary under subparagraph (B); or

"(ii) any other foreign country if—

"(I) the drug meets the requirements of subparagraph (C); and

"(II) the government of the other foreign country has provided documentation that the drug may be lawfully offered for sale in such country.

"(B)(i) The Secretary shall establish and keep current a list of foreign countries to which drugs may be shipped for export under subparagraph (A)(i). In establishing and keeping current such list, the Secretary may, in his discretion, consult with experts in the field of drug regulation. The first list of foreign countries to which such shipment for export is permitted shall include these foreign countries which are determined by the Secretary to have an adequate governmental health authority to approve drugs and shall be established before the expiration of the ninety-day period beginning on the date of enactment of this subsection. The Secretary shall provide a reasonable opportunity for public comment before the list is published.

"(ii) The Secretary shall add a foreign country to the list established under clause (i) if the Secretary determines the foreign country has an adequate governmental health authority to approve drugs, and the Secretary shall remove a foreign country from such list if the Secretary determines that the foreign country does not have an adequate governmental health authority to approve drugs. Any addition to or removal from the list shall be promulgated after an opportunity for public comment.

"(C) A drug may be shipped for export under subparagraph (A)(ii) to a foreign country which is not included in the list established under subparagraph (B) only if—

"(i) the drug is approved or licensed in a foreign country included in the list established under subparagraph (B), and the labeling for such drug which is approved or licensed by such listed foreign country is to be used in such other foreign county except for translation or other changes made to meet legal requirements of such other foreign country respecting information not related to the safety or effectiveness of the drug;

"(ii) an exemption from the approval or licensing requirements described in paragraph (1) exists for investigational use of the drug in the United States or an application for such approval or licensing has been submitted or approved for the drug and has not been the subject of final action by the Secretary or the Secretary of Agriculture denying, withdrawing, or suspending approval or licensing on the basis of safety or effectiveness or otherwise banning the drug, or the Secretary has issued a notice of a determination that the diseases or health conditions for which the drug is intended exist in such other foreign country but not in the United States and such notice of determination has not been withdrawn;

"(iii) with respect to any drug intended for human use, sufficient Phase I clinical investigation has been completed to permit the initiation of Phase II or Phase III clinical studies, as those phases are defined by regulations promulgated by the Secretary; and

"(iv) the drug is not the subject of a notice by the Secretary or the Secretary of Agriculture, issued within 60 days after the notice of intent to ship for export the drug to that foreign country is received under paragraph (3)(H) (which time may be extended an additional 60 days by written notice by the Secretary or the Secretary of Agriculture), of a determination that the sale of the drug in that foreign country is contrary to its public health and safety.

"(3) A drug may be shipped for export to a foreign country under paragraph (1) only if, in addition to the applicable requirements of paragraph (2)—

"(A) it is not the subject of final action by the Secretary or the Secretary of Agriculture denying, withdrawing, or suspending approval or licensing on the basis of safety or effectiveness or otherwise banning the drug or, if it is the subject of such action, the Secretary or the Secretary of Agriculture has issued a notice of a determination that the export of such drug is justified to promote the public health in the country of import because of particular diseases or health conditions in the country of import that do not exist in the United States and such notice of determination has not been withdrawn;

"(B) it is not the subject of a notice by the Secretary or the Secretary of Agriculture of a determination that the manufacture of the drug in the United States for export is contrary to public health and safety in the United States;

"(C) it is not the subject of final action by the governmental health authority responsible for approving drugs in a foreign country which is included in the list established under paragraph (2)(B) determining that the drug is unsafe or ineffective or, if it is the subject of such action, the Secretary or the Secretary of Agriculture has issued a notice of a determination that the export of such drug is justified to promote the public health in the country of import because of particular diseases or health conditions in the country of import that do not exist in the country which made the determination that the drug is unsafe or ineffective and such notice of determination has not been withdrawn;

"(D) it accords to the specifications of the foreign purchaser;

"(E) it is not in conflict with the laws of the country to which it is intended for export;

"(F) it is labeled on the outside of the shipping package that it is intended for export and is not approved for commercial marketing in the United States;

"(G) it has not been or is not introduced or offered for introduction into domestic commerce; and

"(H) the manufacturer or distributor of the drug has submitted at least 60 days prior to the date of first export of the drug to each foreign country, to the Secretary or the Secretary of Agriculture a notice of intent to export which—

"(i) describes the drug, identifies the establishment where it is manufactured for export, and states that the drug is not in conflict with the laws of the country to which it is intended for export; and—

"(ii) in the case of a drug to be exported to a foreign country not included in the list established under paragraph (2)(B), includes a copy of the labeling specified in paragraph (2)(C)(i) which is approved or licensed in a foreign country included in such list and a copy of the documentation specified in paragraph (2)(A)(ii)(II) that the drug may be lawfully offered for sale in such country.

Within 30 days of the receipt of any such notice of intent to export to a foreign country not included in the list established under paragraph (2)(B), the Secretary or the Secretary of Agriculture shall publish in the Federal Register a notice of such receipt which shall describe the drug, state the country to which the drug is intended for export, and specify where the notice of intent to export may be examined.

"(4) A change in the labeling of a drug which has been approved or licensed as described in paragraph (1) will not prevent its export to a foreign country if the change is a translation or other change made to meet the legal requirements of such country respecting information which does not relate to the safety or effectiveness of the drug.

"(5) The Secretary shall establish procedures for—

"(A) periodically informing foreign governments of significant regulatory decisions, actions, and information respecting drugs in the United States;

"(B) periodically sending to foreign governments the required labeling for drugs approved or licensed by the Secretary or the Secretary of Agriculture; and

"(C) responding promptly to requests from foreign governments for available information on any drug imported from the United States.

Under such procedures no foreign government shall be furnished any information which is not available for public disclosure in the United States."

SEC. 3. The first list of foreign countries established by the Secretary of Health and Human Services under section 801(e)(2)(B)(i) of the Federal Food, Drug, and Cosmetic Act, as added by section 2 of the Pharmaceutical Export Amendments of 1984, shall include the following foreign countries unless such Secretary determines that one or more of such foreign countries does not have an adequate governmental health authority to approve drugs: Australia, Canada, Federal Republic of Germany, France, Japan, Sweden, Switzerland, and United Kingdom.

PHARMACEUTICAL EXPORT AMENDMENTS OF 1984—EXPLANATORY STATEMENT

These amendments are designed to address an anomaly in current law, which prohibits United States manufacturers from producing important pharmaceutical products in this country for export prior to their approval for marketing in this country by the Secretary of Health and Human Services (HHS) (who has delegated this authority to the Food and Drug Administration (FDA)) or the United States Department of Agriculture (USDA). American companies must therefore produce these drugs abroad for distribution to worldwide markets where they are already permitted to be marketed. This results in the needless export of American technology and jobs, without any corresponding public health benefits, at a time of increasing worldwide competition.

The need for these amendments is particularly acute in the emerging new area of biotechnology. Important drugs produced through recombinant DNA and other new biotechnology techniques must be manufactured abroad for sale throughout the world until they are approved by FDA or USDA. This amendment would allow the technology and jobs to remain in the United States by permitting manufacturers to export such products, under carefully limited circumstances, prior to FDA or USDA approval for domestic use.

STATUTE AMENDED

These provisions amend section 801 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 381, which relates to the effect of that statute on other existing laws.

CURRENT LAW ON APPROVAL OR LICENSING REQUIREMENTS FOR DRUGS

Under current law, three separate statutes are involved in the regulation and approval of drugs in the United States. Drugs for human and animal use are regulated under the Federal Food, Drug, and Cosmetic Act of 1938 (the FD&C Act), 21 U.S.C. 321 et seq. Human biological products are regulated under the Public Health Service Act (the PHS Act), 42 U.S.C. 262. Animal biological products that move in interstate commerce are regulated under the Act of Congress of March 4, 1913, relating to virus, serum, toxin, and analogous products for domestic animals (the VS&T Act), 21 U.S.C. 151 et seq. The FD&C Act and the PHS Act are administered by HHS, which has delegated that authority to FDA. The VS&T Act is administered by USDA.

Accordingly, throughout the amendments reference is made to both HHS and USDA. Each would retain current departmental jurisdiction over the respective drug products involved.

CURRENT LAW ON EXPORT OF DRUGS NOT APPROVED FOR DOMESTIC USE

Under section 801(d) (1) of the FD&C Act, 21 U.S.C. 381(d)(1), a new drug or new animal drug may not be exported from the United States until it has been approved or licensed by FDA or USDA for use in the United States. In contrast, antibiotic drugs for human use not approved for domestic use adulterated or misbranded drugs, and drug intermediates may be exported to foreign countries where they are permitted to be marketed if they meet the specifications of the foreign purchaser, do not conflict with the foreign law, are labeled for export, and are not sold in domestic commerce.

SCOPE OF PRODUCTS COVERED BY THE EXPORT PROVISIONS OF THE AMENDMENTS

The amendments are limited specifically to those drugs which, under current law, are prohibited from export because they have not been approved or licensed for interstate distribution. This includes two types of products. First, it includes those products which have been approved under specific conditions and with specific labeling in the United States, but which are shipped in a different form, or are translated or labeled for other uses or in different ways, for distribution abroad. For example, it would apply to a new drug approved in the United States, whose labeling is translated into a foreign language and otherwise is changed to meet the regulatory requirements and conditions of a foreign country before it is exported. It would also apply to a new drug approved in final dosage form in the United States, but which is shipped abroad in any unfinished form which FDA regards as an unapproved new drug, where it is to be further processed or packaged before it is put into final dosage form. Second, it also includes those products which are not yet approved under any conditions in the United States, and which are thus not used at all in this country or are used only for investigational purposes in this country. For example, it would apply to a new drug exported to England, in partially processed, bulk, or finished dosage form, for investigational or approved uses there but not yet approved for any use in the United States and thus not used at all in this country or limited to investigational use in this country.

The amendments apply to drugs for both human and animal uses, in partially processed, bulk, or finished dosage form. They include biological products as well as nonbiological products. The amendments do not apply, however, to antibiotic drugs for human use, to drug intermediates, or to any other drugs that are presently allowed to be exported under section 801(d)(1) of the FD&C Act. All of these products remain subject to the current provisions in section 801(d)(1) of the FD&C Act, already described above.

EXPORT OF DRUGS WITH INSIGNIFICANT LABELING CHANGES FOR EXISTING UNITED STATES APPROVALS

In order to market drugs internationally in an economical way after they are approved or licensed in the United States, United States manufacturers need to ship them abroad with labeling that meets the requirements of the country of import. The labeling approved or licensed in the United States must be translated before it can be used in any foreign country where foreign languages are used. Foreign customs requirements and other foreign laws and regulations also frequently require additional minor changes in labeling. For example, a foreign country may require the addition of a registration number, a foreign address, or other information relating uniquely to that country.

All of these labeling changes involve variations from the existing United States approval for the drug and thus technically make the drug illegal and ineligible for export under current law. None of these labeling changes results in the drug being unsafe or ineffective, however, nor would it be wise to spend scarce FDA or USDA resources on approving each minor labeling change of this nature before a drug may be exported.

Accordingly, the amendments provide that a drug which has an existing United States approval or license may be exported where the only change relates to the use of labeling which is translated and otherwise is changed only to comply with legal requirements of the foreign country involved respecting information not relating to the safety or effectiveness of the drug. Only labeling changes that are required by the foreign country as a condition before importation is permitted would be allowed under this provision. In order to qualify for the exemption established under this provision, such labeling changes may not involve the addition of indications or other claims not permitted in the United States, or the deletion or revision of warnings, contraindications, and adverse reactions that are required in the United States, or any other change relating to safety and effectiveness. Under this provision, it is intended that the basic nature of the labeling approved in the United States will remain unchanged when it is used abroad.

The amendments thus assure that, when this provision is invoked, the drug and its labeling abroad will be the same as the drug and its labeling as approved in the United States. Under these very limited circumstances, the drugs may be exported with the translated and revised labeling without any further regulatory requirements. Because the foreign labeling remains the same as the United States labeling in all respects relating to safety and effectiveness, there is no need for the notification requirements and other regulatory controls, described below, that are imposed under these amendments on the export of drugs not subject to United States approvals or with significant changes from United States approvals.

EXPORT OF DRUGS NOT SUBJECT TO UNITED STATES APPROVALS OR WITH SIGNIFICANT CHANGES FROM UNITED STATES APPROVALS

Not all drugs exported from the United States are or can be shipped in a form or with labeling that in all pertinent respects follows an existing approval in the United States. For some, there is no final action in the United States either approving or disapproving the drug. For others, the United States approval is different than the approvals granted in major foreign countries which have their own sophisticated drug approval process. For still others, the drug must be shipped abroad in an unfinished form that is regarded by FDA as an unapproved new drug, for further processing and packaging. In all of these instances, greater regulatory control is needed to provide adequate assurance that unsafe and ineffective drugs are not exported. The remainder of the amendments is devoted to providing that assurance.

Countries to which export is permitted under this provision: The amendments do not permit indiscriminate export of such unapproved drugs to all foreign countries. Export of these drugs is carefully limited. The conditions which must be satisfied before such a drug may be exported differ for two different categories of foreign countries. All of the applicable conditions must be satisfied before export is permitted.

First, export is permitted to a foreign country included on a list established and kept current by HHS of foreign countries which have an adequate governmental health authority to approve drugs. In compiling the initial list and in later determining whether to add countries to it or to delete countries from it. HHS may, in its discretion, obtain the recommendations of experts on foreign drug regulation.

In developing the initial list, it is expected that HHS will first give attention to major nations which are known by FDA to have well-established drug approval processes. To expedite the establishment of the initial list, the amendments specify eight foreign countries that have been identified by experts in the field of drug regulation as generally recognized as having sound drug regulatory systems. These eight countries are to be included in the initial list unless HHS determines that one or more of them does not meet the criteria for such listing. This initial list can thus be established rather quickly.

No such list could be expected to be complete or to remain static. Accordingly, the legislation authorizes HHS to amend the list from time to time after it is established, either to add countries to it or to remove countries from it, depending upon an HHS determination of the adequacy of government health authorities in foreign counties to approve drugs. It is intended that HHS will exercise independent judgment as to the adequacy of government health authorities in each nation.

The amendments purposely do not establish rigid criteria for determining what foreign health authorities should be considered adequate to approve drugs. It is intended that those authorities be concerned with public health and safety, rather than with licensing for purposes of revenue and that they have the capacity to review significant issues involving the safety and effectiveness of drugs. To be listed, a foreign country must have in place both regulatory procedures sufficient to assure adequate scientific review of the preclinical and clinical studies relating to the safety and effectiveness of drugs before they are approved for marketing, and trained personnel with sufficient scientific knowledge and experience to implement those procedures. It is not intended that, to be listed, a foreign country must have regulatory authority identical to FDA, because the regulatory laws and administrative requirements even in sophisticated countries throughout the world differ widely. FDA's extensive experience with foreign regulatory agencies, assisted by the recommendation of experts where appropriate, will enable HHS to exercise sound discretion in establishing and revising the list.

In order to assure that the amendments will go into effect promptly, they provide that the initial list must be established by HHS within 90 days after the date of enactment. It is expected that HHS can readily meet this deadline for a number of major foreign countries, including the eight countries specified in the legislation, and that those which require a slightly longer period can be acted upon a short while later. To make certain that there are no unnecessarily lengthy and complicated procedures for establishing the initial list, the amendment allows HHS to adopt whatever procedures it concludes to be appropriate for this purpose. It is required only that HHS provide a reasonable opportunity for public comment prior to establishing the inital list. For example, HHS might publish a notice giving interested persons an opportunity to comment on the eight countries specified in the legislation and to suggest other appropriate foreign countries for inclusion on the initial list. Thereafter, any amendment of the list must be done by informal notice-and-comment rulemaking under 5 U.S.C. 553.

In the event that any person wishes to contest the inclusion or exclusion of a particular foreign country, a declaratory judgment action will be available under the Administrative Procedure Act. HHS must be prepared to show that its action was not arbitrary or capricious, based on the administrative record it has created on the matter. Current FDA procedural regulations properly recognize that any person is affected by, and thus has standing to obtain judicial review of, final Agency action of this nature.

Second, there will be a large number of foreign countries not included on the list established by HHS but to which export of such drugs may well be justified. Because these countries have not been determined to have their own adequate governmental health authority to regulate such drugs, the amendments impose five additional requirements for export to such countries. These requirements are cumulative, and all must be satisfied before export is permitted to an unlisted foreign country.

The first requirement is that the drug, including its labeling, must be approved or licensed in at least one of the foreign countries that is on the HHS list, thus assuring that at least one adequate foreign regulatory agency has reviewed and approved it. Although the labeling could be translated into another language and otherwise changed to meet local legal requirements, contraindications, warnings, and adverse reactions could not be deleted, and indications or other claims could not be added, because it would then become a different product than was approved or licensed by that foreign regulatory agency.

Under well-established judicial precedent, the term "labeling" has very broad scope, and includes all promotional material in any way accompanying or disseminated with the drug. The courts and FDA have determined that labeling need not be attached to or shipped with the drug, as long as it is associated with the drug when the drug is prescribed, purchased, or used. For example, any submission made by a pharmaceutical company to a compilation of drug information for use by physicians and other health professionals, comparable to the Physicians Desk Reference in this country, would be considered labeling for a drug. It is intended that a broad interpretation of labeling apply to the provisions of this legislation.

Prior to United States approval of a drug, it can be shipped from the United States to an unlisted foreign country only with labeling approved in a particular listed foreign country. The drug company cannot pick and choose among various portions of labeling approved in different listed foreign countries. The company must decide on the labeling approved in a particular listed foreign country and follow that labeling completely (except for translation and any changes required by local law) for the drug shipped to a specific unlisted foreign country.

After United States approval of a drug, it can be shipped from the United States to an unlisted foreign country in one of two different ways. First, it can be shipped with the labeling approved in the United States (except for translation and any changes required by local law). Second, it can be shipped with the same type of labeling that could be used if there were no United States approval, i.e., the labeling approved in a particular listed foreign country.

Thus, shipment of a drug from the United States to an unlisted foreign country is carefully controlled. In no instance can labeling be used that is not approved either in the

United States or in a foreign country with an adequate governmental health authority to approve drugs.

The second requirement is that the drug may not be exported to any country not on the HHS list of countries with an adequate drug regulatory system, unless the drug is the subject of an investigational exemption for testing being conducted in the United States during the time the drug is being exported, or an application has been submitted for United States approval or licensing, or HHS has determined that the drug may nonetheless be exported because of particular diseases or health conditions, in the specific countries to which the drug is intended for export, that do not exist in the United States. This provision, which is in addition to the requirement that the drug be approved by a listed foreign country, provides further assurance that unsafe or ineffective drugs will not be exported to foreign countries that do not have their own adequate drug approval system. For example, if an IND exists for a human drug, under which clinical testing is being conducted in the United States, FDA is already exercising regulatory surveillance over the drug and is in a position to suspend the IND (thus also automatically suspending further export to unlisted countries), ban export of the drug to unlisted foreign countries, or provide relevant information on the drug to unlisted foreign countries, under appropriate circumstances. Similarly, if an NDA has been submitted or approved in the United States for one use and the drug has been approved for other uses in a listed foreign country, the existence of the United States NDA is sufficient to assure adequate knowledge and control by FDA for purposes of preventing improper exports under this amendment.

The IND or NDA must cover the United States use, but need not cover the foreign shipments as well. Nor is it necessary that the uses covered by the IND or NDA in the United States specifically involve every aspect of the uses of the drug abroad. The general requirement of a United States IND or NDA is sufficient to assure that adequate FDA regulatory surveillance is maintained over the drug for the broad purpose of preventing unwarranted shipments of unsafe or ineffective products to unlisted foreign countries. The IND or NDA must remain in effect, and not be suspended, revoked, withdrawn or otherwise become inactive, to satisfy this requirement.

On occasion, drugs will be useful in foreign countries but are not needed in this country. Major tropical diseases still afflict millions abroad but have no counterpart here and thus drugs for their control would not be subject to an IND or NDA in the United States. Under these circumstances, HHS may make a determination that export is permitted to specified unlisted foreign countries, even though there is no IND or NDA here, because of the unique foreign diseases or health conditions that justify a different benefit/risk ratio in those particular countries. That determination may be withdrawn, which would result in an immediate ban on export.

The third requirement is that, before a human drug may be exported to an unlisted foreign country, sufficient Phase I clinical investigation must be completed to permit initiation of Phase II of Phase III clinical studies. Current and proposed new FDA regulations define these phases and thus no additional regulations will be needed under this provision.

The required Phase I investigation may be undertaken anywhere in the world, as long as it is of sufficient quantity and quality to permit the initiation of Phase II or Phase III studies under FDA requirements. The provision does not require that all Phase I investigation be completed, however, because clinical investigation is an ongoing process and some aspects of Phase I testing might be continued or reinstituted long after Phase II or Phase III testing is permitted or begun. Where an IND for Phase II or Phase III has become effective, of course, or where an NDA had been submitted, this requirement would clearly be met.

The fourth requirement is that the drug may not be exported to any country not on the HHS list of countries with an adequate drug regulatory system if FDA or USDA determines that the sale of the drug in that country is contrary to its public health and safety. Any such determination relating to particular unlisted foreign countries to which export is prohibited must be made by FDA or USDA within 60 days after receipt of the required notice of intent to export to that country, but either agency may extend that time period for an additional 60 days by written notice if further time is needed to review the matter and make a decision. A drug that is acceptable for marketing in more sophisticated countries might present a risk to public health and safety in underdeveloped countries. For example, a drug in powder form, which required mixing with water just prior to administration, could present a hazard in those specific countries where the local water is contaminated. This provision assures that FDA and USDA can prevent exportation to particular foreign countries not included on the HHS list where marketing is determined to be contrary to the public health and safety in those countries.

The fifth requirement is that a responsible official of the government of the unlisted foreign country to which the drug is exported must provide written documentation that the drug may lawfully be offered for sale in the country. The exporter must submit this documentation to FDA or USDA as part of its notice of intent to export the drug.

These provisions, together with the limitations on the types of drugs permitted to be exported, will assure that indiscriminate exportation of inappropriate products cannot occur.

Limitations on drugs permitted to be exported under this provision: The amendments impose eight separate limitations upon the drugs that are permitted to be exported, in order to protect foreign countries against the importation of unsafe or ineffective products and to protect the United States against diversion of unapproved products into domestic channels or significant domestic health and safety problems. These limitations incorporate and expand upon the limitations already contained in Section 801(d)(1) of the FD&C Act. These limitations are cumulative, and all must be satisfied before export is permitted to any foreign country.

First, no such drug may be exported if it is banned in the United States (i.e., if approval or licensing is denied, withdrawn, or suspended, or the drug is otherwise banned), unless FDA or USDA determines that it is nonetheless eligible for export to promote the public health in the countries of import because of particular diseases or health conditions abroad that do not exist in the United States. Final action by FDA removing a new drug from the market in the United States on the ground that it is unsafe or ineffective will, for example, preclude its export.

Under the legislation, a drug never marketed or used for investigational purposes in this country may be made here and exported to a country on the HHS list, but not to an unlisted country unless HHS made a special determination that unique conditions in particular foreign countries justify such export on public health grounds. Moreover, if FDA or USDA were to determine that such a drug presented a health hazard in a country on the HHS list, they could take action under this amendment to assure that the residents of those foreign countries are protected as well. EDA or USDA could request that export voluntarily stop and could fully inform the relevant foreign regulatory agencies so that those agencies could take their own appropriate action. In an emergency, FDA or USDA could immediately issue a regulation banning the product in the United States, even if it were not marketed or used for investigational purposes here, in which case the product could no longer be exported from the United States even to a listed foreign country. Thus, the amendment provides adequate authority for the United States to satisfy its ethical obligations to foreign countries without unnecessarily obstructing foreign commerce.

In some instances, FDA may allow a manufacturer to withdraw a pending NDA for a drug rather than make a formal determination denying the NDA, or may allow a manufacturer to withdraw a marketed drug from distribution rather than make a formal determination withdrawing the NDA. These administrative short-cuts have the desired consequences of preventing or stopping marketing in this country, and should have the same consequences abroad. It is intended that FDA pay particular attention to the consequence of such voluntary withdrawals when the drug is also being exported under this legislation. It is not intended that manufacturers be permitted to evade the conditions of this legislation by voluntary withdrawal where the drug poses a threat to health and safety. FDA should consider appropriate steps (including seeking voluntary suspension of export, or action formally to deny, withdraw, or suspend approval) in such a case. Of course, the requirement of an effective IND (or FDA action waiving that requirement) would continue to apply even where the manufacturer voluntarily withdrew a pending NDA.

During the course of FDA and USDA review of new drugs, applications and petitions are frequently declared incomplete and additional testing is rountinely required. Drug approval in this country is, in short, a continuous process of negotiation. Only a final action by FDA or USDA determining a drug to be unsafe or ineffective would be sufficient to trigger the ban against exportation.

Similarly, FDA and USDA routinely impose numerous restrictions on the approval or licensing of such drugs. For example, many of these drugs are limited to prescription sale, and all are limited to sale with the specific labeling, in English, approved by the regulatory agencies in this country. Many of these restrictions are inappropriate for foreign distribution, and thus none is sufficient to trigger an automatic ban of export under the amendment.

Even where a drug is banned in the United States, it may nonetheless be useful abroad. Medical and agricultural conditions in many countries are different from those

in the United States. Accordingly, the amendment authorizes FDA and USDA to permit exportation where they determine that a particular drug is useful to promote the public health in foreign countries even though not in this country.

In most situations, a drug found to be unsafe or ineffective by FDA would similarly be unsafe or ineffective abroad. The authority of FDA or USDA to permit export in spite of a United States ban is intended to cover only those instances where different medical conditions abroad justify the use of drugs not needed in the United States. For example, drugs for tropical diseases that do not exist in the United States cannot be approved as safe and effective for use here but are urgently needed in many other parts of the world, and particularly in the developing countries. This provision will assure that such drugs can be made available without at the same time permitting the export of drugs that would not be safe and effective abroad. If FDA or USDA initially permits export under this exception and then later withdraws that permission, export will be required to cease immediately.

Second, no such drug may be exported if FDA or USDA determines that the manufacture of the drug in the United States for export is contrary to public health and safety in this country. Such a drug could, for example, threaten the health of workers. Similarly, if it were subject to abuse and substantial quantities were diverted into illegitimate trade in domestic commerce, or if FDA or USDA determined that United States residents were in any other way threatened with a risk to health and safety, manufacture of or export could be prohibited under the amendment.

Third, no such drug may be exported if it is banned in one of the listed foreign countries (i.e., if the govermental health authority responsible for approving drugs in the listed foreign country issues a final determination that the drug is unsafe or ineffective), unless FDA or USDA determines that it is nonetheless eligible for export to promote the public health in other foreign countries because of particular diseases or health conditions in those other foreign countries that do not exist in the particular listed country that made the adverse determination. This provision is consistent with the first limitation on drugs permitted to be exported under the legislation, which forbids export of any drug banned in the United States. It is intended to be interpreted and applied in the same way.

In some foreign countries, however, drug regulatory decisions are made, under the controlling statutes, on grounds other than simple safety and effectiveness. Some laws provide, for example, that no drug may be approved unless it has been shown to be safer or more effective than already-marketed drugs. Denial of approval on these grounds would not invoke this provision. This limitation is intended to apply only where a determination is made that the drug, in and of itself, is either unsafe or ineffective.

Fourth, any such drug must meet the specifications of the foreign purchaser. This is currently a requirement under the FD&C Act, and is retained without change. By assuring compliance with foreign specifications, compliance with all foreign laws and regulations is facilitated.

Fifth, any such drug must not conflict with the laws of the country to which it is intended for export. This is also currently a requirement under the FD&C Act, and is retained without change. It assures that drugs may not be dumped abroad in violation of foreign law.

Sixth, any such drug must be labeled on the outside of the shipping package that it is intended for export and that it is not approved for commercial marketing in the United States. This expands upon the provision in current law, which requires that the shipping package be labeled that it is intended for export. It assures that drugs to be exported will not be confused with domestic products and thus will not inadvertently enter domestic trade. If drugs intended for export are shipped between United States facilities prior to export, this provision will apply throughout their processing in this country to make certain that their final destination is made clear. It also advises foreign customs officials and purchasers about the status of the drug in the United States.

Seventh, the specific drugs being exported may not have been, and may not be, introduced or offered for introduction into domestic commerce. This is also a requirement of current law, and is retained without change. All of the drugs subject to this amendment are, by definition, not approved or licensed for domestic commerce and thus may not be distributed interstate in this country except for investigational purposes.

Eighth, every such drug must, at least 60 days prior to the first export to a particular foreign country, be the subject of a notice of intent to export, submitted by the manufacturer or distributor to FDA or USDA. The notice must describe the drug, identify the establishment where it is manufactured, and state that the drug does not conflict with the laws of the country to which it is intended for export.

This will assure FDA and USDA prior notification that a particular drug is being exported to a particular foreign country. Those agencies will then have an opportunity to inspect the manufacturing establishment, if there is any reason to do so, and to take any other action that might be appropriate. If either agency concluded, for example, that the manufacture of the drug for export presented a significant risk to the health and safety of residents of the United States or of foreign countries not on the HHS list, export could be prohibited. If either agency had information about the drug that would be useful to foreign countries for purposes of regulation, FDA would have an opportunity to disseminate that information abroad in accordance with the provisions described below.

This provision dovetails with the existing notification requirements of the Drug Listing Act of 1972, codified in section 510 of the FD&C Act, 21 U.S.C. 360. Every drug manufacturer is presently required to be registered with FDA even if it engages solely in intrastate commerce. USDA licensing satisfies this requirement for products subject to the VS&T Act. Every registered manufacturer is also required to list with FDA each drug introduced for commercial distribution. Such lists are required to be updated twice each year. The listing must contain a reference to the authority for the marketing of the product and a copy of all labeling. The existing provision does not distinguish between products marketed in domestic or in foreign commerce, and thus would apply to any drug shipped abroad for commercial distribution under this amendment.

These existing provisions require drug listing to be updated only every six months, and do not apply to drugs solely for investigational use. Thus, the notification provision in this amendment assures that exported drugs will not fall between the cracks. FDA and USDA will be able to coordinate the new notification procedures for exported drugs with the existing notification procedures for all other drugs.

For exports to an unlisted country, the notice must include the approved labeling from a listed foreign country on which the labeling in the unlisted country must be based, and a copy of the documentation that the drug may be lawfully marketed in the unlisted country. This will provide additional assurance that exports to unlisted countries are in full compliance with the strict limitations imposed by the amendment.

Within 30 days after receiving a notice of intent to export to an unlisted country, FDA or USDA must publish in the Federal Register a notice of such receipt. That Federal Register notice must describe the drug, state the country of import, and specify where the notice of intent to export may be examined. Thus, the notice will be required to contain only very brief information, but it will be sufficient to provide public notification of the export of unapproved drugs to unlisted countries.

This public notification provides an important opportunity for broad public participation in the scrutiny of the export of such drugs. The public notification must occur at least 30 days before the time expires for FDA or USDA to exercise its veto authority to prohibit the export of a drug to an unlisted foreign country as contrary to its public health and safety. Any individual would thus have at least 30 days to request FDA or USDA to exercise that authority or to extend the time for consideration by another 60 days. In addition, unlisted foreign countries may rely on the Federal Register notifications to keep apprised of United States exports of unapproved drugs. This public process will greatly facilitate the proper implementation and enforcement of the amendments and prevent their abuse or violation.

Notifications under this amendment may, in some instances, contain confidential commercial information about drugs. The confidentiality of any such information will be governed by the existing provisions regarding public disclosure under current law.

ENFORCEMENT OF THE AMENDMENTS

Under existing law, FDA has inspection authority to investigate compliance with the FD&C Act and enforcement authority to bring seizure or injunction actions, or to institute criminal prosecution, for any violation of the FD&C Act. USDA has comparable criminal authority. This amendment permits export of drugs as an exception to the requirements for domestic drugs. If all of the conditions established by these amendments for export of particular drugs are not met, the exemption for export would be inapplicable and any export would automatically represent a violation of the existing drug provisions of the FD&C Act and thus would be subject to the existing civil and criminal penalties under the FD&C Act. If, for example, a drug that is subject to these amendments were exported to a foreign country that did not meet the conditions of these amendments, or if a product that is not eligible for export (because, for example, it was banned in the United States, or it was not the subject of the required notice of intent to export, or improp-

er labeling was used) were nonetheless exported, FDA could determine the violation through its customary inspection of drug manufacturers (which is required by current law to occur at least once every two years), through compliants, or in other ways. The responsible individuals would be subject to criminal prosecution, the company and individuals would be subject to an injunction, and any drug intended for illegal export would be subject to seizure. Thus, no independent inspection or enforcement provisions are required to assure adequate compliance with these amendments. The current FD&C Act enforcement provisions automatically apply.

NEW REQUIREMENTS FOR DISSEMINATION OF IMPORTANT REGULATORY INFORMATION

Cooperation among regulatory agencies responsible for drugs throughout the world has increased substantially in the past 10 years. The World Health Organization has established a drug certification scheme. The United Nations has circulated a list of drugs withdrawn from use throughout the world since 1963. FDA meets regularly with its counterpart agencies in England and Canada, and has sponsored a meeting with all foreign counterpart agencies to discuss cooperative efforts. These amendments recognize and reinforce, such efforts directed at drug information dissemination and cooperation.

Under the amendments, HHS (which would undoubtedly delegate the authority to FDA) is required to establish procedures to accomplish three objectives in this area.

First, FDA must periodically inform foreign governments of significant regulatory decisions, actions, and information respecting drugs. it is intended that such reports be sent immediately when there is an emergency or other urgent need for communication as well as on a regular schedule for more routine information. If, for example, FDA were to discover a major new adverse reaction or side effect caused by a drug which raised significant safety concerns and took appropriate regulatory action in the United States, it would immediately notify foreign governments so that any appropriate regulatory action could also be taken by them.

Where appropriate, rather than sending drug regulatory information directly to each foreign country, the FDA procedures could provide for its dissemination through programs established by the World Health Organization (WHO) for distributing important drug information throughout the world, in order to coordinate American information with broader international educational and regulatory efforts. If, for example, FDA were to conclude that a drug is unsafe or ineffective for one indication and took appropriate regulatory action in the United States, although it remained safe and effective for another indication and therefore should not be banned, the Agency might conclude to make that information available abroad through the WHO. Communications of this type will allow foreign countries to consider regulatory action designed to protect their own citizens, regardless of where the drug is manufactured.

Second, FDA must periodically send to foreign governments the required labeling for drugs approved or licensed in this country following enactment of this legislation. This official labeling establishes all the restrictions and limitations imposed by FDA and USDA for the products involved. By referring to this labeling, foreign governments will have available the latest determinations by the official United States agencies relating to safety and effectiveness of these products. They can then compare this information with the labeling on drugs marketed in their own country, regardless of where they are manufactured, and take any appropriate action they may conclude to be warranted under the circumstances.

For prescription drugs, this requirement would be satisfied by furnishing the package insert approved by FDA. It is necessary to send only the piece of approved labeling that forms the basis of the FDA or USDA approval, not related labeling that may also be used for the drug. Changes in labeling need be sent only if they are significant. The official labeling for drugs approved prior to this legislation is already easily available to foreign countries through compilations such as the Physicians Desk Reference and thus is not required to be sent under this provision. As with the dissemination of other drug regulatory information, the FDA procedures may provide for the use of established WHO programs to distribute labeling information, rather than sending it directly to each foreign country, where that is appropriate.

Third, FDA must respond promptly to requests from foreign governments for information about any drug imported from the United States. FDA may, for example, have in its possession information that would help foreign countries make better regulatory determinations about such products.

The amendments make clear that information which is protected from public disclosure in the United States may not be furnished either orally or in writing to foreign governments. It is important to assure that American technology is protected, and is not given away to foreign competitors. Only information that could be made publicly available in the United States can be disclosed to foreign governments.

Unlike the export provisions of the amendments, which apply only to those drugs that are presently prohibited from export because they are not approved or licensed in the United States, the information dissemination provisions apply broadly to all drugs. Thus, they provide a major new effort at international regulatory cooperation and dissemination of information.

EFFECTIVE DATE

The amendments would be effective upon enactment. The export provisions of the amendments would be effective 90 days after enactment, the date by which the list of foreign countries must be established by HHS.

PHARMACEUTICAL EXPORT AMENDMENTS OF 1984—ANALYSIS

This bill amends section 801 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 381, which relates to the effect of that statute on exports. It adds a new subsection (e), designed to allow the export of drugs permitted by foreign countries to be marketed abroad but not approved for use in the United States, without allowing the dumping of unsafe or ineffective products on foreign countries.

Paragraph (e)(1) provides that any drug required to be approved or licensed by the Secretary of Health and Human Services (HHS) or the Secretary of Agriculture (USDA) prior to export, but not so approved or licensed, may be exported to a foreign country described in paragraph (2) if the drug meets the requirements of paragraph (3).

Paragraph (e)(2) describes the two categories of foreign countries to which export of such drugs is permitted.

Subparagraph (2)(A) provides that any such drug may be exported to a foreign country listed by HHS under subparagraph (B) as a country which has an adequate governmental health authority to approve such drugs, or to any other foreign country if the drug meets the requirements of subparagraph (C) and the government of the country of import has provided documentation that the drug may be lawfully offered for sale in such country.

Subparagraph (2)(B) provides that the initial list of foreign countries with an adequate drug regulatory system must be established within 90 days of the enactment of the legislation, and may subsequently be amended to add or delete countries.

Subparagraph (2)(C) provides that any such drug may be exported to an unlisted foreign country if each of the following four conditions is met.

First, the drug must be approved or licensed in at least one of the listed foreign countries, and the approved or licensed labeling must not be changed except for translation and other changes that are required to be made to meet local legal requirements in the nonlisted country respecting information not related to the safety or effectiveness of the drug.

Second, the drug must be the subject of an exemption for investigational use or an application for approval or licensing must be submitted or approved in the United States, or HHS must determine that the drug is nonetheless eligible for export because of particular diseases or health conditions in the countries to which it is exported that do not exist in the United States.

Third, for any human drug sufficient Phase I clinical investigation must be completed to permit the initiation of Phase II or Phase III clinical studies.

Fourth, the drug must not be the subject of a notice by HHS or USDA determining that the sale of the drug in that country is contrary to its public health and safety. Any such notice prohibiting export to particular countries not on the HHS list must be issued by HHS or USDA within 60 days after the notice of intent to export the drug to that country is received by HHS or USDA, but this time period may be extended an additional 60 days by written notice by HHS or USDA.

Paragraph (e)(3) sets forth eight conditions which any such drug must meet before it may be exported to a listed or unlisted foreign country.

First, the drug must not be banned in the United States or, if it is banned, the Secretary must have determined that it is nonetheless eligible for export to promote the public health in the countries to which it is exported because of particular diseases or health conditions in the countries to which it is exported that do not exist in the United States.

Second, the drug must not be the subject of a notice by HHS or USDA determining that manufacture of the drug in the United States for export presents a significant risk to the public and safety in the United States.

Third, the drug must not be banned as unsafe of ineffective in a listed foreign country or, if it is banned, the Secretary must have determined that it is nonetheless eligible for export to promote the public health in the countries to which it is exported because of particular diseases or health

conditions in the countries to which it is exported that do not exist in the country in which it is banned.

Fourth, the drug must be in accord with the specifications of the foreign purchaser.

Fifth, the drug must not be in conflict with the laws of the country to which it is intended for export.

Sixth, the drug must be labeled on the outside of the shipping package that it is intended for export and is not approved for commercial marketing in the United States.

Seventh, the drug must not have been, and is not, introduced or offered for introduction into domestic commerce.

Eighth, the drug must be the subject of a notice of intent to export submitted to HHS or USDA at least 60 days prior to the date of first export to each foreign country. The notice must describe the drug, identify the establishment where it is manufactured for export, and state that the drug does not conflict with the laws of the country to which it is intended for export. For exports to an unlisted foreign country, the notice must also contain the labeling approved in a listed foreign country which, after translation and any other changes necessary to meet local legal requirements, will be used in the unlisted country, and a copy of the documentation that the drug may be lawfully marketed in the unlisted country. Within 30 days of receiving any notice of intent to export to an unlisted country, HHS or USDA must publish a notice in the Federal Register describing the drug, stating the county of import, and specifying where the notice of intent to export may be examined.

Paragraph (e)(4) provides that a change in the approved labeling for a drug which has been approved or licensed by FDA or USDA will not prevent its export to a foreign country if the change involves only translation into a foreign language or other changes made to meet the legal requirements of such country respecting information which does not relate to the safety or effectiveness of the drug.

Paragraph (e)(5) requires HHS to establish procedures for the dissemination of important regulatory information about all drugs to foreign countries throughout the world, in order to facilitate adequate regulatory control of these drugs among all nations.

Subparagraph (5)(A) requires HHS periodically to inform foreign governments about significant regulatory decisions, actions, and information respecting drugs in the United States.

Subparagraph (5)(B) requires HHS periodically to send to foreign governments the required labeling for drugs approved or licensed or in the United States, to permit these countries to determine the conditions imposed for United States marketing.

Subparagraph (5)(C) requires the Secretary of Health and Human Services to respond promptly to requests from foreign governments for available information on any drug imported from the United States.

Each of these three provisions is limited by the requirement that no foreign government shall be furnished any information which is not available for public disclosure in the United States, in order to assure that American technology and other confidential information is not improperly revealed to foreign competitors.

To expedite the development of the first list of countries with adequate drug regulatory systems, the bill specifies eight countries which shall be included on that list unless HHS determines this to be inappropriate.

STATEMENT ON IMPACT OF DRUG EXPORT RESTRICTIONS

Because of the U.S. export restrictions, American Cyanamid Company, in 1975, undertook an $11 million expansion of its pharmaceutical plant in Gosport, England, in order to manufacture new drugs for overseas markets which had not yet been approved by the United States. The plant, now in operation, generates $28 million in annual sales as well as additional new drugs from research. Two of the drugs manufactured at Gosport were subsequently approved by the FDA. Although one of the drugs has not yet received approval in the U.S., nearly 30 other countries have approved it. If and when the product is approved by the FDA, Cyanamid will be faced with importing it into the United States from Great Britain. The plant could and should have been built at Bound Brook, New Jersey or Pearl River, New York for about $5 million rather than $11 million, and the cost of operating it would have been significantly lower. Unfortunately, the restriction on drug export precluded that choice.

Merck's Dolobid was first approved for marketing in the United Kingdom in 1977 but not in the United States until 1982. Because of export restrictions, production in the United States was limited to intermediates which could move in interstate commerce. In 1976 when production of the intermediates was begun in Virginia, Merck had sufficient manufacturing capacity to meet its international requirements and, without the export prohibition, had as well, existing underutilized capacity to supply its foreign markets with the finished bulk drug during the 5-year period preceding FDA approval. Instead, the decision was made to construct a dedicated chemical plant at Ponders End, England to supply international markets at a capital investment of $20 million. While there were other benefits to making such an investment in the United Kingdom, the fact remains that export restrictions imposed by the United States on its own manufacturer precluded even the consideration of supplying the international markets from domestic facilities. In contrast, Merck's Mefoxin, an antibiotic not subject to a pre-approval export prohibition, was approved in Portugal in early 1977 but not in the U.S. until late 1978. Because now F.D.A approved antibiotics, unlike other drugs, may be freely exported under Section 801(d) of the Food, Drug, and Cosmetic Act, Merck, in its long-range planning could consider supplying foreign markets from a domestic facility. In fact, Mefoxin production was put into the United States with knowledge that is could anticipate full utilization of constructed plant capacity even if FDA approval was inordinately delayed. Merck's plant in Elkton, Virginia now supplies all of its international and domestic requirements.

American Cyanamid Company wanted to manufacture the braid for its Dexon synthetic absorbable sutures in Danbury, Connecticut, and export it to England for finishing and packaging to serve the continent. However, because of the additional time required for its approval by FDA, Cyanamid was forced to put a large part of the manufacturing operation in England. Even though FDA has now approved it, Cyanamid most likely will not bring the basic manufacturing back to the U.S. because of the economics involved.

Abbott Laboratories was forced to invest in overseas manufacturing facilities for Ethrane, an anesthetic because it was approved abroad before being approved in the U.S. Abbott now has approximately $4 million invested in two facilities in England and Italy, with a total of 50 people working on the product.

In addition to adversely affecting larger, research intensive pharmaceutical companies, the export restrictions cause irreparable harm to smaller, biotechnology—based companies if it is not corrected. For example, Genentech is a company whose principal activities involve the development of genetic engineering technology for the production of drugs and biologicals, as well as industrial and agricultural chemicals. Its continued success is dependent on research contracts and licensing agreements with foreign partners for the conduct of clinical studies in their countries, and eventual product sales in those countries. Present law prevents commercial exports to its foreign partners of bulk, intermediate drug and biological materials; its contractual arrangements with them could force the transfer to foreign countries of its recombinant DNA technology and unique isolation and purification methods used to prepare its products.

One of American Cyanamid's most important new drug compounds under development is its new anti-cancer agent, mitoxantrone. Because of the export ban, experimental quantities of mitoxantrone are now being produced by Cyanamid of Great Britain at its Gosport plant rather than at one of Cyanamid's plants in the United States. Cyanamid expects that mitoxantrone will be approved overseas within the next year or so, a year or two before it will be approved in this country. This will put the company in the additional difficult position cited earlier of having to install expensive production facilities in Europe or the U.K. or contracting with a West German firm to produce enough commercial quantities for both overseas needs and for needs in the United States.

Similarly, Merck is now investing substantial capital in the modification of existing facilities and construction of new facilities for the manufacture of a new antibiotic for which approval is anticipated overseas at least one year before approval in the United States. This is an investment Merck could not have considered making domestically without full knowledge that even if FDA approval is delayed substantially, these facilities will not be idle because of an export restriction.

A major pharmaceutical marketing firm in the U.K. approached KV Pharmaceutical Co. to enter into a Research and Development/Marketing Agreement to put a new cardiovascular drug into a KV once-a-day delivery system/dose form. A series of negotiating conferences between the two firms led to agreement in principle which included: Subsidy payments for KV's Research & Development efforts; front cash payments on registration of the completed product; KV manufacture for worldwide demand for the product; a royalty on the U.K. company's sales of the product; and KV rights to market the product in the U.S. (since the U.K. company does not have a strong U.S. presence).

Partly due to the problem created by the United States law regarding drug exports, the U.K. company decided not to proceed with KV. Instead, an arrangement has been made with another company (probably European) providing for manufacture in the U.K.

Tangible losses to KV included: Over $800,000 in Research and Development and

license income; manufacturing income estimated at $3.0 million per year; royalty income estimated at $1.5 million per year; marketing/sales revenues in the U.S. of $7 to $12 million per year; and commensurate employment in Research and Development, sale and marketing jobs.

Merrell Dow launched a product called Terfenadine in Europe in 1981. Between then and now it has been marketed in most countries around the world. The U.S. NDA was submitted in February, 1983. It has not yet been approved. Because of existing FDA regulations it was not possible to manufacture this product in the United States. If the U.S. was now exporting this product to other global markets, the U.S. would have realized approximately $22 million in exports in 1984. Projections indicate that by 1993 these exports would amount to approximately $60 million (stated in 1984 dollars).

Product B: This is a new product which is still in the R & D pipeline. Launch is anticipated in late 1986 or early 1987 in Europe. If the existing restrictions are not removed, the U.S. plant will be unable to manufacture and export these active ingredients to global markets. It is anticipated that export of this product by 1993 will amount to approximately $90 million (stated in 1984 dollars).

Product C: This product is also in the R&D pipeline with launch anticipated in late '86 or early '87. It is anticipated that by 1993 exports of this product will amount to approximately $20 million (stated in 1984 dollars).

Merrell Dow is now in the process of conducting engineering studies to determine whether it should build, upgrade and expand an active ingredient plant overseas or whether major investments should be made here in the U.S. It normally takes from 2 to 2½ years from the time a decision is made to build an active ingredient plant to the time when the first commercial scale production is available. In the first year of this 2 to 2½ year period, while it is not critical, it is preferred that the actual location site be known. As you near the end of the first year period it becomes necessary to be site specific. In August/September of this year, engineering studies must start to key in on a particular location. The question is quite simple—do we make these products in the U.S. or in a foreign plant? As things stand now, there is little choice but to select a foreign location.

Merrell Dow would clearly prefer to manufacture in the U.S. in all three of the above instances. Note that most production of Terfenadine will remain abroad. However, the firm would like to have some Terfenadine production in the U.S. as well as 100 percent of the active ingredient production for products B and C in this country.

By Mr. DENTON (for himself, Mr. LEAHY, Mr. THURMOND, Mr. BIDEN, Mr. BAUCUS, Mr. D'AMATO, Mr. DECONCINI, Mr. DOLE, Mr. EAST, Mr. GLENN, Mr. GOLDWATER, Mr. GRASSLEY, Mr. HART, Mr. HATCH, Mrs. HAWKINS, Mr. HEFLIN, Mr. HELMS, Mr. INOUYE, Mr. JEPSEN, Mr. LAXALT, Mr. LUGAR, Mr. METZENBAUM, Mr. RANDOLPH, Mr. SPECTER, Mr. SYMMS, and Mr. TRIBLE):

S.J. Res. 336. Joint resolution to proclaim October 23, 1984, as "A Time of Remembrance" for all victims of terrorism throughout the world; to the Committee on the Judiciary.

TIME OF REMEMBRANCE FOR VICTIMS OF TERRORISM

Mr. DENTON. Mr. President, I join with my distinguished colleagues Senators LEAHY, THURMOND, BIDEN, BAUCUS, D'AMATO, DECONCINI, DOLE, EAST, GLENN, GOLDWATER, GRASSLEY, HART, HATCH, HAWKINS, HEFLIN, HELMS, INOUYE, JEPSEN, LAXALT, LUGAR, METZENBAUM, RANDOLPH, SPECTER, SYMMS, and TRIBLE to introduce a joint resolution to proclaim October 23, 1984, as "A Time of Remembrance" for all victims of terrorism throughout the world.

October 23, 1983, as I am sure we all recall, was the day on which 241 American servicemen were killed in a single act of terrorism in Beirut, Lebanon.

The organization that is the driving force behind "A Time of Remembrance" is No Greater Love, a nonprofit, nonpolitical, humanitarian organization founded in 1971 to provide programs for children whose fathers were killed, missing, or imprisoned in Vietnam. As my colleagues know, that is a subject that is very near and dear to my heart. No Greater Love continues year after year to show those children that they are not forgotten.

Several of my colleagues, on both sides of the aisle, serve on the national advisory council of the organization, including Senators THURMOND, DOLE, GOLDWATER, HART, INOUYE, KENNEDY, LAXALT, LUGAR, and RANDOLPH.

Where appropriate, No Greater Love steps in to offer friendship and care to the families of men and women killed or endangered while serving their country. In 1980, No Greater Love promoted and coordinated the free the hostages yellow ribbon campaign during the hostage crisis in Iran.

Unfortunately, recent events in Lebanon and elsewhere around the world have expanded the ranks of children who deserve the attention of No Greater Love, children who need to know that many Americans care about their loss and remember the ultimate sacrifice made by their parents.

The purpose of "A Time of Remembrance" is to remember all victims of terrorism and to demonstrate to their families and friends that the American people care and will not forget. The theme of the program is "Let Peace Take Root," and the symbol of the program is the purple ribbon. The color purple has symbolized loyalty, dignity, and the love of truth, and was considered fitting for "A Time for Remembrance."

One part of "A Time of Remembrance" will be a very special tree dedication ceremony conducted by children whose parents were killed by terrorists. On October 23, 1984, a tree will be dedicated at Arlington National Cemetery in memory of all victims of terrorism throughout the world. Through the ceremony, the children will be remembering their parents and will be helping to increase world awareness of the consequences of terrorism and of the need for people of all nations to work together for world peace.

Elementary schools, B'nai Brith youth organizations, Camp Fire Girls and Boys, Girl Scouts, and U.S. schools overseas are among the organizations whose children will participate in "A Time of Remembrance" by wearing homemade purple ribbons and by holding ceremonies in memory of all victims of terrorism.

In addition to the joint resolution that I am introducing today, the President, Governors, mayors, and the United Nations will be asked to proclaim October 23, 1984, as "A Time of Remembrance" and will be sent purple ribbons to wear. Governors will be sent a flag that flew at the U.S. Embassy in Beirut and will be asked to fly it at halfstaff over their State capitol buildings on October 23. No Greater Love will send purple ribbons to U.S. Embassy officials throughout the world and ask them to wear the ribbons and fly their flags at halfstaff on October 23. Church and synagogue leaders will be asked to offer prayers for victims of terrorism. National Football League teams playing home games on October 21 will be asked to have a moment of silence, before the national anthem, in memory of all victims of terrorism. Radio and television stations will be asked to broadcast public service announcements and editorials about "A Time of Remembrance."

Mr. President, I urge all my colleagues to support the joint resolution and to join as cosponsors.

I ask unanimous consent that the text of the joint 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. 336

Whereas the problem of terrorism has become an international concern that knows no boundaries—religious, racial, political, or national;

Whereas thousands of men, women, and children have died at the hands of terrorists in nations around the world, and today terrorism continues to claim the lives of many peace-loving individuals;

Whereas October 23, 1983, is the date on which the largest number of Americans were killed in a single act of terrorism—the bombing of the United States compound in Beirut, Lebanon, in which two hundred and forty-one United States servicemen lost their lives;

Whereas many of these victims died defending ideals of peace and freedom; and

Whereas it is appropriate to honor all victims of terrorism, and in America to console the families of victims, and to cherish the

freedom that their sacrifices make possible for all Americans: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 23, 1984, be proclaimed as "A Time of Remembrance", to urge all Americans to take time to reflect on the sacrifices that have been made in the pursuit of peace and freedom, and to promote active participation by the American people through the wearing of a purple ribbon, a symbol of patriotism, dignity, loyalty, and martyrdom. The President is authorized and requested to issue a proclamation calling upon the departments and agencies of the United States and interested organizations, groups, and individuals to fly United States flags at half staff throughout the world in the hope that the desire for peace and freedom take firm root in every person and every nation.

ADDITIONAL COSPONSORS

S. 1003

At the request of Mr. DENTON, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from California [Mr. CRANSTON], the Senator from Connecticut [Mr. DODD], the Senator from West Virginia [Mr. RANDOLPH], the Senator from Iowa [Mr. JEPSEN], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Arizona [Mr. GOLDWATER] were added as cosponsors of S. 1003, a bill to extend and revise the provisions of the Civil Abuse Prevention and Treatment Act and the Child Abuse Prevention Treatment and Adoption Reform Act of 1978.

S. 1531

At the request of Mr. RIEGLE, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 1951, a bill to encourage the use of public school facilities before and after school hours for care of school-age children and for other purposes.

S. 1623

At the request of Mr. DOLE, the name of the Senator from Nebraska [Mr. ZORINSKY] was added as a cosponsor of S. 1623, a bill to establish a National Commission on Neurofibromatosis.

S. 1680

At the request of Mr. SASSER, his name was added as a cosponsor of S. 1680, a bill to clarify the circumstances under which territorial provisions in licenses to distribute and sell trademarked malt beverage products are lawful under the antitrust laws.

S. 2272

At the request of Mr. GOLDWATER, the name of the Senator from West Virginia [Mr. RANDOLPH] was added as a cosponsor of S. 2272, a bill to authorize the Smithsonian Institution to plan and construct facilities for certain science activities of the Institution, and for other purposes.

S. 2437

At the request of Mr. GOLDWATER, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor for S. 2437, a bill to amend the Communications Act of 1934 to clarify the policies regarding the right to view satellite-transmitted television programming.

S. 2509

At the request of Mr. INOUYE, the names of the Senator from Rhode Island [Mr. PELL], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of S. 2509, a bill to amend the Federal Election Campaign Act of 1971 to regulate political advertising in campaigns for Federal elective office.

S. 2563

At the request of Mr. D'AMATO, the name of the Senator from California [Mr. WILSON] was added as a cosponsor of S. 2563, a bill to amend section 1201 of the National Housing Act to extend the crime insurance program.

S. 2726

At the request of Mr. MELCHER, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 2726, a bill to promote the development of Native American culture and art.

S. 2743

At the request of Mr. GRASSLEY, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 2743, a bill to designate a portion of 16th Street NW., Washington, DC, on which the Embassy of the Union of Soviet Socialists Republics is located, as "Andrei Sakharov Avenue."

S. 2768

At the request of Mr. MATHIAS, the names of the Senator from Arkansas [Mr. PRYOR], the Senator from Missouri [Mr. DANFORTH], and the Senator from California [Mr. CRANSTON] were added as cosponsors of S. 2768, a bill to provide for the education in the United States of certain students of limited financial means from developing countries.

S. 2774

At the request of Mrs. KASSEBAUM, the names of the Senator from Minnesota [Mr. DURENBERGER], the Senator from Nevada [Mr. LAXALT], the Senator from Georgia [Mr. MATTINGLY], the Senator from Illinois [Mr. DIXON], the Senator from Hawaii [Mr. INOUYE], the Senator from Vermont [Mr. STAFFORD], and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of S. 2774, a bill to grant a Federal charter to the National Society, Daughters of the American Colonists.

SENATE JOINT RESOLUTION 254

At the request of Mr. LUGAR, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S.J. Res. 254, a joint resolution to designate the month of October, 1984 as "National Down's Syndrome Month".

SENATE JOINT RESOLUTION 272

At the request of Mr. MURKOWSKI, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S.J. Res. 272, a joint resolution recognizing the anniversaries of the Warsaw Uprising and the Polish resistance to the invasion of Poland during World War II.

SENATE JOINT RESOLUTION 305

At the request of Mrs. HAWKINS, the name of the Senator from Colorado [Mr. ARMSTRONG] was added as a cosponsor of S.J. Res. 305, a joint resolution to designate the week of September 10, 1984, through September 16, 1984, as "Teenage Alcohol Abuse Awareness Week".

SENATE JOINT RESOLUTION 322

At the request of Mr. QUAYLE, the names of the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of S.J. Res. 322, a joint resolution designating the week beginning on October 7, 1984, as "Mental Illness Awareness Week".

SENATE JOINT RESOLUTION 323

At the request of Mr. MURKOWSKI, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Colorado [Mr. HART], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Delaware [Mr. BIDEN], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Virginia [Mr. TRIBLE], the Senator from Delaware [Mr. ROTH], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Massachusetts [Mr. TSONGAS] were added as cosponsors of S.J. Res. 323, a joint resolution designating August 1984 as "Polish American Heritage Month".

SENATE JOINT RESOLUTION 327

At the request of Mr. KASTEN, the names of the Senator from California [Mr. CRANSTON], and the Senator from Idaho [Mr. SYMMS] were added as cosponsors of S.J. Res. 327, a joint resolution to designate the week beginning September 2, 1984 as "Youth of America Week".

SENATE JOINT RESOLUTION 333

At the request of Mr. HELMS, the names of the Senator from New Mexico [Mr. DOMENICI], the Senator from Oklahoma [Mr. BOREN], the Senator from Florida [Mrs. HAWKINS], the Senator from Connecticut [Mr. DODD], the Senator from Montana [Mr. BAUCUS], the Senator from Ohio [Mr. GLENN], the Senator from Arkansas [Mr. BUMPERS], the Senator from Mississippi [Mr. STENNIS], the Senator from Vermont [Mr. LEAHY], the Senator from Texas [Mr. TOWER], and the Senator from Georgia [Mr. MATTINGLY] were added as cosponsors of S.J. Res. 333, a joint resolution to desig-

nate September 21, 1984, as "World War I Aces and Aviators Day".

SENATE JOINT RESOLUTION 334

At the request of Mr. DOLE, the names of the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S.J. Res. 334, a joint resolution to provide for the designation of the month of November 1984, as "National Hospice Month".

SENATE CONCURRENT RESOLUTION 109

At the request of Mr. HOLLINGS, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. Con. Res. 109, a concurrent resolution expressing the sense of the Congress that the Federal Government take immediate steps to support a National Storm Program.

SENATE CONCURRENT RESOLUTION 118

At the request of Mr. GRASSLEY, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. Con. Res. 118, a concurrent resolution expressing the sense of Congress that the portion of the street in the District of Columbia on which is located the Embassy of the Union of Soviet Socialist Republics, and the portion of any street in any other city in the United States on which is located a consular office or mission of the Union of Soviet Socialist Republics, should be named "Andrei Sakharov Avenue."

SENATE RESOLUTION 415

At the request of Mr. D'AMATO, the names of the Senator from Pennsylvania [Mr. HEINZ], the Senator from North Dakota [Mr. ANDREWS], the Senator from Connecticut [Mr. WEICKER], the Senator from Rhode Island [Mr. PELL], the Senator from Texas [Mr. TOWER], and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of S. Res. 415, a resolution commemorating the 20 years of Federal support of mass transportation.

AMENDMENTS SUBMITTED

HOOVER POWER PLANT ACT OF 1984

METZENBAUM AMENDMENTS NOS. 3418 AND 3419

Mr. METZENBAUM proposed two amendments to the amendment of the House to the bill (S. 268) to authorize the Secretary of the Interior to construct, operate, and maintain hydroelectric powerplants at various existing water projects, and for other purposes; as follows:

AMENDMENT 3418

At the end of the House amendment, add: Notwithstanding any other provision, no contract authorized in this bill shall prescribe terms and conditions for the renewal of contracts for electrical energy generated at Hoover Dam beyond the period ending December 31, 1988.

AMENDMENT 3419

At the end of the House amendment, add: Notwithstanding any other provision of this bill shall become effective upon date of enactment;

Provided, however, That no section of this bill or the Boulder Canyon Project Act of 1928 regarding the price of power generated at Hoover Dam shall be effective after May 31, 1987.

CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION REFORM ACT AMENDMENTS

STEVENS (AND OTHERS) AMENDMENT NO. 3420

Mr. HATCH (for Mr. STEVENS, for himself, Mr. KENNEDY, Mr. CRANSTON, Mr. DODD, Mrs. HAWKINS, Mr. BOSCHWITZ, Mr. ANDREWS, Mr. MURKOWSKI, Mr. DURENBERGER, Mr. LAUTENBERG, Mr. MOYNIHAN, Mr. RIEGLE, Mr. COHEN, Mr. RANDOLPH, Mr. MATSUNAGA, and Mr. COCHRAN) proposed an amendment to the bill (S. 1003) to extend and revise the provisions of the Child Abuse Prevention and Treatment Act and the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978; as follows:

On page 22, after line 20, add the following new title:

TITLE III—FAMILY VIOLENCE PREVENTION PROGRAM

SHORT TITLE

SEC. 301. This title may be cited as the "Family Violence Prevention Act".

COORDINATION OF PROGRAMS

SEC. 302. The Secretary shall coordinate all programs within the Department of Health and Human Services, and seek to coordinate all other Federal programs, which involve the prevention of incidents of family violence and the provision of assistance for victims and potential victims of family violence and their dependents.

DEMONSTRATION GRANTS AUTHORIZED

SEC. 303. (a) The Secretary is authorized to make demonstration grants to public agencies and private nonprofit organizations (including religious and charitable organizations and voluntary associations) in any State that have the capacity to administer, or are administering, family violence prevention programs. Such grants shall be made on the basis of applications submitted under subsection (b) and approved by the Secretary for the cost of programs designed to carry out one or more of the following purposes:

(1) To prevent incidents of family violence, including the provision of immediate shelter and related assistance to victims of family violence and their dependents.

(2) To conduct research into the causes of family violence, and into the prevention, identification, and treatment thereof, including research into the effectiveness of (A) involving law enforcement personnel in responding to incidents of family violence, (B) State procedures for the removal from the household of the abusing spouse, (C) arrest of the abusing spouse, and (D) referral to drug and alcohol treatment programs or other therapy programs for the abusing spouse.

(3) To train personnel in the conduct of programs for the prevention and treatment of family violence.

(4) To prepare local and State law enforcement personnel for the handling of incidents of family violence.

(b) No demonstration grant may be made under this section unless the public agency or private nonprofit organization submits an application to the Secretary at such time, in such manner, and containing or accompanied by such matter as the Secretary determines reasonably necessary.

(c) In approving applications submitted under subsection (b) of this section, the Secretary shall—

(1) assure that there is an equitable distribution of assistance both with respect to States and between rural and urban areas;

(2) give priority to applications from applicants in communities currently without family violence prevention programs or which can demonstrate that current services or programs are inadequate to meet the needs of the community;

(3) assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this title, and assure that the address or location of any shelter-facility assisted under this title is not made public except by written authorization of the person or persons responsible for the operation of such shelter; and

(4) not make a grant under this section in any fiscal year to any single entity for an amount in excess of $50,000 unless the Secretary, in exceptional circumstances, determines that a grant in a greater amount is necessary.

(d) Nothing in this title shall be construed to supersede the application of State or local requirements for the reporting of incidents of suspected child abuse to the appropriate State authorities.

NATIONAL CLEARINGHOUSE ON FAMILY VIOLENCE PREVENTION

SEC. 304. (a) The Secretary shall operate a national information and research clearinghouse on the prevention of family violence (including the abuse of elderly persons) in order to—

(1) collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance to victims of family violence and their dependents; and

(2) provide information about alternative sources of assistance available with respect to the prevention of incidents of family violence and the provision of immediate shelter and related assistance to victims of family violence and their dependents.

(b) The Secretary shall assure that the activities of the national information and research clearinghouse operated under subsection (a) are coordinated with the information clearinghouse maintained by the National Center on Child Abuse and Neglect under section 2 of the Child Abuse Prevention and Treatment Act.

PAYMENTS

SEC. 305. (a)(1) From the amounts appropriated and available for demonstration grants under section 308, the Secretary

shall pay, in accordance with the provisions of this title, the Federal share of the costs of programs described in the applications approved under section 303.

(2) The Federal share shall be—

(A) 65 percent in fiscal year 1985,

(B) 45 percent in fiscal year 1986, and

(C) 35 percent in fiscal year 1987.

(3) The non-Federal share of demonstration grants under this title may be in cash or in kind, fairly evaluated, including but not limited to planning expenses, plant, equipment, and services.

(b) Demonstration grants made under section 303 may be paid in installments, as in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

ADMINISTRATIVE PROVISIONS

SEC. 306. (a) The Secretary shall appoint an employee of the Department of Health and Human Services to carry out the provisions of this Act. The individual appointed under this subsection shall, prior to such appointment, have had expertise in the field of family violence prevention and services.

(b) In order to carry out the provisions of this title, the Secretary is authorized to—

(1) appoint and fix the compensation of such personnel as are necessary;

(2) procure, to the extent authorized by section 3109 of title 5, United States Code, such temporary and intermittent services of experts and consultants as are necessary;

(3) prescribed such regulations as are necessary; and

(4) enter into contracts, grants, or other arrangements, or modifications thereof that are necessary to carry out the provisions of this title.

DEFINITIONS

SEC. 307. As used in this title—

(1) the term "Secretary" means the Secretary of Health and Human Services;

(2) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands;

(3) the term "related assistance"—

(A) includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate health-care services (including alcohol and drug abuse treatment), and

(B) may include food, clothing, child care, transportation, and emergency services (but not reimbursement for any health-care services) for victims of family violence and their dependents; and

(4) the term "shelter" means the provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

AUTHORIZATION OF APPROPRIATIONS

SEC. 308. There are authorized to be appropriated to carry out this title $5,000,000 for fiscal year 1985, $15,000,000 for fiscal year 1986, and $15,000,000 for fiscal year 1987. Of the amounts appropriated pursuant to this section for each such year, not less than 50 percent shall be available for demonstration grants made under section 303(a)(1) in such year.

HATCH (AND OTHERS) AMENDMENT NO. 3421

Mr. HATCH (for himself, Mr. DODD, Mr. DENTON, and Mr. CRANSTON) proposed an amendment to the bill S. 1003, supra; as follows:

On page 11, beginning with line 11, strike out all through line 2 on page 12.

On page 12, line 3, strike out "(C)" the first time it appears and insert in lieu thereof "(b)".

On page 12, line 8, strike out "SEXUAL ABUSE".

On page 12, lines 10 and 11, strike out "title" and insert in lieu thereof "Act" in both places.

On page 12, lines 14 and 15, strike out "comma and the word 'and' " and insert in lieu thereof "semicolon".

On page 12, line 24, strike out the end quotation marks and the period the second time it appears and insert in lieu thereof a semicolon and "and".

On page 12, after time 24, insert the following:

"(3) the term 'withholding of medically indicated treatment' means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, (A) the infant is chronically and irreversibly comatose; (B) the provision of such treatment would (i) merely prolong dying, (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or (iii) otherwise be futile in terms of the survival of the infant; or (C) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.".

On page 13, strike out line 10 through line 17 and insert in lieu thereof the following: "$32,500,000 for fiscal year 1984, $39,000,000 for fiscal year 1985, $40,500,000 for fiscal year 1986, and $42,080,000 for fiscal year 1987 to carry out the provisions of this Act. Of the sums appropriated for each fiscal year, $9,500,000 shall be available in each fiscal year to carry out the provisions of section 4(b)(1) of this Act, relating to State grants, $4,000,000 shall be available in each such year for identification, treatment, and prevention of sexual abuse, and $5,000,000 shall be available in each such year for the purpose of making additional grants to the States to carry out the provisions of section 4(c) of this Act (as amended by section 201(c)(2) of the Child Abuse Prevention and Treatment and Adoption Reform Act).".

On page 14, line 25, and page 15, line 1, strike out "infants at risk with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 15, lines 11 and 12, strike out "infants at risk with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 16, lines 20 and 21, strike out "infants at risk with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 17, lines 9 and 10, strike out "children with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 19, beginning with line 9, strike out all through line 20 on page 22 and insert in lieu thereof the following new title:

TITLE II—SERVICES AND TREATMENT FOR DISABLED INFANTS

SEC. 201. (a) Section 4(b)(2) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5103(b)(2), hereinafter in this title referred to as "the Act") is amended by—

(1) striking out "and" at the end of clause (I);

(2) striking out the period at the end of clause (J) and inserting in lieu thereof a semicolon and the word "and"; and

(3) Inserting after clause (J) the following new clause:

"(K) have in place for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the state child protective services system), to provide for (1) coordination and consultation with individuals designated by and within appropriate health-care facilities, (ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), and (iii) authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.".

(b) Section 4(b)(3) of the Act is amended by striking out "and (F)" and inserting in lieu thereof "(F), and (K)".

(c) Section 4 of the Act is further amended by—

(1) redesignating subsection (c) as subsection (d), subsection (d) as subsection (e), and subsection (e) as subsection (f); and

(2) inserting after subsection (b) the following new subsection (c):

"(C) The Secretary is authorized to make additional grants to the States for the purpose of developing, establishing, and operating or implementing—

"(1) the procedures or programs required under clause (K) of subsection (d)(2);

"(2) information and education programs or training programs for the purpose of improving the provisions of services to disabled infants with life-threatening conditions for (i) professional and paraprofessional personnel concerned with the welfare of disabled infants with life-threatening conditions, including personnel employed in child protective services programs and health-care facilities, and (ii) the parents of such infants; and

"(3) programs to help in obtaining or coordinating necessary services, including existing social and health services and financial assistance for families with disabled infants with life-threatening conditions, and those services necessary to facilitate adoptive placement of such infants who have been relinquished for adoption.".

REGULATIONS AND GUIDELINES

SEC. 202. (a)(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services (hereinafter in this title referred to as the "Secretary") shall publish proposed regulations to implement the requirements of section 4(b)(2)(K) of the Act (as amended by section 201(a)(3) of this Act).

(2) Not later than 100 days after the date of the enactment of this Act and after notice and opportunity for public comment, the Secretary shall publish final regulations under this subsection.

(b)(1) Not later than 60 days after the date of the enactment of this Act, the Secretary shall publish interim model guidelines to encourage the establishment within health-care facilities of commmittee which would serve the purpose of educating hospital personnel and families of disabled infants with life-threatening conditions, recommending institutional policies and guidelines concerning the withholding of medically indicated treatment from such infants, and offering counsel and review in cases involving disabled infants with life-threatening conditions.

(2) Not later than 150 days after the date of the enactment of this Act and after notice and opportunity for public comment, the Secretary shall publish the model guidelines.

REPORT ON FINANCIAL RESOURCES

SEC. 203. The Secretary shall conduct a study to determine the most effective means of providing Federal financial support, other than the use of funds provided through the Social Security Act, for the provision of medical treatment, general care, and appropriate social services for disabled infants with life-threatening conditions. The Secretary shall report the results of the study to the appropriate Committees of the Congress not later than 270 days after the date of the enactment of this Act and shall include in the report such recommendations for legislation to provide such financial support as the Secretary considers appropriate.

TRAINING, TECHNICAL ASSISTANCE, AND CLEARINGHOUSE ACTIVITIES

SEC. 204. The Secretary shall provide, directly or through grants or contracts with public or private nonprofit organizations, for (1) training and technical assistance programs to assist States in developing, establishing, and operating or implementing programs and procedures meeting the requirements of section 4(b)(2)(K) of the Act (as amended by section 201(a)(3) of this Act); and (2) for the establishment and operation of national and regional information and resource clearinghouses for the purpose of providing the most current and complete information regarding medical treatment procedures and resources and community resources for the provision of services and treatment for disabled infants with life-threatening conditions

STATUTORY CONSTRUCTION

SEC. 205. (a) No provision of this Act or any amendment made by this Act is intended to affect any right or protection under section 504 of the Rehabilitation Act of 1973.

(b) No provision of this Act or any amendment made by this Act may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws.

(c) If the provisions of any part of this Act or any amendment made by this Act or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

EFFECTIVE DATES

SEC. 207. (a) Except as provided in subsection (b), the provisions of this act or any amendment made by this Act shall be effective on the date of the enactment of this Act.

(b)(1) Except as provided in paragraph (2), the amendment made by section 201(a)(3) of this Act shall become effective one year after the date of such enactment.

(2) In the event that, prior to such effective date, funds have not been appropriated pursuant to section 5 of the Act (as amended by section 104 of this Act) for the purpose of grants under section 4(c) of the Act (as amended by section 201(c) of this Act), the Secretary may grant to any State which has not met the requirements of section 4(b)(2)(K) of the Act (as amended by section 201(a)(3) of this Act) a waiver of such requirements for a period of not more than one year, if the Secretary finds that such State is making a good faith effort to comply with such requirements.

HATCH AMENDMENT NO. 3422

Mr. HATCH proposed an amendment to the bill S. 1003, supra; as follows:

On page 14, strike out lines 9 through 16.

At the end of the bill add the following new title:

TITLE IV—REPORT

SEC. 401. Not later than October 1, 1987, the Secretary of Health and Human Services shall submit to the Congress a detailed report on the implementation and the effects of the provisions of the Child Abuse Prevention and Treatment and Adoption Reform Act Amendments of 1983 and the amendments made by it.

RELIEF OF THE ESTATE OF NELL J. REDFIELD

MOYNIHAN (AND OTHERS) AMENDMENT NO. 3423

Mr. MOYNIHAN (for himself, Mr. DOLE, and Mr. BRADLEY) proposed an amendment to the bill (H.R. 1428) for the relief of the estate of Nell J. Redfield; as follows:

Strike all after the enacting clause and insert: (a) in determining whether the base quarter ending on September 30, 1984 is a cost-of-living computation quarter for the purposes of the cost-of-living increases under sections 215(i) and 1617 of the Social Security Act, the phrase "is 3 percent or more"; appearing in section 215(i)(1)(B) of such Act shall be deemed to read "is greater than zero".

(b) For purposes of section 215(i) of such Act, the provisions of subsection (a) shall not constitute a "general benefit increase".

NOTICES OF HEARINGS

COMMITTEE ON SMALL BUSINESS

Mr. WEICKER. Mr. President, I would like to announce that the Senate Small Business Committee's Subcommittee on Small Business: Family Farm, will hold a hearing on August 1, 1984, to examine the issue of corporate buyouts of family farms. The hearing will begin at 10 a.m. in room 428A of the Russell Senate Office Building. Senator PRESSLER will chair the hearing. For further information, please contact Mike Haynes, chief counsel of the committee, at 224-8487.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON SURFACE TRANSPORTATION

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Surface Transportation of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Thursday, July 26, 1984, to hold a hearing on Amtrak's safety record.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 26, at 2 p.m., to hold a hearing to consider the nomination of Richard Wood Boehm, to be Ambassador to the Republic of Cyprus.

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

COMMITTEE ON GOVERNMENT AFFAIRS

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Thursday, July 26, to hold a markup on the following bills:

S. 1858—DC Home Rule Act; and

S. 2438—Paperwork Reduction Act Amendments of 1984.

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

ADDITIONAL STATEMENTS

PELL SUPPORTS SBA SECONDARY MARKET LEGISLATION

● Mr. BUMPERS. Mr. President, last February, Senator WEICKER and I introduced S. 2375, the "Small Business Secondary Market Improvements Act of 1984." That bill is designed to improve the operation of SBA's secondary market, and increase small business access to capital. On July 10, the President signed that bill into law—Public Law 98-352. Last April, the Senator from Rhode Island [Mr. PELL] asked to be added as a cosponsor of

this bill. Through an oversight, that action was not taken until this past Monday. While I have added the Senator as a cosponsor of this bill, as the ranking Democratic member of the Senate Small Business Committee, I want the record to reflect Senator PELL's early and strong support for this specific legislation.●

SSBN—HENRY M. JACKSON

● Mr. McCLURE. Mr. President, I have received a letter from Adm. Kinnaird R. NcKee, in which he tells of the excellent performance of the U.S. Navy's fifth Trident strategic ballistic missile submarine. Admiral McKee's admiration and words of praise also focus on the man for whom the submarine is named, the man Admiral McKee calls the patron saint of the Naval Nuclear Propulsion Program—Henry M. Jackson.

McKee notes that early in his congressional career, Senator Jackson recognized the vast potential of nuclear propulsion for warships, particularly submarines, and the importance of doing the job right. With his vision and commitment, Scoop played a major role in building a navy in which 40 percent of our ships are nuclear powered and can travel the globe independent of fuel supplies. Scoop Jackson saw the need for these submarines and surface warships, and helped to make them possible.

According to the admiral, Scoop derived great satisfaction from the accomplishments of the Naval Nuclear Propulsion Program. He quotes the Senator as pointing out that:

> The Navy today has operational about 161 naval reactors without an incident occurring that would cause any problems for the Navy, for those aboard, for the public.

Senator Jackson's commitment to the pursuit of world peace was based on the recognition that such peace comes through preparedness. And, he also, played a major role in making possible the development of atomic energy for peaceful purposes as well as national defense. His insight and support in this new field of technology was pivotal.

Mr. President, I submit Admiral McKee's letter for the RECORD:

NAVAL REACTORS,
July 2, 1984.

Hon. JAMES A. McCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I have just returned from a successful initial sea trial of *Henry M. Jackson*—our fifth Trident strategic ballistic missile submarine. The Senator would have been proud of the way both ship and crew performed.

To those of us who have grown up in the Naval Nuclear Propulsion Program, Senator Jackson was and is something of a patron saint. His association with our work began in 1949 when, as a young Congressman from the Second District of Washington, he was appointed to the newly established Joint Committee on Atomic Energy. From the outset he recognized the vast potential of nuclear propulsion for warships—particularly submarines—and the importance of doing the job right.

He retained his seat on the committee when he was elected to the Senate. There, he continued to play a major role in making possible the development of atomic energy for peaceful purposes as well as for national defense. It is hard to imagine where we would be now were it not for his insight and support in this entirely new field of technology.

Today 40 percent of our naval combatants are nuclear powered—submarines that are able to operate alone and unsupported in the most hostile areas of the globe, and surface warships that patrol the world's oceans unconstrained by uncertain fuel supplies. In the past two decades these ships have assumed a vitally important place in our naval strategy, playing a role which Senator Jackson foresaw and helped make possible.

The influence and the respect that Senator Jackson commanded among his fellow citizens and in Congress stemmed from his knowledge, good judgment, and integrity. His contributions to this nation extend far beyond those related to the Naval Nuclear Propulsion Program, but there was never any doubt of the satisfaction he derived from the Program's accomplishments. His comments during a hearing two years ago are illustrative:

> I would point out, as the chairman alluded to indirectly, that the Navy today has operational about 161 naval reactors without an incident occurring that would cause any problem for the Navy or for those aboard or for the public. That is a phenomenal record. That's far more reactors, as the chairman knows, than in the private sector. Every one of them have functioned with great precision and to the enduring benefit of the Navy. It's the most revolutionary thing that's ever happened to the U.S. Navy.

Senator Jackson devoted his life to the pursuit of world peace, but he fully understood that security and peace are not separable issues to be debated one at the expense of the other. He also knew that in the presence of a heavily armed antagonist, weakness is an invitation to conflict.

The Senator recognized early on that Trident submarines would become our most effective deterrent to conflict. It is only fitting that the newest ship of this class carry his name. He left a remarkable legacy of public service. We have a responsibility to share his commitment. The *Henry M. Jackson* crew understands that responsibility, and is off to a fine start.

Sincerely,

KINNAIRD R. McKEE,
Admiral, U.S. Navy.●

OUTLOOK FOR U.S. STEEL INDUSTRY

● Mr. CHAFEE. Mr. President, I was pleased to read the conclusions of a study on the U.S. steel industry undertaken by the Congressional Research Service. That study entitled, "America's Steel Industry: Modernizing to Compete," concludes that America's steel industry is hardly a dying industry, despite foreign competition and sluggish domestic demand. If anything, foreign inroads into the American market and shifts in American patterns of steel consumption have inspired the industry finally to address its obsolescence, declining productivity, high labor costs, poor labor-management relations, and other factors which have hampered its competitiveness in world markets.

According to CRS the industry is:

> Aggressively implementing programs of rationalization and modernization to maintain or increase its stature among the world's steel industries, especially in the U.S. market, where import penetration has reached levels of about 20 percent.

Generally the outlook for the steel industry's future in America is encouraging. CRS does not overlook the need for continued attention to the problem areas in steel production, but, overall, its report gives us a positive assessment of recent trends in the industry and its prospects for future competitiveness.

Specifically the report, authored by David Cantor and dated April 23, 1984, made the following findings:

First, competition in the steel industry is and will likely be for market share of a sluggish and declining market. Thus, modernization will be motivated more by the need to achieve greater efficiencies in steel production to be able to compete with foreign producers rather than for growth.

Second, a major thrust in the modernization of America's steel industry has been the replacement of much of its obsolete open-hearth and older basic oxygen capacity. This rationalization, prompted by the declining trend in steel demand, has been pursued, also, in other industrial countries, and at a faster pace than in the United States.

Third, a second facet of modernization in America's steel industry has been the relatively rapid expansion of the electric furnace. Indeed, the United States is the world leader in the use of this process, and is continuing to install new electric steelmaking capability faster than any other country.

Fourth, the third emphasis in the modernization process is the rapid expansion and use of new technologies to increase efficiency and lower production costs of steel products. America's steel industry enjoys a relatively high rate of growth in the use of the continuous casting process vis-a-vis other industrial countries, even during the recent period of recession in 1981 and 1982. Ladle technology, quality control techniques and methods for direct casting of finished steel products are receiving greater attention in the United States and elsewhere. These measures do not increase the total quantity of raw steel produced; instead, they represent efforts to produce better quality finished steel products and at lower costs.

Fifth, despite improvements in and the modernization of steelmaking in the United States, there remains areas of concern, if the U.S. steel industry is to attain a level of international competitiveness. First America's steel industry is slow in eliminating its obsolete open-hearth capacity in relation to other countries, and is likely to use this process intensively. Second, U.S. steel labor costs continue to be high relative to other major steel-producing countries, especially in the Third World. Achieving international competitiveness will require modernization to be pursued aggressively in the United States to attain higher levels of technical efficiency and lower unit costs of production on a par with other countries.

Why should an industry making this kind of progress finally after nearly 7 years of some form of import protection be entitled to more protection? Shouldn't we rather encourage even greater efforts toward modernization so that steelmakers won't rest on their recent progress, while foreign producers continue to make innovations?

We can do more for the industry by refusing import relief and thereby forcing necessary, though sometimes unpleasant, restructuring. More import relief for steel will, in addition, do great harm to the world trading system. It is hardly justifiable to risk a trade war with the Europeans, the alienation of trading partners like Canada which trade steel with us fairly and on a daily basis, or further harm to the fragile balance of payments situation of some LDC steel exporters, all to protect an industry now on an upswing.

An article in the June 25 issue of Business Week suggested that the ITC decision on steel signals more than ever the distinct possibility of a trade war. Mr. President, I request that this Business Week article, along with others from the Boston Globe, Barrons, the Los Angeles Times, and the Wall Street Journal be printed in the RECORD.

The article follows:

[From Business Week, June 25, 1984]

SUDDENLY, A NEW TRADE WAR LOOMS: AN ITC RULING ON STEEL HEIGHTENS PROTECTIONISM AS A CAMPAIGN ISSUE

For a brief sunny period this spring, the Reagan Administration's trade officials had a respite from their fears that election-year political pressures would push the U.S. into a protectionist shootout with its trading partners. It seemed unlikely that Congress would pass restrictive trade legislation before the election. And the International Trade Commission had found in two unanimous rulings that the stainless-steel-flatware and shoe industries had not been injured by imports. President Reagan, it appeared, might not have to make a preelection choice after all on whether to curb imports or risk losing votes.

But chances for finessing protectionism as a campaign issue were dashed by the ITC's June 12 finding that imports of five categories of steel products—accounting for 70% of U.S. imports, worth $4.2 billion last year—are injuring domestic steelmakers. Now the problem of balancing worldwide U.S. economic relations against ailing domestic industries and jobs is headed squarely for Reagan's desk, just as the Presidential campaign heats up. The ITC must recommend by July 24 some combination of tariffs or quotas on steel imports to remedy the injury to U.S. steelmakers. Reagan will have to decide by Sept. 26 whether to accept, reject, or modify that recommendation—and he may be faced with a similar decision on copper. The shock waves could spread quickly through the global trading system.

VIDEO SPECTACULAR

"The trade-war trigger is half-cocked," warns a high Reagan Administration trade official. "The Democratic convention will make a video spectacular of empty factories and jobless lines caused by imports. If [the Democrats] end their disarray and the economy is beginning to go soft by late September, the President may have to scuttle his free-trade principles or face the fate of that statesman Jerry Ford." The nine largest steel-producing states—California, Illinois, Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, and Texas—together have 225 of the 270 Electoral College votes Reagan needs to be reelected.

Dismayed steel-exporting nations read the political equation the same way. "It is traumatic," says Adamo Adani, president of ASSIDER, Italy's national steel producers' association. Adani notes that steel cannot be dealt with in a vacuum. "We have to look at the whole import sector," he says. "We import added-value U.S. high tech. The [European Community] and the U.S. have to look at the global picture in any negotiations."

What the ITC found was that U.S. makers of semifinished steel, plates, sheet and strip, wire and wire products, and structural shapes are being hurt by imports. No injury was found in four other categories. But far more than steel imports or the fate of the U.S. steel industry will be involved in Reagan's decision. If he cuts back steel imports to anything like the 15% of U.S. consumption demanded by the steel industry—down from imports' present market share of more than 25%—steel-exporting countries would be entitled under rules of the General Agreement on Tariffs & Trade (GATT) to demand compensation for lost exports to the U.S. worth as much as several billion dollars. That would force the U.S. to cut tariffs on imports of other products, shifting the burden of import injury from steel to other U.S. industries.

COUNTERFIRE

Just finding where to offer tariff cuts of that scope would be difficult. If the U.S. offer did not satisfy its injured trading partners, they could—and almost certainly would—retaliate by curbing an equal amount of imports from the U.S. That, in turn, would be sure to draw heavy protectionist counterfire from Congress.

Only the opening shots in such a world trade war would be fired before the Nov. 6 election. But once hostilities started they would be hard to stop—particularly if the economic recovery were faltering in the U.S. and abroad. And that kind of trade war would in itself pose a massive threat to continued growth of the world economy and to international financial stability.

A more immediate question the ITC and the President will have to face is what kind of restrictions to impose, and on which exporting countries. At this stage, Administration officials hope that, in the interest of avoiding a transatlantic confrontation over trade, any new restrictions on steel imports can be crafted so that imports of EC steel will not be cut any further than the levels agreed to by the U.S. and the EC in October, 1982. That hope is shared by such industry leaders as Bethlehem Steel Corp. Chairman Donald H. Trautlein, by at least some ITC commissioners, and most fervently by European steelmakers.

EXEMPTING THE EC

"This is troubling," says an official of the French Steelmakers Assn. 'We've done our part to limit exports [to the U.S.], and it is unfair to pin the blame on Eurpoe." He stresses that the five products covered by the ITC represent two-thirds of European exports to the U.S., "so the effect could be great." A spokesman for the West German Iron & Steel Makers Assn. puts the European view more bluntly. "European countries have a restrictive agreement on imports to the U.S. that runs to 1985," he says. "As far as we are concerned, this agreement is still valid, and we are not subject to any other restrictive measures." But exempting EC steel from additional curbs could be difficult. Even if the levels of imports from the EC are left unchanged, imposition of import quotas for five years—a likely outcome—would amount to a unilateral two-year extension of the 1982 agreement, which Brussels could reject.

Canadian producers, stunned by the ITC ruling, are urging Ottawa to retaliate dollar for dollar against U.S. exports to Canada if the ITC curbs imports of Canadian steel. Canada last year exported $1 billion worth of steel to the U.S., against $430 billion worth of steel imports from the U.S. But Canadian steelmakers also buy one-third of their coal and iron ore from their neighbor. "We have no objection to the U.S. attacking the problem, but we aren't part of the problem," says James T. Melville, secretary of Algoma Steel Corp. Donald K. Belch, marketing manager of Stelco Inc., says Canada is different from other steel suppliers. "With the Brazilians, Koreans, and Japanese, it's a case of unloading their surplus production in the U.S. We don't do that. Our purchases don't vary in good times or bad." Canadian steelmakers believe their behavior could effectively exempt them from restrictions if the ITC recommends negotiations for orderly marketing agreements or "voluntary restraints" by suppliers.

But if imports of steel from Europe are also excluded from further curbs—and presumably imports from Japan as well, so long as it sticks to its informal agreement to restrain exports to the U.S.—the full brunt of any new restrictions would fall on such developing countries as Mexico, South Korea, and Taiwan. That could touch off a major north-south crisis, at a time when uncertainty about many countries' ability to service their staggering debt is threatening the stability of the international financial system.

Their reaction would be the more bitter because at least some of them—led by Mexico, Brazil, and South Africa—have pledged to restrict reports to the U.S. unilaterally. "Our steel industry is just growing," complains a spokesman for the Korea Trade Promotion Corp. "If Reagan imposes any tariff restriction on our products we will have big problems." Warning against steel curbs in a fiery speech prior to the ITC

decision, Brazilian Minister of Industry & Commerce João Camilo Penna declared: "If the U.S. insists, we will not pay our debt to them." While Penna may have exaggerated Brazil's reaction, U.S. protectionism will be a prime target of protests, along with high interest rates, at the planned meeting of seven leading Latin American debtor countries in Cartagena, Colombia, on June 21 and 22.

A NO-WIN CHOICE

What the ITC injury decision does accomplish, at least temporarily, is to reduce protectionist pressure on Capitol Hill. It makes less likely any immediate congressional action on an industry-backed bill, pending before both houses, to impose quotas limiting steel imports to 15% of domestic consumption for five years. But steel-state congressmen make clear they will use the threat of such legislation to pressure Reagan to accept substantial restraints on imports. Representative Joseph M. Gaydos (D-Pa.), chairman of the executive committee of the Congressional Steel Caucus, says, "We feel we can have an impact on the President's decision."

That will leave Reagan little maneuvering room. "The President will face a no-win choice," says an Administration official. "If he hits the EC, he starts a trade war with our allies. If he spares it, he risks exploding the LDC debt bomb." And if the election is close, he has those 225 electoral votes to worry about.

[From the Boston Globe, July 13, 1984]

GOING SOFT ON STEEL

A new array of quotas on steel imports recommended by the International Trade Commission cannot really protect the domestic industry from its worst problems and fails to take into account one of the basic difficulties facing this basic industry: the competitive disadvantage imposed by an unrealistic exchange rate for the dollar. President Reagan should reject the proposal.

No one can deny that the industry has problems. It is still plagued by the long-term effects of poor planning and investment by managements that failed to adjust to new technologies. It postponed until too late negotiations with a labor force that was shortsighted in its approach to work-rule changes. It became the victim of dumping practices by foreign competitors subsidized by their governments. It must now sell into markets saturated by excess production around the world—in many cases supplied by highly efficient new mills in countries such as Mexico, Brazil and South Korea that have low labor costs.

The U.S. industry nevertheless possesses strengths and advantages. Some producers of specialty steels can compete effectively with producers all over the world on price and quality. Small mills using bountiful supplies of scrap are highly efficient—and profitable. They benefit from the fact that U.S. prices for scrap steel remain the lowest in the world. Many buyers remain willing to pay small premiums for domestic steel for the sake of preserving certainty of supply.

More recently, the industry has benefited from agreements with its competitors in the industrial world that impose voluntary limits on exports to the United States. Imposition of the new limits threatens revival of countermeasures in other trade areas, as the European Common Market was quick to point out in its response to the new proposals.

Quotas often work to the disadvantage of other sectors of the economy. In the case of automobile import quotas, they have tended to drive up the prices of all cars, to the direct disadvantage of consumers. The steel quotas will probably increase prices for all steel users, further reducing the competitiveness of American goods in marginal markets.

Finally, the proposals come just as the dollar is surging once again in international exchange markets. Dollar exchange rates are setting decade-old records against the German mark, the French franc, the British pound, the Japanese yen—to name only the most prominent currencies. While it may be argued that the dollar will continue strong indefinitely, serious efforts to reduce the federal deficit are under way, and these efforts ought to help reduce U.S. interest rates, cutting the floor into the dollar. Such adjustments will do more for all parties, and especially the steel industry, than the proposed new quotas.

[From Barron's, Apr. 9, 1984]

LOOK AT THE MINI-MILLS, STEEL'S FUTURE LIES IN THE MARKETPLACE, NOT PROTECTIONISM

(By Michael Brody)

It's spring, it's an election year, and the big steel companies are playing politics, as usual. After fighting the Justice Department's Antitrust Division over the LTV-Republic merger, industry lobbyists are now trying to bring election-year pressure to bear on the beleaguered handful of free traders at the Commerce Department, who are opposing stricter import quotas.

The politicization of the steel industry since World War II has gone hand in hand with disastrous mismanagement. Across western Pennsylvania, the Monongahela Valley is a landscape of junked mills and shuttered company towns: the legacy of the executives who have run most of the major integrated producers into the ground. The federal government's assaults on Big Steel's price-setting role, which reached their nadir in President Kennedy's 1962 showdown with U.S. Steel's Roger Blough, helped turn the industry into a political battleground. Today, with foreign competition undercutting Pittsburgh's market power, it is the steelmakers who are besieging the government with demands for federal protection of what is left of their turf.

(For the industry's version of events, see Page 14.)

Pittsburgh, needless to say, blames political interference and "unfair competition" for all of its woes. Unfortunately, however, it's difficult for foreign steelmakers to avoid taking "unfair" advantage of an industry which dragged its heels for decades over replacing ancient open hearths with modern basic oxygen furnaces, and ingot-pouring with expensive new continuous casters, which make possible far higher levels of productivity and quality.

Like other companies that have hung on to aging plants too long, and invested too little, too late in the new technology needed to remain competitive in increasingly cut-throat global markets, the major steel producers have invested heavily in Washington lobbyists instead. The long-run rate of return on such investment may well be negative. Like the prospect of being hanged, the threat of Chapter II concentrates the mind wonderfully on the business at hand. Protectionist nostrums have been defended on the pretext that they provide domestic industry with the time it needs for major restructuring. In steel, all they have done is erode the industry's sense of urgency and allow reluctant companies to avoid taking painful write-offs until the sands were running out. Over the last 10 years, in the teeth of "trigger-price" agreements and "voluntary" quotas, imports' share of the U.S. market has climbed to more than 20% from around 13%.

The year-end bloodletting at U.S. Steel—a $1.2 billion pre-tax charge for the closing of 23 finishing and fabricating mills—has at least helped to bring a note of realism into the executive suite. That write-off, of course, comes on top of a $930 million charge by Bethlehem Steel at the end of 1982, and of Big Steel's previous $809 million capacity cut-back at the end of 1979—which clearly didn't go deep enough. But to old-line company men (and United Steelworkers Union officials), who have resisted every plant closing, lobbying the government to seek to stave off the need for cuts always seems like money well spent. Especially when the short-term price is paid not by the steel companies themselves, but by U.S. consumers forced to buy higher-cost, lower-quality steel (and autos, and refrigerators, and a great many other things), as well as by American workers in agribusiness, petrochemicals and other industries targeted for retaliation by angry foreign governments.

The Reagan Administration, under pressure from political allies in Congress, has already backed away from its commitments for free markets and free trade by imposing steeper tariffs and import quotas on everything from Chinese textiles to Japanese cars and motorcycles to European specialty steels. In January, Bethlehem Steel went far beyond existing quota arrangements by filing a complaint with the U.S. International Trade Commission demanding that all carbon steel imports be limited to 15% of the domestic market for the next five years.

The demand was made not under section 301 of the 1974 Trade Act, which provides for countervailing duties if there is proof that foreign producers have engaged in illegal trade practices, but under section 201, which invites the Chief Executive to take protectionist action whenever imports are found to be hurting U.S. companies, even if no law is broken in the process. The attack on lower-cost foreign steelmakers is aimed at compelling the ITC, which has just six months to make a recommendation on the complaint, to dump the issue in the President's lap by the end of July, thereby forcing him to make a decision by the end of September, just as the election campaign gets into full swing.

All of which has the makings of both a domestic political squabble and another international trade row—especially as the politicization of steel is far more advanced in Europe than here. In France, the announcement of up to 25,000 job losses over the next four years at state-controlled steelworks has triggered rioting throughout Lorraine. Outraged steelworkers have blocked roads and rail lines, thrown rocks and bottles of acid at riot police, sacked local Socialist party offices, and are threatening a march on Paris. By the same token, Italy is currently at war with the Common Market steel cartel over production quotas. State-owned British Steel, subsidies to which fail to compensate for the excess capacity it must keep open, the restrictive union work rules it must accept, and the high-cost British coal it must buy, is suffering further damage from a strike by miners trying to block the closing of money-losing, state-owned coal pits.

Pleas for across-the-board restrictions on imports also strike a jarring note in view of the fact that the industry itself is becoming an importer of lower-cost unfinished steel slabs from countries like Brazil, South Korea and Taiwan. These slabs can then be finished and fabricated in American mills to the specifications of local customers—an international division of labor which could make a lot of sense for everyone.

But attempts to halt the decline of the old-line U.S. steelmakers through political pressure suffer from an even greater defect: half of the industry's competition is already inside the gates. The domestic steel industry today is in fact two industries: the big integrated producers, which turn iron ore into raw steel and then into finished sheets and bars, and the tiny, non-union "minimills," which use electric furnaces to melt down steel scrap from junkyards, get rid of the impurities, and then use it to turn out a relatively narrow range of low-cost, high-profit-margin products.

Unburdened by the enormous capital and energy costs that blast furnaces involve, the mini-mills have been able to undercut dramatically the majors' prices on rod, wire and bar lines. Though relatively small companies like Florida Steel and Nucor cannot produce flat-rolled sheet for GM and GE, or massive I-beams for construction projects, they nonetheless have succeeded in capturing 20% of the domestic steel market—matching the share taken by foreign steelmakers. They were, moreover, the first U.S. steelmakers to install modern continuous casters. And the quickness of their footwork in the marketplace stands in stark contrast to the interminable delays of giants like Big Steel—at which the latest flood of red ink largely reflects the closing of a host of mills which the minis years ago had rendered hopelessly uncompetitive.

The spectacular growth of the mini-mills plainly undercuts the integrated producers' claim that steel is an industry in crisis and in need of a kind of subsidy. The majors may have lost $6 billion over the last two years; the minis are still making hefty profits. But their success in closing many of the big steelmakers' rolling mills has also earned them the political enmity of the United Steelworkers Union. Though whopping productivity bonuses may boost the total compensation of the mini-mills' non-union workforces above USW levels, base wages and fringes average roughly half union rates—and the restrictive union work rules that hamper productivity gains at the integrated producers simply don't exist.

The management approach of mini-mills like Nucor is one of minimal white-collar bureaucracy, few management perquisites, and salary levels sharply below Pittsburgh's well-padded standard. That may not appeal much to the executives who are trooping down to Washington to demand what amount to government bailouts for the firms they have mismanaged—any more than the minis' blue-collar wage scales and strict productivity standards appeal to the shell-shocked remains of the once-mighty USW. (The union, which has seen its active membership cut in half over the past 10 years, and is still embroiled in the disastrous Phelps Dodge copper strike, has just survived a bruising election campaign in which acting president Lynn Williams, a Canadian, won out over a rival who urged steelworkers to vote American as well as buy American.)

But with new mini-mills springing up literally within the walls of frostbelt plants abandoned by the big steelmakers, it is clear that the pleas of the old guard don't reflect what is really going on in the industry. This country has a healthy, dynamic steel industry—it just isn't the one screaming for political protection. Pittsburgh and Chicago, please copy.

[From the Los Angeles Times, April 22, 1984]

UNITED STATES SHOULD LOOK WITHIN, NOT ABROAD, FOR CAUSE OF ITS STEEL INDUSTRY ILLS

(By Murray L. Weidenbaum)

The rapid rise of imports into the United States has led to pleas for restrictions on international trade to "protect" American industry. Such moves are misguided from the viewpoint of American business as well as consumers.

First of all, the companies and unions that are urging the government to intervene have not faced up to their own shortcomings. Higher absenteeism and labor turnover among U.S. auto workers, for example, are not the fault of the Japanese, who have adopted our Puritan work ethic with a vengeance.

From 1950 to 1980, the steel industry's wages and fringe benefits rose far more rapidly than those of other manufacturing industries or those of Western European competitors. The resultant high cost of American production was bound to adversely affect competitiveness. To restrict foreign competition only shifts the burden to American consumers of steel, including the hard-pressed auto industry.

The steel industry complains, quite properly, about subsidies granted by foreign governments to their steel producers. Yet our industry does not support the preferred remedy that the law provides—a special tariff on foreign steel to offset the foreign subsidy. Instead, steelmakers use the subsidy issue to advocate import quotas. Apparently, the industry is more interested in avoiding competition than in combating subsidies.

Since 1980, the labor cost gap between steel and other U.S. manufacturing industries has been narrowing. That is to say, the adjustment process is properly at work and "protectionism" would only delay it. Perhaps as the U.S. steel industry controls its operating costs more effectively, it will reconsider its historically low commitment to new technology.

When we rank industries by their ratios of research and development to sales (a rough measure of technological orientation), steel is near the bottom.

Another reason why so many U.S. companies have lost market shares to foreign producers in the last three years is the run-up in the value of the dollar in relation to foreign currencies. For every company competing against foreign producers, whether at home or abroad, the strengthening of the dollar means that foreign goods are becoming cheaper than American products. For specific American producers, these esoteric exchange rate movements have generated the equivalent of a 20% to 40% price increase in relation to goods produced overseas.

Who or what is to blame? There are many factors, some that we really cannot or should not do much about. For instance, many foreign investors send their money to the United States because this country is considered to be a safe haven. But another reason for the super-strong dollar is our own doing—those large budget deficits that are pushing up interest rates. That $200-billion-a-year tide of red ink has a distinct made-in-Washington label. It cannot be blamed on foreigners.

There is an even more basic reason to oppose protectionist moves, however. The United States is the world's largest exporter. When we impose trade restraints, we set ourselves up for retaliation. When the federal government recently established limits on textile imports from China, that country quickly responded by canceling contracts for U.S. cotton, soybeans and synthetic fibers.

The European Common Market is trying to "compensate" for the quotas we imposed last July against European specialty steels by putting tight limits on imports of U.S. chemicals, plastics, skis, rifles and burglar alarms.

It would also help to clear the air if we acknowledged that the United States does not have clean hands. It is not shy in erecting its own trade obstacles, such as "Buy American" statutes. All state cars in New Jersey, for example, must be produced domestically.

Foreign ships are prohibited by law from engaging in commerce between American ports. Our agricultural laws authorize import restraints on sugar, beef, dairy products and mandarin oranges.

If we are truly concerned about the U.S. trade deficit, we should also focus on self-inflicted wounds, the many barriers our government erects to our own exports.

For example, the Trans-Alaska Pipeline Authorization Act prohibits the export of oil from North Slope fields. A rider to an appropriations act for the Interior Department bans timber exports from federal land west of the 100th meridian. When trade barriers get that specific, you can detect the rich aroma of special interests of plain, old misguided chauvinism.

How should we respond to continuing pressures for protection? First, we should realize that a healthy economy nips protectionist sentiment in the bud. Second, smaller budget deficits would alleviate pressures on interest rates and the dollar. Third, we should remove or at least curb the many restraints on our own exports. Fourth, we should avoid propping up industries with unjustifiably high cost levels.

Fifth, we should acknowledge the positive role of multinational companies. They are less likely to plead for protection than other companies and also are the private-sector alternative to foreign aid in promoting developing nations' economies.

Finally, we should focus on improving the productivity of our own industries. Labor and management in each company need to face the challenge of greater productivity and enhanced competitiveness. We should not look to Washington when the answer is to be found in company and union offices in Detroit, Chicago, St. Louis, Pittsburgh and Los Angeles.

[From the Wall Street Journal, Tuesday, June 26, 1984]

THE CASE FOR FREE TRADE STILL HASN'T BEEN MADE

(By Lindley H. Clark, Jr.)

Adam Smith, the Scottish philosopher who more or less invented economics more than 200 years ago, has often been attacked as an impractical visionary. Nothing could be further from the truth. Mr. Smith knew exactly what the world was like.

As much as he admired the virtues of free trade, for instance, he was realistic enough

to doubt that he would ever be able to completely convert all his fellow men. "To expect," he wrote, "that the freedom of trade should ever be entirely restored in Great Britain, is as absurd as to expect that an Oceana or Utopia should ever be established in it.

"Not only the prejudices of the public, but what is much more unconquerable, the private interests of many individuals, irresistibly oppose it."

Over the past two centuries, free trade has had its ups and downs. There was a time in the 19th century when the British seemed determined to prove Mr. Smith wrong, but other notions intervened.

Here in the U.S., there have been real gains, and tariffs are lower than they once were. But now, in 1984, with the economy in a roaring boom, protectionism is still alive and well. During the 1981-82 recession, the administration gave a lot of ground to protectionists by persuading other countries to limit or to continue limiting exports of such items as autos and textiles to the U.S. But there seemed to be reason to hope that such aberrant behavior reflected bad times, not ideology.

After all, the Reagan administration was chockablock with men who wore Adam Smith neckties and, more important, seemed to know what Mr. Smith really said.

But, amid the expansion, the administration has continued to negotiate limits on imports. A frequent administration comment is that if it didn't act, Congress would do something much worse. Sometime it would be interesting to find out whether Congress really is as silly as it's made out to be.

Well, now the administration has a chance—really, two chances—to show its true colors.

On June 12 the International Trade Commission ruled that U.S. steelmakers are being seriously injured by five major types of imported steel products. The best thing you can say about the ITC on this one is that they had to wrestle over the decision: It was a 3-2 vote and the steel companies and the steel union didn't get absolutely everything they wanted.

There had been reason to hope for better. A few days earlier the commission had turned down a similar plea from the shoe industry.

But things now went from bad to worse. A couple of days after the steel decision, the ITC ruled, 5-0, that U.S. copper producers are being seriously injured by imports and deserve protection.

What both the steel and copper companies would like is import quotas, low import quotas. The trouble with tariffs is that those tricky foreigners can become more efficient, cut their prices and maybe even sell more to the U.S. despite the higher tariffs. The ITC hasn't decided what to recommend to President Reagan, which is where the buck stops.

Mr. Reagan can, if he chooses, simply say no, which would be wonderful. But the pressures on him are considerable. The copper producers operate in the West, where there normally are a large number of Reagan voters. The steel companies and especially the steel union have a lot of friends in Congress, which conceivably could do by legislation anything that the president refused to do by fiat.

Adam Smith, who believed in calling a spade a spade, said that those who contrived to restrict entry to markets were monopolists. But recognition of that didn't seem to bring public opprobrium then, any more than it does now.

Quite the reverse. "The member of parliament who supports every proposal for strengthening this monopoly," Mr. Smith wrote, "is sure to acquire not only the reputation of understanding trade, but great popularity and influence with an order of men whose numbers and wealth render them of great importance.

"If he opposes them, on the contrary, and still more if he has authority enough to be able to thwart them, neither the most acknowledged probity, nor the highest rank, nor the greatest public services, can protect him from the most infamous abuse and detraction, from personal insults, nor sometimes from real danger, arising from the insolent outrage of furious and disappointed monopolists."

The aim of any monopolist is higher prices, and the steel and cooper companies aren't exceptions. The result would be that American consumers and businessmen would be paying a large subsidy to steel and copper companies. The advantage of this sort of subsidy, from the companies' standpoint, is that it's hard to measure. A straight cash payment would be better from the public's standpoint, since its size would be apparent.

What would the subsidy buy? One thing it would buy is more trouble with less developed countries, which are hoping through increased exports of such things as copper and steel to earn funds to service those debts to U.S. banks. There is no reason to be confident that the U.S. industries would become more efficient; with protection, there would be less need for any such action. The pleas for protection would be followed by fresh pleas later on.

Leland B. Yeager of the University of Virginia and David G. Tuerck of Suffolk University write of such matters in "Realism and Free-Trade Policy," an article in The Cato Journal, published by Washington's Cato Institute.

They argue that the purpose of trade, in international markets or at the corner grocery, is to get the best possible products at the lowest possible prices. There it is, in simple language. Economists can and do talk about division of labor and comparative advantage, and the concepts have meaning. But the ultimate question is, why should we do something expensively when we can do it cheaply?

If foreign countries choose to burden their economies by selling goods in the U.S. at uneconomic prices, why not let them? Let the seller beware.

Sure, free trade can lead to displacement of U.S. workers; change always does that, no matter what causes it. It would make more sense for government to subsidize retraining and placement of such workers instead of subsidizing the stagnation of domestic industries.

The idea that the government can construct a sensible program to save steel, copper, autos, textiles and other industries is ridiculous. Profs. Yeager and Tuerck put it this way:

"Can anyone seriously believe, in this day and age, that the governmental process as it operates in the United States and other democratic countries is capable of producing a coherent program of detailed interventions effectively oriented toward nationally sensible economic objectives?"

The ITC has until July 24 to submit its steel recommendation to President Reagan, who must act on it within 60 days. The commission will notify Mr. Reagan of its copper decision on July 9, and the president again has 60 days to act.

The best decision Mr. Reagan could make would be to do nothing at all. In that way he could show the sort of wisdom that would have surprised Adam Smith.●

THE 10TH ANNIVERSARY OF THE TURKISH INVASION OF CYPRUS

● Mr. RIEGLE. Mr. President, it is with great sadness that we mark the tragic event which, one decade ago, brought great suffering and hardship to the people of Cyprus. The invasion of 40,000 Turkish troops has left a wound which has still not been allowed to heal.

For 10 years, Cyprus has existed as a divided nation, its people living with the memory of that terrible day in 1974 when humanitarian and economic chaos was inflicted on them by the invading Turks. Along with the survivors of the invasion, we remember the 200,000 Greek Cypriots who were forced to flee from their homes as their property and belongings were confiscated.

Today, our hearts go out to those who must live as refugees in their own land—their ancestral homes lying out of reach behind the lines of the Turkish occupation army.

Today we grieve with them for the thousands of their country men and women who died, and for the thousands of others whose fate is still unknown.

The human tragedy of the past decade, which we commemorate today, is inextricably linked to the political questions to which no resolution has been found. The effort to achieve a just and lasting solution to the Cyprus dispute is just as elusive in 1984 as it was 10 years ago.

Negotiations to resolve the conflict through intercommunal talks between the Greek and Turkish Cypriots and efforts to trace the missing Cypriots have progressed slowly.

The refusal of Turkish Cypriots to comply with U.N. resolutions calling for the removal of all troops from Cyprus and their unwillingness to respond to allegations concerning the several thousand Greek Cypriots who disappeared during the occupation have impeded progress toward a negotiated settlement.

With the passage of time, we have seen the walls of partition grow higher, as the injustices inflicted on the Greek Cypriots by their Turkish neighbors increase.

Today, in blatant violation of international law, the Turkish Cypriot Government seeks to legitimize itself by officially declaring the Turkish Republic of Northern Cyprus as an independent state. The international community has forcefully condemned this move by refusing to recognize this illegal and provocative act.

The effect of this forced division of the island is to prevent the peaceful coexistence of Greek and Turkish Cypriots. The present environment breeds hatred, prejudice, and intolerance and makes more difficult the achievement of peace through trust and understanding.

The solution to the wrenching problems of a divided Cyprus will not be found in deeper divisions. A policy of partition is no solution for the troubles that beset the island and makes the prospect for a negotiated settlement even more elusive.

All too often, unjustified actions of this kind are accepted by the international community with the passage of time. As the world's attention becomes diverted by other events, the original misdeeds are forgotten and the injustice seems not quite so outrageous as it once did.

Our task is to ensure that, until a just political solution to this conflict is achieved, the world will not be permitted to forget.

The United States must generously exercise its powers of persuasiveness to convince Turkey that its aggressive policies will never bring it victory and that the price of continued unwillingness to negotiate a settlement will be high.

Along with other nations of the free world, the United States must intensify its efforts to bring a just and lasting solution to the violations of international justice which have been allowed to continue for too long. Pursuit of that goal not only pays tribute to those who died and those who continue to suffer from this decade of conflict, it also honors the principles of human rights, justice, and international law to which the United States has always been committed.

And so, today, let us pledge to work to ensure that next year the words of sympathy with the people of Cyprus which we express here today will be replaced with words of joy as we celebrate the restoration of unity and independence to the Republic of Cyprus.●

BALTIC FREEDOM

● Mr. PELL. Mr. President, last month, for the third consecutive year, the Congress passed legislation designating June 14 as "Baltic Freedom Day." Although the independence of the Baltic States was tragically and illegally ended by the Soviet Union during the Second World War, time has not diminished their desire for political autonomy nor the commitment of the United States to their noble cause. Today, on the 62d anniversary of our de jure recognition of the sovereign nations of Lithuania, Latvia, and Estonia, I want to reaffirm this commitment and honor the Baltic peoples' struggle for freedom.

In 1918, after more than a century of Russian rule and czarist oppression, the Baltic republics triumphantly declared their independence. Fortified by their rich and diverse cultural heritage, these young democratic nations withstood Bolshevik challenges to their sovereignty, negotiated nonaggression pacts with their neighbor to the east, and enjoyed full membership in the League of Nations. Their bright future was an inspiration to all emerging nations after the ravages of the First World War.

In the regional power struggle of the late 1930's, the Baltic States tried to maintain absolute neutrality. They became victims, however, of a secret protocol to the German-Soviet pact of 1939 under which they were relegated to the Soviet "sphere of influence." Once Moscow demanded that the three strategic countries sign mutual assistance treaties with the Soviet Union, their fate had been sealed. In rapid succession, Red Army troops were stationed on Baltic soil, the national governments were replaced with pro-Soviet regimes, and the new "parliaments," in flagrant violation of the Baltic constitutions and against the will of the Baltic peoples, voted for incorporation into the Soviet Union by a mere show of hands. Because of the Soviet Union's disrespect for the principle of national self-determination, Lithuania, Latvia, and Estonia became the only members of the League of Nations unable to join the United Nations. To this day, the United States has consistently refused to recognize the Soviet Union's unlawful annexation of the Baltic States.

Since 1940, the Soviet Union has pursued a policy of russification designed to eliminate independent religious, political and cultural activities in the Baltic States. While the Stalinist practice of mass deportations and arbitrary murder has ended, the repression continues. In Lithuania, where Catholicism is deeply rooted, worshippers have been intimidated and harassed, and Catholic priests have been detained, brought to trial and convicted on charges of "anti-Soviet agitation and propaganda." The Lithuanian Helsinki Monitoring Group, another target of the Government's campaign, has been severely shattered by the imprisonment and involuntary exile of some of its members. In Latvia and Estonia, in addition to individual cases of human rights violations, evidence of cultural repression is starkly provided by demographic statistics; in both states, the proportion of native citizens continues to decline.

In spite of such formidable obstacles, the people of the Baltic States continue to strive to protect their national identities. As a member of the Commission on Security and Cooperation in Europe, I am heartened by their courage and vitality, but I am also deeply concerned about recurring violations of their human rights. The Soviet Union has pledged respect for these rights and as a party to the United Nations Charter and a signatory of the Helsinki accords, it has accepted political and legal obligations in these areas. We must take every opportunity to remind the Soviet Union of these obligations and, as we do today, continue to pledge our support for the Baltic peoples' historic struggle for freedom.●

A TRIBUTE TO GOV. MARIO CUOMO'S KEYNOTE ADDRESS

● Mr. MOYNIHAN. Mr. President, a week has passed since the close of the Democratic National Convention in San Francisco. Some of the events have already begun to recede from memory; others grow stronger. I expect one to linger longest: the keynote address delivered by Gov. Mario Cuomo of New York on July 16. It was, I believe, the greatest keynote of our age, an eloquent reminder of what we as a party—and as a nation—stand for. I do not expect to hear its equal.

Mr. President, I ask that the text of Governor Cuomo's address be printed in the RECORD.

The material follows:

TEXT OF GOVERNOR CUOMO'S KEYNOTE ADDRESS

On behalf of the Empire State and the family of New York, I thank you for the great privilege of being able to address this convention.

Please allow me to skip the stories and the poetry and the temptation to deal in nice but vague rhetoric.

Let me instead use this valuable opportunity to deal immediately with questions that should determine this election and that we all know are vital to the American people.

TALE OF TWO CITIES

Ten days ago, President Reagan admitted that although some people in this country seemed to be doing well nowadays, others were unhappy, even worried, about themselves, their families and their futures.

The president said that he didn't understand that fear. He said, "Why, this country is a shining city on a hill."

And the president is right. In many ways we are "a shining city on a hill."

But the hard truth is that not everyone is sharing in this city's splendor and glory.

A shining city is perhaps all the president sees from the portico of the White House and the veranda of his ranch, where everyone seems to be doing well.

But there's another city, another part of the city, the part where some people can't pay their mortgages and most young people can't afford one, where students can't afford the education they need and middle-class parents watch the dreams they hold for their children evaporate.

In this part of the city there are more poor than ever, more families in trouble, more and more people who need help but can't find it.

Even worse: There are elderly people who tremble in the basements of the houses there.

And there are people who sleep in the city streets, in the gutter, where the glitter doesn't show.

There are ghettos where thousands of young people, without a job or an education, give their lives away to drug dealers every day.

There is despair, Mr. President, in the faces that you don't see, in the places that you don't visit in your shining city.

In fact, you ought to know Mr. President, that this nation is more a "Tale of Two Cities" than it is just a "Shining City on a Hill."

Maybe, maybe, Mr. President, if you visited more places.

Maybe if you went to Appalachia where some people still live in sheds, maybe if you went to Lackawanna where thousands of unemployed steel workers wonder why we subsidized foreign steel.

Maybe, maybe, Mr. President, if you stopped into a shelter in Chicago and talked with some of the homeless there; maybe, Mr. President, if you asked a woman who'd been denied the help she needs to feed her children because you said we needed the money for a tax break to a millionaire or to build a missile we can't even afford to use—maybe then you'd understand.

Maybe, maybe, Mr. President.

But I'm afraid not.

Because, the truth is, ladies and gentlemen, that this is how we were warned it would be.

President Reagan told us from the beginning that he believed in a kind of social Darwinism. Survival of the fittest. "Government can't do everything," we were told. "So it should settle for taking care of the strong and hope that economic ambition and charity will do the rest. Make the rich richer and what falls from their table will be enough for the middle class and those who are trying desperately to work their way into the middle class."

You know, the Republicans called it trickle-down when Hoover tried it. Now they call it supply side. But, it's the same shining city for those relative few who are lucky enough to live in its good neighborhoods.

But for the people who are excluded—for the people who are locked out—all they can do is to stare from a distance at that city's glimmering towers.

It's an old story. It's as old as our history.

DEMOCRATS AND REPUBLICANS

The difference between Democrats and Republicans has always been measured in courage and confidence. The Republicans believe that the wagon train will not make it to the frontier unless some of the old, some of the young and some of the weak are left behind by the side of the trail.

The strong, the strong they tell us will inherit the land!

We Democrats believe that we can make it all the way with the whole family intact.

And, we have more than once.

Ever since Franklin Roosevelt lifted himself from his wheelchair to lift this nation from its knees. Wagon train after wagon train. To new frontiers of education, housing, peace. The whole family aboard. Constantly reaching out to extend and enlarge that family. Lifting them up into the wagon on the way. Blacks and Hispanics, and people of every ethnic group, and native Americans—all those struggling to build their families and claim some small share of America.

For nearly 50 years we carried them all to new levels of comfort, security, dignity, even affluence.

And remember this, some of us are in this room today only because this nation had that kind of confidence.

And it would be wrong to forget that.

CLAIMING THE FUTURE

So, here we are at this convention to remind ourselves where we come from and to claim the future for ourselves and for our children.

Today our great Democratic Party, which has saved this nation from depression, from fascism, from racism, from corruption, is called upon to do it again—this time to save the nation from confusion and division, from the threat of eventual fiscal disaster and most of all from the fear of a nuclear holocaust.

That's not going to be easy. Mo Udall is exactly right, it's not going to be easy.

In order to succeed, we must answer our opponent's polished and appealing rhetoric with a more telling reasonableness and rationality.

We must win this case on the merits.

We must get the American public to look past the glitter, beyond the showmanship—to reality, to the hard substance of things. And we will do that not so much with speeches that sound good as with speeches that are good and sound.

Not so much with speeches that will bring people to their feet as with speeches that bring people to their senses.

We must make the American people hear our "Tale of Two Cities."

We must convince them that we don't have to settle for two cities, that we can have one city, indivisible, shining for all of its people.

Now we will have no chance to do that if what comes out of this convention is a babel of arguing voices. If that's what's heard throughout the campaign—dissident voices from all sides—we will have no chance to tell our message.

To succeed we will have to surrender small parts of our individual interest, to build a platform we can *all* stand on, at once, comfortably—proudly singing out the truth for the nation to hear, in chorus, its logic so clear and commanding that no slick commercial, no amount of geniality, no martial music will be able to muffle the sound of the truth.

UNITING THE PARTY AND THE NATION

We Democrats must unite.

We Democrats must unite so that the entire nation can unite because surely the Republicans won't bring this country together. Their policies divide the nation—into the lucky and the left-out, into the royalty and the rabble.

The Republicans are willing to treat that division as victory. They would cut this nation in half, into those temporarily better off and those worse off than before, and they would call that division recovery.

Now we should not be embarrassed, we should not be embarrassed or dismayed or chagrined if the process of unifying is difficult, even wrenching at times.

Remember that, unlike any other party, we embrace men and women of every color, every creed, every orientation, every economic class. In our family are gathered everyone from the abject poor of Essex County in New York, to the enlightened affluent of the gold coasts at both ends of our nation. And in between is the heart of our constituency. The middle class—the people not rich enough to be worry-free but not poor enough to be on welfare. The middle class, those who work for a living because they have to. White collar and blue collar. Young professionals. Men and women in small business desperate for the capital and contracts they need to prove their worth.

We speak for the minorities who have not yet entered the main stream.

We speak for ethnics who want to add their culture to the magnificent mosaic that is America.

We speak for women who are indignant that we refuse to etch into our governmental commandments the simple rule "thou shalt not sin against equality," a rule so simple—

I was going to say, and I perhaps dare not but I will, it's a commandment so simple it can be spelled in three letters—E.R.A.!

We speak for young people demanding an education and a future.

We speak for senior citizens who are terrorized by the idea that their only security—their Social Security—is being threatened.

We speak for millions of reasoning people fighting to preserve our environment from greed and from stupidity. And we speak for reasonable people who are fighting to preserve our very existence from a macho intransigence that refuses to make intelligent attempts to discuss the possibility of nuclear holocaust with our enemy. They refuse. They refuse, because they believe we can pile missiles so high that they will pierce the clouds and the sight of them will frighten our enemies into submission.

Now we're proud of this diversity as Democrats. We're grateful for it. We don't have to manufacture it the way the Republicans will next month in Dallas, by propping up mannequin delegates on the convention floor.

But while we're proud of this diversity as Democrats, we pay a price for it.

The different people that we represent have different points of view. And sometimes they compete and even debate, and even argue. That's what our primaries were all about.

But now the primaries are over and it is time when we pick our candidates and our platform here to lock arms and move into this campaign together.

If you need any more inspiration to put some small part of your own differences aside to create this concensus, all you need to do is to reflect on what the Republican policy of divide and cajole has done to this land since 1980.

REAGAN'S PROMISES

Now the president has asked us to judge him on whether or not he's fulfilled the promise he made four years ago. I believe that as Democrats, we ought to accept that challenge. And, just for a moment let us consider what he has said and what he's done.

Inflation is down since 1980. But not because of the supply-side miracle promised to us by the president. Inflation was reduced the old-fashioned way, with a recession, the worst since 1932. We could have brought inflation down that way. How did he do it? Fifty-five thousand bankruptcies. Two years of massive unemployment. Two hundred thousand farmers and ranchers forced off the land. More homeless than at any time since the Great Depression in 1932. More hungry, in this nation of enormous affluence, the United States of America, more hungry. More poor—most of them women—

and he paid one more thing, a nearly $200 billion deficit threatening our future.

Now we must make the American people understand this deficit because they don't.

The president's deficit is a direct and dramatic repudiation of his promise to balance our budget by 1983.

How large is it? The deficit is the largest in the history of this universe; President Carter's last budget had a deficit of less than one-third of this deficit.

It is a deficit that, according to the president's own fiscal adviser, may grow as high as $300 billion a year for "as far as the eye can see."

And, ladies and gentlemen, it is a debt so large that as much as one-half of our revenue from the income tax goes just to pay the interest.

It is a mortgage on our children's future that can be paid only in pain and that could bring this nation to its knees.

Now don't take my word for it—I'm a Democrat.

Ask the Republican investment bankers on Wall Street what they think the changes of this recovery being permanent are.

You see, if they're not too embarrassed to tell you the truth, they'll say that they are appalled and frightened by the president's deficit. Ask them what they think of our economy, now that it has been driven by the distorted value of the dollar back to its colonial condition—now we're exporting agricultural products and importing manufactured ones.

Ask those Republican investment bankers what they expect the rate of interest to be a year from now. And ask them, if they dare tell you the truth you will hear from them, what they predict for the inflation rate a year from now, because of the deficit.

Now, how important is this question of the deficit.

Think about it practically: What chance would the Republican candidate have had in 1980 if he had told the American people that he intended to pay for his so-called economic recovery with bankruptcies, unemployment, more homeless, more hungry and the largest government debt known to humankind? Would American voters have signed the loan certificate for him on Election Day? Of course not! That was an election won under false pretenses. It was won with smoke and mirrors and illusions. And that's the kind of recovery we have now as well.

And what about foreign policy?

They said that they would make us and the whole world safer. They say they have.

By creating the largest defense budget in history, one that even they now admit is excessive. By escalating to a frenzy the nuclear arms race. By incendiary rhetoric. By refusing to discuss peace with our enemies. By the loss of 279 young Americans in Lebanon in pursuit of a plan and a policy that no one can find or describe.

We give money to Latin American governments that murder nuns, and then we lie about it.

We have been less then zealous in support of our only real friend, it seems to me, we have in the Middle East, the one democracy there, our flesh and blood ally, the state of Israel.

Our foreign policy drifts with no real direction, other than an hysterical commitment to an arms race that leads nowhere—if we're lucky. And if we're not, it could lead us into bankruptcy or war.

Of course we must have a strong defense!

Of course Democrats are for a strong defense. Of course Democrats believe that there are times when we must stand and fight. And we have. Thousands of us have paid for freedom with our lives. But always—when this country has been at its best—our purposes were clear.

Now they're not. Now our allies are as confused as our enemies.

Now we have no real commitment to our friends or to our ideals—not to human rights, not to the refuseniks, not to Sakharov, not to Bishop Tutu and the others struggling for freedom in South Africa.

We have in the last few years spent more than we can afford. We have pounded our chests and made bold speeches. But we lost 279 young Americans in Lebanon and we live behind sand bags in Washington.

How can anyone say that we are stronger, safer, or better?

That is the Republican record.

That its disastrous quality is not more fully understood by the American people I can only attribute to the president's amiability and the failure by some to separate the salesman from the product.

FOUR MORE YEARS OF REAGAN

And, now it's up to us. Now it's now up to you and me to make the case to America.

And to remind Americans that if they are not happy with all the president has done so far, they should consider how much worse it will be if he is left to his radical proclivities for another four years unrestrained. Unrestrained.

If July brings back Ann Gorsuch Burford—what can we expect of December?

Where would another four years take us?

Where would four years more take us?

How much larger will the deficit be?

How much deeper the cuts in programs for the struggling middle class and the poor to limit that deficit? How high will the interest rates be? How much more acid rain killing our forests and fouling our lakes?

And, ladies and gentlemen, the nation must think of this: What kind of Supreme Court will we have? We must ask ourselves what kind of court and country will be fashioned by the man who believes in having government mandate people's religion and morality?

The man who believes that trees pollute the environment, the man that believes that the laws against discrimination against people go too far. The man who threatens Social Security and Medicaid and help for the disabled.

How high will we pile the missiles?

How much deeper will the gulf be between us and our enemies?

And, ladies and gentlemen, will four years more make meaner the spirit of the American people?

This election will measure the record of the past four years. But more than that, it will answer the question of what kind of people we want to be.

DEMOCRATIC CREDO

We Democrats still have a dream. We still believe in this nation's future.

And this is our answer to the question, this is our credo:

We believe in only the government we need but we insist on all the government we need.

We believe in a government that is characterized by fairness and reasonableness, a reasonableness that goes beyond labels, that doesn't distort or promise things that we know we can't do.

We believe in a government strong enough to use the words "love" and "compassion" and smart enough to convert our noblest aspirations into practical realities.

We believe in encouraging the talented, but we believe that while survival of the fittest may be a good working description of the process of evolution, a government of humans should elevate itself to a higher order.

Our government should be able to rise to the level to where it can fill the gaps left by chance or a wisdom we don't fully understand.

We would rather have laws written by the patron of this great city, the man called the "world's most sincere Democrat"—St. Francis of Assissi—than laws written by Darwin.

We believe, we believe as Democrats, that a society as blessed as ours, the most affluent democracy in the world's history, one that can spend trillions on instruments of destruction, ought to be able to help the middle class in its struggle, ought to be able to find work for all who can do it, room at the table, shelter for the homeless, care for the elderly and infirm, and hope for the destitute.

And we proclaim as loudly as we can the utter insanity of nuclear proliferation and the need for a nuclear freeze, if only to affirm the simple truth that peace is better than war because life is better than death.

We believe in firm but fair law and order. We believe proudly in the union movement. We believe in privacy for people, openness by government, we believe in civil rights, and we believe in human rights.

We believe in a single fundamental idea that describes better than most textbooks and any speech that I could write what a proper government should be. The idea of family. Mutuality. The sharing of benefits and burdens for the good of all. Feeling one another's pain. Sharing one another's blessings. Reasonably, honestly, fairly—without respect to race, or sex, or geography or political affiliation.

We believe we must be the family of America, recognizing that at the heart of the matter we are bound one to another, that the problems of a retired school teacher in Duluth are our problems. That the future of the child in Buffalo is our future. That the struggle of a disabled man in Boston to survive, and live decently, is our struggle. That the hunger of a woman in Little Rock is our hunger. That the failure anywhere to provide what reasonably we might, to avoid pain, is our failure.

DEMOCRATIC FUTURE

Now for 50 years, for 50 years we Democrats created a better future for our children, using traditional Democratic principles as a fixed beacon, giving us direction and purpose, but constantly innovating, adapting to new realities; Roosevelt's alphabet programs; Truman's NATO and the GI Bill of Rights; Kennedy's intelligent tax incentives and the Alliance for Progress; Johnson's civil rights; Carter's human rights and the nearly miraculous Camp David Peace Accord.

Democrats did it, Democrats did it—and Democrats can do it again.

We can build a future that deals with our deficit.

Remember this, that 50 years of progress under our principles never cost us what the last four years of stagnation have. And, we can deal with the deficit intelligently, by shared sacrifice, with all parts of the nation's family contributing, building partnerships with the private sector, providing a sound defense without depriving ourselves of what we need to feed our children and care for our people.

We can have a future that provides for all the young of the present, by marrying common sense and compassion.

We know we can, because we did it for nearly 50 years before 1980.

And we can do it again. If we do not forget. If we do not forget that this entire nation has profited by these progressive principles. That they helped lift up generations to the middle class and higher: gave us a chance to work, to go to college, to raise a family, to own a house, to be secure in our old age and, before that, to reach heights that our own parents would not have dared dream of.

That struggle to live with dignity is the real story of the shining city. And it's a story, ladies and gentlemen, that I didn't read in a book, or learn in a classroom. I saw it, and lived it. Like many of you.

I watched a small man with thick calluses on both hands work 15 and 16 hours a day. I saw him once literally bleed from the bottoms of his feet, a man who came here uneducated, alone, unable to speak the language, who taught me all I needed to know about faith and hard work by the simple eloquence of his example. I learned about our kind of democracy from my father. And, I learned about our obligation to each other from him and from my mother. They asked only for a chance to work and to make the world better for their children and they asked to be protected in those moments when they would not be able to protect themselves. This nation and this nation's government did that for them.

And that they were able to build a family and live in dignity and see one of their children go from behind their little grocery store in South Jamaica on the other side of the tracks where he was born, to occupy the highest seat in the greatest state of the greatest nation in the only world we know, is an ineffably beautiful tribute to the democratic process.

And, ladies and gentlemen, on January 20, 1985, it will happen again. Only on a much, much grander scale. We will have a new president of the United States, a Democrat born not to the blood of kings but to the blood of pioneers and immigrants.

And we will have America's first woman vice president, the child of immigrants, and she, she, she will open with one magnificent stroke, a whole new frontier for the United States. Now, it will happen.

It will happen—if we make it happen; if you and I can make it happen.

And I ask you now—ladies and gentlemen, brothers and sisters—for the good of all of us—for the love of this great nation, for the family of America—for the love of God. Please, make this nation remember how futures are built.

Thank you and God bless you.●

INTERNATIONAL TRADE

● Mr. CHAFEE. Mr. President, at the London Economic Summit, leaders of the Allied Nations acknowledged that barriers to international trade are both damaging to the producers of exports and costly to consumers who are denied the right to buy these goods at world prices. One might expect, then, that support for protectionist policies would be a trend of the past.

Yet in recent years protectionist pressures have escalated. This election year has brought increasing stress on the international trading system.

The Reagan administration, facing an unprecedented trade deficit of more than $100 billion this election year, has found itself on the defensive, caught between mounting demands for protection and charges that its economic policies are causing a decline in American competitiveness.

One industry after another has asked for Government help against the flood of imports. They run the gamut—tuna fish, cut flowers, televisions, wine, steel, shoes, machine tools, and automobiles.

These demands for relief have come in the form of quota legislation before Congress and cases filed with the International Trade Commission. On the presumption that the ITC would find these industries to be injured by imports, some of the petitioners even timed their filing so that the President would have to decide on a remedy—tariffs or quotas—within weeks of the election. The President must decide on a remedy for the steel industry, for example, 5 weeks before the election.

Clearly the point is to put pressure on an incumbent President from some crucial industrial States. That pressure is probably no greater than the threat of retaliation being hinted by our trading partners. The import relief being sought here in one form or another is causing high anxiety in Europe, precisely because they fear election year jitters will mean new U.S. trade barriers.

The Common Market Foreign Ministers in a meeting last April predicted that protectionist measures under consideration in Washington could affect $4.7 billion worth of European community exports to the United States. They warned that our actions could lead to a dangerous increase in trade restrictions and to a rapid erosion of the open multilateral trading system on which world prosperity depends.

The pressure for protection is likely to intensify. It's tempting to try to protect our own special interests—and we've got lots of them. Special interests are also being pursued in Japan, in France, in Mexico, everywhere. Pretty soon we could end up with a global maze of restraints and restrictions that make us all worse off.

Let me recall a historical example which still has lessons for us today.

In 1930, a Republican Senate and House passed the Smoot-Hawley Tariff Act, the most restrictive trade law in our history. One of the officially stated purposes was to protect American labor from unemployment allegedly caused by imports of foreign goods.

The result was, however, a total disruption of the world trading system. Within months, retaliatory laws had been passed by virtually all of America's industrial trading partners; world trade plummeted by 60 percent in 2 years; a depression gave way to the Great Depression.

In recent years we have experienced a decline in our world trade position, in sharp contrast to the predominance we enjoyed in the postwar years. To stem this decline, many politicians are calling for strong protectionist measures. They insist that we get tough, just as Representative W.C. Hawley of Oregon insisted. Hawley, by the way, a 13-term Congressman, lost his bid for reelection in 1932 because of the economic damage done by his tariff act.

The lines have been clearly drawn. The Democratic Presidential nominee, former Vice President Mondale, supports the domestic content requirements that the Senate is due to consider this year. The bill, which has already passed the House and has the strong backing of the United Auto Workers, goes well beyond the protection for the automobile industry afforded by the Japanese quotas.

It would require companies selling more than 100,000 cars a year in this county to use specific percentages of American parts and labor.

The immediate effect would be a sharp reduction in Japanese cars available and an increase in automobile industry jobs. The net effect would be retaliation by foreign trading partners wiping out more jobs in other sectors, less choice for the automobile consumer, and higher prices charged for all cars on the market.

Mr. Mondale says this legislation will show the rest of the world we mean business. President Reagan has been a steadfast opponent of the bill, and would veto it if it should ever reach his desk.

Numerous other protectionist measures are being championed by labor and even by some Members of Congress in this election year, ignoring the kind of backlash effect this could have on our exports.

As the world continues its recovery, trade will increasingly provide a growing share of jobs for American workers and profits for American companies. But those jobs will not materialize if the world's major industrial nations begin erecting new trade barriers like steel quotas and domestic content legislation to stem the freer flow of goods and services throughout the world.

The growing importance of two-way, unfettered trade to our economy is often overlooked by Americans, but the facts speak for themselves. Consider the following:

The produce of one out of every three acres cultivated in the United States is shipped abroad, providing over 1 million U.S. jobs in the agricultural sector of our economy.

One out of every six American manufacturing jobs is dependent upon exports. More telling, between 1977 and the onset of the recession in 1981, four

out of every five new jobs in manufacturing in the United States were the result of American products destined for foreign markets.

In 1970, exports accounted for 4 percent of the U.S. gross national product; by 1980, that figure had doubled to 8 percent.

Despite this evidence, Congress and the administration are confronted with some tough political choices in the numerous proposals for import protection. These proposals have different constituencies; some are pushed by labor, some by industry. But, taken together, they constitute a neoprotectionist agenda with growing lists of adherents.

Ironically, the more vocal supporters of these neoprotectionist schemes have tended to be Democrats and representatives of labor. Both of these groups have long pointed with justifiable pride to their commitment to free and unfettered trade. Meanwhile, Republicans historically have tended to stand in opposition to free trade. Oddly enough, now the roles have been reversed.

In fact, remarkably little truly protectionist legislation has been enacted in the United States during President Reagan's term of office.

The pressure to give final approval to the neoprotectionist agenda will continue to mount. I think it is likely we will see an acceleration of the political polarization of trade. Each of the Democratic Presidential contenders embraced protectionism in varying degrees during the primaries and it is obvious that President Reagan is relishing doing battle on that issue.

Where does this leave us? First of all, those who support freer trade—especially Republicans—should not flinch from this pressure. We should welcome a wide-ranging debate over trade. This could be a golden opportunity to broaden the party's appeal and to win new votes from consumers, farmers and workers.

Why do I single out these three groups? First, protectionism is blatantly against the interests of the consumers. In virtually every case, import restrictions lead to both higher prices and a restricted selection of consumer goods. Second, the major portions of the farm community are well aware of the vulnerability of American agriculture to foreign retaliation if we begin erecting new trade barriers. With over 1 million U.S. jobs dependent upon exports of billions of dollars worth of agricultural commodities, farmers have been in the forefront of opposition to protectionist legislation like the automobile domestic content bill. These farmers will vote in a way that facilitates farm exports, not imperils them.

Third, protectionism will inevitably mean a net loss of American jobs which stem from trade, both imports and exports. For every job saved by protectionism, many others will be lost. Let the protectionists justify actions which destroy American jobs.

The world trading system has been under serious pressure since the global recession of 1981 and 1982. We certainly face serious problems in our trade relations with others. Our trading partners have trade barriers which are both unfair and frustrating to Americans. But we merely aggravate the problem by giving in to that frustration and using the opportunities of an election year to press for enactment of protectionist laws.

There is much that Congress can do positively to enhance the American share of world trade. We should focus on ways to help open foreign markets for U.S. goods as well as ways to assist the exporter's competitive position. This can be accomplished in ways that are consistent with our international trading obligations under GATT and which don't make consumers and workers worse off.

One such effort is the reciprocity bill, H.R. 3398—title III, S. 144—the International Trade and Investment Act. Enactment of this bill this year is vital to improve our ability to negotiate the removal of foreign trade barriers and restrictive practices, and to improve our export trade in services, high technology goods, and trade related investment. Full implementation of both its letter and its spirit can provide significantly improved access to foreign markets for U.S. goods and services.

Other pending legislation—like the reauthorization of the generalized system of preferences which would help us gain freer access to LDC markets, help developing countries earn dollars with which to buy U.S. products, and help us obtain protection of U.S. patents and copyrights—deserve our urgent attention, not the spate of protectionist bills which in my view signal the start of a dangerous trade war.

In this election year, however, we cannot afford to try to please everyone. We must choose the course which improves our world trading system while avoiding those protectionist measures which would dismantle it.

Congress can enact laws which help American firms to compete in world markets, without coddling those industries which refuse to modernize in the face of tremendous strides by their foreign competitors. I do not believe that our workers and industries must accept the use of unfair practices by foreign competitors in their efforts to penetrate U.S. markets.

But there are two ways to deal with foreign competition. One way is to keep it out. Another way is to do all we can to meet it and hopefully beat it.

Congress and this administration have so far chosen the second course—which is better for everyone, especially the consumer. If we are committed to a sustained economic recovery, we must hold fast to our commitment to free trade and not permit protectionism to stymie our efforts to improve the world trade situation for American exporters.●

TRIBUTE TO PETER HURD, NEW MEXICAN ARTIST

● Mr. DOMENICI. Mr. President, I rise today to praise the memory of Peter Hurd, the New Mexico artist who gained national recognition for his paintings of the Southwest. He died on July 9 after fighting alzheimer's disease for the last several years.

Born in Roswell, NM, on September 22, 1904, Peter Hurd attended the New Mexico Military Institute, and had completed 2 years at West Point before leaving there to pursue his study of painting. Hurd studied under the great illustrator and painter N.C. Wyeth, and then returned to his 3-square-mile ranch outside of Roswell, where he lived and worked for most of his life. "It just happens that this part of the planet is where I feel closest to life," he once said of New Mexico.

Following a successful showing of his work in 1937, Peter Hurd's reputation began to grow, and during the Second World War, he was a correspondent for Life magazine. Among his critically acclaimed works during this period were a series he did of American bomber pilots.

Peter Hurd's depictions of the Southwest are what made him famous, and the stark eloquence of his paintings have assured him a place in the memory and culture of the United States. Looking at his portrayals of the hills around his ranch, the field hands he knew, the windmills and ranchhouses he loved, one is reminded of Picasso's assertion that painting is a form of magic which serves as a mediator between this strange and beautiful world and we humans who inhabit it. I am proud to pay tribute to this great artist and New Mexican, Peter Hurd.●

S. 757, THE RESOURCE CONSERVATION AND RECOVERY ACT AMENDMENT NO. 3416

● Mr. DENTON. Mr. President, yesterday, the Senate took up consideration of S. 757, the Resource Conservation and Recovery Act. One of the amendments that was offered by Senator HEFLIN and cosponsored by myself, addresses a very serious problem in my State—the disposal of hazardous waste at the largest hazardous waste site in the world, at Emelle, AL.

This amendment was written with the intent of assuring Alabamians of the maximum protection allowed

under the law, from the risks of exposure to hazardous waste.

The amendment would require, that two or more liners and a leachate collection system above and between such liners be installed at the 2,300-acre Emelle site in Alabama.

This amendment will help clarify the purpose and intent of an amendment offered by Senator SIMPSON of Wyoming. His amendment offered during committee hearings waives the double liner requirement, if sites are determined to have an area of clay, or other impermeable strata that would prevent the migration of waste.

My good colleague, Senator SIMPSON, offered this amendment to establish a philosophical guideline and to emphasize performance standards by encouraging companies to look closely at their siting plans to determine the best area for preventing the migration of waste.

Senator SIMPSON offered this amendment with the best of intentions. He feels, as I do, that the real answer to our hazardous waste problem lies in creating laws that minimize large amounts of concentrated industrial hazardous waste.

Section 6 of S. 757 dealing with the double liner waiver has been of great concern to Alabamians for some time.

Senator HEFLIN and I along with our constituents want Senator SIMPSON to know how very much we appreciate his efforts to clarify the intent of his amendment to S. 757. I would like to include a letter Senator SIMPSON sent to the newspapers in Alabama, at my request, explaining why he offered the double liner waiver.

As many know, the Emelle site operation is under investigation by State officials. It is for these reasons that I have refrained until now from making public statements regarding Emelle.

The safe disposal of hazardous waste is a serious national issue, not just in our State but throughout the Nation. Alabamians appreciate the spirit in which this Congress has worked to help assure they receive the maximum protection against hazardous waste allowed under the law.

The letter follows:

AMENDMENT PURPOSE CLARIFIED

Recently it has been widely alleged and circulated in Alabama that I have proposed an amendment to the Solid Waste Disposal Act specifically for the sole purpose of exempting a hazardous waste disposal facility at Emelle, Ala., from requirements which would apply to all other facilities that contain hazardous waste. What drivel. That is not what my amendment was ever intended to do and it is not what my amendment would do.

These are the facts of the matter: Last summer a bill to amend the Solid Waste Disposal Act came before the Senate Committee on Environment and Public Works, on which I serve. It contained a provision requiring that all new or expanded hazardous waste disposal facilities, wherever they are found, must install and use a "double liner" with a leachate collection system between the liners. I have long been opposed to Congress mandating the use of any specific technology for the control of pollution. In my view the law should establish, or direct the EPA to establish a tough general performance standard that would protect human health and the environment, and then allow the individual facilities throughout the United States the flexibility to achieve those standards in any way that they could—as long as their method is equally effective in protecting the public health and the environment.

Accordingly, I then proposed an amendment which would allow a facility to use an alternate system for the containment of hazardous waste, other than a double liner system, if that facility could then demonstrate to EPA that the alternate system is at least as effective as the double liner system. There is nothing magic about a double liner requirement since all liners will leak. The regulations are meant to minimize leakage.

I do not know if the Waste Management Inc. facility at Emelle, or any other facility in the United States for that matter, will be able to make the demonstration that is required by my amendment when the amendment becomes law—but let me clearly inform the people of Alabama that the amendment was not conceived with Emelle or any other specific site in the United States in mind, and neither I nor my staff had any meetings with representatives of Waste Management Inc., or any discussions with them regarding the Emelle site prior to the adoption of the amendment.

I have no desire to make any state the waste dump of America. I know full well the problems associated with hazardous waste contamination because my own state has several Superfund waste sites that are in the process of being cleaned up.

The public health and environment will continue to be protected through new and more specific regulations when these amendments become law. In addition, there is another provision in the Senate bill that would require ground water monitoring around waste sites in order to provide early detection if any leakage threatens to contaminate a public water supply. This factor has been wholly ignored in accounts of my alternate technology amendment.

Should the amendment in question become law and the Emelle facility be allowed to use a different containment system it would only be evidence that they then have demonstrated that such an alternate system will provide as much or more protection to the people and the environment of Alabama as will a double liner system.

It is tough as hell to determine just how to safely handle and dispose of hazardous waste—and Congress is not aided in its task by some who enjoy "juicing up the troops" with emotional babble.

Perhaps it would be well for us all—congresspersons, "the observers," the participants, the media and the public we serve to consider again the words of Edmund Burke. They have a ring. "Those who would carry the great public schemes must be proof against the most fatiguing delays, the most mortifying disappointments, the most shocking insults and worst of all—the presumptuous judgment of the ignorant beyond their design."●

CONDEMNATION OF SOVIET TREATMENT OF DR. ANDREI SAKHAROV

● Mr. D'AMATO. Mr. President, as a member of the Commission on Security and Cooperation in Europe, I have closely followed the plight of Andrei Sakharov and his wife Yelena Bonner. Since January 1980, the couple has been living in exile in the city of Gorky, prisoners in their own country. Soviet treatment of the Sakharovs has been nothing short of criminal.

Their case underscores the Kremlin's complete disregard for basic human rights and civil liberties. As a result of Sakharov's human rights activities including his leadership in the Moscow Helsinki Monitoring Group, he and his wife have been singled out for particularly harsh reprisals by the Soviet secret police.

Shortly after their exile began, the Sakharovs' children were forced to leave the U.S.S.R. The decision to break up the family was clearly made at the highest levels of the Soviet Government. This action epitomizes the cruel nature of the Soviet regime. Earlier this year, Sakharov requested permission for his wife to travel to the West for medical treatment. Despite his membership in the Soviet Academy, Sakharov and Bonner have been denied access to medical facilties readily available to other academy members. At the same time, the Soviets have refused to allow Yelena Bonner to obtain treatment outside of the U.S.S.R.

On May 2, Sakharov began a hunger strike. To protest Soviet actions directed against he and his wife; 4 days later, the Sakharovs disappeared. No one has seen them since. In addition, the Soviet newspaper Izestia has carried a number of articles accusing Bonner of trying to flee to the West and threatened to bring up criminal charges against her for "Anti-Soviet slander" and treason.

Because of my grave concern over this matter, I recently requested permission to visit the Soviet Union in order to raise the issue of Soviet treatment of Andrei Sakharov and Yelena Bonner with representatives of the Soviet Government. The Soviet response to my request was typical—complete silence. I was not granted the visa necessary to enter that closed country.

It is time we open our eyes and confront the realities of the Soviet regime. The men behind the Kremlin walls did not get there by the ballot box. They have resorted, and continue to resort, to ruthless practices in order to gain power and keep it. Through the KGB and the estimated 1.2 million informants who work for the secret police, the Soviet leadership has been able to maintain a stranglehold over the Soviet people. Meanwhile, a so-

phisticated apparatus for agitation and propaganda has been developed by the Soviets. Regrettably, many have been sucked in by Soviet agitprop and disinformation. The time has come to expose the Soviets for what they really are.

Former U.S. Ambassador to the United Nations Adlai Stevenson once confronted the Soviet delegate to the U.N., threatening that "unless the Soviet Union stops telling lies about the United States, we will start telling the truth about the Soviet Union." We must follow through with this threat.

We cannot, and must not, allow the Soviets to continue their reign of terror without raising our voices in condemnation. We must speak out on behalf of those who have been silenced by the Soviets. I intend on continuing to press until the truth is obtained with respect to the welfare and whereabouts of Andrei Sakharov and Yelena Bonner.

It is for these reasons that I cosponsored the recently passed resolution on behalf of the Sakharovs. But this is not enough, we must do more.●

POW/MIA AWARENESS DAY

● Mr. DOLE. Mr. President, 1 week ago today, America marked POW-MIA Awareness Day, a special remembrance of the courage of our missing fighting men and the special dedication of their families.

Mr. President, Hugh Taylor, editor of Kansas' Neodesha Post-Dispatch, is one American for whom July 20 held special meaning. This Senator read with great interest Mr. Taylor's eloquent and heartfelt editorial of July 19, and requests that the article be printed in the RECORD.

The article follows:

NOTES IN THE MARGIN: FOR THE 2,500—FLY YOUR FLAG, BUT, PLEASE, NO COMMERCIALISM

Please excuse me if I ventilate a bit.

Call it a slight case of post-Vietnam Stress Syndrome, or whatever, but I become absolutely furious when I hear of an organization, individual, company, or a newspaper, attempting to profit from the misery of those who have suffered so greatly from the conflict in Southeast Asia.

To me, this is absolutely ghoulish!

I feel strongly that there is something immoral about attempting to turn a profit on something of such deep concern to so many people.

This newspaper has tried to publicize the plight of the POWs, MIAs, and the families of those men, not for profit, but because it is something I, as the editor, strongly believe in.

I am appalled that any newspaper would stoop to trying to make money from the day dedicated to heightening the awareness of the American people on this issue, I cannot believe the gall and lack of sensitivity shown by such an effort.

Because we care, and refuse to make a profit from the misery of others, the Post-Dispatch has asked local individuals and merchants listed in our commemorative ad not to pay us, but to pledge a contribution to the National Forget-Me-Not Association, the group dedicated to increasing awareness on the POW-MIA issue and trying to get answers on the state and whereabouts of our people.

Included in the ad is the address of the Forget-Me-Not Association. If you would like to join this effort, please send your tax-free contribution to the Association and show them that you care.

Perhaps I should explain why I feel so strongly about this.

In Tuesday's Post-Dispatch, we carried a story which mentioned two Naval aviators who were downed in Southeast Asia, known to have been captured, but never accounted for by either the government of the United States or the Vietnamese: Lieutenant Commander Bart Creed and Captain Harley Hall.

I knew both Bart and Harley personally, just as I knew several dozen others who were either held as prisoners of war or are still unaccounted for as missing in action.

From 1969 to 1970, I was Operations Officer of Attack Squadron 113, based at the U.S. Naval Air Station Lemoore, California. In 1970, I was transferred out of 113 as a Commander-selectee, and went to Attack Squadron 122 at Lemoore, the A-7E training squadron, as an instructor pilot.

One of the people who went into 113 when I and several others rotated out was Bart Creed. Later on, just before The Stingers, as 113 is called, went on cruise, a close friend of mine and my former Executive Officer in the squadron, Brent Streit, took over that command as skipper.

As Administrative Officer, then Operations, and finally Executive Officer of VA-122, I worked closely with 113 and the other squadrons at Lemoore, but because "Once a Stinger, Always a Stinger", I was especially attached to that group. I got to know Bart very well during that period.

When he was shot down over Laos, my wife and I were two of those who tried to help his wife, who lived near us on the air station, during those initial trying days.

Later, when the squadron returned from that fateful cruise, Brent and the others in 113 told me of the rescue attempts made by the Army helicopter pilots and covered by The Stingers when they tried to get Bart out.

He was definitely alive, though injured, and they saw him taken prisoner by either the Pathet Lao or the Vietnamese.

In the meantime, Harley Hall, whom I had known when he had the Blue Angels, the Navy's flight demonstration team, had gone through 112 to get checked out in the A-7E. I flew several hops with him and got to know him very well. He was not only a fantastic airplane driver, but a super individual.

I later learned from those who had been with Harley when he got smoked that he had been seen on the ground and was known to have been captured. At least two of the POWs released in 1973 told me personally that they had communicated with Harley at the "Hanoi Hilton", the POW compound in downtown Hanoi where our people were so dreadfully treated by the Vietnamese.

Of course, while at Lemoore during the period of 1968 to 1971, it was almost a daily occurrence to learn that someone from the base that I knew and had flown with had been shot down, killed, or taken prisoner. We had a very large community of MIA and POW wives and families right there on the air station and a braver, stronger, more upbeat group of people you have never met.

There were a few who cracked under the pressure, women and children who had breakdowns, and kids who developed emotional or drug problems because of the strain but, for the most part, they all held up very well.

One of the strongest was Marge Aldern, whose husband, Dean, an Air Wing Commander, was shot down and listed as missing in action during that time. Marge held her family of four boys together in a manner worthy of nothing but praise.

Her eldest, Tom, went on to the U.S. Naval Academy, is now a Lieutenant in the Navy, and, I'm proud to say, my son-in law.

So, if you have wondered why I have been pushing so hard on this POW-MIA Awareness Day, now you know, as Paul Harvey says, "The rest of the story".

I was personally involved and I get a little steamed now when I hear people decry our involvement in Southeast Asia or say that during that time their feelings were "not exactly pro-America."

Please help us get some answers. Fly your flag tomorrow, and put a red ribbon on the staff to show that those who have suffered, and might still be suffering, have not been forgotten.

Red ribbons may be obtained, free of charge, from the House of Flowers and Gifts. All you have to do is ask for them.

Then, I ask that you do one more thing. Write to our Congressional delegation and demand that something be done about this situation. We can get answers from the Vietnamese, but only if we put some pressure on them. This nation has the economic and diplomatic clout to make them come clean on the matter of MIAs, but we won't use it until there is enough pressure on Congress to cause them to act.

You don't have to share my indignation over attempts to commercialize National POW-MIA Awareness Day, especially from those who admit they did not back America's effort during the war in Southeast Asia, but I would ask that you think about what has been happening to those who fought there, were captured there, and are still missing there. If that riles you just a little, I will be satisfied.

"They are not forgotten."●

NEW AIRBAG TECHNOLOGY

● Mr. LAUTENBERG. Mr. President, Secretary of Transportation Elizabeth Dole recently announced the administration's decision to increase use of passive restraint systems in America's automobiles. This decision has received mixed reviews by a variety of parties. But the Secretary deserves our praise for moving this issue off dead center.

The feasibility and utility of airbags has been debated within the Federal Government, DOT and the Congress for a long time; perhaps too long. The arguments against airbags have focused, in part, on their cost. Secretary Dole has stated that airbags, when produced in quantity, can be purchased for $320, about half the cost of a radio in a new car. Nevertheless, cost continues to be cited as an obstacle to airbag installation by opponents.

Given this longstanding argument over cost, I was very pleased to note a

recent article in the Washington Post describing the Breed Corp.'s development of a mechanical airbag. This system could cut the cost of airbags by more than half. The Breed Corp., which is located in Lincoln Park, NJ, will employ the same sophisticated technology that is used in defense weaponry. While the systems to be developed require further testing, they offer great promise for simple and reliable production of auto safety equipment at affordable prices.

Mr. President, airbags can save upwards of 9,000 lives per year. It is my hope that Secretary Dole's decision will ultimately reduce death and crippling injury to American motorists due to the increased use of seatbelts and airbags.

I ask that the article on these developments from the July 22, 1984, edition of the Washington Post be printed in the RECORD for the information of my colleagues.

The article follows:

[From the Washington Post, July 22, 1984]

BREAKING THE COST BARRIER ON AIRBAGS

(By Nell Henderson)

While car manufacturers and consumer groups continue a 15-year-old debate over automobile air bags, a New Jersey company is working on a device that could change the arithmetic of the arguments by drastically reducing the price.

Consumer safety advocates contend that air bags could save 9,000 lives a year and prevent 65,000 crippling injuries over 10 years, but auto makers have argued that motorists just won't spend hundreds of dollars for them.

Mercedes-Benz of North America, the only company now selling air bags in the United States, offers its driver's-side air bag as an $880 option and has sold more than 1,000 air-bag-equipped cars since last fall. General Motors Corp. estimates that an air-bag system protecting both the driver and front-seat passenger would cost $1,100, based on production of 100,000 units. The Department of Transportation says a driver's-side bag could cost about $320, based on production of 1 million bags.

Breed Corp., by contrast, hopes to break through the cost barrier by offering a driver's-side air-bag system for $50 and a full front-seat system for about $150.

Breed, a small defense contractor based in Lincoln Park, N.J., has conceived of an inexpensive mechanical sensor located in the center of the steering wheel that would detect the moment of impact and cause the air bag to inflate in time to protect the motorist. Its cost advantage comes from its simplicity compared with the electrical sensor systems now used with air bags.

Breed envisions a device that motorists could buy at an auto parts store and pop into a cavity that auto manufacturers would leave in the center of the steering wheels of future models. Replacing it would be easier than changing a headlight, and, once installed, it would not be seen.

Most cars now on the road could be modified to use the system, say officials of the company, which has analyzed crash data for auto companies for 15 years.

The much-debated air bag prevents a motorist from crashing into the windshield, dashboard and steering wheel by inflating with nitrogen gas within milliseconds after a front-end impact. The 28-inch-wide circular bag inflates and deflates within two seconds, so fast that some crash victims have said they did not see or feel the bag until after the crash, when they found the deflated bag on their laps.

The traditional system used by GM, Ford Motor Co., and Mercedes-Benz relies on an electronic sensor wired to a device that generates the nitrogen gas that fills the bag. The circuits must be monitored by a diagnostic system, which makes sure they are working, and supported by a back-up electrical source.

Breed will provide electronic sensors for the air bags to be installed in 5,000 Ford Tempos purchased by the General Services Administration. The systems will include five sensors, one located behind each headlight, one on the front bumper and two on the wall separating the hood from the passenger compartment.

In these sensors, magnets hold a small metal ball in place until a crash occurs at at least 12 miles per hour. The momentum of the car frees the ball to fly forward onto two wires, thus completing the electrical circuit and firing the gas generator.

Mercedes uses a different sensor and places it on the transmission tunnel between the two front seats. The Mercedes sensoring system also provides two back-up electrical sources.

The sophisticated technology ensures that the system will work, and will work when it should—discerning between the changes in speed resulting from going over a pothole or curb and those caused by a serious crash.

Breed's mechanial sensor, located in the center of the steering wheel, acts like the trigger on a shotgun. A ball weight is held in place by a lever and a spring. The meomentum of the crash carries the ball forward, overcoming the spring and moving the lever to release a firing pin, which initiates the gas inflation.

Breed estimates that the sensor would cost $5 to produce in quantities of 1 million, the gas generator would cost $15, and the air bag, cover and mounting plate would cost $8.

The circuitry and back-up power systems required for electrical sensors would not be needed for the mechanical model.

The total manufacturing cost would be $28. Breed would sell the complete package (about 9.5 inches long, 5.5 inches wide and 2.5 inches deep, weighing 4.5 pounds) to the distributor or the car manufacturer for $32. The estimated final cost to the customer is about $50.

"It changes the [cost] equation rather dramatically," said Thomas C. McGrath Jr., Breed's vice president of business development.

The mechanical sensor also is simpler and, therefore, more reliable, said Allen K. Breed, chairman of the company, who predicted that the new mechanical device will replace the electrical sensor once testing is completed.

But a long road of testing lies ahead, and auto makers are in a hurry. The Department of Transportation recently announced that 10 percent of all 1987 cars must be equipped with automatic crash protection such as air bags or automatically closing seat belts, and that all new cars must have such protection by the 1990 model year.

Transportation Secretary Elizabeth Dole has said she would suspend the rule if states with two-thirds of the U.S. population pass laws mandating use of seat belts.

She also said the rule will encourage auto makers to use bags or develop "new technologies" by giving cars with such systems credit for 1.5 cars toward the quota, while giving a car with passive belts credit for one car.

Consumer groups have said the Dole rule will kill air bags, because car companies will opt for passive belts, which retail for about $60.

But Breed said the ruling will favor the bags. The car manufacturers "know people reject seat belts," he said. "We're getting urgent calls from all the auto makers. They're all cranking up air-bag programs."

Unfortunately, the Breed mechanical sensor is still in "the preliminary phase and needs proving out," said David S. Breed, the company's vice president.

The National Highway Traffic Safety Administration has awarded Breed a $587,970 contract to retrofit 100 state police cars with its new air-bag package. NHTSA is still "evaluating the concept" and has set no production schedule, spokesman Bob Boaz said.

The auto manufacturers say they have not decided how they will respond to the Dole decision, but they are looking at the mechanical sensor.

"It's promising enough that we're working with Breed on it," said Tom Terry, a GM automotive safety engineer. "But it's still really early in the game, too early to talk production. It's in the research phase."

GM is wary of air bags after offering them as a $225 to $315 option on its Cadillacs, Oldsmobiles and Buicks from 1974 to 1976. Although the air bags were priced below cost, the company sold only 10,000, after estimating sales of 300,000.

One auto maker, which plans to offer air bags on some of its 1987 models, questions whether the mechanical sensor would satisfy the DOT's requirement that an air-bag system have a "readiness indicator" to guarantee that the system is working.

Volvo, like Mercedes, emphasizes that the air bag is a supplement to a lap-and-shoulder belt.

Other auto makers question the merits of air bags, contending that they are effective only in front-end crashes, are no help in a roll-over, and must be worn with a lap belt anyway. But they also tend to agree that cost is a major issue.

"It's an expensive option," said Jerald R. terHorst, a Ford spokesman. "If you ask [buyers], 'Do you want a stereo or an air bag?' what do you expect them to say?"●

THE 1984 OLYMPIC GAMES IN LOS ANGELES, CA

● Mr. WILSON. Mr. President, this week the world has gathered in Los Angeles. Pooling its talents, sharpening its drive, it reminds us all of the universality of man's need to excel. Long before the bowl of fire is ignited inside Los Angeles Memorial Coliseum, the Olympic torch has cast its special light on a country rediscovering its own sense of purpose and pride. Long after the flame is extinguished, memories will remain to illuminate the games of the 23d Olympiad. So will the example of the athletes themselves, their striving and their struggles.

Already, the Los Angeles Olympic Organizing Committee [LAOOC] has set some records of its own. For these are the games of free enterprise, games for the public's enjoyment, paid for out of private funds. As such, they embody the competitive spirit off the field as well as on. Through its own aggressive program of marketing, the LAOOC has earned over $500 million, enough to meet its budget with room to spare. Come to think of it, Uncle Sam could learn a lot from Sam the Eagle. He might even discover ways to turn a deficit into a surplus.

For now, there is no shortfall of national enthusiasm as the international community of runners and swimmers, boxers and gymnasts, and equestrians and sailors convenes in the urban neighborhoods and wide-open spaces of southern California. Before they are gone, they will leave behind perhaps $3 billion in revenue, a substantial boost to a tourism industry already the State's largest.

But in the end, these games are about determination, not dollars. They are the strain on an athlete's face and the pull on his weary muscles—the hidden reserves of energy and character that vault one competitor ahead of another—the end product of a lifelong aspiration to run faster, jump further, soar higher, and be the best, however that exacting standard is defined.

Most of all, the games are a joyous reminder that what unites us is greater than our divisions, and that politics can be relegated to the sidelines, even on a global scale. It is a lesson we need to learn and relearn constantly. For now, let us be grateful that the athletes of Los Angeles have consented to be our teachers. I join with millions of other Americans in wishing them well, and welcoming them with all the warmth that California can supply.●

THE PAPERWORK REDUCTION ACT AMENDMENTS OF 1984

● Mr. PRYOR. Mr. President, I am pleased that the Government Affairs Committee today voted to report legislation to address one of the highest priority issues within the small business community—the need for reduction of Federal paperwork. For small business firms throughout the country, the burden of these federally imposed requirements is an often unbearable one. The perception among my own constituents marks these requirements as not burdensome, but unnecessary as well. The Governmental Affairs Committee's approval of the Paperwork Reduction Act of 1984 is an important congressional response to these concerns.

The Paperwork Reduction Act of 1980 offered several mechanisms to collect information needed by the Government in the most efficient manner possible. The Office of Information and Regulatory Affairs [OIRA], was established as a clearinghouse for all paperwork and recordkeeping requirements imposed on the public. The act also featured a public protection clause which was designed to assure the public that any information requested was in fact needed.

The 1980 legislation mandated a reduction by 25 percent of the paperwork required of small businesses regulated by or trying to do business with the Federal Government. Since its enactment, 477 million hours of annual paperwork burden on the American public have been eliminated saving individuals and businesses an estimated $10 billion to $20 billion. The 25 percent goal has been met and, in fact, exceeded. However, there are still small businesses who are deterred from seeking Federal contracts because of the amount of paperwork, and certain agencies have failed to fully respond to the directive to remove redtape.

The Paperwork Reduction Act Amendments of 1984, S. 2433, will build on the accomplishments of the 1980 measure by mandating an additional 25-percent reduction over the next 5 years. Other features include: First, clarification of the public protection clause outlined in the original bill; second, Presidential appointment and Senate confirmation of the head of the OIRA, which serves to focus the role of congressional oversight in relation to that agency; third, detailed reporting of the annual OIRA budget; and, fourth, the establishment of an up-to-date information technology fund, thereby acknowledging the importance of developing and mastering emerging forms of information technology.

I offer my strong support for the Paperwork Reduction Act Amendments of 1984, and urge swift consideration and action for this important measure.●

AGRICULTURAL CREDIT FAIRNESS

● Mr. PRYOR. Mr. President, I want to express my support for Senate Concurrent Resolution 130, introduced by the distinguished Senator from Nebraska [Mr. EXON], and urge my colleagues to review the resolution, and hopefully, sponsor it. I think it sends an excellent message, not only to the farmers of this Nation, but also to the administration, and officials who are involved in farm credit in this administration.

The resolution is fairly simple. It provides that the President, in cooperation with the Board of Governors of the Federal Reserve Board, should take steps to ensure the availability of agricultural credit to the agricultural producers in this country. It also provides that our producers be treated no less favorably than foreign borrowers. This whole matter, Mr. President, is simply one of equity.

Our farmers, ranchers, dairy producers, and poultry producers, along with businesses that are involved in the agricultural sector of our economy, have made us the envy of the world. Productivity gains in agriculture have been able to keep the balance of trade better than it would otherwise have been because agricultural products are about the only area in which we enjoy a trade surplus.

The problem, Mr. President, as virtually everybody knows, is that more and more people are leaving the rural areas, giving up farming. Farmers, ranchers, dairymen, and poultry producers can't stay in business if what they receive for their production is below the money it took to produce the commodity.

Therefore, we've got to take steps, particularly in the area of export financing and promotion, that will increase our sales abroad. Obviously, the overvalued dollar has hurt, and that's why deficits must be brought down. This would lower interest rates, and not only help our exports, but just as importantly, lower the cost of credit to the American agricultural producer. That's why I've supported a budget freeze, a freeze on Federal spending, for each of the last 2 years. Although it hasn't been successful, I continue to hope that next year, we'll be able to adopt the budget freeze.

Additionally, I was an original cosponsor of, and strongly supported, the proposed constitutional amendment requiring a balanced Federal budget. We have to balance the budget in the State of Arkansas—I did it when I was Governor—and I can't understand why we can't pass this budget reform that will put into place the one mechanism for balancing the budget on the Federal level.

Along with reducing the deficit, and increasing our exports, Mr. President, I think the steps set out in the concurrent resolution (S. Con. Res. 130) would be extremely helpful to our Nation's agricultural producers. People engaged in agriculture have been shown time and time again to be good credit risks. On the other hand, many foreign borrowers, particularly countries in Latin America, have been extremely poor credit risks. However, those foreign nations have received additional loans, and when interest payments were due, but couldn't be paid, a deferral period was arranged, and they were given additional time to pay.

It seems to me, Mr. President, that the agricultural producers in this country should receive comparable treatment. They should come first. They are the ones who've been experiencing a real credit crisis. Although

the Latin American credit problems are on the front pages of many large newspapers frequently, the day-to-day struggles of a farmer, poultry producer, dairy producer, or small business person engaged in some part of the agricultural economy, receive little attention. However, the availability of credit is critically important to our Nation's agricultural economy, and I would hope and expect that our producers should be given no less favorable treatment than some foreign country.

Mr. President, we should adopt this resolution, send a signal to the administration about the availability of agricultural credit, and more importantly, Mr. President, let the agricultural producers in this country know that the Federal Government will be responsive in the area of agricultural credit, as well as agricultural exports.●

ORDERS FOR FRIDAY

ORDER FOR RECESS UNTIL 10 A.M.

Mr. STEVENS. Mr. President, there will be no further votes this evening. I ask unanimous consent that when the Senate recesses, it do so until 10 a.m. tomorrow.

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

ORDER FOR RECOGNITION OF SENATOR PROXMIRE

Mr. STEVENS. Mr. President, after the time for the two leaders under the standing order, I ask unanimous consent that there be a special order for not to exceed 15 minutes for the Senator from Wisconsin [Mr. PROXMIRE].

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

ORDER FOR TIME FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, following the special order, I ask unanimous consent that there be a period for the transaction of routine morning business during which statements may be made for not to exceed 5 minutes and the period not extend beyond 10:30 a.m.

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

EXTENSION OF ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES BLOCK GRANT

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2303.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2303) entitled "An Act to revise and extend the Alcohol and Drug Abuse and Mental Health Services block grant", do pass with the following amendments: Strike out all after the enacting clause and insert:

TITLE I—ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES

SEC. 101. This title may be cited as the "Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984".

SEC. 102. Section 1911 of the Public Health Service Act (42 U.S.C. 300x) is amended by striking out "and" after "1983," and by inserting before the period a comma and the following: "$532,000,000 for fiscal year 1985, $564,000,000 for fiscal year 1986, and $598,000,000 for fiscal year 1987".

SEC. 103. (a) Title XIX of the Public Health Service Act is amended by striking out section 1912 and inserting in lieu thereof the following:

"GRANTS

"SEC. 1912. (a) The Secretary may use not more than 1 percent of the amount appropriated under section 1911 for any fiscal year to make grants to public and nonprofit private entities for projects for the training and retraining of employees adversely affected by changes in the delivery of mental health services and for providing such employees assistance in securing employment.

"(b) No grant may be made by the Secretary under subsection (a) unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain and be accompanied by such information, as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approval application and will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under subsection (a).

"ALLOTMENTS

"SEC. 1913. (a)(1) If the amount available for allotment from appropriations under section 1911 for a fiscal year does not exceed $528,000,000, the Secretary shall allot such amount—

"(A) on the basis of a formula prescribed by the Secretary which is based equally—

"(i) on the population of each State, and

"(ii) the population of each State weighted by its relative per capita income, or

"(B) on the basis of the amount received by a State in fiscal year 1984,

whichever yields a higher amount. For purposes of subparagraph (A), the term 'relative per capita income' means the quotient of the per capital income of the United States and the per capita income of the State, except that if the State is Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific, the Commonwealth of Puerto Rico, and the Virgin Islands, the quotient shall be considered to be one.

"(2) If the amount available for allotment from appropriations under section 1911 for a fiscal year exceeds $528,000,000, the Secretary shall allot $528,000,000 in accordance with paragraph (1) and shall allot the amount which is in excess of such amount on the basis of the formula described in paragraph (1)(A).

"(3) Notwithstanding paragraph (1), if the aggregate of the amounts to be allotted to each State pursuant to paragraph (1)(B) in any fiscal year exceeds the total of the amount appropriated under section 1911 for allotments to States, the amount to be allotted to a State shall for such fiscal year be an amount which bears the same ratio to the amount which is to be allotted to the State pursuant to such paragraph as the total of the amount appropriated under section 1911 for allotments bears to the total of the amount required to be appropriated under such section for allotments to provide each State with the allotment required by such paragraph.

"(4) To the extent that all the funds appropriated under section 1911 for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

"(A) one or more States have not submitted an application or description of activities in accordance with section 1915 for the fiscal year;

"(B) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(C) some State allotments are offset or repaid under section 1916(b)(3);

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

"(b)(1) If the Secretary—

"(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this part be provided directly by the Secretary to such tribe or organization, and

"(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary on this part,

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for the fiscal year the amount determined under paragraph (2).

"(2) The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) an amount equal to the amount which bears the same ratio to the State's allotment for the fiscal year involved as the total amount provided or allotted for fiscal year 1980 by the Secretary to such tribe or tribal organization under the provisions of law referred to in subsection (a)(2) bore to the total amount provided or allotted for such fiscal year by the Secretary to the State and entities (including Indian tribes and tribal organizations) in the State under such provisions of law.

"(3) The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

"(4) In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

"(5) The terms "Indian tribe" and "tribal organization" have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act.".

(b) Section 1915(c)(6) of such Act (42 U.S.C. 300x-4(c)(6)) is amended by striking out subparagraphs (B) and (C) and inserting lieu thereof the following:

"(B) The State agrees to use 75 percent of the funds allotted to it under section 1912 for fiscal years beginning after fiscal year 1984 for the mental health and alcohol drug abuse activities prescribed by section 1914(a) as prescribed by subparagraph (A).".

(c) Such section 1915(c) is amended—

(1) in paragraph (2) by striking out "fiscal years 1982, 1983, and 1984" and inserting in lieu thereof "fiscal years 1985, 1986, and 1987";

(2) by adding at the end thereof the following:

"(14) The State will, not later than October 1, 1984, as prescribed by the Secretary by regulation, collect data on alcoholism, alcohol abuse, drug abuse, and mental illness in the State using a uniform system prescribed in such regulation.

"(15) The chief executive officer of the State may establish a State mental health services planning council which will serve as an advocate for chronically mentally ill individuals, seriously mentally ill children, adolescents, and elderly individuals, other individuals with mental illness or emotional problems and which will monitor, review, and evaluate, not less often than annually, the allocation and adequacy of mental health services within the State. Such a council shall be made up of residents of the State and include in its membership representatives of the principal State agencies involved in mental health, higher education training facilities, and public and private entities concerned with the need, planning, operation, funding, and use of mental health and related services and activities. At least one half of the membership shall consist of individuals who are not State employees or providers of mental health services.

"(16) The State agrees to use an amount equal to at least 10 percent of the funds under its allotment which are to be used for mental health activities to establish new comprehensive community mental health programs for unserved areas or for underserved populations.";

"(17) The State agrees to use not less than 10 percent of the funds allotted to it under this part to initiate and expand alcohol and drug abuse services for women and to initiate and expand mental health services for severely disturbed children and adolescents. The services described in this paragraph are in addition to the services to be provided under paragraph (16).'"; and

(3) by striking out the last sentence.

(d)(1) Section 1915 is amended by redesignating subsection (e) as subsection (g) and by inserting after subsection (d) the following new subsection:

"(e) The chief executive officer of a State may prepare and submit a comprehensive mental health plan which shall include—

"(1) an identification of the mental health service areas within the State and the agency responsible for the delivery and coordination of mental health services within the State;

"(2) an identification of the need in each mental health service area of the State for mental health and related services, particularly the need for services by chronically mentally ill individuals, seriously mentally ill children, adolescents, and elderly individuals, and other identified populations;

"(3) a description of the resources devoted to and activities to be carried out under the plan, including—

"(A) a description of mental health activities funded or supported under this Act,

"(B) a description of mental health activities funded or supported by State appropriations,

"(C) a description of mental health and related support activities funded under or supported through title XIX of the Social Security Act and other programs of Federal assistance, and

"(D) a description of mental health activities reimbursed in the State by private third party insurance coverage;

"(4) the mental health prevention and treatment objectives to be achieved under the plan and a listing of the programs and resources to be used to meet such objectives;

"(5) a strategy for the establishment and implementation for the chronically mentally ill of an organized community-based system of care which shall provide for quantitative targets to be achieved in the implementation of the plan, including numbers of chronically mentally ill persons residing in the areas to be served, services to be provided to such individuals in gaining access to essential mental health services, and medical and dental care and rehabilitation services and employment, housing, and other support services designed to enable chronically mentally ill individuals to function outside of inpatient institutions to the maximum extent of their capabilities;

"(6) targets for provision of community-based mental health services for underserved populations, with particular emphasis on the elderly, children and adolescents, and individuals residing in areas without adequate outpatient treatment facilities; and

"(7) a method for the periodic evaluation of the plan's effectiveness in meeting the objectives set forth in the plan.

"(f) The Secretary shall report annually to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on the new programs initiated and services expanded in accordance with subsection (c)(17). The report shall include a detailed description of such programs and services, an assessment of the adequacy of such programs and services in meeting the alcohol and drug abuse treatment needs of women and the need for mental health services of severely disturbed children and adolescents, and such other information, including legislative and administrative recommendations, as the Secretary deems appropriate.".

(2) Section 1915(c)(2) is amended by striking out "(e)" and inserting in lieu thereof "(g)".

(3) Section 1915(c)(4)(C) is amended by inserting before the first comma the following: "or psychosocial rehabilitation services".

(e) Paragraph (2) of section 1916(b) is amended to read as follows:

"(2) Each State shall provide for one of the following:

"(A) A financial and compliance audit of the funds provided the State under section 1913. Such audits shall be performed annually and shall be conducted in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, activities, and functions.

"(B) A single financial and compliance audit of each entity administering funds provided under section 1913. An audit of such an entity shall be conducted annually and conducted in accordance with standards prescribed by the Comptroller General under subparagraph (A), except that if the entity is an entity of a government which operates on a biennial fiscal period, such audit may be made biennially.

Within 30 days after completion of an audit under subparagraph (A) or (B), a copy of the audit report shall be transmitted to the State legislature and the Secretary and shall be made available for public inspection. For purposes of subparagraphs (A) and (B), the term 'financial and compliance audit' means an audit to determine whether the financial statements of an audited entity present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.".

(f) Section 1916(a) (42 U.S.C. 300x-5(a)) is amended by striking out "and (3)" and inserting in lieu thereof "(3) to furnish the Secretary a detailed description of the programs to be supported in accordance with section 1915(c)(17), and (4)".

(g)(1) Sections 1911, 1913, 1914, 1915, 1916, and 1918 are each amended by striking out "1912" each place it occurs and inserting in lieu thereof "1913".

(2) Sections 1914, 1915, and 1916 are each amended by striking out "1913" each place it occurs and inserting in lieu thereof "1914".

(3) Sections 1913 and 1915 are each amended by striking out "1914" each place it appears and inserting in lieu thereof "1915".

(4) Sections 1913, 1914, 1916, 1917, and 1920 of such Act are each amended by striking out "1915" each place it occurs and inserting in lieu thereof "1916".

(5) Sections 1912 and 1913 are each amended by striking out "1916" each place it occurs and inserting in lieu thereof "1917".

(6) Section 1915 is amended by striking out "1917" and inserting in lieu thereof "1918".

(7) The section of the Public Health Service Act entitled "Payments Under Allotments to States" is redesignated as section 1914 and the existing section 1914 and sections 1915 through 1920 are redesignated as sections 1915 through 1920A, respectively.

(h)(1) Section 1920A of such Act (as so redesignated) is amended to read as follows:

"ADMINISTRATION

"SEC. 1920A. The Secretary, shall through fiscal year 1987 administer this part through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration.".

(2) Subsections (b) and (c) of section 501 of such Act are each amended by striking out "Administration" and inserting in lieu thereof "Administrator" and subsection (e)(1) of such section is amended by striking out "administration" and inserting in lieu thereof "Administration".

SEC. 104. (a) Section 501(a) of the Public Health Service Act is amended by inserting "(1)" after "(a)" and by adding at the end the following:

"(2) There shall be in the Administration an Associate Administrator for Special Populations to identify and assess the needs of minorities and women for alcohol and drug abuse and mental health services, to assure that the research being conducted or supported under this title includes women and minorities, and to assure that research training being provided or supported under this title includes women and minorities.".

(b) Section 501(c) of the Public Health Service Act is amended to read as follows:

"(c)(1) There is established the Alcohol, Drug Abuse, and Mental Health Strategy Council (hereinafter in this subsection referred to as the 'Council'). The Council shall—

"(A) periodically assess the national needs for alcoholism, alcohol abuse, drug abuse, and mental health services and the extent to

which those needs are being met by State, local, and private programs and programs receiving funds under this title, and

"(B) provide advice to the Secretary and the Administrator respecting activities carried out under this title.

"(2)(A) The Council shall consist of fifteen members appointed by the Secretary and such ex officio members from the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health as the Secretary may designate. Of the members appointed to the Council, at least six members shall represent State and local providers of prevention and treatment services for alcoholism, alcohol abuse, drug abuse, and mental illness, at least six members shall be individuals with expertise in public education and prevention services for alcoholism, alcohol abuse, drug abuse, and mental illness, and at least three members shall be appointed from members the general public who are knowledgeable about alcoholism, alcohol abuse, drug abuse, and mental illness.

"(B) The term of office of a member appointed to the council is four years, except that of the members first appointed to the council—

"(i) five shall serve for terms of one year,

"(ii) five shall serve for terms of two years,

"(iii) five shall serve for terms of three years,

as designated by the Secretary at the time of appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

"(3)(A) Except as provided in subparagraph (B), members of the Council shall (i) be paid not more than the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council, and (ii) while away from their homes or regular places of business and while serving in the business of the Council, be entitled to receive transportation expenses as prescribed by section 5703 of title 5, United States Code.

"(B) Members of the Council who are full-time officers or employees of the United States shall receive no additional pay, allowances, or benefits by reason of their service on the Council.

"(4) The Council may appoint such staff personnel as the Council considers appropriate.

"(5) The Secretary shall designate the chairman of the Council.

"(6) The Council shall meet at least three times each calendar year.

"(7) The Council shall report annually to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on its activities during the period reported on and shall include in such report such recommendations for legislation and administrative action as it deems appropriate.".

(c) Section 501 is amended by inserting at the end the following:

"(g)(1) The Administrator may obtain (in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the number of days or the period of service) the services of not more than 20 experts or consultants who have scientific or professional qualifications. Such experts and consultants shall be obtained for the Administration and for each of the research institutes under the Administration.

"(2)(A) Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5742, 5742a(a)(1), 5742a(a)(3), and 5726(c) of title 5, United States Code.

"(B) Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1), unless and until the expert or consultant agrees in writing to complete the entire period of his assignment of 1 year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for these expenses is recoverable from him as a debt of the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.".

(d) Subsection (e) of section 504 of the Public Health Service Act is repealed.

SEC. 105. Part A of title V of the Public Health Service Act is amended by adding at the end the following:

"DEMONSTRATIONS, DATA, AND TECHNICAL ASSISTANCE

"SEC. 507. (a) The Secretary, acting through the Administrator, may make grants to public and nonprofit private entities to carry out activities to demonstrate prevention and treatment services for alcoholism and alcohol abuse, drug abuse, and mental illness. No grant may be made under this subsection for more than 3 years and the Secretary shall disseminate to the public the results of activities undertaken under such a grant.

"(b) The Secretary shall collect and compile data submitted under section 1916(c)(14) and shall provide technical assistance to public and nonprofit entities to assist in the administration of programs for which funds were provided under an allotment under part B of title XIX and in the administration of funds provided under such an allotment.".

SEC. 106. Subsection (d) of section 502 of the Public Health Service Act is amended to read as follows:

"(d) The Secretary, acting through the Administrator, shall make grants to schools of medicine to support the training of students in such schools in the identification and treatment of alcohol and drug abuse. Grants under this subsection shall be made from funds available under this title and section 303.".

SEC. 107. Section 503 of the Public Health Service Act is amended by striking out subsection (d) and by redesignating subsection (e) as subsection (d).

SEC. 108. (a) The first sentence of section 512 of the Public Health Service Act is amended by striking out "and" after "1983" and inserting in lieu thereof a comma and by inserting a comma before the period at the end and the following: "$48,000,000 for fiscal year 1985 and $55,000,000 for fiscal year 1986".

(b) Section 515(c) of such Act is amended by striking out "and" after "1983" and inserting in lieu thereof a comma and by inserting a comma before the period at the end and the following: "$64,000,000 for fiscal year 1985 and $72,000,000 for fiscal year 1986".

SEC. 109. The Secretary of Health and Human Services shall present to the Congress by April 15, 1985, a comprehensive national plan to combat alcoholism and alcohol abuse. The plan shall include—

(1) a current estimate of the social and economic costs of alcoholism and alcohol abuse to the Nation,

(2) an assessment of unmet treatment and rehabilitation needs,

(3) an assessment of personnel needs in the fields of research, treatment, rehabilitation, and prevention,

(4) an assessment of the integration and financing of alcoholism treatment and rehabilitation into the Nation's health care delivery system,

(5) a statement of the Department of Health and Human Services' specific goals and objectives for meeting unmet treatment and rehabilitation needs, for meeting personnel needs, and for reducing the social and economic costs of alcoholism and alcohol abuse to the Nation,

(6) a delineation of specific legislative and administrative recommendations and departmental strategies for accomplishing the Department's goals and objectives,

(7) an analysis of available resources, including current public and private expenditures, to combat alcoholism and alcohol abuse, and

(8) an estimate of needed resources, both private and public, to accomplish the Department's goals and objectives.

SEC. 110. (a) Section 102(28) of the Controlled Substances Act (21 U.S.C. 802) is amended by striking out "twenty-one" and inserting in lieu thereof "one hundred and eighty".

(b) The Secretary of Health and Human Services shall, within ninety days of the date of the enactment of this Act, promulgate regulations for the administration of section 102(28) of the Controlled Substances Act as amended by subsection (a) and shall include in his report under section 505(b) of the Public Health Service Act his findings of the effect of the amendment made by subsection (a).

(c) Section 2(b) of the Alcohol and Drug Abuse Amendments of 1983 (97 Stat. 181) is amended—

(1) by striking out "210" in paragraph (2) and inserting in lieu thereof "201"; and

(2) by striking out "201, 301" in paragraph (13) and inserting in lieu thereof "301, 201".

SEC. 111. Title III of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. 1161-1165) is repealed.

TITLE II—DEVELOPMENTAL DISABILITIES ASSISTANCE

SEC. 201. (a) The first sentence of section 113(b)(2) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6012(b)(2)) is amended by striking out "and" after "1983," and by inserting before the period a comma and the following: "$12,500,000 for the fiscal year ending September 30, 1985, $15,000,000 for the fiscal year ending September 30, 1986, $17,500,000 for the fiscal year ending September 30, 1987, and $20,000,000 for the fiscal year ending September 30, 1988".

(b) Section 123(a) of such Act (42 U.S.C. 6033(a)) is amended by striking out "and" after "1983," and by inserting before the period a comma and the following: "$8,000,000 for the fiscal year ending September 30, 1985, "$8,500,000 for the fiscal year ending September 30, 1986, "$9,000,000

for the fiscal year ending September 30, 1987, and "$9,500,000 for the fiscal year ending September 30, 1988".

(c) Section 131 of such Act (42 U.S.C. 6061) is amended by striking out "and" after "1983," and by inserting before the period a comma and the following "$46,000,000 for the fiscal year ending September 30, 1985, $48,800,000 for the fiscal year ending September 30, 1986, $52,000,000 for the fiscal year ending September 30, 1987, and $55,000,000 for the fiscal year ending September 30, 1988".

(d) Section 145(d) of such Act (42 U.S.C. 6081(d)) is amended by striking out "and" after "1983," and by inserting before the period a comma and the following: "$2,700,000 for the fiscal year ending September 30, 1985, $2,900,000 for the fiscal year ending September 30, 1986, $3,100,000 for the fiscal year ending September 30, 1987, and $3,300,000 for the fiscal year ending September 30, 1988".

SEC. 202. (a) Section 102(8)(A) of such Act (42 U.S.C. 6001(8)(A)) is amended by striking out "and" before "transportation services" and by inserting before the period a comma and the following: "and the promotion and coordination of activities in support of the prevention of developmental disabilities".

(b) Section 102(9) of such Act is amended by inserting "(A)" after "means" and by inserting before the period the following: ", or (B) a public or nonprofit entity which is associated with or is an integral part of a college or university and which provides for at least—

"(i) interdisciplinary training for personnel concerned with the provision of direct or indirect services to persons with developmental disabilities; and

"(ii) dissemination of findings relating to the provision of services to persons with developmental disabilities".

SEC. 203. (a)(1) Section 109 of such Act (42 U.S.C. 6008) is amended by inserting "(a)" after "109." and by adding at the end thereof the following:

"(b) The Secretary shall make an annual report to Congress on the activities of the States with funds provided under section 132 and make such reports available to the States and the general public."

(2) The heading for such section is amended by adding at the end the following: "and annual report".

(b) Section 133(b)(1)(C) of such Act (42 U.S.C. 6063(b)(1)(C)) is amended by striking out "such reports, in such form and containing such information, as the Secretary may from time to time reasonably require" and inserting in lieu thereof "annual reports in such form and containing such information as the Secretary may reasonably require".

SEC. 204. (a) Section 113(a) of such Act (42 U.S.C. 6012(a)) is amended by striking out "and" before "(3)" and by inserting before the period a comma and the following: "and (4) the State must provide assurances satisfactory to the Secretary that the agency implementing the system will not be replaced unless there is good cause for the redesignation and unless notice has been given of the intention to make such replacement to persons with developmental disabilities or their representatives".

(b) The second sentence of section 113(b)(1)(A) of such Act is amended by striking out all that follows after "except that" and inserting in lieu thereof the following: "(i) the allotment to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands shall not be less than $100,000 in any fiscal year if the appropriations for such fiscal year under this subsection exceeds $10,000,000, (ii) if the appropriations for any fiscal year under this subsection do not exceed $10,000,000, such an allotment may not be less than $50,000, (iii) the allotment to any other State for any fiscal year may not be less than the greater of $150,000 or the amount of the allotment received by the State for the fiscal year ending September 30, 1983, if the appropriations for such fiscal year under this subsection exceeds $10,000,000, and (iv) if the appropriations for any fiscal year under this subsection do not exceed $10,000,000 such an allotment may not be less than $50,000.".

SEC. 205. (a) Section 122(d)(1) of such Act (42 U.S.C. 6032(d)) is amended by striking out "$150,000" and inserting in lieu thereof "$200,000" and by inserting before the period a comma and the following: "and to a satellite center shall not be less than $75,000 for any fiscal year".

(b) Section 122(d) of such Act is amended by striking out "(1)" and paragraph (2).

SEC. 206. (a) Section 132(a)(2) of such Act (42 U.S.C. 6062(a)(2)) is amended by striking out "$100,000" in subparagraph (A) and inserting in lieu thereof "$200,000 if the appropriations under section 131 for such fiscal year exceed $47,000,000 or $100,000 if such appropriations do not exceed $47,000,000".

(b) Section 132(a)(2)(B) of such Act is amended by striking out "$250,000" and all that follows in such section and inserting in lieu thereof "$350,000 or the amount of the allotment received by the State for the fiscal year ending September 30, 1983, if the appropriations for such fiscal year under section 131 exceed $47,000,000 or $250,000 if such appropriations do not exceed $47,000,000.".

(c) Section 132(a) of such Act is amended by adding the following new paragraph:

"(4) Adjustments in the amounts of State allotments based on subparagraphs (A), (B), and (C) of paragraph (1) shall be made annually. The Secretary shall notify States no less than six months before the beginning of the fiscal year.".

SEC. 207. Section 133(b)(4)(B)(i) of such Act (42 U.S.C. 6063(b)(4)(B)(i)) is amended by inserting before the period the following: "and for manpower assessment activities. No more than 10 percent of funds for priority services may be used for manpower assessment activities".

Amend the title so as to read: "An Act to amend the Public Health Service Act to revise and extend the authorities of that Act for assistance for alcohol and drug abuse and mental health services and to revise and extend the Developmental Disabilities Assistance and Bill of Rights Act.".

Mr. STEVENS. Mr. President, I move that the Senate disagree to the House amendments and agree to the conference requested by the House and the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mr. WILSON) appointed Mr. HATCH, Mrs. HAWKINS, Mr. QUAYLE, Mr. GRASSLEY, Mr. KENNEDY, Mr. MATSUNAGA, and Mr. RIEGLE, conferees on the part of the Senate.

SENATE JOINT RESOLUTION 272 PLACED ON CALENDAR

Mr. STEVENS. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 272, a joint resolution recognizing the anniversaries of the Warsaw Uprising and the Polish resistance to the invasion of Poland during World War II, and it be placed on the calendar.

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

SENATE JOINT RESOLUTION 323 PLACED ON CALENDAR

Mr. STEVENS. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 323, "Polish American Heritage Month," and it be placed on the calendar.

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

HOUSE CONCURRENT RESOLUTION 331 PLACED ON CALENDAR

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be discharged from further consideration of House Concurrent Resolution 331, condemning the closing of ABC Color, Paraguay's independent newspaper, and urging the Paraguayan Government to permit the paper to resume publication, and it be placed on the calendar.

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

ORDER TO HOLD H.R. 5890 AT DESK

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate receives from the House H.R. 5890, a bill to establish a commission on the observance of the Martin Luther King birthday holiday, it be held at the desk until the close of business on Friday July 26, 1984.

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

ORDER TO HOLD HOUSE CONCURRENT RESOLUTION 340 AT DESK

Mr. STEVENS. Mr. President, I ask unanimous consent that once the Senate receives from the House Concurrent Resolution 340, making technical corrections in H.R. 559, it be held at the desk pending further disposition.

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

REFERRAL OF PHARMACEUTICAL EXPORT BILL

Mr. STEVENS. Mr. President, I ask unanimous consent that the bill introduced today by Senator HATCH dealing with the Pharmaceutical Export Reform Act of 1984, be referred to the Committee on Labor and Human Resources.

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

PROGRAM

Mr. STEVENS. Mr. President, following the routine morning business tomorrow, the Senate will resume consideration of the House message on the Hoover Dam, which is S. 268, with the Metzenbaum amendment No. 3419 pending. The Senate may also turn to the consideration of H.R. 5898, the military construction bill.

RECESS UNTIL 10 A.M. TOMORROW

Mr. STEVENS. Mr. President, if there be no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess in accordance with the previous order.

There being no objection, the Senate, at 9:02 p.m., recessed until Friday, July 27, 1984, at 10 a.m.

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